

Human Rites: Deciphering Fictions of Legal and Literary Personhood, 1830-1860

By

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*For my family, with love,  
and for Penny, who could not be here to see it, but who is on each page.*

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## **Introduction:**

### **Porous Borders, Sleights of the Written Hand, and the Long Shadow of Legalized Slavery**

#### **The Shadows of Ferguson**

On the afternoon of August 9, 2014, an 18-year old African American man lay dead on a street in Missouri. A police officer had shot him at least six times during an altercation that no one on the scene could quite understand or explain. The young man, Michael Brown, was unarmed.

Moments earlier, just before noon, he had stolen a few packages of cigarillos from a convenience store—a petty crime, the type of offense that, on another day or in another town, might elicit a stop and possibly an arrest. Michael Brown could hardly have imagined that he was putting his life in danger when he reached behind the counter and grabbed the cigarillos without paying for them. Nevertheless, his life ended mere minutes later. Brown was dead by 12:03pm, following a struggle at the window of officer Darren Wilson’s police cruiser and a brief pursuit in the street. The entire interaction between Brown and Wilson took just 90 seconds.<sup>1</sup>

In the days that followed, protesters took to the streets of Ferguson, outraged amid reports that Wilson had shot the unarmed Brown while Brown’s hands were raised in surrender.<sup>2</sup> Police responded to the protests in full force, brandishing billy clubs and riot shields. The aftermath of Michael Brown’s death included a three-month grand jury hearing, which failed to produce an indictment of Officer Wilson, and a U.S. Department of Justice investigation into civil rights violations by the Ferguson Police Department. The violence in Ferguson thus provoked intense

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<sup>1</sup> See Paula Mejia, “Altercation Between Michael Brown and Darren Wilson Unfolded in 90 Seconds: Report.” *Newsweek*, 15 Nov. 2014. Mejia’s article arrives at this conclusion by using a collection of sources that include dispatch call records, tweets, police reports, and interviews.

<sup>2</sup> Outrage on this point has manifested in the protest chant, “Hands up, don’t shoot.”

debate about the killing of Michael Brown, the function of law enforcement, and the nature of protest in general. To this day, the mere word “Ferguson” conjures associations not only with Michael Brown, but also with police violence, institutionalized racism, and the birth of the Black Lives Matter movement.

The documents from the grand jury investigation raise far more questions than they answer about what happened to Michael Brown on August 14, 2014. In the Narrative Report of Investigation (2), the Saint Louis County Medical Examiner offers a physical description of Brown’s corpse, followed by another description of the reported events leading up to Brown’s death. The report states in part:

The deceased became belligerent towards Officer WILSON. As Officer WILSON attempted to exit out of his patrol vehicle the deceased pushed his door shut and began to struggle with Officer WILSON, during the struggle the Officers [sic] weapon was unholstered. The weapon discharged during the struggle.

The deceased then ran down the roadway. Officer WILSON then began to chase the deceased. As he was giving chase to the deceased, the deceased turned around and ran towards Officer WILSON. Officer WILSON had his service weapon drawn, as the deceased began to run towards him, he discharged his service weapon several times.

On first glance, this narrative summary is mere bureaucratic formality, protocol designed to produce a paper trail of the police investigation. The report's language, however, is remarkable for the efficiency with which it disposes of Michael Brown—both in name and in body. Despite having previously identified Brown by name at the outset of the report, this section refers to him solely as “the deceased.” In contrast, the report consistently and repeatedly names Officer Wilson, capitalizing his surname for emphasis. The effect of these naming conventions is a sly evacuation of Brown's identity and a subtle legitimization of Officer Wilson. For the reader, the narrative becomes one about Wilson rather than Brown, who has been reduced to a nameless corpse.

Despite the refusal to call Brown by his name, the report nevertheless reminds the reader relentlessly of Brown's deadness. Taken out of the context of an awkward bureaucratic document, sentences such as “The deceased then ran down the roadway,” and “The deceased became belligerent . . .” are striking and horrific—they appear to describe supernatural or paranormal events. Though Michael Brown only actually became “the deceased” after being fatally shot, the report figures him as a corpse even in the events that preceded his death. In the hands of the medical examiner, Michael Brown is dead even before his altercation with Darren Wilson—and his deadness is wrapped up in the implicit characterization of him as a criminal accused of threatening or assaulting a police officer. The report thus manages to chip away at Brown's humanity and his personhood even while it makes him culpable for his own death.

This report and the national conversation surrounding Michael Brown's death raise a host of troubling questions about the relationship between law and law enforcement in contemporary American culture, particularly regarding how these institutions coalesce around black bodies. Under whose authority is a person visible as a subject, or a legal person? Why does American

legal culture repeatedly figure black bodies as the living dead, and how does legal language leach out into larger cultural narratives about race and violence? Where does law begin, and where does it end? What is the role of language and literary production in both shaping and interpreting law?

These questions and the related national conversation about Michael Brown's death were everywhere as I began my work on *Human Rites*. These were the questions on my mind as I read and wrote about Nat Turner's execution, James Williams's disappearance after the publication of his slave narrative, and Jane Johnson's complicated and tenuous inclusion in the legal history surrounding her own escape from slavery. It was not difficult to trace a line between the subject matter of my antebellum research to the racialized violence against Michael Brown, Eric Garner, and Sandra Bland. Although this project focuses on the period from 1830-1860, I have felt at each stage that I am also very much writing about the present. *Human Rites* thus looks at the long history of legalized racial violence in the United States and turns to the antebellum period as a critical moment in the national history of racism—a period from the Republic's infancy when slavery remained legal, when geographical and legal maps were drawn and re-drawn, national mythologies of law were taking root, and new genres of literature were constantly materializing and, just as quickly, disappearing. It is during this period, I argue, that law and literature fomented a set of peculiar, often vexing methods for reckoning with the specter of legalized slavery. These methods reveal that, in the context of slavery at least, it becomes ultimately impossible to distinguish legal texts from other types of literature. Not only does law borrow significant discursive ammunition from literature, but literary texts themselves are also often inherently legal.

## **“Law and Literature,” “Law,” and “Literature”**

In many respects, this dissertation is an un-doing, a dismantling of the borders that we typically draw around the categories of “law” and “literature.” It is altogether too easy, I argue, to preserve these boundaries on the grounds that one keeps us in the realm of the “real world” while the other is the product of creative or artistic labor. It is true that legal texts authorize or mandate highly visible effects in the world—a legal judgment can deprive a person of freedom, property, or even life. Those material results frequently mark law’s capacity for intense violence, as Robert Cover observes when he writes, “Legal interpretation takes place in a field of pain and death” (“Violence and the Word” 1601). But as I demonstrate over the course of four chapters, law is also an incredibly fragile instrument, highly susceptible to creative manipulation, and most of all, deeply dependent on the human hand writing it. Appearing to emanate from disembodied courts, mystical doctrines, or even a divine source of natural law, legal rules are constantly being re-written; they are adapted to different circumstances, utterly contingent upon political and cultural pressures, and often incompatible with each other.

In addition to troubling the boundaries of law, I put pressure on literature’s borders, as well. It would be equally irresponsible, I argue, to ignore literature’s engagement with the real and the material—and particularly the extent to which “the real” is squarely on the table in nineteenth-century African American literature. More than mere artistic flourish, I demonstrate that literature shares significant terrain with legal discourse on the levels of both form and content. I grapple with literature’s complicity in the project of legalized slavery—I cannot and would not claim literature as a redemptive site immune from the racialized violence that so infuses the law of the period, but I do regard literature as a complex, encrypted, and potentially radical site of legal critique.



## *Law and Literature*

Literary critics and legal scholars alike have, using a variety of methodologies, sought to better understand the relationship between law and literature. The connection between the two is at once intriguing and elusive, made more contentious by the disciplinary differences that divide the scholars who work at this intersection. As a general matter, most law and literature scholarship itself falls into one of two binaries: law in literature or law as literature. Both versions of interdisciplinary work have made significant contributions to the field—nevertheless, for reasons which I discuss below, neither approach adequately addresses the specific intersections that I examine in *Human Rites*.

Scholars who study law in literature often address literature—and fiction in particular—as a unique site of sense-making with the potential to isolate or explain life’s and law’s *meaning*. Scholarship in this vein has the tendency to fetishize literature as a source of humanist values, often going so far as to suggest that literature describes what law cannot. While I have no argument here about the inherent *value* of literature, this approach to criticism tends to preserve the sharp distinction between law on one hand and literature on the other. The implication thus reifies a treatment of law as highly specialized, suggesting that, though law may be flawed for its inability to explore the dark corners of the human psyche, it derives its value from a super-cultural position of primacy and institutional authority. This approach also suggests that law is simultaneously self-evident and inscrutable—that it *does* things that literature must in turn *describe*. My work in *Human Rites* complicates both halves of that construction, arguing that it is just as possible to claim that literature *does* and law *describes*. I treat legal texts as simultaneously legal and literary, seeking to capture the nuance of legal language’s procedural and substantive effects while also applying literary analysis to legal language. My close readings

of legal documents thus use literary analysis to better understand the means and mechanisms by which law materializes and evolves.

In this respect, I may initially appear to more closely approximate the methodology of scholars working on law as literature. The “law as literature” approach treats law as a genre of literature and advocates for subjecting law to literary analysis. This approach, however, often creates a reversal of the problematic of “law in literature” scholarship. Scholars treating law as literature tend to focus exclusively on legal materials, and the interdisciplinarity of the approach derives mainly from the use of literary criticism’s “tools” as applied to those legal documents. Here again, the implication is that, at the level of the primary text, law and literature are so incompatible as to merit separate consideration. In *Human Rites*, on the other hand, I place law and literature into direct conversation with each other, troubling cultural narratives that would place law under the heading of “truth” and literature under the heading of “fiction.”

My approach to the relationship between law and literature is in dialogue with a number of scholars currently working at this disciplinary intersection, though these scholars often do not label their own work as part of the “law and literature” field. For example, in *The Fugitive’s Properties: Law and the Poetics of Possession*, Stephen Best weaves together analyses of slavery, intellectual property, personhood, and fugitivity. Best brings these wide-ranging concepts together through consideration of an equally wide-ranging selection of primary sources that include judicial opinions, novels, and statutes, theorizing fugitivity as not only a legal, but also a textual condition. Though scholars often think of Best as working not in law and literature but in African American studies, his methodology in *The Fugitive’s Properties* urges a discipline-bending imperative that I have tried to bring to *Human Rites*.

Best is not alone in creating a nuanced approach to law and literature studies from outside or adjacent to that field's generally accepted borders. For example, in *Slavery on Trial: Law, Abolitionism, and Print Culture*, Jeannine DeLombard undertakes a material culture study of the circulation of law in abolitionist print culture, examining how the abolitionist press staged and re-staged legal dramas surrounding legalized slavery. For DeLombard, these practices of re-printing and journalism transformed slavery as an institution into a culpable criminal on trial in the court of public opinion. Although *Human Rites* is not a print culture study, it engages with some of DeLombard's methodology in *Slavery on Trial*, which theorizes law as something that can happen on the circulated page as well as in the courtroom<sup>3</sup>—DeLombard encourages us to take a broader view of what counts as law, and my work in the dissertation participates in a similar project, often building on DeLombard's arguments.

Finally, Colin Dayan's work, particularly in *The Law is a White Dog: How Legal Rituals Make and Unmake Persons*, bucks many of the features of traditional law and literature scholarship. Dayan takes up legal theory, history, and narrative to bring a uniquely literary perspective to legal rituals and legal personhood. Her examinations of civil death and law's taxonomies bring many of law's more opaque machinations into sharp relief as instruments of racialized violence. Here again, the yield of the scholarship is an interdisciplinary approach that pushes both legal studies and literary criticism, rather than privileging one over the other. For Dayan, legal style and flourish create the appearance of elegance and sense even as they mask some of law's most vicious moves. Likewise, my work attempts to peel back this legal mask, refusing to take law merely at its word and pushing instead to get somehow closer to the means

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<sup>3</sup> For a discussion of how lawyers and other legal actors staged courtroom performances in the antebellum South, see Ariela Gross's work in *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Athens, GA: U of GA P, 2006).

by which law “works” and the literary technologies it borrows in order to bring that work into fruition.

Nineteenth-century U.S. culture is particularly hospitable to studies in law and literature, given the long shadow that legalized slavery cast over all manners of discursive production during the period and the apparent fluency of nineteenth-century writers in both legal developments and literary publications. It is not a coincidence that many of the scholars interested in the law-literature relationship have gravitated toward this period in American history. My work intervenes more broadly in nineteenth-century American studies, and in particular with literary critics and legal historians working on slavery and African American culture of the period. These critics, including Teresa Goddu, Ariela Gross, Saidiya Hartman, Daniel Sharfstein, Christopher Tomlins, Lara Langer Cohen, and Karla Holloway, engage with law to varying degrees in their own work. I envision *Human Rites* as a project that invites and embraces engagement with this broad range of scholarship, and I imagine law and literature studies as including theories of embodiment, performance, material culture, race-making, and legal history.

### ***Law***

*Human Rites* examines two main types of legal documents: the judicial opinion and the statute. As I have already suggested, my work is in part a blurring of the line between law and literature during the antebellum period; for that reason, though I am attentive to the nuances of my primary sources, I am not interested in fetishizing or over-exceptionalizing legal texts. In fact, as the project unfolds, I take an increasingly broad view of what counts as “law,” slowly expanding that circle to include non-binding documents from case files, testimony, news media, and ultimately,

literature. I am mindful, nevertheless, that the texts most obviously “legal”—opinions and statutes—may be unfamiliar to some readers and that their participation in rules of legal procedure requires a certain amount of parsing.

Judges and courts produce opinions, binding decisions that are typically—though not always—memorialized in written text.<sup>4</sup> The basic format of a U.S. judicial opinion is remarkably consistent across different courts and even across different time periods in the past two centuries. Most opinions begin with a brief statement of “facts” and the distillation of the legal question at hand. In the legal analysis that follows, a court grapples with the relevance of existing precedent, the competing equities of the case, and the controlling legal standards. Although judicial opinions often present this material as self-evident or unimpeachable, each of these sections actually obscures a judge’s significant editorial power: to determine what the “facts” are and which facts are relevant to the case, to identify which precedent should apply (judges often have several options on this front), and to conclude which existing law best fits the pre-determined facts of the present case. On the level of form, the elegance of the judicial opinion is in its ability to generate a holding, or legal rule, that appears, by the end of the opinion, to be utterly obvious. Once issued, though theoretically subject to appeal, a judicial opinion becomes binding law, not

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<sup>4</sup> Judicial opinions issue in a variety of cases, both criminal and civil. They may adjudicate a person’s guilt, interpret a statute, or determine a party’s rights in a civil dispute. An opinion is binding within its own jurisdiction and also subject to rules of appeal and the jurisdiction of the relevant appellate courts. Publication of opinions typically occurs in judicial reporters—volumes that aggregate and publish opinions primarily for use by legal practitioners. These published opinions are considered “official” legal records that may be cited in future litigation. Not all judicial opinions are captured in written text, however, and not all written opinions are published in reporters. This dissertation examines written opinions, though I do not limit myself to versions of opinions from official reporters. For instance, in Chapter 1, I examine the sentencing of Nat Turner as reported in Thomas Gray’s pamphlet on Nat Turner’s confessions regarding the Southampton Slave Rebellion. This one example demonstrates the tendency of opinions to circulate in “unofficial” formats that permeate broader zones of readership, particularly during the nineteenth century.

only for the litigants in the present case but also for all *future* litigants who are similarly situated. This process of judicial decision-making generates a genealogy of legal rules that adds to the existing body of precedent while departing from past rulings where the facts diverge—or where political pressures have made existing legal rules untenable.

A relatively well-known line of judicial opinions offers an illustrative example of the evolution of precedent. Many high school civics students learn that *Brown v. Board of Education* (347 U.S. 483 (1954)) established the legal rule that effectively abolished race-based school segregation. That legal holding modified a long-standing legal doctrine that authorized segregation so long as the provided facilities met the standard of “separate but equal.” The “separate but equal” doctrine had legalized a host of Jim Crow-era practices such as separate restrooms, drinking fountains, and other facilities, and that doctrine is directly traceable to the 1896 Supreme Court decision in *Plessy v. Ferguson* (163 U.S. 537).

Rather than governing public school segregation, *Plessy* arose around the issue of railway car segregation. In upholding a Louisiana statute that called for “separate but equal accommodations for white and colored persons” (*Plessy* 552), the Supreme Court validated a legal and cultural narrative that perpetuated racial segregation in a variety of contexts. In *Plessy*, the Supreme Court (544) held that, “Laws permitting, and even requiring, [different racial groups’] separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power.” Later in the opinion, the Court notes (551-52), “If the civil and political rights of both races be equal, one cannot be inferior to the other civilly or politically. If one race be inferior to the other socially, the Constitution of the United States cannot put them upon the same plane.”

The Court thus claims the existence of political and civil equality by citing, curiously, the existence of civil and political equality—the argument here is that it is not the law, but some unnamed social, that is responsible for inequalities among the races. Thus, in this 1896 opinion, the Supreme Court not only established a holding binding on Plessy; it also established a narrative—what would come to be known as the “separate but equal” doctrine—that applied to *future* litigants seeking access to various public facilities from railway cars to drinking fountains and ultimately to public schools.

This accrual of precedent establishes the appearance of teleology, in which later precedent always modifies earlier rulings. In application, however, the story is somewhat more complicated. Precedent looks both forward and backward, so that each decision must take into account the history of the legal issues in question and contemplate the future application of the immediate holding. Taken in isolation, each judicial opinion appears to have the final word on the matter—a holding, always written in the present tense, that settles the legal question with apparently definitive resolve. It is only upon looking at subsequent rulings and laws, however, that one can say finally whether the holding in any given case remains “good law”—law that has not been overturned by appeal, later precedent, or statute.

This tension in law, between its apparent impenetrability and its fragility in the face of competing legal rulings, makes the judicial opinion especially suited to my analysis in *Human Rites*. On the one hand, judicial opinions depict the state of the law at a particular point in history, documenting the most persuasive and pervasive legal narratives of that moment. On the other hand, however, judicial opinions signify law’s habit of perpetually chasing its own tail. Moreover, judicial opinions tend to include extraneous matter that is *not* necessary to the legal holding in question. In the example of *Plessy*, the precise phrase “separate but equal” appears in

only one place in the decision—Justice Harlan’s dissenting opinion, which was not part of the binding judgment. Nevertheless, that language is the phrase that took hold with such force during subsequent debates over Jim Crow policies. Likewise, nearly *all* of the language in the Dred Scott Decision (*Scott v. Sandford*, 60 U.S. 393 (1857)) is dicta, which Black’s Law Dictionary defines as “such opinions uttered . . . not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects.”<sup>5</sup> In other words, judicial opinions often serve as touchstones that provide powerful cultural narratives even when they are explicitly *not* engaged in the process of creating binding law. Judicial opinions thus provide a rich source of material on the power of legal narratives and legal culture, as well as the authorial practices of individual judges.

In addition to judicial opinions, the dissertation also examines other legal documents such as statutes. Unlike opinions, which derive from judges and courts, statutes are the product of the legislative process. Whether passed by city councils, state legislatures, or the U.S. Congress, statutes are often referred to as “codified law” because they are written laws that apply to *all* persons in the jurisdiction—by contrast, while judicial opinions do have effects on similarly situated litigants, a judicial opinion is technically binding on the individual parties to the case. Statutes, on the other hand, aim for broad coverage and applicability. Like other types of law,

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<sup>5</sup> See “What is dictum?” *The Law Dictionary, Featuring Black’s Law Dictionary Free Online 2<sup>nd</sup> Ed.* <http://thelawdictionary.org/dictum/> (internal citation omitted). In addition to these examples of extraneous material *within* judicial opinions, I also consider supporting legal documents that make up the complete record but are not judge-authored judicial opinions. For example, in Chapter 2, I examine various affidavits and testimony from several court cases concerning the fugitivity of the slave known as James Williams. Likewise, in Chapter 4, I discuss Jane Johnson’s affidavit and oral testimony in the legal proceedings against Passmore Williamson and William Still. Both the Williams and Johnson examples demonstrate the difficulty in drawing bright line borders around texts that we think of as “law.” These documents, which participate in law but stop short of acquiring law’s binding effect, illustrate the significant crossover during the antebellum period among categories of testimony, autobiography, witnessing, and protest.



statutes regulate both civil and criminal conduct. While judicial opinions are subject to appeal only by other courts, statutes are vulnerable to challenges on several fronts. Courts interpret statutes in the course of litigation, as with the litigation in *Plessy v. Ferguson*, where Plessy originally challenged a statute regarding public accommodations, and appellate courts may even overturn a statute by declaring it unconstitutional on one or more grounds. In addition to interpretation by courts, statutes may also be amended or abolished by subsequent statutes.

In *Human Rites*, I do not grant any more or less legal “weight” to statutes as opposed to judicial opinions. There are, however, several significant differences between opinions and statutes that make the latter somewhat less amenable to literary analysis. First, statutes are intensely collaborative documents that almost never bear the authorial imprint of any one person. Even in appellate courts where decisions issue from a panel of judges, it is commonplace for a single judge or justice to author an opinion; in that case, other judges concur or dissent, often writing their own separate opinions in addition to the primary majority opinion. In statutes, on the other hand, lawmakers debate individual provisions, repeatedly amending language during the legislative process. Of course, the availability of authorial intention is hardly a prerequisite for literary analysis—and the pursuit of authorial intent may even impede the practice of textual interpretation. Moreover, many of the other materials in *Human Rites* are also undoubtedly the product of collaborative authorship, especially the slave narrative, in which the use of an amanuensis raises a host of far more troubling questions about authorial agency. These other texts with complicated authorship, however, privilege narrative in a way that statutes do not.

The primary goal of legislation is to establish a set of rules, usually a recitation of numbered sections regarding different statutory provisions. While some statutes contain preambles or statements of legislative intent, the language of a statute itself generally reads as a set of authorizations, prohibitions, and conditions with little attempt at *narrative* connection from one section to the next; on the contrary, it is typically in the best interest of a statute to limit narrative or editorialization so as to make the statutory provisions as unambiguous and discrete as possible. This formal limitation on statutes does not mean that it is impossible to interpret the larger cultural narratives underpinning a statute, or in which a statute participates. Rather, in statutory interpretation, it becomes increasingly necessary to look to additional sources to better determine what those narratives are<sup>6</sup>—legislative history, judicial opinions, and relevant statements from lawmakers may bring an entirely new context to a statute that appears on its face to be neutral in some respect.

For instance, to return to the example of Jim Crow laws, many of the statutes regarding public accommodations *appear* to be interested in establishing access to facilities equal for people of all races. The statute at issue in *Plessy v. Ferguson* calls for “equal, but separate, accommodations for the white and colored races, by providing two or more passenger coaches for each train, or by dividing the passenger coaches by a partition to as to secure separate accommodations . . . .” (*Plessy* at 537). This language, to a reader in 2016, is so tinged with the codes of the Jim Crow South, that it signifies immediately as participating in the tradition of

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<sup>6</sup> Strict constructionists or originalists would beg to differ with my characterization here. Interpreters in this vein often call for readings of a statute’s “plain meaning,” an assertion that, for a literary scholar, is practically meaningless. Indeed, so-called “plain meaning” readings of statutory language frequently assign carefully *selected* meanings from among a host of plausible explanations, choosing to label the interpretation as “plain language” in order to obscure the very *interpretive* gestures inherent in statutory construction.

segregation, a practice long held to be unconstitutional racial discrimination. The plain language of the statute, however, *sounds* remarkably value-neutral. It calls for “equal” accommodations, though it does mandate partition or separation. There is no explanation in the statute of why these accommodations ought to be separate in the first place, and there is certainly no indication that the statute is an effort to oppress or even inconvenience non-white railway passengers. In fact, the underlying statute claims that the purpose of the statute is “to promote the comfort of passengers on railway trains.”<sup>7</sup> The absent, but now obvious, subtext is that the statute actually aims to promote the comfort of *white* passengers on railway trains. The racist narrative encompassed by the statute is expressly *not* its stated purpose; that narrative becomes visible only in the broader cultural narrative that is evident from history and context.

When statutes arise in *Human Rites*, they typically demonstrate a similar dissonance between the legislation’s stated purpose and the contextual clues that counsel in favor of an alternative explanation—always as a means of teasing out law’s ability to cloak oppression in mystifying or even disingenuous language. For example, in Chapter 1, I consider a Georgia statute enacted in apparent direct response to the widespread circulation of David Walker’s 1829 *Appeal to the Coloured Citizens of the World*. That statute was one of several laws that criminalized the possession or circulation of materials that might encourage or incite slave rebellions—although the legislative history surrounding these statutes makes it apparent that the laws specifically targeted Walker’s *Appeal*, the statutory language entirely avoids naming Walker personally or any text specifically. Thus, what appears on the face of the statute to be content-neutral regulation actually effaces the panic and outrage sparked by Walker in particular—his pamphlet, which called for the immediate abolition of slavery and the admission

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<sup>7</sup> See Louisiana Railway Accommodations Act of 1890 (Preamble).

of African Americans into full citizenship rights, had been mailed to lawmakers and circulated in urban centers throughout the South. The statutes that responded to Walker's *Appeal* thus faced the unenviable problem of attacking an opponent that they refused to name or otherwise identify—as a result, legislatures were forced to develop unwieldy and overly broad language in order to ensure that the *Appeal* fell within the ambit of the statutes without appearing to be the sole target of the legislation.

These statutory enactments serve as examples of law's shortcomings, its inability to simply do what it wants to do without resorting to a set of textual gymnastics and obfuscations designed to give it the appearance of legitimacy. Walker's *Appeal* in fact exposed a gap in the law, a crack in law's surface through which the *Appeal* initially slipped—southern legislatures acted quickly to fill the crack, but the highly reactive nature of law in this context is ultimately a suggestion of law's vulnerability and its failures as an institution. I do not mean to suggest that these laws, or other laws related to legalized slavery lacked teeth. On the contrary, many of the statutes regulating slavery were unspeakably violent, brutal, and bloody. However, by exposing the tensions between law's stated aims and its contradictory position in cultural narratives, it becomes clear that law's violence is possible not *merely* through its status as law—rather, law deftly marshals language that creates the justification for law's power in the first place, often vanishing the names and histories that underpin individual legislation and regulation.

Where one encounters a gap or silence in the law, the first impulse is to assume that lawmakers have simply erased names and events that are thus lost to history. The literary lives of these statutes suggest, however, that some of those silences become more complicated if we broaden the scope of our inquiry into what we are willing to call "law." I argue that, for this reason, it is unwise to consider legal documents and pieces of legal history as though they exist

solely in their separate, and highly rarefied spheres. I call instead for a much broader reading of legal materials that takes into account their legal *and* literary and cultural contexts. I ultimately suggest that, in the antebellum period in particular, it becomes virtually impossible to determine with certainty where law ends and literature begins. For, whether reading an opinion, a statute, a confession, an affidavit, or an oral argument, law's reach seems always to be seeping outside its apparent borders, making it altogether unclear which documents constitute binding law and which constitute description or narration. Single documents often engage in both practices, further complicating the question of when a legal document is executing each function. The question of influence and infiltration does not, however, flow in one direction alone—for its part, literature always seems to be intruding on law, as well.

### *Literature*

Given my investment in destabilizing the boundaries around law, one might expect that my work in *Human Rites* would therefore privilege literature or claim it as a redemptive site in which to locate those vanished by law. My treatment of literature, however, is equally invested in destabilization, arguing instead that literature shares considerable terrain with law—and that it is often equally vexed, complex, and transdisciplinary. As with law, I argue for expanding the borders around what we encounter as “literary.” In order to demonstrate the porousness and permeability of literature, I bring various literary genres and texts into direct dialogue with documents that appear at least superficially to be legal. In particular, the dissertation considers several distinct genres of African American literature during the antebellum period: protest literature and related print materials, the slave narrative, and the novel. As I will explain below, legal documents such as affidavits, confessions, and testimony nevertheless appear with regularity in these apparently “literary” texts. Thus, although these literary genres may initially

appear to be self-evident, they become, in *Human Rites*, considerably more complicated, frequently creating friction with legal institutions and narratives, and raising challenging questions about the role of African American literary culture in the legal history of slavery in the United States.

One of the movements the dissertation makes is from non-fictional to fictional literature. For many of the literary sources in the project, the question of fictionality is an unusually complicated one, with slave narratives and novels frequently combining both autobiographical and fictional elements within a single text. Non-fiction protest literature, as in the example of David Walker's *Appeal*, is likely the genre least susceptible to confusion over its generic classification. Protest literature and pamphlets thus occupy the firmly non-fictional realm, though they may borrow from conventions of law or literary fiction. Walker's *Appeal* often stages itself as a re-writing of founding documents such as the Declaration of Independence or the Constitution, troubling the border between law and literature if not between fiction and non-fiction.

Even pamphlets that maintain the appearance of non-fictionality, however, have a tendency to push generic boundaries. For instance, although the *Confessions of Nat Turner* was published as a pamphlet, that text hardly qualifies as protest literature, unless one reads it as a protest of slave insurrection. The portion of the *Confessions* that contains Turner's autobiography is arguably a form of black protest, and at the least, it refuses to assume a moral debt for the violence of the Southampton insurrection. The remainder of the pamphlet, however, combines Turner's autobiography with judicial procedure, establishing a complicated narrative that both indulges Turner's confession and attempts to purge the larger cultural narrative of the ways in which Turner's testimony threatens white supremacy. The complete text, housing both

literary practices and legal procedure, thus becomes generically vexed, even without taking into account the editorial license supplied by the pamphlet's publisher, Thomas R. Gray.

While the *Appeal* and the *Confessions* serve as examples of how non-fiction literature reaches out into legal discourse and vice versa, other genres of literature make these disciplinary crossings even more complicated. The slave narrative is often regarded as the quintessential form of early African American literature, and indeed the antebellum period produced a variety of slave narratives, primarily through the white abolitionist print machine.<sup>8</sup> Generally accepted definitions of the slave narrative locate the genre according to some of its more common conventions: the narration by a former slave of the conditions of slavery and his or her eventual escape and fugitivity. Scholars have, however, modified this definition by noting that certain other literary practices tend to mark slave narratives, as well. Examples include evidence of mistreatment and abuse at the hands of slaveholders, claims to lost personal and family histories, and the presence of a white amanuensis who "transcribed" the narrative with varying degrees of (untraceable) editorial influence. In *To Tell a Free Story: The First Century of Afro-American Autobiography, 1760-1865*, William Andrews writes (1):

During the first half of [the nineteenth century], most Afro-American autobiography addressed itself, directly or indirectly, to the proof of two propositions: (1) that the slave was, as the inscription of a famous antislavery medallion put it, 'a man and a brother' to whites, especially to the white reader of slave narratives;

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<sup>8</sup> See Teresa Goddu's work in *Selling Anti-Slavery* for a fuller discussion of how white abolitionist networks took ownership of black literary production as part of a broader corporate strategy.

and (2) that the black narrator was, despite all prejudice and propaganda, a truth-teller, a reliable transcriber of the experience and character of black folk.

Although Andrews speaks here to autobiography more generally, the slave narrative was of course the primary vehicle for African American autobiographical production in the antebellum period. In fact, the very use of the term “autobiography” calls attention to the slave narrative’s most fraught generic trait: it sits somewhat uncomfortably at the intersection of fiction and non-fiction, explaining in part the two separate propositions that Andrews identifies.

As Andrews notes, on the one hand, slave narratives were subject to a rigorous system of verification in order to establish the black narrators as “truth-tellers.” This process of fact-checking and scrutiny claims to be invested in subverting cultural narratives that cast African Americans as untrustworthy and dishonest. On the other hand, as Andrews points out, the twin requirement of the slave narrative was to cast the narrator as a friend to white readers and whites more generally. If fact-checking sought to strip away or discourage racist narratives about slaves, this requirement rather added narrative flourish to the cold hard facts that a slave narrative claimed to rehearse. Not only do these twin requirements cast some light on the motives of white abolitionists to gloss the content of slave narratives (and the motives of the African American narrators to gloss their own relationship to white persons), but they also put pressure on the question of fictionality in the slave narrative genre.



As becomes apparent in *Human Rites*, fictionality is a particularly contentious issue with respect to the 1838 publication, *Narrative of James Williams, an American Slave, Who Was for Several Years a Driver on a Cotton Plantation in Alabama*. Authorized and distributed by the American Anti-Slavery Society, the *Williams Narrative* became incredibly controversial after its publication when pro-slavery writers challenged the veracity of its factual content. As I discuss in Chapter 2, the ensuing debates, scholarship, and mystery surrounding the identity and biography of James Williams staged some of the fact/fiction tension that Andrews alludes to in his characterization of the slave narrative's twin aims. With the factual "truth" of the *Williams Narrative* in question, that text became even more difficult to locate generically—a mystification of fiction and non-fiction that has been profoundly de-stabilizing for literary critics as well as for its original audience. Despite its status as an outlier—most slave narratives were not as controversial as this one, nor was any other slave narrative so decried as "false"—the *Williams Narrative* actually demonstrates the pliability of the slave narrative more generally. It resists easy answers about authorship, authorial identity, and the presence of editorial narratives included more for abolitionists' political ends rather than factual accuracy. This resistance is particularly useful for my work in the dissertation. It is precisely because of these texts' porosity and fluidity that I am able to place "literary" texts like slave narratives alongside "legal" texts like judicial opinions. Thus, I am less interested in what makes a slave narrative visible as a slave narrative—instead, I am far more interested in how and why some slave narratives participate in *legal* narratives, and vice versa.

Even in the dissertation's treatment of literary fiction, it is never altogether clear for the reader whether the primary text is essentially "factual," "fictional," "legal," or "literary." For example, my final chapter considers Hannah Crafts's novel *The Bondwoman's Narrative*, which was written during the 1850s but remained unpublished until 2002. I use the term "novel" here for convenience, but in Chapter 4, I problematize that characterization of the work, suggesting that "fictionalized autobiography" might be a more precise label. Organized as a novel, but bearing many of the hallmarks of a slave narrative—including references to several verifiable "real" persons from the author's life—*The Bondwoman's Narrative*, like each of the other literary texts, occupies many different generic spaces. It variously resembles gothic fiction, the protest pamphlet, autobiography, and the sentimental novel. And indeed, upon unraveling some of the novel's factual and historical references, it turns out also to be a cipher for a set of legal narratives.

I have taken some pains in the Introduction to parse these generic differences among legal and literary texts. That labor appears here not because the project is deeply invested in these generic distinctions—on the contrary, each chapter begins from the assumption that it is both logical and productive to generate a dialogue out of the pairings of texts that appear to be generically different. This Introduction serves instead as a sort of primer for the reader, marking out the pliability inherent in these generic divisions from the outset, and encouraging the reader not to look merely for the generic *differences* among the texts in this dissertation. Rather, I urge you to note what *sustains* these pairings and joinders—the ways in which the borders of genre and form become secondary to the borrowings, takings, and re-imaginings in all of the texts, and the uncertainty one begins to feel about classifying anything as "legal" or "literary" in the first place.

## **African American Literature: Alternate Modes of Authorship**

It is a precarious thing to construct a project whose center is ceaselessly troubled, blurred, and mystified. The risk is that the center will drop out, or that the project will be an exercise in assembling and demolishing a complicated straw man. I have striven, however, to put all of the mystification and border-blurring to a purpose. The uncertainties I advocate about the distinctions between the legal and the literary proceed with the goal of a new understanding about modes of African American authorship and African American literature more generally. Faced with both the practical and political obstacles to scholarly study of early African American literature—not only were African Americans discouraged or prohibited from learning to read and write, but many of the earliest primary sources have been lost or erased—I aim to build on the existing archival and academic work of African American studies scholars while also searching for novel ways to read African American literary practices during the antebellum period. The juxtaposition of legal records with other types of literature shifted the landscape of authorship, urging me toward a broader understanding of what it means not only to be a legal or literary “person” but also what it means to be an author.

Throughout *Human Rites*, African American authors are writers, but they are also witnesses, deponents, storytellers, narrators, advocates, rebels, and fugitives. I argue that the construction of a persona around one’s fugitivity, enslavement, or liberation constitutes its own type of authorship that demands a new type of literary reading—that reading, rather than privileging historical accuracy or factual verification, ought to consider the authorial pressures on an enslaved or free African American subject and recognize authorship that arises in unexpected or counterintuitive places. That reading must be amenable always to the existence of unfamiliar new types of “texts” that linger alongside or outside “typical” literary sources such as

slave narratives, novels, and non-fiction pamphlets.<sup>9</sup> Because African American authorship in the antebellum period was consistently and systematically suppressed or denied, it often developed along furtive and even clandestine pathways. The success of this authorship rested with its undetectability, illegibility, and even invisibility. For slaves who desired communication with loved ones and friends in other places, correspondence was necessarily complex, secretive, and dependent on false claims of illiteracy;<sup>10</sup> for free or fugitive African Americans, publishing a text under one's own name might bring slave catchers and former owners seeking retribution or recapture. To read and analyze clandestine works of authorship means on some level surrendering to the impossibility and incompleteness that this type of authorship presents. It means reading inconsistencies, gaps, and even silences not as fatal flaws or imperfections but as potential sites of African American authorship.

In light of these constraints on traditional authorship, *Human Rites* treats the construct of personhood as the crucible in which alternative modes of authorship emerge as cultural artifacts. By troubling the borders of what constitutes a legal or literary “person,” my work here suggests that the category of “author” is likewise more expansive and far-reaching than we might suspect. I consider the ways that African American writers, narrators, and witnesses envision personhood in subversive and deeply creative dialogue with other literary and legal texts—these reimaginings suggest that African American authorship arose in the practices not only of writing but also in the routine performances of fugitivity, enslavement, and emancipation more

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<sup>9</sup> In this respect, it may be useful to think of this work as grappling, in Derridean terms, with the supplement. While my work has taken me to the intersections among these traditional sources and legal history, I suspect that there are other such vertices that would expose additional supplements and further enrich our understanding of early African American authorship.

