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THE IMAGINATION AND CONSTRUCTION OF THE BLACK CRIMINAL IN AMERICAN LITERATURE, 1741-1910

A Dissertation Presented

by

EMAHUNN RAHEEM ALI CAMPBELL

Submitted to the Graduate School of the University of Massachusetts Amherst in partial fulfillment of the requirements for the degree of

DOCTOR OF PHILOSOPHY

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W.E.B. Du Bois Department of Afro-American Studies
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DEDICATION

To my beloved mother, Darlena Marie Noland
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From the start of my collegiate career at the University of Virginia’s College at Wise, I have lived by three words: hard work, dedication, and grit. These terms had deeper meaning during my time at the University of Memphis and later for my doctoral studies at the University of Massachusetts Amherst. Unashamedly, I worked hard to arrive at this point, and there is still more to go, more to come. At times, I felt alone and all I had was my work to console me—or so I thought. It is my sincere hope that those mentioned in what follows know that during my darkest moments, their words, various forms of support, and encouragement lifted me and made this project possible.

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Onward…
My dissertation examines the origins of the perception of black people as criminally predisposed by arguing that during eighteenth and nineteenth-century America, crime committed by black people was used as a major trope in legal, literary, and scientific discourses, deeming them inherently criminal. Furthermore, I contend that enslaved and free black people often used criminal acts, including murder, theft, and literacy, as avenues toward freedom. However, their resistance was used as a justification for slavery in the South and discrimination in the North. By examining a diverse set of materials such as confessional literature, plantation management literature, (social) scientific studies, and literary works, I demonstrate how historical and cultural representations of crime became racialized.

I begin by analyzing the New York Slave Conspiracy of 1741 and reading the legal testimonies produced by the event as literature. These testimonies contributed to the production of late eighteenth-century confessional narratives, in which there was a disproportionate representation of those from African descent. From here, I examine
different institutions of confinement and mechanisms of torture used on enslaved and free black people, arguing that what emerges from their brutalization and confinement is the circulation of ideas about black people as subjects having a propensity for transgressive behavior. After investigating literary works by William Wells Brown and Mark Twain, among others, I conclude with an analysis of W.E.B. Du Bois’s unpublished short stories. Written in the genres of crime and detective fiction during the first decade of the twentieth century, I argue that these little-known stories use, yet subvert ideas about criminality as inherent among black people and can be read against his sociological studies on urban crime in the same period.

By focusing on literature and culture as ways of understanding perceptions and constructions of racial groups, my dissertation intervenes in legal studies scholarship and scholarship on the history of crime in America. More broadly, it builds upon the larger field of African American Studies by challenging the binary of agency and oppression through examining literary representations of contentious relationships between slaveholders and the enslaved. Through various literatures of the colonial, early national, antebellum, and post-Reconstruction periods, what is at stake in my project is how the criminalization of black people predates Reconstruction and convict leasing. In its attempts to reveal connections between criminality, race, and the judicial system in our contemporary moment, my work is especially timely in light of the recent deaths of Trayvon Martin, Oscar Grant, Rekia Boyd, Eric Garner, Tamir Rice, and many others.
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INTRODUCTION

This dissertation explores the origins of the perception of black people as criminally predisposed by arguing that during first part of the eighteenth century to what historians refer to as the long nineteenth-century in America, crimes committed by black people were used as major tropes in legal, literary, and (social) scientific discourses, deeming them inherently criminal. Furthermore, I contend that enslaved and free black people often used criminal acts, including murder, theft, and even literacy, as avenues towards freedom. However, such resistance to enslavement was used as a justification for slavery in the South and discrimination in the North. By examining diverse literatures such as confessionals, plantation diaries, (social) scientific studies, and fiction, my dissertation demonstrates how historical and cultural representations of crime became racialized.

Unashamedly, I arrived to this topic by way of historical and contemporary avenues. While reading canonical slave narratives such as Narrative of the Life of Frederick Douglass, An American Slave (1845) by Frederick Douglass and Incidents in the Life of a Slave Girl (1861) by Harriet Jacobs, I noticed how these formerly enslaved authors compared slavery to crime and plantation captivity to incarceration. Institutionally, I observed that fugitive slaves—indeed, criminals themselves—were exposed to confinement in slave jails and would often be punished by slave patrollers, the police, and other actors both directly and indirectly affiliated with slavery. By intentionally drawing connections between crime and slavery, black and white authors metaphorically placed legal and moral onuses on planters and overseers. Moreover, when formerly enslaved authors reflected on their crimes while on plantations such as stealing,
subterfuge, and certainly running away, they often blamed slavery for their defiant, yet deviant actions. Rather than absolve themselves of criminal responsibility, fugitive authors asked readers for forgiveness, imploring them to apply different moral standards for slaves’ misdeeds. For these writers, slavery altered notions of acceptable morality. When describing fugitive escape, such writers understood their crime as necessary in order to experience freedom first hand. Contemporarily, I attempt to construct what Michel Foucault describes as a “history of the present”\(^1\). My research cannot ignore what I consider an ongoing history and culture of police and vigilante violence that deliberately targets black people at least since the conclusion of the Civil War.

Throughout my dissertation, I place the texts under analyses in their historical contexts with full understanding about obvious differences between eighteenth and nineteenth-century forms of violence to those enacted today. Yet, the resonances of these centuries can be, and often are, currently felt by black women and men. By analyzing the texts that follow, my project attempts to reveal connections between crime, race, culture, and the judicial system in the here and now, making my work especially timely in light of the recent deaths of Trayvon Martin, Rekia Boyd, Michael Brown, Eric Garner, Tamir Rice, and many others.

Historians and literary scholars tend to primarily focus on the post-Reconstruction period as a starting point to analyze ideas of black people as the primary criminal threat to American society. Moreover, recent scholarship on mass incarceration begins its periodization in the early to mid-twentieth century. To start with two recent works that

\(^1\) Foucault’s actual quote is: “In trying to make a diagnosis of the present in which we live, we can isolate as already belonging to the past certain tendencies which are still considered to be contemporary” (92).
received both scholarly and mainstream attention, Michelle Alexander’s *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (2010) and Khalil Muhammad’s *The Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (2011) briefly touch on the nineteenth century and primarily focus on twentieth century political and sociological discourses on black crime. Alexander concentrates on what she describes as “a new racial caste system” of criminalization and mass incarceration of black men\(^2\) that derives from the postbellum period. This system mainly has its most powerful expression in the “War on Drugs”, initially started by President Richard Nixon in 1971 but launched into full effect by President Ronald Reagan (4, 5). She defines “racial caste” as a way “to denote a stigmatized racial group locked into an inferior position by law and custom. Jim Crow and slavery were caste systems. So is our current system of mass incarceration” (12). The Johnson administration attempted to improve race relations with the Civil Rights and Voting Rights Acts of 1964 and 1965, but these important policy efforts were scaled back under President Reagan. In order to establish her focus on regressive measures pertaining to drug rehabilitation in relation to increased federal funding of police units and FBI task forces, she offers pithy treatment of slavery. For Alexander, linking nineteenth-century forms of black criminalization with late twentieth and twenty-first-century iterations of this process would be ahistorical rather than transhistorical, ruining progressive narratives that highlight important legislative efforts of the past and present.

Beginning his work in an earlier period than Alexander, Muhammad’s study first

\(^2\) Quite explicitly, Alexander discussion is limited to black men. She writes, “relatively little is said here about the unique experiences of women…in the criminal justice system, though [they] are particularly vulnerable to the worst abuses and suffer in ways that are important and distinct” (15-16).
takes readers to the late nineteenth century in order document how the rise in statistical study contributed to a language that made blackness synonymous with crime. From the moment prison statistics became available in 1890,

notions about blacks as criminals materialized in national debates about the fundamental racial and cultural differences between African Americans and native-born whites and European immigrants. These debates also informed questions about appropriate levels of African American access to the social and economic infrastructure of the nation. Calls for greater African American access to public education, for example, were challenged by statistical arguments that education turned black people into criminals. (4)

Invested in examining the history of sociology and statistics regarding black crime, Muhammad’s periodization coincides with the establishment of the first sociology department in the United States at the University of Chicago in 1892, Ida B. Wells-Barnett’s *The Red Record* (1895), and W.E.B. Du Bois’s *The Philadelphia Negro* (1899). For Muhammad, the availability and incorporation of statistics in sociology indicates a shift in the field from biological explanations of crime, which, for the author, began to lose credibility to sociological ones. While there may have been specific moments during the antebellum period that conjoined black people and crime, the close of the nineteenth century, a generation separated from slavery, was the true historical marker used to measure criminal behavior in urban black communities.

Respectively, Alexander and Muhammad’s works have not only reintroduced scholars and the mainstream public to historical and contemporary processes of black criminalization and mass incarceration, but these studies have been crucial to how I
conceptualized my project. I contribute to the conversations their books broach in two ways. First, I extend their timeline by starting with the New York Slave Conspiracy of 1741 and reading the legal testimonies produced by the event as literature. I argue that these testimonies significantly contributed to the production of late eighteenth-century confessional narratives, in which there is an overwhelming representation of those of African descent. I then examine different mechanisms of torture used on enslaved and free black people, arguing that what emerges from their bodily terror is the circulation of ideas about black people as subjects having a propensity for transgressive behavior. After investigating literary works by William Wells Brown and Mark Twain, I conclude with an analysis of W.E.B. Du Bois’s unpublished short stories. Written in the genres of crime and detective fiction during the first decade of the twentieth century, I argue that these stories draw upon, yet subvert ideas about criminality as inherent among black people, and can be read against his sociological studies on urban crime composed in the same period.

Literary scholars have significantly contributed to how I have framed inquiries and argument in my dissertation. Five works in particular strongly influence my project’s legal, literary, and theoretical readings of texts: Saidiya Hartman’s *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America* (1997), Stephen Best’s *The Fugitive’s Properties: Law and the Poetics of Possession* (2004), Bryan Wagner’s *Disturbing the Peace: Black Culture and the Police Power after Slavery* (2009), Colin Dayan’s *The Law is a White Dog: How Legal Rituals Make and Unmake Persons* (2011), and Jeanine DeLombard’s *In the Shadow of the Gallows: Race, Crime, and American Civic Identity* (2013). Taken together, these works wrestle with law and literature’s close
engagement with black flesh and body, indicating discursive overlap and influence. Generally, these works also provide close literary readings of legal culture that expose meaningful gaps in eighteenth and nineteenth-century law. Finally, they offer important implications about the archive not only concerning the permissibility of statements\(^3\), but also, and I feel more critically, the establishment of legal, literary, and cultural materials that produce understandings of black selves that include their bodies—in fact, construct them as bodies—while excluding them as important subjects in archival creation\(^4\).

In her memorable study, Hartman’s attempt to lay bare the violent, punitive underbelly of enjoyment and culpability, freedom and confinement, in the nineteenth century. Her central focus is to explore “ways that the recognition of humanity and individuality acted together to tether, bind, and oppress” (5). Rather than the enactment of marginal agency through brief moments of enjoyment, slaves dancing and playing music were acts of terror for its participants, yet performances of pleasure for owner and overseer alike. These performances, jovial as they seemed, took place on the same soil where the enslaved forcibly observed torture and execution, auctions and captivity. In more apparent legal spaces, the “non-rape” of enslaved and free black women was not

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\(^3\) This draws from Michel Foucault’s definition of the archive in *The Archaeology of Knowledge* (1969). Without explicitly dealing with the archive in their works, I find these authors in conversation with Foucault both through incorporating historical documents and discursive exchanges between law, literature, and theory.

\(^4\) My analysis echoes Jacques Derrida’s position regarding the central political orientation of the archive in *Archive Fever: A Freudian Impression* (1995): “There is no political power without control of the archive, if not of memory. Effective democratization can always be measure by this essential criterion: the participation in and the access to the archive, its constitution, and its interpretation” (4). Indirectly, this dissertation is curious about meanings of the archive and archive construction when those who are central to its foundation, namely black people, are excluded from having control over its shaping during the periods under my investigation.
merely ancillary in an antebellum legal culture that rarely confronted matters of sexual assault and molestation of women, but in fact was central to its formation. Contractual obligations replaced and were just as brutal as physical and psychological scarring left by the whip. With the rise of freedom for newly emancipated slaves came the dawn of criminal culpability and incarceration. By interrogating meanings of slave agency and liberal freedom, Hartman pivots my analyses on warring power relations between planters, owners, slaves, and black freepersons.

Influenced by Hartman’s work, Best’s forges connections between intellectual property and chattel property, specifically in the form of slaves, from the nineteenth century to the early part of the twentieth century. More generally, he is interested slavery’s aftermath in the form of copyright law and figurations of intellectual property rights. “Slavery”, he writes, “is not simply an antebellum institution that the United States has surpassed but a particular historical form of an ongoing crisis involving the subjection of personhood to property” (16). The “form” he describes is what fashions his discussion about legal and theoretical contiguities of voice as an extension of personhood and voice as legal property to be owned. Best’s readings of legal treatises and literature inform my dissertation, especially my second chapter where I provided concentrated discussions on slave evasiveness in relation to copyright law and the Fugitive Slave Act of 1850. Moreover, his work is a template for ways to address the inextricable interconnectedness of property law and slave law in the antebellum period.

Also concentrating on voice, but for different reasons and purposes, Wagner’s *Disturbing the Peace* puts forward provocative readings and theories of blackness and how law, or specifically the police power, shapes it. Ensconced in power networks,
blackness for the author is defined “not as a common culture but instead as a species of statelessness” (23). As such, these networks facilitate interchanges of negation and production: they oppress and remove, while simultaneously creating and producing. Wagner is primarily interested in a black tradition that finds its contours carved by legal history. Although his historical and literary focuses concern the late nineteenth and early twentieth century, Wagner’s emphasis on police power and how it configures blackness assist in my understanding of blackness as an inclusive and exclusive relationship to the law, fraught with particular forms of violence and terror that are illustrative and certainly central to literary, scientific, and cultural discourses of the eighteen century to the early part of the twentieth century. His work fertilizes theoretical soil to raise a question that circulates throughout my dissertation—is it possible to understand, theorize, and critique blackness outside law(s)? Relatedly, one of the implications of my project is how violence and legal terror are constitutive, foundational elements of blackness in the New World.

While working on my study, I wanted to investigate whether the theoretical, practical, and material horizon that could not be transcended was the law. Although this work is interested in how culture, literature, and visual graphics contribute to ideas of black malfeasance, it proved impossible to discuss imaginative and constructive processes involved in the making of the black criminal without encountering law in its general formation and nuanced particularities. Along with forms of physical violence, I became interested in how law violated slaves and freepersons through labeling, declarations, and its operations as mediated by literature. These concerns led me to Dayan’s The Law is a White Dog. Primarily attentive to “extraneous persons” such as
slaves, felons, and even deodands and animals such as dogs, “[l]aw”, as she puts it, “is the protagonist of this plot” (xi). Her central thesis is that the law creates and uncreates “persons” not only through torture and other punitive measures, but also through its procedural application. “[L]egal persons have no fixed definition, but instead take on changing capacities variously granted by the state, such as legal rights, freedoms, duties, and obligations” (25). Legal personhood as non-static, fluctuating humans from things to person and person to thing provides significant insight for my analyses regarding the simultaneity of deodand and mens rea in my first chapter. Slaves were classified as deodand, especially during the colonial period: their owners would often take responsibility for their actions except in capital offenses. Furthermore, and most importantly, compensation was offered to owners who lost their property as a result of the slave’s criminal action. However, slaves were endowed with guilty minds when found criminally culpable. Contrary to legal and literary scholars who emphasize the transition of the slave from property to person once deemed responsible for a crime, I centralize ways in which property, like the ghosts that haunt Dayan’s study, lives within the slave even when she or he is considered a person before the law.

As mentioned earlier, one of my main arguments is how the criminalization of black people, free and enslaved, precedes postbellum America. In this regard, I share DeLombard position in her work, In the Shadow of the Gallows. While my periodization begins in the colonial period, she commences her study in the early national period with the proliferation of confessional literature. Building upon scholarship on confessional literature by Daniel Cohen, Richard Slotkin, and others, DeLombard argues that not only did “gallows literature” set the stage for well-known fugitive slave narratives after the
1831 publication of *The Confessions of Nat Turner*, but these works also formed notions about black criminals among readers—these ideas primarily circulated through early American print culture. Her work proves indispensible to my thesis for how cultural production aided historical developments of particular understandings of black people that are contemporarily pertinent. Furthermore, I borrow her temporal framework (1831) as a way to close what I term the confessional period. However, there are three arguments I posit that differentiate my project from DeLombard’s work. Rather than stressing confessional literature from the early national period, I begin in the colonial period with Daniel Horsmanden’s *Journal of the Proceedings* (1744) to demonstrate how his work effectively inaugurates the confessional period in literary form and legality. Secondly, she refers to the narratives of the period as “gallows literature.” I depart from this characterization due to its specification of execution style. Black transgressors were not only put to death by the state through hanging, but were also burned at the stake, beheaded, hanged by chains, and left to starve. By using confessional, I attempt to encompass not only words uttered by the black condemned, but also the processes involved in their confessions, including torture. Finally, throughout my entire project there is consideration of how crimes are creatively used by black people, especially in the case of the fugitive slave, or who I consider “criminal(ized) property.”

One of the useful components of DeLombard’s project to my research is how it allows me to contemplate the terminology I incorporate. Throughout my dissertation, “crime” and “criminality” are evoked often; therefore, it is necessary to define these and other terms that establish my work’s conceptual foundation. I capaciously define crime not only as an offense that is prosecutable by the state, thereby also making it punishable
by the same entity, but also as particular geographic, social, and cultural breaches distinct to, but inseparable from, formal legal institutions and discourses. Criminality is, as the suffix denotes, the condition of being criminal. For me, this has great ontological implications: the imaginative and constructive processes involved in the creation of perennial black criminals derive from material histories that shape blackness as Being\(^5\).

In the histories and literatures I analyze, black people, like white people and others, undoubtedly committed crimes; however, it was significant to embed criminality in both the enslaved and free black populations in order to define freedom not only on the basis of servitude, but also in terms of (black) freedom itself. What I am suggesting here is that freedom is conditioned on degrees and forms of unfreedom within the concept of freedom itself\(^6\). From the colonial period to the conclusion of the Civil War, black freewomen and freemen were civically and legally free. But within their freedom contained torturous traces and punitive acts that weaved them in the same conceptual and material practices of slavery. In a sense, my project is interested in the intimations issued by black freedom in terms of how it alters both conditions of slavery and freedom. How was black freedom perceived as criminal not only in relation to the peculiar institution, but also on its own terms? In other words, how did black freedom fundamentally question and challenge the very idea of freedom for white people from the colonial through the antebellum period and beyond? Finally, how was black freedom both punishable and punished?

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\(^5\) Nicole Rafter’s *Creating Born Criminals* (1997) serves as the impetus of this formulation.

\(^6\) George Orwell’s was famously on to something in *Animal Farm* with the commandment (1945): “ALL ANIMALS ARE EQUAL BUT SOME ANIMALS ARE MORE EQUAL THAN OTHERS” (51-52).
My definitions of crime and criminality draw upon what postmodern criminologists refer to as the “multiple meanings” of crime, or the multiplicity of law⁷. Crimes of geographic constitution may include specific plantation transgressions as (un)spoken by owners and overseers. Running away or escaping plantations for hours or days may not involve formal legal actors, but may result in punitive measures exacted by the slave power. Indeed, southern states granted authority to owners to punish slaves within legally reasonable parameters, as long as it did not result in the slave’s death. While social transgressions on the part of slaves took place from the colonial to the antebellum period such as black people visiting taverns and breaking curfew to three or more congregating at a well, I also focus on late nineteenth-century black contraveners such as those who are above their proscriptive social and sartorial statuses. Cultural crimes in my research generally function literarily, especially in my chapters dealing with William Wells Brown and Mark Twain. For the former, issues such as plagiarism and copyright laws are evaded through his literary practices and his exile in London. The latter deliberately evokes scandal during the publication of his novel, and also violates conventional literary appropriateness.

As mentioned in the dissertation’s title, I investigate the black criminal pertaining to her and his existence as imagined and constructed. Furthermore, my research is also dedicated to how black people imagine and construct themselves as criminals through fugitivity and literary output. Consequently, “The Imagination and Construction of the Black Criminal in American Literature, 1741-1910” seeks to discuss how black people

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⁷ See Eugene McLaughlin and Karim Murji’s “The Postmodern Condition of the Police”, especially pages 227-229, and “Postmodern Criminology in Relation to Radical and Conflict Criminology” (1997) by Bruce A. Arrigo and Thomas Bernard where they describe “multiple voices and ways of knowing” in understanding crime (43).
are imagined as criminals, and how they use their criminality in innovative ways that occasionally reconstitute and perpetual notions of their criminal status. At this point, it is important to mention that “imagination” in this project is not synonymous with “literature” or “creativity”. In Caleb Smith’s *The Prison and the American Imagination* (2009), for example, imagination is not specifically define and is, instead, a term tantamount to literary fiction. Closer to offering a concrete definition is Toni Morrison in *Playing in the Dark: Whiteness and the Literary Imagination* (1992). She is focused on the “pervasive use of black images and people in expressive prose”, concomitant “taken-for-granted assumptions that lie in [white authors’] usage”, their “sources”, and “the effects they have on the literary imagination and its product” (xiii). Morrison’s text gets me closer to ideas of images, their arrangements, and uses. One may surmise from her discussion that she centralizes how black images are (re)produced through white literary modes of expression. Imagination as a process or theoretical expression is not her primary concern. Like Morrison, however, this dissertation’s definition of imagination concerns itself with image production; but unlike her, I do not seek their sources or origins. Situating myself within the theoretical vein of postmodern understandings of image production and imagination, I am attracted to “parodies” of images that are “[d]evoid of any fixed reference to an origin” and only appear “to refer only to other images” (Kearney 178). Therefore, I do not propose in any way geneses of black criminality nor the beginnings of the ways in which black people are imagined and constructed as such. Instead, I define imagination as the constant reproduction of seemingly deviant images, ideas, and interpretations of black people that are historically derived and driven. By framing imagination this way, I align myself with “scholarship
that looks into the mind, imagination, and behavior of slaves [and] masters” (Morrison xvii), while also avoiding the dangerously attractive, but problematic question of white or black complicity in what I outline. In other words, I desire to keep away from the question: “Who or what created black criminality?” This figuration partially echoes Kendall L. Walton’s distinction between “deliberate” and “spontaneous” imaginings in *Mimesis as Make-Believe: On the Foundations of the Representational Arts* (1990).

Deliberate imaginings are those images and thoughts one intentionally decides to imagine. Conversely, spontaneous imaginings are those one cannot control, at least throughout the entire duration of imagining. But as the author puts it, “The line between deliberate and spontaneous imaginings is not sharp” (14)—that is, they are relationally connected in a network of the process of observing and producing images. One may control her or his imaginings; however, spontaneous imaginings are ones “which the imaginer not only does not but cannot direct” (16). Methodologically, focusing on black cultural and literary image production as a network affords spaces to escape alluring inquiries that are solution oriented. If slavery, discrimination, terror, and torture imposed on black people were causes to what I describe in my study, then one may assume that the elimination or the nonexistence of these institutional practices could have been (or could be) solutions. I find this framework to be parochial, for it limits how black and white people used power dynamics in complex and creative ways to reassert their subjecthood during enslavement and freedom. Displacing imaginative and constructive

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8 I omit Walton’s important associated distinction between “occurrent and nonoccurrent imagings”, in which the former describes explicit, conscious imaginings that come to one’s mind while the later suggests “a backdrop for later occurrent imaginings” (17). For example, I can imagine writing an award-winning book (occurrent imagining); but it may also be the case that I imagine winning this award without scandal or controversy (nonoccurrent imagining).
origins enable me to discard the idea of architects who ostensibly designed oppressive systems.

Construction has a twofold meaning in my project. The first meaning relies upon the historical marker of freedom with the passage of the Thirteenth Amendment and the end of the Civil War. In order to illustrate historical and cultural differences from the colonial to the postbellum period and after, I define “construction”, similar to Hartman, and respectively like historians Muhammad and Matthew Mancini in *One Dies, Get Another: Convict Leasing in the American South, 1866-1928* (1996), as a cultural, discursive, historical, and scientific method of building that only could have occurred in legal freedom *precisely* as a result of it. Borrowed from colonial, early republic, and antebellum images, authors, historians, and (social) scientists participated in the construction of ideas around black people being a criminal threat to freedom, the law, and white sensibilities. As I show in my dissertation, although there is overlap in both the imagination and construction of a perpetual black criminal threat prior to 1865, civil and legal freedom provide added emphasis (along with added numbers of incarcerated black people) to the dependent clause in the first section of the Thirteenth Amendment (“…except as a punishment for crime whereof the party shall have been duly convicted…”).

