

ABSTRACT

Title of Dissertation: "AND THERE SEE JUSTICE DONE": THE PROBLEM OF LAW IN THE AFRICAN AMERICAN LITERARY TRADITION

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This dissertation argues that careful attention to African American literature reveals that the different terms through which we understand race and law are in fact incommensurable, and that the clash of their competing logics constitutes a fundamental, and unremarked upon, organizing theme of the black literary tradition. The law's relationship with its racialized subjects – and its troubled and troubling relationship with African Americans in particular – emblemizes this collision of radically different perspectives. The meaning of equality and freedom, for instance, are ideas often understood in radically different terms by the law and by the literature that critiques it. The rupture produced by this divergence is revealed in the competing texts of the two cultures: on the one hand, in legal disputes and legal texts, in laws and in the deliberations out of which they are constructed; and on the other, in the cultural productions of the African American community, and in particular in its rich tradition of letters. Reading a broad range of works across that tradition, from the earliest slave petitions to the contemporary novel, I offer a new way to understand the relationship between the law, the African American experience of the law, and the texts that narrate their fundamental disjuncture.

Showing that African American literature actually begins with the law, I first investigate the transition of black writing from legal petitions and pamphlets to more literary forms at the end of the eighteenth century. These first black narratives anticipate the inevitable failure of their more legalistic counterparts to remedy injustice, and instead cast their critiques of the law in metaphor. My project then reads both canonical and less-celebrated texts across the entire tradition of African American letters – from Equiano’s 1789 *Interesting Narrative* to Edward Jones’ 2003 *The Known World* – to show that the formal and figurative elements of much of the tradition of African American writing are in fact premised in the law: unexpected and repeated scenes of madness and incompetence attack the illogic of slavery; literary portrayals of black traitors reveal the fundamental tension between black loyalty to the nation and the nation’s betrayal of the race; the passing narrative satirizes white anxiety about the law’s inability to police the color line; the figure of blindness belies a twenty-first century critique of the law’s own colorblindness. And finally, I develop the larger claim that theorizing the rupture between these legal and literary texts can help us to solidify the coherence of an African American literary tradition that is increasingly understood as fractured, and simultaneously resist the law’s compulsion to universalize the particular narratives of its many diverse subjects.

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by

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Chapter One Introduction

“It’s uh known fact, Pheoby, you got tuh go there tuh know there...”

Zora Neale Hurston¹

“These strategies of...incommensurability or translation...are, I think, the unspoken, unexplored moments of modernity.”

Homi Bhabha²

The demand for justice issued by the Spanish sailor narrating the final stanza of Robert Hayden’s “Middle Passage” mocks John Quincy Adams’ stirring and celebrated defense of the African mutineers aboard the slaver *Amistad*: “We find it paradoxical indeed / that you whose wealth, whose tree of liberty / are rooted in the labor of your slaves / should suffer the august John Quincy Adams / to speak with so much passion of the right / of chattel slaves to kill their lawful masters / and with his Roman rhetoric weave a hero’s / garland for Cinquez.” Insisting that he be returned to Cuba with his cargo of Africans and “there see justice done,” the Spaniard seizes on the racial violence and trauma sanctioned by American law and at the same time earnestly appeals to its principles of equity and righteousness. Within the sailor’s plea Hayden embeds one of the fundamental contradictions of American jurisprudence: the incommensurability of its professed fidelity to liberty and equality with the lived experiences of its black subjects. And “Middle Passage,” like so much of the African American literary tradition, rehearses

¹ Zora Neale Hurston, *Their Eyes Were Watching God* (New York: Harper Classics, 1998).

² Bhabha, Homi K. “Location, Intervention, Incommensurability: A Conversation.” *Emergences* 1 (Fall 1989): 63-88.

the competing logics, affects, forms and figures that inform black narrations of the problem of law.

The critical commentary concerning Hayden's anti-epic often focuses on its ironic deployment of legal "texts." The poem's first and third stanzas feature (among their several fragmented narrative conceits) the "testimony" of white sailors aboard doomed slave ships (the middle stanza offers a reconstructed narrative from the published notes of a slave trader). The poem is, of course, devastatingly ironic; its framing of the slave trade through legal documents mocks the institution's appeal to law. This much remarked upon irony of "Middle Passage" at first appears to turn on a critique of how history is written, of whose voices are recorded, of which narratives the law can (or chooses) to hear. And Hayden's construction of the sailors' testimonials does indeed demand that we interrogate the absent stories, the texts untranscribed. But little critical energy has been expended excavating the troubling implications of the poem's ironic conceit. Hayden's construction of a Middle Passage without the voice of a slave seems as much concerned with the seeming impossibility of narrating the trauma of the racialized subject in a language that the law could ever contemplate as it is with the absence of the black narrative from the perspective of law. Suppose, then, the law *could* hear the stories spoken on the lower frequencies of the Middle Passage? What would it make of them? Could it hear those stories in their own terms? Or translate those terms into a language the law is competent to understand, with which it could empathize, to which it could respond?

"Middle Passage" points to both the possibility and the peril of the law. The paradox, of course, is that the law can be employed as a force of emancipation at one

moment and as a subordinating power the next (indeed, often at the same time). For while the Supreme Court's *Amistad* ruling is remembered as a high point in American jurisprudence, Hayden's Spanish sailor reminds us that the decision might also be called the exception that proves the rule. And one of the tricks of "Middle Passage" is its ability to invoke simultaneously both the progressive narrative of America's tradition of liberty (in its allusion to the miracle of freedom won by the Africans aboard the *Amistad*) and the crushing weight of state-sanctioned racial violence for blacks and whites alike. "Middle Passage" is representative in this sense, for many of the texts of the African American literary tradition are ineluctably shaped by the same tension. There we find appeals to the law competing with a second narrative, often unarticulated, that the law is not hearing those appeals in the same way they are being spoken. The terms through which the law and African Americans recognize each other – and through which each understand notions of justice, equality, and freedom – often appear to be foreign, untranslatable, indeed incomparable. The central question of this project, then, is how the texts of the African American literary tradition have shaped themselves in response to the law's inability to assimilate the narratives of black Americans into its own particular languages and conventions and orthodoxies.

This kind of reading of Hayden's "Middle Passage" suggests that we reorient our critical appraisal of many of the texts of the African American literary tradition by asking some new questions. If it is indeed true that the law lacks a vocabulary, and even a logic, for recognizing the ways in which justice and equality and freedom fail for African Americans, and if it is also true that the failure of law has been the *sine qua non* of life in the United States for blacks, then it seems essential for any understanding of the literature

of the African American experience that we theorize how this fundamental disjuncture has come to shape its texts: both in how figures of incommensurability signify on the seeming impossibility of bridging the distance between the law's idea of itself and the black writer's representation of it; and on the radical potentiality of the knowledge that rewards the comparison.

This dissertation explores the paradox that confronts authors writing on the experience of race before the law: how to tell their stories – stories long excluded from the halls of the justice – to an institution whose premises alternately embrace and reject the reality of race? Is the experience of race simply beyond the capacity of the law to understand? If this is so, how – and to what end – do the literary texts that take on the failures of legal “justice” narrate the law's circumscribed view of itself? In short, what do narrations of the collision of different knowledges of law and race look like, and what can they accomplish? Hayden's “Middle Passage” offers numerous structures for representing the incommensurable, structures which I argue recur throughout the African American literary tradition but which have not before been read as part of the tradition's dominant figures. The mad, the blind, the treasonous and the absurd: the madness of attempting to establish black competence (as witnesses, as national subjects) before a law that cannot countenance the slave as human; Lady Justice's refusal to see, to admit of the realities of such a thing as race; the law's insistence that loyalty to race and to nation are mutually exclusive; the absurdity of the posture of the black subject before the law. In these four tropes can be found literature's refusal of the law's sense of itself as

progressive, ordered, rational.³ Hayden offers us figures of each of these: in the “crazed” death leaps of slaves who offer themselves to the sharks; in the twinned, but contrapuntal, blindness of slaves and captains; in the mutinous conspiracy that betrays and confirms the ideals of a nation; and in the strangeness, indeed the utter farce, of a celebration of the Middle Passage. Through them, Hayden’s poem carries the implications of these competing structures of feeling and knowledge into the twentieth century. And in deploying these tropes, “Middle Passage” emblemizes one of the central tensions of the literature of the African American experience under the law: the radical potential for knowledge produced by the failure of comparison.

This project argues that careful attention to African American literature reveals that there are few shared terms through which we can understand both race and law, and that the clash of their competing logics constitutes a fundamental, and unremarked upon, organizing theme of the black literary tradition. The law’s relationship with its racialized subjects – and its troubled and troubling relationship with African Americans in particular – emblemizes this collision of radically different perspectives. The meaning of equality and freedom, for instance, are ideas often understood in radically different terms by the law and by the literature that critiques it. The rupture produced by this divergence is revealed in the competing texts of the two cultures: on the one hand, in legal disputes and legal texts, in laws and in the deliberations out of which they are constructed; and on the other, in the cultural productions of the African American community, and in particular in its rich tradition of letters. Reading a broad range of

³ The personification – and critique – of the law as a disinterested arbiter of truth can be traced back to Oliver Wendell Holmes’ “The Path of the Law.” 10 *Harvard Law Review* 457 (1897).

works across that tradition, from the earliest slave petitions to the contemporary novel, I offer a new way to understand the relationship between the law, the African American experience of the law, and the texts that narrate their fundamental disjuncture. When race and the law meet, how do the texts of the African American literary tradition represent the dissonance of that experience? What are the common figures populating these narrations of the failure of law? And what can they tell us about the political efficacy of incommensurability?

My dissertation aims to address those questions in the following way. It attends to a problem that until now is little discussed in the criticism of African American literature: the gap between the law's vision of itself and an African American experience of the law as narrated in the texts of the tradition, a gap that I read as much more than just the law's failure to live up to its ideals but instead as a fundamental difference in the logic and vocabulary of race. It then proposes a critical apparatus for theorizing how the problem reveals itself in both archives. Each chapter then serves as a kind of episode that rehearses the application of the theory to different legal-historical moments where the problem of that fissure seems particularly glaring. The dissertation makes three distinct but related arguments across four chapters. It begins with the claim that the tradition of black writing actually starts with the law, chronicling the attempts by blacks, both free and enslaved, to demonstrate their competence as national subjects by submitting petitions to the legislatures of the colonies and the early republic. Against these petitions and their assertions of black competence, chapter one shows how Equiano's *Interesting Narrative* – actually written as a petition – repeatedly invoke scenes of madness, and of the inability of blacks to assimilate themselves into, or make any sense of, the New

World. I argue that these representations of madness and incompetence actually dovetail with the formal claims for citizenship posited by the petitions. The first black narratives, then, anticipate the inevitable failure of their more legalistic counterparts to remedy injustice, and deploy the figure of madness to critique the illogic of law.

Second, I argue that this conceit – figurative representations of the dissonance between the law and literature that is borne out of the failure of the founding moment – defines the formal and figurative elements of much of the tradition of African American writing. This project locates the disjuncture between law and justice in several recurring tropes, including madness, treason, the absurd, and blindness, and reads those figures in both canonical and less-celebrated texts. Chapter two explores the recurring figure of the traitor in Victor Séjour’s 1837 “The Mulatto,” Frederick Douglass’ 1853 “The Heroic Slave,” and Sutton Griggs’ 1899 *Imperium in Imperio*, arguing that literary portrayals of the crime of treason reveal the fundamental tension between black loyalty to the nation and the nation’s betrayal of the race, and demand that we reconsider the terms of treason itself. Asking whether and how black writers can navigate the chasm between fidelity to race and nation, this chapter offers the twinned metaphors of patriotism and treason as literary responses to the seeming impossibility of simultaneous racial and national citizenship. Chapter three shows that, in the wake of *Plessy v. Ferguson*, black writers turned to the absurd as a narrative response to the rupture between racial justice and the law. Invoking the rhetoric of strangeness that marks W.E.B. Du Bois’ *Souls of Black Folk*, I demonstrate that texts such as George Schuyler’s 1931 *Black No More* deploy incredible narrative conceits – including the figure of a black baby born to ostensibly white parents – in passing narratives as a response to the senselessness of the *Plessy* era

and white anxiety about the law's inability to police the color line. Chapter four traces the genealogy of the legal trope of "colorblindness" in the African American literary tradition to the twenty-first century. Reading three contemporary novels – Toni Morrison's 1997 *Paradise*, Richard Powers' 2003 *The Time of Our Singing*, and Edward P. Jones' 2003 *The Known World* – I argue that each constructs a racial formalism only to undo it. In the failure of Morrison's all-black town, the destruction of Powers' mixed-race family, and the ruination of Jones' slave-owning black protagonist, each text rejects the interpretive hermeneutics of an ascendant colorblindness in recent Supreme Court jurisprudence.

Finally, the law stands as perhaps the most pervasive presence in black life since enslaved Africans arrived in the New World, and marks the texts that chronicle the African American experience in profound – but subtle and contradictory – ways. Yet with few exceptions, it remains absent from theoretically-inflected commentary on African American literature. This project develops the larger claim that the disjuncture between these legal and literary texts speaks to the problem of what Emmanuel Levinas calls the incommensurable subject, and the law's insistence on universalizing the infinite particularity of human subjectivity. The law's difficulty in accommodating the racial subject is mirrored in the difficulty black writers face in narrating the law's failure. This project explores the efficacy of the incommensurable as a critical apparatus for apprehending the relationship between these two cultures.

Commensurability

Just what exactly *is* the incommensurable? What is to be gained by reading the literary for tropes and figures of incommensurability? And just how does the

incommensurable help us to understand the relationship between law and the tradition of African American letters, in particular, and the structure of racialized subjectivity more generally? This project aims to answer each of these three questions. In short, incommensurability is the impossibility of comparing different objects using a common standard or unit of measure, or what Thomas Kuhn – in his 1962 *The Structure of Scientific Revolutions*, which offered the term as a way to understand radical upheavals in physics – described as knowledge that lives “in different worlds.”⁴ The incommensurable, then, is revealed in the collision of inapposite perceptions, singular axes of experience, unparalleled philosophies. It is the distance between two languages that, more than simply signifying differently, fail even to recognize a common referent in the same terms.

The possibility of comparing different objects using a common standard or unit of measure lies at the heart of the law. Commensurability, in many ways, becomes exactly the object of any system of law.⁵ The universal language of law – its formal properties, its proportionality, its objectivity – professes to make competing particularities similarly legible, and then compares them. But as we see in Hayden’s “Middle Passage,” race and its attendant complications – its subjectivities, its histories, its own competing logics – resist the “ratios and equivalences and exchanges” of a certain kind of justice.⁶ The distance between the logics of race and law challenge an epistemology of justice that proclaims “its ethical primacy and its descriptive adequacy” (Dimock 4). And the texts at

⁴ Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 3rd ed. (Chicago: University Of Chicago Press, 1996), 150.

⁵ Wai Chi Dimock’s *Residues of Justice* details the necessity for any legal system to demonstrate its proportionality. Dimock 6.

⁶ Id. 7.

the heart of my project, and at the heart of the African American literary tradition, do just that. “Middle Passage” asks us to think precisely about the epistemology of the American legal system and whether its sense of “justice” speaks in the same terms as those available to narrate the experience of enslavement, of Jim Crow, of the long civil rights movement. It is in this sense that “Middle Passage” captures the problem of law in the black Atlantic: what happens to narrative when the premise of comparison fails?⁷

The incommensurable does not yet possess a critical vocabulary within the realm of literary studies (though it has a rich, if new, genealogy in the sciences and philosophies). The word itself appears occasionally – and mistakenly – as an adjective to qualify the exceptional, a synonym for the incomparable and the ineffable, though it is not quite any of these. And its provenance is recent. Like the rise of modernism in the wake of the first World War, the proposal by Kuhn of different paradigmatic orders in the post-World War II moment suggests its relationship to crises of science and progress. The “multiple rationalities” made possible by a critical hermeneutic such as Kuhn’s offered a clean break from the “continuum of history” that otherwise connected the pre- and post-war critical landscapes.⁸

Few literary critics have engaged with the *idea* of the incommensurable, which I like to think is more a verb than a noun: it is the insistence on a comparison for which we have no comparative ground. Apples and oranges, of course, is the shorthand, for the

⁷ Ken Warren’s reflections on the Black Atlantic and the “aesthetics and ethics of black identification or affiliation across space and time” in *States of Emergency: The Object of American Studies* reveal an unsettling knowledge: even identifying the Black Atlantic as an object of study is troubled by competing notions of what – and when – exactly it is. Warren 116.

⁸ Lindsay Waters, “The Age of Incommensurability,” *Boundary 2* 28, no. 2 (Summer 2001), 141.

juxtaposition of objects that *cannot* be compared. But incommensurability in fact only inheres in the demand for comparison; its intellectual heft arises out of this dissonance, and the possibility of knowledge created to bridge the interstitial spaces between comparative registers. The most prominent critical appraisal is Natalie Melas' *All the Difference in the World: Postcoloniality and the Ends of Comparison* (2007), which – in the model that this project will follow – explores narratives that offer figures of a fundamental schism in the postcolonial project. Melas' foundational premise is that the comparative endeavor is itself vexed. Not only are there freighted political implications in the choice of which texts to put next to one another, but there is also the profound question of what we are actually doing when we compare texts from different writing traditions – in the case of this dissertation, the archives of the African American literary tradition and the law. Melas contends that because the disparate texts of the postcolonial transnational subject “hail from diverse traditions and have no necessary or intrinsic connection” (43), the literatures (and languages and bodies) of the transnational subject are necessarily incomparable on the same terms; comparative critical approaches to these texts, then, lack a basis by which to compare the disparate and singular experiences of the migrant, the refugee, the exiled. The two travelers in James Clifford's 1992 essay “Traveling Cultures,” for example – from which Melas borrows some of the principal terms of her analysis – may share the same space as a “basis for comparison.” But their particular knowledges – discrete and singular such as they are – cannot form a “ground for equivalence.” Instead of different knowledges producing a dead end, or a “paralyz[ing] aphasia” (27), however, Melas proposes a “minimal form of incommensurability, which produces a generative dislocation without silencing discourse

or marking the limit of knowledge” (31). This softer tension – rather than the absolute break described by Kuhn, or the “heterotopia” Foucault names in *The Order of Things* – instead contemplates productive possibilities in our contacts with the outer reaches of our own knowledge.

What are the premises of comparison? Melas describes its two different elements: the *act* of measurement or comparison, and measurement’s *dependence* on a common denominator that allows quantification (Melas 331).⁹ Comparison, then, requires the assignment of a relationship between similarity and value. Legal comparison, I should say here, insists not just that the law compare apples and oranges, or what Edouard Glissant calls “equivalences that do not unify” (id.), but that it *value* one against the other in the same terms. Legal comparison *insists* on commensurability, and then (in much the same language Melas uses to describe the colonial encounter) paradoxically “produces... incommensurable subjects,” subjects who must – but of course cannot – recognize themselves through law. Ian Baucom, in his work on slavery’s system of economic transformation – turning Africans into property – similarly describes the processes by which the law, more than simply commodifying black subjects, insists on their exchange value in producing a particular kind of justice, one premised on and finally imbricating an inevitable racial violence.

Melas’ sustained attention to the structure of comparison and its disciplinary implications for comparative literature in *All the Difference in the World: Postcoloniality and the Ends of Comparison* provides a theoretical touchstone for this project. So too

⁹ Melas, in *All the Difference in the World*, resists the relativism/universalism binary of post-colonial critical thought, and asks how the task of comparative reading can produce new kinds of knowledge that, paradoxically, is not premised in the terms of either of the points of comparison.

does Baucom's study of the rise of speculative finance, *Specters of the Atlantic*, which naturally turns on the alchemy of exchange value and in particular the commodification of the bodies of murdered slaves, and the accumulation of that history of exchange in the texts of the black Atlantic. Likewise, Wai Chi Dimock's *Residues of Justice: Literature, Law, and Philosophy* interrogates the law's insistence on making disparate subjects comparable in the same terms. Dimock's study, however, elides the particular resonance of the incommensurable for the African American tradition of writing and for the black subject's experience of the law. The possibilities of rejecting the premises of comparison stand as a largely unexplored domain in critical studies of African American literature.

African American Literature and the Law

How, then, can we compare *without* resorting to either pole of the relativism-universality binary that seems to derail so much of post-modern critical inquiry? This is a question that seems to haunt so many African American writers, particularly as their texts narrate the competing desires both to be understood as a constitutive element in the national fabric but also to resist the effacement of a black identity and experience that so often accompanies assimilation. Where to position themselves against the competing impulses to write themselves into a larger national narrative, on the one hand, and reject the reality of America's legally sanctioned apartheid, on the other?¹⁰

The law's relationship with its racialized subjects – and its troubled and troubling relationship with African Americans, in particular – emblemizes this collision of radically different perspectives: for instance, on the meaning of equality and freedom,

¹⁰ Imani Perry, "Occupying the Universal, Embodying the Subject: African American Literary Jurisprudence," *17 Cardozo Stud. L. & Lit.* 97 Spring, 2005 (July 20, 2005). Perry's exploration of the tension between a universal humanity and the particular posture of African Americans before the law explores precisely this question.

ideas that are often understood in radically different terms by each. The rupture produced by this divergence is often rendered visible in the materiality of the two cultures: on the one hand, in legal disputes and legal texts, in laws and in the deliberations out of which they are constructed; and on the other, in the cultural productions of the African American community, and in particular in its rich tradition of letters. Stephen Best, in his study of the aesthetic dimensions of black subjects as enslaved property, suggests that these two competing realities produce “insoluble regimes of knowledge,” and he rejects any formal equivalence between law and literature as illusory.¹¹ Here he echoes the cautionary warnings from Julie Stone Peters about the efficacy of reading legal narratives alongside literary ones.¹² Law and literature have much to offer one another, and in fact much of American literature – and African American literature in particular – can scarcely be understood without an appreciation of the constitutive role played by the law in so many of its texts. But, rather than understanding the law as an organizing element of the study of African American letters, a more apt appraisal of the nexus between the two should conclude that much of black writing is best understood as a *rejection* of the law. Indeed, the refusal of so many texts by black writers to assimilate the ideology of American jurisprudence suggests that an *anti-comparativity* is what marks much of the relationship between law and African American literature, and that the terms through which each understand itself remain fundamentally incompatible.

¹¹ Stephen M. Best, *The Fugitive's Properties: Law and the Poetics of Possession* (Chicago: University Of Chicago Press, 2004), 222. Best observes that “literature and law are disciplinarily oblique, with the added proviso that their unevenness is more precisely a matter not of form but of form’s absorption into insoluble regimes of knowledge.”

¹² Julie Stone Peters, “Law, Literature, and the Vanishing Real: On the Future of an Interdisciplinary Illusion,” *Publications of the Modern Language Association of America*. 120, no. 2 (2005): 442.

While the language and logic of the law expose it as inadequate to represent the history of racialization in America, the richest texts in the African American literary tradition are indeed borne out of the paradox of American justice. Black writers, of course, chronicled the nation's history of inequalities, unswayed by the law's formal articulations of freedom. The novel as a genre offered black writers a chance to articulate the "divided, incommensurable knowledge that is gained" by living in a world that is unaware of your experience of it, leaving blacks both "present and absent in human time and space."¹³ Much as Du Bois describes the "veil" that separates competing racial knowledges, comparative appraisals of legal and (black) literary texts must acknowledge not simply their generic distance from each other but also the differences in their methods, their vernaculars, their divergent political and aesthetic characters.

The leading texts in the area of "law and African American literature," for their part, do not offer any broad critical apparatus to account for the presence of the remarkable figures that stand as the focus of this dissertation.¹⁴ J. Christian Suggs' *Whispered Consolations*, which stands as the most ambitious and broadly realized engagement of the relationship between law and the black literary tradition, explores the role of African American narrative in contesting the stories told by the law, but stops short of theorizing the dissonance between romantic notions of the (black) legal subject and the irony of the African American experience of the law. Gregg Crane's study of the

¹³ Nancy Bentley, "The Fourth Dimension: Kinlessness and African American Narrative," *Critical Inquiry*. 35, no. 2 (2009): 270.

¹⁴ Law and literature as a field is generally acknowledged to begin with James Boyd White's 1973 *The Legal Imagination*. Often understood as simply reading "law in literature" and "law as literature," contemporary scholars increasingly have challenged what it means to compare legal and literary texts. Baucom's *Specters of the Atlantic*, for example, mines a virtually unread legal archive to inform the *structure* of both a reading and economic public in the long-eighteenth century.

nineteenth century in *Race, Citizenship, and Law in American Literature* argues for a better understanding of literature's influence on the discourse of citizenship, again adopting a critical perspective that assumes a convergence between the logics of race and law. Lovalerie King's *Race, Theft, and Ethics* limits itself to a more narrow exploration of the contending meanings given by the law and by black authors to the idea of property.

The most timely intervention in the critical discourse around law's relationship to the tradition of black writing is Ken Warren's *What Was African American Literature?* Warren argues that what we now know as African American literature was in fact a political and historical enterprise "that gained its coherence as an undertaking in the social world defined by the system of Jim Crow segregation." It "took [its] shape...[in response to] the enforcement and justification of racial subordination and exploitation represented by Jim Crow," and it was only in response to the political exigencies of Jim Crow that nineteenth-century texts by black writers were assimilated into an African American canon. "[W]ith the legal demise of Jim Crow, the coherence of African American literature has been correspondingly, if sometimes imperceptibly, eroded as well." As a consequence, Warren argues, what we still *mistakenly* call African American literature refers to a now-defunct historical enterprise rather than "the ongoing expression of a distinct people." The turn to other critical frames besides race – the diasporic, the transatlantic, the global – evidence an awareness that the distinctiveness of African American literature has waned. The tradition, in Warren's view, was never a "transhistorical" enterprise, but only constituted itself as "a literary practice responsive to conditions that, by and large, no longer obtain." The necessary condition of an African American literature was white skepticism of black competence, a premise that can no

longer anchor a political project; and the paradox of African American literature was always that in accomplishing its political ends it would render itself obsolete.¹⁵

So what, Warren asks, “is the contemporary vitality of race?” And to put it in terms of the literature that Warren is reading, what is the contemporary vitality of a text like *Invisible Man*, a novel whose political urgency, to Warren’s mind, evaporated just a few years after its 1952 publication with the Supreme Court’s ruling in *Brown v. Board of Education*? Warren’s book is compelling for this project’s purposes on several levels. First, he explicitly positions the resonance of the African American literary project as *legal*, and asks us to think about the continuing vitality of black literature in terms of the law. And second, his argument makes the claim that the black literature of the Jim Crow era – in Warren’s terms that’s roughly the end of Reconstruction to the end of the civil rights era – should be understood as a genre fundamentally different from the writing by black authors that both preceded and followed it. While one can disagree with Warren’s conclusions about the political and historical status of the black subject and the black literary text in the pre- and post-Jim Crow moment – and this is where most critical responses to Warren’s argument have resided – where I want to focus my appraisal here is on the aesthetic. In a book making an argument against the coherence of an African American literary canon, Warren’s argument is strangely unconcerned with the aesthetic, and in particular strangely unconcerned with a broad appreciation of the aesthetic, or really any consideration of what the literature from the earliest moments of the tradition to the twenty-first century moment might share beyond any political or historical posture.

¹⁵ Kenneth W. Warren, *What Was African American Literature?* (Harvard University Press, 2011) 1-19.

And into that gap I'd like to suggest that it is the law which grants to the African American literary tradition an aesthetic coherence, or put in better terms, it is the *problem of the law* for its African American subjects that links the earliest texts of the tradition with those that followed it in both the Jim Crow era and in an ostensible post-racial moment. The law's logic of race – how the law understands blackness – remains fundamentally and resolutely incommensurable with the logics of race offered by so many of the texts of the African American literary tradition, and it is the problem of law that provides the tradition a coherence that is under increasing attack.

And while seminal texts in the African American critical domain such as Paul Gilroy's *Black Atlantic* and Henry Louis Gates' *Signifying Monkey* offer divergent cultural models as part of their arguments' premises, each insists on an assimilation of the competing discursive landscapes they describe rather than exploring the refusal of many African American texts to write themselves in anything but their own terms. In contradistinction to such studies, I will attend to the productive possibility of narrating that fundamental disjuncture: to what end do narratives of black life before the law embrace figures – and indeed the very structure – of impossible knowledge? This project will be the first to bring a critical perspective on the incommensurable to bear on literature that explores the troubled terrain of black subjects before the law.

Chapter One – Madness

Chapter One takes up the competing structures of madness and competence that mark the early struggles for black subjectivity. It takes as its starting point the disjuncture between the logics of competing legal and literary texts of the late eighteenth century: slave petitions, on the one hand, and Equiano's *Interesting Narrative*, on the

other. The petitions, as well as much of the protest literature that borrows the petition's form by articulating grievance and demanding redress, are the first textual statements of black competence for citizenship, pursuing legal acknowledgments of their formal humanity. Yet read alongside the petitions, the early texts in the black literary tradition produce striking and contrapuntal scenes of the madness inspired by the realities of slavery: of "crazed" slaves who come to see suicide or rebellion as the only sane alternative to servitude (scenes that would be reproduced over the next two centuries – much as we see in Hayden's "Middle Passage" – in an effort to make sense of the *experience* of the madness of the trade's "order").

The petitions and the early narratives demonstrate the impossible predicament in which blacks found themselves in the founding moment, a predicament that in many ways persists today: how to claim the formal protections of the law in the face of injustices and inequalities that the law often cannot – and sometimes will not – resolve? How to narrate the failed logic of that legal system in a representative literature? And finally, how to mobilize the logics of racial slavery – logics that ascribe madness to black attempts to resist their enslavement – in such a way as to evidence not simply the fundamental humanity of the racial subject, but its competence as national subject?

This chapter begins by chronicling the attempts by blacks, both free and enslaved, to demonstrate their competence as national subjects by submitting petitions to the legislatures of the colonies and the early republic. These petitions represent the earliest efforts by blacks to participate in the rights-driven discourse of the founding moment, and to rebut in formal legal terms one of the central justifications for the slave trade, the inability of Africans to live up to the obligations of citizenship. Against these petitions

and their assertions of black competence, Equiano's *Interesting Narrative* – actually written in the form of petitions – repeatedly invokes scenes of black madness, of the inability of blacks to assimilate themselves into, or make any sense of, the New World. I first demonstrate that the form of the petition – both its potentialities and its constraints – contributed directly to the late eighteenth-century eruption of black letters and the birth of what we now know as the slave narrative.¹⁶ I show that the inconsistencies – and indeed the failings – of Equiano's *Interesting Narrative* are a function of the difficult transition from legal to literary texts. And I argue that the seemingly counter-productive representations of madness and incompetence in the literary texts are in fact of a piece with the claims for citizenship posited by the petitions, critique their inevitable failure, and deploy figures of madness in response to the failures of law.

Chapter Two – Treason

Chapter Two explores the related tension between the competing logics of race and nation. Is it possible – or even desirable – for the black writer to remain faithful to both? The seeming impossibility of reconciling black and American identities offers us another structure of the incommensurability that is interwoven through so much of the tradition of African American letters. From the earliest texts of the African American literary tradition, claims for the full humanity of blacks were often read as betrayals of the nation, proof of disloyalty evident in their contestations of the meaning of the founding moment. Conversely, blacks often understood assimilation as a betrayal of the race. Asking whether and how blacks can navigate the chasm between loyalty to race and nation, this chapter looks across a range of texts spanning the tradition to explore the

¹⁶ conventional wisdom re: rise of slave narratives

literary responses to the problem of what it means to live up to the expectations of racial and national citizenship. Chapter Two explores the competing demands made on the black subject by the laws of race and nation and investigates how different literary texts navigate the competing obligations of each.

The chapter's primary focus is on Victor Sejour's "The Mulatto," Frederick Douglass' "The Heroic Slave," and Sutton Griggs' *Imperium in Imperio*, exploring the different modes of representing the relationship between race and nation in the nineteenth century. What can the terms of these three texts tell us about the narrative strategies available to writers confronting the tension between the dueling logics of race and nation? If it is indeed the case that the logics of race and nation operate on incomparable terms, how do these novels represent that fissure? What does it look like and why? The schism between race and nation is such that each novel's protagonists – loyal patriots serving the United States by their betrayal of it – asks whether the rationales of national fidelity and treason fail with the introduction of race as a third term.

Chapter Three – The Absurd

While many nineteenth-century texts narrated what stand in many ways as earnest explorations of the legacy of the rhetoric of the founding moment, farce insistently characterizes some of the most compelling moments in their oeuvre. Griggs' *Imperium* offers some of the earliest sustained parodies of race law in the African American canon: Jim Crow's absurd implications for preachers, white teachers and black students, lynch mobs and their victims, and of course the government itself. (Farce, of course, is not absent from the earliest texts in the canon, such as Equiano's *Narrative* and Webb's *The Garies and their Friends*, which rely on scenes with talking books and child

revolutionaries to mock the hypocrisy of white literary chauvinism and fears of black resistance to racial violence, respectively). Ellison's *Invisible Man*, of course, revolves around set-pieces that insist on the absurdity of the protagonist's (and the black subject's) dilemma: the battle royale; Trueblood's confession; the chaos at the Golden Day; the Liberty Paint inquisition; Brother Jack's glass eye. Less well-known vignettes – "Mister Toussan" and "Flying Home," for instance – cheekily reenact moments of possibility to reveal the impotence of their legacy. Much critical commentary on the African American literary tradition explores the role of irony to rich effect. But as with Hayden's "Middle Passage," describing these moments as "ironic" seems not to capture the predicament at the heart of these scenes. In the face of sustained, and for all intents and purposes *legal*, racial violence and animus, the law continued to insist throughout the second half of the nineteenth century and the first half of the twentieth that it offered justice to all Americans. The rhetoric of "strangeness" that marks the narrative introspection of a text like *Souls of Black Folk* points to the inefficacy of realist narratives to resolve the contradictions of the *Plessy* era, indeed the inability of literary narrative to make any sense of the troubled place of African Americans before the law and the nation. Irony, parody, farce, and the absurd narrate the collapse of racial justice before the law, and expose the failure of race and law to meet on common ground.

Do the formal and generic modes of these texts suggest *possibility*? Can we understand the absurd as productive of new spaces in which a dialectic between race and law can evolve? Chapter Three focuses on the rhetoric of strangeness that marks so many of the texts of the African American literary tradition written during the *Plessy* era, a strangeness inextricably tied to the law's effort to maintain the fiction of "separate but

equal.” Anti-miscegenation laws, perhaps the most emotionally charged of the many legal attempts to police the color line, were also some of the most difficult to parse and yet also the most entrenched. And so it is no surprise that the illogic of the legal predicament in which blacks found themselves was often articulated in literary texts in two related ways: through the figure of the miscegenated baby, and the narrative structure of the absurd. This chapter argues that while the possibility of a baby is usually read to reveal the anxiety of a text’s passing protagonists, in fact many *Plessy*-era works by African American writers deploy the combination of a troubling black baby and the farce of racial taxonomies as a kind of *reductio ad absurdum*, satirizing the law’s doomed attempts to protect the “purity” of the white race. An assessment of the law’s affective attachment to whiteness reveals the formal mode of the absurd as a pointed challenge to the rationale underlying segregation as the law of the land. Finally, a fuller reading of George Schuyler’s *Black No More* shows the incommensurable as a necessary condition for this kind of irony, which turns precisely on the irresolvability of the competing views of the law and of African American writers on the fundamental humanity of the black subject.

Chapter Four - Colorblindness

Chapter Four takes up texts whose racial formalisms belie a twenty-first century critique of the law’s own colorblindness. Against the context of the ascendance of critical formalisms generally and racial hermeneutics in particular, I treat three recent texts – Toni Morrison’s *Paradise*, Richard Powers’ *The Time of Our Singing*, and Edward Jones *The Known World* – to explore how different literary texts engage the notion of the post-racial legal order. It surely is no coincidence that in a newly “post-

racial” moment, in the face of the celebratory rhetoric surrounding the election of our first black president, these three texts narrate the failure of colorblind experiments. Against the law’s exclusion of considerations of race – and of the history of race before the law – how do these texts understand the logic of colorblindness? I argue that these novels each offer a different way of understanding what the law means by colorblindness, three perspectives that illuminate the troubled path of the law as it strives to reach a place unthinkable for most African Americans.

Chapter Two
The Illogic of Law: Madness and the Petition
in Equiano's *Interesting Narrative*

ABSTRACT: This chapter makes two distinct but related claims: first, that the transition in African American writing from legal to literary texts at the close of the eighteenth century was impelled by the failure of law for blacks in a world marked by slavery; and second, that this failure of law – its inability to cognize black competence – is figured in the earliest black texts as a kind of madness. From the first moments of the African American literary tradition, the texts of black writers stood simultaneously as demonstrations of black equality and rejections of the justifications of slavery. Not surprisingly, these texts – poems, narratives, and petitions among them – were rejected by their white detractors as fraudulent, or mindless aping, or proof that the black mind was simply unable to accommodate the reality of its inferiority. Faced with the repeated and emphatic failures of their work to persuade a skeptical audience of the competence of the black subject, black authors deployed figures of madness as one of the few available critiques of the backwardness of a world marked by the illogic of chattel slavery and racial hierarchy. These figurations of madness function as both accusation and indictment, damning both the incoherence of white racism and the seeming impossibility of demonstrating black worth to white readers. Because so much of the rationale of racial animus found itself articulated through the ostensibly disinterested language of law, it is imperative that we understand these literary figurations of madness not simply as critiques of the logics of slavery, but as explicit engagements with the prevailing legal discourses and texts by which so much of the texture of the lives of African Americans has been shaped.

“During this disagreeable business, I was under strong convictions of sin, and thought that my state was worse than any man’s; my mind was unaccountably disturbed; I often wished for death, though, at the same time, convinced I was altogether unprepared for that awful summons...”

Olaudah Equiano¹

I. Introduction

The tradition of African American letters that begins in the second half of the eighteenth century battled a nearly uniform presumption of black incompetence. Despite their obvious intellectual and aesthetic achievements – indeed, what many have since recognized as genius – the published work of blacks like Jupiter Hammon, Phillis Wheatley, Francis Williams, Benjamin Banneker, Ignatius Sancho, Quobna Ottobah Cugoana and Olaudah Equiano simply could not overcome the racial presumptions of “enlightened” critics such as David Hume and Thomas Jefferson, who dismissed the literary merit of black authors out of hand.² Jefferson famously wrote of Wheatley and Sancho, and the black intellect more generally, that

[r]eligion, indeed, has produced a Phyllis Whately [sic]; but it could not produce a poet. The compositions published under her name are below the dignity of criticism.... Ignatius Sancho has approached nearer to merit in composition; yet his letters do more honour to the heart than the head.... his imagination is wild and extravagant, escapes incessantly from every restraint of reason and taste, and, in

¹ Olaudah Equiano, *The Interesting Narrative and Other Writings*, ed. Vincent Carretta, Rev. ed. (New York: Penguin Books, 2003), 181 (hereinafter cited parenthetically).

