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THE APOGEE OF THE COMMODITY

*Anthony Paul Farley**

*If commodities could speak . . .*¹

—Karl Marx

*I would be sorry if they understood me. Until now it has gone according to my wishes with these people; and I hope even now that this exordium will so bewilder them that from now on they see nothing but letters on the page, while what passes for mind in them is torn hither and thither by the caged anger within.*²

—J.G. Fichte

The black is the apogee of the commodity. It is the point—in time as well as in space—at which the commodity becomes flesh. And, for the system of capital, the black is both the instrument of its demise and the vehicle of its ensoulment. Provisionally, let us call the time and space of ensoulment Virginia, 1619 A.D. It begins with a document:

About the latter end of August, a Dutch man of Warr of the burden of 160 tuñes arriued at Point-Comfort, the Cammando^{rs} name Capt Jope, his Pilott for the West Indies one M^r Marmaduke an Englishman He brought not anything but 20. and odd Negroews, w^{ch} the Governo^r and Cape Marchant bought for victual[e] (whereof he was in greate need as he p[re]tended) at the best and easyest rat[e] they could.³

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1. KARL MARX, *I CAPITAL* 176 (Ben Fowkes trans., 1990).

2. J.G. FICHTE, *THE SCIENCE OF KNOWLEDGE* 5 (1794) (Peter Heath & John Lachs eds. & trans., 1982) (1794).

3. *John Rolfe to Sir Edwin Sandys, January 1619*, in 3 *THE RECORDS OF THE VIRGINIA COMPANY OF LONDON* 243 (Susan Myra Kingsbury ed., 1906) [hereinafter *Rolfe to Sandys*].

A legal relationship emerges ("20. and odd Negroews . . . bought for victual[e] . . ."4).⁵ There is a field of knowledge, a science of right, within which that relation is said to exist.⁶ It all comes to an end with the question of reparations.

What is a legal relation? The question brings us back to the commodity that reaches its apogee in the black. What connects a document to a body of rules and to the bodies governed by its rules?

Capital becomes a system of right in and through the voice of the commodity. Commodities *do* speak. Commodities speak of rights (the science of right is the study of the use of words in the language of the commodity). The commodity might like to be human, but humanity, within the system of capital, is ownership. Human rights, then, are precisely what the commodity cannot possess and yet precisely what it perpetually prays to receive. The question of reparations is the expression of this contradiction. The commodity dreams of equality. The commodity *is* that which dreams of equality; the dream of equality, in other words, is the *without which not* of the commodity.

The dream is a disguised wish.⁷ The commodity hides its desire from itself through dreams and prayers for rights. The commodity dreams of equal rights, of being human, and that dream-surface of rights hides the secret shame of the commodity. The commodity's dream of equal rights is a disguise for its secret and shameful desire to remain a commodity. The commodity has been trained to be a commodity and it follows that training all the way to the end. The end is the question of reparations, but before the end is the beginning.

4. *Id.*

5. There is, then, a system. A system? A feeling of a center holding, a history of training that enables a feeling of collective movement. The feeling is experienced as one moves within a field in the generally accepted way. The field is the world or, more precisely, the world, and everything in it, appears to us in fields, withds, and wastes. The juridical is a field. Agriculture is also a field. Fields can be planted with cotton and cultivated by slaves, as with plantations. A plantation is a field that is owned by someone other than the one who is made to work within that field. How to move from field to field? Gold Coast slaveships bound for cotton fields managed to navigate their way across even the most sunless seas and uncultivated oceans to sell their black cargo in the slave markets of New Orleans. There is a generally accepted way to move through the various discursive fields that are labeled juridical, just as there is a generally accepted way to move through the various fields that are labeled agricultural. As the system's population moves through its fields, withds, and wastes it does not always perceive its training, rather, it lives its training as its future.

6. The white-over-black relationship means that there is no *up from slavery* story to tell. Slavery to segregation to neosegregation is white-over-black to white-over-black to white-over-black. There has been no passage of time, no progress. Slavery, segregation, and neosegregation are different names for the same S/M game of white-over-black. White-over-black is white-over-black is white-over-black. The black, then, is the highest height of the commodity.

7. See SIGMUND FREUD, *THE INTERPRETATION OF DREAMS* 359-74 (Joyce Crick trans., 1999).

There are objects and there are owners. When there are owners, one is either object or owner. Objects capable of ownership and exchange are commodities. One owns or does not own. The one that owns is an owner and the one that does not own is either owned or lost. Of the lost, nothing can be said. Of the owned, nothing need be said; they speak with the voice of their owners, they speak of rights. What is the origin of the commodity?

The one who would own must first create a world of objects capable of being owned. This requires, before all else, a marking of bodies. The otherwise common flesh of the human must be divided into the bodies of the owner and the owned. Race and sex, for example, are *marks*.⁸

No *one* has the power to bind others to respecting a mark made on the earth or anything in it. One person cannot force another to respect or with respect to anything at all, at least not for long and not for life. One person may temporarily overpower another but the one must sleep sometime and during that time the other may depart, become stronger than the one, or find an ally. With each night's dreaming, the rule and the rules of the one melt into the sea like castles made of sand. The rule of the one, then, does not allow for the reduction of the other to an object capable of being owned. The one who would own must, therefore, first find others who would own and then jointly devise a "system of marks."⁹ These marks must be written on the body so that those who would own can recognize each other as owners and others as owned. Those who would *own* author a system of marks so that they can organize themselves into a single body powerful enough to force others to respect their will. The powerful group, which shares a common mark, can bind others to its will. The will of the powerful ones, the would-be owners, becomes, through force and habit and force of habit, the system of marks. The powerful group marks itself and marks its others and then forces its less powerful

8. There is no race; there is only the pleasure of white-over-black. There is no sex; there is only the pleasure of man-over-woman. There is no class; there is only the pleasure of the extraction of surplus value, of owner-over-worker.