“Imagination” and “construction” are terms that frame the conceptual basis of my dissertation. Equally important are terms that define and describe actions of the subjects under discussion. Scholars who examine slaves’ personhood statuses upon criminal conviction omit procedures by which slaves become persons before the law, specifically through fugitivity and what I term “the spectacle of arrest”. Fugitivity is
defined as the condition, the state of being fugitive, and use as a way to differentiate
the term from escape, in which the latter indicates an enslaved person fleeing any
authority who operates as an extension of the law for any particular transgression,
while the former connotes a direct affront to local, state, and federal slave laws. These
terms account for legal specificity inside and outside plantation and urban slavery.
Fugitivity is also an effort to capture the slave in her and his liminality, between
personhood and property. To be a fugitive slave is a literal expression of her and his
chattel status—i.e. moveable property—but it is also to endow this property with
personhood recognized by law. Therefore, fugitivity strives to articulate what Best
describes as “pilfered property and indebted person”, or, in Aristotelian form,
“thinking property” (16). Connected to fugitivity is “the spectacle of arrest”, which is a
term that just as strongly identifies with black freepersons as it does with slaves. My
use of arrest, also capacious in definition, has two functions. The first designates the
pursuit and apprehension of a black criminal, “real” or perceived, freed or enslaved.
The second function concerns what Foucault terms “the gaze,” in which the subject
who performs the gaze is not simply observing or glancing at an object of
knowledge—the subject is also being constructed as a knower. Applied to arrest, the
object of knowledge—the escaping and/or fugitive slave, as well as the pursuant—
becomes a knower as a result of the pursuit. Both objects and subjects learn moves and
tendencies; and the desire to avoid arrest, along with the desire to apprehend, arrest—
that is, freezes—the gaze: for the pursuant, nothing is more important than to capture
the escaping or fugitive slave; for the escaping or fugitive slave, avoiding arrest is
paramount.
“Regimes of practice,” to borrow from Foucault in *Discipline and Punish* (1975), materialize in the act of escape. They produce internal surveillance: the escaping slave watches and monitors himself or herself to prevent capture, but internal surveillance then expands externally in ways that both embolden—or resurrects—and thwart potential attempts to escape by other slaves, including by the initial escaping slave if he or she is subsequently seized. Escape also yields geographical knowledge, or what late historian Stephanie Camp refers to as “rival geographies”: the escaping slave, as well as the pursuant, gains intimate knowledge about the plantation and its surrounding area (7-9). Light and darkness are used to both players’ advantages in order to manipulate their furtive movements (one gets a sense of this in Frederick Douglass’s 1845 *Narrative*, when, to escape Mr. Covey, stays close to the road so that may not get lost, but far enough in the woods to avoid detection); and knowledge about corporeal tendencies, irregularities, and markings from both the pursuant—slave patrols and slave owners—and slaves, including the slave who makes his or her escape result in fugitivity.

Monitoring and understanding slaves’ anatomy, movements, and labor during antebellum slavery was, as Frederick Douglass in his first narrative limns, the practice of the overseer “making us [slaves] feel that he was ever present with us,” so that slave began monitoring themselves in order for their labor to continue “in his absence almost as well as in his presence” (322). But it also came through reading slaves’ bodies, noting salient skin imperfections, markings, heights, and postures in order to extract labor and prepare for potential escape, which increases slave patrollers chances to capture the absconding property. As much as they evoke legality, fugitivity and the spectacle of arrest also assume readers of bodies, movements, and space.
These conceptual terms allow me to turn to how they work within the chapters that follow. What brings all my chapters together is their interdisciplinary and intertextual orientation. While literature is central to my discussions about the imaginative and constructive creation of the black criminal, critical theory, history, and legal theory are prominently displayed. Suggested in this enterprise is how texts are persistently evasive—indeed, fugitive—breaking, which also means creating, new literary laws and rules. My first chapter, “‘[C]ommitted a Crime of the Blackest Dye’: Daniel Horsmanden’s Journal of the Proceedings, the Confessional Period, and the Literary Imaginings of the Black Criminal” seeks to establish the foundation of the imagination and construction of the black criminal through cultural expressions from the colonial period, beginning with Daniel Horsmanden’s account of the 1741 New York Slave Conspiracy titled, *Journal of the Proceedings* (1744), to the antebellum period, ending with *The Confessions of Nat Turner* in 1831. Although other texts such as legal and visual reports are analyzed throughout, confessional literature, or what Jeannine DeLombard describes as “gallows literature” (5), is the focus of my examination. I argue that Horsmanden’s *Journal* functions as both a literary-judicial attempt to document the veracity of the 1741 slave conspiracy and an addition to the rise of confessional literature that proliferated during the early national period. Its contribution to what I term the “confessional period” (1741-1831) is marked by the many confessions and testimonies Horsmanden recorded, in which Africans are deliberately criminalized by the writer, the Court, and even themselves. Interestingly, the subjects documented by amanuenses in confessional literature are not mindless, disengaged participants conveying their final words before facing their inevitable fates. Often, as in Abraham
Johnstone’s 1797 confession, the subject’s words war with their ambiguous, mysterious writers in ways that nuance demarcations between writer and subject.

Conversely, black amanuenses—quite rare during the period—like Absalom Jones and Richard Allen cloaked their sociopolitical vindication and defense of (accused) black criminals, as well as their critiques of the criminal justice system, in conventional religious admonishment of their communities. Similar to conditions of enslavement, however, ultimate control remained with the writer to whom the confession was told. For the young Rose Butler (also known as Rosanna Butler), this lack of narrative control in her 1819 confessional defines her both as literarily living and posthumous criminal. Through various iterations and republication of Horsmanden’s *Journal* up to 1899, the circulation of confessional narratives until 1831, and the permitted (and omitted) depictions of punishment and torture inscribed criminality onto black flesh, culturally creating criminal bodies.

After providing a brief reading of Turner’s confessional, I turn to black abolitionist and novelist, William Wells Brown, and his 1853 work *Clotel; or The President’s Daughter: A Narrative of Slave Life in the United States*. In my second chapter, “Evading the Law: The Textuality of Fugitivity in William Wells Brown’s *Clotel*”, I argue that the author, both through his acts of plagiarism in the novel and his fugitive status, evades both the Fugitive Slave Act of 1850 and emerging copyright laws of the period, culminating in the 1853 case, *Stowe vs. Thomas*. This chapter will focus on how these evasions are not disconnected. In fact, he is only able to evade both sets of laws through exile. Slaves fleeing plantation and cities are often described as “stealing themselves”; yet, it is important to keep in mind that in stealing oneself, property
relations endowed in the slave are not interrupted. Moreover, I contend that Brown is not only aware of his arrangement as fugitive property, but also as fugitive writer. Therefore, it was critical for Brown to both own himself and the reproductive materials of his novel. For the fugitive, indeed, criminal novelist, to own oneself in flesh was to also, and powerfully, own oneself in text.

Aside from closely reading familiar and understudied works, my first two chapters directly engage laws and legal theories, such as deodand, mens rea, and copyright law. Chapter three departs from this approach by addressing, along with close readings, confinement and incarceration. Furthermore, it moves the reader out of the antebellum to the post-Reconstruction period. “Mark Twain, Huckleberry Finn and the (Black) Criminal Imaginary” aims to uncover how illegality, specifically as it relates to black criminality, profoundly colors the content and cultural implications of Twain’s most heralded novel. Offering meaningful readings and contributions to this work proves intimidating, for much has been written on this work since its publication, making it difficult to offer any critical intervention. However, I discovered little to no scholarly focus on what I consider to be the novel’s impetus, criminality. It is when Huck feigns his own murder that sends him on his attempted escape from civilization. His traveling partner for most of his adventures, Jim, is a fugitive slave who is desperately seeking refuge in free, non-slave territory in the North. Also, I attempt to offer larger temporal, cultural-political, and textual arguments in my analysis of the novel: that the structures of repression in the nineteenth century, despite shifts from slavery to emancipation have remained consistent in their operations in relation to black Americans, their alteration in forms have been altered (i.e. slavery to freedom); that these structures
are strongly operative in forms of representation; and that criminality is often constituted through (inter)textuality and imaginative play, two interrelated points that loosely engage in Derridian free play, in which criminality inhabited by racialized, criminal(ized) subjects is not (only) structurally relational, but its center is also constantly substituted by these subjects and the institutions that constitute them as such. I find that Twain leaves the question of the central criminal figures and institutions unresolved in the novel; however, it is implicitly understood that a black criminal subject retains substantial value as a primary result of historical and cultural exploitation, repression, and oppression of the nineteenth century—a value that is different than, and does not share equivalence with, white counterparts.

The final chapter moves deeper into the late nineteenth century and concludes in the first decade of the twentieth. It also provides this project’s most concentrated attention on black crime in the (social) sciences by analyzing imaginative and constructive energies of black criminality in W.E.B. Du Bois’s little-known literary works. Through selected unpublished short stories in the early part of his writing career, specifically “The Couple in the Drawing Room” (1906) and “The Jewel”, Du Bois, through his incorporation of crime and detective fiction, literarily challenges pervading scientific arguments that position black subjects—specifically black man subjects—as naturally predisposed to criminal behavior. Often incomplete, fragmented, and underdeveloped, these stories intervene in the sociopolitical and the politico-scientific conversations on black criminality as well as his own 1899 work, The Philadelphia Negro. Intriguingly, Du Bois, à la famed writers like Twain, Edgar Allan Poe, and Arthur Conan Doyle, incorporates forensic methods through his black protagonist. For an author
who maintained fidelity to empiricism and the pursuit of “Truth” through the scientific method, associating his protagonist with empirical capabilities conducts important cultural and sociological work toward ruining baleful myths of a perpetual, inherent black criminal class by illustrating that a black working-class character is able to raise close investigative inquiries.

“The Imagination and Construction of the Black Criminal in American Literature, 1741-1910” does not strive to be textually extensive or historically comprehensive. A number of omitted literary works of the periods I cover come to mind, such as George Lippard’s *The Killers* (1850), Harriet Beecher Stowe’s *Uncle Tom’s Cabin* (1852), and Frank Webb’s *The Garies and Their Friends* (1857). Slave narratives also warrant significant examination on questions regarding black crime and its representation. Despite these omissions, it is my hope that this work not only contributes to the field of literary studies and critical prison studies, but also to, and perhaps most importantly, reveals what is at stake in culture historically and contemporarily.
CHAPTER 1


The slave, who is but “a chattel”...becomes “a person” whenever he is to be punished!

He is the only being in the universe to whom is denied all self-direction and free agency, but who is, nevertheless, held responsible for his conduct, and amendable to law...He is under the control of law, though unprotected by law, and can know law only as an enemy, and not as a friend.—William Goodell, The American Slave Code in Theory and Practice: Its Distinctive Features Shown by Its Statutes, Judicial Decisions and Illustrative Facts (1853)

I

This chapter attempts to establish the foundation of the imagination and construction of the black criminal through cultural expressions from the colonial period, beginning with Daniel Horsmanden’s account of the 1741 New York Slave Conspiracy titled, Journal of the Proceedings (1744), to the antebellum period, ending with The Confessions of Nat Turner in 1831. Although other texts such as legal and visual reports are analyzed throughout, the literary genre chiefly discussed for this chapter is confessional literature, similar to what Jeannine DeLombard describes as “gallows literature” (5)⁹. I argue that Horsmanden’s Journal functions as both a literary-judicial

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⁹ Scholars of the genre use “confessional literature”, “confessional narratives”, “execution literature”, and “gallows literature” interchangeably. Although no clear distinction has been drawn between the terms, I employ “confessional literature” to emphasize the confession, the interaction and tension between the accused and listener
effort to document the veracity of the 1741 slave conspiracy and an addition to the rise of confessional literature that proliferated during the early national period. Departing from debates among historians of the period as to whether a slave conspiracy was afoot or came to fruition in the city, I am interested in how his journal provides informed, imaginative accounts of black slaves and freepersons as perpetual, transgressive threats of the colonies through eighteenth-century legal processes. The Journal’s contribution to what I term the “confessional period” (1741-1831) is marked by the many confessions and testimonies Horsmanden recorded, in which Africans are deliberately criminalized by the writer, the court, and even themselves. Yet, the subjects documented by amanuenses in confessional literature are not mindless, disengaged participants conveying their final words before facing their inevitable fates. It is here where I attempt to complicate what Michel Foucault refers to as the “hermeneutic function” of the confession. “The truth”, he contends, “did not reside solely in the subject who, by confessing, would reveal it wholly formed” (66). Instead, the confession, presented as unfinished, could only reach completion by the judge or religious figure to whom the confession is addressed, thereby making him “the master of truth” (67). Often, as in Abraham Johnstone’s confession, the subject’s words war with their ambiguous, mysterious writers in ways that nuance demarcations between writer and subject. Conversely, black amanuenses—quite rare during the period—like Absalom Jones and Richard Allen cloaked their sociopolitical

before the former is executed. Furthermore, “gallows” specifies style of execution, hanging. Not all those whose confessions and testimonies appear in print were hanged. In the case of the New York Slave Conspiracy of 1741, some were burned at the stake, hung by chains with their rotting corpses on display as a state-authorized lesson, and transported. There were obvious refusals to confess crimes on the part of some; however, those recorded and committed to death confessed sins, while also facilitating, indeed encouraging, the confession of sin (and crime) from readers, execution audiences, and fellow co-conspirators.
vindication and defense of black criminals, as well as their critiques of the criminal
justice system, in conventional religious admonishment of their communities. Ultimate
control, however, remained with the writer to whom the confession was told. For the
young Rose Butler (also known as Rosanna), this lack of narrative control in her 1819
confessional defines her both as literarily living and posthumous criminal. Through
various iterations and republication of Horsmanden’s *Journal* up to 1899\(^{10}\), the
circulation of confessional narratives until 1831, and the permitted (and omitted)
depictions of punishment and torture inscribed criminality onto black flesh, culturally
creating criminal bodies\(^{11}\).

by accounting for the literature’s popularity through cheap circulation of verses,
broadsides, trial reports, and autobiographies spanning from the late seventeenth century
to the conclusion of the antebellum period. However, popularity came with a price, a
criminal one at the expense of those of African descent. “If we allow”, remarks Richard

\(^{10}\) *Journal of the Proceedings* enjoyed numerous references through citation,
quotation, and immediate republication in 1747, 1810 with its changed title as *The Negro
Plot of 1741*, its mention as one of the great American crimes of the eighteenth century in
volume one of Peleg Chandler’s *American Criminal Trials* (1844), and 1899 in the
*American Catholic Historical Researches*’s 1899 *The Trial of John Ury[...] with Being
one of the Conspirators in the Negro Plot to Burn the City of New York, 1741*. Although
the 1744 publication was not its anticipated success, its literary spirit inhabited
publications under different names and print guises.

\(^{11}\) In her well-known “Mama’s Baby, Papa’s Maybe: An American Grammar
Book” (1987), Hortense Spillers usefully distinguishes “flesh” and “body”, in which the
former for her denotes the “seared, divided, ripped-apartness” of the transatlantic slave
trade, “that zero degree of social conceptualization that does not escape concealment
under the brush of discourse, or the reflexes of iconography” (67). Flesh is the landscape,
the canvass of torture, bringing punishments of technology life in the most brutal, vibrant
ways. Before the discursive network of black criminality takes shape in construction
black bodies as criminally predisposed, the flesh must be punitively prepared, wounded,
bloodied, and battered.
Slotkin, “for the possibility that narrative literature makes a stronger impact on the popular imagination than tractarian literature, the importance of black crime narratives” significantly increases. Demographically in New England, the epicenter of confessional literature, “narratives of black crime” represented “some 14% of the total” of crime narratives, “higher by far than their percentage of the New England population” (17). Before the establishment of sociology and criminology as concrete fields committed to registering, analyzing, and narrating crime data, confessional literature was a barometer that not only measured crime and criminals in their various types, but also inflated black crime through imaginative and didactic literary enunciations.

Like the rest of this project, the chapter is chronological, divided by five sections, starting with a reading of different technologies of torture, punishment, and executions that mark their inscriptions on black flesh. “Punishment”, comments legal historian Thomas Morris, “was central” to the relationship between master and slave (182). Sharing the same space of inquiry with literary critics Bryan Wagner, Colin Dayan, and Saidiya Hartman, as well as historians Louis Masur and Walter Johnson12, I am interested in what Johnson calls “carceral landscape” (209); but for my purposes, such a landscape of captivity and pain can be found on black flesh. Therefore, this section concerns itself with how crime and transgressiveness are imposed and construed through black brutality.

12 Texts I have in mind from these authors are Disturbing the Peace: Black Culture and Police Power after Slavery (2009), The Law is a White Dog: How Legal Rituals Make and Unmake Persons, (2011), Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America (1997), Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865, Soul by Soul: Life Inside the Antebellum Slave Market (2001), and River of Dark Dreams: Slavery and Empire in the Cotton Kingdom (2013). In different and differing ways, the common thread that connects all these texts together is the question of violence enacted on slave flesh.
Along with whips, different mechanisms and devices were incorporated to prevent the enslaved from escaping. Transgressive slaves were physically tortured in order to symbolize their waywardness. Planters and overseers were not the only ones who understood black maladjustment and misbehavior through their active participation as writers of brutality; but also, and most importantly, enslaved and free black people were included in this criminal narrative primarily as readers and writers. This section’s aim is to direct the reader’s attention once again to one of slavery’s essential components that often compelled confessions from enslaved black subjects, physical terror.

Section two deals with Horsmanden’s *Journal* in 1741 and its contribution to confessional literature in the second half of the eighteenth century. Scholars trace the genre’s beginnings in relation to the black condemned with two works by New England Puritan minister Cotton Mather, specifically *Pillars of Salt* (1699) and *Tremenda* (1721). Prior to Horsmanden’s *Journal*, no work comes close to the confessional content of *Tremenda*. There are obvious differences between Mather’s 1721 confessional transcription and Horsmanden’s account, the most striking one for my purpose being the latter’s legal orientation. Its purported presentation as law report also made it unique. As legal scholar John Langbein acknowledges, “Criminal law reporting in the modern sense is basically a nineteenth-century tradition, and one that reflects the radically altered state of affairs of the lawyer-dominated nineteenth-century trial. For most of the eighteenth century, when lawyers for prosecution and defense were rather peripheral figures,

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13 Interestingly, the oft-quoted passage by scholars in this work, “When [W.C., a white man executed for rape] came to the gallows, and saw death (and a Picture of Hell too in a Negro then *Burnt* to *Death* at the Stake, for *Burning* her Masters House with some that were in it) before his face, never was a cry for time!”, (71) is also quoted verbatim two years later in the second volume of his *Magnalia Christi Americana* (351).
lawyers’ literature was not much produced” (3). While Horsmanden desired to show that a conspiracy actually took place, despite disagreements from those inside and outside the city, he was not interested in providing a history of the event. Prefatorily, he comments: 

[A] journal would give more satisfaction, inasmuch as in such a kind of process, the depositions and examinations themselves, which were the groundwork of the proceedings, would appear at large; which most probably would afford conviction, to such as have a disposition to be convinced, and have in reality doubted whether any particular convicts had justice done them or not...for the proceedings are set forth in the order of time they were produced, the reader will...be better enabled to conceive the design and dangerous depth of this hellish project, as well as the justice of the several prosecutions. (43, emphasis in original)

For the reporter and judge, composing a history of the conspiracy involves contemplation and retrospection. Recording the trial’s verdicts, sentences, and depositions are, from Horsmanden’s perspective, positioned as accurate, irreproachable, and irrefutable. One may find biases in historical recounting, but not in the harmless task of recording and cataloging words supplied by witnesses and defendants. The Journal, therefore, is not a full break from religious didacticism; however, its compositional intent along with its confessions and testimonies strongly signal a transition from the moral to the legal. Through its publication and sales prospectus, Horsmanden’s reporting anticipates the Supreme Court copyright case, Wheaton v. Peters (1834) by selling verdicts rendered by judges to the larger public rather than specialized audiences. More to the point, however,
is how the *Journal* challenges accusations of racial bias (a point that is discussed in the section) and conspiratorial extrapolation.

Section three sets the stage for *The Address of Abraham Johnstone, a Black Man who was Hanged at Woodbury, in the County of Gloucester, and the State of New Jersey, on Saturday the 8th Day of July Last; to the People of Colour. To Which is Added His Dying Confession of Declaration Also, A Copy of A Letter to His Wife, Written the Day Previous to His Execution* (1797) through accusations of black crime during Philadelphia’s 1793 yellow fever epidemic. The same year, bookseller, printer, and economist Mathew Carey published *A Short Account of the Malignant Fever, Lately Prevalent in Philadelphia: with a Statement of the Proceedings that took Place on the Subject in Different Parts of the United States*. What connect these texts are disease, survival, and the associated discourse of criminality. Johnstone survives the outbreak, only to face the gallows four years later. According to Carey, what was once an economically vibrant, thriving city became threatened with ruin during the outbreak. For the author, economic ruin was associated with quality of care. When famed physician and social reformer Benjamin Rush sought medical assistance from black people who he believed were immune to the disease, it was considered substandard. Dismissively, Carey remarks, “Many men of affluent fortunes, who have given employment and sustenance to hundreds every day in the year, have been abandoned to the care of a negro, after their wives, children, friends, clerks, and servants had fled away, and left them to their fate” (31). “Fate” has double meaning, both equally insidious. Callously deserted by their closest confidants and relatives, these men who have been, through their monetary philanthropy, the lifeblood of the city’s prosperity are now left to die by two pairs of
metaphorical hands—ones belonging to the disease and other used by black nurses. Despite the “very great” “services of [Absalom] Jones, [Richard] Allen, and [William] Gray, and others of their colour [sic]” that “demand public gratitude” (33), their efforts did not prevent Carey from accusing black nurses of pilfering from sick and dead alike, and other black people from planning plunders and extravagant thefts. Two of the black men cited for their appreciated services, Jones and Allen, abolitionists and founders of the Free African Society, responded to Carey’s accusations in their coauthored *A Narrative of the Proceeding of the Black People During the Awful Calamity in Philadelphia, in the Year 1793: An a Refutation of Some Censures Throw Upon Them in Some Late Publications* (1794). The book’s purpose, according to its authors, was to set the facts straight on what they considered to be false accusations concerning alleged criminal conduct on the part of “people of colour” who cared for the sick (2). However, the authors, in a clever move, understate their purpose, for in defending the reputation of black Philadelphians they expand the definition of crime and shift criminal complicity onto white Philadelphians, including Carey. Their eyewitness accounts and documentation, similar to Hormanden over fifty years prior, come off as disinterested, unbiased reportage. Jones and Allen’s adroitness with language offers the proper transition into Johnstone’s confessional. Intertextual in form, the *Address* targets not only Philadelphia’s “People of Colour”, but also, on a personal level, his wife. Johnstone unfolds a number of confessions, but one of the more critical aspects of this work is how it astutely resists assigning criminality to black bodies with the understanding that such a narrative was growing in pervasiveness and appeal. Like Jones and Allen, Johnstone
critiques white people by using his dying words to ascribe criminal responsibility to them, primarily through excoriating slavery.

I find Allen in unique circumstances for the fourth and final section, which is interested in what happens when the amanuensis of the confessional is not white, as was overwhelmingly the case, but black. Analyzing the seldom-studied *Confessions of John Joyce, alias Davis, Who was Executed on Monday, the 14th of March, 1808, for the Murder of Mrs. Sarah Cross; with an Address to the Public and People of Colour, Together with the Substance of the Trial, and the Address of Chief Justice Tilghman, on his Condemnation* (1808), I pay particular attention to its structural order as a form of literary critique. For example, attached to John’s confessional is one by his alleged accomplice, Peter Mathias. Unlike John who admits, without reluctance, to murdering Sarah, Peter adamantly denies direct involvement. His “confession’s” placement in the same pamphlet as John’s adds structural complexity to the document. Peter does not confess, he vehemently pleads his innocence. However, considering that John is seemingly honest about his role in Sarah’s murder, the reader, through John’s sudden narrative inconsistency nearly hidden in a footnote, questions and struggles with his partner’s guiltlessness. Added to this section are the multiple documents pertaining to the 1819 confession and execution of a nineteen-year-old enslaved black woman from New York who is found guilty of arson, Rose Butler. One cannot overstate how confessional literature, especially regarding crimes such as arson and murder, reflected the gender of its purported perpetrators. Yet, it would be a mistake to overlook black women confessionalists. Her little-known story firmly anchors my argument through her

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14 I am indebted to historian Brian Luskey for this discovery.
amanuensis’s deliberate excising of pertinent information that could have potentially saved her from the gallows. Two white men who were owed money by her master, Mr. William Morris, were named by Rose as the ones responsible for arson; but Stanford, her amanuensis, directs that their names and this information should not be printed. Furthermore, the amanuensis is given free reign to draw from newspaper reports on the arson in order to add or remove what he sees fit, as long the editor examines his final draft. I am curious about what it means to explicitly manipulate texts not only as it relates to perpetuating black criminality through literary accounts, but also at the expense of a black woman. Indeed, late eighteenth and early nineteenth-century readers would have encountered more women executed for arson than for murder. In fact, arson in this confessional is surprisingly considered more egregious than murder, for the former has greater potential to indiscriminately include the innocent.

Following DeLombard’s periodization, the chapter concludes with a brief analysis of Nat Turner’s Confessions. It is distinct from other confessional narratives of the period by how it situates Nat as gifted and intelligent, when usually the black condemned are depicted as lacking adroitness. While previous confessionals morally reprimanded criminal subjects, God, according to him, sanctions Turner’s crimes. Rather than repel and repudiate criminality, Turner espouses, embraces, and justifies it.