² Jefferson’s characterization followed the example of David Hume, who similarly disparaged the poetry (and intellect) of Francis Williams: “but ‘tis likely he is admired for very slender accomplishment, like a parrot, who speaks a few words plainly” Emmanuel Chukwudi Eze, *Race and the Enlightenment: A Reader* (Wiley-Blackwell, 1997), 33.. See also Gene Jarrett’s recent essay, “‘To Refute Mr. Jefferson’s Arguments Respecting Us’: Thomas Jefferson, David Walker, and the Politics of Early African American Literature,” *Early American Literature*, Vol. 46, No. 2 (2011), 291-318.

the course of its vagaries, leaves a tract of thought as incoherent and eccentric, as is the course of a meteor through the sky.³

Jefferson's diction in this passage from *Notes on the State of Virginia* reveals precisely the quandary facing black writers in this moment. Indeed, it is not difficult to read Jefferson's attack on Sancho's sentimentality as a charge much more damning: that a black man would maintain an epistolary relationship with such prominent (white) figures of eighteenth century London is itself the thing that "escapes...every restraint of reason and taste." It is Jefferson, of course, who cannot make his racialized understanding of the world cohere with the fact of Sancho's preeminence in British literary circles. But as Jefferson's response to Banneker's and Wheatley's and Sancho's texts suggests, black assertions of authorial and subjective competence were routinely and summarily dismissed.

And perhaps no text was rejected more uniformly or more completely than the black petition. Dozens of petitions by blacks to colonial and early republican legislatures – declarations no less compelling than those that would forge the birth of the new nation, and no less demonstrative of their drafters' competence as authorial and political subjects – were simply ignored. During colonial times, the petition's long history in the social and political fabric of English society offered the perfect tool to attack the peculiar institution. A central element of direct democracy during the colonial and early national period, the right to petition was protected, along with the more recognized press, assembly and religion clauses, by the First Amendment. As such, the formal mode of petition became the preferred form of demands for freedom by the black community up

³ Thomas Jefferson, *The Works of Thomas Jefferson, Vol. IV (in 12 Volumes): Notes on Virginia II, Correspondence 1782-1786* (Cosimo, Inc., 2010), 53.

until the moment of emancipation, by which time literally tens of thousands of petitions had been submitted to local, state, and federal courts and legislatures.⁴ Petition drives of the 1780s and early 1800s in England enabled forces on both sides of the slavery debate to organize supporters and to galvanize public sentiment.⁵ And in the United States, the strength of the petition movements in the 1830s was such that pro-slavery forces in Congress passed the first gag-rule to prevent the American Anti-Slavery Society from bringing the business of the legislature to a stop though the submission of hundreds of petitions.⁶ Indeed, the Supreme Court has recognized sit-ins, demonstrations, silent protests, attempts to register to vote, and political boycotts – all central tools of the Civil Rights movement – as activities protected by the petition clause.⁷ And yet the petition – perhaps the most significant model for black colonial and early American authors articulating the injustice of slavery – remains little remarked upon in critical conversations about the birth of the black literary tradition.

⁴ Loren Schweninger's *Petitions to Southern Legislatures, 1778-1864* collects a vast archive of petitions by or concerning blacks in the slave states from the antebellum era, including petitions to state legislatures and county courts.

⁵ Christopher Leslie Brown, *Moral Capital: Foundations of British Abolitionism* (The University of North Carolina Press, 2006), 447–49.

⁶ The most thorough discussions of the form of the petition remain Gregory A Mark's "The Vestigial Constitution: the History and Significance of the Right to Petition" and Stephen Higginson's "A Short History of the Right to Petition Government for the Redress of Grievances"; see also Susan Zaeske's *Signatures of Citizenship: Petitioning, Anti-Slavery, and Women's Political Identity* and Raymond Bailey's *Popular Influence Upon Public Policy: Petitioning in Eighteenth-Century Virginia*.

⁷ Anita Hodgkiss, "Petitioning and the Empowerment Theory of Practice," *Yale Law Journal* 96, no. 3 (1987): 571. Indeed, "[t]here is a sense in which any political act can be characterized as a petition." Still, the formal mode of petition is an anachronism today, though notable exceptions exist. See, for example, *We Charge Genocide: The Historic Petition to the United Nations for Relief from a Crime of the United States Government Against the Negro People*.

The failure of the black petition – and its particular legal model for elevating the condition of African Americans – might be said to have ushered in new formal and aesthetic modes of narrating black claims of competence. Equiano’s *Interesting Narrative*, in particular, reveals that the transition in African American writing from legal to literary texts at the close of the eighteenth century was impelled in many ways by the failure of law for blacks in a world marked by slavery. What’s more, this failure of law – its inability to cognize black competence – is figured in many of the earliest black texts as a kind of madness. Difference, of course, is often marked as a failure of the mind.⁸ The efficacy of madness in many of the (white) canonical texts of the American literary tradition is relational: hegemony prevails in the marginalization of difference. Though it is little discussed in contemporary literary criticism, Michel Foucault’s epic historiography, *Madness and Civilization: A History of Insanity in the Age of Reason*, quietly underwrites any such reading of madness as a function of power.⁹ Foucault sees

⁸ Toni Morrison, in her seminal essay “Playing in the Dark: Whiteness and the Literary Imagination,” suggests that madness often functions as a part of an insidious “Africanism” that permeates the aesthetics of much of American literature. Morrison’s deft analysis argues that the obsession with color evident in so many canonical texts imbues blackness with the power of “chaos, madness, impropriety, anarchy, [and] strangeness” Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (New York: Vintage, 1993), 80. Constructions of whiteness – and indeed the law – as rational, principled, and enlightened have as their premise just such an instantiation of blackness as incompetent, disordered, unreasoning, mad. This relationship is most evident in texts where blackness and the law collide: Thomas Gray’s *Confessions of Nat Turner*, for instance, transforms Turner’s militant radicalism into an impotent religious zeal, an emasculation similarly evident in much of the rhetoric of degeneration and madness surrounding miscegenation.

⁹ Foucault argues in *Madness and Civilization* that medical science (and, more generally, the abstract universality of an Enlightenment sensibility) “discovers” a natural distinction between reason and madness where in fact it has created one. For Foucault, of course, this kind of madness is relational, a discourse of power. Foucault’s study does not make any claims regarding a racialization of madness. But reading *Madness and Civilization*

in assignations of madness the *creation* of difference. And much as whiteness is constituted by defining that which is “black,” so too is madness a means by which the “reasonable” can cordon off “difference.”¹⁰

But why, then, do figures of madness populate so many of the texts of the African American literary tradition? And what can the formal and aesthetic modes of the petition tell us about the efficacy of the law for African Americans? Faced with the repeated and emphatic failures of their work to persuade a skeptical audience of the competence of the black subject, black authors deployed figures of madness as one of the few available critiques of the backwardness of a world marked by the illogic of chattel slavery and racial hierarchy. These figurations of madness function as both accusation and indictment, damning both the incoherence of white racism and the seeming impossibility of demonstrating black worth to white readers. Because so much of the rationale of racial animus found itself articulated through the ostensibly disinterested language of law, it is

with Morrison in mind, we are immediately struck by the arbitrary starting point for racial discourses of madness, which, to borrow from Foucault, designate [madness] against a backdrop of all that is reasonable, ordered and morally wise. This consciousness is wholly invested in its own judgment, even before any concepts have been worked out, and it does not so much *define* as *denounce*. Madness is experienced as an opposition that is immediately felt, a blatant aberration...From this still initial starting point, the consciousness of madness is self-assured, that is, confident that it itself is not mad.

Michel Foucault, *History of Madness*, ed. Jean Khalfa (Routledge, 2009), 164.

¹⁰ Perhaps the most notable study of madness is Sandra Gilbert’s and Susan Gubar’s 1979 *The Madwoman in the Attic: The Woman Writer and the Nineteenth-Century Literary Imagination*, which examines madness in Victorian texts written by women. Gilbert and Gubar argue that constructions of women in male-authored nineteenth-century texts left writers like Jane Austen, Mary Shelley, the Brontë sisters, George Eliot and Emily Dickinson with only two available embodiments of the feminine: the “angel” and the “madwomen,” foils ruled by affect rather than reason. Critiquing the inability to construct full subjectivities for themselves or their characters, *Madwoman in the Attic* concludes that women writers, owing to the patriarchy under which they toiled, were simply unable to reach beyond figures defined by sentiment.

imperative that we understand these literary figurations of madness not simply as critiques of the logics of slavery, but as explicit engagements with the prevailing legal discourses and texts by which so much of the texture of the lives of African Americans has been shaped. And in Equiano's text we find the earliest explorations of madness as the only logical response to the crazed world in which blacks found themselves living, a trope that I suggest continues to be a predominant feature of the African American literary tradition through the nineteenth and twentieth centuries, and indeed one that remains resonant in the contemporary moment.¹¹

II. "To the Lords Spiritual and Temporal"

On March 21, 1788, Olaudah Equiano presented a letter to Queen Charlotte that he would later describe in his *Interesting Narrative* as "a petition on behalf of my African brethren." Asking relief not for himself – his sufferings as a slave, "although numerous, are in a measure forgotten" – but for the millions of his "countrymen, who groan under

¹¹ Indeed, one could argue that the entire tradition of black letters evinces a singular commitment to figures of madness. Olaudah Equiano's *Interesting Narrative* (1789), the subject of this paper, is certainly the earliest sustained literary exploration of the theme by an author of African descent. David Walker's *Appeal* (1829) and the *History of Mary Prince* (1831), like Equiano's *Interesting Narrative*, share both an explicit legal genealogy and a fascination with white and black madness. Victor Sejour's "The Mulatto" (1837) and Frederick Douglass' "Heroic Slave" (1852), the first pieces of black fiction, each turn precisely on the question of madness in the violence of black resistance. The end of the nineteenth century finds madness in the futility of resistance to a burgeoning Jim Crow in Sutton Griggs' *Imperium in Imperio* (1899) and Charles Chesnutt's *Marrow of Tradition* (1901). Jean Toomer's *Cane* (1923) and Nella Larsen's *Passing* (1929) are perhaps the most notable of the many Harlem Renaissance texts to deploy madness as a psychological response to the predicament of blacks living in a nation defined by its legal apartheid. The canonical texts of the modern African American literary tradition – Richard Wright's *Native Son* (1940), Ralph Ellison's *Invisible Man* (1952), and Toni Morrison's *Beloved* (1987) – yoke the descents of their protagonists to the madness of the law. Finally, Edward Jones' *The Known World* (2003) and M. Nourbese Philip's *Zong* (2008) stand as the twenty-first century's leading examples of the efficacy of the figure of madness in the black literary tradition.

the lash of tyranny in the West Indies,” Equiano draws for the queen a correspondence between the traumas of slavery and the rewards of omnipotent rule:

Your majesty’s reign has hitherto been distinguished by private acts of benevolence and bounty; surely the more extended the misery is, the greater claim it has to your majesty’s compassion, and the greater must be your majesty’s pleasure in administering to its relief (231-32).

Equiano’s syllogism insists on a strange proportionality that would measure the happiness of the throne by the distress of her subjects. It submits that the suffering of the enslaved African – from the horrors of the middle passage to the sting of the whip – can be measured, and that it is cognizable in terms that others may understand (even if only a queen). What’s more, it offers a false equivalence between incommensurable affects, between uncommon sorrow and royal gratification. Abolitionists had long struggled with the problem of how to articulate the hideous realities of the slave trade; Thomas Clarkson, for one, wondered in his 1786 “Essay on the Slavery and Commerce of the Human Species” just how a white anti-slavery advocate could describe the Middle Passage in terms that bore any connection to the lived experience of it. But Clarkson’s problem of ineffability is quite a different one from the contradiction Equiano seems to be highlighting for the Queen, which is the impossibility of comparing not just the subjectivities of Britons and Africans, or of whites and blacks, but indeed the very logics through which each understood a world ordered by slavery.

The chasm between royal prerogative and the fate of the slave plays out in double, both in his letter to Queen Charlotte and in the *Interesting Narrative* itself. This “petition within a petition” conceit dramatizes the nearly inconceivable subject position of the slave at the same time that it reveals as its analogue the vexed relationship between black writing and the law. First, Equiano’s twinned petitions dramatize the generative role

played by the law, legal forms, and the petition from the earliest moments of black writing. Some of the earliest recorded narratives by blacks of life in the Western world are found in the petitions of free and enslaved blacks in the American colonies in the seventeenth century. And by the 1770s and 80s, more than a dozen mass petitions by or on behalf of blacks were submitted to legislatures on behalf of larger black communities and reprinted and circulated throughout the colonies and early republic, just as the earliest texts of what we now recognize as the genre of the “slave narrative” were being written. Though rarely discussed as a legal text, Equiano’s *Interesting Narrative* is in fact structured as a petition to the English Parliament. Each of the nine editions begins with the following salutation, conforming to the petition’s conventions of supplication:

To the Lords Spiritual and Temporal, and the Commons of the Parliament of Great Britain. My Lords and Gentlemen, Permit me with the greatest deference and respect, to lay at your feet the following genuine Narrative; the chief design of which is to excite in your august assemblies a sense of compassion for the miseries which the Slave Trade has entailed on my unfortunate countrymen (7).

The *Interesting Narrative* was published by subscription, and Equiano appended the names of his hundreds of subscribers immediately after this address to Parliament, in effect making each of his subscribers a fellow petitioner.¹² In relying on the formal model of the petition, Equiano invokes its history both as a mode of political protest and as an insistence of the right to participate in the polity.

¹² Vincent Carretta’s “Introduction” to Equiano’s *Interesting Narrative* is an invaluable resource in situating the text amidst the historical background and formal conventions of the late-eighteenth century. Vincent Carretta, “Introduction,” in *The Interesting Narrative and Other Writings*, Rev. ed. (New York: Penguin Books, 2003), xvi. Of course, Carretta’s recent biography raises the prospect that Equiano may have been born in South Carolina rather than Africa; the place of his birth, however, seems of little consequence for the *Interesting Narrative*’s strategic engagement with the competence of the black subject, the unreason of the laws of slavery, and the figure of madness as it is represented in the text. Vincent Carretta, *Equiano, the African: Biography of a Self-Made Man* (Penguin, 2007), 149.

Moreover, Equiano's petitions betray the paradox that confronted black writers in the aftermath of the Revolution: how to demonstrate their competence – both *as* legal subjects and *through* legal texts – to a reading public that understood black articulations of equality as a peculiar kind of madness. Where blacks saw the petitions as proof of their capacity for freedom, whites saw in these petitions a simple reproduction of the claims set forth in the Declaration of Independence. Black participation in eighteenth century legal print culture – pamphlets, broadsides, newspapers, and especially the petition¹³ – marked a concerted effort by black writers to prove their capacity as national subjects, and suggests that the tradition of black writing in fact begins with the law. These demands for equality did little, of course, to change the political landscape in the colonies and the early republic, and remain little remarked-upon by literary scholars. Yet their influence upon Equiano's *Interesting Narrative*, the most widely read of what are now recognized as the early slave narratives, is unmistakable, not only in the formal mode of his autobiography, but its engagement with the prevailing legal decisions and discourse of the black Atlantic, its testamentary role in the Parliamentary debates over abolition in the last two decades of the eighteenth century, and, most importantly, in its troubling representations of white and black (in)competence as a response to the inefficacy of black appeals to Enlightenment logic.

A. History of the Petition

During the 1770s and 1780s, more than a dozen petitions by blacks were submitted to legislatures on behalf of larger black communities and reprinted and

¹³ Joanna Brooks reviews the different ways blacks articulated revolutionary discourse in Joanna Brooks, "The Early American Public Sphere and the Emergence of a Black Print Counterpublic," *The William and Mary Quarterly*. 62, no. 1 (2005): 67.

circulated throughout the colonies. Historians and legal scholars have usually attended to these colonial petitions as evidence of black engagement with the ideals of the American Revolution. Jon Christian Suggs, in his study of law and African American literature as complimentary modes of narrative that speak to the dissonance between the dream and the reality of America, analyzes the few voices of blacks in eighteenth century colonial legal texts as “sketch[ing] the outlines of a life in colonial slavery,” and characterizes the petitions as “sporadic and ineffectual.”¹⁴ What seems absent from these assessments of the efficacy of the petitions is an effort to put them in touch with the history of the petition, and why it is that the petition is the first form in which we find narrations of black colonial life as well as the first critiques of the institution of slavery and the reality of the “freedom” idealized in the rhetoric of the Revolution. Because African American literature is not usually contextualized through this lens, it is not surprising that the early petitions are usually only anthologized as legalistic reproductions of Anglo narratives of liberty. Yet perhaps in the petition we can see the ways in which the legal and literary narratives coalesce, and indeed the potency of the petition as a model for protest literature for blacks into the nineteenth century. In the black petitions of the 1770s, we may even grasp the moment in which freedom was a possibility for blacks in America, the moment before the failure – for blacks – of the Revolution’s narrative of liberty. In order to understand how the history of the right to petition informs the tradition of African American fiction, then, we must understand why the petition became such a central component of the politics of slavery.

¹⁴ Jon Christian Suggs, *Whispered Consolations: Law and Narrative in African American Life* (Ann Arbor: University of Michigan Press, 2000), 21.

The petitions on behalf of blacks in the seventeenth and early eighteenth centuries reflect – particularly in the private nature of their plea – what had become a longstanding tradition of formal appeal to English authority for resolution of personal affairs.¹⁵ The idea of the petition as a formal appeal to authority is thought to take shape in the aftermath of the Norman Conquest, as the English monarchy begins to consolidate its power over and against the interests of the Church of England and the feudal barons. Resistance by the church to King John’s treatment of monks at the beginning of the thirteenth century, and by England’s landed class to a series of taxes enacted by the king to raise an army, lead to a concerted effort to constrain the power of the monarch. The Magna Carta, then, instantiated a formal system of legal checks on the authority of the king, and providing a mechanism for bringing grievances to the king. The petition process became a recourse for challenging the king’s failure to live up to the obligations agreed upon by the monarchy under the charter.¹⁶

The first petitions – “concerning the prices of foodstuffs taken by the King’s servants, taxes on various goods, the value of money, delays in justice resulting from writs of protection, the sale of pardons, illegal constabulary jurisdiction, jurisdiction of royal officers, improper escheatments by the King’s officers”¹⁷ – depended upon an appeal to the ultimate authority of the crown. Individual and group petitions for both public and private grievances were not mechanisms to claim fundamental rights, but instead reinforced the monarchy’s ultimate power to intervene in all matters. Petitions

¹⁵ This history of the development of the petition relies largely on Gregory A. Mark’s “The Vestigial Constitution: The History and Significance of the Right to Petition,” 66 *Fordham L. Rev.* 2153 (1998) and Higgenson.

¹⁶ Mark, 2164 n.29.

¹⁷ *Id.*, 2166.

also became a vehicle by which the king and his advisors were kept abreast of English politics and local events, and through which his subjects suggested changes to royal policy. Harbingers of the health of the economy, satisfaction with government, and the efficiency of the administration of justice and bureaucracy, petitions increasingly came to reflect the state of the king's relationship with his subjects.

As Parliament consolidated control over the purse strings of the crown in the thirteenth and fourteenth centuries, so too did petitions begin to play a more central role in English governance.¹⁸ Obligated to acknowledge and consider the grievances of its subjects or face the withdrawal of funds by Parliament, the presentation of petitions to the king enabled the nobility to extend its sphere of influence. The more petitions considered by Parliament, the more it presented to the king; the more petitions it could present to the king, the greater Parliament's role in shaping the course of government. As a consequence, the expectation became engrained among English subjects that their grievances would be received and considered by Parliament, and presented to the crown. By the fifteenth century, petitions were actually dictating much of the legislative agenda. And by the seventeenth century, petitioning "had come to be considered an ancient right...a mechanism that bound the English together in a web of mutual obligation and acknowledgement." Every petition articulated the hierarchical yet reciprocal relationship at the heart of the burgeoning empire: the subjects' appeals depended upon and reaffirmed the king's ultimate authority, and in receiving the petition the king, "in turn,

¹⁸ Id., 2166-70.

acknowledged a duty to subjects, one that had come to mean both hearing the complaint and not exercising power in an arbitrary fashion.”¹⁹

Particularly important for the argument of this chapter, the formal mode of petition also became a vehicle for the disenfranchised to exercise a voice in an English polity that otherwise excluded them. A far greater cross-section of the English public was participating in the petition process than was eligible to vote, and often participating collectively, that is, “as members of a collectivity and seeking redress for that community of interests.”²⁰ Petitions were presented on behalf of particular economic classes, vocations, and localities; the imprisoned were even regular participants in the political discourse through the petition process. Moreover, the petition was the preferred mode of address for demands of reform. By the beginning of the eighteenth century, the right to petition was esteemed above other forms of political speech in England; the Lord Chief Justice in the 1688 libel trial of the “Six Bishops” chastened counsel not to “compare the writing of a book to the making of a petition; for it is the birthright of the subject to petition.”²¹ The presentation of a petition, then, was the first step in a procedural process that constituted in large measure how justice was enacted for English subjects.

In a political universe in which the reality of the king’s ultimate authority was omnipresent, the form and tone of the petition – especially those questioning the exercise of that authority – required a particular kind of deference. A “language of supplication” shaped the presentation of the grievance, and petitions deemed “insufficiently deferential” could be rejected by the Parliament or the king. Petitions could not be libels

¹⁹ Id., 2169.

²⁰ Id., 2170.

²¹ Id., 2173.

“dressed up” in the form of a petition (which during the frequent political upheavals of the 1600s and 1700s was no small risk), and required formal elements such as “title,” “heading,” and “prayer.” A petition formally presented a written plea to an English authority stating a grievance and proposing the manner of relief requested.

Colonists in America would continue, and extend, the petition tradition. While white landowners were the most frequent colonial petitioners, requesting individualized relief for personal concerns, there was also a “public character” to much of the business of petitions in the colonies: petitions had the effect of regulating public life by shaping tax policy, controlling imports and exports, determining maintenance for the poor and reviewing the treatment of criminals and debtors.²² The business of colonial legislatures largely was determined by the content of the petitions it received; citizens drafted petitions, which the legislatures referred to committee, whose recommendations the legislatures then considered and enacted. In this way, petitions “assured a seamlessness of public and private governance in the colonies.”²³ And as the tensions that would lead to the colonists’ rebellion escalated, so too did the frequency with which public petitions articulated political protest. The Declaration of Independence is itself the culmination of a series of petitions to King George III, and cites the king’s failure to consider the colonies’ complaints as justification for revolution: “In every stage of these Oppressions We have Petitioned for Redress in the most humble terms: Our repeated Petitions have been answered only by repeated injury. A Prince, whose character is thus marked by every act which may define a Tyrant, is unfit to be the ruler of a free people.”²⁴

²² *Id.*, 2182-83.

²³ Higginson, 143-44.

²⁴ Declaration of Independence, para. 26 (1776).

B. The First Black Petitions

It is of course in the rhetoric of the revolution that the utility of the petition as a literary and political device for blacks becomes most obvious. As natural rights justifications for “liberty” and “freedom” from English “tyranny” proliferated, anti-slavery voices seized on the hypocrisy of slavery in the colonies (and soon in the new nation), and the petition – and its long history of combining publicity with argument – lent itself perfectly to the ambitions of abolitionists and, more importantly, blacks. Petitions were, by definition, a more engaged form of political participation than voting, and the disenfranchised had as much right to petition in the colonies as they did in England.

Indeed, since the right to petition was first memorialized in the colonies in the 1641 Massachusetts “Body of Liberties,” which explicitly guaranteed it to “[e]very man whether Inhabitant or forreiner, free or not free shall,”²⁵ blacks employed the petition process to challenge the terms of indentured service, to resist efforts to enslave them, and to make demands for freedom. A 1675 submission to Virginia’s Governor William Berkeley presents the “Petition of Phillip Corven, a Negro,” whose pleading alleges that Charles Lucas “did not att[end] the expiracon” of the terms of Corven’s indenture, and “by his confederacy with some person compel yo[ur] pe[titioner] to sett his hand to a writeing, which the said M Lucas now saith is an Indenture for twenty years.”²⁶ Corven presented the “testimony of persons of good credit” on his behalf, and asked that Lucas “make him satisfaction for the three years service above his time, and pay him corne &

²⁵ Mark, 2177, quoting from “A Coppie of the Liberties of the Massachusetts Collonie in New England” (December 1641).

²⁶ Aptheker, 2-3

clothes, with costs of suite.”²⁷ A 1726 petition to the General Court of North Carolina on behalf of Peter Vantrump, who calls himself “a free Negro,” narrates a similar tale of physical coercion. Anticipating Equiano’s description of the trials he endured as a freeman in the West Indies, Vantrump – in an effort to make his way to Holland from St. Thomas – hired himself out to “one Captain Mackie in a Brigantine from thence being bound (as he reported) to Europe.”²⁸ Instead, Mackie sailed to North Carolina, where Vantrump alleges he was enslaved by Mackie and an accomplice. The petition “prays [Vantrump] may be adjudg[ed] & declar[ed] free as in Justice he ought to be...”²⁹ The pleas of Corven and Vantrump, like all assertions of legal rights by the disenfranchised, offer narratives that otherwise could not be voiced. Outside of the petition process, there is simply no avenue for the dissemination of the injustices suffered by blacks during the first 150 years of slavery in the colonies. Almost without exception, blacks could not initiate legal proceedings, nor could they testify against whites. Nearly universal illiteracy circumscribed the possible avenues through which the stories of blacks could be circulated. By securing counsel for the submission of petitions, blacks could attempt the unthinkable: voice their own demand for justice.

By the time the right to petition is embodied in the constitutions of the new states, petitions by blacks have come to assume a much more explicitly political posture. The revolutionary rhetoric that marked the deteriorating relations between England and the colonies quickly infiltrated the thoughts of many blacks. Several petitions on behalf of blacks had been presented to colonial legislatures by this point, but only individual

²⁷ It is not known how this petition was resolved. *Id.*

²⁸ Aptheker, 3-4

²⁹ Vantrump’s petition was denied. *Id.*

applications for freedom on the basis of parentage or contract. In 1762, Jenny Slew sued her master, John Whipple, for freedom in colonial court in Massachusetts, and the protracted litigation that followed rehearsed many of the ideological arguments for and against slavery.³⁰ On April 1, 1772, the Virginia House of Burgesses, invoking the language of tyranny and inhumanity, petitioned King George III to ban the importation of slaves to Virginia.³¹

The earliest extant petition by or on behalf of a slave was submitted in 1661 to the Director General and Lords Councillors of New Netherlands (still a Dutch colony at the time), and reflects the political character of even the very first narratives of the lives of blacks in the New World.³² The petition explains that Emanuel Pieterse and his wife Reytory, both “free Negro[s],” took in Anthony van Angola, a black child, after the death of his parents. The petition goes on to attest that Reytory

out of Christian affection...and with the fruits of her hands’ bitter toil...reared [Anthony] as her own child, and up to the present supported him, taking all motherly solicitude and care for him, without aid of anyone in the world...to solicit his nourishment...³³

Emanuel Pieterse, the petition explains, also “has done his duty and his very best for the rearing.” It further requests that Anthony, the adopted child,

³⁰ John Adams, then a young lawyer and an observer of much of the argument, recording an appellate judge’s summary of the issues at stake: “This is a Contest between Liberty and Property – both of great Consequence, but Liberty of most importance of the two.” Bruns, 105-06.

³¹ Though likely spurred by the political and economic self-interest of the planters, who had more than enough domestic slaves to propagate the institution, this petition sparked uproarious debate and was one of the first colonial petitions to link the propriety of slavery and the logic of the colonists’ revolutionary intentions. Bruns at 192.

³² Herbert Aptheker, *A Documentary History of the Negro People in the United States*, Carol Publishing Group ed. (New York: Carol Pub. Group, 1990), 1.

³³ *Ibid.*, 2.

being of free parents, reared and brought up without burden or expense of the [West Indian] Company, or of anyone else than your petitioner, in accordance therewith...be declared by your noble honors to be a free person...³⁴

Emanuel Pieterse's petition seemingly asks only that the state attest to – and preserve – the free status into which Anthony was born. Unspoken here is an ever-present threat in the new world: classification of free blacks as slaves, motivated either by indifference or by malice. But like all of the petitions by (and on behalf of) blacks, it does much more than simply plead for freedom. It claims a right to participate in the governance of the colony, to voice grievances, to challenge policy, to demand redress. And though there is no evidence to demonstrate that this petition was part of any larger political effort by its Dutch drafters,³⁵ implicit in the narrative are rebuttals to the dominant tropes justifying the African slave trade. Reytory's care of the parentless Anthony is motivated by her Christian compassion, and enabled by her diligent (and "bitter") labor. Her husband Emanuel is a dutiful husband, attentive to the needs of both his wife and his adopted child. Neither the couple nor Anthony have been any burden on the Dutch colony, and continue to support themselves. Much like the black texts – petitions, slave narratives, letters, pamphlets, autobiography – that will follow a century later, it rebuts the widely-shared presumption of black incompetence. This petition, like the innumerable pleas from blacks that will follow its generic and political example, participates in a tradition of

³⁴ Ibid.

³⁵ It is unclear who drafted the petition; Anthony's "mark" appears at the bottom of the document, indicating that the petition was likely drafted on his behalf rather than by him. The force of this particular petition, however, lies not in its "authorship" but in the agency it narrates: the story belongs to Emanuel and Reytory Pieterse and Anthony van Angola, and reflects a black colonial domesticity, and indeed competence, that is seldom acknowledged.

community protest and political empowerment through narrative that will become a central motif in literature and letters by blacks in the tradition that follows.

The prayer of Emanuel Pieterse's petition was granted, and Anthony's status as a free black was secured. But the central premise of Pieterse's petition – its insistence on black competence – would be rejected again and again in the eyes of the law for the next three centuries. Political, social, economic, and of course legal subjectivities were continually denied to blacks on the basis of their alleged constitutional infirmities despite the compelling evidence to the contrary narrated in even the earliest texts detailing black life in America. Demonstrating black competence to a white public that insisted on its impossibility proved to be a vexed endeavor. And appeals to the law, through its formal terms and generic requirements, carried paradoxical results, particularly when articulated through the form of the petition. By the end of the eighteenth century, mass petitions drafted by free and enslaved blacks on behalf of their larger communities issued stark declarations of the black capacity for freedom. Between January 6, 1773, and September 21, 1781, no fewer than fourteen petitions were submitted on behalf of individual blacks or the wider black community, often drafted by black authors. These petitions pleaded a diverse array of grievances and prayers: for the abolition of slavery,³⁶ for land for cultivation as recompense for the crime of slavery,³⁷ for the amelioration of the living conditions of free blacks,³⁸ for repatriation to Africa,³⁹ protesting the obligation of free

³⁶ Sidney Kaplan and Emma Nogrady Kaplan, *The Black Presence in the Era of the American Revolution* (Univ of Massachusetts Press, 1989), 11; Aptheker, *A Documentary History of the Negro People in the United States*, 6, 8–12.

³⁷ Kaplan and Kaplan, *The Black Presence in the Era of the American Revolution*, 13, 15.

³⁸ *Ibid.*, 11; Dorothy Porter, *Early Negro Writing, 1760-1837*, 1995, 254.

³⁹ Kaplan and Kaplan, *The Black Presence in the Era of the American Revolution*, 11–12; Aptheker, *A Documentary History of the Negro People in the United States*, 7–8.

blacks to pay taxes though they cannot vote,⁴⁰ for public schools for black children,⁴¹ and protesting the kidnapping of free blacks into slavery.⁴² They varied in tone from supplication to righteous demand. These petitions outline the material conditions and lived experiences that will form the substance of much of the narrative literature that follows: theft from Africa, the horror of the Middle Passage, the physical brutality of slavery, the struggle to survive as a free black, the constant risk of return to slavery, the inability to accrue any semblance of citizenship rights in the face of institutionalized racism. Treating both the subtleties of Enlightenment jurisprudence and the shocking vulgarity of white “justice,” these petitions unmistakably pronounced a capacity to participate in the political deliberations over the status of blacks in the colonies and the young republic. And yet their repeated and summary denials by colonial, state and national legislatures proved the intractability of white stereotypes about blackness and the inefficacy of black appeals to the law.

The early slave petitions, then, are remarkable not simply as the very first textual productions by black writers in America. They occupy a vital space in the transition from legalistic forms to literary narrative by black writers at the end of the eighteenth century. Just as the legal texts through which blacks appealed for freedom failed to win redress for the grievances they articulated, black narrations of injustice began to appear in a different form. The earliest of what we now call the slave narratives – late-eighteenth century

⁴⁰ Roger Bruns, *Am I Not a Man and a Brother: The Antislavery Crusade of Revolutionary America, 1688-1788* (Chelsea House Publications, 1983), 454; Aptheker, *A Documentary History of the Negro People in the United States*, 14–16.

⁴¹ Kaplan and Kaplan, *The Black Presence in the Era of the American Revolution*, 11, 207–09; Aptheker, *A Documentary History of the Negro People in the United States*, 19–20.

⁴² Aptheker, *A Documentary History of the Negro People in the United States*, 20–21.

texts by Ukawsaw Gronniosaw, John Marrant, Venture Smith, and most importantly Olaudah Equiano – seem intimately connected to the personal narratives and demands for justice articulated in contemporaneous slave petitions. What seems absent from assessments of the efficacy of the petitions is an effort to put them in touch not only with the rich political history of the petition itself, but also with the birth of a black literary tradition, and more specifically with the ways in which early black authors turned to literary narrative as a corrective for the constrictions of the legal mode in which the petitions were obligated to function. If in the slave petitions we see the first narrations of black colonial life and the first critiques of the institution of slavery, in the earliest slave narratives we often find an altogether different way of responding to the inequities and injustices of slavery in the New World, and a peculiar counter-logic to the petitions’ claims of black competence. And if in the petitions we may even grasp the moment in which freedom was a possibility for blacks in America – the moment before the failure, for blacks, of the Revolution’s narrative of liberty – perhaps in the slave narratives we see black writers struggling to reconcile the competing logics of the Enlightenment and chattel slavery, and leveraging the potentialities of literary narrative in ways that the legal form – and rationale – of the petition precluded.

III. Competence and Madness in Equiano’s *Interesting Narrative*

Equiano lived the paradoxes of Western law in the way that only an enslaved person could, and his *Interesting Narrative* is informed at nearly every step by Equiano’s experiences with, and knowledge of, the law.⁴³ Indeed, the political landscape into which

⁴³ For a perceptive reading of the many ways in which the law is implicated in the *Interesting Narrative*, see Elizabeth Jane Wall Hinds, “The Spirit of Trade: Olaudah

the autobiography was thrust in 1789 owed much of its shape to a single legal decision. In 1771, James Somerset, a slave, escaped from the London home of Charles Stewart, his master. Stewart, a Boston customs official, had brought Somerset to England from the Massachusetts colony in 1769. Somerset was recaptured and placed aboard a ship bound for Jamaica. Before it could sail, Granville Sharp, an anti-slavery activist intent on challenging the legality of slavery in both England and its colonies, petitioned Lord Mansfield, chief justice of the King's Bench, the highest court in England, to issue a habeas corpus petition ordering that Somerset be presented to the court. Up to this moment, the legal status of slavery in England was uncertain; slavery in the British colonies flourished while becoming less and less present on the British isle. Lord Mansfield, who understood the dramatic consequences that would befall the English economy if the careful order surrounding the slave trade was disturbed, urged the parties to settle the matter outside of court. No agreement was reached, and after exhaustive arguments by counsel on both sides, Lord Mansfield issued his ruling on June 22, 1772, declaring of Somerset's detention by Stewart that

[s]o high an act of dominion must derive its authority, if any such it has, from the law of the kingdom where executed...The state of slavery is of such a nature, that it is incapable of now being introduced by Courts of Justice upon mere reasoning or inferences from any principles, natural or political; it must take its rise from positive law...[W]e cannot say the cause set forth by this return is allowed or approved of by the laws of this kingdom, therefore the man must be discharged.⁴⁴

Equiano's Conversion, Legalism, and the Merchant's Life," *African American Review*, Vol. 32, No. 4 (Winter, 1998), pp. 635-647.

⁴⁴ Transcriptions of the opinion, as announced by Lord Mansfield from the bench, are numerous and discrepant, though the rationale and tone are generally concordant. For the full text of this version, as well as a comprehensive history of the circumstances leading up to, and the details of, Lord Mansfield's decision in *Somerset's Case*, see Stephen Wise, *Though the Heavens May Fall: The Landmark Trial That Led to the End of Human Slavery*.

Somerset, in other words, was freed, by the strict logic that no law had ever sanctioned the recapture and sale of a slave who had escaped from servitude in England. And while *Somerset v. Stewart* has come to be understood by many to mean that slaves, upon arriving on English soil, were freed, Lord Mansfield's admonition that slavery "must take its rise from positive law" meant that the court was taking no position on its propriety, which it declared a political question. Parliament – rather than the courts – was the arena in which the fate of English slavery, both in the mother country and its colonies, would be decided. Equiano, heeding Lord Mansfield's call, drafted his *Interesting Narrative* as a petition for the expressed purpose of shaping the debate over the positive law governing slavery, and persuading members of Parliament of the injustice of both the slave trade and the law's treatment of blacks.

Indeed, Equiano had been confronted with the failures of law to secure meaningful liberty for blacks in the face of unconscionable suffering many times, both in England and in the New World. In 1774, he befriended John Annis, a cook on the ship *Anglicania*, on which both served (Equiano as steward) as it prepared to ship from London to Turkey (179). Annis had been the slave of William Kirkpatrick, a West Indian planter, who gave Annis permission to travel to England. Lord Mansfield's holding in *Somerset* that a slave may not forcibly be taken from England meant that Kirkpatrick had no legal power to insist that Annis return to St. Kitts. Yet Annis was kidnapped from the *Anglicania*, seemingly with the consent of its captain, by Kirkpatrick and six accomplices. Equiano recalls in his *Interesting Narrative* both that the conspiracy "reflected great disgrace" on the crew and also bemoans the captain's refusal to "pay me a farthing of [Annis'] wages" (180). His demand for Annis' earnings reflects an

insistence that the captain (and readers of the *Interesting Narrative*) acknowledge the value of this black man's labor, his contribution to the ship, and his now-absent presence as the negative space that records the law's impotence for those it refuses to cognize as subjects. Similarly, when the teenage Equiano is sold to another ship captain while they are at anchor on the Thames outside London, the narrative records Equiano's reaction as he is transferred to a boat about to depart for the West Indies: "I told him I was free, and by law he could not serve me so...I have been baptized; and by the laws of the land no man has a right to sell me" (93-94).⁴⁵ His appeal to the law is summarily rejected; his new owner replies only that Equiano "spoke too much English." Instead of marking his intelligence or literacy, Equiano's familiarity with the law is understood only as a nuisance.