9. Colette Guillaumin uses the term "system of marks" to highlight the way that "[a] *social relationship*, here a relationship of domination, of power, of exploitation, which secretes the idea of nature, is regarded as the product of traits internal to the object which endures the relationship, traits which are revealed in specific practices." Colette Guillaumin, *Race and Nature: The System of Marks*, in *RACISM, SEXISM, POWER AND IDEOLOGY* 143 (Mary Jo Lakeland trans., 1995). Maria Grahn-Farley writes of the system of marks, "[T]he system of marks naturalizes our understanding of the people marked as Women and the people marked as Colored. It does so by guaranteeing that the material treatment of the person is also what the person is seen to be." Maria Grahn-Farley, *The Law Room: Hyperrealist Jurisprudence & Postmodern Politics*, 36 *NEW ENG. L. REV.* 29, 31 (2001) (emphasis omitted).

others to respect the system of marks, to accept its will. The mark is forced upon the others and that *force* is the force of law and the system of property.

The powerful group of would-be owners soon mark the earth and all that is in it. These marks place everything in or out of a system of exchange. This secondary marking is seen as the birth of property.¹⁰ Property comes only *after* the system of marks has been written on the body. We are divided into owners and owned *before* there is property, before there can be property. The owners are the ones who bear the mark of the powerful group on their bodies. The mark is white-over-black.¹¹ ("20. and odd Negroews, . . . bought for victualle . . ."¹²) The owned are all the others, white-over-black. The others are commodities, white-over-black. The commodity acquires the rules of its rulers, white-over-black. This acquisition or capture is seen as the rule of law. The rule of law is seen as necessary to the system of exchange, a system in which the owners seem to meet each other as equals.

10. Property, like desire, like law, is a tie that binds. Its binding force is linked to the binding force of desire (the system of marks) and the system of law (also a matter of desire). Abolitionists and Slavemasters agree about property (although they often know little about law and desire). Abolitionist Richard Hidreth wrote, "[E]quality in general, may be resolved into equality of wealth. All depends on that. Now it is in fact clear and indisputable, that the existence of slavery in a country is the surest and most inevitable means of producing and maintaining an inequality of wealth." RICHARD HILDRETH, *DESPOTISM IN AMERICA: AN INQUIRY INTO THE NATURE, RESULTS AND LEGAL BASIS OF THE SLAVE-HOLDING SYSTEM IN THE UNITED STATES* 98 (Augustus M. Kelly Publishers Reprints of Economic Classics 1970) (1854). Similarly, two years later, proslavery advocate George Fitzhugh wrote:

The Abolitionists and the Socialists, who, alone, have explored the recesses of social science, well understand that they can never establish their Utopia until private property is abolished or equalized. The man without property is theoretically, and, too often, practically, without a single right. Air and water, 'tis generally believed, are the common property of mankind; but nothing is falsar in fact as well as theory. The ownership of land gives to the proprietor the exclusive right to everything above and beneath the soil. The lands are all appropriated, and with them the air above them, the waters on them, and the mines beneath them. The pauper, to breathe the air or drink the waters, must first find a place where he may rightfully enjoy them. He can find, at all times, no such place, and is compelled, by his necessities, to inhale the close and putrid air of small rooms, damp cellars, and crowded factories, and to drink insufficient quantities of impure water, furnished to him at a price he can ill afford. . . . He is not free, because he has no where that he may rightfully lay his head. Private property has monopolized the earth, and destroyed both his liberty and equality.

GEORGE FITZHUGH, *CANNIBALS ALL! OR SLAVES WITHOUT MASTERS* 222 (Belknap Press of Harvard University Press 1960) (1856).

11. "White" is the sadistic pleasure of the owner in owning. "Black" is the masochistic pleasure of the owned in being owned. "White-over-black" is the S/M relation between owner and owned. These terms refer to positions and pleasures, not people. I have borrowed the term "white-over-black" from Winthrop Jordan, who uses it in another context and for a different purpose. See WINTHROP D. JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO 1550-1812* (1995).

12. *Rolfe to Sandys*, *supra* note 3, at 243.

There is nothing in the rule of law, save that which has been placed there by training. And there is no there there, only bodies and pleasures. There is a body of rules, these rules are pleasures. The body of rules, the body of the law, is, literally, the desire of the rulers to rule and the desire of the ruled to be ruled. The body of the law is the desire of the owners to own and the desire of the owned to be owned. These desires, sadistic and masochistic, and perfectly complementary in nonrevolutionary situations, are experienced *as the body of the law* and *in* the bodies marked as owner and owned.

The rule seems to point in a certain direction. We follow the rule when we move in the generally accepted direction. But there is nothing in the rule itself (or in any rule for rule interpretation or in any rule for interpretation of a rule for rule interpretation and so on . . .) that points us in any direction whatsoever. The rule only seems to point. The direction in which it seems to point is the direction of our training. We move in the direction that we are trained to move and we call it the rule of law. We have been trained to see, and do in fact see, the rules *as if* they determine the circumstances of their own application.¹³ This is legal fetishism.