II

I start with three scenes of discipline in South Carolina. The first scene is oft-cited: it comes from “Letter IX: Description of Charles Town: Thoughts on Slavery; on Physical Evil; A Melancholy Scene” from J. Hector St. John de Crèvecoeur’s Letters from An American Farmer; Describing Certain Provincial Situations, Manners, and
Customs, Not Generally Known, and Conveying Some Idea of the Late and Present Interior Circumstances of the British Colonies in North America (1782). The reader finds the French-American writer in Charles Town (Charlestown) where, except the enslaved, “[t]he three principal classes of inhabitants are lawyers, planters and merchants; this is the province which has afforded to the first the richest spoils, for nothing can exceed their wealth, their power, and their influence” (167). In a city of great wealth and splendor, there is also blaring silence: “the horrors of slavery” exist on the city’s periphery; “the cracks of the whip” and accompanying cries of “daughter[s] torn from [their] weeping mother[s]” are too distant to be heard by the writer. Indeed, it is a “[s]trange order of things” for slaves to create the very opulence for “persons they know not, and who have no other power over them than that of violence…” (168). The writer’s purpose throughout his letter is to illustrate diabolical contrast between a country predicated on freedom and liberalism in the aftermath of its own revolution from tyranny and the black population it holds captive. He concludes his letter with a grotesque scene, depicting slavery in its most naked form. On his way to dine with a planter, the writer noticed, “the air strongly agitated, though the day was perfectly calm and sultry” (177). Birds surrounded a cage-like structure that contained the impending carcass, “the living spectre”, of a slave who “killed the overseer of the plantation”, in which “the laws of self-preservation rendered such executions necessary, and supported the doctrine of slavery with the arguments generally made use of to justify the practice…” (178). His flesh was mutilated: the birds feasted on his eyes, his arms were lacerated, and his entire body was covered in wounds, indicating previous torturous acts conducted on his person. Mockingly written, a motionless Crevècoeur gave, upon request, the tortured person
before his eyes water to assuage his thirst. After this paradoxically meaningful, yet meaningless act, he personifies humanity as a woman, suggesting that despite all known acts of depravity, she “would have recoiled back with horror; she would have balanced whether to lessen such reliefless [sic] distress or mercifully with one blow to end this dreadful scene of agonizing torture!” (178). He contemplated deciding the slave’s fate—“Had I had a ball in my gun, I certainly should have dispatched him”, but immediately learned that he was “unable to perform so kind an office…” (178). After learning from the torturously malformed slave that he had been left to die for two days, Crèvecoeur is able to gather his composure to join his host for dinner. In this instance, humanity has reached her normative limits, shifting her center from decentness to the choices of continued torture through living or quick and instant death. Her compunction of this indecent, seemingly insufferable scene may force her to suddenly flinch with disgust, but it does not prevent her, like Crèvecoeur, from considering the slave’s unfortunate outcome. Both staring at the mangled body before their eyes, personified humanity, gendered as a woman, shares the same line of reasoning with material man (Crèvecoeur)—to immediately end his life, to spare him of what seems to be additional, unrelenting suffering would be to fulfill a generous duty. Yet, one wonders if this consideration was for the slave’s benefit or to simply terminate the visual depiction transpiring before the gazers. For humanity, her disgust requires that she thoughtfully ponder whether it is best to futilely mitigate his circumstance or to, “with one blow…end this dreadful scene,” relieving her and, one may safely assume, Crèvecoeur’s mental anguish over the matter. With unmistakable shame, the scene of dismembered black flesh, with its unfathomable horror, forces the writer into “involuntary contemplation”: 
for his reader’s sake and for his own, he does not want to think or write about it. He
“apologize[s] for the gloomy thoughts” associated with the scene, and would have left it
unmentioned in his discussion of slavery if his mind had not “always…been oppressed
since I became a witness to it” (178, 177). This may also explain his hurried abruptness
by which he ends his letter. Although Crèvecoeur desires to expose slavery’s horrors with
flesh-and-blood vividness, thereby hoping to equally reveal the slave’s humanity, he,
instead, postpones his effort by centering his and humanity’s trouble consciences. Like
the slaves’ cries that cannot be heard in Charles Town, what is most unsettling about
Crèvecoeur’s portrait is not torture and terror, but the reality that he and his readers must
bear witness to it. Crèvecoeur brings the geographically marginalized slave to the center
of his letter in order to decenter their humanity for that of the reader.

The next scene takes place in 1828 when a South Carolina overseer writes in his
private journal about the frequency of punishment slaves incur and his own involvement
in this practice. “More punishment”, he notes, “is inflicted on every plantation by the
men in power from private pique than from a neglect of duty. This I assert as a fact; I
have detected it often…When I pass sentence myself, various modes of punishment are
adopted; the lash least of all” (Breeden 78-79). The slave’s dutifulness, her work ethic,
was not in question—rarely did the overseer find fault with her assiduousness. The sine
qua non of her purpose on the plantation—i.e. her labor power—seldom was the
justification for an overseer or planter to exact punishment. Instead, her violation, the
cause of her punishment, was more intimate, more interpersonal. For this South Carolina
overseer, whipping his enslaved laborers was not preferable. From extended labor to
captivity, he diversified his methods to keep the flesh intact and without blemish (“[t]he
lash” should “never…lacerate”), while the body and spirit suffered. However, prohibiting
the flesh from physical damage was provisional: it was to perforce prepare the tissue for
greater transgressions, whether personal or labor-oriented, that would occur—certainly,
overseers and planters awaited them. Sparing exterior flesh did not minimize the
effectiveness of punishment, nor were unseen sinews absolved. Included in “[t]he
parsimonious rationing of shoes, coats, and blankets [that] defined a deeper disciplinary
economy, a sort of calculated disability limiting the enhancement of bare life” was
“controlling the food supply” of slaves, at times through deliberate starvation (Johnson
219, 220). Slaves’ flesh was the site of disciplinary, punitive, and regulatory
experimentation. Slave law, especially in the first three decades of the nineteenth century,
sought ways to manage harsh discipline dispensed by planters and overseers alike.
Theoretically, brutal punishment within “reason”—a term with sizable ambiguity and
uncertainty—was not legally or personally prohibited: to cause debilitating physical
grievance or death to slaves outside lawful justification served little purpose to the slave
power (Morris 183)\textsuperscript{15}. Diversifying and multiplying punishment, having it creep into the

\textsuperscript{15} On the question of slave punishment, the room for what was deemed legal and
illegal was spacious, especially in enforcement. From the eighteenth century to the close
of the antebellum period, there are few cases of overseers or planters found guilty and
sentenced to anything outside monetary infractions after severely abusing, killing, or
murdering slaves. This does not include assaulting slaves or free black people. In “The
‘Law Only as an Enemy’: The Legitimization of Racial Powerlessness Through the
Colonial and Antebellum Criminal Laws of Virginia” (1991) Historians Higginbotham
and Jacobs offer the following:

Assault and battery of a slave, free black, or mulatto went largely
unpunished…Between 1800 and 1860 there were eight reported appellate cases
involving indictment of whites for either murder or assault of blacks…In those
sporadic instances when a prosecution did occur, the record suggest that most
often its impetus was primarily to protect the slaveowner’s property rights and
to serve as a warning to others that slave property should not be damaged by
persons who were neither the owner nor his designee. (1045)
smallest fleshy crevices is not only to punish better and more effectively in a Foucauldian sense—that is part of it—but also it is also to punish visibly yet silently. It is to see punishment, not hear it. To witness its symbols, but not hear its screeching testimony. To read its inscription in and on flesh, but to also eliminate its blaring sub-vocalization.

One year later, a planter from the same state offered his personal remarks on slave discipline. Referring to the “proper management” of slaves as a sentimental and practical dilemma “than perhaps any other vocation” man “could follow”, he notes that to chronicle “their conduct would be a record nothing short of a series of violations of the laws of God and man” (Breeden 79). Slaves, according to South Carolina planter, perpetually contravene moral and legal stipulations that make it difficult for any profound effort to “moralize and induce the slave to assimilate with the master and his interests.” While swift, steady discipline is in order for these incessant infringements, planters and overseers “are bound under many sacred obligations to treat them with humanity at all times and under all circumstances.” He continues with the following:

Although compelled to use coercive measures for their good discipline, yet we should never lose sight of humanity in its strictest sense. Under all these considerations, it requires for the good management and discipline of those people a man of steady habits, connected with sobriety, fortitude, energy, and humanity, and a passion for enterprise. To clothe the naked, feed the hungry, and sooth the sick should be our ceaseless duty toward the slave; and to compel them to theirs should be the order of the day. (79)

For greater discussion on this and related matters, also see Morris’s Southern Slavery and the Law, 1619-1860.
Care and sympathy, compassion and good faith comingle with discipline, “coercive measures”, and passionate enterprise. Ensuring that slaves are fed when hungry, receive salubrious care when sick, and clothed when bare was situated within a disciplinary regime that understood itself as deeply humane, faithfully invested not only in slaves’ humanity, but also how disciplinary tactics reflected on the humanity of the planter. Troublingly, the planter’s humanity is reflected in how he treats his property—the slave’s body transforms into both measurement and mirror, calculating and reflecting the quantity and quality of her owner’s compassion and humanness.

Humanity is the fabrics used to stitch these scenes of discipline and torture together in a firm seam. It is important to keep in mind that these acts, along with terror and mutilation, were not dehumanizing or inhumane. Instead, as historian Walter Johnson reminds readers in his essay, “On Agency” (2003), they “are activities which are elementally human and which depend upon the sentience of a suffering human object to produce the effect desired by their (all-too) human perpetrators” (116). Rather than portraying conduct outside human capacity, these scenes represent various gradations of humanity, sliding legal and moral scales between what is permissible and justifiable and what is considered extreme and destabilizing for the slave power.

Conceptualizing humanity in this way, opening its meaning to consider violence through discipline—indeed, fundamental and “endemic to the human condition” (Lawrence and Karim 13)—provides suitable transition for analyzes about specific mechanisms and practices of what could be considered brutal humanization of slaves that is primarily concentrated on their flesh in order to create perennially transgressive bodies. Here, I turn to the Irish-American planter-turned-abolitionist and itinerant preacher
Thomas Branagan’s 1807 work, *The Penitential Tyrant; or, Slave Trader Reformed: A Pathetic Poem, in Four Cantos*, first published in Philadelphia\(^\text{16}\). “The Penitential Tyrant”, writes Christopher Phillips, “was told in first person, a combination of confessional autobiography, polemic against slavery, and preacherly exhortations to virtue and Christian conversation” that “selectively” “draws on” the Homeric and Miltonic epic (607). The few scholars who have written on this work primarily focus on its literary components. Rather than pursue this line of inquiry, my analysis will strictly discuss how his images depict disciplinary tactics of enslavement. Although his illustrations and descriptions concentrate on his time as a plantation foreman in Antigua, the two editions of his work were published in the United States, Philadelphia and New York respectively. *The Penitential Tyrant* as a material document is, therefore, transnational in both content and publication, potentially importing punitive ideas and experiences into the Republic.

Despite occasional hesitancy and reconsideration on the part of planters, overseers, slave patrollers, and slaves, whipping was one of the most quotidian disciplinary practices from the colonial to antebellum period. Although liberally practiced on the slave’s flesh, it was not without concern for her body as laborer. In the case of slave patrollers, “[s]lave owners stood to lose valuable property when a slave suffered or died from harsh…whippings, particularly if the abusers had no assets to pay for the bondsmen they injured.” Some southern planters “petitioned the legislature for greater restrictions and penalties on men who cruelly whipped slaves…” (Hadden 101). The need

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\(^{16}\) A second edition is published two years later in New York. There are negligible differences between the two; therefore, the 1807 edition is the version I use for my analyses.
to damage the flesh for disciplinary purposes, while simultaneously preserving the body as property inverts, yet perpetuates the legal dichotomy couched in the enslaved.

Resonating with William Goodell’s formulation quoted in the chapter’s epigraph, English colonial law considered slaves “as a form of property in the law; [and], technically speaking…had no ‘personhood’ in law, but when slaves committed crimes they were treated as human beings with the power to choose between good and evil and the will to make decisions” (Hoffer 13). To ensure that punishment is maximized, to make sure it is carried out and understood as effective both physically and psychologically, there must be some concept, however tenuous, that the abuser recognizes the abused as human, that the flesh ripped apart before his eyes belongs to a mortal. Flesh is the medium by which this concept is shaped. But its disfigurement should only take place within proper legal and economic regulations. In disciplinary practices, flesh must be understood as tissue attached to an animate entity that labors, one that has economic and market value, a being that is just as much property as it is flesh. When the whip makes contact with flesh, the slave is understood as both human and person17. Regulation and calculation—the type of physical energy applied to the flesh and the amount of lashes applied for each offense—creates, among other practices of the economic variety, laboring bodies as property. These transfigurations and oscillations between flesh and body are cocooned by perceived transgressive, criminal behavior on the part of the slave. Theft, labor slowdowns, absconding, murder, holding property unfit for her status—all these and more constitute plantation and legal violations, as well as their overlap, that may cause the application of the whip.

17 Despite how grossly ineffective they were, there were, quite ironically, laws that protected slaves against grave abuses and death on the part of owners and others.
Although it is well understood that overseers and planters, along with slave patrollers, employed this device onto the slaves’ back and extremities, I want to turn to an image in Branagan’s work (Appendix A) that captures a slave whipping the back of another. “Another method”, writes Branagan, who words accompany the image, “[is] of fixing the poor victims on a ladder to be flogged, which is also occasionally laid flat on the ground for severer punishment” (273). One of the most immediate aspects surfacing from this image is proximity. Flesh fully exposed, the abused is nakedly attached to ladder angled upright against a tree, while the abuser, a fellow slave, is off to the right and behind the slave awaiting punishment. The gender of the abused slave is unclear, which universalizes his/her position: the abusing slave can replace, may have replaced, and will replace his fellow enslaved comrade, thereby encompassing a long temporal trajectory of disciplinary measures. The whip, a lash with a long handle, is held above his head with his arm and forearm at ninety degrees. He holds the punitive instrument high above his head, while he positions himself and his arm to deliver a backhand blow. Holding the device in his hand this way gives him additional leverage to land a more impactful, devastating strike: he will be able to put more strength into his stroke by rotating his body to then away from the abused slave, while allowing his arm to move upward then down, as opposed to exerting more energy with a down-to-up movement.18 Seemingly capricious on page, these movements and positions indicate keen, calculated considerations when inflicting punishment. Standing diagonally behind both slaves, outfitted with a top hat and inverness coat—distinguishing himself from any other disciplinary administrator—is the planter with a rod-like device situated lower than that

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18 I am indebted to Avelino Amado, PhD Candidate in Kinesiology at the University of Massachusetts – Amherst, for his insightful analysis.
of the abuser’s whip. One is not sure whether he holds it to issue directives or to potentially thrash the abuser if he is not pleased with how his orders are carried out.

Broad in posture, he leans slightly to his left to make himself more visible to the viewer, while improving his view of the slave in the ladder. Spatially, these play on angles invite the viewer to witness what is taking place before her eyes. Determined, his erect stature conveys that he is issuing edicts to the abuser, ensuring that he properly lies on the lashes with necessary force. His stern countenance also exhibits deep interest in and concern for the task at hand. By standing so close to both enslaved figures, positioning himself at an angle to where the abuser does not impede his view, but can still fully observe him—standing behind both puts him out of immediate view of the abused and abuser; the planter can view, but cannot be viewed—give him the advantage of surveilling both with equal visual effect. In this scene, the planter is not only invested in the abused slave’s punishment, but also how his fellow slave punishes him. If the abused is not disciplined to the exact specifications delineated by the planter, the abuser, one may assume, will take his place. Moreover, the abuser is invited against his will to engage in punitive labor of someone who could be him, as illustrated by how both the abused’s and abuser’s faces are difficult to make out. Often, whipping was not a private punitive enterprise. In New York, for example, “[b]oth male and female blacks were publicly whipped at street corners where other blacks were forced to watch. For example, if a black was given 39 lashes, they could be administered three per corner, then he would be marched to the next corner” (Williams 335). Using space and visual geometry disseminates the punishment’s effectiveness and message, removing it from individual isolation. Like the unknown gender of the abused slave, their dark, unclear faces universalizes, yet complicates the
roles of abused and abuser. Both characters can (not) see themselves in each other: their sable hue, their similarly cropped hair, and their spatial positions in relation to the planter form their roles as interchangeable. The whip’s cracks, the slaves’ cries reverberate throughout the plantation, interpellating surrounding slaves as potentially the next one to be securely strapped to the ladder. Considering the contiguity of each actor to one another, both slaves (and those surrounding) are being punished and both are treated as transgressive.

Moving from the strident sounds of the whip, I now focus on the silence and symbolism of iron. Prior to the image (Appendix B), the reader is offered the following description in full to account for the device’s intricacies.

A front and profile view of an African’s head, with a mouth-piece and necklace, the hooks round which are placed to prevent an escape when pursued in the woods, and to hinder them from laying down the head to procure rest.—At A is a flat iron which goes into the mouth, and so effectually keeps down the tongue, that nothing can be swallowed, not even the saliva, a passage for which is made through holes in the mouth-plate.

An enlarged view of the mouth-piece, which, when long worn, becomes so heated, as frequently to bring off the skin along with it.

A view of the leg-bolts or shackles, as put upon the legs of the slaves on shipboards, in the middle passage.

An enlarged view of the boots and spurs, as used at some plantations in Antigua.

(270)
The slave’s eyes look sadly similar to the ones vaguely captured in the previous image. Filled with sorrow and gloom, they highlight how suffocating the mouthpiece is for him. But the “front and profile” views are not meant to highlight his suffering nor how stifled his flesh is; rather, they underline the mouthpiece’s various components and its efficaciousness of torture. One notices its structure: heavy iron, vulgar design, full extensions, its symbolism labeled the wearer transgressor through silence. The mouth is unexposed, rendering the slave mute, while its structure conveyed punitive messages. It was not a device fiendishly applied to every slave: such ubiquity would have minimized its symbolism of fear and terror. Instead, it implied the presence of an absconding subject, a fugitive slave. Although its presentation immediately catches the viewer’s attention, the anguish felt by the slave is more fleshly internal than external. When escaping through wooded areas, the hooks attached to the necklace portion of the mouthpiece latch on to brush, twigs, branches, and other vegetation, inhibiting, if not entirely impeding, his movement. Additionally, the pronged necklace, by restricting his head movement through relative fixity, curtails his vision—he now has limited motion. In order to expand his vision, he would have to move his body; but to move his body would be to further hamper his range of movement. Preventing escape with this device also means to impair visual possibilities that facilitate fleeing. Damage inflicted by the mouthpiece moves inward towards the slave’s bodily functions, using the subject’s/object’s energy against him. The necklace’s extensions serve dual purposes, to restrict movement and to play on it. In order to continue escaping, the slave must at least rest (and/or hide) periodically. With this technology, escape, rather than working as a process towards potentially actualizing freedom, is used against the slave, forcing
continued, breathless, restricted, and constricted movement. The flat iron that weighs down the tongue, obstructing the slave from swallowing his saliva, exacerbates such breathlessness. Holes are made in the mouth plate for mucus to exit, accelerating the drying of the mouth and dehydration. No sustenance, no food, no water, no saliva can enter, thereby “transmut[ing] nature into human energy…convert[ing] distance into privation, space into starvation” (Johnson 220). Finally, the material out of which the mouthpiece is made was deliberately selected to use elements and time as methods of punishment. If the mouthpiece is worn for long durations, it will be intensely heated by the sun, literally cooking the flesh of its unfortunate wearer. The mouthpiece, upon its removal, peels off skin, reminding both its former and future wearer of its painful meanings, transporting one slave’s flesh to that of another. Branagan’s work reveals how in some cases, escape is used as a weapon for the planter in order to torture and discipline slaves. Through both their silent and stentorian symbolism, disciplinary technologies not only punished transgressive slaves in the moment, but also invited other enslaved persons to participate in punitive acts and, in the process, convincingly created transgressive slaves. The slave not only commits crime, but also must agonizingly wear it.

III

In 1744, Daniel Horsmanden, former court recorder and chief justice of British New York, believe his Journal of the Proceedings would sell well, for it would be proof without hyperbole or bias that a conspiracy orchestrated by John Hughson, a white tavern owner, in concert with its black slaves, to destroy the city and its white inhabitants, except its women, was planned. Jill Lepore, author of the most comprehensive study to date on the 1741 conspiracy, New York Burning: Liberty, Slavery, and Conspiracy in
Eighteenth-Century Manhattan (2005), remarks, “Horsmanden was ‘expecting a large Sale.’ But he was to be sorely disappointed. [James] Parker [his printer] sold fewer than fifty copies before a London printer brought out a much smaller and cheaper edition in 1747, denying Parker the opportunity to export what he could not sell in the colonies” (215). Despite some New Yorkers reading his account as flagrantly exaggerated, news of the conspiracy was not limited to the city’s confines: “Subscriptions were taken in New York, Boston, and Philadelphia” (214). Horsmanden’s reputation may have suffered as a result of the poor sales of his work; but the idea of conspiracy, not without historical precedent, resonated into the nineteenth century. For many of them, the 1712 New York Slave Revolt, in which twenty-three Africans murdered nine white people, was not a distant memory. More recently, they heard about South Carolina’s Stono Rebellion of 1739 that led to “the slaughter of twenty-nine settlers near the Stono River…” (Horne 110). In the late 1730s, in nearby Maryland, “frightened citizens of Prince George’s County warned the Council of ‘a most wicked and dangerous Conspiracy having been fored by them the slaves to destroy his Majestys [sic] Subjects within this Province, and to possess themselves of the whole Country’ ” (Jordan 121). Leaving the colonies to cross the Caribbean Sea, they also read about the 1736 slave plot in Antigua. And with a sizable number of New York slaves coming from Jamaica, settlers most certainly read about “in the 1720s and 1730s, large bands of runaway slaves, led by a charismatic leader named Cudjoe, established rebel towns and fought off repeated efforts to conquer them” in publications such as New York Gazette and the Weekly Journal\(^\text{19}\) (Lepore 53).

Important to keep in mind, however, was, despite their actual occurrences, how uncommon slave revolts were. Yet, as historian Winthrop Jordan puts it in *White Over Black: American Attitudes Toward the Negro, 1550-1812* (1968), it was the “picture of the Negro as a potential insurrectionary” that thrived in the North and South (115). With the London printer creating smaller, cheaper versions of the *Journal*, a colonial and transatlantic circulation of the conspiracy was established in easier ways than James Parker’s peddling of subscriptions. With such wide diffusion of the *Journal*, one is able to supplant questions of whether Horsmanden embellished his account or if a conspiracy in fact took place with the question of how his account about actual and potential black rebellion, supported by recent historical examples, generated and shaped ideas about brewing, lingering, and persistent black crime.

Each crime committed by slaves document in the *Journal* raises questions around the concepts *deodand* and *mens rea* found in the property that transforms into a legal person when a legal infraction occurs. Legal historians and scholars have assumed that the slave as deodand, if applicable, is suspended once it is found legally liable for injury or death criminal intent takes the place of the deodand. It is my contention that when it comes to slaves, they existed as both deodand and criminal person throughout the legal process. As attorney and legal scholar Anna Pervukhin notes, deodand law can be traced back to the eleventh century, and was commonly practiced throughout England and its colonies until its abolishment in 1846 (237). She continues by defining the concept and describing its application:

Under this law, a chattel (be it an animal or inanimate object) was deemed to be a deodand whenever a coroner’s jury decided that it had caused the death of a
human being...In theory, the crown was supposed to confiscate falling irons and killer pigs, sell them and send the profits to the kind’s almoner who would eventually apply them toward some pious use. In practice, deodands were rarely taken away from their owners. In most cases, the jury that adjudged the deodand also appraised its value; owners were then expected to pay a fine equal to the value of the deodand. (237)

Using the “maxim [that] is sometimes said to be the essence of the criminal law”, Albert Levitt defines mens rea with the common Latin phrase, actus non facit reum nisi mens sit rea, meaning “the act is not culpable unless the mind is guilty” (117). Colin Dayan’s The Law is a White Dog (2011), linking both legal elements, argues that “[t]he deodand with its associated belief in ‘evil influence’ or ‘evil nature’ is a direct bridge to the legal theory of mens rea, a ‘guilty mind’ ” (181). The evil spirit of the deodand “derives from the Latin phrase deo dandum, which means ‘to be given to God’ ” (Pervukhin 237). Its legal liability personifies it from innocuous thing or animal to a reasonable object/subject. “Instead of the unreasoning thing”, writes Dayan, “moving to the death of a reasonable creature, the mental awareness necessary for criminal liability depends on a subjective test of liability: generally put, reasonableness gone reckless…[T]hese mutations generated by law become part of the logic of punishment” (181). Therefore, the slave existed in nebulous legal space, mutating and fluctuating between criminal property (deodand) and criminal person (mens rea) in one body.

Knowing that slaves occasionally committed capital crimes such as arson and murder, Maryland legislatures in 1717 attempted to prevent slave testimonies by compensating their owners. There were exceptions throughout all the colonies, including
Maryland, which only permitted slave testimony when another slave stood trial. “In New York, ‘Negro Evidence’ was strictly circumscribed: not only was it only allowed against other slaves, it was only admissible in cases of conspiracy, arson, and murder, according to the province’s 1730 law ‘for the more effectual preventing and punishing the conspiracy and insurrection of negroes and other slaves’ ” (Lepore 98). Undoubtedly, “[w]hites never viewed slaves as paragons of truthfulness” (Morris 1214); however, their scant veracity when testifying against those with equal (dis)honesty was taken seriously and used as evidence during a period without criminal investigators and detectives. Participating in the evidential portion of the judicial process, attesting to a conspiratorial plot, endows chattel (slaves) with personhood in order to discover guilty (black) parties. Contradictory in legal formulation, property cannot testify against property, especially if the slave tried could be found guilty of a capital offense. Prevented from offering words that could potentially find white offenders complicit in criminal activity, property embodied in the slave through testimony is momentarily interrupted, only to resurface through guilt and sentencing. Of the close to two hundred slave suspected of burning the city and killing its white citizenry, “thirteen black men were burned at the stake” and “[s]eventeen more were hanged, two of their dead bodies chained to posts…left to bloat and rot.” Furthermore, approximately “eight-four men and women were sold into yet more miserable, bone-crushing slavery in the Caribbean” (Lepore xii). Possibly to clear up confusion between slaves who shared the same names—for example, “Caesar (Vaarck)” and “Vaarck’s Caesar” (Horsmanden 24)—but to also account for owners who were legally granted compensation for executed or transported property, slaves’

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20 By transportation, I refer to the eighteenth-century British practice of conveying
testimonies were recorded with their owners’ names parenthetically cited throughout Horsmanden’s *Journal*. In this arrangement, it is the slave, when sentenced, who suffers punishment through personhood, while the owner is compensation through the slave’s simultaneous deodand status. Whether jailed, transported, or executed, even in the slave’s absent, she, like a disjointed specter, simultaneously represents person and property.