<sup>10</sup> To write a letter to a relative meant that a slave risked exposing his or her ability to read and write.

generally. African American authorship, then, is less contingent on its legibility as or in traditional literary texts than it is on its relentless and necessary *subversion* of those genres, modes, and practices of writing that maintained such historical intimacy with whiteness and institutions of white supremacy.

### **Legal and Literary Personhood**

In a 1928 *Yale Law Journal* article, Bryant Smith writes (283), “To be a legal person is to be the subject of rights and duties.” Sounding nearly too broad to be useful, this definition nevertheless makes plain why personhood, of all legal theories, was in such contention during the antebellum period in the United States. The existence of legal slavery produced a version of legal personality that Colin Dayan has described (xii) as “negative personhood”—slaves occupied a vexed place in law, subject to countless duties and few, if any, rights. It might be most accurate to characterize slaves as legal persons but not judicial ones. In the broadest sense, law did not deny that slaves were human beings, or “persons” in the colloquial sense of the word. On the other hand, however, law consistently refused to extend the rights and privileges of personhood to slaves. As a general matter and at least in theory, slaves could not vote, hold property, bring lawsuits as plaintiffs, or testify as witnesses in court. In many places, slaves were also forbidden from learning to read and write. They could not travel freely. They could not offer or withhold consent when their owners raped them. Though persons in fact, their legal personhood was constantly denied, undermined, and refused.

Many scholars have theorized the denial of legal personhood as constituting civil or social death,<sup>11</sup> offering helpful frameworks for understanding legal personhood as a kind of authorizing gesture that welcomes individuals into a social network, a state, or a nation. Death is undeniably present in my own consideration of legal personhood—in several instances, the texts I read generate intense overkill of black bodies, juxtaposing the deadness of a corpse with the deadness of a living slave. Rather than focusing on social or civil death, however, my work in *Human Rites* takes me to the unexpected ways that personhood is narrated by legal and literary texts. The problem of slaves’ legal personhood tends to create discursive stumbling blocks—often, these stumbling blocks coalesce around a problem of naming. The very gesture of naming a person—as demonstrated by the police report of Michael Brown’s death—establishes a person as an agent of the narrative in question. It comes as no surprise, then, that legal institutions pursuing an agenda of oppression and enslavement frequently refuse to name individual slaves, obscuring their individuality and keeping them as unrecognizably human as possible.

The politics of naming arise in other, more “literary” texts as well, where individual authors generate new names for themselves—sometimes many names in succession, as is the case with the slave known as James Williams. Personhood in this context becomes shockingly fluid, adaptable, and also incoherent. As readers, we are accustomed to identifying persons by what remains static about their identities—their names and, more broadly, what we might call their personalities. But for slaves, and particularly fugitive slaves—for whom identification is often the equivalent of capture and death—personhood is marked not by stasis but by motion,

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<sup>11</sup> See Colin Dayan’s work on civil death in *The Law is a White Dog*. Both Orlando Patterson (*Slavery and Social Death*) and Russ Castronovo (*Necro Citizenship*) have considered the possibilities of social death and dead citizenship as possible frameworks for understanding the legal personhood of slaves and former slaves.

interruption, and incommensurability. In the case of fugitive slaves, as I explore in Chapter 3, legal personhood and literary personhood are inextricably linked, inseparable, and maddeningly elusive.

If legal personhood is marked by “rights and duties,” I mean something quite different when I use the term “literary personhood.” It would be most convenient to equate literary personhood with the status of being a “character” in a text. While I invite that association on some level, I also want to suggest that literary personhood is something other than mere characterization—I mean “literary personhood” as a signifier not necessarily of intense or prolonged characterization, but of a person’s textual visibility as a subject. Even brief literary references to characters, such as Hannah Crafts’s passing references to Jane Johnson in *The Bondwoman’s Narrative*, may nevertheless constitute an assertion or critique of a person’s right to legal personhood. Conversely, a judicial opinion—as in the consideration of petitions for freedom in Chapter 3—may, through specific literary practices, develop a slave’s literary personhood in ways that nevertheless support the denial of legal personhood to that same slave.

Rather than marking out the distinct differences between legal and literary personhood, however, I want to put these terms into play as a means of extending my earlier arguments about the porosity of legal and literary texts. As the dissertation ultimately argues, these various discursive models of personhood reference and encode each other in ways that urge not only the fictionality of law, but also an understanding of literature, and particularly literary fiction, as inherently legal. The terms “legal personhood” and “literary personhood” ultimately call attention to the discursive efforts to narrate personhood in a meaningful coherent way, to the possibility for alternate modes of African American authorship—and to the impossibility of enslaved personhood to be adequately accommodated by these discursive efforts.

## Chapter Summaries

The dissertation moves simultaneously in two directions. First, it is organized more or less chronologically, beginning in the late 1820s and ending in the late 1850s. Second, the project begins in the realm of what we might comfortably call “non-fiction” and moves toward increasingly fictional texts as the chapters progress. In addition to the cumulative focus on fictionality in texts, the dissertation slowly turns its attention to fictionalization as a discursive practice that animates law and literature, often with different purposes and to different ends. The presence and nature of fiction in each of the chapters acquires different meaning. In Chapter 1, fictionality is evidence of law’s violence, whereas Chapter 2 reads fictionality as evidence of law’s vulnerability but also as suggesting new possibilities for fugitive authorship. Chapter 3 examines the legal fiction as a device of law that creates both micro- and macro-narratives about the nature of enslavement and American legal mythology more generally. Finally, in Chapter 4, I theorize fictionality as a process of encryption and suggest that fictionality does not “belong” to either law or literature—rather, it is a product of their intersection.

The dissertation unfolds in two parts. Part I, “Death, Silence, and Disruptive Personae,” considers the complicity of legal and literary institutions, tracing their shared projects in limiting or obscuring the nuances of black personhood in service of institutional (white) supremacy. In Part I, I analyze the disruptive potential of black protest and rebellion from within the legal and cultural constraints of legalized slavery and white supremacy. This section of the dissertation examines how legal institutions and abolitionist networks, despite often claiming deeply divergent political and ethical imperatives, nevertheless participate in a shared project of reducing enslaved persons to blunt binaries or erasing their identities from textual histories. This cooperation, I argue, is at once chillingly efficient and also deeply unsuccessful. I demonstrate



how these efforts at erasure and suppression tend to *over-represent* the very persons that law and literature seem intent on disappearing.

In Chapter 1, “‘Dead! Dead! Dead!’: David Walker, Nat Turner, and Law’s Consuming Violence,” I consider the legal and literary contexts surrounding David Walker’s 1829 *Appeal to the Coloured Citizens of the World* and the 1831 pamphlet circulated by Thomas R. Gray entitled *The Confessions of Nat Turner, the Leader of the Late Insurrection in Southampton, Va.* Both texts deal explicitly in revolutionary and rebellious rhetoric. In considering Walker’s *Appeal*, I close read his text and argue for its self-consciously legal presentation—Walker uses familiar legal forms and documents such as the Declaration of Independence in his call for the immediate abolition of slavery and admission of African Americans into the full privileges of citizenship. I also consider the reactive lawmaking that occurred in response to circulation of the *Appeal*; I argue that Walker and his *Appeal*, though unnamed in the state statutes that criminalized possession of the pamphlet, might be properly considered as structuring those laws. Thus, what initially appears as a silence in the legal record is actually evidence of Walker’s *centrality* to law and the legislative process—the content of the *Appeal* becomes a primer for lawmakers who then attempt to suppress it.

In considering *The Confessions of Nat Turner*, I turn my attention primarily to the sentencing of Nat Turner as reported in Thomas R. Gray’s pamphlet. Taken in the context of Turner’s intensely supernatural and highly spiritual confessions of slave insurrection and rebellion, his sentencing and execution engage in a series of moves that both insist on his deadness and, perversely, seem to suggest that he is incapable of being killed. The *Confessions* is explicitly both legal and literary, a collection of autobiography as well as legal procedure; rather than vanishing Turner, simply killing him, or stripping him of his mythic status as a rebellion

leader, the text instead reveals law as imperfect, insufficient, and strange. At the conclusion of the text, and in particular at the conclusion of the judicial sentencing, Turner has become somehow more dead but also more threatening as a consequence of law's violence.

While Chapter 1 examines these battles over silencing, vanishing, and destruction, Chapter 2 examines the unexpected productivity that proceeds from the intersection of literary networks and legal history, particularly with respect to fugitive slaves. In "Negative Proofs and Proliferating Personae: James Williams and the Complicity of Law and Literature," I trace several related arguments. First, in considering the publication history of the *Narrative of James Williams*, I explore the extent to which the goals of the abolitionist print network—in particular the American Anti-Slavery Society—align with the apparent goals of the laws of slavery. Both institutional apparatuses focus on constructions of slave subjectivity around reductive binaries: law insists on figuring slaves as either criminals or property, while abolitionist networks focus on the binary of honesty and mendacity. In the face of claims to factual inaccuracy in the *Williams Narrative*, the abolitionist press, in cooperation with the pro-slavery print machine, moved with alacrity to maintain the honest/mendacious binary while also adopting law's binary—the resulting journalistic coverage of the *Williams Narrative* stages a criminal trial against the man known as Williams as a means of first discrediting and ultimately disavowing the man himself, though he had already disappeared from the public eye, apparently of his own will.

Second, in pushing the legal and literary complicity first suggested in Chapter 1, I move in Chapter 2 to consider how fugitivity imbues this complicity with different stakes and how performances of selfhood by fugitive slaves force institutions into mimetic responses that grapple awkwardly with how best to name or identify fugitive slaves in the first place. The texts I close read in Chapter 2 include the *Williams Narrative* and several legal opinions that document

Williams at various points in his fugitivity; however, the primary texts in Chapter 2 are the numerous personae that the man known as James Williams created and deployed. His performances as James Williams, Shadrach Wilkins, and Jim Thornton urge a reading of his fugitivity as its own type of authorship, a creative and highly productive practice in which a fugitive slave generates numerous alternative personae, none of which are easily combined or re-assembled into anything resembling a unified, coherent, or whole subject.

The stakes of these personae's existence leave confounding traces in the legal and literary materials of the man I refer to not as simply "James Williams" but as Williams/Thornton/Wilkins. Unlike the legal materials in Chapter 1, which appear intent on merely vanishing or erasing their African American targets, the comparable legal materials in Chapter 2 struggle to *capture* or *fix* Williams/Thornton/Wilkins's identity—a rhetorical posture that mimics his previous owner's pursuit of him after his flight from slavery. Here again, despite law's characterization of itself as powerful, stable, and certain, the proliferating personae of a fugitive slave place law into a wildly reactive posture that fails to settle even on a name for the fugitive slave in question—in the end, law must resort to negative proofs and substitutions, making identifications primarily through negation, naming someone according to who or what he is *not*. This chapter thus reframes questions about what constitutes legible personhood, whether in a legal or a literary context. Further, it suggests reading the generation and deployment of fugitive personae as another kind of black authorship during the antebellum period—one which is profoundly disruptive to accepted legal and literary generic classifications, marked by a legal consciousness, and yet resolute in its refusal to declare itself subservient to legal or literary institutions.

In raising questions of fictionality versus factual “truth,” Chapter 2 also serves as a hinge that opens out onto Part II of *Human Rites*, “Borrowings and Takings: Fictionality in Law and the Legality of Fiction.” In this second half of the dissertation, I explore the specific technologies by which both legal and literary texts move outside their own apparent borders and the extent to which these extra-disciplinary gestures actually animate the rhetorical and cultural power of the resulting narratives. In short, I take fiction seriously as a device of both law and literature; I do not merely suggest that “all texts are fictions,” but I do explore what it is about fiction in particular that can on the one hand supply law with institutional and rhetorical force and, on the other hand, dismantle or at least critique law’s operation. The result is a reading of fictionality as a powerful political and rhetorical *strategy*, as a practice that extends well beyond creative or artistic labor and structures the undeniably “real” conditions of expression and oppression. Thus, the fictionalization of various legal narratives underscores what is authorial about the work of African American commentators, writers, and witnesses during the antebellum period. Witnessing occurs not merely as an exercise in “truth-telling” but also as an opportunity to reimagine existing narratives and doctrines. Moreover, fictionality emerges as a source of complicated citations, encryptions, and allusions that exceed what we might otherwise call intertextuality; not only are legal and literary texts mutually constitutive, I argue, but they are extensions of one another.

In Chapter 3, “‘Not Intended to Deceive’: Legal Fictions, the Transhistorical Slave, and the Mythology of American Law,” I consider the nature and application of legal fictions, particularly in the context of adjudications of slaves’ rights to freedom. My primary sources in this chapter come entirely from the world of judicial and statutory documents, and court opinions in particular; after developing a working definition of the legal fiction, I examine a range of

specific legal fictions around the legal personality of slaves. Law has variously regarded slaves as chattels, real estate, paupers, and other quasi-persons. Adjudications of a slave's right to freedom tend to put particular pressure on these unwieldy and bizarre legal fictions, making visible how the fictionality of legal enslavement is highly contingent on a set of other legal procedural factors as well as pervasive cultural mythologies about the nature and supposed invulnerability of American law. Chapter 3 takes seriously the use of fiction as a technology of law and the necessity of legal fictions in service of a nascent legal culture in the United States during the antebellum period. By close reading the language of several specific legal documents, I demonstrate how fiction in law creates a complicated set of analogies and substitutions that enable the figuration of slaves as paupers, criminals, property, and at times, legal persons.

These analogies and metaphors, however, often take place in a terrain bounded not only by specific legal rules but also by temporal demands. A secondary argument of Chapter 3 is that legal time is counterintuitively flexible and even polytemporal or transhistorical. In particular, the temporal conditions and contingencies around legal fictions of slavery have the tendency to figure slaves as transhistorical subjects that populate the landscape of American legal history. This transhistorical characterization is certainly not part of an intentional project to endow slaves with agency or institutional power. Nevertheless, the treatment of slaves as historical *objects* and transhistorical *subjects* underscores the potential for reimagining the limits of black authorship, and it suggests that the act of legal interpretation has the potential not only to disrupt legal narratives but also to infuse literary production.

Chapter 4 takes up this connection between legal and literary fiction to consider the relationship between Hannah Crafts's novel *The Bondwoman's Narrative* and the legal history surrounding one of that novel's minor characters, Jane—an escaped slave whose actual full name was Jane Johnson. In the novel, the character of “Jane” is so minor as to merit only a few paragraphs and the briefest attention in a text of several hundred pages. In “Ciphers, Citations, and Encryptions: *The Bondwoman's Narrative* and the Case of Jane Johnson,” I pursue a comparative reading of the novel alongside the judicial record of Jane Johnson's escape and the subsequent trials of the abolitionists who allegedly assisted her. Building on Nicole Aljoe's work on slave narratives “embedded” within legal and other materials, I argue for the potential of literary fiction not merely to embed but to encode complicated sets of legal narratives—legal narratives that, in turn, encode additional literary narratives, and so on and so forth. While Aljoe argues for the recovery of testimonial slave narratives from unexpected textual sites, I argue instead that fiction and law do not conceal recoverable slave testimony so much as they encrypt competing narratives that move back and forth across and among genres and disciplines. In African American fiction, I argue, literary characters and legal subjects are often fundamentally indistinguishable. The resulting process of encryption and complex citation situates *The Bondwoman's Narrative* as a vantage point from which to critique and even re-write law.

In the course of the chapter, I analyze critical differences between Crafts's novel and the legal records of Jane Johnson, differences that suggest Crafts's specific critique of the hypocrisy inherent in a democratic republic that tolerates and promotes legalized slavery. The novel incorporates legal actors and recasts them as literary characters as a means of mounting this critique and re-writing the dominant legal philosophy. This re-imagination takes place against a

literary backdrop that is thick with law, making frequent legal references and even engaging at times in the reproduction of legal language and legal form.

The literarization of law, however, is not an unreciprocated endeavor. The legal record, considered alongside Crafts's novel, also emerges as a site of encryption and fictionalization—it too narrates Jane Johnson as a character, ultimately offering an alternative account to the one provided by *The Bondwoman's Narrative*. Moreover, both the novel and the legal record appear at times to mimic the conventions of the slave narrative, each modifying that genre in its own way. The result is that the literary fiction and the legal history are locked in orbit around each other, each encrypting the other and supplying narrative detail unavailable to or unwanted by its counterpart. Literary characters temporarily inhabit legal worlds, and legal narratives occupy fictional spaces, leaving the reader at a loss to state firmly whether we are firmly inside either law or literature at any given moment.

Chapter 4 marks an appropriate culmination of the dissertation because of its engagement in the potential of fiction as a device of both law and literature, demonstrating the discursive, cultural, and historical yield of scholarship that places both types of text in dialogue with each other. However, Chapter 4 also rehearses many of the arguments made in earlier chapters of *Human Rites*, as well: it explicitly engages and develops the theories of fiction first identified in Chapter 3; it takes up questions of fugitivity and persona and thus deepens my arguments from Chapter 2; and it even rehearses another iteration of a tripartite condemnation to death in conversation with Nat Turner's sentencing from Chapter 1. These crossings may be more fortuitous than anything else, and I certainly do not mean to suggest that the telos of the dissertation is "the novel." By contrast, my arguments in Chapter 4 are possible by virtue of the

work in the first three chapters. It may be most accurate to say that the first three chapters of the dissertation develop a multi-faceted methodology that Chapter 4 can finally bring to bear.

\* \* \*

When I began the dissertation, I suspected that some of law's violence might be reclaimed or redressed in the pages of black authors. As my research unfolded, I was forced to confront several difficult realizations and adjust my conclusions about the relationship between the laws of slavery and black literary production in the nineteenth century. It is of course the case that African American literature often opens up legal narratives, casting new light where law has left shadows. But I confess that I began this project in the misguided belief that the literature might also reveal some core truths about the subjectivity of enslaved persons. Instead, what I found at each turn was incommensurability and incoherence; African American literary practices—even where apparently unmediated by white editors or amanuenses—participated in, repeated, or exposed many of the very same tensions and gaps that existed in law. It became apparent that literature was not merely an alternative site of legal discourse, nor a reaction to legal narratives—it had far too much in common with legal discourse, and as I have already described, law was in a reactive posture at least as often as literature was. What emerged instead was an understanding of law and literature as complicit and mutually constitutive even as they appeared to diverge or challenge one another. My focus shifted to explore how and where these interdisciplinary collisions occurred, how both law and African American literature reached similar impasses and had similar failings (often for radically different reasons), how literature itself might be inherently “legal,” and how African American literature might be found in unexpected places. Both law and African American literature repeatedly fail to narrate enslavement coherently, and in particular they fail to figure enslaved persons as coherent or



unified subjects. If law and literature are not opposite ends of an imaginary binary, but are instead extensions of one another, these narrative “failures” accrue increased significance where they occur. This dissertation cannot credibly claim to have solved the problem of language’s inability to fully capture the nature of personhood. It can, however, call our attention to how and why language falls short—and it can urge us toward an understanding of personhood that does not demand or depend on a fantasy of a coherent, intact, or even whole subject.

**PART I:**

**DEATH, SILENCE, AND DISRUPTIVE PERSONAE**

## Chapter 1

### **“Dead! Dead! Dead!”: David Walker, Nat Turner, and Law’s Consuming Violence**

This is a chapter about what happens when black resistance confronts law. It is about how law uses the most violent and insidious means—both in language and in deed—to silence protest from disenfranchised persons. Most especially, this chapter is about two black men ghosted, pathologized, and killed by law. These men lived and wrote in the late 1820s and early 1830s; to understand their relationship to law, first consider the nature of law in the United States during that period.

In the 1820s, barely forty years after the drafting of the Constitution, the Republic had achieved a fragile version of national unity; state and local practices remained crucial to the management of government, and states were primarily responsible for the regulation of slavery. Fundamental constitutional rights were more limited in scope in the 1820s, as well. It was not as simple as the fact that black persons lacked citizenship; the Bill of Rights would not even apply to state governments for another forty years until the 1868 ratification of the Fourteenth Amendment. State and local governments wielded tremendous power in the first half of the nineteenth century, and the result was a messy and uncertain map of human rights across the country.

The Missouri Compromise of 1820 sought to balance the admission of slaveholding and non-slaveholding states (Missouri and Maine, respectively), marking the extent to which local practices stirred national political and rights-based discourse. Within individual states, laws varied widely and changed constantly. For instance, on one end of the spectrum, Pennsylvania

passed an 1826 law prohibiting the kidnapping of free blacks; on the other end of the spectrum, in 1820, South Carolina law required first slaves and then free blacks to wear identifying tags. It was a dangerous and uncertain time for a black person (slave or free) to travel, and threats of kidnapping, enslavement, and violence were hardly absent even in the so-called “free” states of the North.

While state laws and practices curtailed the movement of bodies—and in particular, of black bodies—ideas and texts circulated promiscuously during the same period. Newspapers, magazines, and pamphlets introduced a culture of reprinting<sup>12</sup> that enabled the widespread circulation of numerous texts including news, fiction, editorial/opinion pieces, and ideological advocacy. The anti-slavery press took advantage of print’s portability and propensity for travel; both black and white anti-slavery materials emerged in the 1820s and early 1830s. Newspapers in particular became a forum for anti-slavery discourse, with several early newspapers setting the stage for the print wars of the later antebellum period in the 1840s and 1850s. *Freedom’s Journal*, the first black anti-slavery periodical, was founded in 1827; *The Liberator*, William Lloyd Garrison’s newspaper and the emblem of so-called Garrisonian abolitionism, was founded in 1831. In the 1820s and 1830s, anti-slavery journalism placed into the repository of print the most current legal or political developments and debates around the country; through print, anti-slavery publishers were able to repackage and disseminate that information beyond state and

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<sup>12</sup> See Meredith McGill, *American Literature and the Culture of Reprinting, 1834-1853* (Philadelphia: U of Pennsylvania P, 2003).

local borders.<sup>13</sup> Pro-slavery culture also took notice of print culture's efficacy: as early as 1820, South Carolina introduced legal bans on importation of anti-slavery materials to the state.

Both law and periodical culture in this period registered anxiety about black bodies; periodicals registered that anxiety through debate, while law turned to regulation. Law sought to limit the mobility not just of bodies, but of ideas, setting prohibitions on how and where certain texts could travel.<sup>14</sup> These legal restrictions on mobility—whether physical or discursive—enabled the fantasy of law's cultural supremacy. Individual human bodies and their language were mobile, fleshly, threatening, and unpredictable. By contrast, law appeared fixed, disembodied, reliable, even super-cultural.

In this chapter, I examine the confrontations that occur when law contends with unexpected or unwanted mobility. I am particularly interested in the ability of black writers and subjects to hover inside or above law even while they inhabit it. I consider two texts in which the black subjects perform this spectral tenancy of law under very different conditions and with very different results. In 1829, black abolitionist David Walker published his *Appeal to the Coloured Citizens of the World*, a rallying cry for people throughout the world to unite in opposition to slavery. Two years later, Nat Turner led the Southampton Slave Revolt in southern Virginia. Turner's 1831 confession—made to Thomas Gray, a local lawyer—circulated widely as a pamphlet that included an excerpt from Turner's trial and sentencing.

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<sup>13</sup> For a discussion of the importance of geography to antislavery publishing practices, see Trish Loughran, *The Republic in Print: Print Culture in the Age of U.S. Nation Building, 1770-1870* (Columbia UP, 2007).

<sup>14</sup> For a discussion of the legal culture of travel, see Edlie Wong, *Neither Fugitive Nor Free: Atlantic Slavery, Freedom Suits, and the Legal Culture of Travel* (NYU P, 2009).

There are some obvious reasons, such as the language of resistance and revolt, to join Walker and Turner. I am more interested, however, in the ways that they disrupt or shape the expected legal narratives that they inhabit. Both Walker and Turner tend toward duality, toward an ability to be both inside and outside law even as law grapples with how to structure them as subjects. But Walker and Turner each confronted law in drastically different ways: Walker as an unnamed subject of several subsequent laws and as a shadow-lawyer drafting alternative legal histories, and Turner as a notorious criminal defendant. Despite the difference in their legal postures, both Walker and Turner make legible how the law of slavery extended well beyond the regulation of bodies. The regulation of language and text demonstrate law's uncanny ability to manifest the very things it then denies, prohibits, or criminalizes.

Although I work with two specific texts—the *Appeal* and the *Confessions*—I strive for a richer and more nuanced understanding of law and literature in their generic contexts. Much existing scholarship remains invested in the disciplinary and discursive differences between the two genres,<sup>15</sup> often by structuring law and literature work within the binary of “law in literature” or “law as literature.” My work resists that binary. Instead, I apply pressure to the relationship between law and literature, since, in the early 1830s, these disciplinary divisions were inchoate or undefined. Indeed, law and literature operated in service of each other. Though I borrow some of the language of print culture—such as circulation—throughout the chapter for its applicability to discussions of movement and travel, my project here is ultimately an investigation of what happens when transgressive subjects approach or encroach upon law's domain.

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<sup>15</sup> See, for instance, Gregg Crane's work in *Race, Citizenship, and Law in American Literature* (Cambridge UP, 2002), which traces the influence on literature of various natural law paradigms.

I am not interested in changing the way that we read either the *Appeal* or the *Confessions* as individual texts. Rather, I am building on the work of scholars such as Christopher Tomlins, Peter Hinks, and William Andrews, who have offered nuanced readings of both the *Appeal* and the *Confessions*. Instead, in order to glean a new perspective on the relationship between law and literature in the early 1830s, I offer a historicized analysis of these texts' circulation as legal and literary objects. I argue that the circulation histories of Walker and Turner expose law's tendency toward the unnatural, how it thrives on the tension between uncommon and ordinary to enact literal and symbolic violence through language, repetition, and ritual.

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David Walker—a black abolitionist, subscription agent for *Freedom's Journal*, and Boston shop owner—mounts a series of legal arguments through his *Appeal to the Coloured Citizens of the World* (1829), an anti-slavery pamphlet published in three separate editions between 1829 and 1830 and distributed throughout the United States.<sup>16</sup> Between 1829 and 1831, the *Appeal* traveled to North Carolina, South Carolina, Louisiana, Connecticut, and Massachusetts. Publications ranging from *The Liberator* to the southern *Statesman and Patriot* also reprinted excerpts of the *Appeal* and published commentary on it.<sup>17</sup> The circulation of the *Appeal* throughout the South appears to have followed a relatively predictable format: Walker shipped a number of pamphlets to individual citizens in southern cities—sometimes with their

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<sup>16</sup> See Hinks's Introduction to the *Appeal* at xlv.

<sup>17</sup> See Hinks, *To Awaken My Afflicted Brethren*, at 124. Here Hinks notes that Elijah Burritt, the publisher of the *Statesman and Patriot*, reprinted a *Boston Centinel* column that included excerpts from Walker's *Appeal*. As Hinks notes, "Such excerpting of the *Appeal* was extremely rare in the South primarily because it could contribute to the circulation of ideas among African Americans."

knowledge, and sometimes without—with instructions for distribution.<sup>18</sup> Thus, the *Appeal* infiltrated the South, producing intense curiosity and anxiety wherever the pamphlet appeared.

It is hardly a mystery why the proliferation of the *Appeal* produced this reaction. The *Appeal* calls for “coloured citizens of the world” to reject slavery and to resist slave culture in all of its forms. This term of address suggests on one hand that Walker situated his text within Pan-Africanist discourse; he refers not simply to the United States, but to “the world.” Given that repatriation to Liberia was then a matter of public debate, it might make sense to read Walker as merely participating in that conversation.<sup>19</sup> However, the use of “citizens” further complicates Walker’s address; by referring to “citizens of the world,” Walker subverts and mystifies the common understanding of citizenship as an indicator of national belonging. “Citizens of the world” may refer to national citizens around the world, or it may refer instead to a new category of “world citizenship.” By invoking world citizenship, Walker draws on the 1789 Declaration of the Rights of Man and of the Citizen—which hinged on national citizenship—but ultimately rehearses a rhetoric of fundamental human rights independent of national citizenship that would not be codified until the 1948 Universal Declaration of Human Rights.

Walker not only complicates the meaning of “citizenship” but also that of “coloured.” For much of his pamphlet, Walker addresses African Americans. But Walker also addresses white Americans throughout the text, sliding back and forth between the language of “us” and the language of “you,” self-consciously engaging with the very legal institutions he challenges. He organizes the *Appeal* as a preamble and four articles, a format that recalls statutes in general and

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<sup>18</sup> See Hinks, *To Awaken My Afflicted Brethren*, at 124 *et seq.*

<sup>19</sup> In fact, in Article IV, “Our Wretchedness in Consequence of the Colonizing Plan,” Walker writes, “Will any of us leave our homes and go to Africa? I hope not” (67).



the Constitution in particular. His familiarity with legislative construction is most obvious in Article IV of the *Appeal*, where he quotes the Declaration of Independence<sup>20</sup> and implores white Americans, “Do you understand your own language? Hear your language, proclaimed to the world, July 4, 1776—‘We hold these truths to be self-evident—that ALL MEN ARE CREATED EQUAL!! that they *are endowed by their Creator with certain unalienable rights . . .*’” (78-79) (emphasis in original). Walker’s emphasis calls attention to specific language in the Declaration of Independence that he construes as conferring citizenship rights upon African Americans. Walker continues his address of white Americans by explicitly linking American colonial resistance to black slave resistance: “Now, Americans! I ask you candidly, was your sufferings under Great Britain, one hundredth part as cruel and tyrannical as you have rendered ours under you? Some of you, no doubt, believe that we will never throw off your murderous government and ‘provide new guards for our future security’” (79).

His argument is one of statutory interpretation and analysis; his construction of the U.S. founding documents would not take legal effect until decades later with the ratification of the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Constitutional Amendments.<sup>21</sup> By suggesting that white Americans do not “understand [their] own language,” Walker establishes himself as a more skilled reader, statutory interpreter, and historian than his white counterparts. That he addresses white Americans at all, however, suggests that white Americans too belong in his category of “coloured citizens of the world.”

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<sup>20</sup> Although the Declaration of Independence is not a statute, Walker’s reading of the text is one of legislative or statutory construction.

<sup>21</sup> As noted above, the 1948 Universal Declaration of Human Rights is an even later example of international law codifying Walker’s conception of world citizenship.

Thus, the classification “coloured citizens of the world,” which initially appears to be a discrete and specific grouping, actually emerges as a capacious category that includes *everyone*. Walker’s nimble use of language in the titling of his *Appeal* is emblematic of the duality that characterizes the text as a whole. At once specific and general, inciting and condemning, the *Appeal* moves back and forth in its engagement with, and resistance to, prevailing law. He argues that the “almost universal ignorance among us” (35) is the result of laws and customs that prevent the education of African Americans. In this context, Walker’s distribution scheme is legible as part of the *Appeal*’s project of educating and organizing black Americans around the call for resistance. But his use of legal argument is also a direct engagement with white lawmakers.

Walker’s use of the *Appeal* as a textual emissary to the most dangerous corners of the South exposes an activist disposition that is not only aware of, but also manipulates and subverts laws and institutions. The text, which could travel promiscuously where Walker could not, becomes a proxy for the author himself.<sup>22</sup> Taken in conjunction with his shipments of the *Appeal* to white, as well as black recipients, Walker’s discursive work is hardly *pure* subterfuge. Rather than driving his pamphlet underground and concealing it from slavers, Walker sends it to places where pro-slavery forces are most likely to discover it, and he addresses white Americans

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<sup>22</sup> Hinks asserts that Walker “relied on several sources to introduce the work to the South; the most important were sailors, overland travelers, and the U.S. Postal Service to deliver the work individuals Walker had decided would be receptive to its message” (see *Appeal*, Appendix, Document III). Hinks is less definitive in *To Awaken My Afflicted Brethren*, grappling instead with the uncertainty of how or why Walker selected the southern recipients of the *Appeal*, noting that Walker “may have pinpointed figures . . . to receive the *Appeal* for several reasons” (130).

directly. This rhetorical shift, the move from “us” to “you,” suggests the text’s dual purpose—appeal and indictment.

The differing natures of appeals and indictments inform what is so subversive about Walker’s text. A legal appeal is a plea for reconsideration of a lower court judgment; the appeal is made to a higher court with the authority to overturn (or affirm) that judgment. By naming his text an “appeal,” Walker trades in both the common and legal meanings of that term. In the commonsense meaning of the word, Walker appeals to—or requests—the attention of his audience. In the legal meaning of “appeal,” however, Walker figures his audience as a higher authority capable of judicial review. Given the breadth of the audience—the “coloured citizens of the world”—there are numerous possibilities for how Walker defines his higher legal authority. He writes, “I appeal and ask every citizen of these United States and of the world, both *white* and *black* . . . to answer the Lord, who sees the secrets of our hearts” (52). In contemplating both black and white “citizens,” Walker’s plea suggests the radical possibility that African Americans are part of the higher legal authority worthy of weighing his claims. The rhetoric of “us” throughout the *Appeal*—each of the Articles is titled as “Our Wretchedness in Consequence of” various forms of oppression—supplies not only the pattern of grievances that form the basis of the *Appeal* but also a rhetorical substitution in which the addressees of his claim *become* the authority capable of redressing those grievances.

By contrast, an indictment is a document of criminal law that sets forth the charges against a defendant. Despite framing his text as an *Appeal*, Walker embeds within it an indictment of the institutions, practices, and people responsible for the oppression of African Americans. In the rhetoric of “you,” Walker manipulates the framework of an appeal—a legal document that, on its face at least, keeps Walker in the “safe” position of supplicant pleading for

justice. Rather than following the expected format of an appeal, which consists only of prayers for relief, Walker shifts his posture to accusation, installing himself as the legal authority entitled to mete out punishment. In Article III (44), Walker turns the language of culpability directly onto white oppressors, writing, “Have you not . . . entered among us, and learnt us the art of throat-cutting, by setting us to fight, one against another, to take each other as prisoners of war, and sell to you for small bits of calicoes, old swords, knives, &c. to make slaves for you and your children?” Walker thus traces a chain of responsibility. He assigns not only blame but *guilt*, unpacking a logic of culpability that explains black violence under a new theory of criminal liability: white Americans, through example and manipulation, are responsible for the black violence that they then use to justify continued oppression. Walker assigns ownership to white Americans in the one way they do not wish to assert it—at a time when pro-slavery arguments insisted on slavery as the *natural* consequence of perceived racial inferiority, Walker gives white Americans ownership of the mechanism by which slavery is *manufactured*.

Walker’s legal arguments therefore cannot be mere mimesis, but something closer to the mimicry that Homi Bhabha describes as “a form of colonial discourse that is uttered *inter dicta*: a discourse at the crossroads of what is known and Permissible and that which though known must be kept concealed; a discourse uttered between the lines and as such both against the rules and within them.”<sup>23</sup> Walker moves within the rules insofar as he follows certain discursive forms recognizable as “legal.” To the extent that he resists law through subversion and substitution, however, Walker is quite clearly outside or against “the rules.” Walker’s *Appeal* does not simply rehearse legal form, it also prefigures and anticipates a proliferation of laws written in direct

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<sup>23</sup> See “Of Mimicry and Man: The ambivalence of colonial discourse,” in *The Location of Culture*, 128.

response to it. Once the pamphlet began circulating, it aroused the attention of many legal institutions and legislatures that became determined to criminalize the distribution or possession of the *Appeal*.

State legislatures in a number of southern states took nearly immediate legislative action in response to Walker's text.<sup>24</sup> For example, Hasan Crockett identifies a Georgia statute that created a ban on texts written "for the purpose of exciting to insurrection, conspiracy, or resistance among the slaves, negroes, or free persons of color" (Crockett 311, quoting the 1829 Georgia statute). This legislative response to the *Appeal* brings Walker's text into law on several different levels. Crockett produces considerable legislative history showing that this statute—which does not explicitly name Walker's text—was enacted in direct response to the *Appeal*. The silence of the statute on Walker's specific text, however, is a moment of legislative silence that reveals the thing it erases; without the *Appeal*, there would literally be no statute. Despite the fact that the *Appeal* exists only as an anonymous trace in the legislative language as enacted, Walker's *Appeal* becomes a haunt, a phantom text constituting the very law that seeks to silence it. The resulting tension produces literal and symbolic violence: the legislative hysteria imposed serious penalties on those contributing to the *Appeal*'s circulation, and it also worked symbolic violence on Walker, himself, by rendering him an unnatural and unnamed subject of the law.

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<sup>24</sup> In his introduction to Walker's *Appeal*, Peter Hinks makes the same observation (xl-xli). Dwight McBride (78) also associates the circulation of Walker's *Appeal* with intensification of "the policy against teaching slaves to write or read."

Georgia was not the only state to pass legislation in response to the circulation of Walker's *Appeal*. In 1830, Louisiana passed a prohibition—punishable by life imprisonment or death—for “writ[ing], print[ing], publish[ing] or distribut[ing] any thing having a tendency to create discontent among the free coloured population of [the] state, or insubordination among the slaves therein.”<sup>25</sup> The Louisiana legislature passed this legislation in March of that year, on the heels of the discovery (and arrest) of four men in possession of the *Appeal*.<sup>26</sup> The breadth of the statutory language speaks to the same practice of textual ghosting that occurred in the Georgia statute. The absence of Walker's name is ostensibly designed to make room for the criminalization of texts other than the *Appeal*; more importantly, however, the statute engages in the very abstracting move that made possible countless other forms of legalized violence against African-Americans. The *Appeal* and other forms of protest literature are at the heart of the law itself, and yet the law's insistence on erasing that discourse arguably has the unexpected effect of *over-representing* Walker and other anti-slavery authors.