Legal concepts seem, somehow, to have relations with each other. Legal rules seem, somehow, to apply themselves to circumstances and, before so doing, make arrangements with each other regarding each rule's role in the entire process. It seems, somehow, to those who bow before the rule of law, that legal rules have a way of determining the circumstances of their own application. How is this possible? Legal relations, relations between legal concepts, are our own social relations viewed as if they were not our own social relations but were instead rational or natural relations between rules of law that seemingly organize themselves and then, uncannily, determine the circumstances of their own application.

The uncanny is strangely familiar, it is the familiar made strange. We repress our awareness of our lived experience and when we live, when we experience, we have knowing nonknowledge of what it is we experience. We know and do not know what we do. The repressed always returns. Our repressed experiences return to us and their return is often signaled by the uncanny. Our lived relations with each other are repressed through law. We describe our relations with each other as if they were relations between Rawlsian points of light, as if we were all glittering and windowless monads, as if we were all sparks floating up to heaven and lighting the world. Our worldly relations,

13. See Anthony Paul Farley, *The Dream of Interpretation*, 57 U. MIAMI L. REV. 685 (2003).

our worldly pleasures, are beneath notice, we repress. Legal method is the instrument of repression and, therefore, the vehicle of return. When the repressed desire returns, its vehicle is the repressing instrument itself. Our lived relations bear, therefore, an uncanny resemblance to the structure of our laws. Our legal concepts, our legal relations, arrange themselves in white-over-black.

The system of marks is the system of training. The system of property is the system of training. The system of law is the system of training. There are no systems. There is only training. We go in the direction of our training. We go in the direction of our marks. We go in the direction of our pleasure, however much that pleasure is secreted from ourselves. We move property as we move bodies, in the direction of our training, in the direction of our marks, and in the direction of our pleasure. That direction is seen as the rule of law. We live our training as our future and endlessly repeat the past. We repeat the system of marks in the system of property and we repeat the system of property in the system of law. All systems—the system of marks, the system of property, and the system of law—are repetitions of training. We live our training as our future. Every way of life is itself a form of training in following that way of life. White-over-black, for example, is a form of training, a way of life:

The everyday activity of slaves reproduces slavery. Through their daily activities, slaves do not merely reproduce themselves and their masters physically; they also reproduce the instruments with which their master represses them, and their own habits of submission to the master's authority. To [those] who live in a slave society, the master-slave relation seems like a natural and eternal relation. However, [people] are not born masters or slaves.¹⁴

There is pleasure. Thus, we are trainable. We are trained in the things our trainers find useful. In this way we acquire a value, a pleasure, and an orientation within the system of marks, the system of property, and the system of law. There is a pleasure in hierarchy, in white-over-black. The pleasure of white-over-black is experienced through the system of marks. The pleasure of white-over-black is experienced through the system of property. The pleasure of white-over-black is experienced through the system of law. These systems—of marks, of property, of law—are surfaces. The pleasure of white-over-black is beneath.¹⁵

The sum of our training is the sum of our hierarchies. The color-line divides the entire field of vision. The field is the world. The sys-

14. FREDY PERLMAN, *The Reproduction of Daily Life*, in *ANYTHING CAN HAPPEN* 31 (1992).

15. Anthony Paul Farley, *The Black Body as Fetish Object*, 76 *OR. L. REV.* 457 (1997).

tem of marks is all there is, white-over-black supercedes whatever it was that nature might or might not have created. The system of property is white-over-black. The system of law is also white-over-black, white-over-black only, and that continually. When we encounter the system of marks, the system of property, and the system of law we go in the direction of our training. In other words, we go in the direction of our pleasures, the pleasures cultivated in us, the pleasures we deny with the deliberate speed of commodities. We follow the past into our future.

If white-over-black is the general order of things, then training will generally be in the direction of white-over-black. We acquire a white-over-black orientation through training and are thus ourselves acquired by the system of marks. Once acquired, we orient ourselves within institutional spaces using our *sense* of white-over-black (our sense of pleasure in the white-over-black position).¹⁶ Thus, we repeat the system of marks in the system of property, and the system of property in the system of law. We *see* white-over-black; this is a pleasure and a form of training in itself. We distribute goods and services and fashion a system of exchange according to white-over-black; this too is a pleasure and a form of training. We respect laws respecting the distribution of goods and services and the system of exchange according to white-over-black; this is yet another form of pleasure and training. This last pleasure, the rule of law, is infinite and infinitely perverse and perversely requires the participation of the commodities themselves.

The rule of law is the secret of the commodity and its fetish. There is no rule of law. Laws do not and cannot rule anything. There are the rulers and there are the ruled and that is all, except the secret thing that goes on between the rulers and the ruled in nonrevolutionary situations. The secret thing is the pleasure of hierarchy: a pleasure experienced in the system of marks, in the system of property, and in the system of law. The pleasure of hierarchy is sadistic for those on top and masochistic for those on the bottom. For the owners, there is a sadistic pleasure in treating others as objects, as owned. For the owned, there is a masochistic pleasure in being treated as objects, as owned. Marker and marked, owner and owned, S/M, each requires the other for its own orientation.