Like Dayan, I now focus on the logic of the law as a mode of juridical punishment. Caesar and Prince, the two slaves considered to be the main conspirators in the plot to destroy New York and establish a new government with tavern owner John Hughson as king, Caesar as governor, and Prince as his assistant, were hanged not for their role in the conspiracy, but for larceny. Prior to their sentencing, both men had histories of theft and social transgressions. The fact they frequented Hughson’s tavern, or any tavern for that matter, was a serious legal offense. Historian Oscar R. Williams observes,

Like the southern plantation, the tavern in the Middle Colonies was both the entertainment center and community crossroads. In addition, taverns alehouses, grogshops and inns also afforded blacks the opportunity to participate in activities that were considered undesirable or illegal by prevailing authorities. Most of the black tavern-related ordinances were designed to restrict the movement of blacks and expelling felons overseas that continued in Britain even after the emergence of the penitentiary during final decade of the century. Britain did not have a well-developed penitentiary system until Milbank in 1816. Prior to its construction and “[n]otwithstanding the extensive and well-publicized efforts of prominent prison reformers, seminal prison legislation, and the end of imprisonment’s primary penal alternative, transportation to the American colonies, Britain failed to put its faith in the penitentiary and its strict disciplinary regimen” (Willis 402). Such a penal practices raises additional questions regarding the slave’s personhood that are similar to ones raised when the slave is incarcerated.
in what was considered a den of sin or more importantly a bed of conspiracy for non-white colonists. The general belief that strong liquor, or the quest for it, would drive blacks to crime remained a major motivation behind much legislation. (330)

Africans consuming liquor was no small matter for the court. During Prince and Caesar’s verdict, Hormanden takes time to discuss the seriousness of this offense:

> Another Thing which I cannot omit recommending to your serious and diligent Enquiry [sic], is to find out and present all such Persons who sell Rum, and other strong Liquor to Negroes. It must be obvious to every one, that there are too many of them in this City; who, under pretence [sic] of selling what they call a Penny Dram to a negro, will sell to him as many quarts or gallons of rum, as he can steal money or goods to pay for. How this notion of its being lawful to sell a Penny Dram, or a Pennyworth of rum to a slave, without the Consent or Direction of his master, has prevailed, I know not; but this I am sure of, that there is not only no such law, but that the doing of it is directly contrary to an Act of the Assembly now in Force, for the better Regulating of Slaves. Consequences flowing from this prevailing and wicked Practice are so notorious, and so nearly concern us all, that one would almost be surprized [sic], to think there should be a Necessity for a Court to recommend the Suppressing of such Pernicious Houses; Thus much in Particular; now in General. (12)

Other unrelated restrictions were enforced, such as vending and congregating at wells without white people present. These regulations were foisted not merely to prevent insurrectionary or conspiratorial ploys, but to also, and more importantly, control black
movement. Concerning black testimonies, “the Journal reveals a world that allowed black men and women to travel freely, to socialize often, and to create elaborate rituals” (Bond 65). Whether or not the conspiracy lacked serious credibility was not the central issue. Instead, one can read Hormanden’s work as a contribution to a larger effort to further monitor and regulate black mobility, serving as a warning against such freedom during the eighteenth and nineteenth centuries.

Theft and interracial sex wed all the major actors together to conspire against white New Yorkers, the former slightly more than the latter. Indeed, “Stealing and Plundering was a principal Part of the Hellish Scheme in Agitation…” Despite curfews, Caesar’s social transgressions were protected by the cloak of night. Not only did he, along with Prince and other slaves, pilfer goods and money from time to time, but he also had sex with and impregnated Peggy Kerry, an impecunious white woman who was also a prostitute. In the Journal, Horsmanden uses their penchant for stealing, Caesar’s sexual relationship with Peggy, and their congregation at Hughson’s tavern as the plot’s foundation. Indeed, a critical part of their conspiracy was to take white women as their wives after dispatching the city of its white men. Their deaths, along with the executions of other slaves, would not generate many dissenters. “Those whom the state hanged tended to be young, black, or foreign. The identity of the condemned helped prevent dissent on hanging day, yet at the same time made it more difficult for authorities to convince spectators that unless they obeyed civil and divine law they too would end their days upon the gallows.” Sadly for the condemned of color, “there was little basis for social ties and mutual obligations between the prisoner and any one segment of the population. There was no obvious constituency to challenge the probity of the hanging”
(Masur 6, 46). Even though it was not entirely impossible for white citizenry to empathize with the black condemned, race, age, and national status were difficult impediments to overcome. Keeping in mind the many confessions recorded in Horsmanden’s work, along with its 1810 republication, this challenges Tanya Mears’s thesis that confessional literature of the period did not “represent [Puritans’] racist agenda in prosecuting and executing people of African descent” and that the literature was not “intended to instill a fear of people of African descent in the early American readership” (2). It was critical for Horsmanden to not only expose the reality of conspiracy, but to also clearly demarcate class and social lines in colonial New York. The court’s verdicts in concert with the executions “hoped to fashion a society with clear social distinctions between slaves, elite whites, indentured servants, free blacks, and free whites, as well as between men and women in all of these categories” (Zabin 11). Among white colonists, there was a collective understanding, despite religious admonishment, that those typically executed were black Others.

On Friday, May 8th, 1741, Horsmanden and his fellow justices issued their verdict to Caesar and Prince. Before reading their sentences, however, he assured them, those in attendance, and future readers about the legal fairness they received. In condescending tone, he states the following:

I must tell you, that you have been proceeded against in the same Manner as any white Man, guilty of your Crimes, would have been. You have not only the Liberty of sending for your Witnesses; asking them such Questions as you thought proper; but likewise making the best Defence [sic] you could; and as you
have been convicted by twelve honest Men upon their Oaths, so the just judgment of GOD has at length overtaken you. (20)

It is important to keep in mind that these (white) men were honest through baptism. In Maryland, slaves could only be deposed when testifying against Indians and other black people, included freewomen and freemen, “as long as it was a case that did not involved depriving them” of life; in Virginia, as early as 1692, the law excluded testimony of non-Christians until it permitted godless oath with biblical sanctions (Morris 1210, 1215). As mentioned earlier, slaves were presupposed as dishonest; therefore, providing Caesar and Prince liberty to amass and interrogate witnesses would have been considered mere performance, doing little to nothing to change their fates. Furthermore, contradictions abound in Horsmanden’s address and, later, exhortations of repentance. In both his preface and the slave Patrick’s testimony, Horsmanden notes that when black people lie, which is often, their facial expression reflects it.

Those who are used to Negroes may have experiences, that some of them when charged with any Piece of Villany [sic], they have been detected in, have an odd Knack or (it is hard to call or how to describe it) Way of turning their Eyes inward, as it were, as if shocked at the Consciousness of their own Perfidy; their Looks at the same Time discovering all the Symptoms of the most inveterate Malice and Resentment. (24)

The author of the *Journal* suggests a particular type of black adroitness. If one has few experiences with black people, if one has not been around them when faced with accusation, then their proclivities towards fabrication are magnified. It takes one familiar with black untruthfulness to uncover inexplicable facial characteristics. Black faces, their
eyes, are to be read closely like a disease revealing its symptoms. Although black people may commit perjury, they cannot suppress its inevitable prodromal manifestations. By affording Caesar and Prince the same legal recourses and processes as white people, space opens for underlying presuppositions that inform how black testimony is read and understood to punish not only under the guise of law, but precisely because of law. In the *Journal*, justice for black people is jaundiced, the law is lethal, and fairness is feeble.

Ironically, confessions were not simply drawn out of the black accused; instead, they were sometimes used to buy time before their impending execution or to have their sentences commuted. “Of the 152 enslaved and free black New Yorkers arrested in the spring and summer of 1741, 80—more than half—confessed to destroy the city. (And one more man confessed who had never been arrested)” (Lepore 9-10). Their sentences ranged from burning at the stake, hanging, or suspension in chains (this was Caesar’s fate—his rotting, bloating body was placed outside a slave community as an example for others and possibly foreshadowing their fate) to transportation. Within these depressing possibilities, there was room for leniency only through confession. The slave Sandy, “about Sixteen or Seventeen Years of Age” is the case’s most prominent example. The grand jury pushed Sandy to divulge what he knew about the conspiracy. Reluctant to speak about what he knew, he heard that when “the Negroes told all they knew [during the 1712 uprising]…the white People hanged them” (32). When he was reassured “that it was false, for that the Negroes which confessed the Truth and made a Discovery were certainly pardoned, and shipped off: (which was the Truth)…he began to open” by naming fifteen slaves who conspired to burn the city (32). Horsmanden had to ensure that his readers knew the court was a dignified, honest institution, even during 1712. Sandy
opening up was not unique, for other slaves followed suit by often offering fantastical accounts of the conspiracy. While the court’s “function to verify this obscure truth” (Foucault 66) was critical, it proved difficult due to the overabundance of confessions and the profusion of truth. It was certainly the case that self-criminalization through testimonies sent most slaves to a far-worse fate in the Caribbean. At least momentarily, however, they bought themselves time by languishing in New York’s overcrowded jail, avoiding the gallows and other forms of execution. Borrowing from preconceived understandings of black untruthfulness, Africans committed perjury in ways that exposed the court’s contradictions and prolonged their legal outcomes.

IV

The Journal’s abundant confessions from slaves transitions into the proliferation of confessional literature during the second half of the eighteen century, especially during the early national period. Horsmanden’s work and “[t]he New York Slave Conspiracy in particular seems to have had important effects on the New England writers who followed Mater in the genre—and indeed, may have had as much to do with the genre’s continued existence since before 1740 there were no other workers in that field besides Mather” (Slotkin 12). With the occasional Irish or Jewish miscreant, most confessional literature featured criminals of African descent. Meant to serve as a warning to future legal and religious malefactors, while compelling readers and audiences gathered at executions to repent their sins, confession and conversion were critical components of the literature and the subject’s final days. However, condemnation and reprimand were not the only features of both the literature and execution day. “Execution day”, notes historian Louis Masur, “served as both a warning and a celebration…The pamphlets and broadsides that
contained the lives, last words, and dying confessions of a criminal were sold on
execution day and circulated throughout the community” (25, 33). He continues by
cautions the reader about using confessional literature as a historical source: many of
the subjects awaiting their imminent death had their words altered and fabricated in
formulaic ways to convey messages about the importance of repentance and social order.
However, analyzing such untruthful manufacturing enables one to demonstrate how
blackness became synonymous with crime through popular literature.

Abraham Johnstone, whose real name before arriving to New Jersey was
Benjamin Johnstone, was born a slave in Delaware, but was later manumitted by James
Craig after saving him from a murderous, “insolent” slave who belonged to his sister
(33). The scene comes off as a hero’s tale and a fugitive slave narrative, in which, on the
one hand, it pits the seemingly honest, trustworthy Abraham against the savage, brutish,
knife-bearing slave; and, on the other hand, he frees himself from slavery after he is sold
farther South to Georgia. Referring to the slave’s reputation, “the black [he fought] was
esteemed the stoutest man in all that county, and a very vicious black man…” (33).
Abraham offers no explanation for his foe’s ferocious demeanor. This scene alludes to
ideas about predatory, violent slaves who are ready, when given free opportunity, to slash
their owner’s throats, while attempting to represent Abraham as loyal and dutiful. After
saving his master’s life by incapacitating the savage slave, popular reputation becomes
private, along with the promise of freedom: “My master owned that he owed his life to
me, and ever after held me very high in esteem, and told me that after such a time I
should be free…” (33). Owing his life to his devoted, faithful slave did not prevent James
from continuing to treat Abraham like property in the process of his manumission, for he
was required to pay his master for his freedom. In order to acquire money necessary for purchasing his freedom, Abraham had to travel, which meant staying “away a whole year with a woman, and then was taken up as a runaway, and put into Baltimore jail, from when I let my master know my situation; he had brought from thence and put into Dover jail…” (33). When James died soon after, the jailors contemplated selling him until James Clements, a friend of his deceased master, recalled the promise of emancipation, thereby releasing Abraham from the jailors’ avaricious design. This was not the end of his encounters with the rapacious jailors. While performing work in the woods for his new owner, Clements, the jailors discovered and kidnapped Abraham, intending to sell him. With his wrists tied together with rope, Abraham was fortunately able to secure a knife to cut himself loose. Informing Clements of his unfortunate experience, his current master implored him to seek his former master’s lawyer in Delaware in order to immediately gain his freedom. This was done with great success; however, the jailors, desperate to sell Abraham into slavery, pursued the recently freed slave, forcing him to escape to the North, only for him to, once again, be jailed not as a slave this time, but as a citizen. For Abraham, “the guilty volition enjoyed by the free agent bore an uncanny resemblance to the only form of agency legally exercised by the enslaved—that is, criminal liability” (Hartman 126). Simply put, he moved from the unfreedom of slavery to the circumscribed, incarcerated freedom of citizenship.

The above scene, titled “The Dying Words of Abraham Johnstone”, is placed between the speaker’s address and the letter to his wife, Sally. Even though they are

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21 As DeLombard mentions regarding Johnstone’s Address, “No legal or print records documenting his trial, execution, or involvement in prior civil proceedings have been discovered, and the circumstances of the Address’s authorship, editing, publication,
Abraham’s dying words, they are not, in terms of narrative structure, his last. In “The Address of Abraham Johnstone”, the speaker made it a point to mention that Abraham was not guilty of all the crimes of which he was unjustly accused such as stealing garments from his wife’s (a freewoman) employer, nor killing “a Guinea Negro”, the crime for which he was sentenced to death by hanging. Yet, in his personalized letter to Sally, he sincerely states, “That I am perfectly innocent…” (42) In his letter to her, along with the entire Address, he reproaches people of color to avoid “the most horrid and abandoned lewdness, excesses, debaucharies [sic], licentiousness, obscenity [,] prophanity [sic] and all their attendant train…” (45). Such lecherousness from black people was often displayed in dance during joyous celebrations. “It was not just the ‘lewd and indecent’ gesticulations…’which must cover even a harlot with blushes to describe’…but the absence of ‘regular movements’ and the performers seeming loss of control” (White 24). But Abraham was not merely generalizing: one of his regrets was when he “sometimes…went astray and lusted after other women” (Johnstone 43). These admonishments and condemnations are not found in confessionals featuring white criminals; therefore specific uniqueness was assigned to black people of the early republic that labels them boisterous, sexually felonious, and socially crude into the nineteenth century. When found in black confessional literature, these warnings served as conventional tropes of religious amelioration directed towards northern black communities accused of social waywardness and sexual misconduct.

and circulation remain a mystery” (121). Due to the absence of important information surrounding the Address, I do not assume Johnstone’s authorship. Therefore, I use “speaker” to point to these absences, as well as its mysterious placement and its uncommon message. Like its literary circumstances, through this term I attempt to capture its inscrutability.
Yet, there are salient, subversive, and unconventional elements in the *Address*. Like most confessional literature of the period, it begins with an appeal.

IT is with a heart overflowing with love and humble hope in my God and Redeemer, and general benevolence, charity and good will to all mankind that I address you at this (to me, and not only to me but to all mankind) solemn important and truly aweful [sic] and momentous time, a time when I am on the verge of eternity, and that there is but a few short fleeting hours for me to remain in this world, and of that short time every moment spent by me even in addressing you my dear brethren, shortens. (3)

Its unconventionality arrives through the nature of his crime. Unlike other confessionals that depict primarily black men murdering or raping white people, Johnstone comes before the gallows for the murder of another black man. Although the circumstances of his culpability are specious, the speaker, further establishing the genre’s conventional methods, moves to describe the impartiality of his trial and the honest character of the men that comprised “a jury of his peers” (3). These gentle and worthy men whose integrity and love of truth I so well know that had they not conceived themselves clear of all doubts and scruples, they would not have consigned a fellow creature to death, and to so ignominious a death—therefore their verdict having established a presumption of my guilt and my having not only transgressed the positive rules of society, but committed a crime of the blackest dye, a crime justly hateful odious and horrid in the sight of both God and man, I am to suffer death.— (4, my emphasis)
The speaker leaves the question of the subject’s guilt unanswered, only to be disclosed when he stands before his Maker on the Day of Judgment. By appealing to a higher judge, indeed the highest in God, the speaker disruptively challenges legal authority based on its own ecclesiastical standards. Twelve jurors, seemingly irreproachable in their fidelity to justice, have merely presumed—which is to say, confirmed—his legal guilt, but have not, at least in the speaker’s account, morally established it. One learns from the Address’s preface, “To the Public”, that “there was not positive evidence of the fact; that proof [of his guilt] being founded entirely on presumption…” Through conventional confessional methods and implicit language, the speaker cleverly critiques not only legal malpractice connected Johnstone’s case, but also the legal process itself. The speaker, assuming it is Abraham, self-referentially illustrates this point through his diction, suggesting in typical fashion\(^2\) that murder is the darkest, “blackest” of crimes. Through his silence during the juridical and literary process, the speaker does not simply disrupt hermeneutic functionality of confession; instead, he eliminates it. His critique becomes more explicit when the speaker remarks “that a vast majority of whites have died on the gallows when the population is accurately considered. A plain proof that there

\(^2\) In *White Over Black: American Attitudes Toward the Negro, 1550-1812*, historian Winthrop Jordan offers the following: When he was not called a ‘negroe’ he was called by the indigenous term, a ‘black.’ Although the evidence from language and ideals of beauty in Elizabethan England suggest that the English response to blackness may not have been entirely a matter of associating a physical characteristic with social inferiority, the fact was that from the beginning with Englishmen met black Negroes on a footing of inequality. (257) He continues, noting that by the eighteenth century blackness “served as an easily grasped symbol of the Negro’s baseness and wickedness” (257-258). This was a result of slavery’s racial concretization in the colonies by the late seventeenth and early eighteenth century. In this instance, the Address’s speaker is playing on blackness’s firmly established eighteenth-century connotation.
are some whites (with all due deference to them) capable of being equally as depraved and more generally so than blacks or people of colour [sic]” (7). Implied is the idea that criminality was couched in black skin, that black people of the early national period had increase propensity towards criminal behavior that greatly exceed that of their white counterparts. Through its conventional opening, the Address is purportedly a standard confessional; however, the speaker violates, transgresses literary expectations generally associated with the popular genre.

Wrapped in his critique of the disproportionate application of criminality in relation to black people are attacks of slavery and its crimes, changing the Address from confessional to critique to abolitionist tract. The speaker reflects,

Another circumstances that renders my fate peculiarly [sic] unhappy at this crisis, is that it happens at a time when every effort is using for a total emancipation of all our brethren in slavery within this state [of Pennsylvania], and that by men of exalted spirit generosity and humanity—men whose bosoms glow with philanthropy, good will to all mankind and a love of freedom that shews [sic] them [sic] to be actuated by the noblest of all motives, that first great principle in true religion, ‘do to all men as you would be done unto.’ Men whose spirits rise indignant at seeing their fellow creatures whom God has created in his own likeness and endowed with immortality, held in bondage to each other, or that one human being shall have it in his power to torture and inflict innumerable pains and punishments such as his ingenuity may devise and a caprice may dictate to him on an unfortunate creature who happens not to hold an equal rank in society
with him, tho’ he undoubtedly does in creation and the eyes of the Almighty. (7-8)

The speaker connects civil bondage with slavery, and links Abraham’s previously enslaved body to his newly incarcerated civil body. Rather than facilitating the abolition of slavery in Pennsylvania—the Gradual Emancipation Act of 1780 continued to protect slaveholders’ property rights by keeping slaves held in bondage under their legal authority—collective social and intellectual energy was improperly used for confinement and execution. Unlike the contentious 1780 act, the speaker calls for complete emancipation for slaves who are, based on ecclesiastical principles, brothers who may not share equal social footing on Earth, but are identical in the eyes of Christ. The speaker’s argument, his employment of Christian doctrine, is not unique among abolitionists; however, it requires critical understanding of Christianity’s relationship with the judicial system in the late eighteenth century. Executions were still the order of the day, in which there was the confluence of religious and civil authorities, generally preceding bourgeois reforms of jails, prisons, and executions\textsuperscript{23}. The speaker’s critique is not simply of the religious order—quite emphatically, it is also legally oriented.

Strikingly, the speaker’s tone hardens when contemplating sexual legality and crimes of slavery. Unfortunately, he has witnessed “many a man continue the lawful offspring of his loins a slave during life, exposed to every hardship and cruelty because he was a mulatto” (9). Important in ensuring the “ungovernable passions” and “gross

\textsuperscript{23} One notable exception was the Philadelphia Society for Alleviating the Miseries of Public Prisons, founded in 1787 by Benjamin Rush and Benjamin Franklin, among others. Among its accomplishments was its 1790 legislative push, declaring “that all people convicted of crimes (other than murder and a handful of similarly grave offenses) or misdemeanors be committed to the Walnut Street Jail for a term of hard labor” (McLennan 36).
apetites [sic] by a promiscuous intercourse” of white men in relation to their female slaves was the hereditable status of slavery through the mother, known as *partus sequitur ventrem*. This legal measure, altering traditional English common law, in which an offspring’s status was paternally determined, served sexual and legal purposes. Noting that many slave mothers birthed children by white fathers, William Wieck writes,

To permit these mulatto offspring to take the status of their father would not only be an anomaly—a slave woman raising her children to freedom presented obvious difficulties—but it would also lead to an unthinkable blurring of racial and social lines in a society that viewed miscegenation as a ‘stain and contamination’ to white racial purity. Finally, the mulatto child represented an increase in the master’s property if it grew up enslaved. (263)

Missing in Wieck’s analysis, but included by the *Address*’s speaker, is the sexualization of slave law. If planters’ passions cannot be regulated, then it becomes necessary for law to encourage and favor their licentious craveness. Sex is, therefore, legally profitable in progenies who are property. Moreover, “lawful” in the speaker’s sense connotes legal ambiguity, for, based on the reversal of English common law, biracial children are lawfully enslaved. However, the speaker’s critique is predicated upon Christian morality: it seems squarely immoral for a father to own his child as property. Through such indecent, forcibly imposed activities, planters gain “carnal knowledge of the bodies of blacks, [and] must either admit them to be human or themselves to be guilty of the most odious and enormous of all crimes, a crime that I blush to name—therefore shall leave it to your imagination to supply the omission…” (Johnstone 9-10). Interestingly, the speaker alludes to well-disseminated intellectual ideas concerning the physical makeup
and sexual proclivities of black people. In 1607, traveler and English cleric Edward Topsell drew bodily similarities between ape and Africans, while other commentators argued that Africans “were themselves the offspring of...some unknown African beast”; yet, ideas literally linking Africans with beasts were not pervasive moving into the colonial and early national periods (Jordan 29, 31). What was widespread was the notion that black women had sex with apes. Gaining currency in the early eighteenth century, this thought was famously prorogated by Thomas Jefferson in his Notes on the State of Virginia (1785). After declaring that the major difference, both physical and moral, between black and white individuals is that of hue, he comments that black women’s sexual preference “is...of the Oranootan [sic]...over those of [her] own species” (149-150). For planters to abrasively, lustfully pursue and have sex with black women who are, at worst, descendants of mysterious beasts and, at best, sexually preferential to orangutans questions their moral coital integrity. They must either consider black people, especially black women, as members of the human family or egregiously engage in the unmentionable crime of bestiality.