The silence of the statute in this respect is deafening. The law's de-personalized prohibition on author-less texts marks out the contours of the absences it imposes; the statute even substitutes “thing” for “document” or “text,” mimicking the general thingliness of slaves as living property. The statutory language makes up for the absence of author by deploying the broadest possible characterizations of inflammatory texts, criminalizing the distribution of anything that has “a tendency to create discontent . . . or insubordination.” The omission of standards for determining which texts have such a tendency implies that texts subject to the statute are self-evident—or that the drafters had specific texts, like the *Appeal*, in mind when

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<sup>25</sup> See Hinks, *To Awaken My Afflicted Brethren*, at 150.

<sup>26</sup> *Id.* at 149.

enacting the legislation. Here again, Walker's presence in the statutory language is simultaneously prominent and unnamed. The violence against Walker thus acquires a symbolic, even fictional nature, as the statute punishes him only through implication, inference, and prohibition. This legislative de-naturing of Walker as author enables him to hover as a ghostly figure at the heart of the law *and* as a peripheral figure outside the law's reach (Walker lived in Boston).

The legal response to Walker's *Appeal* was much more diverse than the mere passage of statutes banning its circulation. Legislatively, states passed laws that not only targeted the circulation of incendiary materials but also strengthened broader prohibitions on slave literacy and education. These laws were not toothless or mere symbolic proclamations—the enforcement of the post-*Appeal* hysteria resulted in numerous arrests. The response to Walker's text demonstrates a rhetoric of contagion and contamination—an inherently embodied analogy that speaks an anxiety about law's ability as disembodied agent of power—channeled through a totalitarian police force designed to stem the flow of ideas at any cost. The result is a response that mimics public health monitoring: authorities established notification procedures to report on the *Appeal*'s appearance and contain its movement.<sup>27</sup> In its tendency to de-nature anti-slavery authors, law pathologizes Walker's rhetoric into contagion so that quarantine and elimination appear as the only rational and necessary responses.

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<sup>27</sup> See note 17, discussing the unlikely excerpting of the *Appeal* in the South, where even a portion of it was thought to be a public danger.

This outsized legislative reaction is all the more noticeable in light of the fact that, despite the *Appeal*'s extensive geographic travel, there were never more than a few dozen pamphlets unearthed in any one place at any time. Treating even a single pamphlet as a concentrated source of possible insurrection, officials reacted with swift and certain containment wherever the pamphlet appeared. For example, after police seized 60 copies of the pamphlet from a Savannah preacher in 1829, Savannah mayor W.T. Williams notified the Georgia governor:

“As attempts to introduce into the ports of the South similar dangerous publications will no doubt be made, and there is every probability that their dissemination through the State may be effected, I have deemed it my duty to communicate to you the facts in my possession that you may adopt such measures as you may deem necessary to detect or defeat these destructive efforts.”<sup>28</sup>

Williams's language identifies the vulnerability of southern ports to pamphlets such as the *Appeal*, suggesting that the text's route through ports will initiate an uncontrollable outbreak of dissemination onshore. Despite the fact that the Georgia governor then contacted the mayor of Boston to inquire about Walker,<sup>29</sup> Walker remained out of reach of Georgia law. Unable to arrest Walker, Georgia instead enacted violence on Walker's *Appeal* and anyone who attempted to circulate it.

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<sup>28</sup> Dec. 26, 1829 letter from W.T. Williams to George Gilmer. *Appeal*, Appendix, Document IV. Original letter held by Georgia Historical Society.

<sup>29</sup> See Feb. 10, 1830 letter from George Gilmer to H.G. Otis. *Appeal*, Appendix, Document VI.



This gap between Walker and law exposes a lack of potency in legal rules. Law relies on its disembodied authority as a source for its cultural power, as a force that is able to permeate absolutely everything precisely because it is unbound by fleshly limits. However, law's inability to reach Walker demonstrates the ineffectuality of regulation. By offering his resistance in an already disembodied format—as text—Walker personally managed to elude law's reach. Engaging with law in its self-proclaimed space of intellectual and discursive debate, Walker skates back and forth between inside and outside.

Though most scholars, including Hinks, continue to characterize the circulation of the *Appeal* as furtive and clandestine, doing so risks participating in the same ghosting of Walker that occurred in the legislative response to the *Appeal*. Not only did Walker explicitly address white pro-slavery advocates and apologists in the *Appeal*, but he also established a paper trail in his publication and distribution of the text. For example, in sending the pamphlets to Virginia, Walker wrote to the recipient: “Having written an Appeal to the Coloured Citizens of the World it is now ready to be submitted for inspection, of which, I here with send you 30c which Sir, your Hon, will be please to sell, among the Coloured people. The price of these Books is Twelve cents pr [sic] Book,--to those who can pay for them,--and if there are any who, cannot pay for a Book give them Books for nothing . . . .”<sup>30</sup> In distributing the *Appeal*, Walker firmly establishes his authorship, his circulation goals, and even his contact information. He did not write under a pseudonym, nor did he send his pamphlet to the South through anonymous or untraceable channels.

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<sup>30</sup> Dec. 8, 1829 letter from David Walker to Thomas Lewis. *Appeal*, Appendix, Document III. Original letter held by Virginia State Library.

Rather than reading Walker as an always-peripheral or underground figure, I suggest instead that he only *became* a peripheral figure through the legal and cultural narratives that have sprung up around the history of his *Appeal*. In addition to calling for action from fellow African Americans, Walker installed his *Appeal* in white discourse—and specifically in white legal discourse. The subsequent legislative response engaged with Walker’s *Appeal*, though it did so paradoxically by insisting that it was a regulator of the text rather than an audience for it. Unwilling to acknowledge Walker’s subjectivity and unable to reach him jurisdictionally, the law consumed and eroded the *Appeal*, de-personalizing Walker and absorbing him in order to supply a justification for the creation of more law.

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Where the circulation of Walker’s *Appeal* exposes law’s discursive power to enact violence even in the absence of jurisdictional reach, the circulation history of *The Confessions of Nat Turner* exposes a different aspect of law’s power in the 1830s: its ability to re-enact violence through discursive excess. In 1831, two years after publication of Walker’s *Appeal*, Virginia slave Nat Turner led the infamous Southampton Slave Rebellion. In August of that year, Turner and a small group of fellow slaves and freedmen moved from plantation to plantation, killing slaveowners and their families; by the time the rebellion was suppressed, more than fifty people had been killed. In the wake of the insurrection, Turner and his co-conspirators faced trials in Virginia. By November 1831, Turner and most of those accused with him were executed, although the full scope of retaliation was much larger; throughout the South, reports circulated that hundreds of slaves were murdered in the panicked aftermath of the insurrection.<sup>31</sup> Even by

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<sup>31</sup> Although this narrative of widespread killing has become part of the enduring Turner mythology, the prevalence of violence has likely been overstated against African Americans who

the admission of some of the government officials who presided over this violence, many—if not most—of the murdered slaves were killed despite a total lack of evidence that they were engaged in or planning insurrections.

The Virginia political climate at the time of the Turner rebellion had, if anything, intensified from the culture in place when Walker published his 1829 *Appeal*. In January 1830, a freedman in Richmond had been arrested for possession of Walker's *Appeal*.<sup>32</sup> And just before the Turner insurrection, the Virginia legislature had passed a bill that criminalized the education of blacks (whether slave or free) and established surveillance procedures over freed slaves who failed to leave Virginia within twelve months of their manumission (French 26). In *Nat Turner* (2), Eric Foner has also identified shifting economic conditions in Virginia during this period related to declining tobacco crops and the subsequent division of large farming estates into smaller parcels. The resulting economic anxieties around property, as well as the legal tensions regarding black literacy, fomented a particularly volatile environment in which law stood ready to extinguish inflammatory rhetoric and exterminate anyone suspected of insurrection.

Although the connection between slave literacy and land division may not be immediately apparent, place yourself for an uncomfortable moment in the position of a Virginia plantation owner in the early 1830s. Declining crop production over the past few years has threatened your bottom line. Perhaps you were forced to subdivide your family's plantation, selling off parcels to smaller farmers you once dominated, even selling some of your slaves to those same farmers. Your way of life, the comfortable existence you have built on the backs of

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did not play a role in the insurrection itself. See David Allmendinger, *Nat Turner and the Rising in Southampton County* (Johns Hopkins UP, 2014) at 203 *et seq.* for a fuller discussion of the rumors of widespread retaliatory violence.

<sup>32</sup> See Hinks, *To Awaken My Afflicted Brethren*, at 134-35.

your slave laborers, seems to be under attack. You discover that your slaves are learning to read and write, and you wonder if they will follow the poor whites in moving in to claim a piece of the privilege over which you have exercised exclusive domain. In this context, the criminalization of slave education is a logical response to the perceived threat, and the intensified regulation of antislavery rhetoric is part and parcel of the larger project of protecting white land ownership.

Unlike Walker, who confronted such laws by challenging them in print, Nat Turner encountered law as a criminal defendant. The difference in subject position speaks to the different manners in which law responded to each man. Both Walker and Turner confronted and resisted law, one through discourse and the other primarily through overt rebellion. Walker's sly engagement with law—undertaken at a remove—spared him from incarceration or execution, while Turner's physical violence brought him, literally, into the courtroom. Virginia legal institutions, which had been forced to regulate Walker's conduct via generalizations and abstractions, had full jurisdiction over Turner's physical body.

Turner's textual legacy emerges through his criminal confessions, which he offered to local attorney Thomas Ruffin Gray. Though Gray is sometimes described as Turner's court-appointed lawyer, he had no attorney-client relationship with Turner.<sup>33</sup> Gray did represent one of Turner's co-defendants, however, and he was one of three local lawyers—including Colonel Trezvant, the magistrate who read Turner's confession into the court record—who had “worked

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<sup>33</sup> Turner's lawyer was William C. Parker. James Strange French, who represented a number of Turner's co-conspirators was also an author who had studied at the University of Virginia alongside Edgar Allan Poe, who later reviewed—unfavorably—French's novel *Elkswatawa* in the August 1836 issue of *Southern Literary Messenger*. This odd coincidence, while largely irrelevant to my work here, marks the proximity in the antebellum period of legal and literary networks.

unofficially” on the rebellion from its outset, according to David Allmendinger, Jr. (25).<sup>34</sup>

Allmendinger writes that Gray and his associates “began their own inquiry into the rebellion . . . . They worked unofficially, since the court neither called for their inquiry nor appointed them to the task” (25).<sup>35</sup> Gray’s participation as rebellion enthusiast, erstwhile lawyer, and amanuensis for Turner’s confessions reveals the incestuous community of Southampton lawyers and judges—more a function of the rural location of the region than anything else. The overlaps and intimacy of this network, however, suggests unsurprisingly that the post-insurrection trials were conducted more as a matter of procedure than anything else.

Caught in the legal machinery, Turner nevertheless produced, through his criminal confession, a text that acquired an intense and sustained afterlife. Part-autobiography, part-slave narrative, the published confession consisted of several parts: Turner’s narration of his past and his part in the insurrection, an excerpted transcript of his trial proceedings and sentencing, and appendices that identified the participants in the insurrection as well as the victims of it. Because Gray acted as Turner’s amanuensis, questions of agency and authorship inhere along the lines of many similarly mediated slave narratives.<sup>36</sup> The result is a collection of narrative voices in the

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<sup>34</sup> This citation refers to Allmendinger’s chapter in *Nat Turner: A Slave Rebellion in History and Memory*, ed. Kenneth S. Greenberg. That chapter is entitled “The Construction of *The Confessions of Nat Turner*,” hereafter “Construction.”

<sup>35</sup> *Id.*

<sup>36</sup> In *In the Shadow of the Gallows* (31-32), Jeannine DeLombard discusses this particular problematic of black criminal confessions (the mediation by interested parties and legal entities): “. . . the published confessions attributed to condemned black criminals are noteworthy less for their authenticity or their dissent than for the way in which they formalized, publicized, and thus politicized individual black speech (incriminating though it may have been). That the voice attributed to the convict was rarely a critical one on par with that of David Walker or Frederick Douglass does not eliminate its political significance.” Also in that book (164-65), DeLombard connects the publication of Turner’s confession explicitly to the imminent rise of the slave narrative. For a more general discussion of the mediation inherent in slave narratives, see William Andrews’s work in, *To Tell a Free Story*.

published *Confessions*—Turner, Gray, Trezvant, and Cobb, the sentencing judge. Ultimately, Gray curated these voices in the published pamphlet, which was then distributed in record time. He took Turner’s confession from prison in the days preceding his November 5, 1831 trial; Gray filed his copy of the full pamphlet on November 10, the day before Turner was hanged.

The circulation of the *Confessions* was much more widespread than Walker’s *Appeal*, owing arguably not only to the sensational news coverage of the insurrection but also to the fact that the text was produced by a white author.<sup>37</sup> Excerpts from the *Confessions* appeared in publications as diverse as the *New-York Spectator*,<sup>38</sup> the *Macon Telegraph* (Georgia),<sup>39</sup> and of course William Lloyd Garrison’s *The Liberator*.<sup>40</sup> Treatment of the *Confessions*, particularly by *The Liberator*, is complicated. In the December 17, 1831 edition of *The Liberator*, the excerpt from the *Confessions* is prefaced by a stern, if not perhaps sarcastic, disapproval of Gray’s pamphlet:

An edition of 50,000 copies has been printed in Baltimore, which will only serve to rouse up other leaders and cause other insurrections by creating among the blacks admiration for the character of Nat, and a deep, undying sympathy for his fate. We advise the Grand Juries in the several slave states to indict Mr Gray and the printers of the pamphlet forthwith; and the legislative bodies at the south to offer a large reward for their apprehension.

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<sup>37</sup> 50,000 copies of the *Confessions* were printed (see Higginson at 319).

<sup>38</sup> See “The Confessions of Nat Turner,” 13 Dec. 1831.

<sup>39</sup> See “The Confessions of Nat Turner,” 10 Dec. 1831, Issue 49.

<sup>40</sup> See “Confessions of Nat Turner,” 17 Dec. 1831, Issue 51.

*The Liberator* thus serves up the *Confessions* as a mark not merely of Turner's criminality, but also of Gray's. In a logic of culpability that initially resembles Walker's indictment of white Americans for creating and continuing black violence, *The Liberator* nevertheless re-affirms the logic of contagion that drove the response to Walker's *Appeal* throughout the South.

In fact, several months earlier, in September 1831, Garrison had commented on the Turner rebellion as the culmination of abolitionists' prophecy: "The first step of the earthquake, which is ultimately to shake down the fabric of oppression, leaving not one stone upon the other, has been made. The first drops of blood, which are but the prelude to a deluge from the gathering clouds, have fallen . . . . Read the account of the insurrection in Virginia, and say whether our prophecy be not fulfilled . . . ." <sup>41</sup> Thus, before the capture of Turner and the publication of the *Confessions*, Garrison himself deployed the language of prophecy, destiny, and Biblical preordination to explain the insurrection. Once the *Confessions* were published, however—and importantly, once Turner became legible as a self-avowed prophet—Garrison's rhetoric shifted. His earlier tactic of grounding the insurrection in prophecy became inflammatory and dangerous rhetoric once Gray's pamphlet acknowledged Turner as a *source* of that prophecy.

These complex interactions with the *Confessions* have persisted well beyond its immediate publication and distribution. In 1967, William Styron published *The Confessions of Nat Turner*, a Pulitzer Prize-winning novel written from Turner's perspective. Styron's apparent goal was to re-imagine Turner's confessions without Gray's mediation—in writing it, however, Styron engaged in additional ventriloquism, replacing one version of a white amanuensis with another. In describing Styron's work, Charles Joyner describes it as "a pastiche of the slave

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<sup>41</sup> "The Insurrection," 3 Sept. 1831.

narrative genre” (181). In fact, Styron’s own account of his writing process reveals the deeply troubling ethics underlying his project: “Very few people know anything about slavery and Negro history, and I don’t know of any modern work of fiction that has touched on the problem. Writers have been intimidated by the sheer, awesome fact of what it must have been to be a slave. I just had to seize the bull by the horns and become one.”<sup>42</sup> Putting aside for a moment the simply outrageous aspects of his claims, what most stands out is Styron’s feeling of entitlement to inhabit Turner’s consciousness and “become” a slave. What, one wonders, did Styron envision when he set out to “become” Turner? By what process does a white man in the 1960s possibly inhabit the consciousness of a slave?

These very questions of occupation, possession, and inhabitation always seem somehow to be at the heart of Turner’s engagement with law; contested claims of tenancy infuse nearly every aspect of his legal proceedings and the publication of the *Confessions*. On one hand, Turner revolts by asserting his right to occupy the status of aggressor. Once Turner is caught in the legal process, however, both Gray and the Virginia legal institutions strive to inhabit Turner’s language, his body, and his legacy. Gray’s framing and ventriloquism of Turner insist on a white presence to translate and render Turner’s claims for readers, while the court proceedings ultimately demand possession over Turner’s body.<sup>43</sup>

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<sup>42</sup> See Joyner at 186, quoting Styron’s interview with Phyllis Meras for the *Saturday Review*.

<sup>43</sup> Though this chapter does not engage with it, there is also a complex, and contested history of what happened to Turner’s body after his execution. While the historical record is uncertain, it appears likely that parts of his body were retained as relics by various individuals and institutions around the country.



In order to pursue the nuances of Turner's inhabitation of and by law, I focus on the entirety of the *Confessions* as published by Gray (rather than on Turner's narrative voice). The choice is a conscious one, proceeding from an intention to avoid further marginalization, ventriloquism, and discursive violence against Turner. My purpose is not to tease out Turner's biography, but to examine more fully the way that literature and law have continued to kill him since 1831. Other, gifted scholars have long devoted the full measure of their attention to Turner's biography, religious zeal, and prophetic claims from the published *Confessions*; the result is a wealth of scholarship regarding Turner's subjectivity within the *Confessions* and as a criminal defendant. My work, however, considers the published pamphlet in its entirety as an object that is both legal and literary. In particular, the in-court sentencing of Turner—and the subsequent circulation of that transcript as part of the published *Confessions*—discloses the vexed intersection of law and literature around Turner's criminalized body. The published *Confessions* marries documentary literature with legal discourse in ways that trouble our twenty-first century constructions of imagined divisions between the two disciplines; the afterlife of that text in the 1830s cultural imagination further muddies those divisions and urges a reading of antebellum law as a very public, and literary enterprise deeply indebted to discursive ritual.

In his preamble to the *Confessions*, "TO THE PUBLIC," Gray writes, "The late insurrection in Southampton has greatly excited the public mind, and led to a thousand idle, exaggerated, and mischievous reports." Gray's reference to "the public mind" is striking for the way it orients the text that follows; the public, rather than a swarming mob of people, is characterized as a "mind," a space of ideas and discourse. In reality, what was excited by the Southampton insurrection was not just the public mind, but also the public militia; the rebellion led to a thousand "idle reports" and also to the rumored murders of hundreds of slaves.

Nevertheless, it is to the public *mind* that Gray submits the *Confessions*, explicitly delivering his text into the realm of discourse and debate rather than police power. That he orients the reader toward the intellectualization of Turner is a bit disingenuous, as Turner's confessions were first read in-court in support of his conviction and execution.<sup>44</sup> By offering Turner's story once removed from his in-court appearance—the published confession was accompanied by the transcript of that court session—Gray offers a repetitious accounting of Turner. First, in taking his confession, Gray produced a literary document replete with the narration of Turner's early life, which ostensibly had no legal relevance to the criminal charges against him. Second, in publishing the *Confessions*, Gray repackages Turner's story yet again; he extracts it from its legal context and reproduces it, along with the court transcript, as a born-again literary text for public consumption.

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<sup>44</sup> Although Turner's confessions were undoubtedly introduced into the record in some fashion, it is highly unlikely that, as the pamphlet suggests, the Gray-authored account was the confession that the judges heard. There has been some debate among scholars about the accuracy of the trial events as reported in Gray's pamphlet more generally. While Caleb Smith (*The Oracle and the Curse: A Poetics of Justice from the Revolution to the Civil War*) argues that the specific language of Turner's sentencing was likely the product of Gray's embellishment, Christopher Tomlins ("Demonic Ambiguities") favors the general accuracy of Judge Cobb's language as reported in the *Confessions*. Though I tend to agree with Tomlins's conclusions, my analysis here does not depend on a definitive answer about the specifics of the trial record—the official record, it should be noted, does not settle the matter one way or the other. Rather, I focus on the *Confessions* as a trace of that record; it was, after all, the *Confessions* and not the official transcript that best brought Turner's trial into the public imagination.

This tripling of Turner's criminal confession is a symptom of the excess that defines the law's general engagement with Turner. Despite this discursive layering, Gray further claims that Turner's account:

is submitted to the public, without comment. It reads an awful, and it is hoped, a useful lesson, as to the operations of a mind like his, endeavoring to grapple with things beyond its reach. How it first became bewildered and confounded, and finally corrupted and led to the conception and perpetration of the most heart-rending deeds. It is calculated also to demonstrate the policy [of] our laws in restraint of this class of our population, and to induce all those entrusted with their execution, as well as our citizens generally, to see that they are strictly and rigidly enforced . . . . It will be long remembered in the annals of our country, and many a mother as she presses her infant darling to her bosom, will shudder at the recollection of Nat Turner, and his band of ferocious miscreants. Believing the following narrative, by removing doubts and conjectures from the public mind which otherwise must have remained, would give general satisfaction, it is respectfully submitted to the public by their ob't sv't, T.R. Gray.

Even as he supplies commentary—and even though the text itself contains some dialogue between Turner and Gray—Gray insists that Turner’s confession appears “without comment.”<sup>45</sup> Moreover, this conclusion to the preamble of the *Confessions* further complicates the numerous valences of “law” in the text. On the one hand, Gray submits that Turner’s confession will serve to “satisfy” the curiosity of the public mind; on the other hand, he urges lawmakers to “strictly and rigidly enforce[]” slave laws. Gray’s status as a lawyer representing another defendant in the case appears nowhere in his prefatory remarks, eliding his occupation of legal infrastructure even as he urges the intensification of law’s enforcement of slavery.

Gray’s treatment of Turner in this prologue slips back and forth between aggrandizement and contempt. He allows for Turner’s interiority, speculating as to the workings of his mind—resisting a characterization of Turner as mere meat or property. Gray is, however, quick to place limitations on that interiority, asserting that Turner’s major failing was in attempting to understand things “beyond his reach.” The prevalence of the word “it” in this passage further mystifies the division between Turner and the text that renders his story. After using the word “it” to refer to Turner’s mind, the subsequent sentence reads, “It is calculated also to demonstrate the policy [of] our laws . . . .” While this latter “it” presumably refers to the *Confessions*, and not to Turner’s mind, the slippage is suggestive of Turner’s fraught location within the discursive representation of him. Later, when Gray refers to the likelihood of the insurrection living on “in the annals of our country,” he deliberately shifts the textual focus from an account of an historical event to the establishment of a collective cultural encounter that he projects forward

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<sup>45</sup> This disavowal of authorial or editorial influence is also a convention favored by white amanuenses who “transcribed” the narratives of former slaves for publication.

into the annals of history. Through the *Confessions*, Gray engages in memorialization that is oriented as much toward the future as toward the past.

I offer this reading of Gray's preamble as a means of teasing out the layers of audience and context at work in the *Confessions*. By framing Turner's confession in this manner, Gray establishes a discursive context that simultaneously brings the audience into the law and the law into the public. His emphasis on the mind—of the public, of Turner—exposes the intensely intellectual nature of a document that relies on a highly embodied account of physical violence and precedes the physical violence of Turner's execution. In fact, it is the circulation of the printed *Confessions* that produces for readers a white fantasy of Turner's materiality by bookending the confession with narration by two white male lawyers.

While Gray's commentary opens the *Confessions*, the text concludes—excluding the appendices—with the pronouncement of Turner's sentence by Judge Cobb. Gray produces a case of the trial proceedings to document the sentencing and appends it to Turner's confession.<sup>46</sup> The excerpt is relevant for several reasons. First, it self-reflexively incorporates the Gray-authored *Confessions* as though the pamphlet itself had been admitted and read into the court record—in fact, it was Colonel Trezvant who narrated Turner's confessions in court, and Gray merely equates his pamphlet with the confessions reported by and to Trezvant. Trezvant's narration of Turner's confession follows certain norms in that it produces a criminal confession that furnishes the basis for a conviction. However, the Turner confession did not come into the courtroom as live testimony but as recorded language. It is also manifestly unclear on what authority Gray collected Turner's confession; he was neither law enforcement nor judge, and though he

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<sup>46</sup> See my earlier discussion of the scholarly debate surrounding the accuracy of the transcript in Gray's account.

represented another defendant, he had no attorney-client relationship with Turner. The Gray-mediated confession nevertheless entered the record via ventriloquism by Colonel Trezvant, the presiding magistrate. These multiple removals reveal the symbolic distance between Turner and the law even during his physical encounter with it.

Following the rehearsal of Turner's confession, Judge Jeremiah Cobb briefly questioned Turner, who replied, "I have made a full confession to Mr. Gray, and I have nothing more to say." At this point, Cobb commenced with the formal sentencing. In pronouncing Turner's fate, Cobb acknowledged that Turner's only plausible defense was misguided fanaticism. Cobb's consideration of this hypothetical defense follows:

If this be true, from my soul I pity you; and while you have my sympathies, I am, nevertheless, called upon to pass the sentence of the court. The time between this and your execution will be very short; and your only hope must be in another world. The judgment of the court is, that you be taken hence to the jail from whence you came, thence to the place of execution, and on Friday next, between the hours of 10 A.M. and 2 P.M. be hung by the neck until you are dead! dead! dead and may the Lord have mercy upon your soul.

In certain respects, Cobb's sentencing of Turner follows familiar legal forms. For one thing, notice the distinction Cobb makes between his personal feelings, and his obligations as an officer of the court: "from *my* soul *I* pity you; and while you have *my* sympathies, *I am nevertheless, called upon to pass the sentence of the court*" (emphasis added). The rhetorical shift of ownership here—from the emotions that belong to Cobb, to the sentence that belongs to the

court—is a version of what Robert Cover, in *Justice Accused*, describes as “the judicial ‘can’t.’” Cover uses the judicial can’t to describe moments where a judge professes a *personal* disagreement with the law but declares himself or herself “bound to apply the law, immoral as it may be” (119).

Here, Cobb stops short of characterizing his feelings as disagreement with the law; he does, however, make the typical disclaimer of ownership over the decision. All official speech acts—the rendering of the verdict, the sentencing—must come from the disembodied “court” rather than the judge as an individual. This reliance on a distinction between the personal and the court invokes what Caleb Smith (162) describes as Cobb’s “own conversion into the oracle of a law that comes from beyond himself.” Cobb reinforces this premise later; rather than announcing, “You are sentenced to death,” he frames the official act with the court as the subject and Turner as the object: “The judgment of the court is, that you . . . be hung by the neck.” This dual shift—from personal to “court” and from Turner as subject to Turner as object—reveals the mechanism by which legal language enacts violence. While discussing his personal feelings, Cobb allows Turner to exist as a subject (“you have my sympathies”). It is only after shifting from the personal to the rhetoric of “the court” that Cobb transforms Turner into the de-natured object (“hung by the neck until dead! dead! dead!”) that law is determined to produce and execute.

The violence of law comes into sharper relief in Cobb’s tripling of Turner’s eventual death. This striking moment of the opinion departs from typical judicial protocol, and it also creates a fissure in the rhetorical work Cobb has just done in shifting the burden of Turner’s death onto the institution of law: “The judgment of the court is, that you . . . be hung by the neck until you are dead! dead! dead and may the Lord have mercy upon your soul.” Rather than

expressing the cool, formal posture of the “court,” Cobb is unable to resist killing Turner a total of three times in the single judgment. This rhetorical “overkill” of Turner’s body not only enacts a legal ritual but also produces an excess that sets the stage for that ritual’s repetition through the circulation of the *Confessions*. Cobb’s tripartite announcement of Turner’s imminent death reveals a ritualized aspect of the sentencing that transforms it from secular court action to vanishing ritual—a ritual occasioned precisely by the intensely spiritual language of Turner’s confession, his claims of religious visions, revelations, and astrological messages. By insisting three times on Turner’s death, Cobb seems to engage in a superstitious purge of any supernatural qualities Turner may possess.

As much as Cobb relies on characterizations of Turner as delusional and fanatical, this tripartite condemnation evinces a tacit *acceptance* of Turner as possessing supernatural force. He deliberately tries to de-nature Turner and empty out any possibility of his divinity. The sentencing evacuates Turner’s claims of prophecy and supernatural ability<sup>47</sup> in favor of bare materiality—Turner becomes simply a body to be hung by the neck and killed. The use of “hung” as opposed to “hanged” only underscores the de-personalizing gesture of the sentencing: people are hanged, while objects are hung. This unflensing exemplifies what Colin Dayan (12) describes as “the occult revelations of law’s rituals.”<sup>48</sup> The very thing that enables law’s sacred status is its ability to produce unnatural effects from within a secular space.

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<sup>47</sup> See Tomlins, “The Demonic Ambiguities,” for a discussion of the religious language inherent in Turner’s confession. Scot French, in *The Rebellious Slave*, also notes that Turner’s reputation among slaves was as “Prophet Nat” or “Preacher Nat” (40).

<sup>48</sup> In *The Law is a White Dog: How Legal Rituals Make and Unmake Persons*, Dayan offers a complex and rich accounting of law’s propensity to engage unwelcome subjects in violent legal rituals that put pressure on our understanding of the human, and of “civilization.” Chapter 2 of that book, “Civil Death,” deals with “how law materializes dispossession” (40); I argue here that



This tension between secular and sacred makes legible the extent to which Turner threatens law by asserting his own sacred value—a claim that, if allowed, would displace the culturally sacred position of the law. In Turner’s sentencing, Cobb insists that the court—the disembodied institution that retains the power to kill, through execution—is the only permissible source of the sacred or the divine. The sentencing language thus follows what Roy Rappaport in “The Obvious Aspects of Ritual” describes as ritual’s purpose of invoking “the concept of the sacred, the notion of the divine, and even a paradigm of creation . . .” (174). For Cobb, the court alone passes judgment, and it is through the court that Turner must be killed. Alluding to Turner’s presumed return to his creator, however, Cobb uses the “paradigm of creation” to support the legalized violence he activates. Law stands in as the divine or sacred authority that facilitates Turner’s “return,” through death, to natural law.

Embedded within the ritual of sentencing is also the ritual of execution. Cobb’s description of how, where, and when the execution will occur announces that the killing of Turner will perform a second ritual; while the sentencing is a discursive ritual that takes place in the courtroom, the killing is a physical ritual that must, of necessity, occur *outside* the courtroom. The distinction between in-court and out-of-court ritual here is critical in that it protects what is culturally sacred about the law. Despite having the *power* to set the killing in motion, the courtroom space thus preserves the fiction of “clean hands”; the courtroom is reserved for discursive violence alone, while the messy business of execution occurs on a different day, in a different location, and obviously at the hands of someone other than a judge. Cobb merely prefigures the ritualized killing of Turner, prescribing the physical path his body will take from

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as law dispossesses Turner of his body, one of the material residues of that dispossession is *The Confessions of Nat Turner*.

courtroom to prison and eventually to the site of his execution, as well as the manner in which his body will cease to live (“hung by the neck until dead! dead! dead”). The repetition of “dead” in this context calls attention to the ritual and announces that the ritual is capable of being carried out more than once—discursively and intellectually, as well as literally.

And yet, that tripling of “dead! dead! dead” seems to be speaking Cobb’s *desire* to participate in the out-of-court physical violence. Unable to limit himself to killing Turner once, Cobb’s repetition also suggests that Turner may be somehow impervious to death. Readers thus feel Turner’s deadness even while they continue to be haunted by/terrified of slave revolt. It is through the *Confessions* that Cobb’s tripling enters the cultural imagination; the official court record of the sentencing excludes the verbatim transcript, noting instead simply that the court ordered Turner’s execution.<sup>49</sup> By including Cobb’s frenetic language in the *Confessions*, the ritual enters the public domain, inviting a further layer of participation in ritualized killing. Because the language of court opinions is always in the present tense, the reader experiences the sentencing as though it occurs in “real time.” As each reader comes upon that language— “The judgment of the court is, that you . . . be hung by the neck until you are dead! dead! dead and may the Lord have mercy upon your soul”—the ritual is re-enacted many times over. This accumulation of discursive violence allows the reader to participate in the condemnation of Turner’s criminal confession even after his body has been killed. For readers, the text of Turner’s confession thus becomes the thing to be killed—rather than, or in addition to, his physical body.

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<sup>49</sup> See Alfred Brophy, “The Nat Turner Trials,” 91 N.C. L.Rev. 1817 (2013); also *The Southampton Slave Revolt of 1831: A Compilation of Source Material* ed. Henry Irving Tragle (Amherst: U of Massachusetts P, 1971).

This fantasy of killing Turner (or his confession) moves the reader from vicarious to actual participation. By prefacing the sentencing with Turner's confession, the reader is primed to put himself or herself in the place of judge; having "heard," or read Turner's confession, the reader then becomes capable of passing judgment and participating in Turner's sentencing and execution. And though the text insists on Turner's uncommonness, its circulation renders Turner's killing practically routine. Although the reader feels a sense of participation in Turner's sentencing, the remove offered by the text nevertheless absolves the reader of any meaningful responsibility for Turner's death. Turner's actual killing becomes bureaucratic chaff, a consequence of the de-personalized legal ritual that passes judgment and disposes of cases, and bodies, accordingly. The publishing of that ritual in familiar pamphlet form re-packages the violence yet again as "literature." By the time the reader arrives at Turner's sentencing, Turner has already been killed so many times that one more instance of discursive violence hardly seems to matter.

What happens to Turner in this context is a vexed and mysterious question. Much like the unintended results of the laws that responded to Walker's *Appeal*, the circulation of the *Confessions* has the paradoxical effect of refusing to allow Turner to be fully killed. If it is possible to re-enact his killing with each reading, the need for Cobb's three exclamations of "dead" becomes apparent. Cobb's pronouncement discloses both the discursive need to kill Turner and also the awareness that killing Turner is somehow impossible—he will always be simultaneously dead and capable of being killed. The routinization of these multiple killings is ostensibly a source of comfort for the reader—Gray's mother clutching her child to her bosom as she shudders at the thought of Turner and his compatriots. And yet, the profoundly unnatural result exposes the insufficiencies lurking behind law's powerful veneer.

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In both the *Appeal* and the *Confessions*, these tensions between power and impotence manifest in the ways that Walker and Turner—as authors, as humans, and as legal subjects—move throughout the cultural imaginary. Law’s insistence on de-naturing and de-personalizing Walker and Turner in each case opens up the possibility that law’s culturally sacred power actually depends deeply on the people and things it says it must extinguish. The law of slavery is a site across which this battle is fought; through legalized slavery, law has put itself in the precarious position of engaging with people and things that it says do not and must not exist. At this moment in legal history, Walker and Turner present as especially threatening figures, and not merely for their advocacy of revolt. Walker, a free man beyond the reach of the southern courts, becomes a problematic source of law—courts must ban the circulation of his ideas even as they refuse to engage with his address. Turner, a slave and criminal defendant caught squarely within the arm of the law, must be dealt with as both common and uncommon—uncommon in his spirituality, zeal, and violence, and common in his mortality. Despite providing ready solutions to the “problems” of Walker and Turner, law is unable to ever fully deliver on its promises. Walker’s text continued to circulate and leave traces, regardless of the regulations that sought to eradicate it. And despite Turner’s execution—and the repetitious discursive violence against him—his textual afterlife always revives him, if only to make him available once more for execution.

It is not a coincidence that these fissures, or limits of law’s power to control slave bodies, become apparent through literature. The presence of Walker and Turner through literary circulation operates both in service and subversion of law. On the one hand, their literary presence undergirds the enactment of law’s passage, while on the other hand, that same literary

presence threatens constantly to expose law's failures and insufficiencies. These inconsistencies and ambiguities reveal a tense and developing relationship between the law and literature of slavery in the 1830s. Unable to fully manage either the discursive or physical movement of bodies and ideas, law leaches out into literature even as literature drives the formation of law.

## Chapter 2

### Negative Proofs and Proliferating Personae: James Williams and the Complicity of Law and Literature

*“Where is James Williams? Can he not be found and cross examined?”*

—Lydia Maria Child<sup>50</sup>

Chapter 1 demonstrated law’s capacity to silence and vanish black persons, while Chapter 2 asks what happens when literature and law struggle to represent a slave who appears not as a single, coherent subjectivity, but as a series of contradictory personae scattered across legal, literary, and journalistic texts. Unlike the texts in Chapter 1, which threaten repeatedly to disappear or erase their African American targets, the legal and literary documents in this chapter are concerned primarily with *pursuit*. In both chapters, institutions of law and literature emerge as complicit in their treatment of slaves and African Americans more generally. Chapter 2, however, examines how the condition of fugitivity alters the stakes of this complicity. I argue ultimately in this chapter that fugitive personhood can generate an alternative form of authorship, one which consistently disrupts the discursive networks in which it appears.

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<sup>50</sup> 1838 Letter to Angelina Grimke. Quoted in Ann Fabian, *The Unvarnished Truth: Personal Narratives in Nineteenth-Century America* (Berkeley: U of California P, 2000), 93.