Equiano also played a central role in publicizing the *Zong* massacre. In 1781, the captain of the slave ship *Zong*, which sat at anchor off the coast of Jamaica after a difficult Middle Passage, ordered 122 Africans thrown overboard in the well-founded belief that they would fetch more in insurance proceeds than they would at auction (ten more threw themselves into the sea and drowned).⁴⁶ Though Equiano does not address the matter in his *Interesting Narrative*, he brought news of the murders to Granville Sharp in March 1783 during the midst of litigation that followed the insurers' refusal to pay the ship owner's loss claim. The matter again ended up before Lord Mansfield, who, despite the insistence by anti-slavery activists that a criminal inquiry be instituted,

⁴⁵ Though the prevailing law regarding slavery in England was ambiguous, Equiano, like many enslaved blacks at the time, believed that no one who had been baptized could be kept as a slave.

⁴⁶ Ian Baucom's *Specters of the Atlantic: Finance Capital, Slavery, and the Philosophy of History* investigates the *Zong* massacre and how it informs the circulation of black bodies and modern capital in the Atlantic economy.

approached the matter as a simple insurance litigation and ruled in favor of the insurers on the technical question of when the captain held discretion to discard cargo.

Abolitionists, including Thomas Clarkson and James Ramsey, were stirred to action by the *Zong* massacre, which helped set the stage for the powerful anti-slavery movement that would begin in 1787. Equiano understood, then, the power of narrative to capture the imagination of the public, and his *Interesting Narrative* was a calculated effort to appeal for both public and Parliamentary support for the abolitionist cause.

The narrative's first pages introduce the laws and judges of his village, and insist on the equity, logic, and uniformity of the Igbo system of justice. Its first anecdote is a telling one: Equiano recalls a woman convicted of adultery, a crime "punished with slavery or death" (33). Demonstrating a fidelity to a uniform system of justice, where "in most cases the law of retaliation" – an Igbo version of Exodus' "eye for eye, tooth for tooth" – prevailed, this scene stakes a rhetorical claim for Africa as an ordered space, one that recognizes the law's fundamental premise in recompensing loss. Moreover, it affirms the sanctity of marriage as a convention respected in Africa, and dispels widespread beliefs about black incapacity for domesticity. But instead of suffering the judgment of execution rendered by her husband, the woman is spared because "she had an infant at her breast" (33). Equiano here insists on the wisdom of mercy, and indeed on the dictates of affect, revealing both the undercurrent of suffering that will run through the narrative as well as the vexing nature of sentiment for the machinery of the law.⁴⁷

The narrative, in other words, reveals in its very first pages the tension that will mark the

⁴⁷ Sonia Hofkosh, "Tradition and The Interesting Narrative: Capitalism, Abolition, and the Romantic Individual," in *Romanticism, Race, and Imperial Culture, 1780-1834*, ed. Alan Richardson and Sonia Hofkosh (Bloomington: Indiana University Press, 1996), 220.

entirety of the text: western legal orthodoxy's failure to assimilate the humanity of the black subject, and the consequences for black narrative.

Again and again, the *Interesting Narrative* offers scenes of Equiano's competence. Yet again and again the text reveals moments where logic fails him, where the madness of the Atlantic world exceeds his own rationality. The impossibility of making sense of this predicament – an African of demonstrated ability whose enslavement is justified by Africa's "backwardness" – belies his conception of himself as a man in control of his own narrative. Here we see the difficulty black authors faced in the simultaneous possibility and inefficacy of the petition, with both its rich history of giving a voice to the marginalized but also the decidedly ineffectual outcomes for slaves and free blacks who looked to the law for relief. Equiano's *Narrative* participates in, and argues through, a legal and generic form that makes a claim for a very particular kind of Enlightenment subjectivity. And yet over and over again the *Narrative* challenges its own assumptions about how Equiano can position himself against that order. It's as if the *Interesting Narrative* struggles with just how to negotiate the rhetorics of competence and equality, on the one hand, and the realities of the black Atlantic world, on the other. In both his petition to Queen Charlotte and then again in the *Interesting Narrative*, Equiano's efforts to assimilate the logic of chattel slavery become inverted, resulting in figurations of the madness of the order he ostensibly seeks to reproduce. This is of course an unprecedented narrative position for a black man in this moment, and the formal requirements of the petition and the logic of assimilation vie in the *Interesting Narrative* with what Paul Gilroy has called the "counterculture of modernity" in the black

Atlantic.⁴⁸ This problem – whether, and how, to reconcile this tension – manifests itself in the troubled legal and literary gaps and contradictions in the text, scenes that, perhaps not unexpectedly, often lie unnoticed amidst Equiano’s more optimistic recollections.

The opening chapters of the narrative detail his picturesque life in a West African village in a family and social setting that nearly exceed British versions of cultivated domesticity. Equiano begins by telling us that his family and village are representative of “the whole nation” (32);⁴⁹ his description of Essaka, then, is intended to be a picture of the whole of Guinea (the name by which much of West Africa – that part of Africa with which Europeans had made contact – was then known). In an inversion that will become familiar in the *Interesting Narrative*, Equiano tells how the skin of his village elders is marked by a “thick *weal* across the lower part of the forehead”; here, the phenotype of the African connotes not just competence but “the highest distinction... a mark of grandeur” (32-33). A uniform system of law prevails, as does marital fidelity. “[D]ancers, musicians, and poets” celebrate noteworthy cultural events, and yet the African manner is “entirely plain,” unadorned in the “debauch[ed]” European fashion (34-35). His countrymen are “totally unacquainted with strong or spirituous liquors,” signifying an African mind that is sober and fully in possession of its faculties.

⁴⁸ Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (Cambridge, Mass: Harvard University Press, 1993), 39.

⁴⁹ Many critics have remarked that Equiano’s racial consciousness wavers between identification with Africa (and the enslaved blacks he meets during his travels, especially in his participation in various forms of black community that get elided in the narrative) and England (and his ardent pursuit of the status of a free literate Christian gentleman). But we also get a very particular kind of exceptionalism on display in Equiano’s proffer that perhaps he doesn’t fit in to the conventional taxonomy of the African. In this respect the *Interesting Narrative* anticipates one of the predominant themes in the texts of black writers in the nineteenth century: the tension between representativeness and exceptionalism most notably embodied by Frederick Douglass.

Competence, then, is evinced in both the physical appearance and in the originary culture of the African, two sites consistently understood to mark the race's inferiority.

What's more, Equiano sketches a scene of domestic tranquility that reproduces for the white reader the "order" of metropolitan civilization. Mary Louise Pratt has described how the colonial project assimilated the native spaces they encountered – most notably by ordering and naming these new places, plants and people – and "redeploy[ed] them into a new knowledge formation whose value [lay] precisely in its difference from that chaotic original."⁵⁰ Equiano marshals that same kind of knowledge formation to insist, instead, on the *familiarity* – rather than difference – of the original encounter. He repeatedly invokes his own ability to taxonomize and order the unfamiliar, even repeatedly naming himself in each new space (with resolutely Christian appellations: Jacob, Michael, and Joseph, "the favored of heaven"). Indeed, the *Interesting Narrative* constructs a typological narrative that offers Equiano as a Moses figure, leading a forced Exodus from his homeland, another narrative of course familiar to his readership.⁵¹ Similarly, invoking the analogy between the "manners and customs" of Africans and "the Jews, before they reached the Land of Promise," allows Equiano to claim that Africa can progress from pre-Christian to Christian (43). By making the strangeness of Africa familiar to his readership through a catalogue of domestic behaviors with which his white readers were accustomed, Equiano reveals the otherwise familiar scenes of white colonial encounter that immediately follow – theft, violence, the middle passage – as backward

⁵⁰ Mary Louise Pratt, *Imperial Eyes: Travel Writing and Transculturation*, 2nd ed. (London: Routledge, 2008), 33.

⁵¹ Carretta, "Introduction," xxvii; George Boulukos, *The Grateful Slave: The Emergence of Race in Eighteenth-Century British and American Culture* (New York: Cambridge University Press, 2008), 193–200.

and strange. And in a moment where the roles occupied by African, Englishmen, and slaves were starkly defined, Equiano troubles this straightforward order by inserting his own demonstrations of black competence – as a sailor, a merchant, and finally a reader and writer – into a racial hierarchy whose taxonomies simply could not account for his accomplishments.

Immediately juxtaposed with these scenes of African order and competence are the *Interesting Narrative*'s first encounters with whiteness. Kidnapped and taken to the coast for transport to the New World, Equiano reverses conceptions of African barbarity and simultaneously tries to naturalize Western logics of colonial encounter. This inversion of the conventional narrative of the native cannibal instead shows us white consumption of the black body and black labor and black subjectivity (a critique that will be repeated in London in John Annis' abduction). Indeed, his movement from the African interior to the coast and the increasing barbarity and irrationality of racial violence and trauma lead directly to Equiano's first sight of the sea and the slave ship on which he will be carried. Here, Equiano details the degeneration of logic as he moves *away* from the center of the continent, inverting the widely held belief, best articulated by Hegel in his lecture on "Geographical Basis of World History," that the interior of Africa remained a backward space, "out of time" with history, "unaware of any substantial and objective existence."⁵² Equiano confesses that its appearance "filled me with astonishment, which was soon converted into terror, which I am yet at a loss to describe, nor the then feelings of my mind" (55). This kind of madness, the unreason that overcomes Equiano in the face of the impossible prospect of the middle passage and

⁵² Eze, *Race and the Enlightenment*, 127.

slavery beyond it, is thus introduced into the *Interesting Narrative* as the consequence of a racialized Western slave order that willfully rejects the premise of a wholly human African. For Equiano, then, it is the unreason of the racial violence and trauma of slavery that suddenly strips the competent African of his senses, and of the capacity to order the thoughts running through his mind. Finally “overpowered” by the scene before him, Equiano faints as he is brought aboard the slave ship (55). The collapse of reason in the face of the incomprehensible – indeed, the very impossibility of assimilating the scene before him – is then figured in the rest of the text as a kind of incompetence, but one rendered by the madness of a world marked by slavery.

These “swoons” (to borrow a vernacular term from criticism of the sentimental fiction of the nineteenth century) recur each time Equiano’s African sensibility confronts the racialized violence sanctioned by western law. Sold for the second time and about to ship for the West Indies, Equiano confesses that perhaps his impious behavior – “transgressions” that included “swearing,” “rambling and sport” (95) – was responsible for his fate. He throws himself at the mercy of God, overcome with “contrition [and] unfeigned repentance” for his involuntary servitude. But the episode is over as quickly as it begins: “In a little time my grief, spent with its own violence, began to subside; and after the first confusion of my thoughts was over, I reflected with more calmness on my present condition” (95). Convinced he would be rescued before leaving port, his self-image is again shattered when the ship raised its anchors:

What tumultuous emotions agitated my soul when the convoy got under sail, and I, a prisoner on board, now without hope! I kept my swimming eyes upon the land in a state of unutterable grief; not knowing what to do, and despairing how to help myself. While my mind was in this situation, the fleet sailed on, and in one day’s time I lost sight of the wished-for land. In the first expressions of my grief I reproached my fate, and wished I had never been born. I was ready to curse the

tide that bore us, the gale that wafted my prison, and even the ship that conducted us; and I called on death to relieve me from the horrors I felt and dreaded (97).

His sense of himself – of his responsibility, self-control, piety, personhood – is disrupted; the efficacy of (mis)recognizing himself as a fully formed subject becomes all too clear. Put simply, the fiction of his competence – that it might gain him a full humanity – has collapsed. This failure stands as the apotheosis of the madness of the slave, culminating in the archetypal response of the mad slave: suicide. Equiano enacts these scenes of madness, then, not only as critiques of the unreason of the law, but as an insistence on his own radical difference from the characters that populate his narrative; his madness rejects the circumscribed subjectivity available to him in a mad world, and demands that we imagine the possibility of a different kind of political space. But soon the “turbulence of [his] emotions, however, naturally gave way to calmer thoughts” (98). Equiano immediately returns the figure of the competent African to the narrative, reasserting the claim that there is a place for him within the burgeoning egalitarian order of the late-eighteenth century.

But even freedom, such as it is, drives him mad. Being a free black man in the West Indies seems “dreadful...and in some respects even worse” than slavery, precisely because the law refuses to cognize a competent African: “such is the equity of the West Indian laws, that no free negro’s evidence will be admitted in their courts of justice” (122). Freedom remains wholly contingent on the whimsy of the law; even the ordinary conventions of barter are suspended when a black man is party to a transaction, as Equiano shows us again and again when his efforts to save money to buy his own freedom are upended by unscrupulous trading partners. After Equiano is brutally assaulted in Georgia, his captain learns from colonial lawyers that “they could do nothing

for [him] because [he] was a negro” (130). And as a free black, Equiano can find work for himself only as slave trader, crew on a slave ship, and foreman on a slave plantation. In each of these roles, Equiano itemizes “cruelties of every kind, which were exercised on my unhappy fellow slaves” (104). But of course he is an agent of this suffering, “obliged to submit at all times, being unable to help them,” even if he is also sometimes a victim.

Sailing as a deckhand on a slaver from the West Indies bound for the American colonies, Equiano escapes near certain death as the ship is dashed on rocks amid the breakers; preparing to board their lifeboat, the captain orders Equiano to nail the hatches on the slaves in the hold to keep them from overrunning the only vessel of escape. The thought of dooming his countrymen to their watery grave undoes Equiano, and the “thought rushed upon [his] mind...with such violence, that it quite overpowered [him], and [he] fainted” (149). As readers, Equiano tells us, we “cannot but judge of the irksomeness of this situation to a mind like mine, in being daily exposed to new hardships and impositions, after having seen many better days, and been, as it were, in a state of freedom and plenty” (119). Reconciling these two versions of himself – autonomous subject in one moment, African slave the next – is nearly impossible for Equiano, and the *Interesting Narrative* leverages this contradiction by insisting that the reader inhabit two irresolvable spaces simultaneously; the impossibility of doing both reproduces the madness of these competing positions. Nowhere is this fraught endeavor more evident than in Equiano’s decision to return to the West Indies. His first experience was as a slave, and in leaving he “bade adieu to the sound of the cruel whip, and all other dreadful instruments of torture! adieu to the offensive sight of the violated chastity of the sable females, which too often accosted my eyes! adieu to oppressions...and adieu to the angry

howling dashing surfs!” (164) But following his redemption, Equiano again sails from England “once more to try my fortune in the West-Indies” (170). The failure of benevolence, in this case, is Equiano’s, who puts the accumulation of capital ahead of the suffering of his countrymen.

At times these breaks – the dissonance evident in Equiano’s inability to reconcile his extraordinary competence with his condition as a black man – go unelaborated. Incidents in the narrative that seemingly call for paragraphs and pages of amplification and reflection are offered to the reader as commonplaces. In what he describes only as a “trifling incident,” Equiano – still a child, and after years apart from his countrymen – meets a “black boy about my own size” (85). Though he never relates his own reaction to encountering a likeness that mirrors his own, Equiano tells us that the boy, for his part, was “transported at the sight of his own countrymen...and caught hold of me in his arms as if I had been his brother” (85). Equiano’s first person recollection displaces its affective order onto his anonymous fellow traveler, insisting on a control over his emotional register that is belied by that of his compatriot. And we can only imagine Equiano’s utter despair as Spanish officers on Gibraltar “divert[ed] themselves by mounting [him] on the horses or mules, so that [he] could not fall, and setting them off at full gallop; [his] imperfect skill in horsemanship all the while affording them no small entertainment” (81). While seemingly conveyed as harmless folly, the sheer terror of the moment described here in but a single sentence falls outside the frame of the narrative; the reader is left to imagine the impossibility of reconciling the sense of oneself as “almost an Englishman” (77) with the utter madness of Equiano’s predicament atop a runaway horse, and the radical difference it suggests.

Following his failure to save John Annis, Equiano learns that his friend was tortured in St. Kitts and died soon after his arrival there. The folly of the law finally causes Equiano to forsake reason as his measure of the Western world. In his despair he enters into a spiritual struggle, beset by “awful ‘visions of the night’” (181). His eventual sanctification leads Equiano to find faith, and he embraces the commandments of God as the antithesis of earthly law. Spiritual freedom supplements and finally replaces the failure of physical and legal freedom, and the juxtaposition of his conversion with Annis’ kidnapping heightens the contrast between the two. It is impossible to understand Equiano’s religious salvation, then, without an appreciation of both his desire for a legal system that embraces black humanity and his simultaneous rejection of the legal forms that constrain his personal emancipation.

IV. Conclusion

Equiano’s inability to inhabit a single stable identity manifests itself in the narrative’s unsettled form, which occupies multiple generic spaces simultaneously: petition, bildungsroman, spiritual autobiography, captivity narrative, jeremiad, travelogue, picaresque.⁵³ Equiano’s narrative leverages the capaciousness – the stretchiness – of cultural production in response to the problem of incommensurable worldviews, a problem that conventional legal texts were ill-equipped to articulate. The narrative form allows Equiano to overcome the limits of what is possible in the formal legalistic mode, where the technical and substantive requirements of the petition insist that it participate in concert with the Western legal order. We often assume a retrospective position about the political posture of blacks, and in particular enslaved

⁵³ Carretta, “Introduction,” xxvii.

blacks, in the eighteenth and nineteenth centuries, uncritically inserting texts into a “protest” tradition when a less reductive and more complicated genealogy is appropriate. Equiano offers a decidedly more ambivalent perspective on the possibilities of protest literature for blacks. He concludes his narrative by asking that Britain abolish the slave trade in favor of commerce with, instead of in, Africans, firmly investing himself in a capitalist mode of progress that monetizes, rather than moralizes, opposition to slavery. Juxtaposing irresolvably different rhetorical postures in a single narrative arc might seem to suggest a certain optimism: that incommensurable subjects can exist in the same text and the same political space.

But perhaps Equiano’s ending is the only one that is tenable at the start of the tradition of black writing in a narrative so closely yoked to the form of the legal petition, and so firmly constrained by the illogic of the legal order of slavery. The extraordinary power of deploying Foucault’s theorization of madness is that it offers us the potential of “*déraison*, in which there lurks a dream of madness in the wild, as something prediscursive, inaccessible, pure.”⁵⁴ Representations of madness, in other words, instead of relating the experience of the *other* as mad, in fact narrate the *possibility* of difference. So instead of explaining why it is that Thomas Gray, for example, understands Nat Turner’s confession to be proof of his mental incompetence, Foucault offers us entrée into the use of madness *by black authors* to leverage discomfiture with the radical potential of blackness. This stunning claim reveals the revolutionary promise for the African American literary tradition in reclaiming madness, and thereby reclaiming difference. Literary representations by black authors, then, become a kind of weapon:

⁵⁴ Foucault, *History of Madness*, xii.

“[I]n the absence of a fixed point of reference, madness could equally be reason, and the consciousness of madness a secret presence, a strategy that belongs to madness itself.”⁵⁵ Instead of a discourse of madness that assimilates black difference by taxonomizing it, Foucault’s formulation resists the incorporation of madness into the barometers of progress: literacy, science and medicine. Where canonical readings of Equiano’s *Interesting Narrative* understand the “talking book,” for instance, as an effort by Equiano to insert himself into a (black) literary tradition,⁵⁶ Foucault’s vision of madness allows us to suggest that Equiano was instead resisting the order of the world that was about to subsume him, gesturing toward a space that had not yet naturalized difference. His illiteracy was not a mark of incompetence; instead, as the rest of the *Interesting Narrative* reveals, it was only as he learned to read (and master other Western skills) that whites *recognized* his competence. It is only in the “difference” evident in encounters between blackness, on the one hand, and, white “reason,” on the other, that Equiano is able to offer the black subject narrative space to disrupt the settled legal and racial orders of the black Atlantic.

⁵⁵ Ibid., 164.

⁵⁶ Henry Louis Gates, *The Signifying Monkey: A Theory of African-American Literary Criticism* (New York: Oxford University Press, 1989), 127.

Chapter Three
Seditious Prose: Patriots and Traitors
in Nineteenth Century African American Literature

ABSTRACT: This Chapter explores the recurring figure of the traitor in African American letters, arguing that literary portrayals of the crime of treason reveal the fundamental tension between black loyalty to the nation and the nation's betrayal of the race, and indeed demand that we reconsider the terms of treason itself. In three nineteenth century texts by African American writers – Victor Séjour's 1837 "The Mulatto," Frederick Douglass' 1853 *The Heroic Slave*, and Sutton Griggs' 1899 *Imperium in Imperio* – faithful blacks subjects are inevitably betrayed by racialized law and custom and the refusal to acknowledge the possibility of a black subject fully incorporated into the nation. Asking whether and how blacks writers can navigate the chasm between loyalty to race and nation, this Chapter interrogates the twinned metaphors of patriotism and treason as literary responses to the seeming incommensurability of racial and national citizenship.

Are then the reason and the morality, for which Europeans so highly value themselves of a nature so variable and fluctuating, as to change with the complexion of those to whom they are applied? Do rights of nature cease to be such, when a Negro is to enjoy them? Or does patriotism, in the heart of an African, rankle into treason?

“A Free Negro”¹

“[T]here is no crime which can more excite and agitate the passions of men than treason...”

Chief Justice John Marshall²

On his deathbed he called my father to him and said, “Son, after I’m gone I want you to keep up the good fight. I never told you, but our life is a war and I have been a traitor all my born days, a spy in the enemy’s country ever since I give up my gun back in the Reconstruction. Live with your head in the lion’s mouth. I want you to overcome ‘em with yeses, undermine ‘em with grins, agree ‘em to death and destruction, let ‘em swoller you till they vomit or bust wide open.”

....

The old man’s words were like a curse.

Ralph Ellison, *Invisible Man*³

Introduction

Ralph Ellison’s *Invisible Man* begins with an unforgettable but seldom remarked-upon scene in which we meet the invisible man’s grandfather on his deathbed, where he confesses that he had been “a traitor all my born days, a spy in the enemy’s country.” Confused, the narrator describes his grandfather as the “meekest of men,” his only possible treason “yeses [and] grins.” His parents are dumbstruck, more concerned about the words the dying man uttered than by his death itself. What can his seemingly timid grandfather’s declaration mean? The trajectory of the novel is guided by the invisible

¹ "Letter on Slavery by a Free Negro," *American Museum*, vol. 6 (1789): 77-80, cited in Josh Gottheimer, *Ripples of Hope: Great American Civil Rights Speeches* (Basic Civitas Books, 2004).

² *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 125 (1807).

³ Ralph Ellison, *Invisible Man*, 2nd ed. (New York: Vintage, 1995).

man's earnest insistence on following his grandfather's call for betrayal – despite his confession that he was never sure what it meant – and his search for meaning in the paradox of treachery through fidelity to the nation's racial order. *Invisible Man* seems to revel in the indecorous conceit of an insidious treason, the black subject swallowed whole until it explodes the nation. The ploy is unsettling, and even off-putting: much critical distaste for Ellison's novel stems from the narrator's inability to establish kinship relations either with fellow blacks or the nation that refuses them.⁴ And the jarring rhetoric of the Epilogue – the whiplash of its embrace of “the principle” of American liberalism – is belied by the narrative of the text itself, which reveals again and again the collapse of the American creed. In the “failures” of *Invisible Man*, then, perhaps Ellison slyly metaphorizes the nation's inability to reciprocate the kinship desires of its racialized subjects.

Ellison of course was not the first to seize on the devastating irony imbricated in the celebration of American exceptionalism in the face of its greatest sin. We can see the impulse both to resist and to reproduce what made America a place of such depravity and such promise in nearly every significant moment in the history of African Americans, and in the competing ambitions of blacks to be a part of the nation and to reshape a country that for so long refused to acknowledge the constitutive role blacks played in the national identity.⁵ The irresolvability of these doubled roles as patriots and traitors is most evident, of course, in times of war, when people long forgotten by the nation are expected to fight for it (Ellison's “Flying Home” and “In a Strange Country” and Chester Himes' *If*

⁴ For a recent appraisal of Ellison's connections to the Left and the aesthetic tensions they created for the novel, see Barbara Foley, *Wrestling with the Left: The Making of Ralph Ellison's Invisible Man* (Durham: Duke University Press, 2010).

⁵ Morrison, *Playing in the Dark*.

He Hollers are emblematic twentieth century examples, as is the tortured relationship between the black left and the nation during the Cold War and the selective enforcement of the Smith Act against black communists). But perhaps more tellingly, this paradox is revealed in myriad texts from nearly every moment of the tradition of African American writing: from the first slave petitions in the 1770s to David Walker's *Appeal*; from Frederick Douglass' novella *Heroic Slave* to Martin Delany's *Blake*; from Francis Harper's "Bury Me in a Free Land" to Gwendolyn Brooks' "Negro Hero," from Booker T. Washington's Atlanta Exposition speech to the militant polemics of Garvey and Baraka. (Indeed even – or especially – in the rhetoric that surrounds attacks on Barack Obama as a "traitor" and a "terrorist," and in Michelle Obama's offhand remarks in the wake of the 2008 Iowa primary that "for the first time in my adult life I am proud of my country.")

At the heart of any treason, of course, is a betrayal. And for the traitors in literary texts by black Americans, these betrayals signal a rejection not just of the nation, but of the social difference the nation has inscribed upon the black subject. Their treachery critiques the (im)possibility of national citizenship, and indeed of the impotence – or complicity – of the state as marked by its failure to pursue any real structural transformation. Betrayals "can open a future that is unimaginable and unintelligible from within the bonds of fidelity and identification,"⁶ and the competing discourses of patriotism and treason can redefine "legitimate" categories of citizenship.⁷ By imagining a different vision of the nation, black traitors reveal the arbitrariness, the violence, the

⁶ Crystal Parikh, *An Ethics of Betrayal: The Politics of Otherness in Emergent U.S. Literatures and Culture* (New York: Fordham University Press, 2009).

⁷ Karen Cunningham, *Imaginary Betrayals: Subjectivity and the Discourses of Treason in Early Modern England* (Philadelphia: University of Pennsylvania Press, 2002), 3.

hypocrisy of state-sanctioned racism, and the incommensurability of the racialized subject.⁸ Inherent, then, in the trope of the traitor is the possibility of full agency for the racialized subject, and the re-imagination of America's vision of itself.

Post-Enlightenment critics, Emmanuel Levinas chief among them, have assailed the possibility of realizing any full subjectivity within the structural context of liberal individualism; the autonomy of the subject, in the words of Levinas, denies any relations of responsibility *between* subjects.⁹ The Enlightenment foundations of social and political relations in the United States insists on the recognition of the racialized subject *only* through identification with and assimilation to the nation, and its ethos of individual responsibility and obligation. State-sanctioned racism makes the incorporation of the racialized subject into the national imaginary almost impossible, of course, both because of its refusal to see the racial other as itself *and* its refusal to incorporate difference. Levinas insists on the obligation to take the racial other on its own terms; by fulfilling such a responsibility, the nation would constitute itself in the image of its people, and the constitutive nature of the self via that responsibility. The nation *requires* the treason of the racialized subject, for “justice and democracy proceed through the often traumatic and unanticipated ruptures” that enable the full realization of the racialized subject.¹⁰ Black traitors' rejection of the nation returns us, then, to the founding moment to confront the uncertainty of what obligations and attachments exist between the nation and the national – and racial – subject.

⁸ Ibid., 20.

⁹ For a representative essay articulating our ethical responsibility to the Other, see Emmanuel Levinas, “Ethics as First Philosophy,” in *The Levinas Reader*, ed. Sean Hand, 1ST ed. (Wiley-Blackwell, 2001), 76–87.

¹⁰ Parikh, *An Ethics of Betrayal*, 3.

And so it is not surprising that the figure of the black patriot – and as importantly its foil, the black traitor – appears again and again in texts by black authors. Loyalty to a country that has betrayed its founding creed requires a special suspension of disbelief, indeed a purposeful evasion of logic, that we might even call madness. The madness of the law, and the madness it inspires, is manifest in both the statutes of the American legal system and the texts of the African American literary tradition. And perhaps nowhere is this peculiar relationship more explicit than in the tortured legal and literary history of national and racial belonging. From the earliest texts of the African American literary tradition, claims for the full humanity of blacks were often read as betrayals of the nation, proof of disloyalty evident in the contestations of the meaning of the founding moment. Conversely, blacks often understood assimilation as a betrayal of the race. For so many African American writers, the law fails precisely when it is asked to understand the racialized subject as a national citizen. Reading three nineteenth century texts – Victor Sejour’s 1837 short story “The Mulatto,” Frederick Douglass’ 1853 novella *The Heroic Slave*, and Sutton Griggs’ 1899 novel *Imperium in Imperio* – and asking whether and how blacks writers can navigate the chasm between loyalty to race and nation, this Chapter interrogates the twinned metaphors of patriotism and treason as literary responses to the seeming incommensurability of racial and national citizenship.

I. Whose Treason, Whose Patriotism?

The Treason Clause of Article III of the United States Constitution provides that “Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.”¹¹ On fewer than thirty

¹¹ U.S. Const. art. III, 3.

occasions has the United States brought charges of treason against its citizens, yet the crime looms large in the national imaginary. The deceits of “traitors” such as Benedict Arnold and the Rosenbergs are still taught in elementary schools, and the rhetorics of patriotism and treason have defined the political and cultural landscape for long stretches of American history (the nation’s recent experience with the “war on terror,” of course, being no exception). It is not surprising, then, that treason and betrayal have potent literary and legal genealogies, each with explosive implications for both the nation and the national subject. The commission of a “treason” begs the question, to what exactly must the individual pledge any allegiance? For black Americans in particular this is a vexed endeavor. It is a commonplace to observe that the reality of the American nation falls far short of its idea of itself; yet the “idea” has seen so many iterations as to render almost impossible any stable unitary notion of what the country was or is “supposed” to look like.¹² Born in slavery and founded in so many ways on the racial inequality of its inhabitants, but pledging that “all men are created equal,” the United States set for itself an impossible course; and it is difficult to know what the “idea” of the United States was intended to be at its inception. (Frederick Douglass struggled mightily with this dilemma, unable to settle on what precisely the Constitution envisioned for the land it would rule.) And even as the racialized reality of America entrenched itself and then uneasily unwound over the course of three centuries, the vision of what the nation should look like changed just as much. The very real fact of a mythologized “white” America – one that many Americans aspired to for much of the nineteenth and twentieth centuries –

¹² The theory of originalism is of ongoing concern in contemporary constitutional jurisprudence, and its critics are legion. See, e.g., Stephen Breyer, *Active Liberty: Interpreting Our Democratic Constitution* (New York: Knopf, 2005).

terrifically complicates the simple binary by which Ellison explained the national predicament in the Epilogue of *Invisible Man*.¹³

To what, then, does the traitor owe allegiance? From where does the idea of an obligation to the nation arise? American treason law – much like that concerning the right to petition – has its roots in the very earliest English law. And England’s treason law derives from many centuries of English fealty to the monarch, and, more precisely, the monarchy itself.¹⁴ Overt acts of violence against the king or queen were the highest crimes; the common law prohibition against treason was first codified in English Treason Act of 1351 during the reign of Edward III. It is in this Act that the principal language of the Treason Clause of the United States Constitution lies: the language “levying war” and “adhering to their enemies, giving them aid and comfort” is drawn verbatim from the

¹³ Indeed, in his later essays Ellison deployed a far more subtle appreciation of the constitutive and dynamic relationship between the nation’s founding documents and their social meaning over time:

[B]ehind the Constitution...are really man-made, legal fictions...Human society in this regard is fictitious, and it might well be that at this point the legal fictions through which we seek to impose order upon society meet with, coincide with, the fictions of literature. Perhaps law and literature operate or co-operate, if the term is suitable for an interaction which is far less than implicit; in their respective way these two...symbolic systems work in the interests of social order. The one for stability—that is the law is the law—the other striving to socialize those emotions and interests held in check by manners, conventions, and again, by law.” Ralph Ellison, “Perspective of Literature,” in *Going to the Territory*, 1st ed. (New York: Random House, 1986), 327–29.

¹⁴ Scholarly treatments of the law of treason are few, likely because there is so little Supreme Court precedent on the subject. James Willard Hurst’s treatise *The Law of Treason in the United States: Collected Essays* (Westport, Conn.: Greenwood Press, 1971) is the leading text; see also Bradley Chapin, *American Law of Treason: Revolutionary and Early National Origins* (Seattle: University of Washington Press, 1964); James Willard Hurst, *The Law of Treason in the United States: Collected Essays* (Westport, Conn.: Greenwood Press, 1971); Carlton F.W. Larson, “The Forgotten Constitutional Law of Treason and the Enemy Combatant Problem,” *U. Pa. L.R.* 154 (2006): 863. My review of the history of treason law is drawn largely from these four sources.

statute. Conduct subverting the authority of the monarch was subject to penalty of death. The English Treason Act punished everything from direct attempts on the life of the king or queen to “imagining” their death; it even proscribed any sexual conduct that might call into question the rightful heir to the throne.¹⁵ The political tumult surrounding the crown during and after the Reformation, Civil War and Restoration meant increasingly that “imagined” betrayals – speech and writing, in particular – were encompassed within the behaviors proscribed by the statute; sermons, commentaries, pamphlets and even gossip could be interpreted as malicious, intended to subvert the love that his subjects had for the king and “shorten his life by sadness.”¹⁶ These “constructive treasons” became the basis for some of the most celebrated treason trials in English history, including the trial of Sir Thomas More in 1535, the trial of Mary, Queen of Scots in 1586, and the trial of Sir Walter Raleigh in 1603.

The English colonies in America adopted the language of the English Treason Act, and it was with the impending hostilities of the Revolution that the American law of treason first began to reveal the deeply political character that would come to mark this discourse. English commentary frequently characterized the “tumults and insurrections” in the colonies during the 1760s as “criminal,” “treasonable,” and “seditious,” and both houses of Parliament passed resolutions in 1768 authorizing treason prosecutions of those

¹⁵ Also included in the 1351 definition of treason were counterfeiting the King’s seal or currency and the murder of any of the King’s aides. The Act remains in effect, with amendments, and is one of the oldest of English statutes.

¹⁶ Karen Cunningham, *Imaginary Betrayals: Subjectivity and the Discourses of Treason in Early Modern England* (Philadelphia: University of Pennsylvania Press, 2002), 8; see also John Bellamy, *Tudor Law of Treason: An Introduction* (Routledge & Kegan Paul PLC, 1979), 11.

fomenting dissent in Boston.¹⁷ Colonial reaction was swift, decrying efforts by the English crown to allow colonial authorities to transfer those accused of treason to England for trial. By the time Lord Dartmouth declared the Boston Tea Party an act of treason in the summer of 1774, it was clear that the spirit of American resistance to English authority – and the underlying critique of the English nation – was itself a treason. In June 1776, the Continental Congress inverted the logic of the English Treason Act, introducing a resolution proposing that “all persons, members of, or owing allegiance to any of the United Colonies...who shall levy war against any of the said colonies within the same, or be adherent to the king of Great Britain...giving to him...aid and comfort, are guilty of treason against such colony”; each of the colonies enacted treason statutes consistent with this proposal. (The English provision criminalizing the “imagined” death of the king was notably absent from the colonial provisions.) The foundational premise, then, of the new American nation was its rejection of its mother country. The “patriots” in Boston and elsewhere who imagined a different path for the colonies risked being drawn and quartered as traitors. But for many blacks in the colonies, the dialectic between patriotism and treason was much more complicated.

A. The First Black Traitors

On April 1, 1712, in one of the first recorded acts of “treachery” by blacks in the American colonies, 25 slaves (all Africans from the Gold Coast) set fires to homes and outhouses on the edge of the village of Manhattan and attacked with guns, axes and swords the men who responded to fight the fire; twenty whites were killed. Prosecuted under a 1708 amendment to New York’s “black codes” that specifically addressed slave

¹⁷ Chapin, *American Law of Treason*, 11.

conspiracies, 18 captured slaves were convicted of petit treason – treason against their masters by murder – and executed (some hanged, some gibbeted, some beheaded).¹⁸ Following the Stono Rebellion, an uprising in South Carolina in 1739 in which nearly one hundred slaves killed more than twenty whites in another act of petit treason, “loyal” slaves who refused to join the insurrection were rewarded by their owners.¹⁹ In the widespread arsons of the Great New York Conspiracy of 1741, fires – allegedly set by slaves – burned Fort George, home to the colonial governor, and the fort at the Battery, as well as the homes of many whites. Over one hundred slaves were rounded up and executed after brief trials (along with their alleged white co-conspirators); Daniel Horsmanden, a lawyer whose first-hand account of the trials was published in 1744, captured the delicate attachments and revulsions at stake in the rebellions by blacks in the colonies – resisting the obligations they owed to both their masters and their governments – in his characterization of the conspirators as “enemies of their own household.”²⁰ “Betrayed” by their slaves, whites in New York and throughout the colonies were beset by an anxiety that would mark so much of the relations between whites and black over the next two centuries: to whom, or what, would blacks in America pledge their loyalty? And in the trope of the traitor, African American fiction reveals again and again the

¹⁸ Peter Charles Hoffer offers an exceptional account of the alleged conspiracies of 1712 and 1741, raising challenging questions about both the primary documentary accounts of the rebellions and the intentions of the conspirators. Peter Charles Hoffer, *The Great New York Conspiracy of 1741: Slavery, Crime, and Colonial Law* (University Press of Kansas, 2003).

¹⁹ Id.; see also Jack Shuler, *Calling Out Liberty: The Stono Slave Rebellion and the Universal Struggle for Human Rights* (University Press of Mississippi, 2009); Mark Michael Smith, *Stono: Documenting and Interpreting a Southern Slave Revolt* (Columbia, S.C.: University of South Carolina Press, 2005).

²⁰ Hoffer, *The Great New York Conspiracy of 1741*, 9.

quandary for blacks in forging an attachment to the nation in which such calamitous uprisings were an inevitable consequence of the nation's betrayal of its own creed.

Crispus Attucks is well known as one of the first casualties of American independence, and is now remembered as a patriot who died loyal to the cause of freedom. But the question of loyalty in the Revolutionary moment presented a far more complicated question for most blacks. Since the declaration by Lord Mansfield in *Somerset's Case* that no positive law supported the institution of slavery in England, many blacks in the American colonies viewed England as a land of freedom. As open hostilities seemed increasingly likely, some Loyalists in the colonies began to consider how to leverage black sympathies for England in their favor. John Murray, fourth earl of Dunmore and royal governor of Virginia, suggested in a 1772 letter to Lord Dartmouth, the British secretary of state for the colonies, that many American slaves would gladly take up arms against their masters and would need little encouragement "to revenge themselves."²¹ Then in November 1775, as reports of attacks by patriot militias against British troops began to reach the governor, he issued what came to be known as Dunmore's Proclamation. Declaring Virginia in a state of rebellion and placing it under martial law, Lord Dunmore offered freedom to the slaves of any patriot sympathizers who agreed to fight for the British army. Dunmore explicitly juxtaposed the treachery of the patriots with the loyalty of colonial blacks:

I do require every Person capable of bearing Arms, to resort to His MAJESTY'S STANDARD, or be looked upon as Traitors to His MAJESTY'S Crown and Government, and thereby become liable to the Penalty the Law inflicts upon such Offenses; such as forfeiture of Life, confiscation of Lands, & &. And I do hereby further declare all indented Servants, Negroes, or others, (appertaining to Rebels,)

²¹ Gerald W. Mullin, *Flight and Rebellion: Slave Resistance in Eighteenth-Century Virginia* (New York: Oxford University Press, 1972), 131.

free that are able and willing to bear Arms, they joining His MAJESTY'S Troops as soon as may be, for the more speedily reducing this Colony to a proper Sense of their Duty, to His MAJESTY'S Crown and Dignity.²²

Conservative estimates place the number of slaves who reported to the British Army at the Virginia shore at more than 300; some scholars believe as many as 1000 enslaved blacks in Virginia fled their patriot owners at the prospect of earning their freedom.²³

The prospect of enticing the loyalty of blacks with the prospect of freedom both increased the ranks of British soldiers and exacerbated the anxieties of Virginia masters already concerned with the specter of black insurrection.²⁴ In 1779, Sir Henry Clinton issued the Philipsburg Proclamation, extending Dunmore's Proclamation to all slaves in the colonies.