Approximately four years prior to his last words, the reader learns that Abraham barely survived Philadelphia’s yellow fever epidemic. While bedridden, ideas about black greed and criminal behavior circulated before his arrival to the gallows. His survival of the fever was rare—contrary to Benjamin Rush’s belief “that God had seen fit to grant blacks a special resistance to the dreaded diseases”, the reality was that “[m]ost blacks in didn’t have this natural immunity and would suffer the ravages of the fever along with whites” (Murphy 491). As extensive as his medical training was, taking him as far as Europe, Rush’s assumption, though quite common among white Philadelphians, was
sorely inaccurate. First signs of the disease were detected August 3rd, claiming eight lives within its first week. After that, it consumed the entire Quaker city. For Rush, the symptoms were quickly recognizable:

The sickness began with chills, headache, and a painful aching in the back, arms, and legs. A high fever developed, accompanied by constipation. This stage lasted around three days, and then the fever suddenly broke and the patient seemed to recover. But only for a few short hours. The next stage saw the fever shoot up again. The skin and eyeballs turned yellow, as red blood cells were destroyed, causing the bile pigment bilirubin to accumulate in the body; nose, gums, and intestines began bleeding; and the patient vomited stale, black blood. Finally, the pulse grew weak, the tongue turned a dry brown, and the victim became depressed, confused, and delirious. (152-153)

As multiple as the fever’s symptoms were, the well-known physician advocated medical simplicity, merging his republican, democratic ideals with his scientific training. “The first thing to recognize about Rush’s medical theories”, contends Randall Clark, “is his belief that a man’s health is dependent on the quality of his nation’s social order. The citizen of simple, orderly, and pious democracies had few diseases; the subjects of complex, disorderly, and impious monarchies had many” (227). Medical simplicity, he argued, occasionally required the physician’s absence so that the patient could more freely identify her ailments. Although unmentioned by Rush, merging his political principles with his medical practice contained great implications for black Philadelphians. This, along with his erroneous belief that black people had immunity to the fever, compelled him to solicit assistance from the Free African Society, led by
African American reverends Absalom Jones and Richard Allen. Commenting on its mission and activities, historian Gary Nash writes, “it was an organization in which people emerging from bondage could gather strength, develop their own leaders, define themselves as a group, and independently explore strategies for hammering out an existence that went beyond formal legal release from thralldom” (98). Not only would the two men find gratefulness from the city’s white population, but God would also grant them great favor for their kindness. Despite his political beliefs, requesting help from black Philadelphians may have been embarrassing: he found “himself in the awkward position of asking non-citizens to act like ideal citizens, and so he rhetorically displaces the issue of political rights with that of divine morality” (Gould 157). The displacement of political right for moral imperativeness, however, was not that acute. Through God-led morality, Allen and Jones believed that African Americans could prove themselves worthy of full citizenship before white Philadelphians (Nash 123). At Rush’s insistence, black Philadelphians became part of a critical “test—and a severe one—for a developing American culture whose creators were extremely self-conscious about its relations to American moral health and political virtue” (Kornfield 189). Such was consistent with his political and medical outlook. In a city committed to gradually emancipating its slaves and with a growing free black population—at the time, there were approximately two thousand free black people to three hundred slaves—the line between citizenship and slavery, adequate medical personnel and solicited volunteers, was blurry. Through his request, it seemed as though Rush gave black people in the city a cherished opportunity to earn unqualified citizenship.
Facing a terrible epidemic that spared few lives and eventually drove 20,000 people away from the city, the two black clergymen placed “a solicitation…in the public papers, to the people colour [sic] to come forward and assist the distressed, perishing, and neglected sick; with a kind of assurance, that people of our colour were not liable to take the infection” (Allen and Jones 2). One can detect reluctance in the authors’ tone, underlying the courageousness of black Philadelphia, for, as the writers note, “[i]t was very uncommon…to find any one that would go near, much more, handle a sick or dead person” (4). They were not, unlike Rush and other white Philadelphians, fully convinced in their alleged immunity. However, the promise of citizenship awaited hesitant, yet brave black volunteers: “The Lord was pleased to strengthen us, and remove all fear from us, and disposed our hearts to be as useful as possible” (4). Precarious medical services such as bleeding, changing linen, purchasing food, and cleaning bile and vomit had to be financed; however, volunteers Allen and Jones acquired did not charge fees for their arduous assistance. This proved exceedingly difficult because most of the services black volunteers rendered were to Philadelphia’s poorest inhabitants. Given how widespread and perilous matters were, those who requested in-house medical attention would bid against others, thereby increasing the cost of service, reaching four to five dollars in nursing fees (Murphy 534). The increase was citywide; however, black volunteers were squarely condemned verbally and in writing, most famously by Irish-American economist Mathew Carey, for what was perceived as rapacious, criminal practices.

Carey’s *A Short Account of the Malignant Fever, Lately Prevalent in Philadelphia: with a Statement of the Proceedings that took Place on the Subject in*
Different Parts of the United States went through three editions in over a year. In his preface, Carey informs his reader that he will only submit factual representations of the event, many of which are based on his own observation. Philadelphia, the most prosperity city at the time, according to Carey, experienced vast economic growth prior the epidemic. The epidemic forced multiple states to established trade embargoes, crippling the city’s exports. Moreover, New York City’s mayor listed those arriving from Philadelphia as “subjects of infectious diseases”, in which they were “hunted up like felons…and debarred admittance” whether found ill or salubrious. Globally, the Quaker city had “the fairest prospect of emerging as the capital of a new national cultural and politics alike—the London or Paris of the new nation” (Kornfield 189). Sadly, the fever led to scourges that left property vulnerable to destruction; additionally, the city’s congress was indefinitely suspended. For the opportunistic economist, the disease not only exposed Philadelphia’s wealthy denizens to what he considered improper care offered by black volunteers, but also criminal exploitation from them. Excluding Allen, Jones, and William Gray, a notable member of the Free African Society, from his aspersion, Carey limns what can be considered a black extortionist scheme. He bitterly writes, “The great demand for nurses afforded an opportunity for imposition, which was

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24 For my analysis in this chapter, I draw from the first edition, published November 14th, 1793.

25 Scholar Jacqueline Bacon explains that Carey was not fully indicative of white Philadelphian’s perception of black volunteerism, for a number of them, including mayor Matthew Clarkson, applauded their efforts. However, “Carey’s allegations would be particularly threatening to African Americans because of his influence and access to the public. He was an active participant in Philadelphia politics in the 1790s, the leading publisher of the time, and editor of the American Museum, one of the most influential magazines in eighteenth-century America” (69). Including the three editions of A Short Account, Carey’s position was able to reach a wide audience through his political connections and print.
eagerly seized by some of the vilest of the blacks. They extorted two, three, four, and even five dollars a night for attendance, which would have been well paid by a single dollar. Some of them were even detected in plundering the houses of the sick” (77-78, my emphasis). Carey’s facts on black racketeering are attenuated by his status as an economist and by his initial emphasis on the disease’s depressing fiscal effect on the city. Consequently, his position forecloses opportunities to inquire how the most questionable population, both in terms of rendered medical care and social behavior, was able to extort what the author considers to be exorbitant monetary amounts in a climate that, however dangerous, nearly necessitated competition between black and white nurses. Black volunteers exhibited little care, displayed no reflection, and contained no moral conscience—their despoilment of the most vulnerable white citizens was enthusiastically seized upon. Rather than the rule, Allen, Gray, and Jones are exceptions. Through his use of the superlative (“vilest”), Carey posits that the black extortionists he observed are the worst of what may be a larger segment of deviant, criminal black Philadelphians. For Carey, a chance for black people to prove themselves suitable for citizenship went poorly awry.

Although removed from Carey’s opprobrium of perceived black misconduct, Allen and Jones, the two most prominent black men in Philadelphia, would not remain silent while the economist and publisher besmirched Philadelphia’s black volunteers. Therefore, in a title that echoes Daniel Horsmanden’s work, the two gentlemen, in 1794, published A Narrative of the Proceeding of the Black People During the Late Awful Calamity in Philadelphia, in the Year 1793: An a Refutation of Some Censures Thrown upon them in Some late Publications. The book’s purpose was to set the facts straight on
accusations regarding the conduct of the black accused who cared for the sick. This was no small order. As scholar Jacqueline Bacon rightly points out, Allen and Jones’s response was partly predicated on their endeavor to garner financial support from white Philadelphians for their church, along with demonstrating that “African Americans could make positive contributions to the life of the city” (69). Adding to her analysis, I contend that both men, outside their personal efforts and community-based efforts, found themselves brought into an ever-growing discourse about black malfeasance and criminal behavior that threatened to weaken any present and future pursuit of black citizenship. Moreover, Allen and Jones partial borrowed from pejorative notions that link blackness with crime, paradoxically solidifying their defense while reconstituting the very discourse imagining them as criminally predisposed. Undoubtedly, black untrustworthiness and fabrication was still pervasive, which may explain why the authors’ state that their response also comes from “the advice of several respectable citizens” (2). Preceding this is a legal declaration from Samuel Caldwell, “Clerk of the District of Pennsylvania”, validating “That on the twenty-third day of January…Absalom Jones and Richard Allen, both of the said District, have deposited in this office, [A Narrative of the Proceedings]…In conformity to the act…” of America’s earliest copyright law (1, my emphasis). Applied the same day is a postscript from the Mayor of Philadelphia, Matthew Clarkson, granting approval to the proceedings composed by the authors. Along with written, legal verification from the high political and judicial official in the city, Allen and Jones’s legal status as citizens of the district of Pennsylvania and their publication in accordance to burgeoning copyright statues further authenticates what may have been considered their questionable account. Caldwell also notarizes Carey’s account in
accordance with United States copyright; however, it seems that social and legal stakes are much higher for Allen and Jones. For their observations to be taken just as seriously as the well established, politically connect Carey, their words must be deemed legally legitimate through personal and governmental validation.

As if anticipating charges of extortion and financial foul play, Allen and Jones provide further legal validation in print. On page six of the *Narrative*, both men, after assuring “the public, that all the money we have receive, for burying, and for coffins which we ourselves purchased and procured, has not defrayed the expence [sic] of wages which we had to pay to those whom we employed to assist us”, supply an itemized list that includes “Cash Received”, “Cash Paid”, and “Debts due us, for which we expect but little”, amounting to £177.98 (6, emphasis in original). For the founders of the Free African Society, if anyone should be justly accused of economic expediency and extortion, one should properly turn to Carey. Subsequent to their succinct account of Carey’s cowardice, demonstrated “by leaving the city” during the epidemic, Allen and Jones remark that they “believe he has made more money by the sale of his ‘scraps’ than a dozen of the greatest extortioners [sic] among the black nurses” (8). Questioning the quality of his work, while derisively alluding to its material composition (“scraps”), the authors, like Carey, employ the superlative (“greatest”) not only noting that there were, like white volunteers and nurses, black assistants (according to Allen and Jones, five in total) who pilfered and took advantage of the vulnerable conditions, but also to socially incriminate Carey for his multiple opportunistic publications. Throughout the *Narrative*, Allen and Jones, when referencing Carey’s work, specifically reference which edition they cite, laying bare its print history and the author’s personal profit from its sales.
Despite the “gratitude due from our colour towards the white people” (27), the authors, through legality and literary prowess, assign Carey with criminal complicity. Moreover, connotatively borrowing from the metaphorical use of “black”, the authors quite explicitly, in order to protect the reputation of black Philadelphians, refused to allow “unprovoked”, exaggerated allegations “to make us blacker than we are” (8, my emphasis). Embedded in their diction, their deliberate selection of “blacker”, is an understanding of what black, both as discursive marker and social stigma, means. Like the superlative, adding the suffix (“er”) presupposes connotative, metaphorical, and potentially criminal guilt: they are already (considered) disreputable; to be more without molestation is unjustly gratuitous.

V

I stay with Richard Allen for this final section and merge two confessionals transcribed by him with that of Rose Butler, a black woman sentenced to death for arson in 1819. For Allen’s work, I focus not so much on a close reading John and Peter’s respective stories as much as I attempt to demonstrate their stories’ interaction with the print and narrative layout of the text. Included in my interest about crime are the meanings derived from dictation and transcription from the works covered in this section. What are the cultural, narrative, and political dynamics at play between subject and amanuensis? What tensions are present in what essentially becomes a literary relationship? In what ways does the subject gain control, possession of words that (do not) belong to her and him? These questions may be partially answered by examining amanuensis as a term, relationship, and process. Defined as “a literary or artistic assistant, in particular one who takes dictation or copies manuscripts”, amanuensis has its
origins in the early seventeenth century, and is derived from the Latin “(servus) a manu ‘(slave) at hand(writing), secretary’ + ensis ‘belonging to’ ”. Throughout confessional literature’s history, overwhelmingly amanuenses were white men, reflecting the history of literacy and handwriting. In her essay, “Reading for the Enslaved, Writing for the Free: Reflections on Liberty and Literacy”, E. Jennifer Monaghan notes that during the colonial period, “From the instructional perspective, writing was regarded as difficult. It required real skill on the part of the teacher: it needed a trained professional. So naturally it was entrusted to men…Not for nothing is the art called penmanship” (312). Teaching and learning handwriting coincided with the passage of the first of what would later be many prohibitive literacy laws against free and enslaved black people. However, these laws, first in South Carolina in 1740 and then Georgia in 1755, did not prevent reading, but writing. In the case of South Carolina, the reasoning was clear: the Stono Rebellion took place a year prior to its passage, and “the ability to write enabled slaves to forge their own passes with a view to escaping” (317). Until the 1740s when handwriting training gradually became more available to white women, penmanship was a white male-dominated practice and remained so throughout most of the eighteen century. Clergymen assigned responsibility to transcribe words of the black condemned, described their circumstances, followed their phrases, and published their utterances. From the moment black convicts sentenced to die opened their mouths, white amanuenses became literary slaves to their subjects. The relationship and power dynamics between amanuensis and subject are complicated by this literary arrangement between free or enslaved black woman or man and white writer. Despite relying on black speech, white writers during transcription often manipulated their words for legal and religious
purposes that culturally contributed to the imagination and perception of black people as criminals in early America.

Further complicating this matter is the inclusion of a black amanuensis. Published in 1808, the Confession of John Joyce, alias Davis, Who was Executed on Monday, the 14th of March, 1808, for the Murders of Mrs. Sarah Cross; with an Address to the Public and People of Colour, Together with the Substance of the Trial, and the Address of Chief Tilghman, on His Condemnation. Confession of Peter Mathias, alias Matthews, Who was Executed on Monday, the 14th of March, 1808, for the Murders of Mrs. Sarah Cross; with an Address to the Public and People of Colour, Together with the Substance of the Trial, and the Address of Chief Tilghman, on His Condemnation\(^\text{26}\) (referred to as Confession of John Joyce) was transcribed by Reverend Richard Allen, cofounder of the Free African Society with Absalom Jones and founder of the African Methodist Episcopal Church. He could certainly relate to part of the biographies of his subjects, for all three men were born into slavery. In order to get their stories down, Allen, the former slave, had to literally return to subjugation, as evidenced by including John and Peter’s confessionals together, which weaves John’s depressing experience as a servant in Philadelphia with Peter’s guiltlessness. Despite being on the gallows, his position briefly esteemed John and Peter before their inevitable doom. Rather than exploitative and punitive, Allen’s literary slavery carries a social, legal, and literary mission unlike previous confessionals.

Beginning the confessional is Allen’s “Address to the Public, and People of Colour”, directing his Christian message to two distinct communities. In their response to Mathew Carey, Allen and Jones place their address, specifically to black Philadelphians,

\(^\text{26}\) I thank historian Manisha Sinha for this source.
at the end of their coauthored narrative. For the authors, their address not only admonished its audience about its social vices, a typical narrative method associated with confessionals, but also, and most importantly, mitigated their critique of Carey and other ill-intentioned white commentators. But addressing general and specific audiences in John and Peter’s confessionals, Allen places biblical burden on black and white people alike. Furthermore, his address that precedes John’s confessional contains two components that separate it from other confessionals of the period by offering two readings. First is its obvious placement before John’s confessional. He begins by acknowledging that murder is “one of the most atrocious [sic] crimes, of which depraved human nature is capable”; also, “the very first Son of our common Parents was a murderer.—A mark was set upon Cain” (3). By referencing Cain, the first murderer, Allen situates John and Peter’s alleged crime within biblical context, removing them from the condemned particularity of their state. For Allen, murder is possible when human nature, not humans, is perverted. Yet, mentioning this well-known story from Genesis, specifically his emphasis on Cain, seemingly links crime with black bodies. After reflecting upon his grave crime, Cain, in the Bible’s first book, cries that he will not reap harvest from the earth when he tills, and that he is now “a fugitive and a vagabond…in the earth.” As a result of his homicidal deed, Cain was cursed. Not as prevalent as the “Curse of Ham” to justify slavery during the eighteenth and nineteenth centuries was the “mark of Cain”, interpreted as a black, physical mark upon the first son of Adam (Jordan 242, 416). Fully committing to this reading, however, would obscure Allen’s astuteness both as addresser and amanuensis. As Allen surely understood, the mark God places on Cain was protective: if one was to retributively kill Cain for
murdering his brother, then God would punish the criminal sevenfold. Employing biblical references that were used to argue the pervasiveness of black deviance, while simultaneously undermining its puissance through the same narrative, challenges the discourse through an implicit critique of slavery. When he specifically speaks to “People of Colour”, he subtly continues his attack of enslavement: “Many of you fear the living God, and walk in his commandments;—but, oh, how many of you are slaves of Sin” (5, my emphasis). Not unlike his clever incorporation of the story of Cain and Abel, Allen cloaks social condemnation in biblical terms. One may read this as his more direct warning against black men and women “attend[ing] a frolic” and becoming “[d]runkards and swearers, Whoremongers and Sabbeth-breakers…” (5-6); however, Allen, deliberate in language, uses the preposition “of”, expressing a relationship between a part of a whole and, in a more nuanced fashion, a point of reference. To the latter point, Allen may be suggesting that black people are slaves from, slaves in, a sinful institution, further articulating his abolitionist stance through the delicacy of language.

Immediately succeeding Allen’s address is not John or Peter’s confessional, but “the Substance of the Trial, As it appeared in one of the public Papers”, which adds complex layers and readings to John and Peter’s complicity, while also attempting to protect Allen from accusations of a biased perspective (6). Another potential reason for including their trial proceedings was to expose its misapplication to two former slaves. Although men who earned their freedom through “the service of the United States” in John’s case and self purchase “for 200 dollars” in Peter’s case (12, 30), they strangely were tried “[a]t a court of Oyer and Terminer, for the City and County of Philadelphia”
(24). From the colonial through the antebellum period, oyer and terminer courts primarily were reserved for trying felonious slaves.

“[Oyer and terminer trials were] adopted to assure the ‘speedy and prosecution of negroes and other slaves for capital offences’ so that the other slaves would be ‘detered by the condign punishment’ inflicted and so that they would ‘vigorously proceed in their labours.’ The sheriff was to have a slave ‘well laid with irons’ upon jailing him on a capital charge, and then he was to notify the governor. The governor in turn issued commissions of oyer and terminer ‘to such persons of the county as he shall think fitt.’ They in turn would arraign, indict, take evidence, and render a verdict and pass judgement…The special commission…was ideal [for speedy trials]…Without the use of such a device, slaves would be tried as free men and women, and that involved a truly laborious process. (Morris 214)

Despite John and Peter free status, they were given trials reserved for slaves. Through legal procedures, not only are both men considered and judicially treated as slaves, but also their bodies criminally link freewoman and freemen with the plight of the slaves. Peter’s pleas of innocence and John’s complicated guilt based on money owed to him by Sarah did not matter. Instead, the trial, through its institutional and procedural framework, along with its coup de grace in the form of hanging, rendered them criminal slaves and errant citizens in one body. In their case, little distinction was made between civic justice and the justice offered to slaves.

In the case of John and Peter’s confessional, Allen’s structural components show how the law can change literature. When examining Statement of Confession of Rose
Butler, sentenced to death (1819), one reads how literature can change the law. Handwritten, this is one of the few, if not only, confessinals during this period that concerns crime committed by a black woman. Compositionally, it includes “The Statement of Eliza Duel, a White woman who was placed in the apartment with Rose Butler to take care of her”, Rose’s confession, her interrogation, and marginal notes indicating editorial intentions for the published version. From her confessional, the reader learns that she was a “molatto [sic] woman of 19 years of age, [and] was born a slave in the family of Col. Strang at New Castle, West-Chester County. At the age of nine years she was purchased by Mr. Childs of New York who retained her and was then sold to Mr. [William] Morris, with whom she lived till she committed the crime for which the Law sentenced her to an ignominious death” (6). After her time with William, she served his wife, with whom she had an unpleasant relationship. Like John’s deplorable working conditions, Rose did not fare well under Mrs. Morris unyielding demands. Mrs. Morris “was always finding fault with her work & scolded her, & that she never did like her mistress” (2). These often led “frequent disputes”, in which Mrs. Morris “told me I was determined to be revenged on her” (4). Her poor relationship with Mrs. Morris may have strongly contributed to the arson charge, for which she, after “being solicited to tell the truth and nothing else respecting it” (2), stated she was merely an accomplice to two white men, John Williams and James Edwards. According to her, these men approached Rose for three consecutive weeks prior to the fire in question concerning a debt William

27 In the same year, An Authentic Statement of the Case and Conduct of Rose Butler: who was tried, convicted, and executed for the Crime of Arson/ reviewed and approved by Rev. John Stanford, M.A., Chaplain to the Public Institutions was published by Broderick and Ritter. For my analysis, I do not draw upon the published version; instead, I used John Stanford’s handwritten edition to analyze what editorial processes and decisions are considered when shaping confessinals.
owed to them; however, he along with his wife refused to pay it despite having the means
to do so. During their visits to Rose, they asked her to set fire to the house, which she
refused. She then was given an ultimatum: “if I told of their conversation they would take
away my life” (5). The day before the fire, the two men were repeatedly seen passing
Mrs. Morris’s residence. Prior to her solicitation, she, in fact, mentioned John and James
as guilty parties acting without her involvement.

Rose futilely tried to build a case for herself. Along with tension between she and
her mistress, Rose describes two men who were familiar with William and his wife. Here,
it is important note that two arson attempts were made, in which the last one succeeded
during Rose’s imprisonment. Based on Rose’s confessional, it was inconclusive as to
who was responsible for the first arson attempt. At the very least, Rose remained silent
about the men’s presence and plans to burn her mistress’s home out of fear for her life or
fear of being blamed for their crime. When asked how she knew about the second fire
“while you were in Bridewell”, she explained that she received a letter from Mrs. Scott,
“[a] short; white, & fat woman, that afterwards went to the penitentiary” on behalf of
either John or James. Such a revelation may not have been received well by the
authorities, for it meant that she was able to read. To this point, she was also able to write
although not with the most dexterous hand—she illegibly signed her name rather than,
like John and Peter, mark her signature with an X. Moreover, early in the seven-
document account when she provides James and John’s full names the amanuensis,
Reverend John Stanford, deliberately crosses out both names. When Rose initially met
John and James, she, in an attempt to protect her identity, stated that her name was Jane,
to which they, too, supplied fraudulent names, “David Redman, and Robert Johnston”
Those names are not excised from the confessional. One may question which names are legitimate and which names are mere sobriquets; however, what gives credence to Stanford’s intentional manipulation of Rose’s confessional is when he requests removal of the passage that describes William’s debt to John and James. The passage reads as follow:

They [James and John] told me that they knew Mrs. Morris’s first Husband, who owed them money and would not pay them, Mrs. Morris was flourishing with the money, and would not pay them what they ought to have, and they were determined to have satisfaction [sic] out of her, for she ought to have paid it after his death: & they called upon her several times, but she would not pay them. (4)

In the original document, there is a box drawn in pencil with the passage crossed out. Accompanying this desired omission is marginalia on the left side of the document, which reads, “must not print this” (4). Lastly, along with other less significant erasures, one reads a final marginal note: “You may finish the piece by taking out as much as necessary of the following piece I wrote on the Crime & published in the newspaper some years ago. Let me have it again, with the other paper” (7). One may only speculate why these specific passages and names were omitted from the handwritten confession; but editorial calculations necessitated that Rose take most, in not full, guilt for arson. By omitting what was quite possibly John and James’s actual names, her story comes off as creative, yet baseless, fiction conveyed by a bitter, bellicose, and unrepentant black female slave.

Most likely, this was John Stanford’s plan after seeking out Rose to transcribe her story. After she was condemned to death, “she behaved with extreme impropriety”, and
“her perverseness was in the extreme”, while she sat in jail to await her punishment (7). Even when the Chaplin, reverends, and friends visited her to prepare her for “an eternal world”, she seemed to demonstrate “no signs of contrition” (7). Rose may have depressingly or defiantly resigned to her gloomy fate. Or perhaps the circumstances of her trial rightly angered her. As her slave status designated, she was tried before an oyer and terminer court in New York. The court considered “‘Whether the Burning in this case was sufficient, within in the meaning of the Statute, to constitute it a Capital offence & punishable with Death,’ or ‘whether it was only an offense at Common law, and punishable with Imprisonment’” (3, my emphasis). Important to keep in mind is that “only” is crossed out. If left, the term would point to the relative triviality of her case: at most, there was attempted arson on her part. Since it was a capital case, the New York Supreme Court handled her sentencing, in which “Chief Justice Spencer delivered the unanimous opinion of the Court – ‘That the Burning in this Case was sufficient to bring it within the meaning of the Statute, which constituted it a Capital Offence & punishable with Death’” (3, my emphasis). Like “only”, “in this Case” was editorially omitted as a way of removing the case’s particularity, thereby giving slave law universal application and the guise of fairness. With such literary and judicial maneuvering, resentment was sure to be Rose’s sentiment. In order to construct her confessional as a means of situating her as the primarily, if not lone, suspect, after describing Rose’s adverse feelings towards her circumstances, Stanford writes in the margins, “Here must follow [her] statement” (7). If anyone is to blame for her impending demise, it is Rose.
Published in 1831, The Confessions of Nat Turner, the Leader of the Late Insurrection in Southampton, Va...concludes the confessional period, while representing a departure from the basic tropes of the genre. In the confessionals discussed above, there is little championing of black criminality even in the seeming development of a slave plot, as with the 1741 New York Slave Conspiracy. Most of the black (alleged) criminals and condemned mentioned pleaded their innocence, remained silent on the question, or complicated their guilt. Such was not the case with Nat Turner, who openly admitted to leading his band of rebellious slaves through southeast Virginia, murdering between fifty to sixty white people. Unlike Turner, who was gifted, intelligent, and “intended for some great purpose” (249), the 152 slaves arrested during the 1741 plot were considered by the court incapable of conducted such an elaborate conspiracy. Therefore, The Confessions of Nat Turner marks a shift from the impossibility of black criminal intelligence to the capability of rare black intelligence for criminal endeavors. However, what tie all the confessionals together are not only their black subjects, but also the ways in which literary and editorial practices reflect, alter, and borrow from legal discourses concerning black criminal pervasiveness in imaginative ways.
CHAPTER 2
EVADING THE LAW: THE TEXTUALITY OF FUGITIVITY IN WILLIAM WELLS BROWN’S CLOTEL

What social virtues are possible in a society of which injustice is the primary characteristic?—William Wells Brown, Clotel (1853)

I

This chapter is designed to draw connections between textuality and fugitivity, corporeality and law as mediated by William Wells Brown’s Clotel; or The President’s Daughter: A Narrative of Slave Life in the United States (1853). It does not present itself as an engaged, close reading of specific characters of the novel or its narrative structure. Instead, I argue that Brown, both through his acts of plagiarism in the novel and his fugitive status, evades both the Fugitive Slave Act of 1850 and emerging copyright laws of the period, culminating in the 1853 case, Stowe vs. Thomas. This chapter will emphasize how these evasions are not dissociated: he is only able to evade both sets of laws through exile. Slaves escaping plantation and urban settings are often described as

28 Textuality is used to describe what Roland Barthes refers to in “From Work to Text” (1971) as a “methodological field”, a “process of demonstration” that involves the interweaving of texts (as Barthes points out, the etymological meaning of “text” is “a woven fabric”) (167). Quite literally, Clotel is “woven entirely with citations, references, echoes, cultural language (what language is not?), antecedents or contemporary, which cut across it through and through in a vast stereophony” (169). In a Derridean sense (“Plato’s Pharmacy”), citations in the novel were, until recently, “imperceptible”, intentionally hiding their “rule…of internal play” (136). As the chapter will further elucidate, the purpose for keeping these rules hidden is to have the evasive text reflect the fugitive body, and to make visible, indeed expose, the raison d’être of fugitivity: the institution of slavery and its accompanying brutalization. See also Edward Said’s “The Problem of Textuality: Two Exemplary Positions” (1978).
“stealing themselves”; yet, it is important to keep in mind that in stealing oneself, property relations ensconced in slaves are not suspended. Beyond being what literary critic Robert Levine describes as “something of a [literary] confidence man and trickster” whose thefts can be considered a “(post)modernistic technique of bricolage” (4, 7), it is my contention that Brown is not only aware of his arrangement as fugitive property, but also as fugitive writer. Therefore, it was critical for Brown to both own himself and the reproductive materials of his novel. As Brown biographer Ezra Greenspan puts it, “Texts and bodies, bodies and texts, as interchangeable and exchangeable—such was the underlying logic [of Clotel]” (294). For the fugitive, criminal novelist, to own oneself in flesh was to also, and just as meaningfully, own oneself in text.