## **An Argument for Unwieldy Critique: Unconventional Methodologies and Personae as Texts**

Most famous as the source of his discredited 1838 slave narrative, “James Williams” entered the cultural imagination as a suspected impostor accused of inventing of a fictional autobiography. Recent archival work, however, has demonstrated that “James Williams” was in all likelihood a fugitive slave known by numerous aliases. These aliases appear in collateral texts ranging from runaway slave ads to legal cases, and where they appear, they consistently destabilize white institutional power. As Williams’ textual presence demonstrates, flight from slavery also produces a flight from language. In response to the havoc wrought by this series of aliases, legal and literary networks struggle to represent a thoroughly unknowable and unspeakable figure of fugitive personhood. This chapter seeks, first, to lift the veil on the complicity of law and literature—a complicity so pervasive that it becomes impossible at some point to draw generic distinctions among the texts that record Williams and his other personae. In short, when reading the slave we know as James Williams, the reader no longer feels with certainty whether the textual traces of him are legal or literary in nature. In this respect, the chapter picks up where Chapter 1 left off, applying additional pressure to ostensible institutional and disciplinary boundaries.

The second aim of this chapter is to argue that the creation of fugitive personae constitutes an authorial practice. Indeed, the context surrounding the slave known as James Williams must acknowledge his creation of at least three various personae: James Williams, Jim Thornton, and Shadrach Wilkins. My work in this chapter is unconventional in the sense that my core primary “texts” are these three personae, rather than the printed texts that often contain traces of each identity. Each of these personae emerges and subsequently vanishes from the

textual record, sometimes through radical self-erasure and sometimes through the violence of institutional language. The three personae leave traces in, among other things, an 1841 Louisiana judicial opinion, a series of newspaper articles, runaway slave ads, and of course the infamous slave narrative attributed to James Williams. I read the personae as texts in and of themselves, which may be slightly disorienting for my readers—by treating these personae as examples of fugitive authorship, my readings of other more conventional printed texts unfold in service to my interpretation of the personae themselves. While I treat the personae as my major primary sources, I also examine the personae’s appearances as traces in legal and literary documents; these traces, I argue, reveal an authorial practice of repeated generation and self-erasure or absenting, as well as a response from law and literature that mimics these same strategies. In the hands of the fugitive, these strategies of evasion productively facilitate the slave’s continued fugitivity; in the hands of law and print more generally, the same tactics are shortcomings that add to the burdens of representation.

These printed texts record Williams, Thornton, and Wilkins in ways that demonstrate law’s intense entanglement with literature, and the appearances of the personae in printed text tend to re-enact the condition of fugitivity in the first place. Each persona is maddeningly elusive, often disappearing when an institution of power most “needs” him. Printed texts are in constant pursuit of the fugitive, a rhetorical posture that doubles the physical pursuit by his former owner. The final purpose of the chapter concerns these rhetorical moments of mimesis and doubling. Attempts to record the personae in print often operate as ineffectual “captures”—in response to the personae’s absences and refusals, I argue that legal and literary institutions eventually adopt a mimetic strategy of representation that borrows the fugitive’s own tactics of substitution and negation. To offer a somewhat crude summary, the fugitive absents himself



from language, moving on to inhabit another persona. A court then seeks to describe the fugitive but, uncertain which name to use, resorts to similar strategies of negation and flight, identifying the slave by who or what he is not, where he is not, and what name he is not currently using.

The resulting tension—between the productive proliferation of personae on one hand and acts of textual suppression on the other—underscores that the shared project of literature and law involves a relentless return to figurations of slaves as dead or destroyed. It is tempting to acquiesce to these pressures and to read absence and incompleteness as a kind of death. Instead, I suggest a version of fugitive personhood that rests in its capacity to reiterate, reproduce, and generate multiple personae that disrupt and dislodge the logics of institutional power.<sup>51</sup> The persistence of these personae in the face of discursive violence exposes the shortcomings of the legal-literary project; it is hardly, however, an unequivocal victory of the slave over the institutions that pursue him. The recursive deployment of personae necessitates a continual process of creation and erasure, perhaps best exemplified in one of the relevant judicial texts that, unable to manage the appearance of multiple personae at once, represents the slave as “James Shadrach.”<sup>52</sup>

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<sup>51</sup> The resonance here with Stephen Best’s work, *The Fugitive’s Properties: Law and the Poetics of Possession* (Chicago: U of Chicago P, 2004), is obvious. In that work, Best focuses on the poetics of possession as represented through the figure of the fugitive slave. Here, I focus instead on the fugitive as a site of proliferating subjectivities that dislodge the logics of law and literature.

<sup>52</sup> Affidavit of Caleb Tate, 16 October 1835, reproduced in Appendix D of Hank Trent’s *Narrative of James Williams, An American Slave: Annotated Edition* (Baton Rouge: LSU P, 2013).

This problem of naming is a symptom of language's inadequacy to represent fugitive personhood. The judicial strikethrough, reminiscent of Derrida's "sous rature" or "under-erasure" is "the mark of the absence of a presence."<sup>53</sup> The proliferation of personae produces a series of under-erasures that nevertheless leave the remaining personae visible in their absence; this chapter is also a symptomatic text in this regard. Given that I posit a messy version of personhood that is visible—if at all—in the intersections and gaps among the various personae, I refer to "James Williams" in my broader analysis as Williams/Thornton/Wilkins. The chapter contains separate sections for each of these personae, and in those sections I refer to him by the individual name under consideration. While this naming convention may prove unwieldy for reader and writer alike, the work of this chapter demands an engagement with the unwieldy and often unmanageable dimensions of fugitive personhood.

Perhaps most importantly, I am committed to the constant visual reminder of the ways in which Williams/Thornton/Wilkins's fugitivity produces disruptions in language and in power. By unpacking these various aliases, I not only read his numerous legal and literary personalities, but I also look for the spaces between them, reading those spaces as silences that affirm, rather than debilitate, his personhood. Rather than merely applauding Williams/Thornton/Wilkins for his clever tactics, I examine the authorial potential of his fugitivity to create evanescent, and at times incoherent, personae that appear variously to double or erase the mythical "original" subject.

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<sup>53</sup> See Gayatri Spivak's Preface to *Of Grammatology* at xvii.

For the fugitive slave, nineteenth-century law attempted to circumscribe the boundaries and conditions of slaves' legal personhood as either non-existent (property) or culpable (criminality).<sup>54</sup> The case of Williams/Thornton/Wilkins throws both of these legal options into sharp relief—the legal materials I examine treat Shadrach Wilkins alternately as property and suspected criminal. While law struggled to render slaves as anything other than property or criminals, literature suffered from a related burden—its difficulty in reading or figuring slaves outside the binary of honesty and mendacity. The antebellum slave narrative, dedicated almost by definition to the representation of fugitive slaves, depended entirely upon the verification of slaves' histories as a means of establishing that the authors of slave narratives fell on the “correct” side of the honest/mendacious binary. The troubling of “James Williams’s” position on that binary demonstrates, as I discuss below, just how invested white abolitionist networks were in controlling the characterization of slaves. As a result, the slave narrative genre—essentially an arm of the white abolitionist print machine<sup>55</sup>—frequently failed to figure slaves as agents of their own autobiographies, opting instead to construe slaves as trusted witnesses to the horrors of slavery.

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<sup>54</sup> In *The Law is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton: Princeton UP, 2011), Colin Dayan elucidates the hazy categories between personhood and property through the figure of the deodand (180-81; 195-96), the “cursed object” once legally capable of criminal culpability. For Dayan, the deodand’s capability of *mens rea*, or a guilty mind, demonstrates the power of criminal law to define subjectivity in the language of those who control it, “the judges whose linguistic maneuvering has lethal effects on those whose lives depend on their words.” The legal existence of the deodand thus signals the problematics of locating or evacuating subjectivity for people and things who fall outside law’s limited taxonomies of “personhood,” particularly in the nineteenth century.

<sup>55</sup> Teresa Goddu, who theorizes white abolition as a corporate entity, might characterize slave narrative publishing as a subsidiary of white abolitionists’ broader corporate agenda.

Law and literature therefore both struggled to narrate personhood for slaves in general, and particularly for fugitive slaves. As Stephen Best argues in *The Fugitive's Properties: Law and the Poetics of Possession*, nineteenth-century law understood slaves as having “two bodies”—one mortal and one immortal (4). For Best, this dual conception of slaves is the mechanism underlying the familiar claim that the slave’s existence constitutes a “legal fiction” that both acknowledges and denies the slave’s interiority and agency.<sup>56</sup> Discussing the Fugitive Slave Act of 1850 in particular, Best (9) identifies the fugitive as:

two persons in one [‘pilfered property and indebted person, object of property and subject of contract’], and as a matter of nineteenth-century jurisprudence and legal procedure, few forms of legal personhood rival the fugitive for its ability to incite a crisis in (and provisional resolution of) the tenets and practices of the law.

Though the Fugitive Slave Act of 1850 postdates the events I consider in this chapter, law’s terror of the fugitive was undeniably and demonstrably present during the 1830s and 1840s. Best’s characterization of the fugitive’s disruptive effect on law holds true as well to the legal texts that purport to represent Williams/Thornton/Wilkins.<sup>57</sup>

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<sup>56</sup> In Chapter 3, I explore the nature of legal fictions in greater detail, arguing that the various legal fictions applied to slaves offer an example of how fictionality is at times an attempt to give legalized slavery the appearance of legitimacy in American legal history. In that Chapter, I also consider how legal fictions of slavery participate in larger narratives of personhood.

<sup>57</sup> Best’s work in *The Fugitive's Properties* offers a rich account of law’s figuration of fugitivity, particularly in the latter nineteenth century, and with particular attention to the relationship between legal representations of fugitivity and early conceptions of intellectual property law. Thus, Best focuses mainly on how law manages the figure of the fugitive. While the project is closely related to my work in this chapter, I focus instead on the relationship of law to literature in managing fugitive figures—and I ultimately explore the possibilities for the fugitive to manage both of these institutions through alternative authorial practices.

Because of this disruptive tendency, the personae of Williams, Thornton, and Wilkins do not rest neatly in separate texts. On the contrary, multiple personae frequently appear within a single text either explicitly or as implicit haunts. Each persona uniquely demonstrates the collaboration of law and literature but also reveals Williams/Thornton/Wilkins's frictional, authorial inhabitation of these institutions that would incarcerate him. Wilkins, as the subject of law, is lost or destroyed property walking through the world under a new name. As a literary figure, Wilkins is a persona characterized primarily through his disappearance and negation. In both law and literature, Thornton and Williams are criminal impostors. Thornton's strategic performance of servitude enables him to pass through slave jurisdictions, largely unrecognizable as a fugitive slave. Williams performs servitude of another kind, aligning himself with northern abolitionists who appropriate his enslaved status to their own ends.

These three personae travel back and forth across texts, genres, and geographic jurisdictions. Williams/Thornton/Wilkins repeatedly vanishes himself and creates himself anew; this recursive strategy slips in and out of reach, with personae erupting into new contexts unexpectedly and vanishing as quickly. Beyond exposing the inability of law and literature to accurately record these eruptions, the legal and literary texts that pursue him eventually adopt similar practices of vanishing and re-writing. The result is a bizarre pursuit in which descriptions of Williams/Thornton/Wilkins become mimetic replications of his own evasive strategies; in attempting to capture, or pin down the fugitive, law and literature reproduce the fugitive's negations and re-fashionings. In each of the sections that follow, I too become a reluctant pursuer of the fugitive slave, mining the depths of each persona to better understand its disruptive potential as a version of fugitive authorship.

## Historical Background and Recent Archival Discoveries

In order to critically explore these personae, it is necessary to understand the historical and critical context surrounding Williams/Thornton/Wilkins. In 1838, the American Anti-Slavery Society (AASS) published the *Narrative of James Williams, An American Slave, Who was for Several Years a Driver on a Cotton Plantation in Alabama*.<sup>58</sup> The narrative, including a preface by the poet and amanuensis John Greenleaf Whittier, became a touchstone and source of pride for the AASS. Although several slave autobiographies had already been published in the United States—including Thomas Gray’s publication of Nat Turner’s criminal confession—the anti-slavery press was just gaining traction in the late 1830s.<sup>59</sup>

Publishers and authors on both sides of the Atlantic shared a growing fascination in the 1830s with slave autobiographies, most of which were written with the “assistance” of white amanuenses whose voices bled into the narratives, obscuring or erasing the possibility of ascertaining the extent of the slaves’ actual authorial agency. In the 1830s, a total of nine slave autobiographies were published; by contrast, 25 narratives were published during the 1840s, and 30 during the 1850s.<sup>60</sup> Thus, when the AASS published James Williams’s *Narrative* in 1838, the slave narrative genre was in the early part of its trajectory toward greater popularity in the later antebellum period.

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<sup>58</sup> Hereinafter, *Narrative*.

<sup>59</sup> For a discussion of the corporatization of the anti-slavery press, see Teresa Goddu’s work in *Selling Anti-Slavery*.

<sup>60</sup> “North American Slave Narratives,” *Documenting the American South*, <http://docsouth.unc.edu/neh/chronautobio.html> (accessed 27 April 2015).

While the James Williams *Narrative* marked the AASS's inaugural publication of a slave narrative, that organization would not publish another one for seven years. The seven-year delay resulted at least partially because James William's *Narrative* was mired in controversy immediately after its publication. Believing that the AASS was sitting on a goldmine with Williams's story of cruel enslavement and eventual escape, Whittier and other abolitionists—namely, Emmor Kimber and Lewis Tappan—had rushed to distribute the *Narrative* as widely as possible. That circulation, which included free copies for each Member of Congress, caught the disapproving attention of John Rittenhouse at the *Alabama Beacon*. Rittenhouse almost immediately questioned the plausibility of Williams's *Narrative*, and there ensued a series of volleys in the pages of the *Beacon* and the abolitionist newspaper *The Emancipator*.

Ultimately, the controversy resulted in the formation of an AASS investigative committee to determine the accuracy of the facts included in Williams's autobiography. Unable to locate Williams himself in England—rather than requesting any money for his story, Williams had made passage to Liverpool the sole condition of his participation<sup>61</sup>—the AASS had no means of verifying Williams's identity or background, and the scant information available cast doubts on the *Narrative*'s authenticity. In October 1838, Birney and Tappan announced the following resolution in *The Emancipator* on behalf of the AASS Executive Committee: “That the said special committee prepare, as soon as may be, a statement in relation to said narrative, to be inserted in the *Emancipator*; and that the publishing agent be directed to discontinue the sale of the work.”<sup>62</sup>

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<sup>61</sup> See Hank Trent, *Narrative of James Williams, An American Slave, Annotated Edition*. (Baton Rouge: LSU P, 2013). Introduction. E-book. (Hereinafter “*Annotated Narrative*”).

<sup>62</sup> James Birney and Lewis Tappan, “Narrative of James Williams,” *The Emancipator* (New York, NY), 25 October 1838.

With that resolution, sale of the *Narrative* ceased, and Williams became a notorious footnote in the larger AASS publishing strategy. The critical conversation around James Williams has, until recently, largely followed suit. While critics such as Lara Langer Cohen have attempted to parse the factuality of Williams's *Narrative*<sup>63</sup>, the central critical question about the text has focused primarily on genre: Should the *Narrative* be classified as a slave narrative or as a work of fiction?<sup>64</sup> If a slave narrative, was it a fraudulent one? If a work of fiction, was it evidence of literary genius? This question of generic classification conceals another, murkier question: Was James Williams a “real” person? If so, what kind of person was he—a clever con artist, an earnest fugitive slave, or an unsung literary master? The critical preoccupation with these questions has often seemed intent on fitting Williams into legible, but one-dimensional, categories of personhood.

Hank Trent's recent archival work supplies answers to some of these questions. Trent demonstrates that the *Narrative* was largely factually “true,” albeit with apparently deliberate alterations to certain names, geographical locations, and timelines.<sup>65</sup> These alterations were presumably part of Williams/Thornton/Wilkins's strategic means of evading re-capture—

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<sup>63</sup> See Cohen, *The Fabrication of American Literature: Fraudulence and Antebellum Print Culture* (U of Pennsylvania P, 2012).

<sup>64</sup> See, e.g., Augusta Rohrbach, *Truth Stranger than Fiction: Race, Realism, and the U.S. Literary Marketplace* (Palgrave, 2002). Rohrbach argues that Williams's *Narrative* was actually a novel published as a slave narrative.

<sup>65</sup> I am able to enter the critical conversation in this posture primarily because of the impressive and compelling archival work that Hank Trent presents in his 2013 *Annotated Narrative*. Many of the collateral sources I read in this chapter are from Trent's annotated edition, and his archival work is fundamental to my critical intervention. Trent demonstrates that James Williams was indeed a slave who had been born with the name Shadrach Wilkins. Trent's evidence is highly persuasive and includes documentation that Shadrach Wilkins was the subject of at least one court case—where his owner sought to recover lost property damages following his escape—and tangentially involved in a second, more salacious plot to poison slaveowners.



something he may have especially feared given his earlier suspected involvement in a conspiracy to poison a slaveholder. In the introduction to the *Annotated Narrative*, Trent writes, “Williams was a genuine freedom seeker and a skilled narrator, able to shape his own real life into a cohesive, romanticized story.”<sup>66</sup> While I agree with the first half of Trent’s formulation, I intend to abandon this impulse to read Williams/Thornton/Wilkins as offering a “cohesive,” much less “romanticized” story. Rather, I consider Williams/Thornton/Wilkins to be the author not simply of the *Narrative*, but also of these three personae. The personae—Shadrach Wilkins, Jim Thornton, James Williams—suggest a complex human author whose varied identities ultimately resist any easy congregation. Williams/Thornton/Wilkins thus emerges not as a single authentic subject, but as a person whose authenticity lives in its multiplicity, incoherence, and complexity. These aliases and identities mark the intricate terrain of what it meant to be Williams/Thornton/Wilkins, a terrain that itself is contradictory and irreconcilable.

### **Shadrach Wilkins: Literary Substitutions and the Negative Proof of *Slatter v. Holton***

It is tempting to look to Williams/Thornton/Wilkins’s birth name, Shadrach Wilkins, as a source of authenticity and identity. However, even from the first, his naming is itself a discursive gesture that suggests a paradoxical combination of multiplicity and absence. In his *Narrative* (3), “James Williams” claims to have a twin brother named Meshech [Meshach].<sup>67</sup> Given that his birth name was Shadrach Wilkins, there is no reason to doubt the accuracy of his twin brother’s name. The name also makes logical sense, as the figures of Shadrach and Meshach appear together in a story from the *Book of Daniel*. In that story, Shadrach and Meshach refuse to worship an idol, and the Babylonian king Nebuchadnezzar orders them cast into a massive

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<sup>66</sup> *Annotated Narrative*, Introduction.

<sup>67</sup> *Narrative of James Williams*. (American Anti-Slavery Society, 1838).

furnace to be burned alive. In light of their faith, God delivers them unharmed; a stunned Nebuchadnezzar sees them walking about in the fire, calls them out of the furnace, and promotes them to esteemed positions in Babylon.<sup>68</sup>

That Shadrach was a character in a story of Biblical deliverance is at the least an uncanny foreshadowing of Wilkins's later freedom—and it may simply reflect the longing of a mother to see her newborn children be delivered from the earthly misery of slavery. Through naming her children after these particular Biblical figures, Williams's mother called her sons explicitly into deliverance. However, in naming two boys Shadrach and Meshach, their mother not only speaks them into that narrative but also registers the absence of at least one other person. In *Daniel*, the Babylonian deliverance saves not two, but three men: Shadrach, Meshach, and Abednego. Moreover, when Nebuchadnezzar peers into the furnace, he also sees a fourth unnamed figure, saying, “Did not we cast three men bound into the midst of the fire”? When his guards affirm the question, Nebuchadnezzar exclaims, “Lo, I see four men loose, walking in the midst of the fire, and they have no hurt; and the form of the fourth is like the Son of God!”<sup>69</sup> Despite the appearance of a fourth form, only the three named men emerge from the fire, and there is no other mention in *Daniel* of that fourth figure.

This Biblical tale depicts three recipients of deliverance—Shadrach, Meshach, and Abednego—even as a fourth unnamed figure haunts the story as an uncertain member of their group. The act of naming twins after two of these figures therefore makes visible the absence of the third and fourth members, without whom the tale of deliverance is less complete (though not altogether unreadable)—another example of “under-erasure.” Williams/Thornton/Wilkins's birth

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<sup>68</sup> *Daniel* 3:24-30 (*King James Bible*).

<sup>69</sup> *Id.* at 24-25.

as Shadrach thus locates him immediately in an apparatus that depends both on multiplicity and conspicuous absences. His name acts as a sign for multiple iterations, alter egos, and shadow figures. It also suggests one who transcends, or at least resists, death.

Despite the provocative Biblical connotations of his birth name, the persona of Shadrach Wilkins was hardly the most renowned in Williams/Thornton/Wilkins's repertoire. He never published under the name Shadrach, and in fact "Shadrach Wilkins" ultimately exists as a textual trace of Williams/Thornton/Wilkins's criminality, fugitivity, and status as property. In recorded memory, Wilkins is perhaps most conspicuous as the subject of the 1841 Louisiana court case, *Slatter v. Holton* (No. 3894, 19 La. 39). That opinion describes "Shadrack [sic] Wilkins" as "the property of the Plaintiff," marking law's characterization of Wilkins not as property, but as something owned by H.H. Slatter. When Wilkins disappeared during Slatter's attempt to transport him to Louisville, Slatter then sued Holton, the captain of the *Henry Clay*, "to recover the value of . . . Shadrack," alleging that Holton had failed to properly maintain custody of Wilkins.<sup>70</sup> By identifying "Shadrack" as lost property, Slatter's suit further participates in the legal narrative of Wilkins not as a legal person but a bundle of fungible goods.

*Slatter v. Holton* is not an influential opinion in Louisiana or elsewhere; it offers minor precedent on a single point of law regarding the admissibility of negative testimony, an example of the way in which the legal narrative of Wilkins consistently begets additional negations and absences. The crux of the dispute in *Slatter v. Holton* concerned whether Slatter could prove that Shadrach Wilkins had ever boarded the *Henry Clay*. Slatter argued that a black man traveling by

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<sup>70</sup> The case is complicated by the fact that it also marks the appearance of the "Jim Thornton" persona, under which Williams/Thornton/Wilkins managed to escape to the second ship. I discuss Jim Thornton later in the chapter, focusing here on Shadrach Wilkins.

himself should have been obvious to Holton as a fugitive slave; for his part, Holton argued that there was no proof that Wilkins ever boarded the *Henry Clay*, and thus that he had no duty to detain Wilkins as a fugitive slave. To support this argument, Holton presented testimony from several witnesses who testified that they never observed Shadrach Wilkins on the *Henry Clay*—this testimony that they did *not* see Wilkins was the negative testimony at the heart of the opinion.

The court held that this negative testimony was insufficient to overcome testimony from other witnesses who claimed that they saw a servant aboard the ship—“Jim Thornton”—who proved to be Shadrach Wilkins. The court reasoned, “However strong may appear the negative proof resulting from the declarations of several witnesses that they did not see the plaintiff’s boy on board the *Henry Clay* during her voyage from New Orleans to Louisville, it cannot destroy the positive testimony in the record showing that during the trip the boy was acting on board as one of the servants of the boat under the name of Jim Thornton.” On the basis of this legal rule, the Supreme Court of Louisiana entered judgment in favor of Slatter, holding that he was entitled to \$1600 in damages for the loss of Shadrach Wilkins.

The holding in *Slatter v. Holton* is an unsatisfying text if we read it looking for Wilkins’s agency. When not persistently referring to him as a “boy,” the court construes Wilkins as chattel; the construction is so blatant as to contain a dollar amount (\$1600) for the loss to Slatter of Wilkins’s body. On its face, the opinion *appears* to offer a clear example of law’s well-known treatment of slaves as property, or chattel. But the holding of the opinion also reveals how law reads the slave—and in particular the fugitive slave—through negation and evacuation. The opinion’s language uses a triple negative: that “negative proof” that witnesses “did not see” Wilkins “cannot destroy positive testimony.” This accumulation of negatives renders the holding

practically indecipherable, amassing an unmanageable collection of negations to articulate an otherwise straightforward legal rule: that positive testimony is more persuasive than negative testimony. The grammatical construction of this holding makes “negative proof” the subject of the sentence, a choice that complicates the modifiers and the predicate into a nearly incomprehensible entanglement. The literal subjectivity of “negative proof” thus mirrors Wilkins’s subjectivity as a fugitive slave. At the moment when the court most requires Wilkins’s presence—in order to redress Slatter’s claim for the loss of his property—Wilkins is nowhere to be found. The language of the holding resorts to a correlative posture, in which the presence of a fairly simple legal rule is visible only through a series of denials and negations.

Like the “negative proof,” which is unpacked through a series of additional negations—including the language of destruction—Wilkins’s legal subjectivity is similarly fraught and illegible. As Stephen Best (87) writes: “The law knows the fugitive as a nondescript.” Wilkins, I argue, exists within the language of the court opinion as a series of negations and substitutions, what Best might call a “nondescript”: a boy rather than a man, a vanished slave rather than property in custody, Jim Thornton rather than Shadrach Wilkins, \$1600 rather than flesh and blood. Law’s difficulty in managing Wilkins’s personhood—needing on the one hand to flatten him into property while on the other hand being forced to contend with his free will and agency in escaping from his owner—seems to bleed through into the legal holding itself. This tension demonstrates the possibility of an opinion to grant a slave literary personhood while denying his legal personhood. Wilkins is certainly literarily visible as a persona in the opinion; his legal personhood, on the other hand, is never contemplated, much less adopted.

*Slatter v. Holton* is not the only textual trace of Shadrach Wilkins, however. Though unmentioned in the *Narrative* itself, the name Shadrach Wilkins appears in the literary history surrounding the Williams *Narrative* as early as 1838, as part of the public debate staged in *The Emancipator* and the *Alabama Beacon*. As part of the investigation into the *Narrative*, many readers submitted letters claiming to support or refute the text's veracity. One such letter from George Larimer claimed to recognize James Williams as "Shadrack Wilkins," his mother-in-law's former slave "who was sold by her in consequence of his having been detected in connexion with others in attempting to poison [a neighboring slaveholder] and his family . . . ." <sup>71</sup> Birney and Tappan immediately dismissed Larimer's testimony, writing, "Of this letter but little need be said—it being clear that Geo. T.F. Larimer, by whom it purports to have been written, is not *the person* referred to in the *Narrative*." <sup>72</sup> This textual trace of Wilkins offers additional information about him, but it also refuses any information that would generate a narrative that neatly connects the steamboat escapee with the poisoning conspirator. It does, however, encode the Wilkins persona with enduring rebellion. His escape from the steamboat, which seems in isolation to be merely an act of flight, acquires a different connotation considered alongside the information from the Larimer letter—reading the two items together suggests Wilkins' refusal to surrender to slavery as part of a longer history that includes the willingness to poison and kill someone else's owner.

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<sup>71</sup> James Birney and Lewis Tappan, "Alabama Beacon versus James Williams," *The Emancipator* (New York, NY), 30 August 1838. Their automatic rejection of Larimer's claim hinged on his location in Essex County; in the *Narrative*, Williams claims to have been the slave of a Larrimore family in Powhatan County.

<sup>72</sup> *Id.*

It was not until 2013 that Hank Trent took seriously the Larimer letter, finally making clear that “James Williams” was indeed Shadrach Wilkins, a conclusion that he reached by surmising that “James Williams” had changed the name of the county in his *Narrative*.<sup>73</sup> By itself, this re-naming does not necessarily imply that the remaining *substance* of the *Narrative* was inaccurate. Birney’s and Tappan’s response, however, reveals more than a case of mere mistaken identity. Given that the white abolitionists were prepared to accept a number of other factual errors in the *Narrative*, the geographic discrepancy alone could not account for their ready dismissal of a connection to Shadrach Wilkins.

Rather, their language suggests that the problem of recognition rests in their construction of personhood. When they write that Larimer “is not *the person* referred to in the *Narrative*,” they presumably intend to write that Larimer is not “the person referred to as Larrimore in the *Narrative*.” However, their grammatical construction curiously suggests instead that the *Narrative* as a whole refers only to one person: Larrimore. If Larrimore is the only *person* to appear in the *Narrative*, then “James Williams” himself must therefore not be a “person,” whether in factual truth or legal rule. This implication, combined with their emphasis on the phrase “*the person*,” draws attention to the fact that personhood as a category remained available only to white subjects.<sup>74</sup>

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<sup>73</sup> Note that the substitution of one county name for another rehearses Williams/Thornton/Wilkins’s practice of repeatedly re-naming himself.

<sup>74</sup> Here again is a fraught intersection of legal and literary personhood. Birney and Tappan, in the context of the ostensibly journalistic literary text, appear to offer a construction of personhood as a category of law, custom, and language.

While Birney and Tappan might not consciously be drawing attention to the difference between personhood as a legal category and personhood as an existential condition, their striking choice of language suggests the burden they felt in classifying the man they knew as James Williams. They register an impossibility of connection between James Williams and Shadrach Wilkins, underscoring their understanding of black personhood as rooted in binaries that failed to fully account for the complexities and nuances of fugitive identity. For these abolitionists, in spite of their opposition to legalized slavery, the well-spoken and well-mannered author they knew as James Williams simply *could not be* a suspected criminal who had fooled them into publishing a “false” story.<sup>75</sup>

Whereas law balances the status of personhood against the status of property, Birney and Tappan balance honesty against mendacity when determining how to properly classify a slave. In the debate with the *Alabama Beacon*, the abolitionists of *The Emancipator* focus entirely on the credibility of the man they know as James Williams. Unable to confidently apply the label of

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<sup>75</sup> Of course, Birney and Tappan likely also intended to distance the *Narrative* from Shadrach Wilkins’s sketchy involvement in a poisoning plot. As Hank Trent notes (“Introduction”), Wilkins was arrested in connection with the case but never prosecuted (two other slaves were tried and convicted). Because he was not tried, there is little textual evidence from the legal record to identify him, though Larimer does claim that, “Had Shadrack been tried, there is scarcely a doubt, but that he would have been hanged . . .” (Trent, “Alabama Beacon Versus James Williams”). Thus, these early textual traces of Shadrach Wilkins, though not self-authored, do establish him as defiant, crafty, and social—the former two categories being ready stereotypical tropes for slaves. Whether he used his wits to escape trial is unclear, but he appears to have been acting in concert with several other slaves to rebel by killing the neighboring slaveholder with hemlock. It is unclear why Williams was not prosecuted, but his owner did sell him, his wife, and their son immediately to Caleb Tate in Alabama—the owner of the cotton plantation alluded to in the *Narrative*’s title, the place where Williams worked as a driver over his fellow slaves. He was sold to Tate in 1833, and Williams made several attempts to escape from Caleb Tate’s plantation with his family.



either “true” or “false” to the contents of the *Narrative*, Birney and Tappan cannot offer or imagine an alternative framework. *The Emancipator* is thus inadequate to narrate any meaningful version of fugitive personhood, other than to bemoan the difficulty of locating and capturing the fugitive slave in question.

The textual appearances of the Shadrach Wilkins persona make visible these failures of law and literature—each of which fumbles the attempt to describe Wilkins in satisfying, or even certain, terms. Both law and abolitionist literature resort instead to constructions of Wilkins that depend on substitutions, absences, and negations. Wilkins ultimately must be described in terms of what he is *not*—not money, not a stowaway, not present, not the same slave George Larimer identifies. Although the Wilkins persona offers scant information about how the slave read himself within institutions of power, this persona instead nuances the institutional landscape that the fugitive confronts. It is in the latter two personae of Jim Thornton and James Williams that the conditions of fugitive personhood become more visible. I argue that it is in the creation and deployment of these two personae that Williams/Thornton/Wilkins manifests his canny exploitation of law’s and literature’s failings.

### **Jim Thornton: Servitude and the Strategic Inhabitation of Slavery’s Codes**

In 1833, the Larimer family sold Wilkins, along with his wife and son, to Caleb Tate in Alabama. From Tate’s plantation, Wilkins made numerous attempts at escape with and without his family; following one of his solo escapes, he even managed to remain a fugitive for nearly eight months before being recaptured.<sup>76</sup> Upon his eventual capture in Baltimore, Tate sold

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<sup>76</sup> The fact that an owner would pursue a missing slave for eight months underscores the stakes of fugitivity and the necessity for the creation of personae that could sustain not only the immediate escape but many months or years of possible pursuit.

Wilkins to Shadrach Slatter, from whose custody Wilkins staged the escape that occasioned the *Slatter v. Holton* litigation.<sup>77</sup> Unlike the Wilkins persona, however, the creation of the Jim Thornton persona reveals a great deal more about how Williams/Thornton/Wilkins manifested a complex version of fugitive personhood. A strategic performance of servitude, his identity as Jim Thornton was a conscious act of self-disappearance and re-fashioning rehearsed from outside or in between between the existing legal and literary apparatuses—that elusive, but persistent claim to selfhood was effective precisely because it traded on the failures of both law and print.

Because *Slatter v. Holton* ultimately litigates the status of Shadrach Wilkins, the persona of Jim Thornton enters the case record in glancing references at each stage of the litigation. In the trial court opinion from the Parish Court for the Parish and City of New Orleans, the name Jim Thornton does not appear at all; that court merely held “that the Pltf’s slave was on board the *Henry Clay*, the defendant’s boat waiting at table, which fact cannot be considered as contradicted . . .”<sup>78</sup> The Supreme Court of Louisiana tends to treat “Jim Thornton” as a mere alias, holding that witness testimony proved that Wilkins “was acting on board as one of the servants [on the *Henry Clay*] under the name of Jim Thornton” (19 La. 39). That opinion also references the name Jim Thornton in three other instances. The opinion refers to Wilkins as “the boy Shadrack, or Jim Thornton,” and twice it describes a witness’s role in identifying Thornton. The witness, Mr. Peterson, “instantly recognized Jim Thornton as [Wilkins]”; Peterson also

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<sup>77</sup> I have already alluded to the fact that Wilkins accomplished this escape by using the name Jim Thornton, a persona that—like Shadrach Wilkins—appears in the record of *Slatter v. Holton*.

<sup>78</sup> That opinion was issued May 10, 1839, signed by Judge Charles Maurian (as included in *Trent’s* annotated edition of the *Williams Narrative*).

testified that he had notified a ship's captain "that the boy passing by the name of Jim Thornton belonged to S.F. Slatter, of New Orleans . . . ." <sup>79</sup>

In each of these examples from the judicial opinion, the persona of Jim Thornton appears as an alias or alter ego that merely substitutes for, or is interchangeable with, the name Shadrach Wilkins. In the most generous reading, there is at least literary personhood inherent in the phrase "the boy passing by the name of Jim Thornton." That statement makes Thornton visible as an actual person, but it falls short of establishing legal personhood because it refers to him as "the boy," a phrase that suggests either youth or, more likely, his status as African American. This characterization also implies the strategic use of the Thornton name as a tool of deceit that allowed Wilkins to "pass" for free. The construction endows Wilkins with enough agency at least to strategize a false identity. <sup>80</sup> This marginal agency is nevertheless subsumed by the legal construction of slave as a lying criminal—for a slave to "pass" for a free person is fraudulent and criminal. <sup>81</sup>

The opinion's gloss on Jim Thornton, however, obscures a much richer portrait that emerges in the opinion's supporting materials—namely, additional interrogatory responses from witnesses and arguments offered by counsel. The witnesses who actually encountered Jim Thornton offered accounts that have much more to say about how Williams/Thornton/Wilkins re-fashioned himself in his fugitivity. For instance, William McBride (the pilot of the second ship where Thornton escaped after leaving the *Henry Clay*) gave a deposition in which he offers

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<sup>79</sup> Statement of Henry F. Peterson, 3 August 1837, *Slatter v. Holton*, 19 La. 39 (1841).

<sup>80</sup> Slatter's counsel also seized upon Patterson's use of the word "passing" in summarizing the witness testimony for his legal argument. Statement of George Strawbridge, *Slatter v. Holton*, 19 La. 39 (1841).

<sup>81</sup> Here again the deodand stands as an historical example of how law managed subjectivity from objects unreadable as civil subjects.

this description of Jim Thornton: “rather tall . . . about 5 feet 9 or 10 of a copper color wore his hair well combed back from his face & was remarked on board the Wave for his neatness & activity in acting as a Waiter.”<sup>82</sup> The description characterizes Thornton as respectable, a loaded term that evokes the tendency of white people to congratulate certain types of blackness. Indeed, McBride engages in this version of respectability politics, praising Thornton for the neatness of his hair and eagerness to please the passengers.

Compare this description with the fugitive slave advertisement that Tate placed in 1835: “SHADRICK, a yellow complected, likely fellow bold and impudent look, about 5 feet 10 inches high 26 years old, wears his hair roached, eyes of a yellowish cast, and wore a white hat.”<sup>83</sup> Tate’s description bears the bias of a furious slave owner whose property has vanished. Nevertheless, the difference in described physicality is stark, apart from an apparent agreement about height. While Tate focuses on roached hair, yellowish eyes, and a “bold and impudent look,” McBride describes a well-groomed and neat waiter whose execution of servitude apparently earned the admiration of the ship’s passengers. Setting aside the expected pitfalls of discrepant eyewitness testimony and Tate’s racist rhetoric, these two descriptions are largely incompatible—an example of the incommensurability of the various personae with each other. Based on the divergent descriptions, how unlike Shadrick is the polite waiter known as Jim Thornton. The apparent coherence of Thornton’s persona contrasts sharply with the incoherence that results when one attempts to reconcile Wilkins with Thornton.

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<sup>82</sup> Statement of William M’Bride, 11 Jan. 1839, *Slatter v. Holton*, 19 La. 39 (1841).

<sup>83</sup> “Fifty Dollars Reward,” *Alabama Intelligencer and State Rights Expositor*, 29 August 1835.