General George Washington recognized the threat emancipated slaves posed to the patriot cause and offered similar inducements to slaves willing to fight for the Continental Army; by 1778 he had authorized Rhode Island to raise a regiment consisting

²² Sidney Kaplan, "The 'Domestic Insurrections' of the Declaration of Independence," *The Journal of Negro History* 61, no. 3 (July 1, 1976): 248.

²³ Benjamin Quarles, "The Revolutionary War as a Black Declaration of Independence," in *Slavery and Freedom in the Age of the American Revolution*, ed. Ira Berlin and Ronald Hoffman (Champaign, IL: University of Illinois Press, 1986), 292–93.

²⁴ Thomas Jefferson's original draft famously includes the philippic charging that the English had foisted slavery upon the colonies despite their earnest attempts to "prohibit or restrain this execrable commerce," and that King George III was

exciting those very people [slaves] to rise in arms among us, and to purchase the liberty of which *he* has deprived them, by murdering the people upon whom *he* also obtruded them; thus paying off further crimes committed against the *liberties* of one people, with crimes which he urges them to commit against the lives of another.

After the excision of Jefferson's fiery language – an obscured but unmistakable reference to Lord Dunmore's Proclamation, and its entreaty to slaves to betray their masters – the last of the 27 charges levied by the Declaration of Independence against King George III was subsequently amended to include the claim that "He has excited domestic insurrections amongst us..." Kaplan, "The 'Domestic Insurrections' of the Declaration of Independence," 245–46.

only of black slaves, and other states soon followed suit. The Continental Army also began freeing Loyalist slaves when they were captured. Some scholars believe that what are now sometimes called “Black Loyalists” were in fact no such thing. Benjamin Quarles, for instance, has argued that freedom from slavery was the only abiding interest at stake in deciding to which side to pledge allegiance;²⁵ indeed, Phillis Wheatley published poems dedicated to Lord Dartmouth (1773) and General Washington (1775) only two years apart. Yet what is certain is that the competing offers – and obligations – of national allegiance presented a vexing dilemma for blacks in America. Should they seize the first offer of freedom? Should they weigh the competing visions of nation presented by the colonists and England? Which prospect afforded the best opportunity to prove their capacity for citizenship? Already presumed to be incompetent national subjects, deprived of the rights of citizenship whether free or enslaved, blacks were damned with the prospect of affirming themselves as traitors no matter whom they aligned themselves with.²⁶

By the end of the Revolutionary War, the prospect of an America where all men were created equal seemed dim for many blacks, and more than 3,000 black loyalists – “traitors” by the terms of America’s first treason statute and by virtue of their support for England – sailed from New York to Nova Scotia. Unsurprisingly, the problem of national allegiance remained unresolved; fugitives from the United States but

²⁵ Quarles, “The Revolutionary War as a Black Declaration of Independence,” 293.

²⁶ W.E.B. Du Bois’ call for blacks to “forget our special grievances” and unite in support of the United States war effort in his July 1918 essay “Close Ranks” – and the charges of betrayal lodged against him by many in the black community in response – similarly reveals the tenuous position of black leaders when forced to choose between race and nation. Mark Ellis, “‘Closing Ranks’ and ‘Seeking Honors’: W. E. B. Du Bois in World War I,” *The Journal of American History* 79, no. 1 (June 1, 1992): 97.

unrecognized by Canadian British, nearly all the black loyalists were relocated to Sierra Leone by 1787.

B. Insurrection and Treason

The trial of “Billy,” a Virginia slave convicted of treason in 1781 for the help he provided to the British during the war, demonstrates the difficulty the black traitor presented as a legal matter. Four of the six judges who heard the evidence against Billy voted to convict him. Two dissented, however, and along with Mann Page, an influential planter and the executor of the estate of Billy’s owner, wrote to Governor Thomas Jefferson to ask that the conviction be overturned.²⁷ “We were against his Condemnation,” the two dissenting judges wrote, “because a slave in our opinion Cannot Commit Treason.”²⁸ A slave, they reasoned,

not being Admitted to the Priviledges of a Citizen[,] owes the State No Allegiance and...the Act declaring what shall be treason cannot be intended by the Legislature to include slaves who have neither lands or other property to forfeit...

The motives of Mann and the two dissenters are unclear; it would not be surprising, of course, if – rather than an act of mercy, as one commentator suggests²⁹ – the efforts to have Billy pardoned were merely intended to prevent the loss of a valuable slave by execution. But what is most illustrative about this incident is not why they appealed on Billy’s behalf, but what their legal argument revealed about the tortured legal status of the black traitor. The dissenters recognized that because the slave was not a citizen – indeed, because of the slave’s inimical relationship with the government and its laws – no

²⁷ Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Union, N.J.: The Lawbook Exchange, Ltd., 1998), 189.

²⁸ Thomas Jefferson, Julian Parks Boyd, and Lyman Henry Butterfield, *The Papers of Thomas Jefferson* (Princeton, N.J.: Princeton University Press, 1952), 641.

²⁹ Schwarz, *Twice Condemned*, 189.

allegiance was owed by the slave to the state. The legal and social regime around which slavery was constructed refused blacks the opportunity to perform either the obligations or privileges of citizenship, and the reciprocity of the sovereign/subject relationship could never be made material. The slave could owe no obligation to the state because, quite simply, the state denied any obligation to the slave. Jefferson, who granted the appeal and pardoned Billy, apparently agreed.

Slave rebellions emblemize this dilemma. Though the rhetoric of treason – treachery, betrayal, disloyalty – was manifest in the trials of Gabriel Prosser and Nat Turner, Virginia law continued its refusal to countenance the subjectivity necessary to turn a slave into a traitor, and during their brief trials their crimes were variously described as insurrection, revolt and conspiracy.³⁰ South Carolina had no such reservations in the case of Denmark Vesey and his co-conspirators, charging them with the crime of treason, though the court’s words in issuing its sentence again betray an ignorance of the root of black discontent with the nation:

It is difficult to imagine what *infatuation* could have prompted you to attempt an enterprise so wild and visionary...A moment’s reflection must have convinced you, that the ruin of *your race*, would have been the probable result, and that years would have rolled away, before they could have recovered that confidence which they once enjoyed in this community...In addition to treason, you have committed the grossest impiety; in attempting to pervert the sacred words of God into a sanction for crimes of the blackest hue.³¹

³⁰ Prosser, recently granted an “informal” pardon by the state of Virginia, was remembered by the governor for his “devotion to the ideals of the American revolution.” “Gov. ‘Pardons’ Gabriel’s Rebellion Slave,” *Washington Post*, September 1, 2007, sec. Metro.

³¹ Kai Wright, *The African American Experience: Black History and Culture Through Speeches, Letters, Editorials, Poems, Songs, and Stories* (Black Dog Publishing, 2009), 143.

Unable to understand why a free black man would risk his own life in an attempt to unchain Charleston's slaves, the court painted treason itself in racialized terms, a characterization that revealed more about the relationships between blacks and the nation than the court likely intended.

II. Victor Sejour's Vision of Insurrection

Early texts by African American authors not surprisingly drew on the alleged treason at the heart of black resistance to recast the nation's circumscription of black subjectivity. David Walker's 1829 *Appeal, in Four Articles; Together with a Preamble, to the Coloured Citizens of the World, but in Particular, and Very Expressly, to Those of The United States of America*³² is perhaps the first to invert the trope of treason. Walker's *Appeal*, itself wryly framed as a kind of revision to the United States Constitution, menacingly introduces the possibility – and indeed the inevitability – of violent black resistance as one of several means by which blacks can actually elevate themselves. In Article II, which ostensibly makes the case for education to overcome the ignorance into which slavery had plunged black Americans, Walker explicitly characterizes the docility of slaves – “a groveling servile and abject submission to the lash of tyrants” – as treason (21). The betrayal of “ignorant and treacherous” blacks, who scout out runaway slaves while also “telling them, at the same time, that they always have been, are, and always will be, friends to their brethren,” incenses Walker, who argues that America belongs to the black race as much as it does to the white, nurtured as it is on the blood and tears of slaves (22). Reciting an incident reported in Boston's

³² David Walker, *Appeal, in Four Articles; Together with a Preamble, to the Coloured Citizens of the World, but in Particular, and Very Expressly, to Those of The United States of America*, ed. Sean Wilentz (New York: Hill and Wang, 1995), 21.

“Columbian Centinel,” the *Appeal* describes the revolt of a slave coffle, in which more than a dozen men escape after injuring, but not killing, their driver. A black woman comes to the aid of the injured white man and helps him to safety, where he alerts the townspeople and organizes a chase that eventually returns all the escaped slaves to captivity. Walker chastises the woman as a traitor, and the escapees as “blockheads” for their failure to kill their captor (25). The true patriots, then, are those blacks who would “kill or be killed” when offered the opportunity to seize their freedom (25).

Walker’s *Appeal* circulated widely in the South, and prompted several states to bring prosecutions against those who published, circulated, and even possessed it. Edward Smith, a white steward sailing on a ship from Boston anchored in Charleston, South Carolina, was arrested in March 1830 for distributing copies of the *Appeal*; he was convicted of seditious libel.³³ Walker’s seditious prose was of a piece with a burgeoning spirit of resistance in the South. Slave revolts, both real and imagined, stood as an indictment of the nation’s chattel slavery and racial apartheid; by daring to reject the bonds that ostensibly equated black subservience and national fidelity, enslaved blacks revolted against their masters and their country. Black writers leveraged this equivalence, offering black rebellion as a rejection of the nation. In at least three instances – Victor Séjour’s “The Mullato,” Frederick Douglass’ “Heroic Slave,” and

³³ While the distinction between treason and sedition is significant in legal terms – treason requires an overt act by which the traitor betrays his allegiance to the United States, while sedition proscribes a larger category of rebellious conduct, including speech that foments revolt against the government – both crimes denote a rejection of the nation. In the readings that follow, the legal distinctions between treason and sedition are of course of much less significance than the function that the figure of the black traitor serves in the literary imagination: namely, an invocation of the competing attachments, allegiances and betrayals that comprise the relationship between America and its black subjects.

Sutton Griggs' *Imperium in Imperio* – black writers situated their treasonous protagonists literally outside the nation to imagine a very different kind of relationship between America and its black populace.

Séjour's short story, believed by many to be the first published piece of fiction by an African American, reveals the constitutive relationship between black literature and treason. In the months and years preceding France's 1830 July Revolution, political émigrés brought the political turmoil of Europe to Louisiana, along with an increasingly radical discourse promoting an egalitarian class and race revolution. Conservative reaction was swift. The state legislature had already passed, in 1807, a law banning the entry of free men of color into the state; by 1830, efforts were begun to try to expel free blacks from Donaldsonville, then the state capital. Newspapers aligned with planter interests "depicted gruesome images of the slave rebellion in San Domingue" in support of the efforts to quell black radicalism and protest. Then, in March 1830, a new law was enacted punishing

[w]hosoever shall make use of language, in any public discourse...having a tendency to produce discontent among the free coloured population of this state, or to excite insubordination among the slave therein, or whosoever shall knowingly be instrumental in bringing into this state, any paper, pamphlet or book, having such tendency as aforesaid...³⁴

This statute had the effect of outlawing so-called "seditious" speech and writing, such as that which appeared in *Le Libéral* – sometimes called "New Orleans' Free Negro Newspaper"³⁵ – which published provocative anti-slavery pieces beginning with its founding in February 1830. La Société des Artisans, a benevolent organization created

³⁴ Caryn Cossé Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1868* (Baton Rouge, LA: LSU Press, 2004), 91–94.

³⁵ See Timothy Reilly, "Le Libérateur: New Orleans' Free Negro Newspaper," *Gulf Coast Historical Review* II (Fall 1986): 5–24.

by free black tradespeople and black veterans of the War of 1812, was a forum for similar speech. Séjour, then just a teenage student, presented his first works to La Société. His father, Louis Victor Séjour, born in San Domingue, worried that Louisiana's increasingly repressive laws restricting free speech would inhibit his talented son's career as a writer, and encouraged him to continue his studies in France.

Arriving in Paris in the mid-1830s, Séjour made the acquaintance of Alexandre Dumas, and was soon introduced to Cyril Bisette, a free mulatto from Martinique. Bisette had already established a reputation in France as both an outspoken opponent of slavery and a radical.³⁶ In 1822, following a slave outbreak in Martinique, Bisette and two friends were arrested for possessing materials denouncing the French treatment of free blacks in the colony. Convicted of sedition in 1824, Bisette was branded and sentenced to a lifetime in the galleys. Freed from prison and exiled from Martinique in 1827, Bisette arrived in France as a hero of the abolitionist cause. In 1834 he formed the *Revue des Colonies*, an anti-slavery journal dedicated to circulating both abolitionist material and the accomplishments of those who would be slaves: biographies of successful doctors, businessmen and soldiers of African descent. Bisette published Sejour's "Le Mulatre" – the tale of a slave who is betrayed by his master, escapes, and finally returns to repay his master's unfaithfulness with a fatal treachery of his own – in the March 1837 edition of *Revue*.

³⁶ These details about Sejour and Bisette in France are drawn from Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718-1868*, 95; Robin Blackburn, *The Overthrow of Colonial Slavery, 1776-1848* (New York: Verso, 1988), 477.

The story is immediately noteworthy for its setting: the “sublime diversity,” “bizarre and novel in nature,” of Saint Marc, a small town in Saint Domingue.³⁷ Haiti was, of course, by the 1830s a well-established symbol to the slave-owning world of the radical potential of the black desire for freedom and concomitant overthrow of an established colonial order. But instead of modeling a vision of what a liberated United States *could* look like, Séjour brings us to a pre-revolutionary Haiti, where “great plantation owners” engage in a “loathsome commerce,” trading the lives of men and women “torn from their country by ruse or by force, and who have become, by violence, the goods, the property of their fellow men” (354). This seeming counterfactual allows Séjour to narrate a kind of analogic inevitability between Haiti’s history and the fate of slavery in the United States: the treachery and murder that will unfold over the course of “The Mulatto” stand as harbingers of the bloody violence of a Haitian revolution soon to land on American shores, just as Walker’s *Appeal* predicted would happen if the United States refused to change its course.

The first person narrator, a privileged traveler of indeterminate age and race, is greeted on his arrival in Saint Marc by Antoine, “an old negro, imposing and vigorous” (354). Antoine, surprised by the respect with which the narrator acknowledges him, quickly frames the predicament of his race (again, a characterization that seems to conjure the antebellum South rather than early nineteenth century Haiti):

Master...you know, do you not, that a negro’s as vile as a dog; society rejects him; men detest him; the laws curse him...He may be born good, noble, and generous; God may grant him a great and loyal soul; but despite all that, he often goes to his grave with bloodstained hands, and a heart hungering after yet more vengeance.

³⁷ Victor Séjour, “The Mulatto,” in *The Norton Anthology of African American Literature*, 2nd ed. (New York: W.W. Norton & Co, 2004), 353.

Here Séjour offers us three of the themes that will animate his short story, and so much of the tradition of African American literature that follows: the cruel failed potential of the law, the capacity of blacks to be loyal subjects, and a seemingly inevitable – and murderous – betrayal. Through these terms Antoine introduces the story of Georges, a mulatto slave loyal to his master Alfred; Georges is unaware, however, that Alfred is also his father, a secret Georges' mother Laisa has kept from him. When Alfred, after Georges' years of faithful service, kills Georges' wife Zelia for refusing his sexual advances, Georges flees the plantation, only to return years later to poison Alfred's wife and behead Alfred. Discovering at the last moment that Alfred was in fact his father, Georges then takes his own life. "The Mulatto" deconstructs the duties and attachments and fidelities that are alternately produced and severed by slavery, and insists that we interrogate both their familial and national implications.

Séjour's titular figure of the mulatto, while of course representative of both the sexual violence of slavery and the troubling of the colorline it produced, also offers a metaphor for the troubled nation. If the "miscegenated oedipal drama"³⁸ of the Haitian Revolution provides one of the central metaphors of revolt in nineteenth century American letters, with "black sons" rising up to kill "white fathers," then Séjour's "The Mulatto" interrogates the efficacy of those attachments: what obligation does the son owe to the father, or the slave to the nation? While the self-immolation that concludes Séjour's story is sometimes read as symptomatic of an unproductive revolutionary

³⁸ Marlene L. Daut, "'Sons of White Fathers': Mulatto Vengeance and the Haitian Revolution in Victor Séjour's 'The Mulatto,'" *Nineteenth-Century Literature* 65, no. 1 (June 2010): 5.

praxis,³⁹ Georges patricide suggests that it is the attachment to the father – and indeed to the nation – that can no longer remain unquestioned.

Antoine begins his tale with Laisa’s sale at auction; the auctioneer knows, of course, that all the bidders hope to win her as their mistress. She is sold to Alfred, “twenty-one years old and one of the richest planters in the country.” After the bill of sale is finalized, the auctioneer announces to Laisa that Alfred is her new owner, and tells her, pointing to Alfred, that “[t]his man is now your master.” Laisa and the auctioneer then share the following exchange:

“Are you content?”

“What does it matter to me...him or some other...”

“But surely...” stammered the auctioneer, searching for some answer.

“But surely what?” said the African, with some humor. “And if he doesn’t suit me?”

“My word, that would be unfortunate, for everything is finished...”

“Well then, I’ll keep my thoughts to myself.” (355)

The auctioneer betrays here a strange anxiety, a need for Laisa’s approval. He is aware of his role both in dissolving the familial bonds of the Africans whose sale he manages, and his complicity in the sexual violence that will inevitably follow. He seemingly recognizes an obligation to Laisa, but violates it and simultaneously seeks her absolution. In this, the first of several analogic iterations of the relationship between the slave and the nation, “The Mulatto” asks the following questions: what is the responsibility of the nation to its black subjects, and what are the prerogatives of the black subject when those obligations go unfulfilled?

The rest of the tale repeats this scene again and again: the black subject’s earnest insistence on honoring its attachments and obligations running up against the sovereign’s

³⁹ Ibid., 10; Anna Brickhouse, *Transamerican Literary Relations and the Nineteenth-Century Public Sphere* (Cambridge, U.K: Cambridge University Press, 2004).

series of failures to honor the privileges and responsibilities of its position of authority. When Laisa briefly reunites with her brother, from whom she'd been separated when their parents were killed, their tearful embrace is cut short by the whip of the overseer. Alfred, forcing Laisa to "share [his] bed" for nearly a year, soon "tire[s]" of her; after she bears him a son "he relegate[s] her to the most miserable hut on his lands, despite the fact that he knew very well, as well as one can, that he was the child's father," and forbids Laisa to reveal to Georges his father's identity (356). Laisa, on her deathbed, leaves Georges with a small leather pouch "containing a portrait of the boy's father...not [t]o be opened until his twenty-fifth year."

Georges is ever faithful to Laisa's example, not daring to "violate the solemn oath he had made to his dying mother" (357) and resisting a desperate desire to know the identity of his father. Georges and Alfred forge a close master-servant relationship; Georges proves his fidelity to his master when he learns of a plot to kill Alfred, and, arming himself, swears that "they'll have to walk over my body before they get to you" (358). But Alfred, ever awaiting his son's discovery of his father's true identity, disbelieves Georges' "noble devotion," instead interpreting his slave's warning as a masquerade. Charging his son with betrayal, Alfred pronounces Georges a "[s]coundrel!" even as Georges fights off the attackers, taking a bullet in the process. In the midst of this scene the narrative voice of Antoine returns to reinforce the irresponsible sovereign's *expectation* of the betrayal of his subjects: "Such is the tyrant: he believes all other men incapable of elevated sentiments or selfless dedication, for they must be small-minded, perfidious souls" (358).

Georges' wife Zelia – “whom he loved with every fiber of his being” – attends to him during his convalescence (359). Alfred, “blushing at his own cowardice,” also visits him often, and becomes “enamored of Zelia,” propositioning her despite her dutiful devotion to her husband and Georges' dutiful devotion to Alfred. Zelia repels his advances with “humble dignity,” and Antoine ridicules Alfred's contempt for Zelia's loyalty:

Instead of being moved by this display of virtue that is so rare among women, above all those who, like Zelia, are slaves, and who, every day, see their shameless companions prostitute themselves to the colonists, thereby feeding more licentiousness; instead of being moved...Alfred flew into a rage...[H]ow ironic! (359)

Much as Walker derided the behavior of slaves who willingly cooperated with their white masters, here Antoine indicts the treachery of enslaved blacks complicit in their continued captivity *and* the white masters who rewarded their betrayal. Perhaps Séjour's critique is more subtle, and elaborates the paradox of black fidelity: black resistance to white power was a failure of duty that in the domestic sphere was deemed insolence and in the public sphere approached treason.⁴⁰

But Zelia can walk this delicate tightrope of decorous refusal for only so long, and soon Alfred forces himself upon her. During their struggle Alfred falls; Zelia understands immediately that “death was her fate for having drawn the blood of a being so vile” (359). Georges begs that Alfred spare her life, and asks him to remember when his own life hung in the balance and Georges saved it. Alfred refuses, insisting that there is nothing that he can do – “It is no longer up to me to pardon her” (360) – and that he must leave it up to the law to judge her conduct. Recognizing that his loyalty will not be

⁴⁰ Harriet Jacobs, *Incidents*; see also Lewis Perry, “Harriet Jacobs and the ‘Dear Old Flag’,” *African American Review* 42, no. 3–4 (Fall/Winter 2008): 595–605.

repaid, Georges speaks an unutterable truth: “Master...she will probably be condemned; for only you and I know that she is innocent.” It is at this point in the tale that Georges realizes that his faithfulness to his master will not be reciprocated, and that he can no longer offer fealty to his master; he “understood that it was no longer time to beg, for he had raised the veil that covered his master’s crime” (360). Asserting a subjectivity that was denied him in his role as slave, Georges defies Alfred, threatening him that “your head will remain on your shoulders only so long as she lives” (361). He escapes to the woods and a community of Maroons; Zelia is hanged in the town square the following day.

Antoine indicts the law’s refusal to honor the sacrifices of the enslaved: “Thus this woman, for having been too virtuous, died the kind of death meted out to the vilest criminal. Would this alone not suffice to render the gentlest of men dangerous and bloodthirsty?” (362) Here Séjour offers us twinned inversions of virtue and criminality, as Zelia’s transmutation from sexual victim to executed convict corresponds precisely with Georges’ conversion from loyal servant to sworn enemy. Alfred’s failure of conscience – and the larger failure of justice and of humanity – compel Georges to renounce his allegiance to his master, and he escapes beyond the bounds of the plantation community and indeed beyond the law. Zelia’s execution and Alfred’s betrayal of Georges destabilize the very criminality of slave rebellion, and beget Georges’ thirst for vengeance.⁴¹ These competing treasons enable Séjour to refigure the familial, social and

⁴¹ Georges’ realization that Alfred will not honor his slave’s lifelong fidelity – the moment when he enters into full consciousness with respect to his relationship with his master – is also accompanied by a corresponding rhetoric of madness, evident in Georges’ “hideous smile” (361), his insatiable quest for blood (like a “starving tiger” (363)), and his “convulsive” laughter (363); in Alfred’s struggle to resist Georges’ death

legal attachments on which the master-slave, and sovereign-subject, relationships are ordered.

Of course Georges returns to his old plantation years later, exacting his revenge by killing first Alfred's wife, then Alfred, then finally, after learning that Alfred is actually his father, himself ("Ah! He cried out, 'I'm cursed...'"(365)). Antoine's story ends here; no further mediation is offered by either our storyteller or by Séjour's omniscient narration. The absence of any narrative framing suggests, perhaps, the impossibility of any resolution after so many generations of racial violence, and the efficacy of these competing betrayals remains uncertain. But "The Mulatto" imagines an unsettling of the relationship between blacks and the nation, resisting the state's official narrative of the rebel slave as traitor – "as a monster discovered by the state" – and implicating the state itself in the "production" of treason.⁴²

III. Frederick Douglass Re-imagines Mutiny

Two celebrated slave insurrections occurred in the years immediately following the publication of Séjour's "The Mulatto." Both took place at sea (mutinies aboard slave ships), both implicated similar themes of fidelity and betrayal as those explored in "The Mulatto," and both were memorialized in prose works in the 1850s. In July 1839, enslaved Africans en route to Havana, Cuba, aboard the Spanish schooner *La Amistad* rose up against their captors and took control of the ship. They demanded that the ship's navigator return them to Africa; instead, he directed the ship to the Long Island coast,

grip ("like a madman") and attempts to buy Georges' forgiveness ("Have you gone mad, master...." (364); and in Alfred's wife's death throes ("pale and disheveled, her eyes...starting out of her head, her hair...in wild disarray" (364)).

⁴² Rebecca Lemon, *Treason by Words: Literature, Law, And Rebellion in Shakespeare's England*, 1st ed. (Ithaca, NY: Cornell University Press, 2006), 4.

where United States authorities took custody of the Africans and delivered them to New Haven, Connecticut. After two years of legal proceedings, the United States Supreme Court confirmed a trial court's judgment that their enslavement had been illegal and they were released to freedom. Herman Melville's *Benito Cereno*, published in 1855, famously rewrites the fate of the captives and crew of *La Amistad*, deftly capturing the "Gordian knots" of both the United State's increasingly intractable slavery question and the insistent yet absent voice of the enslaved in the narratives of law and history.⁴³

The *Amistad* affair and Melville's short story surely raise difficult questions of national allegiance and belonging. But because the enslaved figures in both *Benito Cereno* and the real life incident upon which it is based were Africans with no connection to the Spanish colonies, the themes of fidelity and betrayal do not resonate as strongly as they do in another incident that took place two years later. The slave mutiny aboard the *Creole* in November 1841, and the short story "The Heroic Slave," which Frederick Douglass based largely on the affair and published in 1853 as his only work of fiction, explicitly frame the struggles of the enslaved as crises of national attachment and betrayal. Madison Washington, the leader of the mutiny aboard the *Creole* and the titular character in Douglass' story, fled Virginia slavery in late 1840 and escaped to Canada, where he lived for a time with Hiram Wilson (a radical abolitionist and ex-patriot who founded schools for fugitive slave communities in southern Ontario). An April 4, 1842 article in the *National Anti-Slavery Standard* notes that Washington lived in Canada "long enough to rejoice in British liberty. But he loved his wife who was left a slave in

⁴³ Herman Melville, "Benito Cereno," in *Two Slave Rebellions at Sea*, ed. George Hendrick and Willene Hendrick (St. James, New York: Brandywine Press, 2000), 77.

Virginia still more.”⁴⁴ Washington committed himself to returning to Virginia to rescue her; his friends, including Henry Highland Garnet and Robert Purvis, tried unsuccessfully to dissuade him, and he traveled south in the fall of 1841. Though the details of his capture – and the fate of his wife – are unclear, Washington was apparently arrested in Virginia, sold to Thomas McCargo, a New Orleans trader, and put aboard the *Creole* in Richmond. With 101 other slaves, the *Creole* set sail on October 25, 1841, stopping at Hampton Roads to take on 32 additional slaves and leaving for New Orleans on October 31, 1841.

What is known about the details of the mutiny are recorded in investigative reports prepared by the United States Senate and trial records from *Thomas McCargo v. The New Orleans Company*, the insurance litigation brought by the owner of most of the slaves. On November 7, while the ship lay at anchor near the Bahamas, nineteen male slaves rose up against the crew, decapitating Thomas Hewell, an agent for McCargo, and throwing his body overboard. Washington, according to the subsequent testimony of the crew, urged his co-conspirators against further violence. After persuading the mutineers that the ship lacked the provisions to endure a return trip to Africa, William Henry Merritt, one of the ship’s guards, agreed to sail the vessel to Nassau in exchange for a promise that the rest of the crew be spared. Two days later, on November 9, the *Creole* arrived in Nassau. When the harbor’s pilot boat met the *Creole*, the ship’s first mate jumped aboard and related the tale of the mutiny, asking that none of the slaves be allowed to leave the ship. John Bacon, the United States consul in Nassau, was summoned, and in a meeting with Sir Francis Cockburn, the British Governor, insisted

⁴⁴ George Hendrick and Willene Hendrick, eds., “Introduction,” in *Two Slave Rebellions at Sea* (St. James, New York: Brandywine Press, 2000), 3.

that the ship's "property" be protected. Instead, Sir Cockburn placed the ship under the protection of twenty black British soldiers (slavery in the British colonies had been abolished in 1834 by the Emancipation Act). An attempt by Bacon on November 12, to retake the *Creole* by force with the help of the crew of two United States ships in Nassau at the time was aborted. Thereafter, the island's attorney general boarded the ship, informed the nineteen mutineers that they would be held pending an investigation into the incident onboard the ship, and released the rest of the slaves to freedom (most traveled to Jamaica; "four or five...inexplicably" continued on with the *Creole* to New Orleans).⁴⁵ Washington and his fellow mutineers were held in prison in Nassau while English officials reviewed their case until April 1842, when they were finally released; nothing more is known about them.⁴⁶

Frederick Douglass invoked the story of Madison Washington and the *Creole* again and again during his speeches in the second half of the 1840s, and finally, at the request of the Rochester Ladies' Anti-Slavery Society, wrote and published "The Heroic Slave" in 1853 in Julia Griffiths' *Autographs for Freedom* (after publishing it serially in *Frederick Douglass' Paper* earlier that year). Douglass' novella retells the story of Madison Washington over the course of four parts: in Part I, Mr. Listwell, an Ohioan traveling in Virginia, stumbles upon a vexed Madison Washington in the woods outside the plantation where he is enslaved and listens, unnoticed, as Washington delivers a soliloquy committing himself to escaping north while struggling with the reality of abandoning his wife; in Part II, which takes place five years later, Washington unknowingly happens upon Listwell's home on his way to Canada, where he shares the

⁴⁵ Ibid., 13.

⁴⁶ Ibid., 17.

story of his deferred escape and is helped across the Canadian border by his new friend; Part III finds Listwell again in Virginia, one year later, where he is surprised to come upon Washington – captured after returning in an attempt to rescue his wife – marching toward Richmond as a prisoner in a slave coffer; Part IV concludes the novella in a Virginia saloon, where we learn the story of the Washington-led mutiny through the words of Tom Grant, a sailor on the ill-fated *Creole*, who defends himself against the accusation that he and his shipmates let themselves be overtaken by “black rascals” and swears never to board a slave ship again.

“The Heroic Slave” dramatizes the utility of the trope of the traitor for African American authors whose works are concerned with the paradoxical relationship between blacks and the nation. Madison Washington, during his flight to Canada and his rebellion aboard the *Creole*, insistently betrays the obligations the law insists he owes to his nation. The various iterations of federal and state fugitive slave laws that govern the fate of escaped slaves mean that Washington is compelled to violate the laws of his country as he seeks the protection of another.⁴⁷ Yet Douglass repeatedly – and convincingly – inverts the roles of hero and traitor, esteeming fugitive slaves over and above American soldiers, whose courage – even facing “the deadly cannon’s mouth in warm blood unterrified” – pales compared to that of the runaway (29). Mutiny, murder, and piracy follow. Douglass writes Washington into the pantheon of Virginia’s founding gentlemen precisely *through* these infidelities and betrayals, and simultaneously reveals that the

⁴⁷ Though an anachronism, Douglass seems to leverage the severity of the Fugitive Slave Act of 1850 as he narrates Washington’s escape to Canada in 1840 (“...for the laws of Ohio were very stringent against anyone who should aid, or who were found aiding a slave to escape from that State. A citizen, for the simple act of taking a fugitive slave in his carriage, had just been stripped of all his property, and thrown penniless upon the world” (34)).

legacy of those esteemed Virginians has “lost much of its ancient consequence and splendor” (36).

Douglass’ references to Madison Washington in his public appearances before the publication of the novella confirm his intention to invert the treachery of national betrayal and to leverage the possibility of revision and rebirth implicated in Washington’s treason. In “Slavery, the Slumbering Volcano,” an April 23, 1849 speech delivered in New York City,” Douglass describes Washington escaping and “succeed[ing] in reaching Canada, where, nestled in the mane of the British Lion, the American Eagle might scream in vain above him, for from his bloody beak and talons he was free.” Though this speech is often read in connection with “The Heroic Slave,”⁴⁸ absent from critical commentary is the connection between it and the nearly identical language that Douglass uses in the story itself to position the “traitor” Washington vis-à-vis the nation he is betraying. In a letter to Listwell after he arrives safely in Canada, Madison Washington writes:

I nestle in the mane of the British lion, protected by his mighty paw from the talons and the beak of the American eagle. I AM FREE, and breathe an atmosphere too pure for *slaves*, slave-hunters, or slave-holders. (35-36)

Here Douglass combines the anti-American rhetoric of his earlier speech with words often misattributed to Lord Mansfield, whose 1772 opinion in *Somerset v. Stewart* was widely understood to have declared that “the air of England is too pure for any slave to breathe.” In contrast to this vision of Britain as protector, the icon of American liberty is collapsed with slave hunters and slave owners, patrolling the skies of the United States for fugitives forced to *escape* from their own nation to achieve freedom. Douglass even

⁴⁸ Ivy Wilson, “On Native Ground: Transnationalism, Frederick Douglass, and ‘The Heroic Slave,’” *Publications of the Modern Language Association of America*. 121, no. 2 (2006): 5.

metaphorizes Washington in the same terms he uses to describe England, noting that “[i]n his movements he seemed to combine, with the strength of the lion, a lion’s elasticity” (24).

Close readers of Douglass’ public words would not have been surprised by the “betrayals” at the heart of “The Heroic Slave.” Conventional accounts of Douglass remember a man committed to the idea of the American nation and the promise of its founding documents.⁴⁹ But the younger Douglass was a more radical Douglass. He struggled mightily to determine the character of the United States Constitution and its position on slavery: was the nation founded on the betrayal of an entire race? Or a commitment to racial equality? After many years of publicly supporting the view of William Lloyd Garrison that the Constitution was a terrible compromise between freedom and slavery – “a Covenant with Death, an Agreement with Hell” – Douglass reversed course and aligned himself with Gerrit Smith and Lysander Spooner, Liberty Party founders and staunch advocates of an interpretation of the Constitution as anti-slavery. In the midst of this intellectual crisis, Frederick Douglass delivered on July 5, 1852, in Rochester, New York, perhaps his most famous address, “What to the Slave is the Fourth of July?” No words in the African American canon convey more eloquently the profound ambivalence of an aggrieved race with the idea of the American nation. The very premise of the speech – a celebration of America, of its independence, of its

⁴⁹ Ivy Wilson’s reading of Douglass’ relationship with the Constitution in his “Fourth of July” speech perhaps too easily elides a contentious relationship with that “GLORIOUS LIBERTY DOCUMENT.” Wilson, “On Native Ground.” 456. Similarly, Gregg Crane’s account of Douglass’ so-called “cosmopolitan constitutionalism” belies a wavering Douglass’ ambivalence about the efficacy of the progressive narrative of freedom with which the “Fourth of July” speech begins. Gregg D Crane, *Race, Citizenship, and Law in American Literature* (Cambridge, U.K: Cambridge University Press, 2002), 120.

birth – implicates the pride of a nation, its citizens' love and devotion to their country. "Pride and patriotism," Douglass tells his audience, prompt a nation to celebrate and "to hold in perpetual remembrance" its founding moment.⁵⁰ And were the nation older than its 76 years, "the patriot's heart might be sadder" to see what its people had done with the promise of that beginning. Douglass professes to understand the pride his audience takes in the anniversary, "the birthday of your national independence," but takes little time in establishing the devastating pathos of that "you," the separatism of it, the shame and guilt it is intended to invoke, and indeed to provoke. "What have I, or those I represent, to do with your national independence?" he asks. And "how can we sing the Lord's song in a strange land?"

And yet Douglass does not disguise his appreciation for the principles of liberty and equality that he understands as the justification for the American Revolution. Lauding the virtues of rebellion rather than submission, Douglass celebrates the accomplishments of those revolutionary forefathers. And he remembers a time when "to pronounce against England, and in favor of the cause of the colonies, tried men's souls. They who did so were accounted in their day plotters of mischief, agitators and rebels, dangerous men." Here Douglass hints at the tension embedded in the revolutionary moment: the traitorous ambitions of the founding fathers, and their simultaneous rejection and embrace of the nation to which they belonged and the country for which they would fight. There can be little mistaking Douglass' implication here. Not ten years before the outbreak of another war, and in a political climate that understood radical abolition as

⁵⁰ Frederick Douglass, "'The Meaning of July Fourth for the Negro,' Speech at Rochester, New York, July 5, 1852," in *Frederick Douglass: Selected Speeches and Writings*, ed. Philip Sheldon Foner and Yuval Taylor, 1st ed. (Chicago: Lawrence Hill Books, 1999), 186–206.

nothing short of treason, in this speech Douglass positions blacks both as outside the nation, refusing – and unable – to share his audience’s pride in its accomplishments, and at the same time as revolutionaries following in the footsteps of the founding fathers, willing to fight and die in the name of a principle, and for their freedom, whatever the law may call them.

Douglass, of course, is famous for his deployment of chiasmus. And we can understand much of what Douglass is doing with the figure of the traitor in these texts as a kind of structural chiasmus. His “Fourth of July” speech begins by praising the idea of American liberty and the struggle of the founding fathers. But Douglass soon reveals celebration as “sham,” liberty as “unholy license,” American exceptionalism as “swelling vanity,” the founders’ attacks on British tyranny as “brass fronted impudence,” and the prayer and sermons of slaveholders a “thin veil” (a metaphor to be repeated by Justice Harlan in *Plessy v. Ferguson*) to “cover up crimes that would disgrace a nation of savages” (196-98). Douglass reverses the premise of the pride of independence, juxtaposing the shouts of celebrating whites with the cries of blacks under the lash. His damning list of “national inconsistencies” flips the premise of the celebration of national independence and indeed his praise for the nation’s founders: “I dare to affirm, notwithstanding all I have said before, your fathers stooped, basely stooped, ‘To palter with us in a double sense: / And keep the word of promise to the ear, / But break it to the heart’” (203). Drawing on Macbeth’s confession that he had been duped by false promises, Douglass reverses the praise for the founders with which he began, and patriots are rendered traitors to the cause of liberty.