The two subsequent sections analyze the historical and legal circumstances that shape Clotel, the latter briefly concerning literacy laws and the interchange of transatlantic copyright laws. Section two offers definitions of fugitivity, escape, and the spectacle of arrest, and relates these concepts to the materiality of the novel. Citing Brown’s experiences as well as other fugitive slaves and free black people, this section seeks to succinctly limn similar circumstances shared among them. What is at stake are the ways in which nineteenth-century black mobility was also deeply contingent upon the text in the forms of certificates of freedom and slave passes. For both free and enslaved black people, to be caught without these documents would call for swift, immediate punishment. However, free papers and slave passes did not offer absolute protection. Oftentimes, they could be disregarded or destroyed, leaving both slaves and free black people with little to no legal recourse. Yet, such grim realities do not imply textual tenuousness. Quite the contrary, its strength and importance lie in the forgery of passes
and, on rare occasions, certificates of freedom, along with damnable acts of tearing up these crucial documents. Planters, overseers, slaves, and freepersons attached great value to passes and certificates of freedom, which led to strict detailing of these documents and the imposition of curfews. In order to remark upon the fragile centrality of the text, the section will also include a reading of one visual graphic from The Anti-Slavery Almanac.

Although intellectual property rights were not fully established in the nineteenth century, authors began to conceptualize their works as original. Yet, this did not prevent their borrowings from other works to shape their own. With this in mind, the start of the third section deals with how I understand plagiarism in relation to Clotel. While it was commonplace to use materials from other sources without attribution, there was not full silence on the issue. Well before the Supreme Court case Wheaton vs. Peters (1834), and as implied by a less publicized, but still important case, Stowe vs. Thomas (1853), serious discussions ensued in conjunction with copyright laws as to authors’ financial, intellectual, and legal connection to and ownership of her and his work. Brown engages in literary practices that are both understood and accepted; however, what scholars describe is how extensive Brown’s literary borrowings are, labeling him a “plagiarist” who “steals the texts of a culture that steals black bodies” (Colvin 6). His trickery and machinations demonstrate his cleverness as both reader and writer. There are also moments in Clotel when Brown either “steals” his own words or transforms the content of a passage with his own words with questionable attribution. I specifically examine the latter act to discuss how Brown provides theoretical groundwork for discussing self-ownership through textuality before his freedom is legally purchased. Considering ways in which Brown plagiarizes from other sources and even himself illustrate his intentional
textual evasiveness, thereby making both novel and writer difficult to capture. Moreover, this section connects acts of fugitivity and writing by bridging slaves’ acquisition of literacy with emerging British and US copyright laws. The purpose of discussing this emergence is twofold. First, British copyright precedes and, most importantly, sets the standard for US copyright law from the late eighteenth century to the early part of the nineteenth century. Although plagiarism was more a cultural practice with an ambiguous history, it began to matter more with the emergence of copyright law and authorial proprietorship. This began with British copyright law, particularly with the Statute of Anne in 1710. Authorial ownership as a concept gained strength in Britain in the latter part of the eighteenth century into the nineteenth century. A shift took place in the US in 1834, which functioned as a departure from British copyright law, with the Supreme Court case *Wheaton v. Peters*, in which authorial ownership was supplanted by republican interest in educating its populace. The same legal logic applies to *Stowe v. Thomas*, in which public interest takes precedent. Secondly, despite *Clotel* heavily citing US sources, Brown is able to use his exile in Britain to take advantage and ownership of his novel in ways that are impossible in his home country. As a result, Brown’s ownership of his work enables textual ownership of himself.

In my concluding fourth section, I document serious implications of *Clotel* in relation to black criminality by addressing its legal and cultural importance during the period. Through excessive plagiarism, *Clotel* is left vulnerable to added scrutiny and monitoring, as noticed by Frederick Douglass in an 1853 reprinted letter from Brown addressed to William Lloyd Garrison. Therefore, the first published novel by a black
person blurs boundaries between appropriation and creativity, as well as literary possibilities available to black writers in the midst of slavery.

II

I define fugitivity as the condition, the state of being fugitive, and use it as a way to differentiate the term from escape, which indicates a slave fleeing any authority who operates as an extension of the law for any particular transgression. Explicitly, fugitivity connotes direct affront to local, state, and federal slave laws. These terms account for legal specificity inside and outside plantation and urban slavery. Fugitivity is also an effort to capture slaves in their liminality, between personhood and property. To be a fugitive slave is a literal expression of the slave’s chattel status—i.e. moveable property—but it is also to endow this property with personhood recognized by law. Therefore, fugitivity strives to articulate what Stephen Best describes as “pilfered property and indebted person”, or, in Aristotelian form, “thinking property” (16).

Perhaps there is no better illustration of the fugitive/property paradigm than in the little-known 1837 case of Johnson Molesby, a fugitive slave from Kentucky. As reported in the September 14, 1837 issue of The Niagara Reporter under the title “The Slave Case”, Molesby fled his plantation in April of that year to free soil in British Canada.

29 Historians note how plantation management often coincided with, overlapped, and sometimes resembled formal laws. One such example comes from a Georgia planter who, in 1831 writes,

When any quarrel or disturbance occurs on the plantation, one or two not implicated are examined in the presence of the accused, who have the right to correct false statements and establish their innocence by reference to other testimony, which is immediately produced by the driver, or if absent and the case of an important one, judgment is arrested until the necessary information can be procured. (Breeden 51)

By focusing on the specificity of law one can account for occasional breaches and transgressions of formal law by planters and slaves. One also can mark how both were sometimes oblivious to legal statues and codes.
he surely understood, “[t]he minute that the slave puts his foot on British ground, that moment he is free” (1). While fleeing, Molesby, the absconder, committed another crime when he stole his owner’s horse. Because he was considered a free person based on “British law and British justice”, his unnamed owner “procured a demand from the power of Kentucky to our [Lieutenant] Governor [Sir Francis Bond Head] to give him up as a horse theft” (1). Molesby’s counsel appealed to the Governor by arguing that the charge against their client was impossible, for horse theft by Kentucky law was not an offense that required extradition. All parties were aware that “there is but three crimes which will deprive his master of his property in his slave namely, Murder, Arson, and Rape of white women, for all other offenses the master is answerable, the same as for trespass committed by his cattle…” (1). Therefore, Molesby’s owner, as a result of his slave’s now free status in British territory, was legally responsible for any incurred charges resulting from his (former) slave’s flight. However, in a ruling ironically consistent with British law, Lieutenant Governor Head called for Molesby’s extradition to Kentucky not as a fugitive slave, but as a free person who purloined his (former) owner’s horse.

When constables arrived to the jail where Molesby was imprisoned, they were surprisingly met by what the reported called “a more motley assemblage [of] about a hundred coloured [sic] people and forty or fifty of them females drawn up in battle array at the Gaol gates ready to seize the man as soon as out of the gate” (1). This gathering of black community members assembled to protect Molesby would soon face a grave, callous threat: the magistrate ordered the sheriff and four armed, but noncommissioned officers to assist him in safely retrieving Molesby from his cell. If any citizen present prevented the sheriff from executing his duty, the magistrate gave the officers full license
“to no doubt…fire on the citizens if occasion *in their opinion should require it*” (1). Determined to get to Molesby, the officers audaciously made their way through the “infuriated mob.” Fortunately, the crowd’s sympathized with the soldiers and understood “*that their duty compelled them to be on the spot*”; therefore, the soldiers were permitted access to the jail unharmed. It was at that time “a letter arrived from Toronto stating that His Excellency had ordered the Council to assemble to reconsider the slave case, when the multitude dispersed after giving three cheers” (1). The reporter concludes that no matter one’s race, British Canada is a place where “man is practically ‘Free and Equal’” (1). After the case was reconsidered, it was decided that Molesby be returned to his owner. Once he stepped outside the jail gate, Molesby broke free “from his irons”, jumped the wagon that was to bring him back to Kentucky, and attempted his second escape. When the sheriff ordered his officers to shoot the fugitive, two black men courageously jumped in front of the line of fire and were killed.

Molesby’s case exposes the interchangeability of the fugitive/property relation, and raises questions about legal life and death. When he arrived to Canada, he was legally considered a free person, afforded the rights and privileges under the British Crown. He left Kentucky as fugitive property—personhood endowed in the slave for purposes of being tried for crime, or in this case stealing himself—only to enter British territory as fugitive proper for horse theft. Following the logical of the law as explained by Molesby’s counsel, the escapee’s personhood would not have been expressed in his fugitivity upon his arrival to Canada, at least not enough to justify extradition. Kentucky law attempted to dissociate *mens rea*—i.e. legal culpability—from the fugitive slave except for capital crimes. This is to suggest that criminal responsibility linked to
personhood was challenged, for, according to the article, Molesby’s owner was liable for all (illegal) acts conducted by his slave, except murder, arson, and the rape of white women. If, in fact, what Kentucky law indicated was the idea that criminal liability outside the most extreme crimes was always applied to the owner, then personhood in fugitivity is a contested condition, a contentious legal construction that potentially strips criminal liability—and in this case, freedom—from the enslaved.

Karl Marx’s famous description of the animate commodity and its “grotesque ideas” in Section Four of Capital, Vol. I (1863) readily come to mind here (46); yet, it would be premature to dismiss outright the tension between criminal responsibility and intention—which is to also say criminal thought—assigned to mens rea in relation to both slaves and owners. The fugitive slave, by virtue of his fugitiveness as recognized and announced by law, is, for sure must be, criminally responsible for his flight. It is important to recall that the issue at hand in Molesby’s case was if his fugitiveness, his unauthorized departure from his plantation, warranted extradition by British Canada. Once he crossed Canadian territory, Molesby’s fugitivity inextricably linked to his enslavement perished. However, it was only when he was subject to British law that he could be transported back to the United States not as a fugitive slave, but as a fugitive—that is, free—thief, a wanted criminal. Undoubtedly, he would not return to Kentucky and

A difficult question arises: is the slave a commodity in the literal sense, the metaphorical sense, the legal sense, or all three? By literal, I refer to Marx’s definition of commodity limned in Capital, Vol. I. as “a thing” produced by labor “that by its very properties satisfies human wants of some sort or another”, which can be marketed as a product (26, 28). Labor power can also be considered a commodity. Although Marx highlights its “thingness”, his personification of the commodity moving, standing on its head, and thinking offers theoretical opportunities that can be applied to the slave’s slippery legal status. Considering that many eighteenth and nineteenth century legal cases often used metaphors to describe youthful legal precedents, the personified commodity seems quite fitting when describing categorical spaces slaves occupied.
his owner as horse thief. Rather, he would return as a capture fugitive slave. When it comes to personhood, at play are questions of legal death, birth, and resurrection when crossing legally constructed borders. Fugitivity, in this sense, beckons a return to both law and language by muddling the binary, “life or death”, and instead replaces one conjunction with another—“life and death.” Molesby’s free status, his hope of establishing a new life in Canada liberated from the drudgery of slavery, unfortunately left him vulnerable to the legal and political machinations involved in his return to Kentucky. He sought freedom and acquired it in Canada, only to be extradited as a freeperson and returned a slave in the slaveholding South.

Fugitivity also explain ways formal law and its institutions subjectify slaves. As historians John Hope Franklin and Loren Schweninger note in their collaborative work, Runaway Slaves: Rebels on the Plantation (1999), and later Sylviane Diouf in her study Slavery’s Exiles: The Story of the American Maroons (2014), slaves would sometimes escape plantation life for momentary periods. “It was clear that some runaways viewed the city not as a permanent refuge but as a temporary locale. As with lying out, being away from bondage for even a short period offered relief from toil on the plantation” (Franklin and Schweninger 126). The slave regime understood this to be an inconvenient, yet relatively tolerable part of slavery. Escape, therefore, encompassed the brevity of such departures. Temporary respite from slavery’s regimentation, harshness, and brutality did not constitute fugitivity, for there was mutual understanding by slaves and the slave regime that the former would return31. While escaping slaves were certainly not

31 Unless she or he fled to maroon communities, the slave’s proximity to the plantation or labor site was another critical way of classifying her or him as fugitive. A slave could be quickly captured, which complicates how one reads his or her motives.
insignificant to overall slave resistance and individual strivings, fugitivity tries to encompasses the enormity of the threat such a condition imposed on the slave regime. What follows is a brief account of the development of the 1790 Fugitive Slave Act and its amended 1850 version. I find it useful to briefly go through this history in order to illustrate the criminalization of both enslaved and free black life, as well as to set up a literary reading of the 1850 Act.

Fugitive slaves were a problem as soon as slaves were brought to the New World. “Colonial laws dealing with runaway servants and slaves,” writes late historian Don E. Fehrenbacher, “dated back to the seventeenth century. Some responsibility for enforcement rested with sheriffs, magistrates, and other public officers, but more often than not, recovery depended largely on the initiative of the owner” (206). This initiative was based on the common-law understanding of “recaption”, which allowed a private citizen to retrieve his servant so long as it did not cause “‘strife or bodily contention, or endanger the peace of society’ ” (206). Although the fugitive slave issue was far from a national crisis in 1787, the year the sixth article of the Northwest Ordinance was adopted32 (this was also the same year the Society for the Relief of Free Negroes Temporality was also considered. The length of time a slave was away from the plantation or labor site determined how she or he was classified. Such classification, in turn, often regulated the types of punishments meted out.

32 Note the striking resemblance in language between the sixth article of the Northwest Ordinance and the Thirteenth Amendment, specifically in terms of the permissibility of slavery. Not only does the Northwest Ordinance, along with the Gradual Emancipation Act of 1780 in Pennsylvania, establish a precedent for national emancipation close to eighty years later, but also offers the language for a particular kind of continuance of slavery for “punishment of a crime whereof the party shall have been duly convicted.” There are, of course, differences in contexts as well as purposes: the 1787 Northwest Ordinance permitted lawful reclamation of fugitive slaves across state boundaries. See Fehrenbacher’s The Slaveholding Republic: An Account of the United States Government’s Relations to Slavery (2001).
Unlawfully Held in Bondage reorganized into the Pennsylvania Society for Promoting the Abolition of Slavery, it was a particular problem for southern Pennsylvania. Historian David Smith points out,

Southerners knew that every single fugitive slave escaping by land east of the Appalachian Mountains had to pass through Pennsylvania, which is why the state [along with the Cumberland Valley in Maryland and the Shenandoah in Virginia]…was a vital entry point for fugitives seeking from the central agricultural regions of Maryland and Virginia as well as Baltimore and Washington, D.C. (2)

If the question of fugitive slaves was to become a national issue that concerned both slaveholders and antislavery advocates then it looked as if all roads led to Pennsylvania.

Linking slaveholders and antislavery advocates on the fugitive slave issue in the late-eighteenth century is important when noting both parties concerns on matters of liberty and property. For opponents of slavery,

[the problem of kidnapping free blacks quickly emerged as a mirror image of the problem of fugitive slaves. Just as southern states demanded the right to retrieve runaway slaves, northern states demanded the right to protect their free black residents from being kidnapped and sold into servitude in the south. The right of personal liberty and the claims of personal property caused sectional strife from 1787 until the Civil War. (Finkelman 399)]

These concerns culminated in 1791 when Pennsylvania Governor Thomas Mifflin demanded that Governor Beverly Randolph of Virginia extradite three men from the state, charged with kidnapping a black man named John Davis and bringing him to
Virginia as a slave. Governor Randolph refused, claiming they were simply retrieving a fugitive slave who escaped to Pennsylvania. This matter led President George Washington appealing to Congress “to adopt legislation on both interstate extradition and fugitive slave rendition”, resulting in the passage of the Fugitive Slave Act of 1793 (Finkelman 398). In the legislation, two criminal matters are notably at stake: slaves in flight and the extradition of kidnappers. Opponents of slavery in Pennsylvania had little concern for the plight of free black people; instead, they were concerned how notions of personal liberty were compromised through illegal abductions. Connected to eighteenth and nineteenth-century ideas of liberty were the protection of property rights. It was, therefore, imperative that legislation secured individual liberty while maintaining property as one of its defining pillars. Philadelphia physician Jesse Torrey conveys these sentiments in *A Portraiture of Domestic Slavery in the United States* (1817). Echoing and, at times, quoting Thomas Jefferson’s famous *Notes from the State of Virginia* (1785), Torrey found “[u]nconditional slavery…contrary to the precepts of religion, moral justice, and the abstract, natural and political rights of man” that, with its accumulation, would lead to “the sudden explosion of which, might produce dangerous and fatal consequences” (18). Key in his rendering is “[u]nconditional.” As he was against slavery without regulations and restrictions, Torrey was also against universal, unconditional emancipation. In order to protect white Southerners’ property rights, he favored mitigating slavery to the point that slavery as a term, “which sounds so

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33 As historians on this subject observe, Davis gained his freedom under Pennsylvania’s 1780 gradual emancipation law, although his kidnappers rejected this fact. Davis’s freedom, however, was a matter of border confusion and late registration. See Fehrenbacher’s *The Slaveholding Republic* and Finkelman’s “The Kidnapping of John Davis and the Adoption of the Fugitive Slave Act of 1793,” especially pages 400-403 (1990).
discordant, in connexion [sic] with the cheering music of liberty, might be exchange for some title, attended with a less chilling and base note” (19). On the question of preserving personal liberties of black people, Torrey turned to the interior slave trade and described it as “uncontrolled.” It “gives facility,” he continues, “to the extensive and increasing practice of kidnapping (slaves as well as freemen,) and secures it from the possibility of detection, except causally” (31). If the interior trade could not safeguard against such unjust abductions, then its regulation should be considered. He wanted to witness all repugnant practices associated with slavery eliminated, but not without qualification. Men should not be bought and “sold as beasts of the harness, without their consent”, nor should they have shackles and irons restricting their limbs, “unless”, he quickly notes, “found guilty of criminal conduct” (19, my emphasis). Paralleling the language of the Northwest Ordinance’s sixth article, Torrey believed that the symbols of brutalization associated with slavery were only permissible when laws were violated. Slavery was not to be totally outlawed—its ghost would live in legal breeches.

When Governor Mifflin sent copies of the indictment to Governor Randolph, the latter left matters in the hands of his attorney general, James Innes. At Innes’s recommendation, Randolph refused to extradite Davis’s kidnappers unless Pennsylvania convicted them in absentia. Such strange legal logic was then passed from Governor Mifflin to President George Washington, who sent the matter to Congress in late October 1791 (Finkelman 407). Even though the issue at hand for Congress “was the extradition of fugitives from justice, not the rendition of fugitive slaves”, John’s fleeing from Virginia to Pennsylvania “seemed to be the very stuff of black fugitivism. That made it easy for members of Congress to conclude that both of the fugitive clauses in the
Constitution required legislative elaboration” (Fehrenbacher 210, emphasis in original).

John’s freedom, or at least his pathway to it, decided by Pennsylvania’s 1780 Gradual Emancipation Act, undergirded the legislative thrust of congressional decision-making when crafting the 1793 Fugitive Slave Act. Despite legal confusions connected to John’s escape, it was understood that John was a freeman. Black freedom, in this case, was also understood as black fugitivity.

Signed into law by George Washington in 1793, the Fugitive Slave Act was the first and, until 1850, only constitutional clause that firmly and federally expressed slave owners’ right to recapture fugitive slaves across state borders. But the act was not without shortcomings. In states committed to abolishing slavery, black people were “legally presumed…free in the absence of proof to the contrary” (Fehrenbacher 212). Therefore, states such as Pennsylvania were obligated to protect its citizens from illegal abduction. It was an inescapable fact that tension would exist between state and federal governments on this question, for embedded in the retrieval of fugitive slaves was the threat of kidnapping black freepersons. Throughout its tenure, “[n]o bill aimed at amelioration the racial injustice of the measure was ever introduced or reported in either house, whereas southerners seeking tougher enforcement came close to success on two occasions [in 1801 and 1817]” (213). This was the first iteration of the criminalization of black life, both freepersons and slaves.

Due to Pennsylvania’s contiguity to Maryland and Virginia, the fugitive slave issue was still important during the first half of the nineteenth century. As historian David Smith points out in On the Edge of Freedom: The Fugitive Slave Issue in South Central Pennsylvania, 1820-1870 (2013), a number of significant cases were brought to trial in
the 1840s that greatly shaped how the 1793 Fugitive Slave Act was amended in 1850. “That decade alone saw the important case *Prigg vs. Pennsylvania*, two prosecutions of slave catchers for kidnapping African Americans (*Finnegan, Auld*), a prosecution for harboring fugitive slaves (*Oliver v. Kaufman*), and a slave rescue/riot case (*McClintock*), all originating in south central Pennsylvania” (89). During this decade, President James Polk, in December 1845, annexed Texas and signed it into the Union as a slave state, a move that was strongly criticized by the Mexican government. This move was the *sine qua non* of the Mexican-American War. After General Winfield Scott gained control of Mexico City 1847, effectively winning the war for the US, Mexico, through the Treaty of Guadalupe Hidalgo, “was forced to cede nearly half of its territory to the United States…[including] a disputed portion of Texas…in exchange for the payment of $15 million and the assumption of an additional $3 million in debt” (Lubet 37). The incessant failure of the greatly debated Wilmot Proviso led to Henry Clay’s eight-resolution proposal that called for California to be admitted to the Union as a free state; “the abolition of the public slave trade in the District of Columbia”; the admission of both Utah and New Mexico to the Union, with both states respectively deciding the question of slavery; “and finally…the enactment of a stronger fugitive slave law” (40). Massachusetts Senator Daniel Webster’s support and defense of Clay’s eight resolutions, especially on the constitutionally protected issue of recaption, along with the debates between the Whigs, created proper conditions for the Compromise of 1850 and the accompanying Fugitive Slave Act to take shape.

There were important differences between the 1793 and its 1850 amendment. When Virginia Senator James Mason introduced the bill, it was in direct “response to the
Supreme Court ruling in *Prigg v. Pennsylvania* [that] completely federaliz[ed] the apprehension of runaways while denying states any power to interfere.” Unlike the 1793 Act, the 1850 Fugitive Slave Act endowed federal power to US court commissioners dealing with fugitive slave cases. It greatly “increased the number of commissioners and allowed them to exercise ‘concurrent jurisdiction’ with federal judges, and to issue warrants, appoint deputies, hold hearings, and issue ‘certificates of removal’ for the return of fugitives to their asserted masters” (42). The local became federal and removed power (and states’ rights) from Northern states on how they would handle fugitive slaves entering their respective jurisdictions.