It is tempting to conclude that Wilkins was such a gifted *performer* that his transformation into Jim Thornton merely reflects the effectiveness of his performances and disguises.<sup>84</sup> Jim Thornton, however, was more than a series of garments or a change in hairstyle—the persona of Jim Thornton deftly navigated social codes that had trained others to encounter his body as one of labor and servitude. Thus, Shadrach Wilkins did not *transform* into Jim Thornton at all—rather, the persona of Jim Thornton was *deployed* when the need for him arose. Williams/Thornton/Wilkins pursued liberty not merely through self-representation, but through the creation of Jim Thornton. To deploy the persona of Jim Thornton, it was necessary only to present a public identity that would align with the social expectations projected onto his body.

The man who called himself Jim Thornton “passed” for a waiter, trading forced labor for voluntary service, deploying the persona of Jim Thornton as an authorial strategy of fugitive personhood—the descriptions of Thornton as “passing” conjure associations with a number of other fugitive practices. According to the ship’s passengers, his performance as a waiter was convincing. Even Thornton’s transfer to a second boat apparently occurred by virtue of his exemplary conduct as a waiter—when the *Henry Clay* encountered ice that blocked its passage, the *Wave* took some of the *Clay*’s passengers and also some of its staff, including Jim Thornton. Captain Spalding (*Wave*) testified: “[T]here was a coloured boy that passed by the name of Jim Thornton from steamboat Henry Clay together with some others of his cabin boys who captain Holton requested me to let such as I should need work their passage the rest pay, this Jim Thornton being very active about the table and my Steward being sick at the time I let him work

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<sup>84</sup> For a fuller discussion on the dimensions of racialized performances and performative self-actualization, see Daphne Brooks’s work in *Bodies in Dissent: Spectacular Performances of Race and Freedom, 1850-1910* (Duke UP, 2006).

his passage above Flint Island, where I discharged him . . . .”<sup>85</sup> The double use of both “passed” and “passage” draws certain rhetorical connections between Thornton’s specific persona and the terrain of fugitive personhood. As a strategy of survival, the fugitive must “pass” for a member of a group to which he ought not—according to prevailing legal and cultural narratives—belong. The successful “passing” as a waiter then ensures several other passages: from one steamboat to another, from South to North, from slavery to freedom. For the fugitive, however, the project of “passing” is never truly complete. The fugitive slave laws during the antebellum period, which frequently authorized re-capture even from free jurisdictions, recast passing not as a temporary strategy, but as a permanent condition of fugitivity.<sup>86</sup> Captain Spalding’s description of Thornton perhaps unwittingly reinforces the numerous dimensions of “passing” inherent in Thornton’s performance as a waiter.

The other passengers corroborate Spalding’s characterization of Thornton, while nuancing Spalding’s emphasis on passing. For example, after offering a physical description of Thornton, McBride testifies that Thornton was “very active in bringing the baggage from the Henry Clay to the Wave.”<sup>87</sup> Finally, the boat’s clerk, Erasmus Plastridge, testifies that he “saw Jim Thornton waiting on the passengers who were at Supper in the cabin, & afterwards aiding to carry the passengers [sic] baggage on board the Wave from the Henry.”<sup>88</sup> Each description of

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<sup>85</sup> Statement of Ulysses Spalding, 15 June 1838, *Slatter v. Holton*, 19 La. 39 (1841). Note the double meaning of the word “passed” in the first sentence of this quote. While Spalding presumably intended merely to suggest that the waiter used the name Thornton, the word “passed” also evokes the practice of passing for a member of a group to which one does not belong—many fugitive slaves escaped North by passing for white, or by passing for a different gender.

<sup>86</sup> See Daniel Sharfstein’s work in *The Invisible Line* for a fuller history of passing in the nineteenth and twentieth centuries.

<sup>87</sup> Statement of William M’Bride, 11 January 1839, *Slatter v. Holton*, 19 La. 39 (1841).

<sup>88</sup> Statement of Erasmus D. Plastridge, 30 November 1837, *Slatter v. Holton*, 19 La. 39 (1841).

Thornton focuses almost exclusively on his body and its movement, supplying a fuller description of how specifically Thornton accomplished his many passages. Their focus on his movement and industry evinces the social codes that these passengers were conditioned to recognize from a young African American man aboard their ship. His quick actions and attentive devotion to the passengers marked him for these passengers as an “acceptable” kind of black man—subservient, hard-working, and available to cater to the needs of white passengers.

Thornton’s visibility exploited the categories of personhood that hovered around his body. Only in certain narrow contexts did his blackness render him legible and, paradoxically, thus safely *invisible*. Apart from depicting Thornton as highly “active,” the testimony in *Slatter v. Holton* is notable for *where* it depicts him—at table. The persona of Jim Thornton was thus legible in the context of servitude, and only servitude. There are no descriptions of him elsewhere aboard the boat, nor any accounts of him engaged in any activity but waiting at table or assisting with baggage. It is impossible to know what happened to Jim Thornton during moments away from the labor he performed as a crew member. There is no testimony from other waiters or stewards, no suggestion of Thornton’s social existence. Rather, the testimony suggests that Jim Thornton did not exist in any other context aboard the ship. While this cannot be logically true—he must have taken breaks, he most likely spoke to other crew members at some point, etc.—his appearance as a phantom waiter comports with the legal texts that represent him.

Thornton’s ability to hide in plain sight among the passengers offers a counterpoint to the elusiveness of Shadrach Wilkins from the judicial record. Wilkins was absent or lost during a time of white institutional need; by contrast, Thornton was exceptionally *present* for the white passengers on the ship. Thornton’s presence in this context was safe precisely because the need he filled, while also in service of white supremacist customs, did not depend on his specific

persona—any other waiter, black or white, could have easily replaced him. In short, when the passengers onboard required a waiter, no one was searching for “Jim Thornton” in particular. And in any case, his readiness to be of service ensured that he always appeared *before* his presence could be called into question.

Henry Peterson, who had seen Wilkins on several occasions, was the sole passenger with reason to suspect that Thornton was a runaway slave. In fact, Peterson readily recognized the waiter as Shadrach Wilkins and alerted Captain Spalding immediately to Thornton’s identity as a runaway slave. Spalding declined to arrest Thornton—whether because he truly could not reconcile this polite waiter with a fugitive slave or because he secretly harbored anti-slavery sympathies. In any case, it appears that, apart from the neatly combed hair, Jim Thornton more or less resembled Shadrach Wilkins to someone who had met both men—that Jim Thornton was not merely a physical disguise but an uncanny iteration of the fugitive slave known variously by both of these names.

Jim Thornton so fully inhabited this persona that, when Peterson recognized him, he insisted “that his name was Jim Thornton.”<sup>89</sup> To identify himself to Peterson as Jim Thornton is a radical act of self-disappearance, a denial of access to Williams/Thornton/Wilkins’s self-conception, and an insistence instead on the lie of the substitution. Even as he seeks his own liberty, the conditions of his fugitivity refuse him a version of selfhood that acknowledges his past—Shadrach Wilkins is not entitled to freedom, but Jim Thornton is. Thus, when Peterson asks his name, the only possible response is “Jim Thornton.” He does not insist on his innate right to liberty, but he claims another persona that *does* have such a right. In her work on legal

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<sup>89</sup> Statement of Henry F. Peterson, 3 August 1837, *Slatter v. Holton*, 19 La. 39 (1841).



ritual, Colin Dayan uses the categories of “legal slave” and “civil body” to “suggest that potent image of a servile body can be perpetually reinvented. In this ritual, both legal slave and civil body are sacrificed to the civil order” (*White Dog* 41). In Jim Thornton’s case, his servile body is reinvented into a steamboat waiter through rituals that appear to manage both his status as legal slave and his assertion of civil body. The performance of Jim Thornton’s persona, and the claim to that name, suggest a complete evacuation of Shadrach Wilkins—a disavowal of the legal slave, Wilkins, in favor of a claim to Thornton’s civil body. The emergence of Jim Thornton thus occurs in unison with the social death or negative personhood of Shadrach Wilkins.

It is no surprise, then, that *Slatter v. Holton* expends little effort to plumb the depths of “Jim Thornton.” That litigation has no interest in Thornton, who merely haunts the case materials to interrupt the trajectory of Shadrach Wilkins, slave and property. Just as Jim Thornton jettisons Shadrach Wilkins in order to avoid jurisdictional claims over his body, the legal opinion must jettison Thornton’s presence by “returning” him to classification as Wilkins, who is then “returned” into the condition of enslavement and valued at \$1600. In the very first sentence of the opinion, the trial court holds “That the testimony produced by the plaintiff clearly establishes the fact that the Pltf’s slave was on board the Henry Clay, the defendant’s boat waiting at table.”<sup>90</sup> In fact, this holding completely contradicts the testimony, which almost universally identifies Jim Thornton as the waiter in question. By issuing the holding that the plaintiff’s slave was on board the *Henry Clay*, the court collapses Thornton and Wilkins together in order to produce a legally readable person: the slave. The appellate court offers slightly more nuance, holding that Wilkins “was acting on board as one of the servants of the boat under the name of

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<sup>90</sup> Judgment, *Slatter v. Holton*, State of Louisiana Parish Court for the Parish and City of New Orleans, 10 May 1839.

Jim Thornton.”<sup>91</sup> Even here, however, Thornton is merely a name to be applied over Wilkins, suggesting that the name Jim Thornton was an alter ego or mask that disguised the real person (Wilkins) beneath it. The court thus pretends that Wilkins and Thornton are equivalents, or that Thornton is a mere name rather than a personality. By adjudicating Thornton’s presence on the *Henry Clay*, the court adjudicates Wilkins’s disappearance from his owner.

The opinion thus produces a strange result wherein Thornton’s existence constitutes the vanishing of Wilkins that entitles Slatter to damages for the loss of his property. In reaching this result, the court makes Slatter whole by ordering that he be compensated for Wilkins’s value of \$1600, making the disappearance of Shadrach Wilkins a matter of law. This legal fiction operates despite the court’s knowledge that the man known as Jim Thornton walked off the ship and presumably lives elsewhere under that or another name. Lacking a framework of discourse or compensation that would recognize this persistence, law can only adjudicate Shadrach Wilkins who is now, for all intents and purposes, dead or destroyed. The judgment for \$1600 is a bizarre form of emancipation that un-couples Wilkins from Slatter, though there is no available legal language to describe it in those terms—nor does law have any interest in framing it accordingly.

But it is too simple to read Jim Thornton as Shadrach Wilkins’s emancipator. For one thing, that emancipation occurred only through radical self-disappearance and law’s inadequacy to register the complexities of Shadrach Wilkins’s subjectivity. The context that produces Jim Thornton also differs sharply from the context that produces Williams/Thornton/Wilkins’s other

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<sup>91</sup> *Slatter v. Holton*, 19 La. at 39.

personae. In the case of the James Williams persona, the act of self-disappearance manifests along entirely different lines.

### **James Williams: The Fugitive and the Criminal in the Abolitionist Context**

The persona of James Williams is perhaps the most difficult to parse, as it appears to promise some insight—through his self-authored slave narrative—into Williams/Thornton/Wilkins’s self-realized subjectivity. Having authored the *Narrative* with the mediation of abolitionists John Greenleaf Whittier, James Birney, Emmor Kimber, and Lewis Tappan, James Williams offers readers the fantasy of that text as a more authentic rendering of his personhood as a fugitive. The abolitionists who published the text appear to have been likewise seduced.

In his 2013 annotated edition, Hank Trent describes the process of authentication and vetting that the abolitionists deployed regarding the veracity of Williams’s *Narrative*. From the beginning, according to Trent, Kimber crafted an outline that would serve as the basis for investigation—Williams’s initial story would ultimately be verified, cross-examined, and subjected to scrutiny from every direction. Trent writes of the process in his Introduction: “Abolitionists peppered him with questions, then huddled secretly to compare their notes with Kimber’s letter and to pore over maps of the South, checking towns and distances. They observed the scars on his back.”<sup>92</sup> This conflation of psychological, cognitive, and physical inspection suggests an intimacy between the legal personhood of a fugitive slave and the literary personhood available to that slave within white abolitionist print networks. While the abolitionists claimed an investment in the liberation of slaves, these rituals of scrutiny conjure

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<sup>92</sup> The abolitionists’ process of authentication would later become a familiar trope in the circulation of slave narratives, with physical wounds and marks standing in as witnesses to corroborate the underlying narratives of escaped slaves.

associations with buyers inspecting slaves on the auction block, suggesting an affinity between rituals that deny legal personhood and those that claim to affirm literary personhood.

That this process framed and dictated the publication history of the *Narrative* suggests the terms on which these abolitionists read James Williams's persona—terms that depended on his honesty or lack thereof. The resonance with law is apparent: Williams is either honest (innocent) or dishonest (criminal). The substitution of this binary for law's dichotomy of property/criminal nevertheless denies Williams the potential for civil personhood. If determined to be essentially honest, Williams is not a criminal—but he is also certainly not a citizen or civil person. Instead, the threat of criminality remains even after the abolitionists rewrite law's binary in different terms. Thus, from the first, James Williams's persona was filtered through a process of detection intended to extract, through rigorous inspection, the *true* account of his life as a slave.

I have already alluded to the disruption this account produced both in the initial print debates with the *Alabama Beacon* and also in the critical scholarship on James Williams among contemporary scholars. Since 1838, one question has consistently preoccupied literary critics and historians: Was James Williams a “real” person? The *Narrative* actually constructs Williams around the terms of that question. It is replete with data points that appear to be consistent with the world from which he fled: names of people and places, timelines, and other details that document the existence of a person within various bureaucratic and geographical boundaries. The *Narrative* marshals the ephemera of James Williams's history to produce a legible telos that begins with his trustworthiness and the injustice of slavery and ends with freedom—precisely the telos that abolitionist readers were capable of comprehending.

What it explicitly does *not* do is afford access to the subjectivity or selfhood of the man who created the James Williams persona. Instead, it denies any connection whatsoever to that man, the person I have been referring to as Williams/Thornton/Wilkins. The *Narrative* is perfectly content to accept Williams on these terms—as a collection of biographical and historical data—so long as Williams remains a trustworthy and honest narrator. The moment that Williams’s credibility is in doubt, however, the rhetoric surrounding the *Narrative* shifts dramatically, moving from a posture of recordation to one of trial and judgment. This shift illustrates the means by which literature and law collaborate to register fugitive slaves in only the narrowest of terms.

Throughout the *Narrative*, Williams calls attention to the “dark reality of evil” (29)<sup>93</sup> that persists in slavery. For the most part, however, he stops short of overtly calling for slavery’s abolition or for insurrection. Where the language of revolt does arise, it is through the ventriloquism of Williams’s brother, a preacher who has secretly learned to read and write. Williams (26) writes that, when a local church routinely removed black worshippers from their seats to make room for white churchgoers, his brother “on one occasion preached a sermon from a text, showing that all are of one blood. Some of the whites who heard it said that such preaching would raise an insurrection among the negroes.” Williams later says (27), “Since the insurrection of Nat. Turner [his brother] has not been allowed to preach at all.” This description of Williams’s brother appears on the second and third pages of his *Narrative*, establishing, along with Williams’s genealogical history, the governing logic of black representation in the text. By deploying the story about his brother, the literate preacher silenced by a white audience,

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<sup>93</sup> Page references to the *Narrative* refer to the 1838 edition, *Narrative of James Williams, an American Slave, Who Was for Several Years a Driver on a Cotton Plantation in Alabama* (American Anti-Slavery Society, 1838).

Williams frames the *Narrative* as occupying the razor's edge between language and silence. First by substituting his brother for himself, and then by referencing the equivalency between speech and insurrection in the white imagination, Williams displaces his own subjectivity in favor of a framing genealogy that explicitly tests the boundaries of the abolitionists recording his story. The association with Nat Turner also marks a sharp contrast with the presences and absences of the Williams, Thornton, and Wilkins personae. Turner's confessions to Thomas R. Gray created Turner's rather outsized textual presence in the materials that recorded him. That intense textual presence was in fact the occasion for Judge Cobb's rhetorical overkill of Turner's body. By contrast, the discourse of rebellion in Williams's *Narrative* absents Williams from the text, speaking discourse instead through the ventriloquism of Williams's brother.

If Williams's opening gambit suggests a healthy awareness of the propensity of black speech to incite white terror, a passage near the end of the *Narrative* suggests a practice that may have informed Williams's rhetorical strategy for evading capture. As Williams narrates his flight from the Alabama plantation where he had labored as a slave driver, he describes the bloodhounds that pursued him. As was customary on the plantation—the *Narrative* contains descriptions of how the hounds were used to capture and kill other runaway slaves—and elsewhere throughout the South, the bloodhounds had been set on Williams's scent. Exhausted after nearly drowning during his flight, Williams describes the moment of his surrender to the dogs' inevitable arrival. He writes (85-86):

Here, panting and exhausted, I stood waiting for the dogs. The woods seemed full of them. I heard a bell tinkle, and a moment after, our old hound Venus came bounding through the cane, dripping wet from the creek. As the old hound came towards me, I called to her as I used to

do when out hunting with her. She stopped suddenly, looked up at me, and then came wagging her tail and fawning around me. A moment after the other dogs came up hot in the chase, and with their noses to the ground. I called to them, but they did not look up, just came yelling on. I was just about to spring into the tree to avoid them, when Venus, the old hound, met them, and stopped them. Then they all came, fawning and playing and jumping about me. The very creatures whom a moment before I had feared would tear me limb from limb, were now leaping and licking my hands, and rolling on the leaves around me.

In this striking passage, the dogs move from pursuers to allies, from captors to companions. Williams, knowing that the dogs will do what they have been trained to do—to capture and dismember him—chooses to greet and entice them rather than to flee from them. As much as his pursuers have activated the dogs’ instinctual impulse to hunt him, the dogs also know Williams as a hunting companion. By calling to Venus in the familiar fashion she will recognize, Williams transforms her from an agent of his enslavement to an agent of his fugitivity. Williams is rewarded in this story by behavior that he repeatedly refers to as “fawning.” The dogs not only spare his life but fawn about him and become his companions until he later sets them off to chase a deer.

It is difficult not to see the parallel in this anecdote to Williams's engagement with the abolitionists publishing his *Narrative*. Though the *Narrative* itself does not explicitly register the abolitionists' engagement with Williams, John Greenleaf Whittier's Preface barely contains the pleasure it evidently takes in producing Williams's autobiography—with all of the horrors it describes. Whittier writes:

The following pages contain the simple and unvarnished story of an AMERICAN SLAVE,--of one whose situation, in the first place, as a favorite servant in an aristocratic family in Virginia, and afterwards as the sole and confidential driver on a large plantation in Alabama, afforded him rare and peculiar advantages for accurate observation of the practical workings on the system. His intelligence, evident candor, and grateful remembrance of those kindnesses which in a land of slavery made his cup of suffering less bitter; the perfect accordance of his statements (made at different times and to different individuals) one with another, as well as those statements themselves, all afford strong confirmation of the truth and accuracy of his story.<sup>94</sup>

This language from the Preface reveals the aggrandizing narrative gestures that participate uncomfortably in some of the trappings of slavery—the satisfaction taken in Williams's ownership by an “aristocratic” family in Virginia as though the association renders Williams himself aristocratic, the treatment of Williams's time as a slave driver with pride rather than horror, the evident savoring of what is described as Williams's “cup of bitterness.” As when

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<sup>94</sup> “Preface,” *Narrative* at xvii-xviii.



Williams greets the hounds with apparent affection and gratitude, he becomes the object of fawning by the abolitionists for his apparent willingness to indulge them in the gruesome details of his enslavement. This Preface, in its fawning over Williams and his horrific history, demonstrates all of the shortcomings of abolitionist print in reading the fugitive slave. Here, as in the newspaper accounts that followed the *Narrative*'s scandal, Williams registers as an *instrument* rather than a fully realized subject; rather than grappling with the complexities of his status as a fugitive or former slave, the Preface can only understand Williams first by who owned him, then by the events he witnessed, and finally by his rigorously tested truthfulness.

As tempting as it is to read this flattening only in the Preface, the *Narrative* itself is at pains to account for the depths of Williams's personality—another self-induced narrative absence that occurs either because Williams was a persona rather than a person, or because Williams/Thornton/Wilkins deliberately obfuscated Williams's history as part of his ongoing fugitivity and evasion. Hank Trent capably demonstrates the extent to which Williams's *Narrative* appears to intentionally alter the names of people and places, even as it contains a bevy of factual information that is otherwise consistent with what we know about the slave born Shadrach Wilkins.<sup>95</sup> But the linguistic and narrative moves that Williams makes reveal the context in which this persona arises in the first place. In addition to demonstrating an awareness of the propensity of white readers to be either terrified or enticed, the *Narrative* also announces its governing narrative logic in other ways.

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<sup>95</sup> See Trent's Introduction to his 2013 annotated edition of the *Narrative* for a fuller accounting of the factual inconsistencies and manipulations in the *Narrative*. I have no reason to contest his findings, nor do the specific alterations to names and dates affect my larger arguments here about the ways that the James Williams manifests in the *Narrative* and elsewhere.

For instance, Williams writes (52-53), “It is not in my power to give a narrative of the daily occurrences on the plantation. The history of one day was that of all.” Here, in addition to underscoring the perpetual horror inherent in slavery, Williams trades on the same logic of substitution at work in the legal and literary texts that purport to represent slaves—a single day can stand in for the entire history of life on the plantation, a single chain of events can stand in for an escaped slave’s life story. In offering this announcement, Williams makes no effort to hew too closely to a temporal or historical accounting of what “happened” to him on the Alabama plantation. Rather, the anecdotes he chooses to repeat are metonyms for the larger and longer “history of life on the plantation.” In this sense, “the plantation” that he lived on in Alabama becomes a metonym for plantation life in general.

Despite his promise not to merely narrate daily occurrences on the plantation, Williams proceeds to do exactly that. The *Narrative* admits relatively little in the way of his own feelings or reactions, favoring instead to tell James Williams’s history primarily through acts of witnessing the behavior of *others*. While Williams occasionally acknowledges feelings of dread or fear, he reserves his attention to detail mainly for descriptions of physical violation or to build a fuller picture of owners and other slaves. For example, when describing the whipping he received at the hands of Huckstep, the abusive overseer on the plantation, Williams writes (67):

A moment after I felt the first blow of the overseer’s whip across my shoulders. It seemed to cut into my very heart. I felt the blood gush and run down my back. I fainted at length under the torture, and on being taken down my shoes were filled with the blood which ran from the gashes in my back. The skin was worn off from my breast,

arms, and thighs, against the rough bark of the tree. I was sick and feverish, and in great pain, for three weeks afterwards . . . .

This level of detail offers a chilling account of the physical degradations and torture techniques at work on the plantation. Williams is willing to be gruesomely specific about the physical wounds he suffers; when it comes to psychological suffering, he is far less forthcoming, tending to rely on summative, rather than descriptive language.

For instance, upon realizing that his owner intended to leave him in Alabama for a decade—separated from his wife and children in Virginia—Williams (69) says simply, “I now saw that my destiny was fixed, and that I was to spend my days in Alabama, and I retired to my bed that evening with a heavy heart.” While admitting to mental anguish, he nevertheless sums up the entirety of his pain with the phrase “a heavy heart.” Despite the agony that must have accompanied the revelation of his permanent separation from his wife and children, absent is anything approaching the level of detail that characterizes Williams’s physical suffering when Huckstep whips him. Instead, Williams offers almost no clarifying information to represent his emotional pain for the reader. The denial of readerly access to Williams’s interior self is another instance of his refusal to engage with white institutions of power and print. The abolitionists’ apparent intention in publishing his *Narrative* is to grant white readers intimate access to the conditions of enslavement and fugitivity—Whittier’s Preface promises an accurate rendition of these conditions, and Williams’s “cup of bitterness” is a thinly veiled solicitation of sympathy from the AASS’s audience. Williams nevertheless consistently withholds information while *appearing* to reward the abolitionists with the details that would support their project. For each moment of proffered information, there is a correlative act of self-erasure or sublimation.

These descriptive gaps—in which Williams reserves the greatest level of detail for events and physical sensations rather than emotions—also tend to expose the abolitionists’ blind spots. According to Whittier’s Preface, Williams had “rare and peculiar advantages for accurate observation of the practical workings on the system” (*Narrative* xvii)<sup>96</sup>, but even that prefatory language seems unable to conceive of Williams *within* that system as an object of it. Just as law can only read the slave as a piece of property or a guilty criminal, Whittier’s Preface registers the slave as either a voiceless object to be observed within the system, or a trusted outside witness to that system—there is no mechanism to represent a slave who occupies both positions at once. In this context, Williams’s relative silence on the emotional and psychological dimensions of his torture obeys the logic of the text: to delve too deeply into his own subjectivity would violate the narrative distance required for him to objectively witness the workings of slavery.

Literature’s proximity to law comes into sharpest relief, however, during the newspaper coverage that followed the *Narrative*’s publication. Almost immediately after the AASS had published the *Narrative*, southern slavery advocates used print to attack the *Narrative*’s factual accuracy. One newspaper in particular, the *Alabama Beacon*, published a series of pieces denouncing James Williams, the AASS, and the *Narrative* as a whole, arguing that the text was factually impossible. After undertaking an internal investigation, the AASS disclaimed the *Narrative* and withdrew it from circulation in October 1838. Before ultimately halting publication, however, the AASS published a large feature in its newspaper, *The Emancipator*,

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<sup>96</sup> Because of the fraught questions of authorship that arise during the use of an amanuensis, it is unclear whether this absence emotional description was the result of Williams’s decision to withhold personal information, the AASS’s choice to present Williams as a resilient victim of physical pain rather than emotional abuse, or some combination of these factors.

entitled “Alabama Beacon versus James Williams.”<sup>97</sup> That feature purported to document all available sources regarding James Williams, his history, and his *Narrative*.

Among the materials included in the newspaper feature are letters from those claiming to know Williams (including the letter from George Larimer), those claiming to have proof that his story was fake, and the AASS’s own history of the steps it took to procure and verify Williams’s original story. At each turn, this feature collapses print coverage into legal language, subsuming the controversy beneath the institutional force and procedure of law. In *Slavery on Trial: Law, Abolitionism, and Print Culture*, Jeannine DeLombard offers compelling examples of the anti-slavery movement’s deft print campaigns to put the institution of slavery on trial in the pages of periodicals and pamphlets.<sup>98</sup> DeLombard unpacks the means by which abolitionists used print culture to witness the horrors of slavery and stage a public trial designed to expose its injustices. In “Alabama Beacon versus James Williams,” however, the AASS harnesses the power of the printed word to place James Williams on trial.

The titling of the feature marks an obvious framing of the investigation in legal terms, mirroring the captioning of legal cases and establishing James Williams as the defendant in these quasi-judicial criminal proceedings. The feature in *The Emancipator* presents the relevant sources in a format that also recalls trial proceedings: after first offering its own version of opening remarks that contextualize the dispute, *The Emancipator* presents letters as testimony in the manner of depositions or written affidavits. The resonance with law’s machinations is evident—James Williams has been transformed from author to criminal. What little agency he gains from existing as a party to the case—an upgrade from *Slatter v. Holton*, where he appears

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<sup>97</sup> *The Emancipator*, 30 August 1838.

<sup>98</sup> See *Slavery on Trial* (U of North Carolina P, 2007).

as the property in dispute—occurs only at the price of reading him in the register of criminality. If the feature figures the *Alabama Beacon* as the plaintiff and James Williams as the defendant, *The Emancipator* appears to figure itself as judge and jury—it sets the terms on which the investigation will occur, but it also positions itself as the finder of facts. In any event, *The Emancipator* and the AASS hardly appear as advocates for James Williams, despite their assertions of due diligence in securing Williams’s autobiography.

The AASS even calls for Williams’s extradition so that he might answer the claims against him. Noting that Williams was last seen bound for Liverpool, the AASS writes, “If we could have satisfactory assurance that he would be safe, as a freeman, in New York, from the claims of the Slaveholder, the Executive Committee ought to proceed to make inquiry for the place of his residence, that he might be brought back and subjected to the most rigid cross-examination that those who dispute his story could impose.”<sup>99</sup> Notice the sleight-of-hand that the AASS demonstrates here, calling at once for the subjection of Williams “to the most rigid cross-examination” and simultaneously suggesting that it is not necessarily the AASS, but a collection of shadowy unnamed detractors, who would be responsible for imposing this violence on Williams. All the while, the AASS keeps law at the forefront, using the language of cross-examination to articulate the process at hand and thus underscoring the need to treat Williams as a criminal defendant.<sup>100</sup> This language also explicitly imports the concept of “subjection,” to figure Williams as an object, or specifically as *the* object of rigid cross-examination. The AASS

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<sup>99</sup> “Alabama Beacon versus James Williams,” 73. Given the unlikelihood that Williams’s owner would agree to such conditions, this offer probably represents disingenuous posturing rather than genuine negotiation.

<sup>100</sup> Though any witness is theoretically subject to cross-examination by opposing counsel, the context here (“the most rigid cross-examination”) implies that Williams is suspected of lying, that his truthfulness is in dispute, and therefore that it is Williams himself who is being tried.

makes these discursive moves beneath the veneer of anti-slavery benevolence, framing this remarkable call for Williams's violent subjection within a half-hearted plea for assurance of Williams's safety as a freeman.

The abolitionist press thus reveals its complicity with law. Satisfied, like the hounds, to fawn over James Williams while he appeals to its fantasy of a trustworthy slave narrator, the AASS goes for blood almost from the moment that Williams's honesty is placed in question. In addition to glorifying Williams, Whittier's Preface to the *Narrative* actually opens by denouncing the *laws* of slavery. Whittier (iv) writes, "It was reserved for American slave-holders to present to the world the hideous anomaly of a code of laws, beginning with the emphatic declaration of inalienable rights of all men to life, liberty, and the pursuit of happiness, and closing with a deliberate and systematic denial of those rights, in respect to a large portion of their countrymen." By pointing out the same hypocrisy that David Walker identifies in his *Appeal to the Coloured Citizens of the World*, Whittier skewers American law as fundamentally indefensible in its denial of rights to slaves. The Whittier Preface even reproduces advertisements for runaway slaves as examples of law's inhumane treatment of fugitive slaves,<sup>101</sup> presenting these ads as evidence for its conclusions about the injustice of slavery as an institution.<sup>102</sup>

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<sup>101</sup> See Preface at xii-xiv.

<sup>102</sup> In this section of the Preface, Whittier also mirrors legal language to a lesser degree, couching the factual conclusions as proceeding from the "testimony" of slaves. It is not, however, until *The Emancipator* publishes "Alabama Beacon versus James Williams" that the AASS's adoption of legal procedure becomes explicit.

And yet, it is to law that the AASS immediately returns in evaluating the veracity of the *Narrative*, shifting scrutiny and judgment from the institution of slavery onto the individual known as James Williams. Unable or unwilling to account for the incoherence in Williams's persona, the AASS resorts to legal procedure to re-enact law's criminalization of the slave—the very same procedure that the AASS denounces in the Preface to the *Narrative*. The narrative gaps that arise in the conditions of Williams's fugitivity, thoroughly unreadable in the AASS's white fantasy of black subjectivity, become fodder for his literary trial and conviction.

As with Jim Thornton, the existence of James Williams's persona necessitates a series of radical acts of self-disappearance, as well as institutional acts of erasure. James Williams inhabits his persona so fully that even when Shadrach Wilkins appears in the letter to *The Emancipator*, no one—for nearly two hundred years—imagined that Wilkins and Williams might be the same person. But the most blatant version of James Williams's erasure and substitution occurs through an 1835 legal document that predates the *Narrative* by several years. While still on Caleb Tate's plantation in Alabama, Williams/Thornton/Wilkins made several unsuccessful attempts to escape, one of which resulted in a six-month stint posing as the slave, “James Williams,” of a man named James White. The two men traveled from Alabama to Baltimore, according to Hank Trent, by repeatedly enacting the same con: White “sold” Williams to a new owner, then surreptitiously “rescued” Williams, and the two moved on to the next town and the next unwitting purchaser.

When finally captured in Baltimore, Caleb Tate appeared before a County Court judge in Montgomery County, Alabama to submit an affidavit in support of his efforts to recapture his escaped slave—who was then calling himself James Williams. The affidavit records Tate's claim that White “is guilty of stealing from [Tate's] possession in the County of his residence



aforesaid, his negro man, ~~James~~ Shadrach.”<sup>103</sup> This strikethrough, or what Derrida would refer to as “under-erasure,” simultaneously evacuates the persona of James even as it leaves a visible sign of James’s “absence.” James has been erased, but not erased so fully as to be invisible. In affirming the presence of Shadrach’s persona, the court thus permits the residue of James to continue inhabiting the text. This process of striking and re-writing personae is a mimetic replication of the process that Williams/Thornton/Wilkins deploys in his fugitivity. Just as Shadrach Wilkins disappears in order to make room for Jim Thornton, so does the court strike out the name James in order to accommodate Shadrach. Confronted by a fugitive slave who repeatedly erases and re-writes himself, the court adopts an identical rhetorical strategy—the effect of which, however, leaves a visual and textual trace that the practice of fugitive authorship tends to resist.

This 1835 appearance of the Williams persona stifles any temptation to read Williams/Thornton/Wilkins as the mere sum of his personae, or as representing any clear linear progression from one persona to the next. James Williams’s emergence in 1835 predates the emergence of Jim Thornton aboard the *Henry Clay*, making clear that these personae were deployed, abandoned, and recycled as their contexts made necessary and appropriate. Therefore, one act of vanishing does not preclude the vanished persona from returning in future. At the most, the discursive representations of each persona appear as versions of the strikethrough in Tate’s affidavit—vanished for now, but perhaps more accurately described as “dormant.” Though the textual representations only permit one persona to be represented at a time, the

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<sup>103</sup> Affidavit of Caleb Tate, 16 October 1835, reproduced in Appendix D of Trent’s *Narrative of James Williams, An American Slave: Annotated Edition* (2013).

strikethrough suggests that fugitive personhood, if it is to be read at all, must be read in the gaps, absences, substitutions, and deletions that punctuate the appearances of these multiple personae.

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While I critically consider these multiple personae—Shadrach Wilkins, Jim Thornton, and James Williams—I ultimately argue that they cannot merely be aggregated to form a single, coherent, unified person. Instead, the personae inhabit various discursive territories, each of which is inadequate to fully contain Williams/Thornton/Wilkins's complexity and rich identity. If it is dangerous to read the Wilkins, Thornton, and Williams personae as parts of a coherent whole, it is equally dangerous, however, to read them as merely wounded or traumatized quasi-persons. To do so would be to resort to the same gestures that law and literature make—to accept the fantasy of readable, white subjectivity as the *only* model for a fully realized nineteenth-century subject. Instead, we must accept the unknowability and incoherence of Williams/Thornton/Wilkins. To engage meaningfully with fugitive personhood, then, we must accept each of these personae as both fully realized subject *and* as unreadable on account of that subject's condition as a fugitive. The proliferation of fugitive personae does not mark the inadequacy or incompleteness of the subject himself or herself—instead, it records the subjective space that neither law nor literature cannot represent. Both law and literature, faced with a failure of representation, have as their only recourse a mimetic reproduction of the very strategies that Williams/Thornton/Wilkins deploys: recursive proliferation, negation, and substitution.

**PART II:**

**BORROWINGS AND TAKINGS:  
FICTIONALITY IN LAW AND THE LEGALITY OF FICTION**

## Chapter 3

### **“Not Intended to Deceive”:**

#### **Legal Fictions, the Transhistorical Slave, and the Mythology of American Law**

While Chapter 1 considers the negation of black subjects in both law and literature, Chapter 2 examines instead the difficulties that faced law and literature in reading or managing proliferating black fugitive personae. Both of these chapters have made a case for the shared project of law and literature in the antebellum period with respect to slavery and black subjectivity more generally. In Chapter 3, I turn to a particular literary device—the legal fiction—in the adjudication of slaves’ rights to petition for freedom.

In the 1840s and 1850s, the ideological distance between slave and free jurisdictions became all the more contentious as state governments increasingly established their own unique systems to manage black bodies. The regulation of fugitive slaves took on particular significance, most notably in the federal Fugitive Slave Act of 1850, which essentially required government officials—even in free states—to enforce the capture and return of fugitive slaves to their southern owners. This sweeping federal legislation was part of the legislative bundle known as the Compromise of 1850, a collection of five statutes intended to bring order to the contradictory legal rules in slaveholding and non-slaveholding jurisdictions. At the heart of this legislative package was a tension over how to absorb various bodies into existing categories such as citizen, slave, and free person. Slavery, and its insistent muddying of the line between person and property, posed particular challenges to these categories, especially since legal definitions of slaves varied by jurisdiction. Increased travel and mobility also created new categories of persons who had been slaves at one point but became free, whether through escape or

manumission.<sup>104</sup> Several generations of slaveholding had also produced a number of bi- and multi-racial subjects born into slavery who were nevertheless at least half (and often more than half) white. In short, in these decades leading up to the Civil War, it was becoming increasingly difficult to confidently ascertain a person's racial, and thus legal, status without recourse to evidence other than physical appearance. A palpable collective anxiety arose around how best to narrate categories of personhood—legal institutions were particularly susceptible to the narrative challenges of representing slaves without disrupting the tenuous prevailing laws of slavery.

The legal system necessarily developed procedures to address some of the more complicated questions of racial identity. In slaveholding jurisdictions, blackness was generally *prima facie* evidence of enslavement,<sup>105</sup> and a black person asserting a right to freedom bore the burden of proof in establishing that he or she had been wrongfully enslaved, typically as the result of kidnapping or fraud. Another common legal rule used to definitively “sort” black persons into the category of “slave” was the status of that person's mother; the theory that the child followed the condition of the mother meant that if a person's mother was a slave, then that person was also a slave, regardless of racial identity. These rules, ostensibly made to promote a kind of certainty within the law, created bright-line categories for legal racial status—bright-line categories that also then created the conditions for a person to assert that he or she had been mis-categorized.