With every move, with every turn of the page, there is the risk that one might lose one's way. In the space between the lines we fear not because we have the ability to find our place. We find our place, we

16. Anthony Paul Farley, *Cassiopeia*, 9 *CARDOZO WOMEN'S L.J.* 423 (2003).

orient ourselves by following our pleasure. Training gives us the ability to know where we are in the system of marks; we are oriented in the direction of white-over-black. Through training, we always know where we are in the system of property; we are oriented in the direction of white-over-black. And because of our training we always know where we are in the system of law; we are oriented in the direction of white-over-black. We live our training as our future. We point eternally in the direction of white-over-black. We point eternally in the direction of our training.

A fetish is an artifact that is treated as if it were not the product of human work. The fetishist forgets the creation of the artifact and then absurdly bows down before his or her own work. Law, looked upon as if it were something other than the *force* of the system of marks and the system of property, is a fetish. Law, looked upon as if it were something other than white-over-black, is a fetish. Law is white-over-black, white-over-black only, and that continually.

Law only appears after the system of marks and the system of property. Law is the way that awareness of the system of marks and the system of property is banished from consciousness. Law is *always* repression and so *only* appears in the form of the fetish. There is no need, therefore, to critique or expose legal fetishism. Law cannot be anything other than fetish. Law is the most important fetish. The desire for the rule of law is the unconscious desire for white-over-black. Law is the way we make ourselves unconscious of our pleasure in white-over-black.

Law begins to look like a system when those who are placed at the bottom begin to dream of equal rights. The dream of equal rights requires a system of law and a science of right in which the legal relation of equality can exist and make sense. The dreamers dream for the entire system, they dream the system into being. Without the dreamers and their dream there is no *system* of law, there are only chaotic statements accompanying the fact of movement in the direction of our hierarchies.¹⁷ With the dreamers and within their dream,

17. Saidiya Hartman is illuminating:

The task . . . is to discern the ways in which emancipatory discourses of rights, liberty, and equality instigate, transmit, and effect forms of racial domination and liberal narratives of individuality idealize mechanisms of domination and discipline. It is not simply that rights are inseparable from the entitlements of whiteness or that blacks should be recognized as legitimate rights bearers; rather, the issue at hand is the way in which the stipulation of abstract equality produces white entitlement and black subjection in its promulgation of formal equality.

SAIDIYA V. HARTMAN, SCENES OF SUBJECTION: TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH-CENTURY AMERICA 116 (1997).

there appears a system that seems coherent, even beautiful, but for a few changes, but for equality of right. It is in this way that the commodity gives up the ghost.

Equality of right leads to questions of redress and reparations, and the question of reparations for slavery leads to the end of the dreamers, and thus to the end of the dream. When the commodity prays for reparations and redress it prays for reparations and redress for having been made a commodity. To repair slavery is to end inequality and the end of inequality is the end of right altogether.

The question of reparations forces the commodity to confront the rule of law and its own role in maintaining the system of white-over-black. The question of reparations is uncanny. The question of reparations is uncanny because it marks the place and time that the commodity experiences its estrangement from itself. The commodity, as stated earlier, dreams of rights. The somnambulant path of the law leads to the question of reparations because the law promises a remedy for every wrong. The commodity dreams of equality and, therefore, of reparations. Rights are the manifest content of the commodity's dreams and all the commodity ever speaks of. Below the surface of the commodity's dreams of equal rights, however, there is the latent desire for white-over-black. It is in this way that the system of capital acquires its spirit.

Only the injured dream of rights.¹⁸ The injury occurs when and where the mark is attached to the body. The system of marks, then, is a systematic injury; white-over-black. That injury can be understood by examining the system of property and the way property is organized as white-over-black. Pleasure is a many-splendored thing. Everything can be made a pleasure. There are no limits to desire. Even injuries can become desired pleasures. White-over-black is the injury that begins the dream of rights. The injury, however, seems to fade from consciousness when one turns to the system of law. This is the secret of the commodity and its fetish.

The commodity is made to desire equality. The commodity has less and so it seeks to balance an equation. The commodity has been marked *as* less, as white-over-black. The commodity has also been marked *for* less; property flows in the direction of white-over-black. The commodity desires equality. The commodity presents its suffering, its nonownership, as a prayer for legal relief from the inequality

18. See generally, Anthony Paul Farley, *Lacan & Voting Rights*, 13 YALE J.L. & HUMAN. 283 (2001); Maria Grahn-Farley, *A Theory of Child Rights*, 57 U. MIAMI L. REV. 867 (2003).

that it experiences as its injury. The commodity prays for equal rights but rights cannot be equal.

Rules are endlessly interpretable. Desire sorts them out. Desire is cultivated and educated in a way that leads us in certain directions, directions that those who cultivate and educate us find useful. Interpretation comes to an end when we move in the generally accepted way. We move in the generally accepted way when our training, made possible by and through the cultivation and education of our desire, has proceeded in the generally accepted way. We interpret and follow a rule correctly when we move in the generally accepted way. We move in the generally accepted way when our training has resulted in the acquisition of the usual orientation, white-over-black. Generally, our institutions are white-over-black and that is the orientation required to move through them in the generally accepted way. The sum of our institutions is the sum of our training. Our training in how to move through our institutions is a training in white-over-black. Our institutions cultivate and educate the desire for white-over-black. To move in a white-over-black direction is to move in the generally accepted way. White-over-black is always the correct interpretation of every rule of law. To follow our desire is to arrive at white-over-black again and again and again and to infinity.