Indeed, in “The Heroic Slave” Douglass relies on the same strategy of reversal. Describing to Listwell “the hardships of . . . escaping from slavery,” Washington frames his flight from Virginia as beyond the conventional frame of right and wrong. Declaring (rather than confessing) that he “suffered little for want of food,” Washington proffers that

Your moral code may differ from mine, as your customs and usages are different. The fact is, sir, during my flight, I felt myself robbed by society of all my just rights; that I was in an enemy’s land, who sought both my life and my liberty. They had transformed me into a brute; made merchandise of my body, and, for all the purposes of my flight, turned day into night, - and guided by my own necessities, and in contempt of their conventionalities, I did not scruple to take bread where I could get it. (31)

Day is night, slavery is theft, theft is just, and justice is gone from this “enemy’s land.” Madison Washington’s description of contented slaves, whom he observes when he returns to the plantation to meet with his wife, is perhaps the apotheosis of this discourse: “I despised the cowardly acquiescence in their own degradation . . . and felt a kind of pride and glory in my own desperate lot. I dared not enter the quarters, – for where there is seeming contentment with slavery, there is a certain *treachery* toward freedom” (29, emphasis added). Like David Walker, Douglass finds treachery in the slave’s refusal to reject the nation’s “religion” (25). These inversions are of a piece with Douglass’ reversal of the Manichaean patriot-traitor binary: while the law may call the fugitive and the radical abolitionist traitors, Madison Washington hints that even the murderous mutiny to come must be understood in terms of freedom and liberty rather than property and ownership (as “the laws of Virginia and the laws of the United States” (51) would prescribe).

Indeed, it is only on “the lonely billows of the Atlantic, where every breeze speaks of courage and liberty” (46), that Madison Washington can locate a space to enact his full humanity (much as the “dismal swamps” (30) function during his time as a fugitive). Like Sejour before him, Douglass can only imagine the site of rebellion *outside* the United States. With “the whole physical force of the government, State and national” (46), under the command of slaveholders, Douglass recognizes that the chances of successful revolt in the United States are slim. Recent readings of “The Heroic Slave” by critics such as Lance Newman and Ivy Wilson offer novel interpretations of Douglass’ text. They are of a piece, however, with conventional critical perspectives in depicting Douglass’ revolutionism as “temperate,”⁵¹ and even romanticize Washington’s “pastoral” speechmaking⁵² and “transnational” arrival in Nassau.⁵³ These characterizations risk eliding the treasonous conduct of Douglass’ protagonist as he resists the sustaining reality of the United States at mid-century: a nation-state faithfully committed to the principles of chattel slavery. Sustained attention to the trope of treason and the concomitant inversion of the patriot/traitor binary, however, reveals a more radical Douglass, one willing to embrace and indeed encourage the kind of treachery necessary to imagine a very different kind of America.

IV. Sutton Griggs’ More Perfect Union

Revolution would come, of course, and in the form that David Walker predicted. Increasing violence between radical abolitionists and pro-slavery advocates in the second

⁵¹ Robert S Levine, *Martin Delany, Frederick Douglass, and the Politics of Representative Identity* (Chapel Hill: University of North Carolina Press, 1997), 99.

⁵² Lance Newman, “Free Soil and the Abolitionist Forests of Frederick Douglass’s ‘The Heroic Slave’,” *American Literature* 81, no. 1 (2009): 127.

⁵³ Wilson, “On Native Ground.”

half of the 1850s, highlighted by the fighting in “bleeding Kansas” and eventually John Brown’s raid on Harper’s Ferry, were merely precursors to the Civil War, in which fidelity to, and betrayal of, the Union was a predominant narrative. The North’s victory, the abolition of slavery, and enfranchisement (of black men) meant that simultaneous national and racial kinship structures for blacks were newly possible. Yet the failure of Reconstruction and the nation’s slow descent toward the Nadir, culminating with the Supreme Court’s 1896 decision in *Plessy v. Ferguson*, resuscitated the tropes of patriotism and treason that marked Séjour’s 1837 “The Mulatto” and Douglass’ 1853 “The Heroic Slave.”

In *Plessy*, the Supreme Court disclaimed national responsibility for “separate but equal” as the law of the land, instead declaring that the natural difference between the races trumped any effort by law to redress social animus between them. The Court argued that the Constitution could not protect blacks from the economic privation, violent suppression of voter rights, and state-sanctioned apartheid that marked the nadir. *Plessy*, as an instantiation of the gap between the promise and the reality of America for blacks, demanded that black writers (and the black community) stake a position on their relationship with the nation.⁵⁴ Written in 1899 in the wake of *Plessy*, *Imperium In Imperio* explores the two axes of available responses: allegiance to race or nation. But first, Griggs must retell the story of black citizenship at the end of the nineteenth century,

⁵⁴ Challenged to consider their relationship with the nation, black writers in the nineteenth century could look beyond the United States, of course, as Ifeoma Kiddoe Nwankwo’s recent study of black cosmopolitanism shows. And, as this Chapter aims to illustrate, an insistent but elusive transnational identity looms large in the texts of Sejour, Douglass and Griggs. Ifeoma Kiddoe Nwankwo, *Black Cosmopolitanism: Racial Consciousness and Transnational Identity in the Nineteenth-Century Americas* (Philadelphia: University of Pennsylvania Press, 2005).

rejecting the narrative offered by the Supreme Court in 1896 that the nation bore no responsibility for the nation's abandonment of its African American subjects.⁵⁵

The tropes of treason and betrayal, and the larger exploration of the relationship between race and nation, that mark *Imperium in Imperio* are grounded in the burgeoning debate over black citizenship in the 1890s. The construction of citizenship within the nation – and its concomitant relation to the subjectivity of black Americans – was premised not strictly in formal political and civic rights (the abolition of slavery and awarding of the franchise), but also in access to labor, education, and the channels of political power.⁵⁶ The *Plessy* decision denied this relationship between political and social rights, arguing that “[i]f one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane” (552). The Court’s majority opinion positioned the status of blacks in the nation as a function of their fundamental difference, “a distinction which is founded in the color of the [white and black] races, and which must always exist so long as white men are distinguished from the other race by color” (543).

The onset of the Spanish American war only two years later crystallized the dilemma for black citizenship in the wake of *Plessy*. While the entrenchment of Jim

⁵⁵ These twin agendas will run through the fiction of the *Plessy* era, from Chesnut’s *Marrow of Tradition* to Johnson’s *Autobiography*, from Wright’s protest fiction to Baldwin’s radically personal race fiction, and finally with Ellison’s *Invisible Man* published just before the *Brown v. Board of Education* decision overruled *Plessy*.

⁵⁶ Judith Shklar outlines the realities of citizenship for blacks in the postbellum South in Judith N. Shklar, *American Citizenship: The Quest for Inclusion* (Boston: Harvard University Press, 1991); see also George M. Fredrickson, *The Black Image in the White Mind: The Debate on Afro-American Character and Destiny, 1817-1914* (Middletown, CT: Wesleyan University Press, 1987); Joel Williamson, *The Crucible of Race: Black-White Relations in the American South Since Emancipation* (New York: Oxford University Press, 1984).

Crow reified second-class citizenship for blacks, the nation simultaneously demanded unqualified support from all of its citizens as it returned to the battlefield for the first time since the Civil War. The Spanish American War offered the country the chance to prove it had healed the divisions of its sectionalist past, and offered black soldiers in particular a chance to demonstrate – by their valor on the battlefield – that the constrictions of American race law were faulty at their premise. And conservative black leaders such as Booker T. Washington embraced the opportunity for black Americans to demonstrate their patriotism, leveraging the romantic plantation-era stereotypes of loyal black servants into what Stephen Knadler has called “Citizen Toms”: African Americans at the end of the nineteenth century whose “racial instincts toward affection, loyalty, self-sacrifice and submissiveness” could be trusted to pledge complete fidelity to the nation’s imperial designs.⁵⁷

The state-sanctioned apartheid of *Plessy* and the “paralyzing and unresolved double allegiance” invoked by the Spanish American War – “in which patriotism and treason are intertwined”⁵⁸ – collide with syncretic effect in Griggs’ first novel, where the bombing of the U.S.S. Maine propels the protagonists toward their own war against the United States. While *Plessy* naturalized racial difference and black soldiers served in a war that exported America’s particular racial order, *Imperium* narrates a quite different story of the relationship between blacks and the nation, identifying black treason as a necessary consequence of the nation’s betrayal of its racialized subjects. Griggs’ novel, self-published and self-distributed to a mainly black audience, offered two mutually

⁵⁷ Stephen P. Knadler, *Remapping Citizenship and the Nation in African-American Literature* (New York: Routledge, 2009), 144.

⁵⁸ Amy Kaplan, *The Anarchy of Empire in the Making of U.S. Culture* (Boston: Harvard University Press, 2002), 124.

exclusive courses of action.⁵⁹ Bernard Belgrave, President of the Imperium In Imperio – a shadow Congress formed by blacks to remedy the shortcomings of the national government – preaches a militant separatism premised in race allegiance. Belton Piedmont, his childhood friend and a founder of the Imperium, believes instead that blacks can win a participatory role in the nation by living up to the Anglo-Saxon model of liberal democracy. The central narrative conceit of the novel revolves around the idea that each of these positions is a treason: Bernard’s separatism is a betrayal of the national creed, and Belton’s fidelity to a flawed nation is a betrayal of his race. In fact, the narrator of the tale – Berl Trout, a member of the Imperium and a confidant to both Bernard and Belton – begins with a confession: “I am a traitor” (5). Trout has revealed to the white world the existence of the Imperium and its plans for armed insurrection, and will soon be executed by the Imperium for his infidelity. But he qualifies his confession: “While I acknowledge that I am a traitor, I also pronounce myself a patriot. It is true that I have betrayed the immediate plans of the race to which I belong; but I have done this in the interest of the whole human family – of which my race is but a part” (6). Here Trout outlines the dilemma that haunts both blacks and the nation at the close of the nineteenth century: in light of the failure of the nation to incorporate blacks as full citizens, is simultaneous loyalty to race and nation necessarily incompatible?

The novel’s narrative trajectory charts the paths of Belton and Bernard as they grow from childhood schoolmates to co-conspirators on the cusp of leading a violent

⁵⁹ Unlike Chesnut, a Griggs’ contemporary and often called the first “professional” African American writer, Griggs did not have the machinery of a white commercial press available to him, instead traveling to black communities and selling his first novel door-to-door. Finnie D. Coleman, *Sutton E. Griggs and the Struggle Against White Supremacy* (Knoxville: Univ. of Tennessee Press, 2007), 58.

insurrection intent on establishing a new and separate nation for blacks. In between, each suffers the indignities of the American betrayal of its professed creed and its African American subjects. Through these experiences, Griggs portrays a black community that is deprived of its formal political equality precisely through the mechanisms of social apartheid. From their first meeting as students in a Freedmen's School in Winchester, Virginia, in 1867 – the dawn of Reconstruction – Bernard and Belton are educated in the models of patriotism and treason available to them as both national and racialized subjects. Light-skinned Bernard is the son of Fairfax Belgrave, a “tall and graceful” mulatto woman (14) who was once a slave of, and now wife to, a United States senator (though their marriage is a secret, and Bernard will not learn the identity of his father until he graduates from college). He benefits from many of the privileges of his background – his mother is educated and refined, he never wants for food or clothing – and he is received with pleasure by the local school teacher. Belton's mother, Hannah Piedmont, is a “poor, ignorant negro woman” abandoned by her husband (7); while Belton suffers the indignities of his poverty stoically, his education is made all the more difficult by the animus his dark skin and soiled clothing engender (“Another black nigger brat for me to teach,” thinks his teacher as he arrives at school (12)). Despite their disparate circumstances, each will learn firsthand the racial inequities of racialized citizenship in postbellum America (though in an inversion of convention, it is Belton, the mulatto, who resists the call of assimilation, while dark-skinned Bernard lauds the accomplishments and possibilities of white America).

Both excel in their studies. As schoolmates who compete for valedictory honors, Belton and Bernard choose as the subjects of their respective addresses “The

Contribution of the Anglo Saxon to the Cause of Human Liberty” and “Robert Emmett.” Here Griggs’ sketches the paths of his protagonists: Belton’s speech foreshadows his insistence on the efficacy of assimilation as the route to black liberty; Bernard’s invocation of the Irish revolutionary – executed, drawn and quartered after his conviction for treason – hints at the rebellion he will lead. The premises of their respective positions – the laudable accomplishments of white America, on the one hand, and the need for violent revolution to undo white America, on the other – seem unable to resolve into one another, with no middle space capable of moderating either position.

Both continue their educations in national and racial kinship at university. Bernard heads to Harvard, where the advantages of his class and his mother’s education affirm Bernard’s exceptionalism. He studies law and graduates at the top of his class, and “many young white men of wealth and high social standing, attracted by his brilliance, drew near him and became his fast friends” (61). Belton, on the other hand, heads to the fictional Stowe University in Nashville, Tennessee, a product of Northern philanthropy and “scarcely more than a normal school with a college department attached” (38). Here its (white) administrators preach *duty*: of a new generation of blacks to remake the South and the nation, and to resist the “[r]idicule, vilification, ostracism, violence, arson, [and] murder...employed to hinder the progress of the[ir] work” (40). Belton revels in the “equality of the races” evident in the presence – and implied authority – of a single black professor, and embraces “the fire of patriotism” as “the deepest passion of his soul” (42). And yet this single black professor must sit at a table with students during lunch, rather than with his (white) fellow faculty. An aggrieved Belton, in a curious parody of the coming founding of the Imperium, forms a secret

society with his fellow students with the aim of “coerc[ing] the white teachers into allowing the colored teacher to eat with them” (44); they choose “Equality or Death” as the group’s password and vigorously guard against being discovered, for “a fear of [joining] combinations seems to have been injected into the Negro’s very blood” in the wake of slavery and the brutal repression of organized black resistance. Winning the sought-after concession from their white teachers, the students celebrate the acceptance of their black professor at the white table by parading out of the lunchroom singing “John Brown’s Body.” Griggs hyperbolically notes that

Ye who chronicle history and mark epochs in the career of races and nations must put here a towering, gigantic, century stone, as marking the passing of one and ushering in of another great era in the history of the colored people of the United States (46).

Reflecting on their particular education in patriotism at Stowe University and the possibility that blacks might win concessions from the larger nation, Griggs seems to mock the students’ successful “rebellion against the whites,” and the political activism it encourages, as utterly inconsequential. The pessimism embedded within these scenes recalls Belton’s first effort to produce political change on the campus: about to be caught spying on a faculty meeting to deliberate the fate of their sole black member, Belton mistakenly runs into a hen house, and Griggs tell us “thus again a black patriot was mistaken for a chicken thief” (44).

Efforts to imbricate himself in the national fabric continue to fail Belton. His trip south to assume the presidency of a “Negro college” in Louisiana catalogs the awesome distance between the promise of equality for blacks and the material reality at the moment of *Plessy*. His journey begins – but where else? – on a train. Belton is strangely unaware of the “unwritten but inexorable law” banning blacks from riding in the first

class coach, and finds himself forcibly ejected from the moving train by an indignant group of white passengers (97). He is then arrested creating a scene after he is refused seating in a restaurant, prompting him to wonder “what kind of country he had entered” (99). Most poignantly, upon his arrival in a suburb of New Orleans, he gives a lecture in a local chapter encouraging young men to vote. A village elder quickly intercedes, and describes to Belton “the political history of this section of Louisiana” (101). Belton learns that despite black numeric majority, whites control the ballot. Describing the lynching of a white Republican campaigner and of two blacks who tried to cast their ballot, the man summarizes for Belton: “[y]ou can judge why we neglect voting” (103). The old man tells Belton that “the white people made a spy and traitor” out of his cowardly brother:

When the people found out that there was a treachery in our ranks it demoralized them, and our organization went to pieces. We had not the authority nor disposition to kill a traitor, and consequently we had no effective remedy against a betrayal (101).

Here we see in stark relief the impossibly vexed relationship between national fidelity and betrayal. The old man’s confession – that the black community lacked the will to murder its traitors – reveals that a commitment to full black citizenship at the end of the nineteenth century required a re-imagining of the nation underwritten, if necessary, by a treason of its own: violent resistance to the established national order.

Griggs juxtaposes these tales of violent disfranchisement with incidents of ugly social customs – Jim Crow train cars, the paucity of travel accommodations, the scientific racism of John H. Van Evrie (118) and white fear of miscegenation (95), and finally, Belton’s lynching for contact with a white woman (105) – and positions both as figurations of the nation itself. “Color prejudice,” laments Belton, is upheld “by the flag

which he had loved so dearly” (95). The nation, then, is the agent of black subordination. Belton, arrested and charged with murder for killing one of his assailants, reaches a reporter from jail and gives “a thorough and detailed account of every happening” (108). Bernard, by now a successful lawyer, hears of Belton’s plight and argues his case to the Supreme Court, winning a retrial. Here, Griggs re-narrates the premises of *Plessy*, naming black political inequality as the very real consequence of white social custom, and positioning the nation at the center of the process.

Griggs embodies the emptiness of black national citizenship in the inability of his protagonists to find fulfilling romantic relationships. After Harvard, Bernard meets his father for the first and only time. The Senator pleads with Bernard to “[m]ake it possible, dear boy, for me to own you ere I pass out of life. Let your mother have the veil of slander torn from her pure form ere she closes here eyes on earth forever” (66). The Senator’s affection for Fairfax Belgrave is belied, however, by his confession that “I shall certainly kill myself if [the marriage is] ever exposed.” Interracial relationships, even those borne out of genuine affection and black agency, remain incommensurable with the obligations of national citizenship. It is unsurprising, then, that the Senator’s marriage is known only to a fellow veteran of the Confederate Army, a colonel whom the Senator discovered was guilty of fratricide. Confronted by the Senator, the colonel threatens to “let the whole world know about your nigger wife.” It is in the bonds of service to the Confederacy that the Senator’s affections for Fairfax Belgrave are betrayed in favor of his obligations to and identification with the nation. Griggs will reconstruct these failed affective structures in the relationships that Belton and Bernard will forge with love interests of their own, lovers whom they will reject, and be rejected by: Belton’s wife

gives birth to a white child, and Belton flees their marriage in shame; Bernard's fiancé commits suicide, inverting the arguments of early scientific racism and concluding that marrying Bernard – and his father's white blood – will only dilute the “vitality of the Negro race” (118). At every step, America's racial creed explodes the hopes of Griggs' African American protagonists to build both personal and national kinship relations. In the wake of these traumas, each will turn to the imagined national community of the Imperium.⁶⁰

For Griggs, the primary modes of the re-narration of the story of *Plessy* are through oratory and text. The novel interrogates the “official” story of the nation's fraught relationship with blacks, and makes the legitimacy of state-sanctioned violence the fulcrum of their critiques. Some critics maintain that *Imperium* fails to offer a path for blacks to full citizenship; Maria Karafilis, for example, argues that oratory, in *Imperium*, functions as an attempt to “create, recreate, and sustain spaces of democratic political participation” (125) that ultimately fails to convert black “mastery of language [into] political personhood” (130). But this argument views the novel's oratory as a failure simply because the Imperium is unable to resolve the fractures of the nation. Read more broadly – in the context of, and as a response to, *Plessy* – the oratory of the novel is a breathtaking critique of the failure of the nation and of national kinship, and a narrative response to the nation's story of itself. As Belton tells Bernard when revealing the

⁶⁰ Stephen Knadler's exceptional reading of *Imperium*, which charts the ultimately unfulfilling “spectacular patriotism” of Griggs' protagonists, argues that Belton's and Bernard's “hyperbolic” devotions to the American nation and the Imperium, respectively, reveal unproductive national and racial kinship attachments. My reading of the novel, however, suggests that Griggs positions the Imperium not as a parallel to the failures of United States citizenship for blacks, but as a revision of its *possibility*. Knadler, *Remapping Citizenship and the Nation in African-American Literature*.

existence of the Imperium, “there is one serious flaw in the Constitution of the United States”: the failure of the nation to protect blacks from the violence of the individual states (123-24). In a novel full of speechmaking, Belton’s plea to Bernard about the importance of the Imperium is the first speech to be presented verbatim. And the argument is chilling:

The General Government says to the citizen: “I am your sovereign. You are my citizen and not the citizen of only one state. If I call on you to defend my sovereignty, you must do so even if you have to fight against your own state. But while I am your supreme earthly sovereign I am powerless to protect you against crimes, injustices, outrages against you. Your state may disenfranchise you with or without law, may mob you; but my hands are so tied that I can’t help you at all...” Such is what the Federal Government has to say to the Negro. (124)

This language recalls the obligations of citizenship explored in the early treason cases involving slaves. Without a reciprocal obligation, what demands can the nation make of its black subjects? Here Griggs asks the question, what can the nation do to recover any sense of duty that blacks might owe to their ostensible sovereign?

Shortly after Bernard assumes the presidency of the Imperium, two incidents cement the inevitable revolt of its members against the nation that subjugates them: the patriotic fervor of white America is aroused by the bombing of a United States navy vessel at port in the Cuba; and Felix A. Cook – postmaster of Lake City, South Carolina, and “a colored man of ability, culture and refinement – is brutally lynched by a white mob offended by his position of authority, his wife and children barely escaping to safety (137).⁶¹ Incensed that the American government would mobilize its military on behalf of a (contrived) foreign war while the travesties against the black body (politic) go

⁶¹ Griggs re-narrates the 1898 lynching of Frazier Baker, the black postmaster of Lake City, South Carolina, in which both Baker and his infant child were shot and killed; his wife and five other children were wounded but survived. Coleman, *Sutton E. Griggs and the Struggle Against White Supremacy*, 61.

unpunished at home, Bernard prepares the Imperium for war, with the ultimate goal of forging a new and separate black nation in Texas. Belton, however, balks at the prospect of bloodshed; he resigns his membership in the Imperium and is executed according to its rules, insisting that “I loved the race to which I belonged and the flag that floated over me [and am] unable to see these objects of my love engage in mortal combat” (173). His body is buried “shrouded in an American flag.”⁶² Many critics find Belton’s wavering relationship with the nation to be an aesthetic failure, the result of an uneven character undone by Griggs’ polemics.⁶³ Yet the troubling arc of Belton’s character is better understood as a consequence of the impossibility of resolving the tensions between patriotism and treason. It is not Griggs’ failure to resolve the competing narratives of Belton and Bernard that should be of interest to literary scholars, but the paradoxical and productive nature of the figure of the traitor that it reveals.

Conclusion

Belton and Bernard come to fatal disagreement over how to respond to the failure of federalism amidst the triumph of states rights,⁶⁴ and the impotence of the national

⁶² Griggs’ would seem to be invoking Edward Hale’s 1863 “A Man Without a Country,” in which its protagonist, convicted of treason for conspiring with Aaron Burr, emphatically rejects his attachment to the United States before finally coming to regret his betrayal shortly before his death in prison (“Here, you see...I have a country!”). Brook Thomas, *Civic Myths: A Law-and-Literature Approach to Citizenship* (Chapel Hill: UNC Press Books, 2007), 87.

⁶³ See, e.g., Cornel West, “Introduction,” in *Imperium in Imperio*, 2004, xvii.

⁶⁴ Charles Chesnutt, in a novel also centrally concerned with the fate of blacks in the wake of *Plessy*, similarly identified the awesome power of the states rights tradition as a root cause of the persistence of race violence in the South. Charles W. Chesnutt, *The Marrow of Tradition* (New York: Bedford/St. Martin’s, 2002). The “Calhoun Cocktail,” the potent drink imbibed by the conspirators responsible for the race riot in *The Marrow of Tradition* (67), stands as a proxy for John C. Calhoun’s early political claim to the South’s right to ignore federal interference. Calhoun advocated the so-called

government – over and against the claims of *Plessy* that there is no place in the Constitution for attention to such matters – will echo through the coming decades of the civil rights movement. *Imperium*, of course, is best remembered for the militancy suggested by the establishment of a separate nation for African Americans and in the nearly-averted revolt of its conclusion. But it is the rhetoric of patriotism and treason and Griggs’ unabashed ambivalence about the obligations of blacks to the nation that mark *Imperium* over and above its suggestion of separatism. Belton, in his last speech to the Imperium and in language nearly identical to that used by Frederick Douglass’ narrator in “The Heroic Slave,” invokes the paradox of freedom for blacks in the United States:

The Anglo-Saxon has seen the eyes of the Negro following the American eagle in its glorious flight. The eagle has alighted on some mountain top and the poor Negro has been seen climbing up the rugged mountain-side, eager to caress the eagle. When he has attempted to do this, the eagle has clawed at his eyes and dug his beak into his heart and has flown away in disdain; and yet, so majestic was its flight that the Negro, with tears in his eyes, and blood dripping from his heart has smiled and shouted: ‘God save the eagle’ (162).

The contrast of these last lines with the sentiment of David Walker’s *Appeal* could not be more stark. Walker, of course, was not tempted by the illusory potential of American democracy for black Americans in the early nineteenth century. But much as the Invisible Man is unable to reconcile his competing attachment to and rejection of the American nation, so too do we find Belton unable to give up his desire for the reciprocal subject-sovereign relationship that his life experiences would seem to reveal as unobtainable. Bernard, of course, simply cannot contemplate such a relationship ever existing. What is clear at the close of the nineteenth century, however – particularly as revealed in the failure of the law to assimilate black kinship with the nation in the terms

“nullification” of national laws that circumscribed the reproduction of the Southern plantocracy.

of the law of treason – is that the nation does not recognize its African American people in the same terms that it understands itself.

The three texts at the heart of this Chapter – Victor Séjour’s “The Mulatto,” Frederick Douglass’ “Heroic Slave,” and Sutton Griggs’ *Imperium in Imperio* – are informed, of course, by disparate political, historical and literary contexts. The nearly gothic psychological terror of Séjour’s “The Mulatto” is of a piece with the predicament in which blacks, both free and enslaved, found themselves in the 1830s, and the violent repression of recent slave insurrections – and the seeming certainty of more to come – haunts the short story. Douglass’ novella leverages the destabilizing potential of radical abolition, but can only envision a space of freedom outside the American nation. And Griggs’ novel offers a paradigmatic narrative of the posture of African Americans during the nadir moment, when the fleeting possibility of fully realized national subjectivity seems to have slipped from their grasp. The figure of the black traitor at the heart of each of these texts, however, reveals that much as the nation evolved over the course of the nineteenth century, each of these moments is marked not just by an inability to accept its black subjects as citizens, but by a spectacular refusal to recognize them as a constitutive component of the national fabric, indeed one that shapes, and sharpens, the nation’s understanding of itself.

Chapter Four
“Our racket’s within th’ law, ain’t it?”:
Reproducing the Anxiety of the Color Line in *Black No More*

ABSTRACT:

A rhetoric of strangeness marks so many of the texts of the African American literary tradition written during the *Plessy* era, a strangeness inextricably tied to the law’s effort to maintain the fiction of “separate but equal.” Anti-miscegenation laws, perhaps the most emotionally charged of the many legal attempts to police the color line, were also some of the most difficult to parse and yet also the most entrenched. And so it is no surprise that the illogic of the legal predicament in which blacks found themselves was often articulated in literary texts in two related ways: through the figure of the miscegenated baby, and the narrative structure of the absurd. This chapter argues that while the possibility of a baby is usually read to reveal the anxiety of a text’s passing protagonists, in fact many *Plessy*-era works by African American writers deploy the combination of a troubling black baby and the farce of racial taxonomies as a kind of *reductio ad absurdum*, satirizing the law’s doomed attempts to protect the “purity” of the white race. An assessment of the law’s affective attachment to whiteness reveals the formal mode of the absurd as a pointed challenge to the rationale underlying segregation as the law of the land. Finally, a fuller reading of George Schuyler’s *Black No More* shows the incommensurable as a necessary condition for this kind of irony, which turns precisely on the irresolvability of the competing views of the law and of African American writers on the fundamental humanity of the black subject.

God grant deliverance in his own way and time, and get him honour upon all those whose avarice impels them to countenance and help forward the calamities of their fellow creatures. This I desire not for their hurt, but to convince them of the strange absurdity of their conduct, whose words and actions are so diametrically opposite. How well the cry for liberty, and the reverse disposition for the exercise of oppressive power over others agree - I humbly think it does not require the penetration of a philosopher to determine.

Phillis Wheatley, letter to Samson Occom

If then the progeny of the white race be uniformly distinct from that of the black, it may be said to be a law of nature, that a white couple cannot produce a negro or mulatto child. For no experience is more universal than that a white couple always produces white offspring, and never black or mulatto.

Watkins and wife v. Carlton, 37 Va. 560 (1840)

Reductio ad absurdum (Latin: “reduction to the absurd”): The method of disproving an argument by showing that it leads to an absurd consequence.

Black’s Law Dictionary

I. Introduction

W.E.B. Du Bois famously concludes the opening paragraph of *The Souls of Black Folk* by noting that “the problem of the Twentieth Century is the problem of the color-line.” Less well-remembered, however, is the riddle of sorts with which “The Forethought” begins: “Herein lie buried many things which if read with patience may show the strange meaning of being black” at the height of the legally-sanctioned racial apartheid and violence of Jim Crow America at the start of the twentieth century. The doubled identity that Du Bois goes on to describe – “an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body” (9) – epitomizes the rhetoric of strangeness that marks *Souls*, and indeed marks many of the texts of the late nineteenth- and early twentieth-century African American literary tradition. In the wake of the pronouncement by the United States Supreme Court in

Plessy v. Ferguson (1896) that there would be two “separate but equal” legal regimes that applied to blacks and whites in America, DuBois’ puzzled take on the “strange prejudice” of American law and custom is perhaps to be expected (13). *Plessy*’s validation of the Jim Crow regime plunged African Americans into a world of illogic, unreality, and unreliability. The “due process” and “equal protection” promised by the Civil War amendments were illusory, and indeed illusions: they seemed a cruel misnaming of the discriminations and inequalities facing black Americans in nearly every aspect of their lives. Disparate treatment of blacks in voting rights, public accommodations, employment and housing signaled that the irrationality of slave law had been transmuted into something somehow less remarkable but more insidious, an Orwellian landscape where a Jim Crow train car was the “equal” of a first-class car in the eyes of the law.

This catachresis – the radical denuding of the meaning of equality while still insisting on its presence – is born out of the fiction that imagined the separate legal regimes of Jim Crow as constitutionally permissible. Perhaps nowhere was this double identity – and its concomitant irony – more apparent than in the law’s treatment of sexual relationships between blacks and whites. The absurdity of outlawing miscegenation as “unnatural” in the wake of centuries of sexual relationships between blacks and whites seems self-evidently nonsensical. But notwithstanding the frequency of such interracial relationships, 37 states banned sexual intimacy between blacks and whites at one time or another since the end of the Civil War. Thirty states had laws against such relationships during the first half of the 1900s. Miscegenation law “kept interracial children slaves during slavery and after slavery bastardized them,” and because interracial sexual relations was the cite of reproduction – “and the institution where reproduction was

legitimated” – it was policed vigilantly if not rationally.¹ Laws regulating interracial reproduction, then, had as their primary function the privileging of white property – and whiteness as property – notwithstanding the ostensible equality of blacks in the eyes of the Constitution.

Many of the texts of the African American literary tradition turn precisely on this relationship between the logic of anti-miscegenation laws and the formal structure of the absurd. As Du Bois’ characterization of the strangeness of the colorline might suggest, representing the problem of miscegenation in literature was often a fraught endeavor. How, for instance, to portray the distance between law and custom regarding rules of race and property? Because “[t]he legal, semiotic discourse of miscegenation [is] not mimetic,” as Eva Saks writes, representations of racial difference often function solely as figures of speech: metaphors premised in competing binaries of blood, which are “mutually constitutive, and equally fictitious” (42). And because the legal cases that so troubled the racial order were often those where no physical difference existed between either party to the interracial relationship, the prospect of reproducing that sameness – of having children – was especially troubling. So it is no surprise that so many of the texts that subvert the logic of miscegenation law feature the figure of the child of the miscegenated relationship – sometimes black, sometimes white, often mulatto – as the vehicle of the critique.

Babies that trouble the legal order of Jim Crow appear again and again in the fiction of the *Plessy* era, beginning with texts such as Kate Chopin’s 1893 short story “Desiree’s Baby,” Mark Twain’s 1894 farce *Pudd’nhead Wilson*, the trilogy of “lost

¹ Eva Saks, “Representing Miscegenation Law,” *Raritan* 8, no. 2 (Fall 1988): 39–69.

child” novels by Pauline Hopkins (*Contending Forces*, *Hagar’s Daughter*, *Of One Blood*), and Sutton Griggs’ 1899 *Imperium in Imperio*. While the possibility of a baby often revealed the anxiety of a text’s passing protagonists – perhaps most notably the fears of James Weldon Johnson’s protagonist in *Autobiography of an Ex-colored Man* (1912) that his past will come back to haunt him – by the height of the Harlem Renaissance the profound absurdity of the logic of “separate but equal” brought pointed challenges to the rationale underlying segregation as the law of the land, while also invoking the ambivalence of blacks about the possibility of “possessing” whiteness. Langston Hughes’ “Red-Headed Baby,” for example, collected in *The Ways of White Folks*, offers a deaf and bow-legged child suffering in fatherless poverty as the result of an unfulfilling mixed-race liaison, his black mother still eager to renew her affair with a white man surprised to learn that he’s become a father. On the whole, texts that explore the dilemma of interracial relationships during the *Plessy* era do so through the mode of literary realism popular in the early twentieth century, with novels like Charles Chesnutt’s *Marrow of Tradition* as the preeminent example. But as DuBois’ rhetoric in *Souls* suggests, another form would come to seem well-suited to the task: satire, and the novelization of the absurd.

George S. Schuyler’s 1931 *Black No More* is perhaps the most complete literary satire to invoke the paradoxes of miscegenation law. With the delightfully simple premise of a machine that can turn black skin white, Schuyler’s novel enacts the literal incommensurability of the passing subject. This particular incommensurability has produced a richly productive tension in the tradition of black letters, and offers us a way to understand a predominant but under-read thematic in its texts: the laws of racial

apartheid as not simply immoral and wrongheaded, but strange and incomprehensible. It goes without saying, of course, that the law's tortured history with race in the United States is marked by a certain kind of absurdity: the illogic of the commodification of the enslaved body; the division of the antebellum nation into separate free and slave states; caste laws that meant a person was white in North Carolina but a slave in Georgia; the legal fact of Jim Crow. And the double character of the law – its professed neutrality and impartiality in the face of two centuries of legally sanctioned racial apartheid – testifies to the folly of such a thing as “separate but equal.” Satire, which requires that the reader be able to decode it based upon knowledge and values that the satirist and the audience share,² revels in the confused double-meanings and hypocrisies of Jim Crow. Indeed, satire depends on a kind of absurdity, and on the distance between two opposing worldviews. Schuyler deploys the form to great effect to reveal the failure of these laws to police the color line. And in particular, *Black No More* satirizes white anxiety over *reproducing* that color line. The figure of the black baby born to white parents – a narrative inevitability that propels *Black No More* at every moment – mocks an investment in whiteness (by whites *and* blacks) that is both sedimented and ephemeral, and through it Schuyler explodes the conventional form of the passing novel, and the logic of separate but equal.

II. Regulating the Reproduction of Whiteness

Anti-miscegenation laws have been part of the fabric of American culture since its founding, and not until 1967, after the Supreme Court's ruling in *Loving v. Virginia*, were prohibitions against intimate relations between blacks and whites finally declared

² Darryl Dickson-Carr, *African American Satire: The Sacredly Profane Novel*, 1st ed. (University of Missouri, 2001).

unconstitutional. At the time of the *Loving* decision, Virginia's ban on interracial marriage had been in effect for nearly four centuries; marriage between "whites" and any "negroe, mulatto or Indian" were proscribed by its colonial government in 1691 "for prevention of that abominable mixture and spurious issue [resulting from] their unlawfull accompanying with one another." Punishment for violating Virginia's anti-miscegenation law called for the white man or woman to be "banished and removed from this dominion forever." What's more, the 1691 act also effectively amended Virginia's 1662 birthright law, which decreed that children born of a free white mother and Negro father were free. Instead, the 1691 act revised the law such that a white woman who gave birth to a "negroe [or] mulatto child" would be fined fifteen pounds sterling, payable within one month of the child's birth; failure to pay meant indenture for the mother, and the child was effectively enslaved, indentured for thirty years.³

As the work of historians such as Ariela J. Gross has shown, however, the very racial identity that these laws tried so hard to police was often inscrutable.⁴ Again and again, the law's inability to abide by its own terms – and indeed to decipher a logic of racial difference at all – revealed the fundamental absurdity of anti-miscegenation laws. Parentage, custom, community impression, blood, and perhaps most importantly the ability of a "mulatto" to assume confidently the identity of a "white" person meant that the law had little ability to uniformly identify race in the first place, much less to sort out the messy complications of the progeny of such "mixed" relationships. But try it did, and

³ Act XVI, *Laws of Virginia*, April 1691 (*Hening's Statutes at Large*, 3: 87).

⁴ Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Harvard University Press, 2010).

in the effort ensured its susceptibility to the *reductio ad absurdum* that would come to form the basis of many of the literary critiques of the racial logic of the law.

Williams and wife v. Carlton

In the last years of his life, John Carlton, a Virginia husband and father, went insane. He died sometime in the late 1820s, survived by his wife Sarah, and three children: Mary, an adult, and two young boys, Thomas and William. John Carlton's will, written a few years before his death and just a few months before the birth of his last child, "devised and bequeathed his whole estate, real and personal, to his two children Mary and Thomas Carlton" (560); the will, for reasons unknown, was never updated to include William. In probate, the King and Queen county court first awarded Sarah a widow's dower: use of John's land, slaves and income for the rest of her life. Contrary to the will, however, it then divided the estate into three equal parts, rather than two: one for each child subject to Sarah's life interest. In 1829, Mary and her husband William Watkins filed suit in the superior court of chancery in Richmond against the estate of John Carlton, disputing the county court's award of any interest to Mary's brother William. The plaintiffs relied not on the terms of Mary's father's will, but on the allegation that William was not his father's son, charging instead that he was a mulatto born of Sarah Carlton's relationship with an unidentified black man. Their lawyer argued that

John Carlton and his wife were both white persons, and, in the course of nature, the husband could not be the father of the mulatto child; that, therefore, that child, though born in wedlock and while the husband and wife were cohabiting, was illegitimate, and consequently was not entitled to any part of the testator's estate.⁵

⁵ *Watkins and wife v. Carlton*, 37 Va. 560 (1840).

Mary and her husband petitioned the superior court to declare William illegitimate, and to award the third part of the Carlton land and slaves, which had been reserved by the decree of the county court for the infant William, to Mary and her brother Thomas, to be divided between them. The arguments of the two sides reveal much about the logics of anti-miscegenation law. Counsel for William argued that John and Sarah Carlton were legally married, that William was born during their “legal wedlock,” and that no absence or incompetence precluded John from being William’s father. Mary and her husband, on the other hand, introduced evidence to show that both John and Sarah were white and that William was mulatto, and that “there was no time at which such sexual intercourse could take place between a white man and a white woman, that the white man could, according to the laws of nature, be the father of a mulatto child born of the white woman.” The superior court heard testimony regarding the question of whether William appeared “by his features, hair and complexion” to be a mulatto, whether John Carlton “was or was not a white man,” whether William “was the child of a black or of a white father,” and whether William “was in fact the lawfully begotten child of John Carlton.” Finally, the jury was instructed that the law presumed a child’s legitimacy notwithstanding absence or physical inability to conceive, and ruled in William’s favor.