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<sup>104</sup> For Edlie Wong, travel is central to her consideration of freedom suits in *Neither Fugitive Nor Free: Atlantic Slavery, Freedom Suits, and the Legal Culture of Travel* (New York: NYU P, 2009).

<sup>105</sup> I take up this particular legal rule later in the chapter in my discussion of *Boulware v. Hendricks*, 23 Tex. 667, 667 (1859).

For persons asserting wrongful enslavement, legal procedure posed a specific obstacle: in general, slaves were not permitted to sue as plaintiffs in civil courts, nor were they typically permitted to offer in-court testimony as witnesses.<sup>106</sup> As a means of avoiding this legal predicament, law recognized a new genre of civil proceeding, the freedom suit. Individual states established their own methods for adjudicating these cases where people held in slavery alleged wrongful enslavement or wrongful imprisonment. The most famous of these freedom suits is undoubtedly *Dred Scott v. Sandford*, the 1857 case in which the Supreme Court, under Justice Taney's pen, declared federal citizenship unavailable to any persons of African descent.<sup>107</sup> The St. Louis Circuit Court Historical Records Project currently houses what is generally regarded as the largest collection of freedom suit filings, a total of 301 petitions for freedom from the years 1814 through 1860.<sup>108</sup> These records are primarily the petitions themselves, rather than written court opinions adjudicating the status of the petitioners. This archive has formed the basis for much of the recent scholarship on freedom suits and offers a kind of primer on what we might consider their generic attributes.

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<sup>106</sup> However, as Ariela Gross argues in *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (67-69), slave testimony often entered the courtroom as hearsay or through various local practices that created exceptions on an *ad hoc* basis. (Princeton UP, 2000).

<sup>107</sup> 60 U.S. 393 (1857).

<sup>108</sup> See St. Louis Circuit Court Historical Records Project, Freedom Suits Case Files, 1814-1860. Available at <http://www.stlcourtrecords.wustl.edu/about-freedom-suits-series.php>. It is difficult to estimate the total number of freedom suits filed nationwide—many of these suits were not reported in official court reporters, or only entered the official legal record at the appellate stage. This difficulty in locating the underlying petitions for freedom is unsurprising, given the nascent status of legal publishing and the pervasive pattern of archival silence that tends to occur around the histories of slaves.

Procedurally, there was a general prohibition on slaves bringing civil suits as plaintiffs; freedom suits carved out a temporary suspension of this prohibition, creating an exception to that prohibition that allowed slaves to file these specific petitions against their owners. Typically, a freedom suit consists of a petition alleging the basis for wrongful enslavement. The form here is critical in that a freedom suit in no way challenges the legitimacy of slavery as an institution; rather, it forces a slave to implicitly accept the legitimacy of slavery by instead alleging that he or she has been *mischaracterized* as a slave through mistake or fraud. In *Neither Fugitive Nor Free: Atlantic Slavery, Freedom Suits, and the Legal Culture of Travel* (5), Edlie Wong refers to this feature of freedom suits by noting that “the slave had to acknowledge the idea of *just* subjection under slave law in order to petition courts for emancipation based on *wrongful* enslavement.”<sup>109</sup> Here, law’s typology of slaves appears in sharp relief. As I discuss later in this chapter, law insists elsewhere that enslavement is an innate status; the freedom suit, however, stages enslavement as a fictional category, an attribute or characteristic to be applied to individuals either rightly or wrongly.

Because freedom suits thus embrace the question of fictionality at such a broad level, it is perhaps unsurprising that the use of specific legal fictions are also critical to the operation of individual freedom suits. Legalized slavery itself depends on the existence of living property, a category that permits ownership over human beings who are analogized to myriad other forms of property. As I will discuss later in this chapter, those analogies run the gamut from so-called “chattel slavery,” in which slaves are considered personal chattels, to the legal treatment of slaves as real estate or “immovables.”<sup>110</sup> No matter which jurisdiction is operative, however, the

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<sup>109</sup> New York: NYU P, 2009.

<sup>110</sup> These distinctions were often contradictory or confusing even within jurisdictions. See for example *Girard v. New Orleans*, 2 La. 897 (La. 1847), in which the Louisiana Supreme Court

one category consistently unavailable to slaves is that of full legal persons or citizens. This broad and diverse basis for legalized slavery is itself a legal fiction, a creation of law that demonstrates, in Karla Holloway's words, how "[t]here is an out(side of)law and irregular quality to embodied blackness."<sup>111</sup> The law names black subjects even as it insists on their situation outside institutional protections—outside citizenship, outside personhood—and yet refuses to grant black subjects their own unique status, instead repeatedly analogizing them to various other types of property.

In a suit for freedom, slavery's biggest, most outrageous lie—that black subjects were not persons at all—posed a particular problem for the continuity of legal precedent. A slave, who normally would enter a courtroom only in chains as a criminal defendant, temporarily entered the courtroom as a legal actor, endowed with the capacity to sue another person—a white slaveholder, no less. One legal fiction thus came to substitute for another. An action for freedom suspended the legal fiction of the slave as property in favor of another temporary legal fiction of the slave as person entitled to assert a right to personal liberty. This chapter examines these particular legal fictions, those surrounding the legal personality of slaves during adjudications of freedom; my methodology here is one that combines legal history with literary critique in order to elucidate the precise mechanisms by which literary practices act on or within legal institutions. These particular legal fictions, I argue, reveal how law construes itself in the antebellum United States, as both uniquely American and simultaneously the product of a long and substantial history. I do not mean to suggest here that legal fictions are somehow unique to the antebellum

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holds that slaves are not real estate, but "immovables." An immovable is the equivalent of a fixture, an item which, by virtue of its permanent attachment to a plot of real estate, conveys along with the property.

<sup>111</sup> *Legal Fictions: Constituting Race, Composing Literature* (Duke UP, 2013) (3).



period or to the laws of slavery. Rather, as Stewart Motha (330) writes, “[T]here is no way around the fictive narratives that sustain our social and political life.” Instead, my goal in this chapter is to examine the specific legal fictions that accrue around legal representations of slaves as a means of understanding how those fictions animate the legal and cultural narratives from which they borrow and in which they participate. I further argue for fictionality not merely as shared terrain between law and literature but as a citational practice that facilitates the generic crossings I address in Chapter 4.

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It is useful here to establish a working definition of legal fictions more generally. In *Legal Fictions*, Lon Fuller offers the following much-quoted distinction between a legal fiction and a simple lie: “For a fiction is distinguished from a lie by the fact that it is not intended to deceive” (6).<sup>112</sup> This distinction supplies a ready logic for the way that law deploys fictions; when a court opinion holds that a slave is chattel property, one hardly supposes that any of the legal actors or readers are fooled into thinking that slaves are inanimate objects like other types of chattel property. This aspect of a legal fiction—a disjuncture between the literal “truth” of the statement and its legal effect—is arguably an instance of law’s efficiency, as Fuller himself notes when he recognizes that legal fictions are often tolerated on account of their “utility” (9).

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<sup>112</sup> Stanford UP, 1967. Fuller (9) further defines legal fictions as falling into one of the following two categories: “(1) a statement propounded with a complete or partial consciousness of its falsity, or (2) a false statement recognized as having utility.”

Another way of understanding the legal fiction is through the “as if” construction that Stewart Motha favors. Building on Derrida’s theorization of the “as if,”<sup>113</sup> Motha distinguishes between “as such” and “as if,” with the former approximating a characterization of something “in fact” and the latter approximating law’s legal fiction. To continue with the example of chattel property, law makes the analogy not merely by holding that a slave is chattel property, as such—rather, law will treat a slave *as if* he or she is chattel property. These formulations of legal fictions do rhetorical work on two levels. First, the legal fiction gives law the appearance of efficiency, as Fuller notes when he suggests that the perceived utility of legal fictions is at least partially responsible for their prevalence. However, on the second level, the “as if” construction of a legal fiction, by being labeled “useful” or “efficient,” thus supports the apparent utility that attaches to the institutions it regulates. In the chattel slavery example, the presumption of the fiction’s efficiency assumes that chattel slavery is a useful institution in the first place. Thus, the supposed efficiency of the legal fiction rather confirms the usefulness of chattel slavery.

In their application, legal fictions tend to betray the sharp tension in law between facts and legal principles—it is for this reason that Motha offers “as such” as the counterpoint to the “as if,” as a means of keeping both literal fact and legal fiction in play. As judicial holdings or terms of art, legal fictions should theoretically fall in the category of “legal principles” rather than “facts.” At some point, the distinction between fact and law ceases to matter—part of the work of a legal text is to blend the two together to establish a coherent application of realness to the circumstances in question. And yet, as a literary matter, this distinction helps explain the process of fictionalization in law beyond the use of specific legal fictions. The continued use and

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<sup>113</sup> See, e.g., Derrida, “The Future of the Profession or the University Without Condition (Thanks to the “Humanities,” What *Could Take Place Tomorrow*) in *Jacques Derrida and the Humanities: A Critical Reader*, ed. Tom Cohen (Cambridge UP, 2002).

absorption of certain legal fictions into the cultural lexicon has the tendency to push those fictions toward statements that sound suspiciously “factual” and implicitly beyond interpretation. Once a statement has been classified as “factual finding,” it has already been adjudicated—relegation to the realm of judicial “fact” does not make the statement any more “real” or “true,” but it does mean that a court will not expend any additional judicial labor interpreting it. Rather, so-called facts are accepted at face value.

When legal fictions become used repeatedly over time, what was initially a genuine matter of legal interpretation has the tendency, therefore, to migrate out of the “legal” category and into the “factual” one. For example, when a court simply describes a slave as chattel without explicitly citing a legal rule or justification for that proposition, it becomes evident how this particular legal fiction has invaded language to such an extent that its paradoxical nature goes unremarked. The question of slaves’ status as chattel is presented as self-evident *condition* rather than legal conclusion. In other words, readers and litigants would be so familiar with this specific legal fiction that it could be asserted by judge and layperson alike without necessitating any legal or ideological explanation: the legal fiction has become shorthand for an entire set of legal principles and precedents.

This apparent utility of legal fictions actually depends on a series of contingencies in language’s connotative and descriptive force. The hearer or reader of a legal fiction, much like a reader of any foreign language, must possess a certain facility with metaphor and other figures of speech in order for the legal fiction to maintain any legibility, much less descriptive traction. For this reason, Fuller frequently refers to the metaphorical, linguistic, and literary nature of legal fictions. It is worth pausing to consider the nature of fictionality more generally in the context of literary fiction, where readers are less suspicious of it. Literary fiction, like law, depends upon

the construction of plausible narratives and literary worlds.<sup>114</sup> The main difference between a literary fiction and a legal fiction, of course, is that law carries with it the force to compel or mandate its conclusions in the “real world.” It is this nature of law that Robert Cover refers to in “Violence and the Word” (1601) when he writes, “Legal interpretation takes place in a field of pain and death.” At law, the act of interpretation—and fictionalization—occurs in the domain of language, but the language itself has the tendency to bridge the gap one imagines between the fantasy of legal fiction and the reality facing those who stand before law and await its judgment. As Cover (1604) writes, “Law is the projection of an imagined future upon reality.”

This projection of an imagined future on top of, or in addition to, so-called reality sounds remarkably similar to literary fiction, where authors construct narratives that depend both on creative imagination and also on the plausibility of the fictional worlds as coherent versions of “the real world.” Whereas law projects—or mandates—future worlds onto real ones, fiction might be better described as projecting *possible* worlds onto real ones. Both discursive postures, however, are transformative projections that test the borders of what we experience as “real”; given the stakes of legal adjudications for our “real” words, we should take seriously fiction’s role in shaping law. As Colin Dayan writes (150-51) in *The Law is a White Dog*:

Once the word ‘legal’ is attached to words such as conscience, intellect, or choice, they no longer mean what we thought they meant. It is as if whenever ‘legal’ is used, it erodes not just the customary and normal but the very facts of existence. This

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<sup>114</sup> For a fuller discussion of worldbuilding, see my chapter “Bartleby, *Barbarians*, and the Legality of Literature” in *Latour and the Passage of Law*, ed. Kyle McGee (U of Edinburgh P, 2015).

transforming power gives law a reality that flies in the face of logic, and the most fantastic fictions are put forth as the most natural, the most reasonable thing in the world.

Despite the inherent similarities between legal and literary fictions, the important difference is the way in which we encounter each type of fiction. As Dayan notes, legal fictions have the habit of naturalizing the fictional into the real. A kind of inverse truth operates in literary fictions, which we typically (though not always) encounter as somehow adding to, or transforming the real into something *more* than real.

By taking fiction seriously as a technology of law, I push past the basic assertion of law as a social construction to plumb the depths of this tension in law among the categories of real, natural, and fictional—categories that, rather than operating as distinct states, constantly interrogate and overlap with each other. For this reason, I hew somewhat closely to Fuller's characterization of the legal fiction as an untruth that is deployed with some aim other than deception. It seems always that the legal fiction is doing something much more powerful and sly than merely deceiving, and part of its power derives explicitly from the fact that it does *not* ask us to believe the truth of it what it explicitly offers. As Fuller notes, the legal fiction frequently occurs for purposes of efficiency, to shore up some other assumed premise (51-53), or any other number of reasons. The main distinguishing feature of the legal fiction, however, is that it always operates on two planes—the declarative and the analogous. As a declarative strategy, legal fictions supply names and labels, typically borrowed terms that are, on a literal level, untrue. On the plane of analogy, however, legal fictions use approximations and metaphors to generate connections between that literal untruth and the favored legal conclusion.

Here, I am concerned primarily with the legal fictions at work in the adjudication of free or slave status, and the manner in which such legal fictions constantly substitute, displace, or oscillate with each other. At the center of this particular set of legal fictions is the contested site of the black body and its classification into one of several available and pre-existing categories. As Karla Holloway (4) writes, “What makes a body visible enough for literary act and legal notice?” The visibility of black bodies during the antebellum period is a condition that necessitated the creation of new legal procedures but also called attention to specific inconsistencies in the narrative of the United States as an Anglo-Saxon nation. The difficulties of absorbing black bodies into the body politic—a fantasy of the United States as a space of white citizenship—resulted in a series of legal fictions that struggled to establish coherent American law without disrupting a historical narrative that grounded the United States in an Anglo-Saxon tradition.

These legal fictions perpetuate a mythology of American law connected with the Republic’s project of nation-building during the nineteenth century, forging a transhistorical narrative out of the legal fictions that continually interrupt judicial reasoning during the adjudication of slaves’ claims of wrongful enslavement. The persistent intrusion of metaphor and analogy into law has the habit of calling the reader’s attention to the fact that law, by itself, lacks the language to fully account for those it adjudicates. These fictions, which appear to “interrupt” legal reasoning, in fact help create its continuity—metaphor and analogy are the devices that help law bridge the gap of an otherwise unresolvable legal problem, such as how to account for slaves’ bodies and legal personalities.<sup>115</sup>

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<sup>115</sup> In *An Inquiry into Modes of Existence*, Bruno Latour (165) uses the term “hiatus” to describe apparent interruptions or gaps that actually preserve the continuity of networks or institutions. In

Further, the practice of transhistorical narrative creation is a literary act. Once exposed, it sets the stage for the use of literary fiction as a site of legal critique and radical re-making. This chapter examines what it means that fiction, typically considered the domain of literature, is the technology of the metaphors and analogies that arise around the body of the slave. If works that we recognize as literary fiction—novels, short stories, and the like—share infrastructure with legal texts, then literature emerges as a possible site in which to critique and even re-write law. In this chapter, I demonstrate the extent to which law is already engaged in the production of literature and the conclusion that literary and legal fictions are, at some point, inextricable.

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When the United States declared its independence from Great Britain in 1776, it “inherited” previously existing British common law. In common law cases, British common law essentially formed a point of departure for judicial opinions in early U.S. courts, leading to the formation of new legal holdings and rules that slowly accrued their own precedential weight. By the 1840s, U.S. federal law was still less than a century old. At the state and local levels, court reporting of judicial opinions occurred somewhat unpredictably from jurisdiction to jurisdiction, and new states were entering the Union on a regular basis—often entering as either “slave” or “free” states. In short, both geographical and legal maps were in a state of constant flux. Adjudication of wrongful enslavement followed a variety of different procedures throughout the country, with distinctions that ranged from regulations of who could bring freedom suits to the proper court filings necessary to make a claim for wrongful enslavement.

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“Bartleby, *Barbarians*, and the Legality of Literature,” I theorize the legal fiction as an example of such a hiatus.

As early as the eighteenth century, Virginia law sought to establish a narrative of the slave's body as something other than the body owned by a white person. While the freedom suit procedure temporarily suspended a slave's status as "out(side of)law" in Karla Holloway's description, the earlier fictionalization of the slave's body drew on existing legal categories to produce the illusion that slavery had some rightful place in American legal philosophy. For instance, a 1705 Virginia statute declared "Negro, mulatto, and Indian slaves within this dominion to be real estate."<sup>116</sup> That statute appeared to acknowledge the fictive nature of the pronouncement, offering the following justification:

For the better settling and preservation of estates within this dominion . . . that all negro, mulatto, and Indian slaves, in all courts of judicature, and other places, within this dominion, shall be held, taken, and adjudged to be real estate (and not chattels;) [*sic*] and shall descend unto the heirs and widows of persons departing this life, according to the manner and custom of land of inheritance, held in fee simple.

Perhaps because of the striking oddity of declaring people to be real estate, the statute provides the logic of its provision as the promotion of efficient inheritance of landed estates. In the law of property, chattels do not convey or descend to heirs as part of real estate; this theoretical division between chattel and real property is the principle that prevents furnishings from automatically conveying in the sale of real estate. Presumably, characterizing slaves as chattels would have increased the administrative burden on executors, whereas classifying slaves as real estate meant

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<sup>116</sup> Acts of the Virginia Commonwealth, October 1705, Ch. XXIII, 3:33. Available at <http://www.pbs.org/wnet/slavery/experience/legal/docs1.html>.



that relatives who inherited a plantation would automatically also inherit the entire labor force that powered it.

Apart from promoting efficient inheritance, by equating slaves with real estate, law anchors slaves—literally in the land—to a natural, and insurmountable condition of subjugation. In property law, real estate held in fee simple refers to absolute ownership. By classifying the ownership of slaves as fee simple, the Virginia statute essentially makes it difficult if not impossible for anyone to interfere with a master’s enforceable legal title to his slaves. As with the later statutory provision that likens slaves to paupers, this early Virginia statute also resorts to approximation, but it approximates slaves not to other living humans but to land itself. This denaturing of the slave, the evacuation of the body and temporary substitution with the body of the pauper, participates in the narrative of slavery’s existence within American law more generally. The 1705 statute, promulgated during British colonial rule, narrates the slave in conjunction with the distinctly British system of landed estates and real property ownership. The continuation of this metaphor of the slave as real estate persisted in Virginia long after independence, however, moving through several transformations as lawyers, legislators, and judges slowly established a body of new American law. When a later statute affords slaves the right to sue for their own freedom *in forma pauperis*, law then re-narrates the slave, shifting him or her from a geographical condition to one of indigence.

In Virginia, procedures for freedom suits had also been in place since the eighteenth century, when the Statutes at Large of Virginia provided, “That, when any person shall conceive himself or herself illegally detained as a slave in the possession of another, it shall and may be lawful for such person to make complaint thereof . . . .” The statute further prescribed the means of a freedom petition, noting that the slave should “petition[ ] the said court to be allowed to sue

therein *in forma pauperis*, for the recovery of his or her freedom.”<sup>117</sup> This statutory enactment would form the basis for freedom suits filed in the state throughout the first half of the nineteenth century, and it embraces several key concepts. First, in creating a category of illegal detention, the statute imagines a status of wrongful enslavement. Although the statute is silent on the characteristics of illegal detention, the provision explicitly concerns illegal detention in slavery, as opposed to wrongful imprisonment more generally. The possibility of “illegal” detention thus carves out a presumption that slavery in other circumstances is legal—if not natural. In fact, the statute appears to construe slavery not as a natural condition of birth, but as a man-made institution subject to error. The *construction* of slavery—its existence as a legal as opposed to natural creation—is thus implied in the statute’s language.

If this aspect of the statutory language feels somewhat straightforward, the procedural steps outlined in the statute move closer to metaphor or analogy. For those bringing freedom suits, the statute provides that courts have the power to allow these slaves “to sue therein *in forma pauperis*,” or in the manner of a pauper. This legislative sleight-of-hand both denies a slave’s legal personhood even as it provides a substitute: the slave, not a citizen and thus not a proper civil plaintiff, may sue *as though he or she is a poor person*. Proceedings *in forma pauperis*, which typically waive court costs and other filing fees, are primarily the domain of indigent and incarcerated plaintiffs seeking judicial relief. In making this type of pleading available to slaves, the statute also limits its application—the designation of *in forma pauperis* occurs only to these freedom petitions and not to any other type of civil proceeding. The analogy links the slave explicitly to both poverty and incarceration. While appearing to “make room” for

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<sup>117</sup> General Assembly of Virginia, *Statutes at Large of Virginia, from October Session 1792 to December Session 1806, Inclusive, in Three Volumes*, Laws of Virginia, 1795, Ch. 11 (364).

the slave at law, this judicial procedure calls attention to the slave's lack of citizenship rights and links the slave's status as property to the slave's condition as having no property of his or her own.

The statute thus nuances the legal fictions at work; by fictionalizing the slaves as paupers, the statute's analogy, in comparing slaves to indigent people, only underscores that slaves themselves lack legal rights to their own bodies. The predominant legal fiction in play is that slaves do not have, or own, their bodies—they *are* bodies that belong to others. The Virginia statute temporarily vanishes the slave's body and substitutes the figure of the pauper in its place.<sup>118</sup> This approximation of the slave as an indigent or prisoner establishes the kind of logical symmetry that law favors; the slave, after all, is seeking relief for illegal "detention," and the prescribed form of pleading *in forma pauperis* mirrors the status of a prisoner seeking relief for wrongful imprisonment more generally. Absent this one exception that allowed a slave to petition for freedom, slaves typically only otherwise entered the courtroom as criminal defendants. The efficiency of this substitution (the pauper or prisoner in place of the slave) also forecloses any legal concession that a slave possesses either the right or the capacity to hold property of his or her own. The equation of the slave with the criminal participates in a much larger narrative at work in the antebellum period—and very much in force up to the present day. This relatively small act of describing slaves as indigents or prisoners thus establishes a set of connotations that *characterizes*—an act that we typically regard as the provenance of literary fiction—slaves as impoverished and criminal.

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<sup>118</sup> Note how this substitution also mirrors the fiction about the slave's lack of ownership over his or her body. By figuring the slave as a pauper, law suggests that the slave is impoverished rather than utterly excluded from the entire system of economic participation. In fact, the slave was more likely to enter the marketplace as goods than as a consumer.

In addition to the statutory provisions regarding petitions for freedom, Virginia case law repeatedly fictionalized the slave's body when interpreting the statutory mandates and adjudicating slave's rights to freedom. The importance of temporality in these fictions demonstrates the extent to which these particular legal fictions participate in larger narratives about the formation of U.S. law. In 1859, Virginia's Supreme Court of Appeals issued its opinion in *Shue v. Turk* (15 Gratt. 256), a case in which a recently emancipated slave submitted a petition for a writ of *habeas corpus* when a creditor claimed a right to collect the slave as a lien on a debt. The opinion reveals the set of contingencies and fictions that arise around a slave's body when the legitimacy of enslavement is at issue. Despite concerning an emancipated slave, the opinion never names the slave, referring to him instead as simply "Slave S." The court describes the central legal issue as follows: "The matter in controversy is not whether the petitioner is a freeman or a slave: but whether, as an emancipated negro, he is liable for a debt of Hanna, his former owner—that is to say, whether, being free, he is subject to a lien, the enforcement of which may have the effect of reducing him again to the condition of slavery" (260). The case is therefore not a freedom suit *per se*, though it demonstrates that even emancipation was extremely precarious for former slaves. In discussing the nature of the contract between the slave's former owner and the creditor and its contradiction of public policy, the court notes that "If, however, any contract of this character can ever be, this one is, free from the objection that the slave is put in a condition between freedom and slavery" (267).<sup>119</sup> The court's continued reference to the petitioner as a slave somewhat undercuts the claim that the petitioner is "between freedom and slavery." Though the court ultimately orders the former slave released

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<sup>119</sup> The court is unhelpfully creative with sentence structure in this excerpt. It may be more helpful to read this quote as saying "If any contract of this character could ever exist, this one fits the bill, except for the fact that it puts the slave in a condition between freedom and slavery."

from custody, this refusal to call the petitioner by name—and continued characterization of him as a slave—makes clear that the stain of slavery outlives even manumission or emancipation.

It is against this backdrop that the court also considers a second, procedural issue that fictionalizes this otherwise nameless slave's body. The fact that the former slave filed a petition for a writ of *habeas corpus* necessitated some judicial debate regarding the propriety of that pleading. Though one justice dissented, the majority of the court held that the *habeas* petition was proper—precisely because the former slave was able to show that he had *already* been emancipated. As the court notes, “It is well settled that a negro, claimed and held as a slave, cannot litigate his right to freedom under a writ of *habeas corpus*. In this case, however, the petitioner produces his papers showing, on their face, that he has been regularly emancipated” (259-60). The court ultimately holds that because emancipation has already occurred, the *habeas* writ is proper in this case. In reaching this holding, the court cites *Ruddles Ex'r v. Ben*, 10 Leigh 467 (1839), where a similar question was in dispute. In that earlier case, the court held that there was “no reason for denying to the petitioner the benefit of the great and salutary writ of *habeas corpus*” (476). It is thus clear from both *Ruddles* and *Shue* that the availability of *habeas* relief is a badge of, if not citizenship, freedom. Both cases assert that someone who is claimed as a slave must file *in forma pauperis* for freedom rather than through submission of a *habeas* petition. Though the cases refer to the Virginia statute prescribing the requisite form of pleading in freedom suits, there is no other discussion regarding the inappropriate nature of a *habeas* petition.

The writ of *habeas corpus*, literally “you may have the body,”<sup>120</sup> is the petition typically used by people claiming unlawful imprisonment. By distinguishing unlawful imprisonment more generally from unlawful slavery, Virginia law establishes certain contingencies and temporalities for slaves’ bodies. Prior to some adjudication of freedom, the slave has no body—he or she *is* a body that is considered, for all legal purposes, as real estate. It is not *only* through the analogy to real estate, however, that slaves’ bodies are revealed as complicated sites of potential self-ownership.<sup>121</sup> Concerning a Virginia case on manumission, Colin Dayan (146) writes, “Release through manumission, then, was not simply a gift but an act of creation. Since the slave had no capacity to become free and could never gain it, emancipation meant something new . . . . [H]ow do you bequeath freedom to enslaved persons who might not be capable of receiving it?” Dayan’s analysis demonstrates not only the problem of the slave’s legal personhood—the lack of a legal body in which he or she has an ownership interest—but also the birth of the legal body through manumission or emancipation. Manumission creates the body that the slave then has a legal right to control. This act of creation is a paradox, a granting of legal personality to a human being the law has already declared to be a non-person, forever incapable of achieving personhood.

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<sup>120</sup> Others have translated the phrase as “you shall have the body” or “you must have the body.” Crucially, petitioners seek the writ either to secure the release of an improperly detained prisoner or to produce a witness for testimony or examination.

<sup>121</sup> In *The Law is a White Dog*, Colin Dayan considers the 1858 Virginia case of *Bailey v. Poindexter’s Executor*, in which a slaveholder bequeathed a complicated future grant of freedom to his slaves, a grant that essentially asked the slaves to choose between being sold at auction or being hired out to raise the funds for their own emancipation. Though not a comparison to real estate, *Bailey* offers another example of how even manumission generates complicated fictions of slave bodies.

Petitions for freedom resolve this paradox—the absence of a legal body, or the presence of a human body that nevertheless fails to rise to the level of legal person—by temporarily embodying the slave in another category of person recognized in law. Freedom petitions do so by creating a new fiction of the slave *in forma pauperis* for purposes of the freedom litigation. It is only *after* being freed, whether through emancipation or litigation, that the slave acquires his or her own legal body and thus recourse to *habeas* relief. By denying *habeas* relief to the slave prior to emancipation, the law refuses to grant a slave his or her own body—and rejects the possibility of doing so. This legal distinction operates in part because, in the case of unlawful imprisonment by someone other than the owner, a slave would have no legally enforceable interest in his or her own body; were a slave detained, it would be the *master* who would instead have standing to assert a right to his unlawfully detained property. Here it is increasingly difficult to distinguish legal fictions from literary fictions, except that legal fictions appear in legal texts and documents. The legal fictions take a set of facts and re-narrate them to fit them into the desired legal premise, to produce the desired legal outcome.

This trajectory of the slave—from real estate to indigent to legal body—establishes a temporal dimension to the movement from slavery to freedom. Whatever the outcome of a petition for freedom, the slave's status as a pauper is a temporary one that exists solely for purposes of that litigation. This fictionalization of the slave at three different stages of adjudication hews to existing legal categories of property, liberty, and personhood—though it sometimes claims to promote efficiency, this fidelity to existing categories actually creates an unwieldy system of classification and pleading during and even after the adjudication of a slave's right to freedom. What, then, is the legal payoff for this complicated set of legal fictions from

slavery to freedom? By using approximations and analogies—law’s metaphors—legal texts preserve the continuity of precedent, reaffirming law as a source of order and governance.

It would be equally possible for law to simply create a new category of property devoted specifically to slaves. Doing so would arguably be the most efficient means of regulating slavery, and it would not require the suspension of disbelief that arises in the face of implausible legal fictions that ask readers to imagine slaves, for example, as plots of land. But the creation of a new category of property altogether would be a sharp departure from a legal tradition that recognized discrete forms of ownership and limited legal personhood to one specific population. Instead, law read slaves back into a system of regulation that had never anticipated them in the first place—the act of inserting slaves into existing categories of property served to manage the contentious claim that law itself was in some way a “natural” system of rules. As James Kent writes in *Commentaries on American Law*:

There has been a difference of opinion among writers, concerning the foundations of the law of nations. It has been considered by some as a mere system of positive institutions, founded upon consent and usage; while others have insisted that it was essentially the same as the law of nature, applied to the conduct of nations, in the character of moral persons, susceptible of obligation and laws . . . . There is a natural and a positive law of nations. By the former, every state, in its relations with other states, is bound to conduct itself with justice, good faith, and benevolence; and this application of the law of nature has been called by Vattel, the necessary law of nations, because nations are bound by the law of nature to observe it; and it



is termed by others, the internal law of nations, because it is obligatory upon them in point of conscience.

Kent draws a distinction between “the law of nature” and “instituted or positive law, founded on usage, consent, and agreement,” ultimately claiming both aspects of law in the American legal tradition and casting natural law as the “point of conscience” that animates codified national legal standards. Kent’s pairing of law and nation-state is persistent; in his formulation, it is incumbent on nations to construe natural law responsibly and *morally*. The implication here is that a moral national legal system is the mark of a mature and legitimate nation-state.

In fact, Kent opens this lecture with the genealogy of U.S. law in a European tradition, writing, “When the United States ceased to be a part of the British Empire, and assumed the character of an independent nation, they became subject to that system of rules which reason, morality, and custom had established among the civilized nations of Europe, as their public law.” This opening gambit situates U.S. law both within and without the “civilized” nations of Europe, arguing that the United States, as an independent nation, was thus responsible for honoring the same general code of decency that existed among the other powerful, white, European nations. Kent goes so far to say, “The faithful observance of this law is essential to national character, and to the happiness of mankind.” For Kent, fidelity to European morality and legal custom thus marks the United States as a participant on the global stage, and it is central to the collective character of the newly formed nation.

This mythology of American law as both preceding from and in contrast with the British and European legal traditions is a defining aspect of legal philosophy in the nineteenth century. The existence of legalized slavery in the United States in the antebellum period posed a textual problem for the creation of law that participated in and perpetuated this national legal mythology. While earlier British law regulated slavery, including the 1705 Virginia statute defining slaves as real estate, Britain had abolished slavery altogether in 1833 after first abolishing the slave trade in 1807.<sup>122</sup> The American system of legalized slavery, pervasive and violent as it was during the first half of the nineteenth century, essentially created a new set of legal problems that existing European law was ill-equipped to manage. As Kent's *Commentaries* suggest, however, American legal thinkers during the antebellum period sought to preserve the commonality between American and British law as a means of legitimizing the United States as a formidable, "civilized," and globally relevant nation-state.

As the Virginia statutes and case law demonstrate, the adjudication of a slave's right to freedom underscores this tension between history and genealogy on the one hand and the idea of national progress on the other. By fictionalizing the slave's body as real estate, law implicitly suggests that slaves belonged in the existing frameworks of ownership and property, that it was not only logical but also *natural* for slaves to be legally tied to a master, as well as a fixed place. If, as Kent suggests, positive law is connected to a natural code of justice, then positive law permitting the ownership of human beings required a certain amount of linguistic gymnastics to square it with the conscience-clouding moral compass inherent in natural law.

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<sup>122</sup> Kent's lectures began as early as 1794 and initially published as the *Commentaries* in 1826. Though some of his lectures predate the abolition of slavery in Britain, the circulation of the *Commentaries* during the antebellum period suggests their influence during the decades leading up to the Civil War.

These fictions of the slave's body—as non-existent, as real estate, as indigent—also depend deeply on a set of temporal contingencies. As I have already argued with respect to the development of law in Virginia, legal procedure as a path to freedom must unfold in a set of clearly defined steps: each moves the slave closer to legal personhood even as they prop up the larger apparatus that supports legalized slavery. The effect of these fictions is that the slave's body is at once a historical *object* and a transhistorical *subject*. The mythology of American law insists on the slave as a naturally occurring phenomenon in legal systems of property ownership. At each stage of adjudication, the slave's body is an object that accords with the history of law, suspended in a temporary assignation of property. And yet, these fictions do not accord with each other; in law, the slave cannot simultaneously be real estate, prisoner, and free legal person. Each legal fiction depends on the cancellation of the others.<sup>123</sup> As we see from the court's treatment of the freed slave in *Shue v. Turk*, however, the slave remains a slave even after manumission or emancipation. This figuration of the slave is also a fiction, though not merely a legal one—for this is a fiction that outlasts any legal actions, demonstrated by the fact that the fiction holds even after the slave ceases to “technically” (legally) be a slave.

Thus, the *figure* of the slave is a transhistorical one that hovers alongside or outside these temporary legal fictions—a status that aligns with what Saidiya Hartman refers to as “the disparate temporalities of unfreedom.”<sup>124</sup> Hartman uses this phrase to describe the temporal conflation between slavery and its modern remnants, wherein modern traces of slavery persist in

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<sup>123</sup> Note the parallel here to Williams/Thornton/Wilkins's practice of fugitive personhood as a series of personae that arise and cancel one another out, at least temporarily. The resonance with his authorial practices as a fugitive slave suggest an intimate connection between the authorial and discursive strategies of fugitive personhood and the legal fiction strategies of adjudicating petitions for freedom.

<sup>124</sup> See “The Time of Slavery” at 763.

their feeling of currentness and presentness, in spite of our supposed historical distance from legalized slavery. These “temporalities of unfreedom” also inhere in the legal fictions surrounding the slave’s body in judicial opinions such as *Shue v. Turk*, however, reminding us that history is always a matter of degree and perspective. Even in the mid-nineteenth century, the figure of the slave was already peculiarly transhistorical, harkening back to an imaginary history of American law that fantasized slavery’s rightful place in the legal landscape—and thus American law’s rightful place in a European, and specifically Anglo-Saxon, tradition. This fantasy of the slave’s long, natural history in American law was also a forward-looking projection in that the stain of slavery attached even to freed slaves.

Even courts recognize this broader fictionalization of the slave through recourse to the old distinction between fact and law, a dichotomy that we might think of here as standing in for the dichotomy between fact and fiction. Kim Lane Scheppelle (58) describes the use of fact in legal interpretation by noting that “fictions are not wholly legal judgments but not wholly factual descriptions either...And in this respect, fictions are no different from many other apparently factual descriptions that use legal categories.”<sup>125</sup> As suggested by Scheppelle’s observation, this affinity between legal facts and legal fictions complicates the question of where narration ends and “law” begins—or if it is ever possible to separate the two. In an 1859 opinion, the Supreme Court of Texas held that “Negroes, in this state, are *prima facie* slaves; and when held as such, they are slaves *de facto*, whether *de jure*, or not.”<sup>126</sup> From a legal perspective, the classification of blackness as *prima facie* evidence of slave status means that the slave bears the burden of proving that he or she is wrongfully held in slavery—that, though a slave in fact, his or her “real”

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<sup>125</sup> “Facing Facts in Legal Interpretation.” *Representations* 30 (1990): 42-77.

<sup>126</sup> *Boulware v. Hendricks*, 23 Tex. 667, 667 (1859).

status is not one of legal enslavement. In describing this type of legal rule, in which blackness is presumptive evidence of slavery, Cheryl Harris writes that “whiteness became a shield from slavery, a highly volatile and unstable form of property.”<sup>127</sup>

Indeed, in a system that equates blackness with slavery, the ability to claim whiteness is a mechanism for staving off challenges to claims for freedom—and the enforceability of clear title is the basis for all types of property. But the placing and shifting of legal burdens is itself also a temporal one because it determines which actor must make the first, or next, step in litigation. An actor without a burden has no responsibility to mount a case at all.<sup>128</sup> These temporal qualifiers are important because taking a legal action or figure out of its chronology tends to disrupt the other operative legal fictions, causing the metaphors to lose their traction. Whatever utility exists in referring to a slave as real estate, for instance, becomes nonsensical if a slave in another context is a legal person. Where blackness itself is *prima facie* evidence of slavery, the fiction of the slave as a transhistorical figure further complicates the temporal sequences that move a person from legal slavery to legal freedom.