A right will always be interpreted and followed in the direction of white-over-black and so rights cannot be equal. We pursue our pleasure; that is what we have been trained to do. If our training is white-over-black and we have been successfully trained, then we will move in the direction of white-over-black and equal will always end in white-over-black. The sum of our institutions is the sum of our training. The sum of our training reveals the totality of our pleasures. We follow our pleasure to infinity and thus endlessly repeat our training. Our institutions are white-over-black. All of them. Our training is white-over-black. Our pleasure is white-over-black. Our desire is white-over-black. We follow white-over-black and thus endlessly project our past into our future. We do this through rights.

To request equality is to surrender before one begins. To request equality is to grant one's owners the power to grant or deny one's request. To grant one's owners such a power is to surrender oneself to one's owners entirely and completely. To grant such a power is to accept one's status as a commodity, a thing the future of which is rightly left to the persons granted the power to grant or deny the request for equality. To grant such a power is to accept one's future, and therefore oneself, as owned by the ones granted the power to grant or withhold one's request for equality. To pray for legal redress

is to bow before the authority of law. There is no mystery in the authority of law. Law's authority is only the surrender-and-training of the commodity. Law is only the relation of white-over-black to white-over-black to white-over-black. When we follow a legal rule we follow only the track that *we have ourselves laid down*. In other words, we ourselves are the track, we become the track when we lay down, and we follow that track white-over-black into the future that lasts forever.

Sometimes training goes awry and things fall apart. Sometimes the "caged anger within" escapes.¹⁹ The words of J.G. Fichte, although written in another context, are nonetheless helpful in understanding such moments:

I would be sorry if they understood me. Until now it has gone according to my wishes with these people; and I hope even now that this exordium will so bewilder them that from now on they see nothing but letters on the page, while what passes for mind in them is torn hither and thither by the caged anger within.²⁰

The exordia penned by commodities that realize and refuse their roles bewilder and leave "what passes for mind" in their would-be-owners "torn hither and thither by the caged anger within."²¹ A passage in a letter penned by political prisoner Afeni Shakur during the conspiracy trial of the Black Panther 21 is an open window the moment that the commodity realizes and refuses its role:

We know that the 13th, 14th and 15th amendments did not liberate us—that they only legalized slavery and expanded the Dred Scott decision to include the Indians, Spanish speaking and poor whites. We know that things have not gotten any better—but only progressively worse. We know that it is the rich man's courts, laws, and justice. It is his skies and air—we can only look at it and breathe it if he says so We know that the Almighty dollar which everyone is taught to revere is only guaranteed by slavery and exploitation. We know that we live in a world inhuman in its poverty.²²

The question of poverty concerns the relation between persons and property. There is no relation between persons and property. Nature

19. Mtayari Shabaka Sundiata, a citizen of the Republic of New Africa, described Assata Shakur of the Black Liberation Army as having "shattered the [Bastille] of ignorance." Mtayari Shabaka Sundiata, *By Choice You Are Assata*, in *HAULING UP THE MORNING: WRITING & ART BY POLITICAL PRISONERS & PRISONERS OF WAR IN THE U.S.* 334, 335 (Tim Blunk & Raymond Luc Levasseur eds., 1990). The Republic of New Afrika was described as "[a] small nation in the minds of 30 million people." *Id.* at 279.

20. FICHTE, *supra* note 2, at 5.

21. *Id.*

22. Afeni Shakur, *We Will Win: Letter from Prison*, in *THE BLACK PANTHERS SPEAK* 161, 162 (Philip S. Foner ed., 1995) (open letter written during the Panther 21 conspiracy trial in New York).

does not produce property. Property, considered as a natural object, does not exist. The line drawn by the law from persons to property, therefore, connects nothing, because there is nothing to connect. Relations between persons and property do not exist. What does exist is a relation between persons that is treated *as if* it were a relation between objects. The laws we lay down do not connect persons to property. We ourselves connect persons to property when we lay down before the law.

The act of laying down before the law occurs before there is law, before there is anything before which to lay down. A person lays down and becomes a thing, a thing that lays down, a commodity. The commodity lays down and thus makes itself a thing-that-can-be-owned. Ownership, then, is a relation between persons that is disguised as a relation between objects of property. And those objects of property are themselves disguised as legal relations.

Ambiguity always exists.²³ Everything has its ambiguities. The ambiguities are too many to be named, counted, or categorized. The ambiguities are endlessly available for interpretation. To be oppressed is to have the ambiguities, which are infinite as well as indefinable, interpreted in a way that oppresses. A right is always ambiguous and, therefore, available to be interpreted. An equal right or a right to equality is, likewise, always ambiguous and interpretable. Equality can be anything at all. To be oppressed is to have one's rights interpreted oppressively. The ubiquity of ambiguity means that equality and right are both available for oppressive interpretations. The ambiguities are where desire prepares its endless strategies and masquerades. Equality is the most covert hiding place for, and the most effective mask of, oppression. Oppressive interpretations marshal the ambiguities against the oppressed.

When the commodity prays for legal rights it bows down before the rule of law. If the ambiguities were not always read as white-over-black, then the commodity would have no need to pray for equal rights. The rule of law, like everything, is filled with ambiguities. The ambiguities are resolved into white-over-black. The rule of law is nothing other than the ambiguities and the ambiguities are nothing other than white-over-black. Prayers for relief will be answered with white-over-black when relief is granted and when it is not. A rule granting an equal right is as available for a white-over-black interpretation as is a rule mandating an unequal right. Equality is as available for white-over-black as is inequality. The ambiguities are everywhere

23. See generally Grahn-Farley, *supra* note 9.

and always available for white-over-black. The ambiguities are the shape of our desire. The ambiguities show us our own desire. In a white-over-black situation there is white-over-black. We live in a white-over-black situation. There is, therefore, white-over-black and it is everywhere because the ambiguities are everywhere, especially in those places we pretend that they are not—for example, the rule of law. Law is the ambiguity that pretends most intensely not to be. Law is white-over-black.