In an October 24, 1850 issue of *The North Star*, Frederick Douglass, in his article “The Manstealing Law”, succinctly summarizes in one sentence each of the ten sections of the newly passed act. Of particular notice is section six, which describe how a fugitive slave can be apprehended either by a warrant or certificate issued by commissioners, judges, or the courts; or through “seizing and arresting such fugitive…without due process” (“Fugitive Slave Act of 1850” 1). In order to capture the fugitive’s connection to the text, I want focus on capture through textual—which is to also say, judicial—authorization. Certificates permitting capture were not required to precede seizing a suspected fugitive slave; however, there is the creation and subsequent proliferation of a primarily textual record of fugitivity and its process within the judicial apparatus. It is worth quoting part of section six at length to illustrate process. Once a fugitive slave is captured, she or he must be brought before the court, judge, or commissioner, whose duty it shall be to hear and determine the case of such claimant in a summary manner; and upon satisfactory proof being
made, by *deposition* or *affidavit*, in *writing*, to be taken and certified by such
court, judge, or commissioner, or by other satisfactory testimony, duly taken and
certified by some court, magistrate, justice of the peace, or other legal officer
authorized to administer an oath and take depositions under the laws of the State
or Territory from which such person owing service or labor may have escaped,
with a *certificate* of such magistracy or other authority, as aforesaid, with the *seal*
of the proper court or officer thereto attached, which seal shall be sufficient to
establish the competency of the proof, and *with proof, also by affidavit*, of the
identity of the person whose service or labor is claimed to be due as aforesaid,
that the person so arrested does in fact owe service or labor to the person or
persons claiming him or her, in the State or Territory from which such fugitive
may have escaped as aforesaid, and that said person escaped, to make out
and deliver to such claimant, his or her agent or attorney, a certificate setting
forth the substantial facts as to the service or labor due from such fugitive to
the claimant, and of his or her escape from the State or Territory in which he or
she was arrested, with authority to such claimant, or his or her agent or
attorney, to use such reasonable force and restraint as may be necessary, under the
circumstances of the case, to take and remove such fugitive person back to the
State or Territory whence he or she may have escaped as aforesaid. (1, my
emphasis)

There are clear links between textual production and legal procedures. But what surfaces
are the ways in which fugitiveness produces and creates texts without the fugitive’s
presence. Although, as Douglass writes, the “[f]ugitive’s evidence is not to be taken” (1),
his and her condition as fugitives become the conditions of possibility for such necessary documents to channel through legal stages. Legal authorities used affidavits, depositions, testimonies, and certificates not only to establish evidentiary support of owners’ claims to property, but these documents also function as textual and categorical markers, labeling and increasing the surveillance of slaves and free black people in northern states. Their identities are confirmed in writing, establishing proof of their illegality. Fugitives’ words do not need to be considered evidence as a way of marking their inclusion in antebellum law. Instead, their fugitivity, whether real or perceived, works and is read as evidence, yielding more evidence, more documents in the pursuit of black bodies. Fugitive slaves assure “a classificatory function”: their “author function” is “penal” not in a narratively transgressive sense, but in terms of “subject[s] of punishment” before the law (Foucault 210, 212-213), in which their bodies’ institutional relationship engendered textual production.

It could be argued that the threat imposed by the 1850 Fugitive Slave Law was felt most by free black people in both free and slave states. Now that alleged fugitive slaves could be captured without due process greatly troubled, if not nearly eviscerated, any idea of freedom as promised through their status. Certainly by the start of the eighteen century, if not earlier, free black people constantly had their liberty under siege; and their mobility faced greater, harsher regulations throughout the colonial period, going into the nineteenth century. While slaves carried passes that delineated and, in many cases, permitted travel at their owners’ behest, black freepersons were required to keep their certificates of freedom, free papers, or some identification of freedom on their persons or be subjected to grave consequences. For example,
[a] 1785 North Carolina law, regulating the hiring of slaves in certain towns, ordered all urban Negroes to register with the town commission and to wear a shoulder patch inscribed with the word ‘FREE.’ In 1793, the Virginia General Assembly, complaining of the ‘great inconvenience’ of slaves passing as free in the cities, required urban free Negroes to register with the town clerk. The clerk would record their name, sex, color, age, stature, identifying marks, and how they were freed…A free Negro who failed to register was fined five dollars and could be sold into servitude in default of payment. Free Negroes without papers and unable to prove their freedom were, of course, treated as fugitives. (Berlin 93)

Such requirements and regulatory practices were carried deep into nineteenth century. Outside the close social monitoring described, corporeal mapping, biopolitical in both orientation and practice, leading to textual and legal production was a dominant feature. In the case of North Carolina, a black person’s free status was literally and literarily on display. The word’s contiguity to and placement on the body branded free black people as subjects of surveillance and targets of oppression not only for what their freedom signified to slaves, but also how freedom was understood by whites. Ironically, freedom in this sense was not to be pleasantly recognized and enjoyed by black freepersons, but rather for white protection against freedom as exercised by black bodies.

34 Following Toni Morrison’s lead in Playing in the Dark: Whiteness and the Literary Imagination (1992), it is undoubtedly the case that white freedom is contingent upon the unfree Africanist presence. However, her position generalizes notions of freedom without accounting for its nuances. Quite obviously, black freepersons were not legally slaves. And while black freepersons during the colonial and antebellum periods were threatening to the sanctity of slavery, they also constituted a danger to white freedom. Therefore, one can begin to interrogate the ways in which ideas and practices of white freedom were possible not only because of enslavement, but also because of limited black freedom.
At times, it was the slave pass, the document permitting black mobility, that was the crucial nexus between slaves and free black people, firmly binding them together in punishment. William Wells Brown puts it rather intelligently in a scene in his 1847 *Narrative of William W. Brown, A Fugitive Slave. Written by Himself*. After William spilled wine over his owner’s (Mr. Walker) guests, Mr. Walker “attend[s]” to him the following morning by giving him “a note to carry to the jailer, and a dollar in money to give to him” (396). Sensing that something was awry, and unable to read the missive’s contents, William requests a sailor to read the note and inform him of his fate. He learns that he will be given “hell”: the jailer, with a dollar to compensate him for his troubles, will whip him. In order to buy himself time while contemplating his next move, William spots a free black man who was “about my size” and conveys to him that he “had a note to go into the jail, and [to] get a trunk to carry to one of the steamboats; but was so busily engaged that I could not do it, although I had a dollar to pay for it” (397). The man carries the note to the jailer and is, as charged by the letter, thoroughly whipped with twenty lashes. It was the design of his subterfuge and deliberate deception to “show how it is that slavery makes its victims lying and mean” (398); and it also evinces forms of shared punishment used on enslaved and free black people. William and the freeman are indistinguishable: the latter, like most free men and women in the South, is assumed a slave. The similarities they share, however, are not solely couched in their blackness or in the assumption that all black people in southern states were slaves. Their indistinguishable characteristics that led to the freeman’s punishment that was meant for William are mediated by Mr. Walker’s note. The note is what sends William on his way to visit the jailer and what replaces him with the freeman. His agency, coming at the
expense of the unsuspecting freeman, is initiated and enabled by the epistle, supplanting one body suitable for punishment with another.

Whether permitting travel or indicating freedom, slave passes and free papers did not protect antebellum black people from punitive whims and deliberate maltreatment from white people. Slave passes were not as susceptible to intentional destruction as free papers, for the former was a direct edict from the slave’s owner to employer to carry out a specific task. Although attached to the sanctity of liberty, free papers did not fully protect free black people from harassment, punishment, or even enslavement. Thus, “even the most prominent and successful free men of color in the South sought to maintain cordial relations with slave owners and others who might be needed in times of crisis” (Franklin and Schweninger 187). “Tearing Up Free Papers”, a graphic in the 1837 issue of The American Anti-Slavery Almanac (see Appendix C) exposes how vulnerable free black people were to having their freedom torn to bits. The caption reads, “In the Southern States, every colored person is presumed to be a slave, till proved to be free; and they are often robbed of the proof” (8). Slightly disrupting conventional depictions of freedom, rather than showing a black freeman wrestling to reclaim his free papers from the white assailants, the graphic features a black freewoman and her child struggling to recover her precious document. Her clothes are not disheveled or ragged, emphasizing her free status. To the left of the graphic is her white attacker with his head turned toward the black freewoman, while his body covers the free papers from her view. With a stern stare, his hands grip both sides of the document, paper bent as he gestures tearing it in half. By covering her papers with his body and not fully ripping them apart, he taunts her, plays with her, exposing differences in power dynamics between the two. He stands erect and
strong with a partially wide base as if to prepare for her breaking free from her partner’s

grip. She desperately reaches towards him, rendering her powerless against the two men.

Her child helplessly tries to defend his mother from the aggressor gripping her arm, while
she lunges forward—all this augmenting her powerlessness and the vulnerability of

nineteenth-century womanhood. Items lay between her and the man holding her papers,
indicating the situation’s randomness and how “any black person could be stopped and
interrogated by any white person” (184). Captured in the image’s backdrop is an

incarcerated black figure, graphically foreshadowing the black woman’s fate. Saliently,
the image situates the destruction of black freedom next to black incarceration, further

emphasizing how tenuous black freedom in the context of slavery. Moreover, depicting a
black freewoman and her child struggling to regain possession of her free papers against
two white men highlights the sheer susceptibility of black freedom, while underlining the
preciousness of womanhood, for to portray a black freeman in this position would
remove the scene’s sentimental innocence. Her desperation expresses her attachment to
quite possibly the only document, the only means that can substantiate her claims of

freedom, along with her child. Since southern black people were considered slaves unless
proven otherwise, it is presumed that to tear her free papers is to eviscerate her freedom
and consign both mother and child to slavery. Keeping in mind that the child takes on the
status of the mother, the document proves vital not only to their status, but their
impending fate.

Whether it is through capturing fugitive slaves or black freepersons, a consistent
thread weaves its way through all aspects of fugitivity, which is what I term, “the
spectacle of arrest”35. My use of arrest, quite capacious in definition, has two functions. The first designates the pursuit and apprehension of a black criminal, “real” or perceived, free or slave. The second function concerns what Foucault terms “the gaze,” in which the subject who performs the gaze is not simply observing or glancing at an object of knowledge—the subject is also being constructed as a knower. Applied to arrest, the object of knowledge—the escaping and/or fugitive slave, as well as the pursuant36—becomes a knower as a result of the pursuit. Both objects and subjects learn moves and tendencies; and the desire to avoid arrest, along with the desire to apprehend, arrest—that is, freezes—the gaze: for the pursuant, nothing is more important than to capture the escaping or fugitive slave; for the escaping or fugitive slave, avoiding arrest is paramount.

“Regimes of practice,” to borrow from Foucault, materializes in escape. They produce internal surveillance: the escaping slave watches and monitors himself or herself to prevent capture, but internal surveillance then expands externally in ways that both embolden—or resurrects—and thwart potential attempts to escape by other slaves, including by the initial escaping slave if he or she is subsequently seized. Escape also yields geographical knowledge, or what late historian Stephanie Camp refers to as

35 “Spectacle” refers to the emphasis, the overdetermination of a particular literary scene or characters’ experience, as well as the scene’s own self-reflexivity. Violence is not excluded, but is not always central to the spectacle.

36 Rather than “pursuer,” “follower,” or any term that denotes chase or pursuit, I use “pursuant” in order to evoke legality while attaching it to the characters and subjects under my analyses. Those who are in pursuit of escaping and fugitive slaves generally act in accordance with the law. This, of course, is expanded with the passage of the Fugitive Slave Act of 1850, which virtually expands the obligation of the citizenry to assist in the capture of fugitive slaves. While some who attempt to apprehend escaping and fugitives slaves are not explicitly granted legal authority, they are nonetheless obligated to maintain slave power and white rule.
“rival geographies”: the escaping slave, as well as the pursuant, gains intimate knowledge about the plantation and the surrounding area (7-9). Light and darkness are used to both players’ advantages in order to manipulate their furtive movements (one gets a sense of this in Frederick Douglass’s 1845 *Narrative*, when, to escape Mr. Covey, stays close to the road so that may not get lost, but far enough in the woods to avoid detection); and knowledge about corporeal tendencies, irregularities, and markings from both the pursuant—slave patrols and slave owners—and slaves, including the slave who makes his or her escape result from escape. Maryland farmer George G. Ashcom, in his 1825 broadside posting about his escaped “negro Washington”, describes him as “yellow complexion; much freckled; he has a scar over one of his eyebrows, which not recollected; large coarse features; about five feet high; bulky made” (Franklin and Schweninger 171). Aschom pays scrupulous attention to Washington’s physical markings—he, in fact, read and texutalized Washington’s anatomy. Monitoring and understanding slaves’ anatomy, movements, and labor during antebellum slavery was, as Frederick Douglass limns in his 1845 narrative, the practice of the overseer “making us [slaves] feel that he was ever present with us,” so that slave began monitoring themselves in order for their labor to continue “in his absence almost as well as in his presence” (322). But it also came through reading slaves’ bodies, noting salient skin imperfections, markings, heights, and postures in order to extract labor and prepare for potential escape, which increases slave patrollers chances to capture absconding property.

With the above in mind, I turn to the introductory narrative in *Clotel*, focusing on Brown’s use of third person and the narrative’s title, paying particular attention to
“Escape.” Unlike his first narrative published in 1847, this shortened account is written in the third person, using the tone of an amanuensis, a separated, divorced, but self-owning narrator to his own story. Brown’s use of third person is consistent with, yet complicates what William Andrews notes as a shift away from authentication in slave narratives, starting in the 1850s, to what he describes as the “novelization” of the slave experience through narrative voice (24). *Clotel* fictively documents the lives of the enslaved in, as M. Giulia Fabi puts it, “two competing plots” of “all-but-white female” slaves and the larger “slave community” (639). If Brown novelizes these experiences through *Clotel*, then he also (auto)biographizes them in “Narrative of the Life and Escape of William Wells Brown”, threading hyperbolic fact with creative fiction through distancing provided by third-person. Brown, the writer, is also “William,” “the subject of this narrative,” constructing himself as a textual subject, thereby framing his own self-subjectivity through authorship (1). In this iteration, his life is no longer autobiographical: he is the author of another self, albeit himself, who experiences the horror and barbarity of slavery. To (re)write his experience as a fugitive slave, however, does not merely convert him into the narrative’s omniscient, surveilling narrator who, in the case of Brown, self-subjectifies and panoptically self-surveils through constructing himself as William, but also marks him as a spectator, a reader of his own torture, torment, and, later, escape. The violence described therein, within the context of various slave narrative published prior to 1853, has the potential, as Saidiya Hartman remarks, to transform us, the readers, into “voyeurs fascinated with and repelled by exhibitions of terror and sufferance” (3). Yet, I am interested in the implications of how Brown textualizes and reads his body. Brown biographer, Erza Greenspan, comments on how
“[t]he [third person narrative] effect is disconcerting to the reader and destabilizing to the text: Brown quoting Brown about Brown” when borrowing from his 1847 narrative (293). Narrative form takes textual, literal, and material shape in Clotel: Brown does not merely incorporate third person in his abbreviated narrative, he creates a double, and in this instance, triple self, paradoxically applying objective tone. Indeed, Brown attempts to offer a neutral tone to William’s experiences; however, there is more at stake, specifically in relation to his fugitive self. By using the third-person narrative voice to replicate his self self-reflexivity (Brown quoting Brown about Brown), while “destabilizing…the text”, Brown makes it difficult for the reader to track down the Brown rendering the story, the William described, and the validity of his 1847 narrative. As a reader, to understand, to capture Brown, the narrator, is not to understand William; and to understand William is not the same as understanding the William Wells Brown of his autobiographical work. Distinct identities of the same (physical) body hop from text to text, narrative voice to character. The fugitive slave for Brown also escapes through and in literary form, arresting and evading his narrative gaze all at once.

Shifting to the narrative’s content, Brown’s life as slave prefaces and arranges his life as fugitive property. His life as slave arranges his life as fugitive property. Juxtaposing “Life” with “Escape” prefigures and underscores George Jackson’s remark in his epistolary text Soledad Brother (1970). “Capture,” writes a solitarily confined Jackson, “is the closest thing to being dead that one is likely to experience in this life” (19-20). Escape, therefore, signifies both an opposition to death and a reemphasis on life. It marks a transition from William’s life as a slave—an objectionable, wretched life to be sure—to a comparatively richer life as an (il)legal freeman/fugitive. Consistent
with its title, the narrative places focused detail on attempted escapes by William and other slaves. In an arresting scene William observes, the narrator describes a fleeing slave’s murder. Told with the tone of a testimony submitted before the court, Brown writes, “In the evening between seven and eight o’clock, a slave came running down the levee, followed by several men and boys” (10). It is important to point out here that he, the narrator, endows this scene with legal currency. He does not witness the killing of a slave; instead, he is witness to the murder of a slave, a technical legal term, one that corresponds with the tone of the passage. The slave, running for his life, allegedly purloined meat from a group of white men, despite his desperate, gasping pleas to the contrary. To save his running, performed in vain, he conceals himself by jumping in a river. Observing and following his movements, the throng of white men boards a ship and successfully “drive him from his hiding-place” by using a pike-pole. Once apprehended, the slave is fatally assaulted with severe, stunning blows to his head. Afterward, his lifeless body is left in the river, in which he sought escape.

The nameless slave’s wild, distressed pleas introduce William and the reader to the spectacle of arrest: his cries, while aiming to validate his innocence, alert the indignant mob, surrounding slaves, and nearby spectators. Consequently, these actors are privy to the knowledge that he has allegedly committed theft and subsequently on the run. When the mob, responding both to escaping slave’s cries and nearby onlookers, replies, “Stop that nigger! stop [sic] that nigger!”, it interpellates the slave as a subject of the spectacle—he is the malfeasant, escaping slave the mob chases (10). It continues through the mob’s aggressive smites and stabs into the river with a sharp pike-pole in order to draw the slave out from hiding. In this moment, the spectacle of arrest connotes
certain relative spontaneities in its enactment. Although both parties—the pursuant and escaping slave—acquire and produce knowledge through and in their roles, it proves difficult to predict each party’s expectations. During the spectacle of arrest when the mob unremittingly slashes his body with a hook from the pike-pole, it is unsure and later surprised that its vicious assault led to the slave’s murder. Some of its members “said he was ‘playing ‘possum’; while others kicked him to make him get up” (10).

Despite occasional deviation, this suggests that the spectacle of arrest may involve corporeal torture, but it is not its raison d’etre. While the pursuit takes place—it is, in point of fact, central to the spectacle of arrest—its purpose is to mark the escaping slave as miscreant and the pursuant slave patrol and/or owner as legal arbiter. Also, torture is not peripheral to the slave’s murder: it emanates through the presence of his body and permeates the social body. Observing the slave’s mangled body, “William went on board of the boat where the gang of slaves were, and during the whole night his mind was occupied with what he had seen.” The next morning, he finds the slave’s corpse in the same position as the previous night only to be callously and impetuously disposed twenty-four hours later by a trash cart (11). Immediately following the moment of the nameless slave’s death, other slaves gathered around his body to view spectacle of torture that lives through his death: his lifeless body becomes a symbol of that torture, arrested/arresting onlookers’ gazes, transforming them into witnesses, knowers of the act that transpired before their eyes. They partake in and internalize this torture, as the group of slaves’ gaze of the murdered slave cautions against actions that may lead to similar allegations. In this sense, spectacular torture and the gaze preclude and produce—they prevent, at least potentially, such alleged criminal behavior on the
slave’s part, but they produce knowledge of what may happen. As a result of such production, slaves know themselves, their potential (in)actions, and the possible (in)actions of other slaves. This torture encroaches on William’s dreams, seizing his unconsciousness. Rather than spurn the image, William checks to see if the body is still tortured through the lack of concern for it. Flagrant disregard for perished black person exceeds insolence—perhaps it is not the disrespect itself that becomes one of the narrative’s central scenes. Instead, it is the torture through insolence, the blatant disrespect of black life and the care for and of black bodies, alive or dead, that assault William’s dreams and waking moments. Throughout Brown’s introductory narrative and Clotel itself, literarily imaginativeness and the centralization of escape, fugitivity, the slave pen, and the jail are saliently presented and read through the arrangement established by the spectacle of arrest.

II

In order to demonstrate the ways in which William Wells Brown exploits his fugitivity in both body and text, it is important now to succinctly cover the history of copyright law in both Britain and the US. Doing this enables analyses of how black fugitive writers, Brown specifically, evade and write against two sets of expanding laws. Since much of early US copyright derives from British rulings, discussing both attends to the transatlantic composition of copyright and the transatlantic travel Brown embarks on as a fugitive slave. Furthermore, accounting for copyright law’s growth and implementation in Britain and the US reveals the difficult, ambiguous space Clotel occupied. While the novel was “contracted with a large London trade house of Patridge and Oakley” and “was on sale across the British Isles” (Greenspan 291), Brown heavily
cites US sources of pro and antislavery varieties, along with literary authors from his country of exile who sojourned in London. His literary or “encyclopedic borrowings” (291) from US texts while in London raises important questions regarding Brown’s standing as both temporary citizen, writer of and in Europe, and fugitively exiled writer of his home country. Transatlantic in his literary theft of self and text, Brown provocatively places issues of (il)legal citizenship next to his (il)legal status as a writer. In what is to follow, I attempt to argue that in some sense the author of Clotel embodies copyright and authorial rights to the text.

Before addressing explicit concerns on copyright and its relationship to Clotel, it is necessary to first discuss the culturally ambivalent act of plagiarism. While it was a common practice and, as one scholar argues, a “necessity of [late nineteenth-century] literature” to plagiarize (MacFarlane 8), one should keep in mind racialized notions of literary ex nihilo originality. “[T]he identification with [ex nihilo] originality with whiteness”, remarks literary scholar Geoffrey Sanborn, “had made nineteenth-century African American writers especially vulnerable to accusations of fraudulence” (910). Slave narratives were susceptible to such accusations, necessitating prefatory remarks from sympathetic white writers. In the larger context of plagiarism and individual intellectual property, unauthorized literary borrowings “received both serious and comic attention throughout the revolutionary and early national periods…[H]owever loosely early Americans were prepared to interpret intellectual property in order to ensure a literate populace united by a common store of knowledge, they also shared [general] outrage at literary theft” (Rust 147, 149). Sanborn’s work, among others, on Brown’s creative plagiarisms and their performative elements, particularly in his essay ““People
Will Pay to Hear the Drama’: Plagiarism in Clotel’ (2012), has uncovered that his excessive borrowings, unmatched in nineteenth-century literature, account for “nearly twenty-three percent of the novel, from fifty different sources. And if one groups those passages together with all the epigraphs, poems, songs, newspaper clippings, and miscellaneous quotations in Clotel, the proportion of the novel written by people other than Brown jumps to thirty-five percent” (67). Certainly, there are performative elements in Brown’s plagiarism; but I am interested in capturing what the performative signifies in relation to the fugitive-writer who is acutely aware of his presence as such. Important to keep in mind is that the origin of “plagiarism” comes from the seventeenth-century Latin plagiarus, meaning “kidnapper”, which has its Indo-European root as plak—“to weave.” Not simply following nineteenth-century literary conventions, Brown etymologically deconstructs his own literary thefts and citations in quite intentional ways. Just as important as the issue of his Brown’s unique, pervasive literary pilfering are the ways in which he plagiarized and the meanings one can derive from his textual evasiveness.

Materially connecting self-ownership, fugitivity, and textuality, one learns from Jonathan Senchyne that “William Wells Brown carried stereotypes with him…[in which the] stereotype plates in [his] traveling case remind us that producing oneself as a free subject in print and in life is embedded within a set of material textual practices…” (140, 141). These plates, which have a long history, beginning with his time as a hired slave employed by Elijah Lovejoy, publisher of the Saint Louis Times, were of the first edition of his autobiographical narrative. Although a slave in exile, a fugitive of the law, Brown’s ownership of his words, of himself, precedes Ellen Richardson’s purchase of
his manumission paper in July 1854. Brown’s textual ownership of himself prior to his eventual freedom is not to bestow primacy or privilege to the text. By emphasizing how both material and literary words fit in Brown’s biography in critical ways, one can index different purposes associated with fugitive plagiarism. Sources in Clotel are as diverse as Theodore Weld’s The Bible Against Slavery (1837), newspapers such as the New York Evangelist, and William Bowditch’s Slavery and the Constitution (1849). Some of the passages Brown employs, particularly in Chapter One, “are noticeably more colloquial or more formal than the ordinary level of his prose in order to induce in the reader the sense of a sudden leap or drop in linguistic status.” Brown’s selective use of the colloquial and formal allows him to “change things up and keep things moving” (Sanborn 69). Changing, moving, and the interchangeability of flesh and text, especially in their subtle expressions, are deliberately hidden within the novel.

In Chapter Four, “The Quadroon’s Home”, the reader enters Clotel’s cottage, purchased by her lover, Horatio Green. While the two lovers, encumbered by the strictures of slavery, discuss the possibility of Horatio purchasing her mother and sister, another idea, grandiose yet welcomed, surfaces. “Clotel now urged Horatio to move to France or England, where both her and her child would be free, and where colour [sic] was not a crime” (Brown 101). The passage slightly alludes to Brown’s daughters and their travel from France to England, subtly infusing their biography into his novel. Europe, according to the narrative, does not consider blackness culturally and socially illegal, which has great implications for black people in the US, both free and slave. If one could be socially prosecuted for, as Lunsford Lane puts it in titular fashion in his 1842 autobiographical narrative, “the Crime of Wearing a Colored Skin”, then one
simply moves through various and varying degrees of what could be considered ontological criminality. Therefore, enslavement and freedom for black people represent different gradations of prosecution and persecution. Arranged in this way, black existence is a criminal threat. Literally and legally, crime as a color is metaphorical, but this is precisely the point. Only through metaphor is the narrator able to expose Clotel’s thoughts regarding what is paradoxically her legal, not pigmented, status as black (she is considered in nineteenth-century classificatory parlance, one-eight black; therefore, she is not, at least in terms of hue, saliently black). Metaphor pushes legal classification to its boundaries, uncovering its labeling absurdity. Since blackness is metaphorically criminal, fugitivity reconstitutes and recapitulates what is already apparent as social and cultural expression. However, criminalizing blackness and its recapitulation through fugitivity are not simultaneous occurrences: the metaphorical criminalization of black people precedes its illegal demonstration through fugitivity, which then awakens, evokes formal legal institutions, providing additional credence, energy to the metaphorical and legal constitution of black criminality. Only through fugitive exile can the crime of color be extricated.