In *Boulware v. Hendricks*, after declaring this distinction between slavery *de facto* and *de jure*, the court continues, “If they [slaves] are dissatisfied with their condition, and have a right to be free, our courts are open to them, as well as to other persons, to assert their right. As long as they fail to do so, they recognize their status as slaves, and so long, the mutual obligation of duty and protection subsists. Any other doctrine would complicate this relation, whose simplicity and

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<sup>127</sup> “Whiteness as Property,” 106 *Harv. L. Rev.* 8, 1707-91, 1720 (June 1993).

<sup>128</sup> The most common and well-known example of this phenomenon occurs in a criminal case, where the prosecution bears the burden of proof. Criminal defendants are not required to present any evidence since the burden is on the prosecution. This is the same reason that the prosecution must always present its case in its entirety before the defense has the option to present any of its own evidence.

certainty is most beneficial to both parties to it,—the master and the slave.”<sup>129</sup> The perambulations and circular logics of this holding necessitate some parsing. One might summarize the holding as follows: (1) Black people are presumed to be slaves. (2) But if they have a right to be free (in other words, if they are not “true” slaves and ought not be enslaved), they have access to the courts. (3) If they do not petition for their freedom, they assent to their status as slaves, which in turn transforms them into slaves—even if they, as free people, ought not be slaves in the first place. Translated into plain language, this series of legal holdings sounds nonsensical because these categories simultaneously presume that slavery is a natural condition into which some people are born, and that slavery is sometimes contingent merely on one’s condition as slave, a condition that is in one’s power to transcend if the enslavement is illegal in the first place. In other words, slavery is both natural and constructed, but only one of those categories at a time. It is the chronology, or temporality, that determines what a slave “is” at any given point in time. Despite offering a set of confusing and circular logics, one thing the opinion explicitly does *not* do is provide any guidance as to *when* a slave petitioning for freedom might actually become free. The persistence of phrases like “as long as” and “so long” underscores that, for slaves submitting petitions, freedom is available only conditionally, provisionally, or temporarily.

These adjudications of freedom, then, are a means of suspending or freezing the otherwise nonsensical temporality that governs the body of the slave. Being a slave *de facto*, or in fact, is merely another way of saying that one is a slave during a certain period of time. That “now,” or at the time of litigation, that person is being claimed by someone else as property. But the slave may have had an entirely different status at birth, or indeed may have another status

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<sup>129</sup> *Boulware v. Hendricks*, 23 Tex. at 669.

pending the outcome of the litigation. But law, rather than acknowledging the slipperiness of temporality, relegates the matter to a question of fact—which is another way of saying “reality.” For in the example from *Boulware v. Hendricks*, the supposed distinction between *de facto* and *de jure* appears on its face to be supporting a kind of legal efficiency, a way of taking a snapshot of a slave’s status at a particular point in time. Without applying this temporal dimension, however, the numerous legal fictions of the court’s holding are nonsensical—they cannot simultaneously co-exist. What initially appears to be an exercise in legal efficiency becomes, on closer inspection, a remarkably unwieldy methodology for thinking about slavery more generally.

What does it mean, then, that the figure of the slave is not only fictional but also polytemporal? First, it helps explain the difficulties that law repeatedly has when it attempts to read, name, or adjudicate slaves. As was the case in the way that law responded to David Walker’s *Appeal to the Coloured Citizens of the World*, law has the peculiar habit of *over-representing* those it appears to want to vanish. A similar result occurs here when courts attempt to adjudicate a slave’s right to freedom. By fictionalizing the slave’s body as, in part, a temporal construction, law also creates a need to pull the slave briefly *out* of that temporality for the purposes of adjudication—this suspension appears to occur in cooperation with the mythology of the slave as a natural part of the American legal landscape, but it also has the strange effect of rendering the slave as a transhistorical figure.

Despite the law’s best efforts to reduce or altogether deny the personhood or humanity of the slave, the slave’s shadow on American law thus acquires a *suprahuman*, rather than subhuman, quality. The slave, unlike the free citizen, can infiltrate and upset any category and classification into which he or she is assigned. The need to resort to metaphor and legal fiction

only underscores the uncontainability of the slave's body—there is always a remainder, an excess that law must analogize and approximate because it cannot otherwise account for the surplus.

These questions of approximation, excess, and temporality appear in sharp relief in the 1859 case of *Stephenson v. Harrison*, 3 Head 728 (Tenn. 1859). In that case, a slaveholder died, leaving a will that specified the disposition of his various property. Specifically, the will expressed the decedent's desire for his slaves to continue serving his wife for the remainder of her life. At her death, the slaves would be freed, and the cost of their repatriation to Liberia would be funded through the sale of certain specific holdings in his estate. His heirs sought to use the proceeds of those funds for their own remuneration, and the slaves sued via next friends for the protection of those assets. As a legal procedural matter, suing via a "next friend" is a practice available to those who otherwise lack capacity to sue and is most commonly used for guardians to sue on behalf of minors or disabled adults. Here, the Supreme Court of Tennessee (732) held, "...that slaves, while in that condition, cannot come into a court, except to assert the right to freedom, and the incidents thereto." In this case, the slaves were not asserting their right to freedom, but the protection of assets for their future use, and thus the slaves could not bring suit. By using the language "while in that condition," the opinion calls attention to the temporal boundaries that attach to enslavement in this case. Citing the interests of justice, however, the Supreme Court of Tennessee does recognize another possibility of redress: "Here is a certain right to liberty given, but the time of its enjoyment is postponed until the happening of a future certain event. Connected with this bequest of freedom, there are certain rights of property, or money, given. How are these to be protected, but by the slaves through the next friend?"<sup>130</sup>

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<sup>130</sup> *Id.*



Ultimately, the court authorizes the creation of a kind of trust for the funds to be used by the slaves upon their grant of freedom. While this opinion appears—perhaps surprisingly—to protect the financial interests of the slaves in future, it deploys the same legal fictions that operate elsewhere to dehumanize slaves and deny their rights.

In *Stephenson*, the court acknowledges the present status of the slaves as slaves, as property; this status precludes them from suing their owners except through the fiction of the next friend. While this exception appears to circumvent the prohibition against slaves suing as civil plaintiffs, it does so by figuring the slaves as incapacitated or disabled. Rather than figuring the slaves as either property or persons, the law analogizes the slaves to children or disabled adults; significantly, it does so *only* because of the future grant of freedom. This remedy would not be available to other slaves who wanted to sue their owners for other reasons. Here again, it is the temporality that controls—now a slave, tomorrow a free man—a move that confirms *and* denies both of the dueling propositions of “born a slave, always a slave” and “once free, always free.” In *Stephenson*, both the current slavery and the future freedom are revealed as fictions, and it is only through the next friend that the court can address these fictions out of order, by putting in place the protections of freedom while the condition of slavery persists. The opinion itself thus manages the excesses of slavery and freedom—the establishment of a trust accounts for the excess of freedom that hovers over the slaves, and the insistence that the slaves bring the suit via next friend accounts for the excess enslavement that attaches to the slaves’ future rights. Once again, law manages these excesses through fictions that both reduce the slaves to something less than human and mark the status of slave as exceptionally potent and persistent.

Likewise, these fictions both clarify and mystify the plane of the “real” in legal language. The power of metaphor is in its capacity to gesture toward the ineffable, to provide an approximation that gives the reader a sense of the meaning while also acknowledging the impossibility of expressing it in language. In this way, metaphor is a perfectly apt vehicle for the problem of the slave’s body at law—it gestures toward the tendency of the slave’s body to exceed or outlast the legal categories in which it is placed. In accordance with Fuller’s characterization of legal fictions, these metaphors of the slave’s body are emphatically not intended to deceive. Rather than deception, the legal fictions of the slave’s body in adjudications of freedom emerge first and foremost as attempts to preserve the continuity of legal reasoning; as the legal reasoning becomes more strained, the fictions become more unwieldy, until eventually the slave becomes a superhuman, transhistorical personality with the terrifying capacity to act upon both slaveholders and freed slaves. For slaveholders, the slave is property to be managed and contained, and the slave’s uncontainability continually presents challenges at law. For freed slaves, the persistence of the slave’s body *as a figure* is a haunt that attaches and outlasts even legal emancipation.

The nature of fictionality at law thus opens out onto fictionality more generally. In statutes and judicial opinions, fiction is a technology that propels law intentionally into a specific direction—the legal fiction animates or enlivens law to reach into corners where straightforward declarations cannot. In the specific context of antebellum adjudications of freedom petitions, metaphors and analogies re-purpose existing legal categories of personhood to expand or restrict their scope and to characterize each category’s membership class. These characterizations are transformative, both rhetorically and in their application—the shifting of a person from one category to another can mean the difference between enslavement and some version of freedom.

But the fictions also narrate a larger mythology of American law and American legal history, seeking to adopt taxonomies of personhood that accord with the desired narrative of the United States as a contender on the global—and specifically European—political stage.

More to the point, the existence of legal fictions makes clear that narrative exists on both the micro and macro levels in law—not only do cases and statutes narrate broad legal questions, but legal fictions themselves are narratives within narratives. Though often intended as practical measures to improve efficiency, their charged language can also conjure connotations and conclusions that subvert the institutions they appear to support. In Chapter 4, I argue that this capacity of legal fictions—to transform actors and institutions by placing them within or outside of specific histories—is also present in literary fiction. I examine a work of literary fiction that is also comprised of narratives within narratives; I consider the intricate and mysterious ways that literary fiction encrypts legal narratives and vice versa. I argue that not only is fiction a site of potentially radical critique of legal narratives, but legal documents and literary fictions might best be understood as encrypted extensions of one another. Chapter 4 considers the ways that fictionality arises as the shared terrain of legal and literary landscapes, suggesting not merely the pliability and fictionality of law but also the inherent legality of literature.

## Chapter 4

### Ciphers, Citations, and Encryptions:

#### *The Bondwoman's Narrative and the Case of Jane Johnson*

*“It must be a strange state to be prized just according to the firmness of your joints, the strength of your sinews, and your capability of endurance. To be made to feel that you have no business here, there, or anywhere except just to work—work—work—And yet to know that you are here somehow, with once in a great while like a straggling ray in a dark place a faint aspiration for something better, with a glimpse, a mere glimpse of something beyond. It must be a strange state to feel that in the judgement of those above you you are scarcely human, and to fear that their opinion is more than half right, that you really are assimilated to the brutes, that the horses, dogs and cattle have quite as many priviledges, and are probably your equals or it may be your superiors in knowledge, that even your shape is questionable as belonging to that order of superior beings whose delicacy you offend.*

*It must be strange to live in a world of civilization and, elegance, and refinement, and yet know nothing about either, yet that is the way with multitudes and with none more than the slaves. The Constitution that asserts the right of freedom and equality to all mankind is a sealed book to them, and so is the Bible, that tells how Christ died for all; the bond as well as the free.”*

—Hannah Crafts, *The Bondwoman's Narrative*<sup>131</sup>

In the first three chapters of the dissertation, I have explored the mechanisms by which law and literature act in concert with respect to slavery in the antebellum period. The yield of those three chapters is a kind of un-doing of what we might suppose we already know about what constitutes “law” and what constitutes “literature.” In Chapter 1, I examine the ways that black protest literature and confession surreptitiously structure laws that ostensibly vanish or destroy black bodies. In Chapter 2, I argue for the productive capacity of fugitivity to create multiple legal and

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<sup>131</sup> Warner Books, 2002 (201).

literary personae—none of which can be said to fully contain the fugitive slave’s body, much less his or her identity. Chapter 3 considers the legal fiction as a specific legal mechanism that both attempts and fails to place the slave’s body in accepted legal categories, primarily in freedom suits and other adjudications of a slave’s status as property or free. In Chapter 3, I argue that the literary dimensions of legal fictions—their metaphoricity and reliance on analogy—make visible the slave’s capacity to exceed any categories that law contemplates as appropriate “containers” for slave subjectivity. Given the intimate and interconnected relationship I have traced between law and literature, Chapter 4 turns to literary fiction to explore the relationship between African American fiction and the law of slavery.

I argue here that fiction and law operate not merely as mutually constitutive intertexts but as extensions of one another, encoding multiple narratives with little regard for generic boundaries or discursive traditions. My primary texts in this chapter are *The Bondwoman’s Narrative*, the fictionalized autobiography written by Hannah Crafts in the 1850s, and the legal testimony offered by Jane Johnson in connection with the trial of the abolitionist who allegedly helped her flee from slavery. The connection between these two texts, I argue, reveals that literary characters and legal subjects are practically indistinguishable in antebellum African American fiction. Fiction emerges as a locus for documenting and re-writing law, while law encodes the literary past of legal actors in “legal time,” a transhistorical feature of legal texts that confines slaves in bondage into perpetuity.

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In 2002, Henry Louis Gates, Jr. published *The Bondwoman's Narrative*, a previously unpublished novel by an apparent antebellum author named Hannah Crafts. In the 2002 edition, Gates offers a host of authenticating materials associated with the manuscript, which Gates had purchased at auction the previous year. After consulting with a number of scholars and experts, Gates concluded that the novel had been written sometime between 1853—the year of construction for a Washington, D.C. statue referenced in the text—and the onset of the Civil War.<sup>132</sup> Although Gates was unable to definitively identify Hannah Crafts, he and other scholars were able to identify many of the people referenced in the novel, including John Hill Wheeler, her owner in Washington, D.C. and North Carolina during the 1850s. Gregg Hecimovich has since identified Hannah Crafts as Hannah Bond, a slave who escaped from Wheeler's North Carolina plantation in approximately 1857 and ultimately re-settled in New Jersey.<sup>133</sup> Hecimovich's conclusion has been reviewed and accepted by a number of scholars, including Gates.

The question of Crafts's identity and the "truthfulness" of the events in *The Bondwoman's Narrative* have haunted literary critics in a manner similar to the controversy and discomfort surrounding the slave narrative of James Williams. In addition to the 11-year quest to positively identify the woman known only as "Hannah Crafts," scholars have also grappled with how best to classify *The Bondwoman's Narrative* generically. It bears certain similarities to a slave narrative, in that it claims in the Preface to be a "record of plain unvarnished facts" (3), and Crafts identifies herself on the title page as "A Fugitive Slave Recently Escaped From North Carolina" (1). Like most slave narratives, *The Bondwoman's Narrative* also offers an

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<sup>132</sup> See Appendix A, *The Bondwoman's Narrative*.

<sup>133</sup> See Julie Bosman, "Professor Says He Has Solved a Mystery Over a Slave's Novel." *New York Times*, 18 Sept. 2013.

autobiography of Crafts's life within slavery, opening with a description of the narrator's childhood that mirrors the genealogical absences typical of fugitive slaves: "No one seemed to care for me till I was able to work, and then it was Hannah do this and Hannah do that . . . . Of my relatives I knew nothing. No one ever spoke of my father or mother, but I soon learned what a curse was attached to my race, soon learned that the African blood in my veins would forever exclude me from the higher walks of life" (5-6). Crafts thus opens her narrative in the familiar format of a slave narrative, acknowledging her fugitivity, claiming a truthfulness in the "unvarnished facts" of her story, and establishing her origin story as an apparently orphaned slave.

Despite these affinities with the slave narrative, *The Bondwoman's Narrative* makes a sharp departure from the genre in several important respects. First, unlike the slave narratives published by abolitionist societies, *The Bondwoman's Narrative* lacks an amanuensis, appearing instead to be truly and fully written by Crafts herself. This detachment from abolitionist infrastructure means also that Crafts's manuscript is not subject to the political aims and proprieties of an abolitionist culture that frequently privileged its own institutional survival and publicity over its concern for the slaves whose narratives it cannibalized.<sup>134</sup> More than this institutional independence, however, *The Bondwoman's Narrative* displays other traits that are much more commonly associated with fiction, or the novel in particular. Well-documented

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<sup>134</sup> See Teresa Goddu's work in *Selling Anti-slavery* for a discussion of the anti-slavery movement's embrace of corporate culture in disseminating and publicizing its own products. As Goddu argues in *Selling Anti-Slavery*, and as suggested by my analysis in Chapter 2, anti-slavery societies appropriated slave narratives as part of their corporate branding and publicity. As the case of James Williams demonstrates, this appropriation was swiftly disclaimed when the accuracy of the Williams *Narrative* came under suspicion in the press. In disclaiming its affiliation with Williams, the American Anti-Slavery Society demonstrated that, despite its willingness to appropriate Williams's autobiography for its own ends, the Society's loyalty to and advocacy for Williams was equivocal at best.

intertexts such as *Bleak House* permeate *The Bondwoman's Narrative*, and scholars have also noted Crafts's use of gothic tropes such as the linden tree whose ominous creaks portend death and doom.<sup>135</sup> These discursive borrowings from fiction suggest that Crafts located her text within that genre, despite how rooted it apparently was in the details and facts of her own life.

Finally, and perhaps most prosaically and obviously, *The Bondwoman's Narrative* looks like a novel in various basic respects. Crafts divides the text into chapters, each with its own epigraph. Rather than limiting the novel to her own autobiography, Crafts uses her text to narrate the stories of numerous characters. For instance, Chapters 14 and 15 are titled "Lizzy's Story" and "Lizzy's Story, Continued," respectively, self-consciously ceding narrative space to another slave. The result is a text that looks a good deal more like *Uncle Tom's Cabin* than the *Narrative of Frederick Douglass, an American Slave*. In fact, Crafts's novel virtually bursts at the seams with the many biographies and narratives contained within it. Often, the most glancing reference in the text actually encodes and abridges another biography that could have, on its own, served as the framing structure for an entirely separate novel.

The final chapter, "In Freedom," offers an example of this textual pregnancy, in which *The Bondwoman's Narrative* seems always on the verge of giving birth to another narrative world. In that chapter, Crafts writes of her life after slavery, where she runs a school for black children. In describing life in the North, Crafts (237-38) writes of her unlikely reunion with her own mother:

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<sup>135</sup> For a fuller discussion of the novel's use of gothic themes, see Bridget Marshall's work in "Slave Narrative and the Gothic Novel: Hannah Crafts's *The Bondwoman's Narrative*" in *The Transatlantic Gothic Novel and the Law, 1790-1860* (Ashgate Publishing, 2011).



Can you guess who lives with me? You never could—my own dear mother, aged and venerable, yet so smart and lively and active, and Oh: so fond of me. There was a hand of Providence in our meeting as we did. I am sure of it. Her history is most affecting and eventful. During my infancy she was transferred from Lindendale to the owner of a plantation in Mississippi, yet she never forgot me nor certain marks on my body, by which I might be identified in after years. She found a hard master, but he soon died, and she became the property of his daughter who dwelt in Maryland, and thither she was removed. Here she became acquainted with a free mulatto from New Jersey, who persuaded her to escape to his native state with him, where they might be married and live in freedom and happiness. She consented . . . . We met accidentally, where or how it matters not. I thought it strange, but my heart yearned towards her with a deep intense feeling it had never known before.

In this passage, Crafts condenses what might have been her own mother's autobiography or slave narrative into a brief summary. This excerpt narrates her mother's separation from her, as well as her journey north out of slavery and into freedom. Crucially, Crafts supplies a number of geographical details, such as specific states of residence, but minimizes the moment that might bear the greatest narrative fruit—she writes of their initial reunion, “We met accidentally, where or how it matters not” (238). Though she proceeds later to tell of their tearful realization of their connection to each other, Crafts glosses over this first meeting, denying the reader any narrative suspense or drama associated with the details or “Providential” happenings that actually brought

these two women face to face against unimaginable odds. Though Crafts appears to be supplying a short biography of her mother's life after slavery, this summary is more of a cipher than an elaboration. Crafts offers enough details to make her mother's story legible, but she also denies enough information that the reader has the feeling of having reached merely the tip of the iceberg.

These literary excesses—in which the novel generates a surplus of narratives that threaten to burst through the central plot—counsel in favor of what Nicole Aljoe describes as “embedded slave narratives.” In *Creole Testimonies: Slave Narratives from the British West Indies 1709-1838*, Aljoe argues for the possibility of recovering slave narratives that have been embedded elsewhere, often in fragmentary form.<sup>136</sup> Focusing primarily on the *testimonio*, a Caribbean analogue to the freedom suit, Aljoe also locates testimonial slave narratives in places such as anti-slavery periodicals and even James Thistlewood's diary. For Aljoe, regardless of the slave narrative's generic legibility, these instances of fragmented narratives have one thing in common: first-hand testimony about the experiences of enslavement. This testimonial capacity of slave narratives is, for Aljoe, the central aspect of a reparative reading of unexpected archives in order to bring un-examined narratives into scholarly notice. Aljoe's theorization of embedded narratives is especially useful to my consideration of *The Bondwoman's Narrative*, and it is a starting point from which I branch out into several simultaneous directions.

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<sup>136</sup> Palgrave, 2012.

On one hand, it is possible to read *The Bondwoman's Narrative* (and I do) as embedding multiple other slave narratives, such as those of Lizzy or Crafts's mother, as suggested above. However, rather than using Crafts's text as a repository for other recoverable slave narratives, I argue that it is also encoding a number of legal narratives—legal narratives that, in turn, further encode slave narratives. To this end, the intersection of literary personhood and legal personhood emerges as a peculiarly fraught generic crossing, in which it becomes increasingly difficult to discern a meaningful difference between the two—in which the possibilities and limitations of language figure slave personality while also participating in a never-ending citational practice of encryption, suggesting that other textual remainders of slave personality can be located elsewhere. The narrative world of *The Bondwoman's Narrative* claims the stories and persons encoded within it, while also suggesting that some textual “elsewhere”—perhaps legal materials, census records, or other historical archives—can accommodate the textual overflow that exceeds the novel's parameters.

This aspect of my analysis offers my most visible departure from Aljoe. While her work suggests the recoverability of *intact* testimonies—separated though they may be from a visibly literary context—I argue for a process of encryption in which literary and legal texts take up various narratives, transform them through addition, subtraction, or modification, and deploy them in a way that nevertheless preserves the visibility of the connections among the texts. While the nature of “encryption” might suggest the existence a decipherable, pure original, I use the term somewhat differently here. Rather, I treat encryption as a citational practice that continually cites and re-shapes existing narratives. This practice of encryption is not protecting or safeguarding any mythical “original,” nor does any mythical key unlock the encryptions that occur. My analysis ultimately places law and literature in a never-ending feedback loop, each

citing and encrypting the narratives that appear to belong to the other, always adding layers to narrative histories and never taking any of those layers away. Encryption, I argue, is a process of accrual and accumulation.

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*The Bondwoman's Narrative* contains a rich set of references and terms that suggest Hannah Crafts's self-conscious engagement with legal rhetoric and practice. Whether through the character of Trappe, an unscrupulous lawyer who blackmails light-skinned women passing for white, or references to legal terms of art such as "chain of evidence" (44), or even direct addresses to lawmakers, the novel is thick with law. The brief appearance of a single character, however, is a cipher for a rich and well-publicized legal trial from the mid-1850s. Jane Johnson, referred to simply as "Jane" in the novel, serves as a specific intersection between the novel's quasi-fictional world and the so-called "real world" of the legal system that faced fugitive slaves during the antebellum period.

In *The Bondwoman's Narrative*, the narrator Hannah traces her movement from her original station at the Lindendale plantation to a series of other locations on her way to ultimate freedom in New Jersey. Her initial escape from Lindendale occurs in cooperation with her mistress, a young woman born a slave and under threat of exposure by the blackmailing of Trappe, an unscrupulous lawyer. When the two women are captured and imprisoned, her mistress ultimately hemorrhages to death from a ruptured blood vessel, leaving Hannah in the hands of Trappe, who sells her to a slave trader. During transport, however, their carriage overturns, killing the slave trader and leaving Hannah in a precarious position of unsettled ownership. The Henry family takes Hannah into their service while communicating with the next

of kin of her last living owner. Hannah's prospects are thus already imbued with legal meaning and legal tension. Laws of inheritance determine who has an enforceable claim of ownership over her body, and the uncertainty of her ownership becomes a torturous condition, as Hannah begs the relatively kind Henrys to buy her and save her from the devil she doesn't know. Rather than buying her themselves, however, the Henrys arrange for the sale of Hannah to the Wheelers, distant relatives in North Carolina. It is through Hannah's intersection with the Wheelers that *The Bondswoman's Narrative* encodes not merely Hannah's legal narrative, but also that of Jane Johnson.

Jane's literary treatment in the novel is brief. The reader learns that Mrs. Wheeler is in need of a new lady's maid because her previous slave, Jane, has disappeared. The details of Jane's disappearance are scant, with Mrs. Wheeler initially saying merely that "Jane ran off" (149). Displeased with Hannah's efforts to comb hair, Mrs. Wheeler elaborates: "Jane was very handy at almost everything . . . . You will seldom find a slave so handy, but she grew discontented and dissatisfied with her condition, thought she could do better in a land of freedom, and such like I watched her closely you may depend" (149). In between pulls on her snarled hair, Mrs. Wheeler continues (149), "Oh dear, this is what I have to endure from losing Jane, but she'll have to suffer more, probably. I didn't much like the idea of bringing her to Washington. It was all Mr. Wheeler's fault. He wanted me to come, and I couldn't think of doing without her in my feeble health." This introduction to Jane, appearing almost casually in the text amid Mrs. Wheeler's pleas for Hannah to be gentle with her hair, underscores the extent to which intense questions of legal personhood and slavery suffuse and infiltrate the most prosaic aspects of daily life in the antebellum South. Reading the subtext of Mrs. Wheeler's characterization that Jane "grew discontented and dissatisfied with her condition," it seems clear enough that Jane

became a fugitive slave. By suggesting that Jane simply changed her status on becoming dissatisfied, Mrs. Wheeler's euphemistic description affords Jane an agency that obscures the obvious legal and personal risks associated with fugitivity. Hinting merely that Jane will "suffer more, probably," Mrs. Wheeler gestures toward the possibility of re-capture and punishment without naming it, choosing instead to frame Jane's absence as a matter of intense personal inconvenience. Jane's interchangeability within another slave comes into focus when Mrs. Wheeler says of Hannah, "She could fill the place of Jane so exactly" (152). Jane is not a person in this characterization, but a space to fill—a space that fits exactly the shape of another female slave. While the reader never obtains access to Jane's own words—thus keeping this narrative out of what Nicole Aljoe would consider embedded testimony—Jane's narrative is instead a wheel within the wheel of Hannah Crafts's larger novel, and her evacuation from the Wheeler home and the novel is an invitation for Hannah to enter and occupy both spaces.

But despite the reader's inability to hear from Jane directly, the novel's backstory on Jane also encodes a legal drama that unfolded in Pennsylvania in 1855—and that legal drama does offer some of Jane's first-hand testimony. The Wheelers described in *The Bondwoman's Narrative* are thought to be John Hill Wheeler, state legislator and federal appointee, and his family. Acting on information first asserted by Dorothy Porter, the manuscript's previous owner, Henry Louis Gates, Jr. confirmed this identification in the introduction to the 2002 edition of *The Bondwoman's Narrative* (xlii-lvi). The Wheelers' slave, Jane Johnson, featured prominently in a well-known court battle over fugitive slaves in 1855. Despite the novel's glancing references to "Jane," the circumstances surrounding Jane Johnson's escape from the Wheelers received

considerable media attention, primarily in the Philadelphia area.<sup>137</sup> Crafts is ambiguous about the geographical specifics of Jane's escape, leaving merely the suggestion, through Mrs. Wheeler's comment that the mistress "didn't much like the idea of bringing [Jane] to Washington" (149), that Jane fled while in the nation's capital. In fact, Jane Johnson's escape occurred while the Wheelers stopped in Philadelphia while traveling from New York to Nicaragua, where Colonel John Hill Wheeler was to begin a diplomatic position.

On July 18, 1855, accompanying the Wheeler family, Jane Johnson arrived in Philadelphia along with her own sons, Daniel and Isaiah, whose names and existences are completely absent from *The Bondwoman's Narrative*. It was during this stop that Johnson, with the assistance of several abolitionists, made her escape, taking her children with her.<sup>138</sup> Passmore Williamson and William Still, the abolitionists who assisted Johnson, subsequently found themselves at the center of a legal drama after Johnson's successful flight from the Wheelers' household. In an effort to effect Johnson's return, Colonel Wheeler filed a petition for a writ of *habeas corpus* in the Eastern District of Pennsylvania, a federal district court. In that petition, Colonel Wheeler urged the court to compel Passmore Williamson to produce Jane Johnson and her children.<sup>139</sup> The request itself was unusual because *habeas* petitions most commonly compel the government to release a prisoner, rather than compelling a private citizen to produce another

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<sup>137</sup> See, e.g., "The Case of Colonel Wheeler's Slaves. Decision of Judge Kane" in *The National Era*; "The Wheeler Slave Case. Passmore Williamson Committed for Contempt" in *Frederick Douglass' Paper* (reprinted from *The Philadelphia Bulletin*); "The Wheeler Slave Case—Testimony of Jane Johnson" in *The Liberator*.

<sup>138</sup> "The Liberation of Jane Johnson." Jane Johnson Online Exhibit, *Library Company of Philadelphia*. Hereafter "JJOE."

<sup>139</sup> *United States v. Williamson*, 28 F. Cas. 682-95 (1855) (Case Nos. 16,725 and 16,726).

private citizen.<sup>140</sup> Nevertheless, Judge John Kane granted Wheeler's petition and ordered Williamson to produce Johnson and her children.<sup>141</sup> Williamson declined to do so, and on July 27, 1855, Judge Kane imprisoned Williamson in Moyamensing Prison on a charge of contempt;<sup>142</sup> he would remain there for nearly four months until his eventual release in November 1855.<sup>143</sup>

Despite Johnson's evasion of Wheeler, however, she offered her own written and oral testimony in connection with Williamson's imprisonment.<sup>144</sup> First, Jane Johnson submitted an affidavit in an attempt to exonerate Williamson during his *habeas* and contempt proceedings; Judge Kane refused to acknowledge Johnson's standing in the court, however, and denied the affidavit. Meanwhile, William Still, an African-American abolitionist faced criminal charges in the Court of Quarter Sessions in Philadelphia, a state court<sup>145</sup> (*Williamson Narrative* 13). Jane Johnson appeared in person to testify in that trial, in which Still and a handful of other defendants were acquitted of most of the charges against them (*Williamson Narrative* 16). The

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<sup>140</sup> This procedure of law also marks a sharp contrast with Johnson's own inability, as outlined in Chapter 3, to file a writ of *habeas corpus* to secure her own release from imprisonment as one of the Wheelers' slaves.

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> JJOE. The Pennsylvania Supreme Court affirmed Judge Kane's decision in September 1855; Judge Kane himself finally relented and granted Williamson his freedom in November 1855, following months of motions and arguments.

<sup>144</sup> Compare Johnson's strategies of evasion with those of Williams/Thornton/Wilkins. Johnson *generated* printed text in furtherance of her fugitivity; by contrast, Williams/Thornton/Wilkins generated non-written personae, and his persistent textual *unavailability* from judicial records routinely frustrates courts' ability to document his existence or identity with certainty.

<sup>145</sup> Still and a handful of African-American co-defendants faced charges for riot, assault, and battery, among other things. See *Narrative of Facts in the Case of Passmore Williamson* [hereafter *Williamson Narrative*] at 16.



media coverage of the Williamson and Still litigations was extensive, casting the white abolitionist Williamson as a folk hero during his imprisonment.<sup>146</sup>

The trials of Williamson and Still, and in particular Williamson's imprisonment, generated considerable attention in an era of fraught politics regarding fugitive slaves.

Pennsylvania, a free state, had long been a site for legal posturing regarding fugitive slaves. In the 1842 case *Prigg v. Pennsylvania*, the United States Supreme Court had essentially voided a state law that prohibited the transport of free persons out of Pennsylvania and into slavery.<sup>147</sup>

Widely regarded as an obstacle for slaveowners seeking to recover fugitive slaves, the Court held that the state law could not supersede the Fugitive Slave Act of 1793, which was then in force. With the passage of the Federal Fugitive Slave Act of 1850, the rights of slaveholders further expanded, allowing state and local authorities to be compelled to assist in the recovery and return of fugitive slaves, even in free jurisdictions.

Against this backdrop of geographical and ideological division, the abolitionist press in particular paid close attention to litigation surrounding fugitive slaves; Jeannine DeLombard's compelling account of the "trial" of slavery both in actual courts and the court of public opinion demonstrates the salience of legal battles in the public consciousness during the nineteenth century. As DeLombard notes, over five hundred people visited Passmore Williamson during his imprisonment (7; internal citation omitted). Indeed, the media coverage of the Jane Johnson escape and subsequent litigations ranged across and beyond the abolitionist press, achieving notoriety in publications such as *The National Era*, *Frederick Douglass's Paper*, and *The*

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<sup>146</sup> For instance, in 1855, the Pennsylvania Anti-Slavery Society published the *Williamson Narrative* as a pamphlet. Media coverage was also extensive, including articles in *Frederick Douglass' Paper*, *The National Era*, and others.

<sup>147</sup> 41 U.S. 539 (1842).

*Philadelphia Bulletin*.<sup>148</sup> Such far-reaching media coverage makes it possible, even where the legal records themselves may be sparse or missing, to locate corroborating coverage in other contemporary documents.<sup>149</sup> Indeed, a number of media accounts and legal records entirely corroborate Johnson’s participation, however tenuous, in both the Williamson and Still proceedings.

Johnson’s participation in these proceedings took two very different forms—written affidavit and recorded testimony—each of which yields different information and presents different problems for critical consideration. However, the particular status of the documents within the legal realm does offer a certain amount of documentary reliability, as rules of procedure require the authentication of documents entered into evidence. Though these legal documents and appearances present their own questions of authenticity and authorship, theorizing them is not so different from theorizing more traditional slave narratives, where similar questions also arise in the context of slave testimony.

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<sup>148</sup> See, e.g., “The Case of Colonel Wheeler’s Slaves. Decision of Judge Kane” in *The National Era*, and “The Wheeler Slave Case. Passmore Williamson Committed for Contempt” in *Frederick Douglass’ Paper* (reprinted from *The Philadelphia Bulletin*).

<sup>149</sup> Today, court decisions are typically “reported” by courts in official “case reporters.” The use of case reporters began at different times in different jurisdictions. Pennsylvania, where the Johnson litigations occurred, presents an example of how case reporting varied among different courts. For instance, the Passmore Williamson litigation took place in federal court, in the Eastern District of Pennsylvania. As a federal court case, the proceedings of the Williamson litigation were reported in *Federal Cases*, a publication covering cases as early as 1789. However, the Still trial took place in the Philadelphia Court of Quarter Sessions, a local Pennsylvania court. Case reporters for Pennsylvania district and county reports did not begin publishing case reporters until 1918. Therefore, the Still trial materials are not part of an official reporter, and this project looks instead to accounts of the Still litigation from newspapers and other archival sources from 1855.

In the Williamson litigation, Johnson attempted to offer a written affidavit into the record. Johnson’s sworn affidavit to Judge Kane<sup>150</sup> urged him that Passmore Williamson had not abducted her. Johnson signed the affidavit with an “X” and the notation “Her mark;”<sup>151</sup> there is no suggestion that Johnson was literate, and the “X” in place of her name seems to confirm her lack of formal education. This “X” is also a reminder of her fraught status as a quasi-legal personality by virtue of her enslavement and fugitivity—the substitution of her name with an “X” enacts on one hand a denial of her subjectivity and individuality, while on the other hand claiming her right to submit the affidavit and be heard by the court. In addition to the “X,” there are other indicators that she did not personally draft the content of the affidavit.<sup>152</sup> For instance, it contains legal jargon as in the following phrase: “That she is one of the three parties named in the aforesaid writ of habeas corpus, and the mother of the two children, Daniel and Isaiah, also named therein and thereby required to be produced.”<sup>153</sup> Throughout the affidavit, references to Johnson herself appear as references to “your petitioner” (Johnson, as the affiant, submitted the affidavit as a petition to Judge Kane). These linguistic and stylistic features counsel in favor of an attorney or other legal expert having drafted the affidavit on Johnson’s behalf.

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<sup>150</sup> See 28 F. Cas. at 687. Johnson swore this affidavit before a Massachusetts District Court.

<sup>151</sup> *Id.*

<sup>152</sup> In fact, and owing most likely to a fear of recapture, Johnson submitted the affidavit through an appearance of her two attorneys, Joseph Townsend and John Read (See *Case of Passmore Williamson: report of the proceedings on the writ of habeas corpus, issued by the Hon. John K. Kane, judge of the District Court of the United States for the Eastern District of Pennsylvania, in the case of the United States of America ex rel. John H. Wheeler vs. Passmore Williamson* at 164. Hereafter, “*Case of Passmore Williamson.*”

<sup>153</sup> 28 F. Cas. at 687.

Though this revelation complicates the question of authorship, it is customary for attorneys to draft affidavits on behalf of clients and witnesses. Moreover, in the traditional generic slave narrative, an amanuensis frequently acted as the scrivener for a former slave's narration. Thus, the slave narrative was also mediated through a third party, and the question of authorship presents a similarly fraught scenario. Therefore, the problem of authorship in the Johnson affidavit is not so far afield from the same problems of authorship frequently present in a traditional slave narrative. Indeed, the fact that Johnson signed the affidavit, and that it was sworn under oath, both authenticate the document and support its credibility, at least in the eyes of the law. These authenticating gestures are of a piece with authentication of other, more traditional slave narratives, where the marks on a former slave's body might authenticate that slave's claims of physical abuse. These similarities with the slave narrative thus locate Johnson's narrative within this legal document in a manner consistent with Aljoe's theorization of embedded narratives. This particular narrative, however, is not only embedded within the affidavit but also re-inscribed and encrypted in *The Bondwoman's Narrative*.