Mary and her husband appealed the jury’s verdict to the Virginia Court of Appeals, which reasoned that the presumption in the court below failed to answer the central question: namely, “was William the child of a black or white father?” The court deduced that by failing to answer this question definitively, the law of presumption risked “legitimat[ing] a negro because he was born in wedlock.” Analogizing the “impossibility” of a white man and woman producing a mulatto child to the same

“impossibility” of a wife producing a child in the face of a husband’s absence or physical incompetence, the Court of Appeals reversed the lower court’s ruling and sent the issue back for retrial before the jury.

At stake in *Watkins and Wife v. Carlton* are so many of the fraught anxieties that animate the twinned problems of passing and miscegenation in American law and literature: property, slavery, madness, the unknowability of white and black bloodlines, the violability of familial dynasties, and perhaps most tellingly, the fate of a dark-skinned curly-haired baby. There is no recognition by any of the parties involved of the possibility that a mulatto baby could be born to two ostensibly “white” parents, or that even by the logic of Virginia’s legal definitions such progeny might be unsurprising. In Virginia, a mulatto was defined as someone with “1/4 negro blood”; his parents could each have been legally white, with “1/8 negro blood” – and William could have had “1/8 negro blood” and still been legally white.⁶ The law’s insistence that the offspring of interracial relationships produce “evidence” of a violation of the color line is of a piece with the large fiction of “separate but equal”: the Lacanian order imposed by the law of Jim Crow must maintain that fiction for whiteness to remain sovereign.

Alabama v. Pace

Notwithstanding the ostensible equality of the races in the wake of the Civil War, the question of how interracial marriage would be regulated by the state did not reach the United States Supreme Court until 1883. Tony Pace, a black man, and Mary Cox, a white woman, were arrested in 1881 and convicted of violating Alabama’s prohibition on “adultery or fornication” – sexual relations outside of marriage – a felony ordinarily

⁶ Werner Sollors, *Interracialism: Black-White Intermarriage in American History, Literature, and Law* (Oxford University Press US, 2000), 112.

punished by a fine and up to six months in jail. The statute prescribed a much more severe punishment, however, for adulterous relationships between “any white person and any negro, or the descendant of any negro to the third generation”; such interracial relationships subjected violators to a minimum of two years in prison and up to as many as seven. Both appealed their convictions to the Alabama Supreme Court, where they were upheld; and from there they appealed to the United States Supreme Court.

Reading the Supreme Court’s unanimous three-paragraph decision upholding the couple’s conviction, one would be hard-pressed to imagine that only ten years before such a relationship was not even a crime. Sexual relations between white and black partners was a misdemeanor before the Civil War; immediately after the war ended, the Alabama legislature – in a flurry of last-minute law-making – made such conduct a felony (and even criminalized the administration of an interracial marriage). But during Reconstruction, three Republicans were elected to the new state Supreme Court with the support of newly eligible black voters. And in 1872, in a decision that hinted at the progressive possibility that a new southern order might auger, the court ruled in *Burns v. State* that Alabama’s anti-miscegenation law failed to meet with either the equal protection clause outlined in the Civil War amendments or the legal rights extended to blacks by the Civil Rights Act of 1866, including the right to make contracts.⁷ (Eleven states repealed their intermarriage bans in the years immediately following the Civil

⁷ 48 Ala. 195 (1872). At issue in *Burns* was the appellant’s conviction for presiding over an interracial marriage.

War.)⁸ The *Burns* decision strongly protects the individual liberties of all Americans, regardless of race:

Marriage is a civil contract, and in that character alone is dealt with by the municipal law. The same right to make a contract as is enjoyed by white citizens, means the right to make any contract which a white citizen may make. [This anti-marriage] law intended to destroy the distinctions of race and color in respect to the rights secured by it. It did not aim to create merely an equality of the races in reference to each other. If so, laws prohibiting the races from suing each other, giving evidence for or against, or dealing with one another, would be permissible. The very excess to which such a construction would lead is conclusive against it.

But the backlash to *Burns* began almost immediately. As legal historian Jessica Roberts notes, Redemption-era resistance to its equal protection rationale made *Burns* the target of racialized justifications for the continued separation of blacks and whites in the social sphere. By 1877, with its decision in *Green v. State*, the Alabama Supreme Court had reversed itself, cunningly avoiding any reference to *Burns*' contract equality rationale.⁹ Instead, the state's police power to regulate marriage justified reinstating the state's ban on interracial relationships: "Who can estimate the evil of introducing into [the people's] intimate relations, elements so heterogeneous that they must naturally cause discord, shame, disruption of family circles and estrangement of kindred?"

The rhetoric of *Green* laid bare the anxiety at the heart of postbellum laws against interracial marriage, and the logic of the disparate punishments meted out to interracial couples such as Pace and Cox for their romantic transgressions. Marriage was characterized as more than merely contract; because of its ability to reshape the racial landscape of the country by sanctioning the amalgamation of the races, the state was justified in deploying its police power for the "common good." And the common good,

⁸ Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (Oxford University Press US, 2009).

⁹ 58 Ala. 190 (1877).

of course, meant no mixed-race babies. The rationale of the Alabama Supreme Court's decision in *Pace & Cox v. State* upholding the conviction of Pace and Cox makes plain that "[t]he evil tendency of the crime [of adultery or fornication] is greater when committed between persons of the two races...Its result may be the amalgamation of the two races, producing a mongrel population and a degraded civilization, the prevention of which is dictated by a sound policy affecting the highest interests of society and government."¹⁰

The decision of the United States Supreme Court to uphold the convictions of Pace and Cox concretized miscegenation law as a foundational component of a resurgent white supremacy at the close of the nineteenth century. As Peggy Pascoe describes, miscegenation law "rested on three animating fictions" that together allowed race-making to become a "routine aspect of American state-making."¹¹ First, as we see explicitly in the legal reasoning of *Pace v. Alabama*, what Pascoe calls the "constitutional fiction" of miscegenation law allowed courts to reason that because both partners in an interracial relationship were being punished equally, the unequal treatments of interracial relationships vis-à-vis same-race marriages could somehow comport with the constitutional requirements of equal protection. Indeed, the Court merely reproduces the reasoning from below that "the evil tendency of the crime of living in adultery or fornication is greater when it is committed between persons of the two races than between persons of the same race."¹² Not until *Loving v. Virginia* would the Supreme Court finally unwind this logic.

¹⁰ 69 Ala 231, 233 (1882).

¹¹ Pascoe, *What Comes Naturally*, 6.

¹² *Pace v. State*, 61 Ala. 231, 232 (1881).

Second, Pascoe describes the “scientific fiction” that racial purity “should be protected” by miscegenation law. The scientific racism of the second half of the nineteenth century impressed upon a receptive American audience the notion that racial mixing was not only unnatural but would have catastrophic results: myths about racial descent and mixed-race inferiority riddle the court decisions concerning interracial marriage, and forced judges to invoke stilted legal reasoning to square their desire for racial purity with the law’s abstract demand for formal equality. And finally, describing the widespread notion that such a thing as race could ever be legislated, Pascoe indicts the “popular fiction” that indicia of blood or ancestry or behavior marked any real racial identity at all. As Eva Saks writes, the “difference in blood” that formed the premise of miscegenation law “existed only as a figure of speech,” which is to say, as metaphor.¹³ The rhetoric of miscegenation “was not mimetic” – its logic, of course, had no fixed object of representation. Instead, as Saks demonstrates, the law could only feign mastery of the putative signifiers of race. And that, I argue, is the real anxiety at stake in the absurd legal and literary narratives of miscegenation: the inability to know where the progeny of racial mixing will turn up.

III. Passing’s Catachresis

On November 22, 1892, Homer A. Plessy, a passenger on a train of the East Louisiana Railroad Company, was arrested by a train conductor and charged with willfully disregarding Louisiana’s Separate Car Law after he “insisted upon going into and remaining in a compartment of a coach...which had been assigned to white

¹³ Eva Saks, “Representing Miscegenation Law,” *Raritan* 8, no. 2 (Fall 1988): 42.

passengers.”¹⁴ Three years later, in October 1895, Albion Tourgee submitted to the United States Supreme Court his brief appealing Plessy’s conviction for violating the Jim Crow train law. Plessy’s brief is best known for imagining a “colorblind” fourteenth amendment jurisprudence, a radical idea in the post-Reconstruction moment and one that Justice Harlan seized upon in his now-famous dissenting opinion. But in the brief’s concluding paragraphs Tourgee asks the justices to consider a far more transgressive scenario. “Suppose,” Tourgee suggested, “a member of this court, nay, suppose every member of it, by some mysterious dispensation of providence should wake to-morrow with a black skin and curly hair.” At least seven of the justices of the *Plessy* Court, as the majority opinion attests, seem to have been unable to imagine any such thing, as Tourgee presumably expected.¹⁵ The prose of the brief seems to revel in the gross impropriety of its counterfactual: “It is easy to imagine what would be the result, the indignation, the protests, the assertion of pure Caucasian ancestry...What humiliation, what rage would then fill the judicial mind! How would the resources of language not be taxed in objurgation!” Tourgee envisions not simply the objections of men of privilege rejected from their sanctified first class car, but the failure of reason. Two failures, in fact. First, these men of law, suddenly members of the “unfortunate race,” find their appeals to logic incapable of persuasion, unable to produce a “rational” result. This leads directly to a second, more profound, undoing: their confusion and anger and humiliation soon exceeds their mind’s capacity to represent it, to put into words the radical effacement under which

¹⁴ Petitioner’s Brief.

¹⁵ Indeed, Tourgee may very well have done damage to his client’s cause by even asking the court to indulge such a thought exercise; *Plessy*, we sometimes forget, was the culmination of nearly twenty years of Redemption politics, and its ruling was a foregone conclusion before the first word was argued to the court. (The New York Times only covered the decision under the summary heading “Railroad News.”)

they now suffer. And it's easy to wonder if perhaps Tourgee was scripting not the fictive protestations of judges offended at their unjust treatment as black men in a parallel universe, but instead the reaction of his readers on the bench: esteemed thinkers, the best jurists of their day, very much real and very much aggrieved at the pointed unraveling of their whiteness.

Tourgee's conceit ostensibly asks the court to put itself in Plessy's shoes, and to empathize with the plight of the black southerner, thirty years freed from slavery but still subject to the "assortment of the citizens on the line of race...intended to humiliate and degrade the former subject and dependent class." And yet Plessy was to all appearances a white man: an "octoroon...of mixed Caucasian and African blood, in the proportion of one-eighth black and seven-eighths Caucasian," handpicked by the New Orleans' "Citizens' Committee to Test the Constitutionality of the Separate Car Law." Indeed, the Citizens' Committee, which conspired with the railroad company to challenge the legality of "separate but equal," had to arrange to have Plessy identify himself as black to the conductor. The facts of the case at bar would seem to auger in favor of an altogether different hypothetical, that of a white sitting Supreme Court justice – unchanged in appearance – being accused of possessing the requisite "African blood" to preclude him from riding in the first-class car despite his white phenotype. Instead, Tourgee's counterfactual not-so-subtly inverts Plessy's reality. Where Plessy was to every appearance a white man capable of passing, Tourgee's fiction imagines what – to his audience – was an altogether unimaginable outcome, and one we can surmise the justices' understood as such: unthinkable, and indeed incommensurable with their

knowledges of themselves and indeed their ignorance of the indignities and very real violences to which black Southerners were subjected.

What, then, is the efficacy of Tourgee's hypothetical? Perhaps we might better understand it not as fantastic, but instead something much more commonplace at the close of the nineteenth century, and emblematic of precisely the stakes of any such interracial relationship during the *Plessy* era: as miscegenated progeny, black mirrors of white fathers. Indeed, the mixed-race child is the subject of myriad legal and literary texts in this moment, troubling the logic of a legal regime that both insists on naturalizing segregation while at the same time denying the reality – and ubiquity – of interracial relationships. It is in this moment, and perhaps only in this moment, that the unspoken contexts of *Plessy v. Ferguson* are made manifest: sexual relations between the races and the law's attachment to – and the impossibility of – ordering the world through race. Tourgee's alchemy – reproducing “black” Supreme Court justices from white ones – is best read as what no one participating in the legal proceedings dared admit in such explicit terms: that miscegenation represented a direct and immediate challenge to the system of legal apartheid. For Tourgee – and for black writers leveraging the same reality – the ability to impose upon the reader an impossible knowledge made the specter of the black baby a fantastically productive metaphor for white anxiety about the law's inability to police the color line.

The majority opinion in *Plessy* wonders – perhaps naively, or perhaps maliciously – why blacks understand themselves to be, or consent to being labeled as, an inferior race. Yet there is no discussion of what constitutes the “badges and incidents” of slavery, or how the equal protection and due process of law might protect against the continuing

sexual violence and nonsensical divinations of the color line. And unsurprisingly, it does not reference Tourgee's hypothetical, or the specter of the black baby born of seemingly white parents. Stephen Best's study of the aesthetics of chattel slavery, however, links the "logical, temporal, and cognitive constraints" of the jurisprudence of equal protection in the wake of the Reconstruction Amendments with a poetics of "identity exchange" in the legal pleadings, literature and film of the turn of the century, and reads the Tourgee hypothetical as such.¹⁶ Best argues that in the counterfactual, the doctrine of separate but equal "arguably encounters its correlate legal and logical form"; that is, in the oxymoronic character of intentionally imagining something as that which it is not – Jim Crow train cars as interchangeable with white, first-class cars – the *Plessy* majority implicitly acknowledges the impossibility that the law faces in accommodating its own racialized attachments and desires. The counterfactual, Best continues, "replicates the deepest structure of metaphor." Metaphor insists on a "false identity" between its terms of comparison, leveraging the "frisson" between "A is B" and "A is *not* B" to reinforce a point of commonality otherwise lost in the "radically different contexts in which [the metaphor's terms] are normally embedded."¹⁷

Passing novels do just this, of course. Passing is its own peculiar kind of counterfactual: the intentional misnaming of a social identity. As such, Best suggests passing is a kind of catachresis, the intentional use of a word in a way that is not correct. Catachresis describes an unnamable identity, a rhetorical gesture that Nancy Bentley has noted as present in the insistence of kinship that marks many of the texts of the African

¹⁶ Best, *The Fugitive's Properties: Law and the Poetics of Possession* 218.

¹⁷ *Ibid*, 224.

American literary tradition despite the distortion of black family structure by centuries of legal exclusion.¹⁸ Catachresis, as Bentley describes it,

mark[s] its distance from conventional denotations of proper usage, [and] open[s] a gap or space of knowing for knowledge that lies outside normative definitions... wherein strained or illogical language is necessary to name that which has no name, supplying words for a truth or experience lying outside the intelligibility of existing linguistic norms.

This kind of incommensurability – the passer as a figure consisting of two dueling identities, each unintelligible to the other – makes the passing text (literary, legal or otherwise) the ideal lens through which to view the absurd double logics of miscegenation law.

IV. George Schuyler's Future American

In 1924, Leonard Kip Rhinelander, a 21-year old New York socialite, married Alice Jones, a former domestic servant, after a three-year courtship. The marriage was a boon to the tabloid papers in the city, and when rumors surfaced just after the ceremony that Jones was the daughter of a black man, a massive public spectacle ensued, fueled by the possibility that Alice had hid her mixed-race identity from her husband. (Many believe that Leonard's father, who opposed his son's unconventional marriage, was the source of the allegations.) Leonard appears initially to have stood behind his new wife, but soon the tide of publicity seemed to overwhelm him. Only a month after their nuptials he filed for an annulment, alleging that Alice had told him she was white before their wedding even though she had "colored blood in her veins."¹⁹ Though New York state had no law prohibiting interracial marriage (and is in fact one of the few to never

¹⁸ Bentley, "The Fourth Dimension," 276-77.

¹⁹ Elizabeth M. Smith-Pryor, *Property Rites: The Rhinelander Trial, Passing, and the Protection of Whiteness* (The University of North Carolina Press, 2009), 5.

have had one), Leonard alleged that Alice had withheld a “material fact” that would have stopped him from marrying Alice in the first place if he’d been aware of it. She denied all of Leonard’s allegations and fought to hold their marriage together. The New York court that heard their annulment trial finally ruled in Alice’s favor, and though she would eventually consent to a divorce, she would be buried with “Alice Rhineland” on her headstone.

To the extent that it is known at all, the Rhineland affair is remembered for a sensational moment in the annulment trial when the court ordered Alice into the judge’s chambers and directed her to disrobe in the presence of counsel and the jury. It was adduced at testimony by both parties that Alice and Leonard had had sexual relations before they entered into marriage. Alice’s own counsel moved that the court endeavor to determine whether Leonard’s knowledge of the color of Alice’s skin – her calves, her back, her breasts, her nipples – constituted knowledge of her race; that is, did Leonard “know,” notwithstanding whether Alice told him, that she was of mixed-race ancestry? And would the jury believe that he should have, notwithstanding his protests to the contrary? Leonard’s lawyer was shocked at the absurdity of the request: “You go through the farce of exposing her body and asking him if she is the girl. What a ridiculous thing that is!”

Not surprisingly, the examination revealed little about Alice’s “true” racial identity. Nor did an examination of Alice’s conduct and customs. (In *Plessy*, the Supreme Court recognized that each of the states had its own answer to the question of how to determine whether a person was “colored [or] white.” Blood was the most common method, followed by custom, and both produced widely disparate results from

one state to the next.)²⁰ The jury was persuaded by the end of the trial that Leonard had not been tricked, or at least should not have been, and the marriage was preserved. But the *Rhineland* case reveals the absurd lengths that the law would reach to reinforce the “boundaries of race” in the face of fears of a “mongrelized” America, and “symbolized the chaotic future that awaited Americans if racial lines could not be clearly drawn.”²¹

That “chaotic future” highlighted the fiction evident in cases like *Rhineland* that the law somehow *could* police the reproduction of racial identity. And perhaps nowhere are representations of that future revealed more fully than in the literature of the Harlem Renaissance. Critic Sonnet Retman has recently suggested that “[i]f we take into account the satire of the Harlem Renaissance and its often absurdist and violent truth claims, an alternative genealogy of that period emerges,” one that foregrounds the “vagaries of race as commodity in the marketplace.”²² And while the notion of “whiteness as property” is certainly not new, the recognition that the ironies of the *Plessy* era are underread in texts of the Harlem Renaissance is not widely discussed.²³ In 1931, George S. Schuyler published perhaps the most comprehensive satire in the history of the African American literary tradition.²⁴ Skewering the racial logic that privileged white skin over black, Schuyler’s novel *Black No More: Being an Account of the Strange and Wonderful Workings of Science in the Land of the Free, A.D. 1933-1940* invents a machine that

²⁰ *Plessy*, 163 U.S. 537, 552 (1896).

²¹ Smith-Pryor, *Property Rites*, 5.

²² Sonnet H. Retman, “Black No More: George Schuyler and Racial Capitalism,” *PMLA* 123.5 (2008).

²³ As texts like Nella Larsen’s *Quicksand* and Carl Van Vechten’s *Nigger Heaven* demonstrate, the legal and political context of the Harlem Renaissance enabled an occasional aestheticized ironic sensibility.

²⁴ *Black No More* is also notable in that it assumes both a classical generic form – satire – and a radically new one: it is acknowledged to be the first work of science fiction by an African American.

undoes the phenotypical markers of race: it turns black skin white.²⁵ If the Rhinelander affair embodies the “conception of the race-marked body as a readable text which represented race and, upon fulfillment of the relevant conditions, crime,”²⁶ then Schuyler’s novel represents the racialized body as an enigma. The objects of Schuyler’s satire include, notably, leaders of both black civic movements and white supremacist organizations, who in Schuyler’s uncharitable view have profited the most from the country’s racial apartheid and therefore have the most to lose. But beyond these comic portrayals of public figures prominent in the competing racial discourses of the early twentieth century, Schuyler takes bemused aim at broader targets. Most obvious, perhaps, is his attack on the commodification of the logic of racial difference writ small and large: *Black No More* satirizes the niche commercial markets for skin lighteners and hair straighteners fashionable in Harlem and on the pages of many black publications in the 1920s and 30s; it also targets the unwillingness of white labor to put class interests above racial ones, paradoxically putting a wage differential on the value of whiteness. But embedded in Schuyler’s novel is an equally insistent critique of the law’s complicity not only in perpetuating the value of whiteness as property in the way the *Plessy* decision enables,²⁷ but also in fostering white anxiety around miscegenation. And it is in the critique of the logical absurdity of the law’s policing of the colorline that Schuyler’s conceit is most devastating. In both its (re)production of, and resistance to, the miscegenated body, the law caricatures its own professions of formal equality and racial

²⁵ George S. Schuyler, *Black No More* (New York: Modern Library, 1999). Subsequent citations to *Black No More* in this chapter are included in parentheses in text.

²⁶ Retman, “Black No More: George Schuyler and Racial Capitalism.”

²⁷ See Cheryl I. Harris, “Whiteness as Property,” *Harvard Law Review* 106, no. 8 (June 1993), for a fuller discussion of the implications of *Plessy* for the commodification of whiteness.

freedom. Not surprisingly, then, the figure through which Schuyler levels his *reductio ad absurdum* is the unlikely black baby born to white parents.

Black No More tells the story of Max Disher, a 1930s Harlem charmer who is the first patient – Schuyler might say customer – of Dr. Junius Crookman, the discoverer of a revolutionary technology that undoes black skin. Recognizing a commercial opportunity of magnificent proportions, Crookman founds Black No More, Inc., a “biotech” startup, of sorts, and collects fifty dollars each from the thousands and thousands of those who possess the “negroid features” and “ebony” phenotype (3) that signal racial difference in 1930s America. Max’s “change” is successful and he quickly passes into whiteness, infiltrating a white-supremacist group in the South – not to expose its members or to uncover the horrors of lynching, à la Walter White, but instead to profit on the anxiety of whites by selling his (insider) knowledge about how to respond to the “crisis” of the pollution of America’s “pure Anglo-Saxon” bloodlines. So successful is Dr. Crookman’s formula that dozens of sanitariums are opened and millions of dollars collected; soon few “unchanged” blacks remain in the United States, and white apprehension about the ability to discern “true” racial identity reaches a fever pitch. By the end of the novel – because those who’ve under the process seem almost “too” white – the signifiers of racial purity become inverted, and dark skin is soon privileged as the mark of racial purity.

George Schuyler, if asked to describe himself, would surely have answered “black and conservative,” which, unsurprisingly, is also the title of his 1966 autobiography. Yet Schuyler’s embrace of anti-communism and resistance to the civil rights movement was a sharp turn away from the progressive race politics of his early career, and it would seem that Schuyler’s iconoclastic views at the end of his life are responsible for his current

critical neglect. A friend and acolyte of H.L. Mencken, Schuyler was a biting social critic and satirist who wrote thousands of articles and hundreds of essays for left-leaning black newspapers the *Messenger* and *Pittsburg Courier* beginning in 1923; Schuyler had even joined the socialist party in 1921. As Gene Jarrett describes him, Schuyler, more than any other black cultural critic or writer during the 1920s and 30s, “sought to undermine the protocols of racialism, cultural pluralism, and racial realism that [Alain] Locke promoted in New Negro modernism and during the Harlem Renaissance.”²⁸ A contrarian by nature, Schuyler resisted the renewed interest in black-authored works during the Harlem Renaissance, and worried that the insistence on such a thing as a “black aesthetic” shared a central premise with segregationists and even white supremacists: an essentializing belief in racial difference. His very public 1926 debate with Langston Hughes in the pages of the *Nation* magazine made this point clear: Schuyler’s essay “The Negro-Art Hokum” rejected the notion that black writers and artists collectively produced such a thing as “Negro art,” famously observing that the “Aframerican is merely a lampblack Anglo-Saxon,” shaped by the same political and cultural forces as anyone else living in America.²⁹ Hughes’ essay in response – “The Negro Artist and the Racial Mountain” – rejected what came to be understood as the thrust of Schuyler’s argument, “this urge within the race toward whiteness, the desire to

²⁸ Gene Andrew Jarrett, *Deans And Truants: Race And Realism in African American Literature* (University of Pennsylvania Press, 2007).

²⁹ Jarrett argues that *Black No More* extends Schuyler’s argument in “The Negro-Art Hokum” that there is no such thing as “Aframerican” literature, only “national or sectional literature” Ibid.

pour racial individuality into the mold of American standardization, and to be as little Negro and as much American as possible.”³⁰

A careful reading of Schuyler’s earlier work, however, would seem to undo the claim that, at least by the time of *Black No More*’s 1931 publication, Schuyler was aspiring to whiteness. In 1927, for example, Schuyler published in *Ebony and Topaz* the essay “Our Greatest Gift to America,” which Melvin B. Tolson described as the “greatest satire on the race problem in this country that has ever been written.”³¹ There, Schuyler uses a gentle critique of the “vogue” interest in all things Negro to open up a larger attack of black investment in whiteness. He professes that there is little to admire in the “peckerwoods,” whites “bored to death with their uninteresting lives [who] turn to the crows for inspiration and entertainment.”³² And Schuyler also lambasts “black scribblers [and] race orators” who trade their sudden celebrity for the trappings of whiteness: “the luxury of four room apartments, expensive radios, Chickering pianos, Bond Street habiliments, canvas-back duck, pre-war Scotch and high yellow mistresses.” Notwithstanding Hughes’ intimation that Schuyler is an assimilationist, in this essay we find both white and black Americans skewered for their mutual fallibility. The “masses of white citizens[, d]escendants of convicts, serfs, and half-wits,” are continually “assured of their superiority to all other races” by every cultural and legal and political formation in the United States: schools, theaters, books and magazines, labor organizations, courts, the Klan. And blacks flatter them by imitation, Schuyler argues,

³⁰ Langston Hughes, “The Negro Artist and the Racial Mountain,” *Nation* (June 23, 1926).

³¹ Melvin B. Tolson, “George S. Schuyler,” *The American Mercury* 28 (March 1933): 373.

³² George S. Schuyler, “Our Greatest Gift to America,” in *Voices from the Harlem Renaissance*, ed. Nathan Irvin Huggins (Oxford University Press, 1995), 361–365.

reproducing a color caste system by aspiring to “a pink color” and straight hair.³³

But while Schuyler seems uninterested in crossing over himself, certainly *Black No More* has as its primary focus the overwhelming anxiety that marks the first three decades of the twentieth century to secure whiteness “as a personal and national trait.”³⁴ We might understand “Our Greatest Gift to America,” then, as a kind of abstract for the argument Schuyler advances in *Black No More*, which asks again and again what constitutes an ostensible racial and cultural identity, how whiteness is (re)produced over and against a purported black racial difference, and what are the absurd consequences for – and produced by – cultural and political institutions that work to maintain the distinction. Of course, a black desire to be understood as white can signal many things.

As Jaen Kuenz describes the novel,

the desire for whiteness is made analogous to the hope for the kind of participation in the cultural, economic, and political affairs of the nation denied by definition in the racial discourse of the period; in short, wanting to be white means wanting to be a free and democratic citizen of the nation, to be included in the conceptual realm of “America,” access to which in the novel’s present is seemingly, and in many ways practically, limited to whites alone.³⁵

For Max, whiteness signals, above all, access to white women. Max’s path to whiteness begins when his romantic designs on a dashing white woman named Helen are rebuffed after they meet at an uptown nightclub on New Year’s Eve. From this moment, Max declares it his life’s ambition to marry the “tall, titian-haired girl who seemingly had

³³ Ibid, 365.

³⁴ Jane Kuenz, “American Racial Discourse, 1900-1930: Schuyler’s *Black No More*,” *Novel* 30.2: 185.

³⁵ Kuenz goes on to note that Schuyler’s “knack in *Black No More* for occupying both sides of his argument with Hughes – on the one hand representing race as a cultural construction while on the other showing the progressive loss of something looking very much like ‘black authenticity’ – is enabled by just this elision of whiteness in the United States with the United States itself” (188).

dropped from heaven or the front cover of a magazine” (5). Juxtaposing divine (white) beauty with the conventions of the cover girl, Schuyler begins *Black No More* by highlighting the sad fact that black Harlem had been brainwashed by “America’s constant reiteration of the superiority of whiteness” (Preface, xix). And yet Schuyler is at pains to emphasize the irrationality, the illogic, and the very absurdity of racial convention even in marking Helen as the archetypal fair-haired maiden: upon her arrival at the Honky Tonk Club, Max and his sidekick Bunny cannot decipher whether she’s a “high yallah” or a “cracker” (6). Unsullied whiteness reads as a kind of holy grail, but one recognized – on the lower frequencies, at least – as elusive, mythic, ephemeral. Max’s confidence – in both this scene and throughout the novel – is misleading, of course. Again and again in *Black No More*, Schuyler mocks the logic of racial caste and the technologies of racial discovery that undergird the law’s efforts to police the color line. The satire reaches absurd heights in its treatment of the anxieties of miscegenation. Max dreams of a successful courtship of Helen, which ends with him “sitting beside her on a golden throne while millions of manacled white slaves prostrated themselves before him” (9). But that is followed immediately by “a nightmare of grim, gray men with shotguns, baying hounds, a heap of gasoline-soaked faggots and screeching, fanatical mob.” Only in Dr. Crookman’s machine – a “sure way to turn darkies white” – does Max recognize a way to render his race illegible: “No more Jim Crow. No more insults. As a white man he could go anywhere, be anything he wanted to be, do most anything he wanted to do, be a free man at last (10). The Black No More machine enacts precisely the catachresis of Tourgee’s *Plessy* counterfactual: Schuyler has Max inhabit a false identity, and a literal misnaming (Max becomes Matt), that reproduces the absurdity of the colorline. The

progeny of Max's miscegenated relationship – the inevitable black child that Helen will bear for him – mocks the inability of the law to police both the literal and symbolic orders of Jim Crow.

Schuyler's protagonist vacillates between a seemingly earnest striving for whiteness – embracing the “feeling of absolute freedom and sureness” that Max feels as he strides through Times Square – with a more insidious motivation, one that Schuyler employs as a running gag throughout the novel. Now that his blackness is illegible, Max is free to chase white women: to desire them, to court them, to sleep with them, to marry them. And notwithstanding the many tectonic shifts for whiteness that accompany Dr. Crookman's miracle invention, it is the anxiety of Schuyler's “ofay” characters around the prospect of miscegenation that most pointedly undermine racial difference. Reporters besiege Max after he emerges from the Black No More sanitarium, and their first questions after the procedure are about whether he will marry a white woman (20). He immediately tries to seduce Sybil Smith, a white reporter who interviews him and is also keen to write a story about being seduced by a black man-turned-white (21). Visiting a midtown cabaret, Max revels in the fact that she is the “only one in the place that'll know I'm a Negro” (21). Schuyler's conceit inverts the logic of Amy Robinson's formulation of the “passing triangle,” where every racial pass involves three figures: the passer, the dupe, and the “in-group spectator,” someone of the same race who recognizes in the passer the essence of their identity but keeps the secret, enabling the pass. Here, Sybil is notably what we might call an “out-group spectator.” Though she is complicit in the trickery of Max's new identity, she – like many to come in the novel – has both a financial investment in, and an affective attachment to, his newfound whiteness.

Black No More mocks this reproduction of (a false) whiteness. And notwithstanding Schuyler's earlier insistence in "The Negro-Art Hokum" that there exists no "essential" blackness, it is precisely Max's racialized character that makes him so attractive again and again to the whites – both men and women – that he seduces. Blacks, in contradistinction to white culture, are revealed to be joyful, restrained and refined, even sensuous, easygoing though not light-hearted about the seriousness of their political predicament; Max observes whites, on the other hand, to be "noisy, awkward, inelegant" (23), seeking out the company of uptown blacks, desiring their nightlife and frivolity but unable somehow to assimilate it. Reading these intimate moments between blacks and white, it is difficult not to see in them a kind of satiric revision of a (white) miscegenation narrative. Where Plessy or Pace or the Rhinelander affair produce legal narratives of white preservation, *Black No More* describes failed white affective attachments to blackness: white characters romantically attached not to a deceitful passing figure reproducing whiteness, but to blacks who've crossed the colorline in plain sight, an open secret of sorts. The miscegenated unions in *Black No More* belie the law's insistence that consenting interracial sexual relationships are somehow corrupting (as in *Pace*), that social relations between black and whites are necessarily unequal (as in *Plessy*), and that whites are duped into relationships with blacks (as in *Rhinelander*). The efficacy of Schuyler's satire lies in undoing the reproduction of whiteness as a privileged legal subject position: where miscegenation jurisprudence unfailingly managed to consolidate the power of racial difference for white hegemony, *Black No More's* narrative of miscegenation ironically and inevitably (re)produces blackness.

Dr. Crookman's Black No More machine ensures that the progeny from the

sexual relationships enabled by his new race paradigm can only be black. “But is the transformation transferred to the offspring?” is the question immediately on every reporter’s mind at the announcement of his invention. “As yet,” Crookman tells them, “I have discovered no way to accomplish anything so revolutionary but I am able to transform a black infant to a white one in twenty-four hours” (12). Crookman and his partners understand immediately that “[t]here’ll be hell to pay when you whiten up a lot o’ these darkies and them mulatto babies start appearing here and there” (13). And of course there is. Strong editorials begin appearing in the papers, mostly in the South, decrying the unwitting participation of white fathers in their daughters’ undoing:

THE OFFSPRING OF THESE WHITENED NEGROES WILL BE NEGROES!
This means that your daughter, having married a supposed white man, may find herself with a black baby! Will the proud white men of the Southland so far forget their traditions as to remain idle while this devilish work is going on? (32)

Here Schuyler invokes perhaps the most infamous of race-baiting commentaries, Rebecca Latimer Felton’s speech to the Georgia Agricultural Society in 1897, in which she pronounced – in the most inflammatory terms – that the greatest danger facing young white women were black rapists, and that “if it needs lynching to protect woman’s dearest possession from the ravening human beasts[,] then I say lynch, a thousand times a week if necessary.” Alexander Manly, a prominent black newspaperman and editor of the North Carolina *Wilmington Daily Record*, responded in print in 1898, defending the actions of black men and noting by way of explanation that most interracial relationships, in his experience, were the result of sexual advances by white women. On November 10, 1898, Wilmington erupted in racial violence, its mostly black political leadership was ejected from office, and an unknown number of blacks were killed by marauding whites; Manly’s office was burned to the ground and he barely escaped the city with his life.

Schuyler slyly intimates here that the racial mixing that caused so much consternation in the minds of white southerners at the turn of the century would continue unabated, though this time the racially-motivated violence that will conclude Schuyler's story is, ironically, white-on-white.³⁶

Critic Harryette Mullen suggests that black anxiety about interracial relationships often results in asexual technologies of miscegenation in racial passing narratives, such as Schuyler's *Black No More* machine, which allows for black assimilation without physical consummation.³⁷ Miscegenation without sex, Mullen argues, gives blacks the chance to assume the cultural and political privilege of whiteness without the threat of retributive violence. But Schuyler notably marks sex at the center of Max's move into whiteness. Assuming the alias Matthew Fisher, he journeys to Atlanta in search of Helen. To his surprise, he finds life as a white man "dull" (43); searching for the "happy-go-lucky, jovial good-fellowship of the Negroes," he discovers that the only black people who will pay him any mind are prostitutes. And while *Black No More* spends considerable energy narrating the "unreasoning and illogical color prejudice" of white southerners, Schuyler's implication that black women are no strangers to the sexual company of white men suggests that the uproar over interracial unions is a false one. What is authentic, according to Schuyler's conceit, is the anxiety that these relationships will no longer be policed by a legally-enforced colorline, and indeed that the children of such relationships will reveal them to be commonplace. Max finally finds Helen at a meeting of the Knights of Nordica, a newly-minted white supremacist organization of which her father,

³⁶ Charles W. Chesnutt, *The Marrow of Tradition*, ed. Nancy Bentley and Sandra Gunning, 1st ed. (Bedford/St. Martin's, 2002), 405-07.

³⁷ Harryette Mullen, "Optic White: Blackness and the Production of Whiteness," *Diacritics* 24.2/3 (July 1, 1994): 77.

the Reverend Henry Givens, was founder and Imperial Grand Wizard. Having sniffed out the opportunity both to win Helen's hand and a few dollars, he professes a membership in the New York Anthropological Society and offers to speak at Rev. Givens' first meeting on the "superior intellectual and moral qualities" of white skin and the dangerous implications of Black-No-More, Incorporated, for the sisters and daughters of the Knights in attendance.³⁸ Schuyler's diction here mocks the membership's faith in the "Word of God, the sanctity of womanhood and the purity of the white race," as Max's vigorous speechmaking seduces his listeners, their rapturous applause reminiscent of the "religious orgies of the more ignorant Negroes" (55). Emboldened by the sexual energy of his audience, Max professes his interest in Helen to Rev. Givens, whose enthusiastic response renders him as a salesman: "'Heh! Heh! Heh!' chuckled the Wizard, rubbing his stubbly chin... 'Like to meet her?'" (56) Schuyler turns Helen's father into little more than a pimp, his membership into a throbbing mass, each desperate to consummate a relationship with the once-black Matthew Fisher.

Max, of course, is complicit – even duplicitous – in the (re)production of these interracial sexual relationships. And when Max finally wins Helen's hand in marriage, the stage is set for Schuyler to deploy the literal progeny of these miscegenated relationships, mocking America's ineffectual legal and social and political efforts to "maintain" the color line. Babies will come, *Black No More* assures us, notwithstanding the myriad laws aimed at preventing them. The legal landscape narrated by Schuyler here is grounded in historical reality, and yet still reads as part of the satire that frames

³⁸ "Bernard Bell's observation that the plot of *Black No More* and Max's triumph in particular illustrate Schuyler's ambivalent admiration for the "successful manipulation of color prejudice and capitalism" on the part of the novel's heroes, white and black (144)"

the novel. A report prepared by the presidential commission assigned to investigate the legality of Black-No-More machines determines

that it was illegal in most of the country for pure whites and persons of Negro ancestry to intermarry but that it was difficult to detect fraud because of collusion. As a remedy the commission recommended stricter observance of the law, minor changes in the marriage laws, the organization of special matrimonial courts with trained genealogists attached to each, better equipped judges, more competent district attorneys, the strengthening of the Mann Act, the abolition of the road house, the closer supervision of dance halls, a stricter censorship on books and moving pictures and government control of cabarets (118).

As decades of legally-sanctioned racial discrimination have made plain, social custom trumps law, and no court, it seems, can stem the coming tide of babies, proof of the law's ineffectuality.