Prayers for relief can only be answered in the form of white-over-black. These prayers are acts of state worship (and ecstatic exhibitions of the commodity's death-drive).²⁴ The state is the desire for white-over-black. Rule fetishism (fundamentalism and fealty to the "system") is always simultaneously the hiding place and stronghold of the will to oppress.

The commodity is the soul of a soulless world. A. G. Goikhbarg observed:

With the grace of God, the feudal state was a religious state. On the other hand, the bourgeoisie designated its state as a *Rechtsstaat*, as a state of law. Religion and law are the ideologies of the suppressing classes, the latter gradually replacing the former. Since we must, at the present time, fiercely struggle against religious ideology, we will, in the future, have to struggle against the ideology of law to a considerably greater degree. Any conscious proletarian either knows or has heard that religion is the opium of the people. But only a few . . . know that law is an even more poisoning and stupefying opium for the people.²⁵

The question of reparations reveals the state for what it is and presents the commodity with a choice. Reparation for slavery requires the undoing of white-over-black and *that* requires the end of the system of marks, the end of the system of property, and the end of the system of law. The state will not grant the prayer for reparations; it cannot without destroying itself. Without white-over-black the state withers away. The commodity's choice is to remain awake and force the undoing of white-over-black and all its reifications or remain asleep and continue to dream of equal rights.²⁶

24. Anthony Paul Farley, *Amusing Monsters*, 23 *CARDOZO L. REV.* 1493 (2002).

25. A.G. Goikhbarg, *Justice, the Ideology of Law, and Revolution (1924)*, in *SOVIET POLITICAL THOUGHT: AN ANTHOLOGY* 121 (Micheal Jaworskyj ed. & trans., 1967). In the theology of liberation we find the sighs of the oppressed directed toward the destruction of the system that oppresses. See, e.g., JAMES H. CONE, *BLACK THEOLOGY & BLACK POWER* 143 (1969) ("[I]f the system is evil, then revolutionary violence is both justified and necessary.")

26. The following autobiographies, and words of Black Panthers are open windows into the soul of the commodity that realizes and refuses its role: GEORGE JACKSON, *SOLEDAD BROTHER: THE PRISON LETTERS OF GEORGE JACKSON* (1970); GEORGE L. JACKSON, *BLOOD IN MY EYE*

The commodity has been trained to be the commodity, to be white-over-black. The commodity that prays for relief, as has been shown, prays, as it has been trained to pray, for white-over-black. The commodity prays in the ecstasy of total surrender, of infinite masochism or inverted sadism. The white-over-black that the commodity receives, whether in the form of equal rights or in the form of the denial of equal rights, is the secret face of its own desire for white-over-black.

White-over-black is the form of the situation that leads the commodity to pray. White-over-black, being the form of our institutional situations, is the form of our training and, therefore, the form of our desire. White-over-black fills the ever-present ambiguities and all is resolved into the pleasure of white-over-black, the words are simply the sweet nothings of a relief that serves only to prolong the agonizing pleasure of white-over-black. The ambiguities are everywhere. Without the commodities' dream-work, the system would have no coherence, no consistency, no foundation. Indeed, it would not be a system, it would only be an obvious and insane and random war of all against all.²⁷ The feeling that the "system" is a "system" is produced by the

(1972); ANGELA Y. DAVIS ET AL., *IF THEY COME IN THE MORNING: VOICES OF RESISTANCE* (1971); ANGELA DAVIS, *ANGELA DAVIS: AN AUTOBIOGRAPHY* (1974); *THE ANGELA Y. DAVIS READER* (Joy James ed., 1998); ASSATA SHAKUR, *ASSATA: AN AUTOBIOGRAPHY* (1987); EVELYN A. WILLIAMS, *INADMISSIBLE EVIDENCE: THE STORY OF THE AFRICAN-AMERICAN TRIAL LAWYER WHO DEFENDED THE BLACK LIBERATION ARMY* (1993); HUEY P. NEWTON, *REVOLUTIONARY SUICIDE* (1995); *TO DIE FOR THE PEOPLE: THE WRITINGS OF HUEY P. NEWTON* (Toni Morrison ed., 1995); BOBBY SEALE, *SEIZE THE TIME* (1970); BOBBY SEALE, *A LONELY RAGE: THE AUTOBIOGRAPHY OF BOBBY SEALE* (1978); ELDRIDGE CLEAVER, *SOUL ON ICE* (1968); ELDRIDGE CLEAVER, *POST PRISON WRITINGS* (Robert Scheer ed., 1968); H. RAP BROWN, *DIE NIGGER DIE!* (1969); DAVID HILLIARD & LEWIS COLE, *THIS SIDE OF GLORY: THE AUTOBIOGRAPHY OF DAVID HILLIARD AND THE STORY OF THE BLACK PANTHER PARTY* (1993); WILLIAM LEE BRENT, *LONG TIME GONE: A BLACK PANTHER'S TRUE-LIFE STORY OF HIS HIJACKING AND TWENTY-FIVE YEARS IN CUBA* (1996); JAMES CARR, *BAD, THE AUTOBIOGRAPHY OF JAMES CARR* (1975); ELAINE BROWN, *A TASTE OF POWER: A BLACK WOMAN'S STORY* (1994); and MUMIA ABU-JAMAL, *LIVE FROM DEATH ROW* (1995).