The content of Johnson's testimonial narrative offers an elaboration on her brief appearance in Crafts's novel. In the affidavit itself, Johnson asserts that she "was very desirous of procuring the freedom of herself and her children" and that "she wished to be free."<sup>154</sup> Johnson thus repeatedly affirms her own agency and her desire to escape from Colonel Wheeler—in describing her flight, Johnson casts her freedom as the product of *her* desire and *her* "wish[] to be free." Throughout the affidavit, Johnson repeatedly makes similar assertions, including a claim that none of the abolitionists ever restrained or coerced her in any way. In fact, Johnson states that several servants who assisted her during her escape "took her children with

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<sup>154</sup> See *U.S. v. Williamson* at 687.

her consent.”<sup>155</sup> By establishing herself as someone entitled to, and capable of, offering her consent, Johnson asserts not only that she was a free person but also that she was *already* free when she left Colonel Wheeler in Philadelphia. The capacity to give consent, like the capacity to contract, is a privilege of free personhood; consent was completely unavailable to slaves, whose consent had been stolen by a legal system that treated them as various types of property.

Johnson’s affidavit in the Williamson litigation does not contain detail about her life as a slave—in fact, based on Hannah Crafts’s descriptions of life with the Wheelers, the novel promises greater information about what Johnson’s daily life must have been like at the side of Mrs. Wheeler, a conniving and manipulative mistress preoccupied with her own vanity and quest for status. But even without any elaboration on her daily life as a slave, the affidavit does explicitly express Johnson’s desire to escape from slavery and her insistence on herself as an agent of her own liberty.

The legal system’s reception of this affidavit, on the other hand, throws into relief just how contentious Johnson’s self-determination really was. Judge Kane ultimately refused to admit this affidavit into evidence, using a host of dubious justifications for this exclusion. In a particularly suspicious moment of legal reasoning, Judge Kane claimed to be unable to confirm that Jane Johnson was the same person referred to in Wheeler’s petition, noting that the latter document referred only to “Jane” and omitted a surname.<sup>156</sup> The judge did, however, concede that Johnson’s testimony might have been properly admissible had she been either a party to the litigation or a witness called to testify in court.<sup>157</sup> His general holding was that Johnson lacked “status” in the court—a move that technically referred to the fact that she was not a party to the

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<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

litigation but obliquely called attention to the fraught nature of Johnson's status as a legal "person"—in Pennsylvania, a free state, she had personhood; by contrast, in North Carolina, a slave state, she was Colonel Wheeler's property.<sup>158</sup>

Despite Johnson's claims to her own agency, Judge Kane's legal reasoning demonstrates the extent to which law's institutional weight pushed against a slave's desire for freedom, even after a successful escape from slavery. Without explicitly saying so, what Judge Kane actually denied Johnson was a recognition of her status as a person entitled to testify in court. Judge Kane gestures toward the unique and ambiguous status Johnson occupied—a former slave, ostensibly free, whose agency and very identity were at the heart of the trial of a white abolitionist. He writes:

The very name of the person who authenticates the prayer is a stranger to any proceeding that is or has been before me. She asks no judicial action for herself, and does not profess to have any right to solicit action in behalf of another: on the contrary, her counsel here assure me expressly, that Mr. Williamson has not sanctioned her application. She has therefore no status whatever in this Court.<sup>159</sup>

By casting Johnson as a "stranger" to the court proceedings, Judge Kane emphasizes that the legal proceedings revolved not around Jane Johnson herself but Passmore Williamson, the white abolitionist accused of helping her escape. But more than simply a stranger in the sense of someone who is not a party to the litigation, Kane's language calls attention to the strangeness of

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<sup>158</sup> *See id.* at 694.

<sup>159</sup> *Case of Passmore Williamson* at 188-89.

Johnson as a legal personality—indeed, she is the body, or *corpus*, being sought by Wheeler’s petition for a writ of *habeas corpus*. Yet, in spite of her intimate connection to the case, Johnson thus remained a “stranger” even to the litigation of her own freedom.<sup>160</sup> At this point, Johnson is neither wholly slave nor wholly free. As Judge Kane points out, Johnson “has therefore no status whatever in this Court”—her lack of status refers to the fact that she is not a named party to the litigation, but it also underscores the many broader ways in which Johnson could be said to be status-less. She lacks standing to bring a lawsuit of her own. She lacks status as a citizen entitled to the rights and privileges of other free persons. And given that “status” and “state” share the same Latin root, Kane’s severe language reminds the reader that Johnson lacks any meaningful belonging in either Pennsylvania or the United States as a nation-state.

Despite Judge Kane’s exclusion of Johnson’s affidavit from evidence, the affidavit itself nevertheless appears in its entirety as part of the decision in the Williamson litigation.<sup>161</sup> In this way, Johnson’s affidavit—though not admitted—remains hidden in plain sight, inscribed within the legal archive of the Williamson litigation and also reprinted in the *Williamson Narrative*, the pamphlet that documented Passmore Williamson’s lengthy legal battle. Though Johnson was not a party to the litigation, and though this case was not a freedom suit of the sort in which one would expect to encounter documents such as the Johnson affidavit, Johnson’s story is yet a part of the legal record—and in that context it offers more insight into law’s treatment of slaves, even

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<sup>160</sup> Note the parallel here to the legal proceedings outlined in Chapter 3, where slaves in certain jurisdictions could seek freedom through the legal mechanism of the “next friend,” relegating the slaves themselves to the margins and making free white persons the parties to the actual litigation.

<sup>161</sup> 28 F. Cas. at 687.

in free jurisdictions, than it does about Johnson's personal experience as the property of the Wheelers.

Whereas Johnson submitted a written affidavit in the Williamson litigation, her in-court appearance at William Still's trial proved to be her most dramatic participation in the legal actions surrounding her escape from Wheeler. Still and several co-defendants faced criminal charges in the Court of Quarter Sessions in Philadelphia for assault and battery, as well as riot-related charges (*Williamson Narrative* 16). On August 29, 1855, Johnson appeared in-court at Still's trial (*Williamson Narrative* 13).<sup>162</sup> According to Still, as well as the *Williamson Narrative*, Johnson testified orally in court.<sup>163</sup> Indeed, in Still's work *The Underground Railroad*, Johnson's testimony appears in quotes and contains language that is suggestive of oral, as opposed to written, testimony. For instance, it begins as follows: "My name is Jane—Jane Johnson" (Still 94).<sup>164</sup> The repetition of the name Jane is strongly suggestive of oral testimony, as such a colloquial construction would be unusual in a formal legal document.<sup>165</sup> Indeed, there appears to be little dispute that Johnson's testimony was offered orally,<sup>166</sup> and in any event, the

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<sup>162</sup> Though the legal record of the Still trial is somewhat muddy, owing to its occurrence in state (rather than federal) court, there are several accounts of Johnson's appearance and testimony, all of which substantially corroborate each other. Still himself, in *The Underground Railroad*, devotes an entire section of his book to the Johnson escape and subsequent trials. His account of her appearance at the trial contains a lengthy reproduction of her testimony (94-95).

<sup>163</sup> For a press account of Johnson's testimony, see "The Wheeler Slave Case—Testimony of Jane Johnson" from *The Liberator*.

<sup>164</sup> Note that this phrase does not appear in the account from the *Williamson Narrative*.

<sup>165</sup> Compare this language with written affidavit from the Williamson litigation as reported in 28 F. Cas. at 687.

<sup>166</sup> The *Williamson Narrative* (13-14) also includes a lengthy account of Johnson's oral testimony. What is unusual about Still's account, however, is an indication at the conclusion of Johnson's testimony that she signed her mark (95). This may be best explained by a prefatory comment by Still that "[s]ubstantially, her testimony on this occasion . . . was in keeping with the subjoined affidavit, which as follows . . . ." (Still 94). This remark suggests that Johnson may have submitted an affidavit in addition to her oral testimony, or it may refer simply to the affidavit she submitted in the Williamson litigation. Note, however, that Johnson's in-court



*Williamson Narrative* corroborates and supplements Still's account of Johnson's testimony. As with the written affidavit submitted in the Williamson litigation, Johnson's oral testimony at the Still trial was subject to various methods of authentication. She testified under oath, with the judge's acquiescence. There does not, however, appear to have been cross-examination of Johnson by the prosecution; if there was cross-examination, the transcript of those remarks has been absorbed into the general transcript or has not survived.

What Johnson's written affidavit lacks in data about her life as a slave, her oral testimony compensates for in greater detail. As Johnson spoke of her escape from Colonel Wheeler, she first identified herself and her children (Still 94). In a turn familiar within traditional slave narratives, Johnson betrayed her lack of verifiable genealogy, stating, "I can't tell my exact age; I guess I am about 25; I was born in Washington City" (*Williamson Narrative* 14). She also spoke of a third, estranged child, a boy living in Richmond, Virginia: "I have not seen him for about two years; never expect to see him again . . . ." (Still 94). The opening of her oral testimony thus mimics the traditional introductions to slave narratives and indeed the opening of the fictional narrative offered in *The Bondwoman's Narrative*. Johnson, like Crafts, characterizes herself through a series of negatives. Whereas Crafts's novel opens with her assertions of "no training, no cultivation" and her claim that "[o]f my relatives I knew nothing," (Crafts 5), Johnson commences her testimony unable to tell her "exact age" and certain that she "never expected" to see her third son again. For both women, these evacuations of history and familial connection operate as a kind of authentication of the autobiographies that follow—as though in order to

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appearance at the Still trial took place on August 29, 1855, whereas she submitted her written affidavit in the Williamson litigation in October 1855.

qualify for slave autobiography in the first place, it is necessary to establish the gaps that enslavement has wrought in their personal and familial histories.<sup>167</sup>

In her oral testimony, Johnson continues by describing her journey with Colonel Wheeler en route to Nicaragua, noting that while they were in Philadelphia, “Mr. Wheeler kept his eye on me all the time except when he was at dinner” (Still 94). This documentation of Wheeler’s constant surveillance of Johnson establishes her incarceration, a claim that becomes even more visible when she describes Wheeler’s limitations on what she might disclose about her own circumstances to those she met during the journey. According to Johnson’s testimony, Wheeler had admonished her “not to talk to colored persons; to tell everybody I was traveling with a minister going to Nicaragua; he seemed to think I might be led off . . . .” (*Williamson Narrative* 14). Johnson’s own testimony again underscores her self-characterization as an agent. Though she relays Wheeler’s instructions to her, she maintains an awareness of his intentions, as when she says, “he seemed to think I might be led off.”

Rather than acting as her owner’s mere puppet, capable only of obedience, Johnson reveals herself as a keen judge of character—this moment captures not only her awareness of Wheeler’s fears about her possible escape, but also her awareness of his relation to her as a subjugated person or an object. She writes that he feared that she “might be led off,” a grammatical construction that casts her as an object; rather than worrying that she might run away of her own volition, she understands Wheeler’s fear to be one of, essentially, misappropriation—that someone else might lure her away from him and “steal” her. In this

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<sup>167</sup> Compare these evacuations of personal history with the acts of self-erasure wrought by Williams/Thornton/Wilkins in Chapter 2. The act of absenting oneself from a knowable family history is a practice that both authenticates a slave narrative as generically legitimate, and serves as an evasive strategy of fugitivity.

moment, Johnson succinctly characterizes the depth of Wheeler's belief in her status as subjugated, but her mere description in these terms reveals her perceptive ability. And in the end, despite Wheeler's efforts to shield Johnson from anyone who might encourage her to escape, a group of abolitionists nevertheless approached her while she remained in Wheeler's company.

When the "white gentleman" (presumably Passmore Williamson) asked Johnson if she wished to be free, she replied that she did but noted that she was Wheeler's property and could not be free (Still 94-95). Johnson testified that, upon hearing that freedom was hers for the taking if she desired it, she left Colonel Wheeler immediately. Addressing any argument that she had been persuaded or otherwise coaxed to leave, she said, "I did not say I did not want my freedom; I have always wanted it; I did not say I wanted to go with my master; I went very willingly to the carriage; I was very glad to go" (*Williamson Narrative* 15).<sup>168</sup> In the dramatic conclusion to her testimony, Johnson said, "I had rather die than go back [to Wheeler]. I wish to make this statement before a magistrate, because I understand that Mr. Williamson is in prison on my account, and I hope the truth may be of benefit to him" (Still 95).<sup>169</sup>

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<sup>168</sup> Note the additional resonance with the conditions of fugitive personhood discussed in Chapter 2. There, I argue that Williams/Thornton/Wilkins constructs himself through a series of absences and erasures, and that legal language in turn constructs him through negative proofs and other negations. Johnson's testimony here appears to engage a similar strategy, where she employs a double negative in her first sentence and then alternates sentence construction between positive and negative verbs.

<sup>169</sup> This last reference to Williamson suggests that this portion of her testimony may have been part of a written affidavit, sworn before a magistrate judge. It is unclear whether Still has conflated her oral and written testimony, or whether there is some conflation of the materials from the Williamson and Still litigations.

As is evident in her written affidavit, Johnson's oral testimony is unwavering in its assertions of her agency. Her habit of starting each sentence and clause with "I" offers a grammatical reinforcement of her insistence on herself as a subject; in fact, her description of her departure refuses the abolitionists any credit for her escape. Whether or not this refusal was an intentional effort to assist the abolitionists in their legal battles, Johnson's oral testimony is a persistent demand on her listeners to encounter her as a fully realized and constituted subject. Moreover, she leaves little room for counterargument about her intentions; she claims that she "had rather die than go back" to slavery and asserts that she had "always wanted" her freedom—a backwards-looking statement of intent that again refuses to afford the abolitionists any of the credit even for instigating her desire to be free. Essentially, Johnson testified not as a fugitive slave but as a free person. The distinction is critical because Johnson, rather than proving that her otherwise illegal flight from an owner was justified, instead argued that she existed *legally* as a free person who had *legally* exercised her free will in leaving Wheeler.

In William Still's account of Johnson's in-court appearance, he notes that Johnson arrived in court "veiled, and of course was not known by the crowd, as pains had been taken to keep the public in ignorance of the fact, that she was to be brought on to bear witness" (Still 94). This description evokes and erodes the similar "white envelope" associated with traditional slave narratives that are mediated by the labor of white amanuenses. Johnson was cloaked in-court literally by her veil and also by the phalanx of abolitionists who escorted her to the courtroom. What her testimony offers, however, is a moment of revelation—a lifting of the literal and metaphorical veils that hung between Johnson and her audience, particularly the judges presiding over the trials of Williamson and Still, and allowing her a moment of unmediated speech. Thus, despite the fact that her narrative may be less visible—owing to its location within other people's

criminal trial materials—Johnson’s testimony nevertheless offers direct, tangible links to her own experience.

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While self-authored accounts of her experience may inhabit the legal narrative surrounding Passmore Williamson and William Still, it is more appropriate to say that it is the *legal* narrative, rather than the personal or slave narrative, of Jane Johnson that inhabits the fictional world of *The Bondwoman’s Narrative*. Mrs. Wheeler’s descriptions of “Jane” in the novel make little reasonable sense, indeed, when de-coupled from the legal narratives that offer context for Jane’s escape. While the novel suggests to the reader that Jane was “discontented and dissatisfied with her condition” (149), Johnson never actually appears in the novel except through the dubious and brief narration of Mrs. Wheeler—whose own manipulations to purchase Hannah cast doubt on her reliability as a truth-teller.<sup>170</sup>

In fact, the novel offers yet another explanation for Johnson’s flight; a young slave boy reports that Jane had received a letter from “the ‘Hio man,” who turns out to be, in Mrs. Wheeler’s description, “The Senator from Ohio . . . who professed a great regard for slaves and negroes . . . . This fellow was thought to have his master’s concurrence in persuading servants to abandon their masters; it was even suspected that the grave senator assisted in spiriting them away.”<sup>171</sup> When pressed by Hannah on whether the Wheelers took efforts to recover Jane, Mrs.

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<sup>170</sup> In the novel, Mrs. Wheeler dictates a letter to the man who has inherited Hannah following the slave trader’s untimely death. In that letter, which Hannah herself is forced to transcribe, Mrs. Wheeler describes her as “very homely, and what was worse a bigot in religion; that [she] wept and shuddered at the idea of being transferred to his family” (153). These assertions, all of which are patently untrue, make Hannah deeply uncomfortable; Mrs. Wheeler employs these machinations as a means of securing a lower purchase price.

<sup>171</sup> See Crafts at 150-51.

Wheeler replies, “Oh, no; Mr Wheeler said that it would be of no use, and then he disliked making a hue and cry about a slave at the Federal Capital, so we said little as possible about it” (151).

The novel thus departs in several ways from certain specifics that are verified in the legal record: Crafts has Jane disappear in Washington, D.C. rather than Philadelphia; the suggestion is that she was assisted not by abolitionists but by an Ohio Senator; there is no mention whatsoever of her children; and finally, that the Wheelers made no efforts to recover her after her escape. These departures mark the novel’s reference to the legal record not merely as citational but as encrypted. It is obviously impossible to say with any certainty whether Crafts’s changes were attempts to protect her identity or that of Johnson, though her retention of the Wheeler family name certainly makes it less likely that these editorial changes were tactics of evasion. It is equally impossible to know whether Crafts herself was aware of the highly publicized legal trials that followed Johnson’s escape.

However, the novel’s factual alterations both call attention to the relevant legal narrative and re-cast its terms. First, the novel makes an intimate connection between Johnson’s escape and federal government. The fictional treatment of the escape occurs in the nation’s capital under the supposed assistance of a U.S. Senator. Moreover, Mrs. Wheeler claims to have been “attending a party at the Russian Minister’s” (151) when Jane fled. These details characterize the Wheelers as Washington power-brokers, mingling with diplomats. Even Mrs. Wheeler’s—presumably mendacious—claim that Mr. Wheeler thought pursuit would be useless inscribes the terminology of federal government: “he disliked making a hue and cry about a slave at the Federal Capital, so we said as little as possible about it” (151).

Why, the reader might wonder, would it be especially unseemly to pursue a fugitive slave in the District of Columbia? Though the novel's chronology is somewhat uncertain, it is generally accepted to have been written sometime in the 1850s. Johnson's flight and the ensuing legal actions took place in 1855, suggesting that, regardless of when the novel took place, it was written sometime after 1855. Washington, D.C. in the 1850s was at the heart of the slavery debate both literally and symbolically. Though slave trading had been banned in the District in 1850, slaveholding was still perfectly legal there until 1862, and the city had sizeable populations of both enslaved and free African Americans. Though Mrs. Wheeler fails to elaborate on this peculiar claim about their unwillingness to "make a hue and cry" about Johnson's escape, her comment calls attention to the symbolic weight of the District of Columbia in questions of slavery's legality. To "make a hue and cry" about their fugitive slave in the "Federal Capital" of all places would seem to throw into controversy the legality of slavery in a very concrete and visible manner. Given the intense legislative battles around the Compromise of 1850 and the Fugitive Slave Act of 1850 in particular, the novel's re-casting of Johnson's escape thus places slavery, quite literally, at the federal government's doorstep. And the introduction of foreign diplomats into this equation further exposes a tension between the notion of the United States as a "civilized" international state and an uglier image of the United States as entirely unable to manage its own domestic affairs or to keep the peace between slaveholding and non-slaveholding jurisdictions.

As a result, the novel's treatment of "Jane" the slave reveals far less about Jane Johnson than it does about the Wheeler family and about various legal narratives surrounding slavery, suggesting that it is not Johnson's narrative embedded within *The Bondwoman's Narrative*, but a much thornier legal and cultural narrative—a narrative for which the literary character of "Jane"

is a cipher. The veil that Johnson wears during her in-court appearance thus accrues additional meaning in the context of *The Bondwoman's Narrative*—if Johnson's in-court veil is symbolic of her remove from the legal system in which she speaks, she is doubly veiled in the novel, where the reader can only come to know her through inference and imagination. Moreover, the novel's fictionalization of Jane—whether that fictionalization occurs solely at the hands of Hannah Crafts or by virtue of Mrs. Wheeler's deception—establishes the intersection of Jane Johnson's legal personhood and her literary personhood as a character in a work of fiction. Her literary self and her legal personality can certainly be read together, but as with the case of the man known as James Williams, these various selves cannot coalesce into a single, coherent whole by merely placing the texts alongside one another. Instead, the novel introduces new questions into the narrative offered by the legal record, and vice versa.

In addition to the specific departures that *The Bondwoman's Narrative* makes surrounding the “real-life” events in Jane Johnson's life, the novel repeatedly engages other strategies of encrypting and encoding legal narratives through plot, characterization, and occasional addresses directly to the reader. In other words, it is not solely through the fictionalization of Jane Johnson that *The Bondwoman's Narrative* encrypts and re-casts law. In a novel that seems always on the verge of erupting into yet another slave's biography, the law lingers at the margins and in the depths of what we are urged to read as the autobiography of Hannah Crafts. I have already alluded to some of the ways that legal language and theme permeate the text, as with the character of Trappe and the persistent use of legal terms of art. In one such example, as the narrator hesitates to write Mrs. Wheeler's false account of her character, Hannah confesses (153), “No one can doubt that I hesitated to pen such a libel on myself,” once more infusing plot with (accurate) legal conclusions. But in particular, one of the



novel's peripheral characters demonstrates how Crafts's literary strategies engage explicitly with legal personhood. In Chapter 14, "Lizzy's Story," the narrator of the novel makes plain how these capsule narratives are more than mere flourish—and in particular how what is embedded within these narratives is not the slaves' own testimonies but the author's commentary on the laws of slavery.

Lizzy is a slave whom Hannah first knew at Lindendale, the plantation on which the novel opens. While owned by the Wheelers and still in Washington, D.C., Hannah has a chance encounter with Lizzy while she runs errands for Mrs. Wheeler. In another example of the novel's resemblance to nesting dolls in its narrative architecture, "Lizzy's Story" is not the story of Lizzy's experiences; instead, it is a story about the current master and mistress of Lindendale...as told to Lizzy by yet another slave named Lilly. These relentless layers of remove demonstrate on the level of form that the novel takes great pains in *refusing* to claim that it is an anthology of individual slaves' narratives. Given the multiple tiers of narration, "Lizzy's Story" cannot reasonably be read as containing embedded *testimony*—instead, it is explicitly offered not for its testimonial *truth* but for its narrative significance.

In Lizzy's account, the mistress at Lindendale has recently discovered that her husband has fathered several children with slaves on the estate; in her rage, she demands that the women and children be sold out of state entirely. What begins as an entirely too familiar plantation drama explicitly engages law in its framing. When confronted by his wife, the master first says, "And I say . . . that there is law in this country for the slave as well as the free, and if you attempt to injur[e] them you will find it so to your sorrow. Proud as you are, and rich as you think you be, the key of the prison door has been turned on richer and nobler people times without number" (176).

His implication is clear: that, should his wife attempt to interfere with his property, he will ensure that she suffers the *legal* consequences for the property damage or loss. Perversely, his declaration begins with the claim “that there is law in this country for the slave as well as the free,” suggesting that slaves themselves actually benefit from laws regarding their treatment. In fact, as his monologue immediately becomes visible as a threat, it is evident that his reference to “law for the slave” actually refers to law for the *slaveholder*. Whether his threat to his wife is the product of some obscene affection for the women is, of course, immaterial—their status as his property is the lever across which he is able to intimidate his wife under threat of incarceration for property interference.

The presence of slave law thus frames the encounter between husband and wife. As the husband, Mr. Cosgrove, eventually yields to his wife’s demands, Lizzy’s story takes an even more revolting turn. Several days after this marital dispute, a slave trader arrives at Lindendale to examine and purchase the women and children in question. When one of Cosgrove’s children calls him “Pa” and implores his father not to sell him, the child’s mother takes unimaginable action against her other child, an infant in her arms (177-78):

. . . with a motion so sudden that no one could prevent it, she snatched a sharp knife which a servant had carelessly left after cutting butcher’s meat, and stabbing the infant threw it with one toss into the arms of its father. Before he had time to recover from his astonishment she had run the knife into her own body, and fell at his feet bathing them in her blood. She lived only long enough to say that she prayed God to forgive her for an act dictated by the wildest despair.

This gruesome scene takes advantage of specific imagery to unmistakably interrogate the slave's status as living property. By seizing a butcher's knife still dirty from carving meat, the desperate mother aligns her own flesh—and her infant's flesh—with that of livestock. In this rapid murder and suicide, the slave mother butchers her own child and herself, gesturing toward the oft-repeated comparisons between the legal status of slaves and animals (and livestock in particular). She tosses the dead infant into its father's arms, and her own dead flesh literally lands at his feet. By heaping these slave bodies onto the master—who is also the father and rapist/lover of the casualties—the narrative repeats the trope first suggested in Mrs. Wheeler's description of Jane's flight. In that earlier example, the specter of an escaped slave in the nation's capital would cast an uncomfortable shadow on any myths of benevolent slaveholding. Similarly, Cosgrove is left to contend with the obscenity of his own actions—his hands are literally full and his feet are drenched from the bloody corpses of the mother and child. By the scene's end, the woman and her baby are so much meat.

In the aftermath of this violence, Cosgrove's threat to his wife about property interference hovers with renewed force. The dead slave at his feet, the property in question, has effectively violated the law of slavery that Cosgrove previously deployed against his wife. This upsetting of legal norms—in which the ostensibly objectified slave becomes the agent of her own destruction—is a radical re-casting of the law that Cosgrove cites. In this account, the property dies, testing the borders of ownership but also of what it means to be owned. Cosgrove's ownership of this woman, despite his posturing to his wife, turns out to be far from absolute.<sup>172</sup>

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<sup>172</sup> The dead woman, unnamed in the novel, thus also echoes Jane Johnson's claim that she "had rather die than go back [to Wheeler]." (Still 95).

The narration of this scene, however, contains another invocation of law that offers an even more direct example of how the novel encrypts and re-casts legal narratives. After Lizzy's story of Lindendale concludes, the narrator's voice intrudes in a striking address directly to imagined readers. Here is the narrator's commentary (178)<sup>173</sup> on the scene Lizzy has described, with the dead mother at the feet of her master:

She smiled faintly, turned her eyes to the child which had breathed its last. A slight spasm, a convulsive shudder and she was dead. Dead, your Excellency, the President of this Republic. Dead, grave senators who grow eloquent over pensions and army wrongs. Dead, ministers of religion, who prate because poor men without a moment[']s leisure on other days presume to read the newspapers on Sunday, yet who wink at, or approve of laws that occasion such scenes as this.

The abrupt narrative turn, from the inward-facing world of the scene just described to the outermost reaches of possible audience, marks a shift from literary fiction to legal protest. The subjects of the address range from the President to senators to religious ministers, all of whom are marked with responsibility for the young woman's death. This linkage of an unnamed slave

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<sup>173</sup> In the 2002 edition of the novel, editor Henry Louis Gates, Jr. inserts a double quotation mark in brackets at the conclusion of this passage, presumably considering it part of Lizzy's narration. In the context of the chapter, however, it makes little sense for this interruption to occur within Lizzy's storytelling. First, the preceding chapter concludes with Hannah and Lizzy congregating behind stacked lumber in order to "be effectually screened from observation" (171). The two women settle in so that Lizzy may relate this story to Hannah, and Hannah alone. It makes little sense for Lizzy to conclude her story by addressing the President, senators, and religious ministers. It is far more plausible, on the other hand, to read this final section as Hannah's commentary on the story she has just heard.

to the uppermost echelons of power and law rehearses the same trope that appears elsewhere in the novel, as with the Wheelers' reluctance to draw attention to Jane's escape.

The moment of actual death is almost unremarkable, “a slight spasm, a convulsive shudder” preceding the nothingness of an unnamed slave's death. The lightness of the death and the anonymity of the slave stand in stark contrast with the weight of those whose hypocrisy the narrator exposes.<sup>174</sup> The narrator specifically addresses both lawmakers and religious leaders who approve of brutal slave laws while obsessing over trivial matters, explicitly making the slave's death a matter of law. Specifically, the address recasts the death as a *crime*, for which the lawmakers—and not the slave herself, or even her owner—are responsible. In a remarkable parallel with the language used to condemn Nat Turner to death, the narrator triples the word “dead,” addressing each instance to a different audience. Unlike the tripling of “dead” in the Turner context—in which the overkill is directed solely at one subject, Turner, and in which the overkill appears intent on ensuring that Turner dies and remains so—this tripling works to a rather different effect. Though it reminds its audience of the woman's death, the tripling of “dead” in the novel works rather to enliven rather than destroy or purge the body it describes.

By rhetorically killing the slave three times, in three separate contexts, the narrator reanimates the corpse before each address, so that the woman appears to die three separate times after her actual death at her owner's feet. Each deployment of “dead” figuratively places her body at the feet of each audience. Beginning with the President himself, whom the narrator somewhat sarcastically refers to as “your Excellency,” the dead body first rests before “the

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<sup>174</sup> It should be noted that it is manifestly unclear *who* the narrator is in this moment. I read the passage as though it proceeds from the novel's main narrator, Hannah; while Lizzy could plausibly be the narrator in this section, the diction and style hew more closely to the literary personality of Hannah.

Republic.” This move again insists on the connection between legal slavery and the U.S. as a nation-state, troubling the myth of the United States as a civilized nation and instead littering the ultimate seat of power with the corpses of slaves. Should this association be ambiguous, the narrator then addresses Senators, ensuring that the legislative branch of government—and specifically, that representatives of individual states—also bear responsibility for this woman’s death. There is no distinction here between Senators from slave or free jurisdictions, suggesting instead that the existence of legalized slavery anywhere has corrupted the legislative process everywhere. To underscore the pervasiveness of law’s hypocrisy, the address ends with religious ministers who “wink at, or approve of laws that occasion such scenes as this.” The tripling thus unites all three audiences in a conspiratorial network of complicity in the enterprise of slavery. Here, the fact that the woman appears to die three times in succession demonstrates how the legally-sanctioned violence is excessive, wasteful, and obscene.

By bookending this scene in legal language—first with Cosgrove’s assertion of law and later with the address to lawmakers—the novel encrypts law within its own narrative, seizing on law as an appropriate frame and then turning the law back onto itself. As a result, the novel absorbs law but reimagines it in radically subtle ways. Like David Walker, who reappropriates the structure of the Declaration of Independence in order to argue against the constitutionality of legalized slavery, Crafts borrows from legal norms and principles in order to expose the intense *culpability* of lawmakers for the violence carried out by individual slaveholders. The epigraph to this chapter includes a passage from the novel that explicitly enacts a project similar to Walker’s, in which Crafts writes (201), “The Constitution that asserts the right of freedom and equality to all mankind is a sealed book to [slaves].” Her citation of the Constitution both verifies her own

legal consciousness—she is acutely aware of the Constitution’s guarantees—and claims that, in the hands of lawmakers, that same document is unable to deliver on its promises.

This reading of the Constitution as simultaneously self-evident and also imperfectly constructed is a sophisticated and nuanced interpretation of law. It reveals an understanding of the legal philosophical distinction between natural and positive law and also locates the Constitution as a particularly troubled site of the tension that Kent refers to when he writes, “States, or bodies politic, are to be considered as moral persons . . . inasmuch as they are collections of individuals, each of whom carries with him, into the service of the community, the same binding law of morality and religion which ought to control his conduct in private life.”<sup>175</sup> Crafts’s handling of the Constitution and her address to specific lawmakers are indictments of the very hypocrisy Kent warns against, in which the collective “morality” of a nation becomes subject to a lower standard than that required of an individual.

For Crafts, this hypocrisy is linked explicitly with the question of personhood—the question of which persons may reap the benefits and protections of law. In the passage where the novel’s narrator invokes the Constitution, she has just completed her journey with the Wheelers from Washington, D.C. to their plantation in North Carolina. The change in scenery is horrifying, and Hannah regards the slaves’ living conditions with sorrow—the field slaves live in crowded huts, and Hannah observes, “If the huts were bad, the inhabitants it seemed were still worse. Degradation, neglect, and ill treatment had wrought on them its legitimate effects” (200). As with the earlier aside to the President, Senators, and religious leaders, the narrator pauses to address her reader again (201): “What do you think of it? Doctors of Divinity Isn’t it a strange

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<sup>175</sup> See *Commentaries on American Law (1826-1830)*, Lecture I.

state to be like them. To shuffle up and down the lanes unfamiliar with the flowers, and in utter darkness as to the meaning of Nature's various hieroglyphical symbols, so abundant on the trees, the skies, in the leaves of grass, and everywhere." Addressing "Doctors of Divinity," the narrator asks the reader to imagine how it feels to be a slave. In her characterization, to be a slave is an endless shuffle in darkness, illiterate to the point of regarding all of nature as a set of incomprehensible hieroglyphics.

This passage from the novel resonates with Nietzsche's famous description of cattle in *Untimely Meditations*: "Consider the cattle, grazing as they pass you by; they do not know what is meant by yesterday or today, they leap about, eat, rest, digest, leap about again, and so from morn till night and from day to day, fettered to the moment and its pleasure or displeasure, and thus neither melancholy nor bored."<sup>176</sup> Like Crafts's description of slaves, Nietzsche's cattle perceive neither time nor history, merely shuffling and grazing endlessly. In fact, as with the earlier description of the slave who kills herself with a butcher's knife, Crafts explicitly links the slaves in the huts to the livestock of the plantation: "It must be a strange state to feel that in the judgement of those above you you are scarcely human, and to fear that their opinion is more than half right, that you really are assimilated to the brutes, that the horses, dogs and cattle have quite as many priveledges, and are probably your equals or it may be your superiors in knowledge, that even your shape is questionable as belonging to that order of superior beings whose delicacy you offend" (201). This juxtaposition of slaves and livestock appears within that address to Doctors of Divinity, in which her use of the second-person places the reader in the place of the slaves she describes.

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<sup>176</sup> Cambridge UP, 1997, ed. Daniel Breazeale, trans. R.J. Hollingdale.



Despite her own past as a slave, the narrator nevertheless reserves her description to the realm of the hypothetical, writing that “it must be” strange to be like these slaves—for Hannah, the house slave, her own experience remains outside the degradation she describes. Indeed, she is educated, aware of her condition, and acutely aware of history, unlike these other slaves, whose very “shape” is practically unrecognizable as human. The connections are unmistakable; Hannah writes that the Constitution is “sealed” to these slaves, who, for her, do not qualify as humans—much less legal persons—in any meaningful way. Unable to perceive history or their place within it, these slaves exist in a state of strangeness—the narrator’s repetition of the word “strange” throughout this passage calls attention to the slaves’ status as not only bizarre, but also estranged and alienated. Like Judge Kane’s characterization of Jane Johnson as a “stranger” to the Williamson court proceedings, these slaves too are strangers—to history, to knowledge, and even to themselves. The narrator’s comparison of slaves with animals is an undeniable reckoning with their legal status; the animals, she notes, have access to various rights and privileges that exceed the rights of slaves, after all. This juxtaposition, rather than simply equating slaves with animals, raises complex questions about the nuances of a slave’s legal personality. The law, as the narrator notes, is not so blunt as to merely treat slaves as though they are animals; it does, however, fail to account for slaves to such a degree that slaves often have fewer rights than livestock.

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As a work of literary fiction, *The Bondwoman’s Narrative* contains a complicated network of characters, plot devices, and nods to various other literary genres. But more than a compendium of various fictionalized slave narratives, the novel also acts as a cipher for various legal narratives and ultimately for a set of legal arguments about the failures and injustices of slavery.

It encodes specific legal narratives of actual slaves, as in the case of Jane Johnson—an encryption that, first, places the novel in relation to the legal documents containing Johnson's testimony and second, critiques the prevailing law that applied to Johnson's fugitivity. The legal record thus becomes not only an intertext for the novel but also an internal narrative within the novel's larger structure.

The novel also encodes more general legal narratives that are de-coupled from official legal records or identifiable slaves. As in the case of the unnamed slave who kills herself and her baby, the novel uses law as a framing device for plot lines—and then subsequently uses the plot lines to entirely upset and re-write the expected legal outcomes. Literary fiction thus emerges as a site in which to expose and re-imagine various legal fictions and legal theories. Law is present at every turn in *The Bondswoman's Narrative*, even embodied by Trappe, the unscrupulous lawyer who relentlessly pursues Hannah's mistress from Lindendale and reappears with implausible frequency—he turns up at exactly the house where Hannah and her mistress are hiding, and Hannah even encounters him on the street in Washington, D.C. long after her mistress has died. This fog of law hangs over the entire novel, and each time Trappe reappears in the literary landscape, it is a reminder that we are never firmly outside of law or wholly inside fiction.

I suggest that this inextricability urges a reading of the literary fiction as, on some level, inherently legal. The practices we might think of as “literary”—the characterization, the recasting of legal principles, the encryption of other types of narratives—look remarkably similar to the discursive strategies of legal writing. Rather than reading fictionality as a literary tactic that somehow *undermines* the realness of other, non-literary texts, I read it as a mark of rhetorical and political power. In Chapter 1, the fictionality surrounding the sentencing of Nat

Turner signifies as law's violent potential; in Chapter 2, fictionality signifies as a problematic for white abolitionists, slaveholders, and literary critics, as well as a potential source of productive fugitive personhood; in Chapter 3, fiction animates the law of slavery as a means of regulating petitions for freedom and narrating national mythologies. Here, in Chapter 4, fictionality is a device of encryption that enables generic and disciplinary crossings. In each instance, fictionality materializes around the intersections of legal and literary personhood, suggesting that fictionality is not the primary domain of either law or literature—rather, fictionality may actually be contingent upon the collision and complicity of the two.

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