Not long after treating its first customers, the Black-No-More machine is quickly responsible for accounts that begin to appear in papers across the country, describing the revelatory births of black babies to seemingly white parents: "WEALTHY WHITE GIRL HAS NEGRO BABY," cry the headlines (88). And Schuyler demands that we understand this to be nothing new: "For the first time the prevalence of sexual promiscuity [between the races] was brought home to the thinking people of American. Hospital authorities and physicians had know about it in a general way but it had been unknown to the public." Crookman's race-erasing technology had given cover to the longstanding existence of interracial sexual relationships, and given the lie to the law's absurd insistence that it could police the intermixing of the races. Soon Black-No-More "lying-in" hospitals begin to crop up, available for prospective mothers to have their (potentially black) babies and turn them white, if necessary. Helen's predictable pregnancy imperils Max's whiteness and its accoutrements: property, wealth, sexual relations with a beautiful white woman (by this logic, a kind of property and wealth in its

own right).

And just as in *Autobiography of an Ex-colored Man*, it is a racial identity whose effacement is at stake. With Helen pregnant, Max induces a miscarriage – by burning down their home and throwing Helen into a panic – to prevent the arrival of a dark-skinned baby. A second pregnancy proves more difficult to manage, and when Helen’s labor begins Max awaits the inevitable exposure of his past identity, “like a young soldier about to leave his trench to face a baptism of machine gun fire” (150). And indeed, their son is born dark brown and cherubic, what the doctor charitably calls a “reversion to type if any such thing had ever been proved” (150). He offers to “get rid” of the baby and keep the news to himself: “Of course, it’s all in the day’s work for me, you know. I’ve had plenty of cases like this in Atlanta even before the disappearance of the Negroes” (151). Schuyler’s modest proposal strikes even Max as short-sighted, for “[s]urely one couldn’t go on murdering one’s children” (151). Borrowing from Swift’s Juvenalian satire, Schuyler here mocks the absurdist consequences of miscegenation law, but also links them with the freedom from “petty insults and cheap discriminations” that drew Max across the color line in the first place. Their black baby confirms the inability of racial technologies to ensure the reproduction of whiteness.

Max’s unlikely salvation arrives in the nick of time. Reverend Givens arrives at the hospital with explosive news: a secret report commissioned by the Democratic Party ironically reveals that nearly all the race-baiting leaders of the day possess “Negro ancestry...a hidden Negro drop of blood in [their] vein[s]” (153). Helen is distraught, and begs Max to forgive her for “disgracing” their family. But unlike the protagonist in *Autobiography of an Ex-Colored Man*, Max confesses his own past and admits that “I’m

the guilty one” (154). In a story that requires a constant suspension of disbelief, perhaps nothing is less likely than Helen’s acceptance of Max’s racial identity – though the fact that Schuyler finally offers an earnest appraisal of the era’s racial politics through the character of Helen comes close. Max’s entire trajectory in the novel is premised in Helen’s resolute racism, and yet Schuyler finally has her pronounce that “all talk of race and color was damned foolishness” (154). Echoing Tourgee’s counterfactual in *Plessy*, even Rev. Givens sees the light, admitting that “we’re all niggers now” (155).

VI. Conclusion

Black No More refuses to surrender its satirical form, however, and its conclusion – the darkest moment of the novel – reminds us of just what it really means to be black in America during Jim Crow. Arthur Snobbcraft and Dr. Samuel Buggerie, the Vice Presidential nominee of the racist wing of the Democratic Party and his dutiful policy eugenics policy director, respectfully, also find themselves “disgraced” by the revelation of impurities in their family trees. They flee from their redoubts in Washington, D.C., and eventually board a private plane headed for Mexico.³⁹ But their plane runs out of fuel and they make it only as far as Meridian, Mississippi. Thinking that the news of their black ancestry has preceded them and worried that they will be recognized, Snobbcraft and Buggerie “darken up” with the aid of that old minstrelsy standby, shoe polish, and make their way toward town. They have the misfortune, however, of being black in a space where it remains meaningful: unbeknownst to them, Meridian is a rural town peopled by precisely the voters at whom the race-baiters had aimed their populist

³⁹ In the escape from the United States, Schuyler also offers *Black No More* as anti-utopian, with racial assimilation as an aspiration, but where white are unworthy of imitation. John M. Reilly, “The Black Anti-Utopia,” *Black American Literature Forum* 12.3 (Fall 1978), 107-08.

pitch. Meridian is proud of its record of violently evicting its few black denizens, by lynching if necessary, though the Black-No-More machine has made finding blacks to lynch nearly impossible. Snobbcraft and Buggerie stumble upon an evangelical revival in the woods, a reverie hoping for the opportunity to prove that “true” whites remain the privileged race in the South. Their prayers answered, the townspeople jump at their chance, seizing the two men and beginning to enact the ritual violence. As their clothes are torn off to reveal pale skins, Snobbcraft and Buggerie are able to convince the mob they are actually white men. But news of the Democratic leaders’ “compromised” genealogies has spread even to Meridian, and the town gets its lynching at last. Schuyler’s contribution to the canon of literary lynchings signifies once again on Johnson’s *Autobiography*, putting both the reader (and the “whitened Negroes” who witness it) in the absurd position of both rooting for and detesting it. Extralegal but also sanctioned by “time-honored custom” (175), the lynchings depicted in *Black No More* are portrayed as the inevitable consequence of the law’s insistence on misnaming the civic status of blacks. The scene concludes: “AND SO ON AND SO ON,” marking the novel’s pessimism about the possibility of undoing America’s cynical investment in the double character of the law while also signaling the possibility of a violent denouement in the wake of the collapse of its false logic.

In its last scenes, Schuyler’s novel combines each of its constituent components – white anxiety about miscegenation, satire, and the reproduction of the color line – both to indict the absurdity of the legal regime that defines the *Plessy* era and to undo the logic of its reproduction by replicating it again and again. *Black No More*, in other words, functions as an extended *reductio ad absurdum*: the legal doctrine of “separate but equal”

sets the novel's characters on a trajectory that ineluctably draws out the fallacies of the many "technologies" of racial divination, with finally black babies being born of white parents and the white leaders of the United States being lynched on account of their blackness. Schuyler is remembered as a racial conservative whose political essays advocated assimilation amidst the high-stakes racial posturing of the Cold War. But *Black No More* reveals a different Schuyler, one who leveraged the fundamental incommensurability between the racialized black subject and whites anxious to sediment that difference, and embraced the narrative absurdity of the passing genre as the mode for his critique.

Chapter Five
Was Blind but Now I See:
Colorblind Justice and The Unmaking of Race

ABSTRACT

This chapter takes up three recent novels – Toni Morrison’s *Paradise* (1997), Richard Powers’ *The Time of Our Singing* (2003), and Edward Jones’ *The Known World* (2004) – texts whose racial formalisms belie a twenty-first century critique of the law’s own colorblindness. It surely is no coincidence that in a newly “post-racial” moment, in the face of the celebratory rhetoric surrounding the election of our first black president, these three texts narrate the failure of colorblind experiments. What are these novels telling us about what is lost to the law – what the law cannot see – when it pledges fidelity to colorblindness?

I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin, but by the content of their character.

Dr. Martin Luther King, Jr.¹

Right he had, in the abstract; in the concrete, none. Justice would not hear his voice. The law was still color-blinded by the past.

Albion Tourgée²

In order to get beyond racism, we must first take account of race.

Justice Blackmon³

I. Introduction

W.E.B. Du Bois declared in 1903 that “the problem of the twentieth century is the problem of the color-line.”⁴ While Du Bois was surely right that the demarcation of race would be central to the American experience over the next hundred years, the irrepressibility of race itself has recently begun to yield to another permutation of Du Bois’s prediction: the question of whether race itself *should* matter. The pervasiveness of “color-blindness” – a universalism that simply refuses to consider the history of such a thing as race – is perhaps the most prominent feature of contemporary discourses about race. The desirability of “beyond-ing” race finds its concomitant in the renewed critical influence of interpretive formalisms generally: rules of interpretation that constrain readers from looking outside texts – at the historical context and the social realities of a particular moment – to divine meaning. This trend is particularly evident in the recent

¹ Martin Luther King, *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James M. Washington, Reprint. (New York: Harper Collins, 1990) 219.

² Albion W. Tourgée, *Bricks Without Straw* (New York: Fords, Howard, & Hulbert, 1880), 35.

³ *Bakke v. University of California*, 438 U.S. 268, 407 (1978) (Blackmun, J.).

⁴ W.E.B. Du Bois, *The Souls of Black Folk*, Penguin Books, New York: 1996, 13.

rhetoric of the Supreme Court. From questions of federalism to abortion, from the rules of contracts to those governing government confiscation of private property, the language of formal rights has assumed an unexpected primacy in the reasoning of the Rehnquist and Roberts Courts, not least of all in their reliance on the rhetoric of individual liberty to narrowly interpret the constitutionality of legislation implicating race. And as the recent arguments in *Fisher v. University of Texas at Austin* show,⁵ the matter of how to interpret the law's obligation – or willingness – to consider race in disputes over social justice and policy remains very much an open question.

One of the more conspicuous aspects of the revival of interpretive formalisms is the ascendance of racial formalisms in both the rhetoric of the Supreme Court and contemporary critical theory more generally. Rather than acknowledging the United States' history of racial violence and discrimination, many now argue that we should be “blind” to race. Jurists and critical theorists increasingly pronounce race to be outside the bounds of legal and intellectual relevance, and the historical fact of institutionalized racism is put to the side. Ken Warren's *What Was African American Literature?* (2011) occupies a central place in the argument over how race factors into contemporary critical practice. Warren's thesis is that because what we now call “African American literature” was born out of a socio-legal-political crisis for blacks as to how to respond to the age of constitutionally-sanctioned racial discrimination known as Jim Crow, the undoing of that legal regime and its attendant “problem of the color line” means that today's texts written

⁵ Docket No. 11-345 (argued October 10, 2012). *Fisher v. University of Texas at Austin* raises nearly identical questions about race and higher education as those raised in *Grutter v. Bollinger*, 539 U.S. 306 (2003), and *Regents of the University of California v. Bakke*, 438 U.S. 265 (1978), before it: namely, whether the Court's decisions interpreting the Fourteenth Amendment's Equal Protection and Due Process clauses permit the use of race in admissions processes at institutions of higher education.

by African American authors no longer confront that same problem, and as such can no longer be a part of that earlier literary tradition. Warren argues that texts by black authors written since the Supreme Court's 1954 decision in *Brown v. Board of Education* lack any unifying racial theme or form, and that as the political impetus behind "African American literature" as a genre fell away, so too has the efficacy of reading such texts through the lens of race. Read in the context of Warren's claim, the argument of this chapter is quite simple: by reading *without* attention to race, we – literary and legal critics alike – lose an extraordinary insight into the histories and identities that shape the narratives we tell about ourselves and our nation.⁶

The trope of blindness – in both law and literature – has an ambivalent history. It sometimes represents a larger failure to see, to apprehend a particular reality or truth, but also sometimes signals what Du Bois might call a kind of "second sight." In Greek tragedies blindness was often punishment from the gods, but also a corresponding gift for artistic genius. From Sophocles to Ellison, the figure of the blind protagonist is both afflicted and blessed: limited in his vision but also unsullied by prejudice, unable to truly see but sometimes possessing a greater truth. The three novels at the heart of this chapter – Toni Morrison's *Paradise* (1997), Richard Powers' *The Time of Our Singing* (2003), and Edward Jones' *The Known World* (2003) – situate themselves amidst, and in response to, the revival of formalism by signifying on the rich history of the figure of blindness. By virtue of their engagement with fundamental questions of interpretation (of

⁶ In a sense the argument of the entire dissertation – that the law functions as a kind of bulwark against which African American literature has shaped many of its formal and aesthetic qualities across the entirety of the tradition – stands as a rebuttal to Warren's claim that there exists no generic or thematic organizing elements beyond the literature of the Jim Crow era.

race, of music, of time) and in particular the figure of the “blind” seer, these novels offer an object lesson in methodology: how one reads “texts” – their meanings as wholly constituted and self-generating, or as contingent on social realities and situated in a particular time and place – determines in large part how one understands race and the law and how each relates to the other. The methodology, then, by which one engages (or refuses to engage) Du Bois’s appraisal of the American dilemma will in large measure condition one’s perspective on how to remedy it. This chapter will first take up the revival of the formalist interpretive methodology, both in judicial circles and in critical theory more generally, looking at the turn to colorblindness in legal and cultural rhetoric in the late twentieth and twenty first century and corresponding literary critiques of the “rhetorical invisibility of whiteness” in contradistinction to the preeminence of racial discourse marking the country’s first two centuries (Bradshaw 244). It will then read the figure of blindness in these three novels in relation to this ascendant formalism, exploring each text’s invocation of the efficacy of an ahistorical approach to interpretation generally and the interpretation of matters of race in particular.

II. Colorblindness Justice

Racial formalists in legal and literary studies seeks to achieve many of the same ends: in their faithfulness to the four corners of a text, each hopes to limit interpretive hermeneutics in an effort to arrive at the *true meaning* of an individual text, be it a statute or a Supreme Court precedent or a work of literature, unsullied by political agenda. Here one might recall the “baseball umpire” analogy offered by Chief Justice John Roberts during his confirmation hearing:

Judges are like umpires. Umpires don't make the rules; they apply them. The role of an umpire and a judge is critical. They make sure everybody plays by the rules. But it is a limited role.⁷

But the decision to exclude race from one's rubric of interpretation is of course a political decision in its own right. Where colorblind rhetoric, perhaps most famously in the polemics of Justice Harlan and Martin Luther King, Jr., once signified a righteous rejoinder to the injustice of white supremacy, today it seems to echo in the public consciousness as a signifier of an ostensible "post-racial" landscape. A rigid focus on the individual and the rhetoric of formal rights and interpretive methods marks the colorblind movement as a counterpoint to the "identity politics" of the late-twentieth century.⁸ Instead of taxonomizing and aggregating similarities and differences on a group-wide basis, and deriving value therefrom, racial formalists reject the kinship model of identity politics. They refuse to assign a substantive meaning to race, instead applying the same interpretive framework to every individual regardless of race. It is through this interpretive methodology that formalists reject racial justifications for controversial public programs like affirmative action in the university setting and minority set asides in the awarding of government contracts notwithstanding the overwhelming evidence that blacks, as a group, continue to suffer the indignities of state-sanctioned racism.

Not since the zealous protection of individual economic rights during the height of the legal formalism of the late nineteenth and early twentieth century has the rhetoric

⁷ Bruce Weber, "Umpires V. Judges," *The New York Times*, July 12, 2009, sec. Week in Review, <http://www.nytimes.com/2009/07/12/weekinreview/12weber.html>.

⁸ Prominent proponents of colorblindness include conservative critics and commentators such as Tamar Jacoby, Jim Sleeper, Dinesh D'Souza, Shelby Steele, and Stephen and Abigail Thernstrom. Their strange bedfellows on the left include critics such as Walter Benn Michaels and Ken Warren. Opponents include prominent legal scholars such as Cheryl Harris, Alexander Aleinikoff and Neil Gotanda, as well as cultural critics like Ian Haney Lopez and Henry Louis Gates, Jr.

of the formalist method been so forcefully employed at the expense of historical and social realities. During that period, from roughly 1890 until 1937, courts across the country struck down social welfare statutes, including laws enacting a minimum wage, limiting child labor, and regulating working conditions, on the ground that the state's role in such matters must be circumscribed so as to protect the individual liberties (such as the right to contract) enumerated in the Constitution. One Supreme Court case in particular – *Lochner v. New York* – has come to emblemize this “laissez-faire constitutionalism.” Of course, the *Lochner* era's reification of what many saw as entrenched societal asymmetries spawned the so-called “realist critique”: prominent scholars in the 1910s and 1920s argued that the formalist method, rather than protecting individual liberties from state interference, was in fact (re-)constituting those asymmetries by maintaining an illusory distinction between the “public” and “private” sphere and by adhering to the flawed principle of governmental neutrality. “Realist” and “post-realist” thinkers on race have for many years pleaded the necessity of affirmative action to address the instantiation of social injustices *resulting from* racial formalisms, to remedy perceived *inequalities* between privileged and subordinated classes at the expense of a commitment to the formal interpretive method. The near consensus view of the inadequacy of formalism as an interpretive tool was marked by the (sometimes grudging) acknowledgment that “[w]e are all realists now.” The new formalism rejects this view, and the influence of the formalist method has come full circle.

While the current rise of colorblind rhetoric owes much of its force to the logic of *Lochner* and the revival of formal rights discourse more broadly, *Lochner*'s protection of economic liberty in fact borrowed from the “colorblind” rhetoric of the very first cases

interpreting the meaning of the Fourteenth Amendment following its enactment in 1868. Notwithstanding the legislative history of the Civil War Amendments, the Court rejected the notion that federal legislation might be enacted specifically for the benefit of blacks. Indeed, in *The Civil Rights Cases* in 1883 the Court struck down as unconstitutional the Civil Rights Act of 1876's criminalization of discrimination in privately owned "public accommodations," holding that the Fourteenth Amendment applied only to official state conduct and prohibited governmental interference with private contractual relations.⁹ Justice Joseph P. Bradley's majority opinion in *The Civil Rights Cases* articulated, for the first time, the Court's antipathy to legislation extending protections to blacks in the wake of the country's quite recent history of slavery. Not even twenty years had passed since the Emancipation, yet Bradley wrote that

When a man has emerged from slavery and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rights of a mere citizen and *ceases to be the special favorite of the law* and when his rights as a citizen or a man are to be protected in the ordinary mode by which other men's rights are to be protected.¹⁰

(emphasis added). The tortured history of "colorblindness" in the rhetoric of the Supreme Court begins with these words, which, incredibly and prematurely, declared the effects of state-sanctioned discrimination to have passed. They also make explicit the relationship between the discourse of formal rights and the rhetoric surrounding questions of race, and evidence the centrality of interpretive methodology to resolving contemporary disputes over conceptions of "liberty." Moreover, Bradley's brand of interpretation makes plain the debilitating isomorphism of formalism and colorblindness:

⁹ 109 U.S. 3 (1883).

¹⁰ *Id.* at 25.

not only is the colorblind method the paradigmatic formalism, but all interpretive formalisms necessarily implicate the racializing consequences of colorblindness. In the wake of Bradley's rhetoric, the commitment to colorblindness was always already what was at stake in the century-long contest over the methodology by which the *Lochner* Court chose to understand liberty.

The dissent of Justice Thomas in *Grutter v. Bollinger*,¹¹ the Supreme Court's 2003 recent opinion addressing the constitutionality of the University of Michigan law school's race-conscious admission policy and the first opinion by the Court to address affirmative action in the university context since 1978, could well have been written by Justice Bradley. In *Grutter*, the Court, while holding that the state's interest in securing a diverse educational environment overcame the ordinary presumption against race-based preferences, upheld the standard established in *Adarand* that "any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny."¹² While the object of much criticism by those opposed to race-conscious public policy, *Grutter*, in adhering to the so-called "strict scrutiny" standard set forth in *Adarand*, is consistent with the racial formalism practiced by the Court over the last decade, and requires a particularized individual showing of state discriminatory harm to overcome the Court's animus for racial classifications, even those of "benign" or "inclusive" character.

Thomas's dissenting opinion complains that the majority affords undue deference to the state's justifications for its policies, but the real import of *Grutter* is that the Court

¹¹ 539 U.S. 306 (2003).

¹² *Id.* at 326.

refused to abandon its commitment to colorblindness. For all its bluster, Thomas's dissent is consistent with the Court's continued racial formalism, in both its disregard of the historicity of the notion of colorblindness and its reliance on the language of formal individual rights. Thomas begins his opinion with a quote from a speech given by Frederick Douglas in 1865:

The American people have always been anxious to know what they shall do with us...I have had but one answer from the beginning. Do nothing with us!...Let him alone!...[Y]our interference is doing us positive injury.¹³

With these words Thomas positions Douglas as an ally in the colorblindness debate. Of course, Douglas was no such thing. Thomas's ellipses disingenuously mask the import of Douglas's entreaty. Far from forbidding the state to take remedial action for the harms suffered by blacks, Douglas was asking for an end to the virulent discrimination and bias that continued to be prevalent in the wake of emancipation:

Let him alone! If you see him on his way to school, let him alone, don't disturb him! If you see him going to the dinner-table at a hotel, let him go! If you see him going to the ballot-box, let him alone, don't disturb him! If you see him going into a work-shop, just let him alone - your interference is doing him a positive injury.¹⁴

Douglas continued that without freedom from such discrimination, without the franchise, without true equality, the black race's "liberty is a mockery."¹⁵ Douglas's refusal to accept the guarantee of a formal liberty, a liberty in name only, lays bare the dramatic deficiency of a formalist interpretive methodology that would equate emancipation with freedom.

¹³ Id. at 349-50 (Thomas, J., dissenting).

¹⁴ Frederick Douglas, "What the Black Man Wants" (January 26, 1865), reprinted in John W. Blassingame and John R. McKivigan, eds., 4 Frederick Douglas Papers 59, 68-70 (New Haven: Yale University Press, 1991).

¹⁵ Id.

Justice Thomas goes on to argue that

The Constitution abhors classifications based on race, not only because those classifications can harm favored races or are based on illegitimate motives, but also because every time the government places citizens on racial registers and makes race relevant to the provision of burdens or benefits, it demeans us all.¹⁶

Here Thomas relies on the “colorblind” rationale of Justice Harlan’s famous *Plessy* dissent. Harlan’s dissent is oft-quoted by racial formalists, not least of all Justices Scalia and Thomas, for its formulation of a constitutional rule that would forbid any differentiation in the law premised on race: “Our Constitution is color-blind, and neither knows nor tolerates classes among citizens.”¹⁷ Seldom acknowledged by those who would rely on such language is its very historicity. Borrowing the notion of “colorblindness” from the petitioner’s brief, authored by Albion Winegar Tourgée – a noted civil rights proponent, lawyer and author – Harlan ignores the pedigree of Tourgée’s phrase. As Brook Thomas notes in “*Plessy v. Ferguson* and the Literary Imagination,” Tourgée himself first used the term in his 1880 novel *Bricks Without Straw*, characterizing the trope of colorblindness as a “defect that does not allow people to see the actual condition” of blacks.¹⁸ Tourgée, anticipating and rebutting Justice Bradley’s reasoning in *The Civil Rights Cases* that blacks had been elevated to the status of equals by virtue of the Civil War Amendments, proclaims that “Right he had, in the abstract; in the concrete, none. Justice would not hear his voice. The law was still color-blinded by the past.”¹⁹ The signature phrase of Harlan’s dissent, relied upon by today’s

¹⁶ *Grutter*, 539 U.S. at 354 (Thomas, J., dissenting).

¹⁷ *Plessy v. Ferguson*, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting).

¹⁸ Brooks Thomas, “*Plessy v. Ferguson* and the Literary Imagination,” 9 *Cardozo Studies in Law and Literature* 45, 62 (1997).

¹⁹ Albion W. Tourgée, *Bricks Without Straw* (New York: Fords, Howard, & Hulbert, 1880), 35.

racial formalists, makes precisely the opposite point they intend: by ignoring the historical condition of blacks, formal interpretation serves only to reinforce the very real racial differences that mark society in the United States.

Moreover, Harlan's central objection to the Jim Crow statute at issue in *Plessy* was its implication for *liberty*, a concern that foreshadows the reasoning, and deficiencies, of the formalist method of *Lochner*:

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty.²⁰

Harlan makes plain the central paradox of colorblindness: if the law, and society, are committed to formal principles of constitutional liberty – that is, an interpretation of liberty that ignores the social realities of historically asymmetrical power distributions – the so-called dominant race will maintain its advantage over those against whom discrimination has long been practiced. As in *Lochner*, the interpretive constraints imposed by the formalist method serve to reinforce, rather than alleviate, the effects of ignored history. Justice Thomas's *Grutter* dissent and his brand of racial and interpretive formalism, like Harlan's, simply refuse to acknowledge that, as Koteles Alexander puts it, "legal issues pertaining to race compel one to struggle with empirical evidence."²¹ The Court's current racial formalism, like the formalism of the *Lochner* era, cannot allow itself to engage the realities of the historical moment by which the question of liberty, and the very concept of such a thing as rights, is contextualized.

²⁰ *Plessy*, 163 U.S. at 559 (Harlan, J., dissenting).

²¹ Koteles Alexander, "Adarand: Brute Political Force Concealed as a Constitutional Colorblind Principle," 39 *How. L.J.* 367, 369 (1995).

The current revisionism of the meaning of *Lochner*, taken together with the ascendance of the formal discourse of rights in the context of affirmative action, highlights the return of a formal interpretive methodology to legal and other interpretive fields. Stanley Fish's recent contribution to the debate over who should succeed Justice O'Connor is illustrative in this sense.²² Fish, advocating a pure form of constitutional originalism, argues that "without [the] constraint" imposed by fidelity to the words of the Constitution as written, "law and predictability disappear and are replaced by irresponsibility and the exercise of power." Meaning, then, for Fish, is static: the constitutional guarantee of "liberty," in his view, presumably can only mean what the Framers understood it to mean two hundred years ago, undisturbed by the necessary temporality of such a thing as freedom. The resurgence of just this kind of rhetoric of interpretive constraint in the language of the Supreme Court's decision-making finds its concomitant in the broader critical appraisals of the significance of such a thing as race. As the critic Walter Benn Michaels asks, "What kind of reality is the compelling reality of race today?"²³ For Michaels, both the early twentieth century conception of race as a biological fact and the late twentieth century conception of race as a social construction are *mistakes*, false constructions of racial essentialisms that prevent us from producing "a world in which race [is] *not* a compelling reality."²⁴ Michaels notes that biological conceptions of race, premised on blood or phenotype, are outdated as essentialisms that have any meaning for identity. He goes on to argue that performative theories of racial identity similarly are flawed in that they inscribe "imitation" with a racial meaning that

²² Stanley Fish, "Intentional Neglect," *New York Times*, Section A, p.21, July 19, 2005.

²³ Walter Benn Michaels, "Autobiography of an Ex-White Man," *Transitions*, No. 73 (1997), 122, 131.

²⁴ *Id.*

relies upon the same essentialism rejected by critiques of biological racialisms; that is, “the social constructionist commitment to the racial performative...is only skin deep. It involves not the choice of behavior over color but the adjustment of behavior to color.”²⁵ In the end, Michael’s rejection of all racial essentialisms – in either the biological or the socially performative sense – requires that “we ought to give up the idea of racial identity altogether [and] deny that there are such things as...blacks, or whites.”²⁶

Randall Kennedy, a professor at Harvard Law School, echoes Michael’s sentiments: “...I am skeptical of, if not hostile to, claims of racial kinship, valorization of racial roots, and politics organized around racial identity. I am a liberal individualist who yearns for a society in which race has withered away as an important social marker.”²⁷ Kennedy’s resort to a race-neutral universal moral standard is borne out of a liberal individualism that is committed to “bringing into being new and better forms of communal affiliations, ones in which love and loyalty are unbounded by race.” Jim Sleeper, a writer on urban politics and civic culture, has written that “color no longer works well as a marker of cultural differences now that Americans are shedding the racial apartheid of the past.”²⁸ And Shelby Steele, the noted black conservative, describing what he calls the “atavism of race,” decries affirmative action as “a violation of principle.”²⁹ What each of these commentators share is a refusal to read the racial past into the present. As an interpretive matter, each believes that the constraint imposed by

²⁵ Id. at 137

²⁶ Id. at 142.

²⁷ Randall Kennedy, “Racial Passing,” 62 Ohio St. L.J. 1145, 1188 (2001).

²⁸ Jim Sleeper, “Folding the Race Card,” *Washington Monthly*, July/August 2002.

²⁹ “Interview with Shelby Steele,” Stan Faryna, Brad Stetson and Joseph G. Conti, eds., *Black and Right: The Bold New Voice of Black Conservatives in America* (Westport: Praeger, 1997), 146.

the suppression of history's experience with race advances us along the path to a society *beyond* race.

III. Toni Morrison's Colorblind Conceit

One of the more surprising proponents of a colorblind formalism is Toni Morrison. The prolific Morrison and her oeuvre are very nearly defined by an unflinching attention to race, and so it was unexpected to find in her 1997 novel *Paradise* a colorblind aesthetic profoundly different from her earlier work. *Paradise* is interested in precisely the question of how the many different registers of race complicate the stories we tell and the way those stories are heard. And colorblindness – in the form of a very literal narrative formal conceit – marks the reader's experience of the text at every turn. The novel tells the parallel stories of two exiled communities – one an all-black town defined by its racial identity and the second a nearby group of five women uniformly unidentifiable in terms of race – living anxiously alongside one another in the ambiguous racial climate of the post-civil rights movement era. In her 1997 essay “Home,” drawn from a talk given as she was writing the novel, Morrison describes the project of *Paradise*: “In the novel I am now writing, I am trying first to enunciate and then eclipse the racial gaze altogether.” And she confesses that *Paradise* takes on what seems to be a fraught project, and might risk being understood as a “futile attempt[] to transcend race...or trivialize it” (“Home” 8). Whereas a world free of racial hierarchy is generally understood as a “dreamscape – Edenesque, Utopian, so remote are the possibilities of its achievement,” Morrison claims to imagine “a-world-in-which-race-does-not-matter” as altogether real and attainable, and in fact, she thinks of such a race-free world as “home.” “[U]nmattering race,” the essay tells us, is a “manageable, doable,

modern human activity.” Yet the novel shows it to be no such thing. Again and again, Morrison’s text seems to undo its own intimations about the efficacy of a racial formalism. While the novel is populated with characters whose fates seem yoked to their ability to see beyond race, it simultaneously reveals itself to be an incomplete text in those places where the crucial racial dynamics of social interactions and customs are left unnarrated.

Paradise tells the story of the founding of Haven, Oklahoma, an all-black town settled in the westward migration of freed slaves from the postbellum South, and – following Haven’s economic and spiritual collapse – its relocation to Ruby, Oklahoma after the second World War. These two towns and their people, of course, are colored by race both at the surface and at the core: dark-skinned and blue veined, the residents of Haven and its successor town understand themselves through the inter- and intra-racial discriminations that characterized their long journeys from the plantation to the plains, and as readers we are never unaware of that history.

Second, the novel sketches the lives of five women living together in a former convent on the outskirts of Ruby where the nuns ran a school for Native children, “stilled Arapaho girls [who] learned to forget” (4). *Paradise* is at pains to develop the characters of each of these five women without any racial clues by which to identify them.

Paradise begins with six striking words: “They shoot the white girl first” (3). The novel’s formal conceit, however, ensures that we do not know who “the white girl” is. And in the dueling racializations of these two communities Morrison sets up the tension between colorblindness and dutiful attention to skin color: the novel’s formal aesthetic hides the race of the women, while the racial identities of the all-black families of Ruby

are manifest; yet both communities disintegrate by the novel's finish. Narrating the similarities and differences in the long arcs of these two communal spaces, Morrison's hope, then, is to try to create "a place where race both matters and is rendered impotent" (Home 9).

Can narrative – or law – tell stories that are fully meaningful *without* the truth quality imparted by racial knowledge? What meaning is there in a story that occludes race? Each of the several narrative threads that holds *Paradise* together as a novel asks us to consider precisely this question. When Morrison's all-black town collapses and dies, it also ostensibly becomes the agent for the destruction of a "domesticate[d]" "race-free paradise" ("Home" 8) at the Convent. And yet it is the Convent itself, and the racially unmarked women who reside there, whose "blindness" reveals what is lost when race is discarded.

When Mavis, a young mother running from the tragic deaths of her twin children, arrives at the Convent having run out of gas on her way to California, she is met at the door by Connie, an older matron to troubled young women who stares at the sun "full of defiance" (43). "Lies not allowed in this place," Connie tells Mavis. "In this place every true thing is okay" (38). And yet it soon becomes clear that in the Convent, Morrison has crafted a space in which "truth" is unmediated by any social reality: "No newspapers in this house. No radio either. Any news we get have to be from somebody telling it face-to-face" (41). The novel immediately divorces the Convent from the urgent social, political and historical realities from which its residents have escaped, not least of which is their racialized subject positions. And we can certainly see the liberatory potential in moving beyond the limits of the racist, patriarchal and heteronormative landscape of the

young women's pasts: Pallas and Seneca find empathic and romantic fulfillment at the Convent; Gigi's "loose" sexual mores are acknowledged as self-satisfying; Connie's literal blindness marks the Convent as a domestic sphere without judgment.

Yet at the same time Morrison deploys a vocabulary that seems to self-consciously undo the radical potential of "beyonding" race. The women of the Convent repeatedly enter into the social situations that cry out for further elaboration of an unspoken racial dynamic at play. Early in the novel the scenarios are merely descriptive. To pay for her trip west to California, Mavis picks up hitchhikers: "Flat hair swinging or hair picked out in Afros. The white ones were the friendliest; the colored girls slow to melt" (33). Mavis' own unrevealed race surely informs these interactions, yet Morrison lets us wonder without satisfying our yearning for more detail. The prose is non-committal, refusing to impart meaning or valorize any racialized perspective. But soon after her arrival at the Convent Mavis has her first meeting with a black woman from Ruby, and the import of her own racial identity becomes more freighted. Any understanding of Connie's introduction of Mavis to Soane Morgan, a woman from Ruby who regular visits the Convent to buy Connie's garden peppers, simply cannot be complete without a fuller sense of the racial dynamic at play:

"Mavis Albright, this is Soane Morgan."

"Hi, hon."

"Morgan, Mrs. Morgan."

Mavis' face warmed, but she smiled anyway and said, "Sorry. Mrs. Morgan," while taking note of the women's expensive oxford shoes, sheer stockings, wool cardigan and the cut of her dress: summer-weight crepe, pale blue with a white collar (43).

A reader might be expected to infer that a "white" Mavis presumed a too-easy familiarity with an older black women, a familiarity that was firmly rebuffed. What's more, a

“white” Mavis might properly be understood to be surprised not simply to be chided for her lapse in manners, but also to realize that she was in the presence of her social better, a refined black woman of taste and class unafraid to assert her autonomy. One wonders how a scene such as this one amplifies Morrison’s stated goal of “unmattering race”; indeed, it is precisely this particular kind of racial knowledge – the kind that demystifies, rather than obscures, social relations – that is lost as a consequence of Morrison’s colorblind conceit.

And so it goes with nearly every meeting between the women from the Convent and the denizens of Ruby. Personal connections that implicate the racial politics of sexual relations, in particular, cry out for the kind of elaboration that Morrison’s colorblind narration masks. When Gigi first arrives in Ruby on a mission to find a long-lost lover, she steps off a bus in the center of town “in pants so tight, heels so high, earrings so large” that K.D. – nephew to Deacon and Steward Morgan, town elders and the heart of Ruby’s conservative consciousness – and his friends can only stare at her “screaming tits” (54-55). The raucous affair that begins between K.D. and Gigi will be one of the chief contributing causes to the violence that concludes the story, and yet again it is altogether unclear whether Deacon and Steward simply resent Gigi’s flashy dress and refusal to make herself less obviously desirable to the men around her, or if it is the town’s anxiety about an interracial sexual liaison that destabilizes the already wary relationship between the men of Ruby and the women of the Convent. As readers, we are deprived by Morrison’s colorblind conceit of any explicit causal connection between the sexualized violence that marks much of the novel and the racial component that is surely present but maddeningly unlocatable.

As if to impress upon us that the novel's ambiguity regarding the racial animus between Ruby and the Convent isn't simply an oversight, we learn that other affairs have rankled the quiet (racial) self-assuredness of the all-black town. Sexual relationships between Ruby's sons and lighter-skinned – perhaps even white – women threatened to disrupt the *raison d'être* of Haven and Ruby, which were born out of an exclusion: the refusal of both white and black communities to take in the weary travelers who'd left the South so many years before for a new life on the prairie. Passed from father to son and embedded in the motto that adorned the Oven, the memory of that slight – what came to be called the “Disallowing” – means the townspeople zealously guard Ruby's racial purity, though not without consequences. When Menus Jury returns home from the war with a “pretty sandy-haired girl from Virginia” unknown to anyone in Ruby, he is quietly “dissuaded” from marrying her; though the townspeople wishfully “attributed his weekend drunks to his Vietnam memories,” they knew his insobriety was caused by “love in its desperate state” (195). Morrison's prose disguises the exact nature of the town's objections to Menus' fiancée, but not its racial and political and historical roots.

So too with the affair that perhaps seals the fate of the Convent some thirty years before its destruction by the men of Ruby. Deacon Morgan, husband to Soane, spent a summer as a married man sleeping with Connie, then a thirty-nine year-old living with the nuns of the Convent. Connie, unsurprisingly, is the kind of woman that would never be allowed to sully the pure bloodlines of the original families of Haven. She had been “rescued” as a nine-year old by Mary Magna, a Catholic nun on a mission to Portugal who'd come across the young girl sitting in the street in a pile of garbage and simply taken her. And unsurprisingly the text's phenotypic description of Connie reveals no

fixed racial identity: green eyes, tea-colored hair, “smoky, sundown skin” (223).

Morrison tells us only that Connie’s “certainly not white” provenance allows the nuns to secret her out of Portugal unnoticed. But it is a racial identity seemingly different enough from that which constitutes Ruby to render Connie unfit for inclusion in the town’s plan for itself; Connie’s love for Deacon is doomed before it even begins.

How much of the trajectory of the novel is attributable to this all-black town’s cloistered racism? *Paradise* never lets us know, but certainly Ruby is blinded by its affective attachment to its racial identity. Patricia Best, the town’s teacher, is a descendant of one of the founding families but daughter to a light-skinned mother and mother to light-skinned children. Delia, Pat’s mother, died in childbirth, because none of the Ruby men would go to a white doctor for help or, perhaps, because they “despised” Delia for being “a wife with no last name, a wife without people, a wife of sunlight skin, a wife of racial tampering” (197). And so Pat has spent years compiling a rigorous genealogy of the town based on the inside covers of borrowed Bibles and stories told over coffee. Though she will burn it just before the violence at the Convent, its revealed truth is one of the enduring paradoxes of the novel. What does Morrison intend us to take as the meaning of Ruby and its progenitor Haven? What does its history mean to its people? And what can we know about them without knowing that history? The full story of the town, known in pieces by its people but pulled together into narrative by Patricia’s overflowing binders of family trees, troubles the central critical thread of Morrison’s public pronouncements on the novel’s intentions. Why, in other words, set a story about the “unmattering” of race in a black town that could never be divorced from its racial history? Morrison’s public pronouncements in essays like “Home” on *Paradise*’s

colorblind project seem to be at odds with the hermeneutic structure provided by the novel itself. Does Morrison really not want her readers to try to figure out the races of the women in the Convent? And does she really want race to fall out of the narrative and out of our own interpretive frame?