Other useful works about the Black Panthers include: BETTINA APTHEKER, *THE MORNING BREAKS: THE TRIAL OF ANGELA DAVIS* (Cornell Univ. Press 1999) (1975); GREGORY ARMSTRONG, *THE DRAGON HAS COME* (1974); PAUL LIBERATORE, *THE ROAD TO HELL: THE TRUE STORY OF GEORGE JACKSON, STEPHEN BINGHAM, AND THE SAN QUENTIN MASSACRE* (1996); BLACK POWER, WHITE BLOOD: *THE LIFE AND TIMES OF JOHNNY SPAIN* (Lori Andrews ed., 1996); STILL BLACK, STILL STRONG: *SURVIVORS OF THE WAR AGAINST BLACK REVOLUTIONARIES* (Jim Fletcher et al. eds., 1993); ERIC CUMMINS, *THE RISE AND FALL OF CALIFORNIA'S RADICAL PRISON MOVEMENT* (1994); WILLIAM L. VAN DEBURG, *NEW DAY IN BABYLON: THE BLACK POWER MOVEMENT AND AMERICAN CULTURE, 1965-1975* (1992); GILBERT MOORE, *RAGE* (1993); and GENE MARINE, *THE BLACK PANTHERS: ELDRIDGE CLEAVER, HUEY NEWTON, BOBBY SEALE, A COMPELLING STUDY OF THE ANGRY YOUNG REVOLUTIONARIES WHO HAVE SHAKEN A BLACK FIST AT WHITE AMERICA* (1969).

27. Jean Genet, in his study of the Black Panthers, observed, "In the United States the Blacks were the characters inscribed on the whiteness of America, giving meaning to that wan continent." JEAN GENET, *PRISONER OF LOVE* 221 (Barbara Bray trans., 1992).

commodities themselves through their dream-work, through their dreams of equal rights. And if they left off dreaming of equal rights?

The system is a desire for death. Freedom from ambiguity comes only with death. Death balances every equation. An essay by Black Panther Linda Harrison, written in 1969, is another open window into the moment the commodity realizes and refuses its role:

All [people] can die, and this is the only thing that equalizes them. Under many systems those with money die less often. Any confrontation which gives [people], no matter what their social or economic position, an equal chance to die under equal conditions is uplifting for those who consider themselves at the bottom and degrading and toppling for those who are at the top.²⁸

Death is what happens when the commodity realizes and refuses its role.²⁹ The commodity is the system's repressed death-drive. And the repressed always returns. And when it returns it returns through the vehicle of the instrument of the repression itself. The commodity dons black flesh and then it begins. There is a specter haunting the United States, the specter of the commodity, the spectral return of the repressed, the specter of servile insurrection. Black Panther Connie Matthews, in a speech delivered at the Vietnam Moratorium demonstration at San Jose State College on October 15, 1969, spoke with an awareness of the death that comes with the refusal of the commodity form:

[G]et with it and educate your people because the Black Panther party is out there in the front but we can't stay out there in the front forever. We will stay until everyone of us is killed or imprisoned by these racist pigs, but then someone will have to take over. So don't let us all die in vain.³⁰

28. Linda Harrison, *On Cultural Nationalism*, in *THE BLACK PANTHERS SPEAK*, *supra* note 22, at 151.

29. Ward Churchill and Jim Vander Wall write:

The FBI has admitted that, during the COINTELPRO era proper (1956-71), it ran some 295 distinct COINTELPRO operations against individuals and organizations [that were] part of the black liberation movement. Of these, 233 were aimed at the [Black Panther Party] between 1967 and 1971. The total number of fatalities resulting from these brutally illegal activities on the part of the nation's "top law enforcement agency" will probably never be known, nor will the number of years spent by innocent people railroaded into prison cells or the number of lives wrecked in more subtle ways. . . . Under the weight of such ruthless, concerted and sustained repression—and despite the incredible bravery with which many of its members attempted to continue their work—the Black Panther Party simply collapsed.

WARD CHURCHILL & JIM VANDER WALL, *THE COINTELPRO PAPERS: DOCUMENTS FOR THE FBI'S SECRET WARS AGAINST DISSENT* 164 (1990) (footnote omitted).

30. Connie Matthews, *The Struggle Is a World Struggle*, in *THE BLACK PANTHERS SPEAK*, *supra* note 22, at 159 (speech delivered at the Vietnam Moratorium demonstration, San Jose State College, October 15, 1969).

Matthews was prophetic. The Black Panther Party could not remain "out there" in front forever.³¹ A war was waged against them and all who refused the commodity form that they had been assigned.³² Those who realized and refused the commodity form were killed³³ or imprisoned.³⁴ But the system of marks that is the system of property that is the system of law continues to produce, every now and then, commodities that realize and refuse their role.³⁵ The question of repa-