This question of the import of the absent racial character of the women of the Convent is elaborated in other ways, as well. The hermeneutic inquiry at the heart of *Paradise* is figured most notably in the problem of the Oven, a communal hearth at the heart of the novel, first in Haven and then later moved, brick by brick, to accommodate the same role in Ruby. And in particular on the words that adorn it – the “motto” of Haven’s founders – their origin and original intent lost in the many years since its construction, its coherence undermined by its literal and figurative deconstruction. By 1973, the year in which the novel both opens and finishes, the words that remain on the oven – “The Furrow of His Brow” – and the open fighting over what those words were originally or should become – “Beware the Furrow of His Brow” or “Be the Furrow of His Brow” or “We are the Furrow of His Brow” – have revealed generational and political fissures in Haven that will ensure its collapse. And while this thread of the novel lacks the racial component that marks the readerly inquiry into the identity of the Convent community, it extends the larger hermeneutic question about how Morrison expects us, as readers, to approach the questions of knowledge that inhabit the text. The phrase on the oven was installed by the patriarch of one of the original nine founding families, an ironmonger surnamed Morgan who literally built the words out of any metal he could get his hands on, and no one knows “where the words came from. Something he heard, invented, or something whispered to him while he curled over his tools in a

wagon bed...[W]ho knew if he invented or stole the half-dozen or so words he forged. Words that seemed at first to bless them; later to confound them; finally to announce they had lost” (7).

Many in Haven believed that the Oven “monumentalized what [the Old Fathers] had done,” their survival of slavery and escape from the old South, their rebirth and self-sufficiency abetted by the grace of God (7). Following the failure of Reconstruction, nine families – one hundred and fifty eight freedmen –traveled from Mississippi to Louisiana to Oklahoma, drawn by the success of the first Exodusters and the encouragement of African American newspapers. And yet the group was “unwelcome on each grain of soil from Yazoo to Fort Smith” (13), turned away by whites and blacks alike at every step of their journey on account of the deep black color of their skin, starved and barely surviving as a consequence. The capstone on a dream finally carved out of the Oklahoma prairie in 1889, the Oven and its motto embodied a devout conservatism and profound injury that would become a “cold blooded obsession” with the “narrow path of righteousness” and the myopia of a cloistered purity.

Deacon and Steward Morgan, twins and grandsons of Morgan the ironmonger, are the moral centers of the town. Having served their country in the second world war and returned home to Haven to find it atrophied and lifeless, they moved their families even further west in Oklahoma, resisting the call of the cities and doubling down on the convictions of the Old Fathers. They loved “what Haven had been – the idea of it and its reach” (6). They carry the story of Haven’s genesis with them always: “they have never forgotten the message or the specifics of any story, especially the controlling one told to them by their grandfather – the man who put the words in the Oven’s black mouth” (13).

Those stories – of a harrowing journey, of endless discriminations and violences, of the white men who would drive to Haven to expose themselves out car windows to young black girls – “explained why neither the founders of Haven nor their descendants could tolerate anyone but themselves” (13). As the center of the town’s communal life and with the memory of its provenance still fresh, the words adorning the Oven went unquestioned, if little discussed.

But as the dynamism of Haven faded with the Great Depression and the loss of a generation of young men to the war, so too did the Oven’s moral and affective presence atrophy. In Ruby, the Oven becomes the site for a new generation to gather: K.D., nephew to Steward and Deacon and orphaned son of their sister Ruby (after whom the new town is named), leads a crowd of Ruby teenagers that drinks and loiters and flirts on what their elders consider hallowed ground. As such, the Oven becomes both the literal and figurative site of Ruby’s roiling generational and cultural divide. It is where K.D. and Arnette, his pregnant girlfriend, publicly argue over the future of their relationship to the eternal shame of both their families; it is where Gigi steps off the bus, sending ripples of shock and anger through the town’s conservative leaders (54); it is where the decision to attack the Convent is made, and where they meet before the attack. And it is the vehicle through which the Reverends Misner and Pulliam – heads of Ruby’s Baptist and Methodist churches, respectfully – enact a battle over the meaning and history of the words on the Oven.

In the words on the hearth, the town elders see not a motto but a transparent and incontestable order:

“Motto? Motto? We talking command!” Reverend Pulliam pointed an elegant finger at the ceiling. “‘Beware the Furrow of His Brow.’ That’s what is says clear as daylight. That’s not a suggestion; that’s an order!” (86)

But Reverend Misner challenges that history, noting that only the prevailing oral history of the town’s founding includes the declarative “Beware.” Had a word been lost? Had Esther, an illiterate woman who, as a child, traced the original words with her fingers and in whose recollection Deacon and Steward rest their faith, misremembered?

The rise of a new political activism among the next generation in Ruby disturbs the static meaning long imbued in the Oven, as the motto becomes a battleground in the debate over civil rights, African identity, black progress and black power. Young members of the town’s several churches offer their own opinions about what the words might mean, or – more unsettling to the elders – what they should have been. “No ex-slave would tell us to be scared all the time. To ‘beware’ God,” insists Destry Beauchamp, articulating the strident confidence of the novel’s “young folks” (84). Hoping to vest the motto with a “new life” that melded the radical self-sufficiency of the town’s founders with the emerging political agency of a new generation of black men, Destry suggests “‘Be the Furrow of His Brow’...His instrument, His justice” (87). But the town elders hear this as an assumption of God’s omnipotence and, therefore, a “blasphemy.”

It is difficult to read the townsfolk’s competing visions of the Oven in *Paradise* without imagining it as a kind of urtext, a referendum on the fidelity we owe as readers to the intentions of any historical document. Critics including Philip Page, Evelyn Shockley and Brent Staples have referenced the hermeneutic quality of *Paradise* in their assessments of the novel’s “readerly” quality, drawing us into the text’s own sticky

interpretive dilemmas. Little has been said, however, about the analogy that Morrison draws between the Oven's motto and legal texts in particular. The parallels to legalistic inquiry nearly jump off the page, right down to the question of the intent of the "founders" and the debate between static and active meaning that animates Destry's critique of the continuing reality of the rationale of any century-old text.³⁰ And because *Paradise* so nakedly inserts itself into an ongoing conversation about the efficacy of (legal) colorblindness, it is imperative that we assess the place of race – in the novel and in the critical legal landscape – as an interpretive tool. Indeed, in a text like *Paradise*, questions about interpretive legitimacy and the histories of Haven and Ruby and the Convent are intimately bound up with questions of race. In "Home," Morrison describes her work in *Paradise* as battling "the accretions of deceit, blindness, ignorance, paralysis, and sheer malevolence embedded in race language so that other kinds of perception were not only available but were inevitable" (7). But just what does the text reveal about the judiciousness of excising "raced" language – and what that language can offer us as a function of meaning – from interpretation?

The older generation of men in Ruby are associated with phallogocentrism, individual acquisition and control, qualities that correspond with interpretive modes consistent with fixed authority and unitary interpretation.³¹ While the younger generation of black men in Ruby serve as a kind of foil to the likes of Deacon and Steward Morgan, their objections to their elders are admittedly circumscribed by their youth, a reflexive

³⁰ Breyer, *Active Liberty*.

³¹ Linda J. Krumholz, "Reading and Insight in Toni Morrison's *Paradise*," *African American Review* 36.2 (Spring 2002).

and unapologetic defense of their own brash and impulsive behavior. It is the women of the Convent, then, in whom Morrison invests a fuller interpretive counterpoint.

The novel ends with the body of that “white girl” – and the bodies of her four friends at the Convent – risen, reconstituted, redeemed. They are killed by nine of the leading men from Ruby, men both enraged by and in dread of the permissive and limitless mercy and compassion offered by the women to anyone in need, irrespective of the mores and conventions of the town. The women disappear from the Convent; Pat Best and her father, the town’s mortician, search the Convent in vain for the bodies of the murdered women, the absence of which begets as many different stories about the circumstances of their deaths as there were witnesses (more, perhaps). The people of Ruby are relieved; no bodies means they won’t have to alert the white police from the closest white town. And that means the “white law” won’t find the bodies that haven’t disappeared, bodies whose stories the town knows but doesn’t wish to be a part of: those of a white family that succumbed in their car to a blizzard after refusing friendly advice to find shelter in town rather than drive on toward Texas.

Morrison’s novel juxtaposes the startlingly banal deaths of this white family with the lives of five women of indeterminate race whose resurrections are nearly inexplicable. How we understand the fates of the Convent and of Ruby depends, perhaps, on how we approach the similarly vexed interpretive dilemma of how to read the words engraved on the town’s Oven, placed there by the town’s founder but ambiguous at their core. The absence of important cues to help divine the original intent of the Oven’s moniker mirrors the novel’s conscious refusal to mark the race of the women of

the Convent, and asks us as readers to consider how we might make meaning out of such a void.

IV. Richard Powers' Rejoinder to the New Formalism

Unlike Morrison's contribution to the hermeneutic of colorblindness, Richard Powers' *The Time of Our Singing*³² rejects the efficacy of any sort of blindness to race and pointedly dramatizes the failure of formalism as an interpretive methodology. Powers positions David and Delia Strom, a mixed race couple who marry in the racial turmoil of 1940s America, as naïve romantics hoping to escape the "reified binary categories"³³ – and indeed the very historicity – of black and white, a project which of course has resonance for all normative binaries (white/non-white, male/female, straight/queer, normative/non-normative). David Strom, the patriarch of the doomed family, insists throughout the novel that "[t]here is no such thing as race"³⁴ and raises his children accordingly. Yet the novel evidences America's inability to escape from the realities of centuries of racial division and the implications of that failure for the dream of a colorblind America and the efficacy of rights discourse in the face of that history. As Powers put it in his 2003 interview with *The Paris Review*,

My project has always been to try to say where history has dropped us down, and you can't say where history has dropped America down without confronting race. That's the core of who we are...I don't see today as ahistorical. I don't buy the postmodern break. I believe that we came here along a certain identifiable path. I believe that identifying that path is possible and necessary.³⁵

³² Richard Powers, *The Time of Our Singing* (New York: Farrar, Straus and Giroux, 2003).

³³ Randall Fuller, "An Interview with Richard Powers," *The Missouri Review*, v. 26 (2003), 97, 111.

³⁴ Powers, 94.

³⁵ "The Art of Fiction," *The Paris Review*, v. 44 (Winter 2002-2003), 107, 120-21.

“[I]dentifying that path” is what dictates the form of the novel, which charts the trajectory of each member of the family while simultaneously mapping it upon many of the significant moments of the civil rights movement. This structure allows the historical moment of each vignette to contextualize the subject position of each character. In the novel’s opening moments, David and Delia meet at the Easter 1939 performance of Marian Anderson on the steps of the Lincoln Memorial, where Anderson performed after being denied permission to sing in Constitution Hall on account of her race. From the first moment, then, it is the country’s troubled relationship with race that brings them together, contextualizing their affair from the outset. And with the very premise of an immigrant Jew marrying a young black woman from Philadelphia in 1940s America, Powers demands that we interrogate, via the realities of the history, the counterfactual nature of an interracial marriage that refuses to acknowledge the difficulties it will encounter in the face of institutionalized racism. Later, while Jonah and Joseph study within the walls of an elite music academy in New England, Emmett Till is tortured and killed in the heart of Mississippi, and the great urban centers of the 1960s burn as the two brothers begin their careers singing lieder for white audiences far from the riots. For the reader, for the Stroms, any attempt to try to understand life outside of race in these moments is necessarily inadequate. *The Time of Our Singing*, then, proceeds as a meditation on the futility of living outside of race, outside of history.

Powers sketches the boundaries of the tension between formalism and realism as interpretive methodologies by engaging questions of music, time and race. At the heart of the novel, then, lies the question of the legibility of cultural artifacts – laws, music, literature – in the context of the tension between formalism and realism. Authorial intent

and the rules that govern the latitude afforded to the interpreter are in this sense vital. The premise of interpretive formalisms, as discussed above, is constraint; bound by a particular set of rules, the reader of a text is limited in the kinds of meaning that can be derived. For legal formalists, interpretive rules that limit the power to import new meaning to texts are a tool for safeguarding democratic processes, preventing unelected judges from employing their own sense of history to overrule the will of the majority as embodied in particular texts. In literary criticism, formalism prevents the interpreter's ideology or belief system from imposing on the autonomy of the text. And racial formalisms function in the same way, ostensibly barring the importation of racial biases to the interpretive process.

Each "text" engaged by the novel is an opportunity for Powers to explore the efficacy of this restraint on interpretation. Jonah and Joseph Strom, brothers and musical prodigies, study at an exclusive (read: white) music academy from the beginning of their teenage years, where they are introduced to the competing hermeneutics of formalism and realism. A fellow student, steeped in the historical context of music by her father, an accomplished European conductor, is unbeatable at the school's version of "name that tune," shaming the boys in their ignorance of the markers of time and place that characterize every piece of music. Even when she hadn't heard a piece before, "she could almost always zone in on its origin and figure out its maker...[a] piece was what it was only because of all the pieces written before and after it."³⁶ The Strom children, however, were raised not only without respect any knowledge of race but also history. They are ignorant of the interrelationship between the history of musical forms and

³⁶ Powers, 57-58.

history itself, and cannot appreciate that the rich clues hidden within the form reveal a piece's history to an educated listener; to them, "the thousand years of Western music might as well have been written that morning" (58). The historicity of music mirrored that of race, and it is these histories – indeed, the historicity of interpretation generally – that the family resists, and that will ultimately account for its disintegration. [get in the absence of context for music/history and why the analogy is so apt]

Jonah, whose talent – and efforts to escape race – is most pronounced in the novel, faithfully clings to his parents' lesson. The trajectory of his musical career eventually finds him as the world's leading performer of "early music," which his ensemble interprets without respect to how contemporary musical scholarship believes they *should* be performed.³⁷ His first and best teacher, "[l]ike most champions of Western culture[,] pretended race didn't really exist."³⁸ Jonah simply refuses to allow the historicity of music, least of all any racial component, to inform his interpretation of it. Here Jonah (and Powers) nods to the appeal of a colorblind approach to race: escaping the very real constrictions that the tortured history of race places upon us. Classical music was (and in many respects still is) a domain of the privileged. For a black man to escape that history, to reject it, and to stake a claim to this music as his own – not just his to perform but his to *read* – is in a very real sense empowering. It enables those who historically have been excluded from the process of cultural production, and whose productions have been undervalued, to negate in some sense this marginalization. Yet relinquishing the lessons of that history, or worse refusing to acknowledge the very real sense in which it continues to shape the contours of our cultural texts, is

³⁷ Id. at 66.

³⁸ Id. at 114.

counterproductive. As Powers explains, and as Jonah's ultimate self-destruction demonstrates, the "attempt to withdraw completely from the condition of earthly politics is a Faustian one. It will doom itself. It will create the seeds of its own impotence and irrelevance."³⁹ That is, reading – interpretation – becomes delimited: by refusing to incorporate history or contemporary reference into a text, formal interpretation creates a kind of stasis that deadens meaning.

The centrality, within *The Time of Our Singing*, of texts demanding interpretation makes plain the point of Powers' project. When David Strom meets Delia's skeptical father, William Daley, for the first time, James Joyce's *Ulysses*, perhaps unsurprisingly, serves as a cultural icebreaker.⁴⁰ Powers nods here toward the very impossibility of engaging in matters of interpretation *without* reference to the history of a particular moment; the density of Joyce's historical referents is justly famous, and *Ulysses* continues to stand as representative of one of the paradigmatic breaks with traditional literary form. Much later in the story, years after their mother has died, Ruth gives Jonah a picture-book history of the blues as a Christmas present,⁴¹ leading to a bitter fight over ownership of cultural forms: Ruth, already having sworn allegiance to her race, is pained that her mother (also a trained classical vocalist) chose "[m]usic that didn't belong to her"; Jonah, furious that his sister puts race ahead of family, refuses to concede that "[a] thousand years of music is off limits" by dint of the history of its cultural production.⁴² Ignoring his sister's critique that he has abandoned black culture, Jonah surrenders himself to the demands of his professional milieu, which he wishfully conceives as

³⁹ *The Paris Review*, 119.

⁴⁰ Powers, 230.

⁴¹ Id. at 289.

⁴² Id. at 302.

existing outside of the biases of cultural capital. Jonah insists that high art is “only death, beauty and artistic pretense,”⁴³ universal themes without cultural inflection and free from historical context. He performs “whatever the audience wants,” ignoring the critics’ barbs that he is “playing the white culture game.”⁴⁴ This argument over interpretive methodology is central to both the novel and the contemporary debate over the meaning of race: who is entitled to determine what meaning history imparts to language, and by what rules can it be done?

The very act of writing such a book as *The Time of Our Singing* implicates Powers in this debate over cultural ownership and authority, of how particular forms are created and occupied. As Powers puts it:

So the question what right does Powers have to speak through the mouth of a mixed-race person? is in a sense a direct reflection of the question that Joey and Jonah face in the book. What right do people not from that culture have to appropriate and own Western concert music? There’s a double act of ventriloquism going on.⁴⁵

The contestation over the performance and interpretation of particular cultural texts and forms evidences the centrality of the question of the relevance of race and other identity cues within the contemporary formalist interpretive methodology. Mirroring Jonah’s formal notion of racial colorblindness, Walter Benn Michaels argues that because it can neither be understood as a biological fact or a social construction, “[r]ace no more follows music than music follows race.”⁴⁶ Michaels employs this formalism to dispel the notion that there can even exist such a thing as black “culture”; if this is so, of course, the very premise of race consciousness fails on its own terms. Justice Thomas argues that the

⁴³ Id. at 382.

⁴⁴ Id. at 380-81.

⁴⁵ *The Paris Review*, 123-24

⁴⁶ Michaels, 134.

Declaration of Independence in conjunction with the Fourteenth Amendment dispensed with race as a legal category. Like Jonah and his father, Michaels and Thomas put aside the histories and discriminations of the past and offer instead an ideology of “beyonding,” refusing to acknowledge social facts that would otherwise inform how texts are read. Powers, of course, punishes David and Jonah Strom for similar hubris: their insistence on their individuality, their unwillingness to be a part of the history handed down to them.

The bitter division between Ruth and Jonah on the question of the contingency of interpretation in *The Time of Our Singing* metaphorizes the debate over formal interpretive methodologies in the law and critical theory more broadly. It is the rejection of any such contingency that forms the premise of legal formalism and the revival of formalist legal theory in the sense described above. As Frederick Schauer puts it, legal formalism “inheres in its denial of the political, moral, social, and economic choices involved in the decision, and indeed in its denial that there was any choice at all... Thus, choice is masked by the language of linguistic inexorability.”⁴⁷ Powers’ novel gestures at every turn toward the kind of denial described here by Schauer. Jonah inherits his fathers struggles with the notion of the relativity of time. As a musician, he lives for moments of “unforgiving eternity, nothing between the notes and the instant past they rush toward,”⁴⁸ an existence infinitely removed from the contextualization of time, of politics, of society. Learning that his sister Ruth – a burgeoning political activist who will soon join the Black Panthers, and his interpretive foil throughout the novel – intends to study history at NYU, Jonah asks “what possible use is there in that?”⁴⁹ For Jonah – for Clarence

⁴⁷ Schauer, 511.

⁴⁸ Powers, 213.

⁴⁹ Id. at 263.

Thomas – formalism as an interpretive methodology *frees* him from the oppressive history of race, of the burden of being another Marian Anderson, carrying the hopes of a race instead of the ambitions of an individual. In the view of the formalist, refusing to inflect a text with a racialized perspective is what will enable the country to move beyond its racialized history, “to live now, in the present.”⁵⁰ It is what Jonah believes will save him from being nothing more than “one of the finest Negro recitalists this country has ever produced.”⁵¹ This kind of racial formalism, paradoxically, motivates the (traditionally black) broom ceremony David and Delia perform on their wedding day: “It means you’re all swept out. It means the house you’re moving into is clean, top to bottom. All the bad past that ever happened to you—swept away by this broom!”⁵²

It is his professional success in eluding his family history, his race, that grants Jonah the “*liberty* to ignore how the world sees him” (emphasis added).⁵³ In abandoning the historical context of race, of culture, of all externality, Jonah is “after his own kind of freedom.”⁵⁴ Liberty, for Jonah and for the formalist, resides precisely in the denial of one’s social contingency; by refusing the construction of subjecthood imposed by society, they believe the effects of such a construction can be overcome. Jonah’s view of the world means his success as a vocalist is his own: his achievements are meritorious, rather than conditioned on race or class or sex or any historical contingency. It is in this respect that contemporary colorblindness is only one component of the larger revival of the formal aesthetic: as W.J.T. Mitchell writes, the “commitment to form is also finally a

⁵⁰ Id. at 466.

⁵¹ Id. at 313.

⁵² Id. at 285.

⁵³ Id. at 216.

⁵⁴ Id. at 562.

commitment to emancipatory, progressive political practices united with a scrupulous attention to ethical means. Insofar as formalism insists on paying attention to a way of being in the path rather than to where the path leads, it seems to me central to any notion of right action.”⁵⁵

This notion is, of course, the aspect of formalism that it most vulnerable to the realist critique: texts and their interpretation are always already shaped by these constructions, and contribute to their reification. When David and Delia Strom tell her father their plan to raise his grandchildren beyond race, William Daley angrily appraises their naiveté and the futility, the backwardness of their plan:

You know what beyond color means?...We’re already there. Beyond color means hide the black man. Wipe him out. Means everybody play the one annihilating game white’s been playing since [the beginning].⁵⁶

And in the face of the debilitating racism that the Stroms face from their first married moments, they come to learn that “[c]hoice and race were mortal opposites,”⁵⁷ that blindness cannot trump society’s prejudicial assignments. Decades later, Ruth echoes her grandfather’s words, bitterly telling Joseph “only white men have the luxury of ignoring race” and that he was doing just that.⁵⁸

The Time of Our Singing’s engagement of the contingency of textual inquiry finds Powers declaiming the efficacy of colorblindness as a mode of interpretation. “Race’s worst injuries are color-blind,” Joseph admits to himself as his family disintegrates,⁵⁹

⁵⁵ W. J. T. Mitchell, “The Commitment to Form; or, Still Crazy after All These Years,” *PMLA* 118.2 (March 2003), 321, 325.

⁵⁶ Powers, 425.

⁵⁷ *Id.* at 287.

⁵⁸ *Id.* at 304.

⁵⁹ *Id.* at 552.

even as his brother “turned his back on the whole time frame of earthly politics.”⁶⁰ David Strom’s job as a Columbia University scientist working on the formative questions of *relativity* in the new field of quantum physics explicitly positions the interdependence of meanings and the flexibility of rules as central to resolving problems of interpretation. David’s mental breakdown following Delia’s death and the continuing dissolution of his family as the siblings contest the meaning of their race manifests itself, in his last, dying years, as a desperate interest in time travel, in the relativities and contextualities of time and space. Powers describes *The Time of Our Singing* as the story of a family “profoundly connected historically to these complicated, separate ties and alienating processes networking in America.”⁶¹ The breakdown of David’s family derives from his refusal to acknowledge those ties and that history, and his reactionary turn to a pure relativism in theories of time travel reflects on the futility of his colorblind project.

The novel’s end finds Ruth and Joseph living together in a mixed race community in the late 1990s. Jonah’s attempts to live outside race have failed: he died on the periphery of the Los Angeles riots in the wake of the Rodney King verdict. Ruth’s race consciousness has only grown since her radical days with the black nationalist movement; she is a widow, her husband shot to death during a suspicious police stop. Joseph has renounced his ties to classical music. By linking the Stroms’ lived experiences amidst the institutionalized racism of the mid-century with this contemporary moment, Powers draws upon what Danielle Allen calls the “record of experience and

⁶⁰ Id. at 398.

⁶¹ *The Paris Review*, 119.

narrative” that justifies racial mistrust.⁶² These protagonists are witnesses to the fact of the nation’s history of racism, and their narratives are necessarily defined in part by those experiences. A formal interpretive methodology that rejects the histories of these narratives would seem to have little purchase on any authoritative reading of such texts.

With respect to the meaning of law, in particular, Powers insists that mechanisms of interpretation – who’s doing the interpreting, to whom the law is being applied – mean everything. When Joseph and Ruth meet briefly during her time “underground,” he asks whether she is in any kind of trouble. “Criminal?” replies Ruth. “Question doesn’t mean anything. You see, the law has been aimed against us for so long. When the law is corrupt, you no longer need to treat it like the law.” When Joseph protests that the law means what it says, regardless of to whom it is applied, Ruth replies that “[t]he people” get to decide what it means.⁶³ The legitimacy of legal interpretation, then, rests not in formal mechanistic applications without reference to context, but in whether that law is ratified by those to whom it is applied. *The Time of Our Singing* suggests that in a progressive democratic society, the power of meaning is vested in the people and without their consent legal interpretation that ignores racial context loses its force.

V. The Absent Knowledge from *The Known World*

If *The Time of Our Singing* interrogates the hermeneutic of colorblindness, *The Known World* is interested in its epistemology: in the kinds of knowledge that the law and race can share, and the kinds of knowledge that remain hidden, unavailable, indecipherable. Edward Jones’ 2003 Pulitzer prize-winning novel leverages the trope of

⁶² Danielle Allen, *Talking to Strangers: Anxieties of Citizenship Since Brown v. Board of Education* (Chicago: University of Chicago Press, 2004), xiii.

⁶³ Powers, 374.

blindness in exploring how enslaved African Americans find themselves the unlikely property of black masters, and how both the law and its subjects – black and white – “learn” to see some things but not others. Its many narrative threads connect through the figure of Henry Townsend, a black man in antebellum Virginia who owns slaves and whose plantation is quickly undone following his early death. *The Known World* imagines the law’s omnipresence in the life of southern blacks, free and enslaved: from the local figures of the sheriff and the slave patrollers, to the 1806 Expulsion Act that required freed slaves to leave the state within 12 months of manumission or their condition would revert back to property (because “freed Negroes lack the ‘natural controls’ put on a slave” (15)), to the stunning consequences of the 1840 census for Jones’ fictional Manchester County (where the children of white men and Indian women are labeled slaves because they were “too dark” to be considered anything other than black). And yet at the same time it explores those aspects of the life under slavery that the law cannot, or will not, see: a sheriff’s lust for the black slave he raised as a daughter; the sanity of a mad woman; the motivations of the many blacks who flee from their “homes” to escape to the north; the kidnapping of free blacks to be sold back into slavery. The juxtaposition of these two kinds of knowledge reveals the institutional blindness of the law, an inability – or a refusal? – to see how color functions in a world ordered by race.

This unintelligibility – what we might even call an incommensurability – appears again and again in *The Known World* as a kind of blindness, one that is embedded in the law. Henry Townsend – born a slave to William Robbins, the county’s most esteemed white man, but bought out of slavery by his father Augustus – remakes himself in his master’s (rather than his father’s) image: as an ostensibly benevolent owner of 33 of his own slaves, his race ignored in the eyes of the law so long as he can manage his property like a white man. Robbins tells Henry after he buys Moses, his first slave, that

‘The law will protect you as a master to your slave, and it will not flinch when it protects you. That protection lasts from here’ – and he pointed to an imaginary place in the road – ‘all the way to the death of that property’ – and he pointed to a place a few feet from the first place. ‘But the law expects you to know what is master and what is slave. *And it does not matter if you are not much darker than your slave. The law is blind to that. You are the master and that is all the law wants to know.* The law will come to you and stand behind you. But if you roll around and be a playmate to your property, and your property turns around and bites you, the law will come to you still, but it will not come with the full heart and all the deliberate speed that you need. You will have failed in your part of the bargain. You will have pointed to the line that separates you from your property and told your property that the line does not matter’ (123, emphasis added).

The law’s colorblindness in *The Known World* professes to treat black owners of slaves the same as white owners, maintaining the distinction between master and property notwithstanding the master’s race. What does this colorblindness accomplish? First, the law allows and even protects Henry in his reproduction of the order of the plantocracy. Property rules established racial hierarchy, and even property ownership that “transgressed the customary boundaries of race” reinscribed the hegemony of capital⁶⁴. Indeed, Robbins petitions the state assembly to allow Augustus Townsend to remain in the state following his manumission, if only because the graceful furniture and

⁶⁴ Katherine Clay Bassard, “Imagining Other Worlds: Race, Gender, and the ‘Power Line’ in Edward P. Jones’s ‘The Known World’,” *African* 42, no. 3/4 (Fall-Winter) (2008): 408.

elaborately carved walking sticks Augustus composed were prized possessions for the county's elite. And Henry's own emerging skill as Robbins' groom and as a shoemaker reveals the dark counterpoint to capital's prominence: "The cost of [Henry's competence] was not fixed and because it was fluid, it was whatever the market would bear and all of that burden would fall upon...Augustus" and his wife Mildred, impeding their ambition to buy Henry's freedom (17). And just as it remains unremarked upon by the narrator, Henry's own labor as a slave – standing in the cold rain awaiting Robbins' morning returns from his liaisons with his black mistress – is unacknowledged by his master, and "[i]f the horse recognized the boy from all the work he did, it never showed (21).

What's more, by allowing free blacks to own slaves, the law conforms to its own sense of itself. It provides the illusion of an integrity, and an internal consistency, that a fuller vision of the law's reality would undermine, and the protection of an abstract right – the right to property – in the face of the absurdity of its consequences. As Henry reasons with his father as he defends his decision to buy his own slaves, "I ain't done nothing I ain't a right to. I ain't done nothing no white man wouldn't do" (138). The ostensible "fairness" of the law of Manchester County – and its "equal" treatment of black and white – is metaphorized in the figure of John Skiffington, William Robbins' handpicked sheriff. A pious man whose wife, Winifred, was raised a Philadelphia Quaker and an abolitionist, Skiffington's own sense of the law's justice is continually compromised – and occasionally blinded – by his fidelity to the people he is tasked with protecting, and by the juxtaposition of the peculiar institution with the dictates of his conscience. After his brother, Counsel, gives John and Winifred a black servant as a

wedding gift, the newlyweds struggle with how to negotiate the competing knowledges of north and south, free and slave, fairness and injustice:

Despite vowing never to own a slave, Skiffington had no trouble doing his job to keep the institution of slavery going, an institution even God himself had sanctioned throughout the Bible. Skiffington had learned from his father how much solace there was in separating God's law from Caesar's law...As long as Skiffington and Winifred lived within the light that came from God's law, from the Bible, nothing on earth, not even his duty as a sheriff to the Caesars, could deny them the kingdom of God. "We will not own slaves," Skiffington promised God, and he promised each morning he went to his knees to pray. Though everyone in the county saw Minerva the wedding present as their property, the Skiffingtons did not feel that they owned her, not in the way whites and a few blacks owned slaves (43).

But in the end they do own Minerva, and the decision about how to handle "the wedding gift" reveals precisely the kind of rationalizations that undo aspirations toward justice:

"She might be better off with us than anywhere else," Skiffington consoles Winifred when she confesses her discomfort on their wedding night (34). Here his concern for the young black girl's future is undermined by his attention to his own, as he wonders "not only about what would happen if they sold her into God knows what but what their neighbors might say if they gave her to Winifred's people for a life in the North: Deputy John Skiffington, once a good man, but now siding with the outsiders, and northern ones at that. Skiffington asked his wife, 'Are you and me not good people?'" (34). Minerva remains their servant – and increasingly the object of Skiffington's desire – until she abandons Winifred and assumes the life of a free woman of color in Philadelphia.

The Known World contrasts these two Skiffingtons to great effect: one a wise sheriff, politically attuned and deft at managing those both above and below his class and rank; the other increasingly mired in the unfurling collapse of Henry Townsend's – and, indeed, the antebellum south's – halting attempts to reconcile the competing logics of law

and race. In legal matters uncomplicated by race, Skiffington demonstrates the law's potential for equity, and its oft-unrealized capacity to see beyond the self-imposed limits on its vision. Adjudicating a dispute between two neighbors over the sale of a cow – a cow the seller knew produced no milk – Skiffington tells them “I take no side but the right one” (358). Skiffington knows the seller to be a cheat and a liar; he suspects he tried to swindle the buyer; and he is quietly tickled by the cow's sudden and newfound supply of milk, which has the seller demanding the cow back. Skiffington's resolution is Solomonic: the sale stands, but the seller can fill two buckets twice a week with the cow's milk. “There would be no more trouble with the cow,” the narrator assures us. Without the complexities and complications of race, the law – Skiffington – confidently and successfully resolves a dispute that was nearing violence, and he does so by looking outside the four corners of a contract and to fuller notions of equity.

The law seems unable, however, to muster the vision necessary to resolve conflicts driven by race. The experience of Skiffington's predecessor, Sheriff Gilly Patterson, in confronting the vexing problem of runaway slaves foreshadows the tension that will mark so much of *The Known World*. Twenty years before slaves would begin to disappear from Henry Townsend's plantation, a man named Jesse, along with four other slaves, were found by a posse led by Patterson two days after their escape. Their master, a part of the posse and bitter after the chase, shot and killed Jesse, cutting off his head and posting it in front of Jesse's cabin as a warning to others who might consider running. Patterson, charged with writing up a report of the incident, noted that the runaways were threatening a white widow and her two daughters, and ruled their deaths justifiable homicide. The narrator tells us that the men and women were a mile apart, headed in

different directions, and that Patterson believed Jesse got what he deserved. But “[h]e did not put it in those words in a report he made to the circuit judge, a man known for opposing the abuse of slaves” (26). Here, then, two visions of the law are not just incomplete, but in opposition, and Sheriff Patterson’s own conception of racial justice occludes a genuinely colorblind appreciation of what would otherwise be seen as state-sanctioned violence.

Sheriff Skiffington’s turn to confront the problem of runaway slaves is complicated by an inversion of the usual scenario, one in which the law is both complicit and at the same time wholly impotent to redress: the kidnapping of Augustus Townsend, a free black man. Three of Skiffington’s slave patrollers – Henry Travis, Barnum Kimsey, and Oden Peoples – meet Augustus and his wagon on the road in the dark of the evening. Offended at Augustus’ attempt at small talk, Travis invokes the authority of his position – “This ain’t no damn church social... This is the law’s business” – and rejects the old man’s free papers, though he had seen them many times before: “You ain’t free less me and the law say you free” (211). These three men, though agents of the law, have already rejected the legalistic paradox at the novel’s center, in which Henry Townsend’s race is ignored in the service of the law’s veneration of property as an abstract right. “This is what happens,” they say among themselves earlier in the story while confronting another runaway, “when you give niggers the same rights as a white man” (13). And as Augustus Townsend stands before them they reject it again, Henry Travis eating Augustus’ free papers and then selling him to a passing slave trader. When Kimsey protests that the whole town knows Augustus to be free, Travis replies, “Don’t tell me what I know and don’t know” (211). The poor white slave patroller here makes a

doubled claim. First, he revels in the difference between the law's knowledge and other competing knowledges, in this instance prioritizing legal form over local truth. Second, he articulates a larger claim that appears in the novel again and again: what the law can know is delimited by its failure to understand the anxieties of race.

Skiffington himself finally comes to know this truth right before he is killed by his cousin and deputy, Counsel Skiffington. The two men arrive at Mildred Townsend's home just after she has a vision of her husband Augustus, kidnapped and sold, being shot and killed in South Carolina. John and Counsel are searching for a runaway, Henry Townsend's foreman Moses, and come to believe that Mildred is hiding him; when she greets them with a rifle they are sure. "Surrender the property," the sheriff tells Mildred. Having failed in his promise to Mildred to bring Augustus back home and see justice done to his kidnapers, Skiffington tries to insist on the abstract duty of the law but cannot keep at bay the realization that his inability to protect this free black family has hopelessly undermined him. He cannot bring himself to empathize or confess his (or the law's) failure, and instead tells her "[n]o nigger will stand between me and my duty...I have a right to do what is right, and no nigger can stand and oppose that right" (364-65). But his faith in the sanctity of that duty is belied by a sudden inability to recognize Mildred: "[h]e could not remember if he had ever spoken her name before and for a moment he questioned the entire day because he though he had gotten her name wrong. Was her name really Mildred?" And then, too, his very real affection for and history with Augustus evaporates: "He tried to remember her husband's name, to make some connection, but he could not remember the man's name." Skiffington's knowledge of the very real racial injustice being done to the Townsends is disrupted by the law's fidelity to

abstraction: he professes that “[w]e have a duty to uphold” and demands that Mildred “[s]urrender the property”.

Again and again *The Known World* juxtaposes these competing kinds of knowledge: the law’s abstract formalism, and its disregard of the realities of race; and what its racialized subjects know, and could teach it. And it is perhaps not surprising that it is in the novel’s own form that we find explicit comparisons between what and how the law knows (and doesn’t know) the black characters that populate the novel. *The Known World* repeatedly introduces extratextual artifacts – statutes, academic texts, historical documents, business and corporate ledgers – the kind of seemingly objective textual evidence that informs legal reasoning. And then it deconstructs them. The census that taxonomizes many of the novel’s characters, for example, reveals that the law is interested only in counting who lives in what house, and who is mother or father to which and how many children. It cannot tell us, as Jones’ narrator does, “that black children were [a white man’s] flesh and blood and that he traveled into Manchester because he loved their mother far more than anything he could name and that, in his quieter moments, after the storms in his head, he feared that he was losing his mind because of that love.” The law is unable – or unwilling – to invest itself in this kind of affect. As a result, the law’s consequences, or more aptly the subjects who suffer those consequences, become, in a very real way, unintelligible to the law, and of course the law is rendered similarly unintelligible to those same people.

VI. Conclusion

Jones invests the ignorance of such a world in the character of Alice Night, an enslaved woman on the Townsend plantation who people said lost her mind after being

kicked in the head by a mule. Henry leverages her madness, recognizing that she's a good worker and "a woman of half a mind is much cheaper to buy than one with a whole mind." But he is blind to the efficacy of her madness, and to how Alice leverages it to transgress the order of slavery. The patrollers explain it as a failure of law: "This is what happens, they said among themselves, when you give niggers the same rights as a white man." But Alice's madness enables her to invert the received logic of a world ordered by legally-sanctioned slavery: she is able to wander at night without a pass (learning every nook and cranny of the land in anticipation of her eventual escape), speak truth to whites ("God would toss them into hell with no more thought than a woman dropping strawberries into a cup of tea"), and reverse the sexual violence of slavery (she grabs the patrollers' crotches and threatens to take them away with her). Jones embeds in Alice the anxiety of pro-slavery whites (and blacks) that the rationality of their racial order can be undone. Alice flaunts her disregard of the conventions of the antebellum South, a fool speaking truth to power.

Henry Townsend's brother-in-law, Calvin, another black owner of slaves in the novel, finally discovers Alice in Washington, DC. She has crafted two tapestries after her escape that are displayed in an exhibit hall; each captures, in devastating detail, the history of Manchester County and of the Townsend plantation, a vision of "what God sees when he looks down." Calvin recollects his role in building the Townsend plantation, and confesses to his sister Caldonia that Alice's art leaves him chastened: enslaving his own people, he realizes, perhaps means he is more culpable for the crime of slavery than even someone like William Robbins. It is through Alice and her art that we can apprehend the extraordinary constraint that this kind of blindness entails, and the

difference between Alice's vision and what the law can see. *The Known World* concludes on the same note as both Morrison's *Paradise* and Powers' *The Time of Our Singing*: with a hermeneutic knot, a text within a text that demands to be judged precisely through the lens of race. Jones' rebuke – through Alice and through so much of the novel – to contemporary colorblindness speaks directly to the racial colorblindness that marks the rhetoric of recent Supreme Court jurisprudence, and to interpretive (racial) formalisms more generally. The law cannot “just call balls and strikes,” and indeed should not understand itself as an omniscient and impartial arbiter of facts, when it seems unable to be mindful – or even to recognize – its own blindness.

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