31. FBI Director J. Edgar Hoover wrote of the Bureau's "goals" in a letter dated March 4, 1968:

1. Prevent the coalition of militant black nationalist groups. In unity there is strength; a truism that is no less valid for all its triteness. An effective coalition of black nationalist groups might be the first step toward a real "Mau Mau" in America, the beginning of a true revolution.
2. Prevent the rise of a "messiah" who could unify, and electrify, the militant black nationalist movement. Malcolm X might have been such a "messiah;" he is the martyr of the movement today. Martin Luther King, Stokely Carmichael, and Elijah Muhammed all aspire to this position. Elijah Muhammed is less of a threat because of his age. King could be a very real contender for this position should he abandon his supposed "obedience" to "white, liberal doctrines" (nonviolence) and embrace black nationalism. Carmichael has the necessary charisma to be a real threat in this way.
3. Prevent violence on the part of black nationalist groups. . . . Through counterintelligence it should be possible to pinpoint potential troublemakers and neutralize them before they exercise their potential for violence.
4. Prevent militant black nationalist groups and leaders from gaining respectability, by discrediting them to three separate segments of the community. The goal of discrediting them black nationalists must be handled tactically in three ways. You must discredit these groups and individuals to, first, the responsible Negro community. Second, they must be discredited to the white community Third, these groups must be discredited in the eyes of the Negro radicals

CHURCHILL & VANDER WALL, *supra* note 29, at 110-11.

32. HUEY P. NEWTON, *WAR AGAINST THE PANTHERS: A STUDY OF REPRESSION IN AMERICA* (1996).

33. Jean Genet observed this death during his time in the United States with the Black Panthers:

Deaths and other acts of aggression showed the Blacks as more and more threatening, less and less in awe of the Whites. The Whites sensed that a real society was coming into being not far away. It had existed before, but then it had been timid attempt at counterfeiting white society. Now it was breaking away, refusing to be a copy. And not only outwardly, in everyday life, but also inwardly, in the creation of a myth for which Malcolm X, [Martin] Luther King himself, and N'Krumah all acted as models.

GENET, *supra* note 27, at 84.

34. See WARD CHURCHILL & JIM VANDER WALL, *AGENTS OF REPRESSION: THE FBI'S SECRET WARS AGAINST THE BLACK PANTHER PARTY AND THE AMERICAN INDIAN MOVEMENT* (1990); CHURCHILL & VANDER WALL, *supra* note 29; *CAGES OF STEEL: THE POLITICS OF IMPRISONMENT IN THE UNITED STATES* (Ward Churchill & J.J. Vander Wall eds., 1992); M. WESLEY SWEARINGEN, *FBI SECRETS: AN AGENT'S EXPOSE* (1995).

35. Assata Shakur of the Black Liberation Army discussed the way that the conditions that produce the commodity also go awry and produce black liberation armies:

The idea of a Black Liberation Army emerged from conditions in Black communities: conditions of poverty, indecent housing, massive unemployment, poor medical care, and inferior education. The idea came about because Black people are not free or

rations can only be answered with the end of the system of marks, the end of the system of property, and the end of the system of law. The wide-awake world of the former commodity is the end of marks, the end of property, and the end of law:

We realize that freedom is a duty and it is our duty to get this freedom for our people and to yield to no one in obtaining it. We will be beggars no longer. You brought the nigger into existence and now finally, we are destroying him. We know that your economic system is a chain around our necks and we are breaking all of your chains.³⁶

The question of reparations can only be answered by the commodity that wakes up from the dream of equal rights. The Black Panther Party understood that the system of law would not commit suicide:

You are the state and we say "All Power to the People" and the people will have the power. But you will try to stop us. You will oppress us until we stop you and we will stop you. History shows that wars against oppression are always successful. And there will be a war—a true revolutionary war—a bloody war. No one not you nor us nor anyone in this country can stop it from occurring now. And we will win. We admit all of this.³⁷

The question of reparations is produced by the system of marks. The question of reparations is produced by the system of property. The question of reparations is produced by the system of law. The answer to the question requires the end of law, the end of property, and the end of marks. The answer to the question of reparations is the end of white-over-black. Of an earlier waking moment in the life of the commodity, C.L.R. James wrote:

The slaves destroyed tirelessly. . . . [T]hey were seeking their salvation in the most obvious way, the destruction of what they knew was the cause of their sufferings; and if they destroyed much it was because they had suffered much. They knew that as long as these plantations stood their lot would be to labour on them until they dropped. The only thing was to destroy them.³⁸

equal in this country. Because ninety percent of the men and women in this country's prisons are Black and Third World. Because ten-year-old children are shot down in our streets. Because dope has saturated our communities, preying on the disillusionment and frustration of our children. The concept of the BLA arose because of the political, social, and economic oppression of Black people in this country. And where there is oppression, there will be resistance. The BLA is part of that resistance movement. The Black Liberation Army stands for freedom and justice for all people.

SHAKUR, *supra* note 26, at 169.

36. Shakur, *supra* note 22, at 163.

37. *Id.*

38. C.L.R. JAMES, *THE BLACK JACOBINS: TOUSSAINT L'OUVERTURE AND THE SAN DOMINGO REVOLUTION* 88 (Vintage Books 1989) (1963). The commodities, to save their souls, destroy the system of marks, the system of property, and the system of law, in sum, they destroy

The commodity that realizes and refuses its commodity form is the end of the system of marks, the system of property, and the system of law.

Every mark is an attack. Every claim of ownership is an attack. Every law is an attack. Rule of law is a lie, perhaps the longest lie. The Earth, and all that is in it, belongs to everyone. There is as much and as good for everyone. There is as much and as good for all of us to have and to give as fits our infinitely varied needs and incalculably diverse abilities.

every plantation. It is important to remember, however, that “[t]he cruelties of property and privilege are always more ferocious than the revenges of property and oppression. For the one aims at perpetuating injustice, the other is merely a momentary passion soon appeased.” *Id.* at 88-89.