Excitement reaches Horatio’s heart when pondering Clotel’s resplendent idea. Moving to Europe would allow the partnership to love freely without the inextricable racism linked with slavery. It “was so attractive to his imagination, that he might have overcome all intervening obstacles, had not ‘a change come over the spirit of his dreams’ ” (101). Sadly for Clotel, Horatio’s political ambitions outweigh and outmatched her extravagant dreams of love and freedom. In this passage, Brown quotes Lord Byron’s 1816 narrative poem, “The Dream.” As Robert Levine points out, Brown
“changes the phrasing from the first to the third person” (101). When analyzing both Brown’s intertextual use of the poem without direct attribution, one witnesses how skillful Brown’s literary thefts are. In five stanzas—stanzas three through eight—Byron begins, “A change came o’er the spirit of my dreams.” Brown does not abbreviate “over”, stripping the line of its rhythmic, musical quality. Placed within the novel’s context, particularly how the formal marks Horatio’s abrupt shift from excitement to personal, political expediency, the phrase becomes darker, mechanical in its lyricism. It also shows Brown’s subtle editorial qualities to suit his plot. Incorporating the poetic energies and narrative content of Byron’s poem to the line appropriated reveals more than a change in narrative mode. As a textual modiste, it shows, as Bryan Sinche observes, “[a]nother of Brown’s [many] revisions” (86).

Byron’s nine-stanza poem describes a number of dream-scenes about love, its loss, and travel. More than the line that begins stanza three, the poem presages Horatio and Clotel’s fate in markedly different ways. Horatio’s political ambitions and the revelation of his impending marriage with Gertrude in the eighth chapter will redirect him away from Clotel. When Clotel, his initial love, informs him that to see each other again “‘is henceforth [a] crime…’ ”, the narrator states, “At that moment he would have given worlds to have disengaged himself from Gertrude…”, his connections with relatives made “obtain[ing] his freedom” nearly impossible (121). His predicament is similar to stanza six of Byron’s poem, in which “The Wanderer was Returned”, standing at “an Altar” with a gentle, but unloved bride. Needless to say, the bride before the altar was not his beloved: “he spoke/ The fitting vows, but heard not his own words…” (12, 13, 23-24). Given his familial circumstances, career aspirations, and Clotel’s slave
status, Horatio can only love Clotel in his dreams. Gertrude becomes fully aware of this reality when she unsuspectingly runs into Horatio’s former lover and recalls moments when she heard Clotel’s name “murmur[ed] in [her husband’s] uneasy slumbers” (122). Sentiments move through genders, while something comes over Horatio’s spirit when contemplating the impossibility of fleeing to Europe with his beloved Clotel: “a change came over [Gertrude’s] feelings and her manners” upon learning about her husband’s former relationship with a slave. Although Horatio’s dreams may exist in another realm divorced from the polarity of life and death, dividing “our being” into different spaces of consciousness (Byron 9), they must ultimately come to terms with the oppressive circumstances imposed by slavery. Broadening Brown’s intertextual employment of a Byronic line, he, similar to his incorporation of Lydia Maria Child’s 1842 classic “The Quadroons”, threads both narratives and narrative poems into his literary fabric, borrowing and fragmenting his novel while changing the way the reader analyzes texts he uses. Brown imperceptibly weaves part of Byron’s dream-scenes to not only uncover how social, economic, and political conditions inform and, in this case, prevent love from flourishing, but also, and most importantly, how intertextuality is not literary practice readily observed. Rather than the act as a mere demonstration of interwoven texts, the author of Clotel challenges his readers to understand its practice, its textual ontology as a fugitive condition—that is, a way in which texts appropriate and alter different contents, modifying and, at times, obscuring the texts being usurped. The texts used remain, as a result of the writer’s narrative creativity, partially unidentifiable, deeply couched in hardly noticeable literary crevices. Literary scholars who specialize in Brown’s works are currently recognizing that they are becoming more than close
readers of his texts, but also detectives who, in discovering his different textual abductions, are discovering and undoubtedly attempting to capture the ever-evasive literary fugitive.

To discuss plagiarism or literary theft in the above ways lead to discussions about their legal ramifications. In the case of the latter, it is important to keep in mind the complicated, imperfect ways the US created, established, and reshaped copyright laws. For the young US, “copyright was the subject of widespread legislation almost as soon as the new nation founded” (Patterson 180). What made copyright law unique in the nascent republic was its initial focus on authorial control and individual rights in relation to literary production. This focus was a departure from early stages of British copyright law, which had little to no concern about authorial control and ideas of originality. Rather, it was critical for the British government to have control over printing through the Stationers’ Company. In sixteenth-century Britain, “[t]he governing officials remained wholly indifferent to the ownership of copy, as copyright was then called, but their use of members of [the stationers] as policemen of the press gave the printers and publishers a national monopoly of printing and freedom to create rights involving ownership of copy which developed into copyright” (Patterson 21). Despite its geographical limitations, it ensured that no one in England or “the dominions of the same shall practise [sic] or exercise himself…the art of mistery of printing any book or any thing for sale or traffic within…England…unless the same person…has therefore license of us or the heirs or successors of us the foresaid Queen…” (32). Despite how paramount censorship and government control over literary publications was during Britain’s experiment with copyright law, the author was not excluded as a player, a
subject in legal consciousness. In this instance, the author was not “conceived as the originator and therefore the owner of a special kind of commodity”; but rather, he took on the character of oppositional subject; a character whose presence needed monitoring and regulation; one whose literary and intellectual labor was alienated not merely for exploitation, but also and primarily for security. Consistent with Foucault’s historicization and fragmentation of the author, it was during this period that “authors became subject to punishment, that is, to the extent that discourses could be transgressive” (212). It was not until the Statue of Anne in 1710 that authorial ownership was discussed in copyright law. Although it was a strange “legislative extension of the long-standing regulatory practices of the Stationers’ Company”, the statute raised the question of authorial common-law by limiting perpetual copyright of the guild and, most importantly, legally recognizing authors as “possible proprietors of their works” (Rose 4).

The Statute of Anne set the stage for US copyright law in considering the individualization of the author as owner of intellectual property. Based on the 1710 British statute, the Continental Congress, in August 1787, enacted “a resolution ‘recommending the several States to secure to the Authors or Publishers of New Books the copyright of such Books’ ” (Patterson 183). The copyright, which included both authors and publishers, was extended to fourteen years with possible renewal if both parties outlasted the first term. Moreover, the right for both “was to print, publish, and sell, with the collar that no one else print the copyrighted work without permission” 37

37 In line with what Trish Loughran later describes in *The Republic in Print: Print Culture in the Age of U.S. Nation Building, 1770-1870*, initial copyright statues and
The 1787 resolution, after going through some alterations, led to the first national copyright act of 1790, which focused on “four basic ideas[:] author’s right, promotion of learning, government grant, and monopoly…”; however, authors’ rights and the general promotion of learning were subsidiaries to governmental concerns regarding grant and monopoly (198). With only slight amendments in 1802 and 1831, US federal copyright laws remained generally unchanged until *Wheaton vs. Peters* in 1834.

In was during the antebellum period when copyright wedded itself in stronger ways with republicanism. *Wheaton vs. Peters* remains a landmark case because it was a legal point of departure from the Statute of Anne and English copyright law. Regarding the shift represented by the *Wheaton* case, scholar Meredith McGill argues

Rather than confirming the author as the owner of a text that was clearly defined as a commodity, *Wheaton v. Peters* establishes going-into-print as the moment when individual rights give way to the demands of the social and defines the private ownership of a printed text as the temporary alienation of public property. It is with the circumscription of individual rights and not with their extension that nineteenth-century American copyright law is primarily concern. (45-46)

It was difficulty, if not impossible, to reconcile uninterrupted authorial ownership “in a culture that regarded the free circulation of texts as the sign and guarantor of liberty” especially after the 1834 decision (45). Knowledge and information in the antebellum period was meant to serve the needs of the general public.

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legislation, reflecting “the very localness of print cultures”, were issued on individual state bases (xix).
The third reporter of the Supreme Court, Henry Wheaton, meticulously recorded the Court’s proceedings, along with extended summaries of arguments and annotations citing other legal settlements. Unmatched by reporters of the Court before him, under Wheaton “[a]ccuracy and completeness like timeliness of publication, improved dramatically. In addition, Wheaton provided to purchasers a resource unimagined by his predecessors: extensive scholarly annotations intended to furnish readers a comprehensive view of the entire areas of law…” (Joyce 352). But it was precisely due to its exhaustive, massive comprehensiveness that the twenty-four-volume report was costly and led to marginal sales. His successor, Richard Peters, Jr., took a different, more business savvy approach to Supreme Court reportage. He eliminated the scholarly annotations and arguments that appeared in earlier volumes, and “[t]he type employed would be smaller than in the original volumes.” He also removed both concurring and dissenting opinions of the Court. Indeed, “[t]he means might be draconian, but the aim was brilliantly appealing. At one stroke, Peters’ *Condensed Reports* [1829] would supplant the entire market for all of his predecessors’ volumes through slashing both bulk and expense by seventy-five percent” (356). Congruous with Meredith’s argument, Justices of the Court were pleased with Peters’ efforts, for now the public could have general access to Supreme Court rulings. Predictably, however, Wheaton took great offense, especially when observing the great success of Peters’ abbreviated six-volume edition.

Discontentedly, the third reporter of the Court framed his frustration in the language of common-law and plagiarism. As Craig Joyce records, Wheaton and his publisher felt that “‘Until an example is made of these literary Pirates there can be no
security for the labours [sic] of authors and Publishers’” (359). Personal financial concerns and sentiments are emoted here; however, in articulating his concern in language of literary theft, Wheaton situated himself in a larger institutional discourse about the cultural and legal acceptability of plagiarism and copyright violation. But his stance was erroneously based on the idea that federal common law copyright existed on a wide scale. The plaintiff’s position before the Pennsylvania Eastern District Circuit Court and later the Supreme Court was that Peters’ edition contained all of Wheaton’s reportages recorded in his first volume. In his defense, Peters argued, “that the statutory requirements for securing a federal copyright had not been met” by the plaintiff and, significantly, “no right to common law copyright existed in the United States…” (363). Even if common law copyright was federalized, Wheaton, according to Peters, had not met its threshold, nor had he met it for statutory law. In their legal tenacity, both positions raised a larger, more fundamental question that would ultimately shape the Court’s decision: who owned the rulings of the Supreme Court? Wheaton believed his reportage to be authorship, not merely the thoughtless jotting of words. He took authorial credit “‘of the Summaries of Points decided—of the States of the Cases prefixed—of the analytical Indexes at the end of each vol. All these Mr. P. has pirated’” (366). Pertaining to the ownership of the Justices’ opinions, Wheaton’s counsel argued the following:

The copy in the opinions, as they were new, original and unpublished, must have belonged to some one. If to the judges, they gave it to Mr Wheaton. That it did belong to them is evident; because they are bound by no law or custom to write out such elaborate opinions. They would have discharged their duty by
delivering oral opinions. What right, then, can the public claim to the manuscript? The reporter's duty is to write or take down the opinions. If the court choose to aid him by giving him theirs, can any one complain?

But we allege and prove that Mr[.] Wheaton was the author of the reports; that he published them. This is enough to entitle him to a copyright, until they prove that he is not. The burden of proof is on them.

There are a number of points to be drawn from Wheaton’s counsel, Elijah Paine and Daniel Webster. Most important is the idea of intellectual property not only as it relates to the plaintiff’s publications, but also to the Court’s opinions. Since the Supreme Court is a public entity that deliberates on the constitutionality of legal matters, opinions written behind chamber walls are public property. Once such opinions, in all their detailed elaboration, were handed to Wheaton, they switched from public pen to private ownership and publication. Interestingly, the reporter of the Court was not considered to be a public servant. Wheaton’s counsel, in the second passage, seems to also suggest, similar to McGill in means but not conclusion, that ownership is established once words go to press. As soon as the Court gave Wheaton its opinions, they were in the hands of a private citizen who sought to reap profit from its sales. Therefore, what is challenged by Wheaton’s testimony is not the idea of going to press as the defining point of public copyright, but the relinquishing of intellectual property on the part of the Justices.

Logically extrapolating from his counsel’s argument is the notion that if interested and concerned enough in the dissemination of its rulings on its own terms, the Supreme Court could have published its own opinions under its name. By handing these duties over to Wheaton, or by Wheaton taking initiative, the public had lost its right and claim to their
control. The only duty Wheaton was charged with executing was to write down the Court’s opinions and rulings. He took an additional step by going to print, thereby making him the owner, the author of the Court’s rulings hitherto.

Peters’ attorneys, J.R. Ingersoll and Thomas Sergeant, disagreed. Rather than being a private citizen using the Justices’ opinions for profit, Wheaton’s reports, like Peters’s condensed version, “are made up as an officer of the court.” Even more,

The court appointed him under the authority of a law of the United States, and furnished him the materials for the volumes; not for his own sake, but for the benefit and use of the public, not for his own exclusive property, but for the free and unrestrained use of the citizens of the United States. In relation to the work, he was not an author, but as a an officer, as a public agent, selected, authorised [sic] and paid for making up the reports of the decisions of the court.

As a public agent, it was Wheaton’s job, and later Peters’, to disseminate court opinions not for profit, not for authorial ownership bestowed by common-law, but for to perpetuate an informed populace. In his persuasive defense statement, Ingersoll emphasizes “not simply that the broad dissemination of judicial reports is compatible with republican principles, but that the very survival of the republic depends on their circulation.” More than that, Ingersoll argued that such dissemination “insured [the law’s] efficacy” (McGill 58, 59). Incompatible with the dissemination of legal information in which the understanding and, suggestively, the concretization of the law meant for the sustainability of the republic is individual covetousness bound by an idea of intellectual labor being the sole property of its creator. Private interests are incongruous with public necessity.
The final ruling issued by the Court on this matter is difficult to ascertain. However, the Court ruled in favor of Peters on what McGills calls “three important points of law, ruling (1) that an author’s common-law property in his text ceased on publication; (2) that strict compliance with all statutory requirements was necessary for establishing title in a work; and (3) that there could be no common law of the United States” (65). Common-law copyright’s death upon publication has its specter reappear almost two decades later in 1853 in Stowe v. Thomas, incidentally the same year Clotel is published. Harriet Beecher Stowe, author of the internationally famed Uncle Tom’s Cabin (1852), filed a copyright suit in federal circuit court in Philadelphia against F.W. Thomas, a printer from Philadelphia who took liberty to published an unauthorized German edition of Uncle Tom’s Cabin in his newspaper, Die Freie Presse. This was done to restrict the circulation of her novel to ensure the protection of her profits through her own abolitionist German-American connections. However, what is important about this case is not how it essentially supports the Wheaton decision on the question of individual common law claims to literary ownership, but its legal proximity to slavery as judicially and textually rendered.

One of the great ironies, if not coincidences, of Stowe v. Thomas is that Justice Robert Grier, adamant defender of the 1850 Fugitive Slave Law, presided over the case. Melissa Homestead, in her essay, “‘When I Can Read My Title Clear’: Harriet Beecher Stowe and the Stowe v. Thomas Copyright Infringement Case” (2002) offers the following:

After the enactment of the 1850 law, Grier was one of the first circuit justices to be called upon to enforce the law, and although other circuit courts were active in
enforcement, Grier’s assignment to the Third Circuit made him one of the most active and vociferous judges in the enforcement of the law because of Philadelphia’s role as one of the first Northern stopping places for fugitives and because of anti-Fugitive Slave Law agitation and resistance centered in the city.

(219)

Given the novel’s anti-slavery orientation, along with the criminal entrance of fugitive slaves into Pennsylvania, it was therefore no surprise for Grier to evoke slavery, particularly the characters of Tom and Topsy, in his verdict. Consistent with the 1834 case, Grier opines, “By publication of Mrs. Stowe’s book, the creations of the genius and imagination of the author have become as much public property as those of Homer or Cervantes. Uncle Tom and Topsy are as much publici juris as Don Quixote and Sancho Panza” (208). Homestead interprets Grier’s decision as an ironic shift from private literary possession to public ownership of Topsy and Tom, as well as an attempt to “undercut Stowe’s moral authority by exposing an uncomfortable truth about Stowe’s relation as an author to her worlds and to her literary characters—a relationship that is both protectively maternal and economically exploitative” (220). Despite these two enslaved characters moving like chattel from private to public ownership, it is important to keep in mind that not even in the literary imagination and the legal circumstances of their circulation are these fictitious figures’ property relations suspended. They leave Stowe’s private hands in order to be disseminated and owned by a larger body of readers and translators. The implication here is that the metaphorical and literary ownership of these characters reflects the larger movement and circulation of slaves; however, it is here
where the textual and literary become another stage through legal discourse by which to reconstitute property relations and what seems to be the immutable status of the slave.

Since authorial ownership is deemphasized, if not outright eliminated, in antebellum copyright at the precise moment of publication, then how are republican ideals of education, public ownership, and, to reintroduce the issue, individual ownership of one’s literary work complicated or even challenged through the inclusion of slaves? It goes without saying that the great dilemma faced by proponents of disseminating information to the general public was that the entity was quite specific insofar as it stressed exclusion as much as it did inclusion. Beginning in 1740, South Carolina prohibited teaching slaves literacy with a fine of £100 to the guilty part. “But only one of the two literacy skills was prohibited”, writes E. Jennifer Monaghan in “Reading for the Enslaved, Writing for the Free: Reflections on Liberty and Literacy” (2000), the law was aimed at anyone who taught or caused a slave to be taught to write, or used him ‘as a scribe’ ” (317). Such literacy laws, including the prohibition of reading continue all the way through the early republic and antebellum periods, also including free black southerners as described in Margaret Douglass’s *Educational Laws of Virginia: The Personal Narrative of Mrs. Margaret Douglass, A Southern Woman, Who was Imprisoned for One Month in the Common Jail of Norfolk, Under the Laws of Virginia, for the Crime of Teaching Free Colored Children to Read* (1854). Still, even without instruction few slaves transgressed and used both reading and writing as a “pathway from slavery to freedom” (Douglass), but also to understand the world around them.\(^{38}\)

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\(^{38}\) One cannot count Brown in any direct way as one who illegally obtains literacy while enslaved. Ezra Greenspan documents how Brown’s achievements in his intellectual upbringing are communally attributable to his wife Betsy and Amy Post, his friend and
catalyst of the 1740 statute was simple: in the aftermath of the 1739 Stono Rebellion, it became necessary to prevent enslaved persons from forging passes. Up to this point, reading among slaves was a form of social control, for most, if not all, of what they had access to read consisted of the Bible. Yet, the emphasis on mobility and the ability to create a false document granting additional freedom through movement may have marked the beginning of the fearful connection between fugitivity, the text, and black authorship in its most literal sense.

Beyond the illegality of the acquisition of literacy among slaves and some free black people, I want to focus on the common law component in relation to Clotel as a way to suggest how Brown’s literary efforts and thefts, along with his exile in London, attempts to push against this ruling. Following the lead of Robert Levine, I have attempted to convey the relationship between Brown’s literary thefts and his fugitive body. Along with the other of his fugitive brethren, he represents and, through himself, practices illegal ownership. While this may only be metaphorical, there is a conspicuous affront to federal law and property ownership held by the planter. In his and her escape, the fugitive slave, in their illegality, challenges planters’ property rights, calling into question the morality of slavery by pushing the limits of the law. Informal, illegal ownership on the part of the fugitive slave disturbs ownership as a concept among the planter, for the former has broken his and her understood, seemingly accepted status as property-person by becoming, in the course of fugitivity, a propertied-person—a person

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Quaker from Rochester, New York (105). During his time in London, Brown tells a story of how he acquired literacy in his youth through ingenious subterfuge. While this was not the case, one can read his creative misspeak as a noble attempt to highlight the harsh, repressive conditions under which the most ambitious slave desperately desired education.
who owns the property of herself and himself. When applied to the fugitive writer, specifically in the case of Brown’s massive pilfering, this ownership of self contains similar currency in the ownership of his text and the texts that comprise his novel. His forced exile in London not only protects him from the reaches of the 1850 law, but it also coincidentally affords him access to common law copyright in Britain, a law that is eroded in the US until it is reintroduced in the 1870s. One can only speculate if Brown’s thefts would have been spotted if he book was published in his home country; however, British copyright law’s emphasis on common law ownership secures Brown proprietorship of his novel in a way that would not have been possible under US copyright. Outside the fact that a fugitive author would have no right under law to ownership of her or his work, publishing Clotel in the US would have immediately made his work public property, dispossessing Brown of his novel. Common law copyright, in which the intellectual, creative labor performed by the writer belongs to her and him, takes on new meaning when situated next to the fugitive writer. In this case, proprietorship as ensconced in the body of the fugitive slave, is the closest one can come to the ownership of one’s labor through copyright law. Therefore, Brown’s exile in London becomes the site of his illegal ownership of his body and the legal ownership of his novel.

Rather than engaging in a sustained close reading of Clotel, what I have attempted to do in this chapter is demonstrate the contiguity of the text and the flesh mediated by the law in the case of the fugitive slave writer. Brown’s novel was a commentary on his corporeal, (il)legal status as a fugitive slave. By incorporating intertextual practices that are argued as literary theft, the author of Clotel was both legally and textually evasive,
proving difficult to capture the full meaning of his pilfering. Moreover, I have also tried to expose the relationship between literary metaphor and law by arguing that the two often bleed into each other in ways that the law becomes metaphor and metaphor becomes (in)formal law. Finally, the emergence of copyright law in the US and Britain afford Brown opportunities to exploit its infancy in ways that imply his legal and literary sophistication. It is through Brown’s body and his novel that his flesh is textually represented and his literary articulations are fleshly demonstrated. Although his literary thefts are, as Frederick Douglass puts it in 1853, “like other literary men” (1), Brown’s fugitivity makes his novel all the more transgressive, all the more criminal.
CHAPTER 3
MARK TWAIN, HUCKLEBERRY FINN, AND THE (BLACK) CRIMINAL IMAGINARY

It is the foreign element that commits our crimes. There is no native criminal class except Congress.—Mark Twain, “More Maxims of Mark”

Pessimist—The optimist who didn’t arrive.—Mark Twain, “More Maxims of Mark”

I

In this chapter, I argue that criminal acts primarily committed by black characters profoundly shape Mark Twain’s The Adventures of Huckleberry Finn (1884). Since its publication, much has been written on the novel; however, there has been little scholarly focus on what I consider to be the novel’s center, crime. For example, it is when Huck feigns his own murder that sends him on his escape from civilization. His traveling partner for most of his adventures, Jim, is a fugitive slave who is desperately seeking refuge in non-slavery territory in the North. It is the cultural implications of crime that circulate through the characters’ interactions with one another. As a critical theme in this and other works by Twain, focusing on crime, I contend, offers temporal and sociopolitical commentary during the period of its publication: that the structures of repression in the nineteenth century, despite shifts from slavery to emancipation have remained consistent in relation to black Americans, while their forms have been altered (i.e. slavery to freedom); that these structures are strongly operative through sartorial representation; and that criminality is often constituted through (inter)textuality and imaginative play. Twain leaves the question of who is or what is the central criminal in the novel; however, there is an implicit understanding that black criminal subject retains a
substantial value as a primary result of historical and cultural exploitation, repression, and oppression of the nineteenth century. By setting the novel in the South, Twain presages a certain kind of criminality involved in the construction of a black criminal type, a subject who figures as the quintessential antebellum and postbellum social threat.

It is from here that *Huckleberry Finn* posits two provocative, related, and overlapping concepts on the way crime maneuvers in the text, as well as the way criminality constitutes subjectivity. The first concept is of a textual order: it examines the final third of *Huckleberry Finn* by primarily focusing on Jim’s incarceration. For Jim, the slave jail—that is, incarceration proper—and Tom’s imagination transform him from fugitive slave to prisoner (slave). In this regard, I take seriously novelist Toni Morrison’s analysis of the novel in *Playing in the Dark: Whiteness and the Literary Imagination* (1992), in which she argues that:

> If Jim had been a white ex-convict befriended by Huck, the ending could not have been imagined or written: because it would not have been possible for two children to play so painfully with the life of a white man (regardless of his class, education, or fugitiveness) once he had been revealed to us as a moral adult. Jim’s slave status makes play and deferment possible—but it also dramatizes, in style and mode of narration, the connection between slavery and the achievement (in actual and imaginary terms) of freedom. (56)

Huck’s pursuit and understanding freedom is contingent upon Jim’s unfreedom, for it would not have been possible for Huck to shout the warning, “They’re after us” (Twain 53). But it is Jim’s incarceration as a “prisoner” that authorizes Tom and Huck’s play of criminality at Jim’s expense (to help Jim escape from his slave jail is both imaginatively
and materially a crime). The second theory is institutional: legal circumstances—
specifically convict leasing and black disenfranchisement, among other issues—and
structures situate and, at times, constitute the subject as a criminal type, prefiguring what
Sherwood Cummings has described in his *Mark Twain and Science: Adventures of a
Mind* (1988) as Twain’s increasing “pessimistic-determinism” (208) that can found in his
later essays such as “What is Man?” (1906). That is, the beginnings of Twain’s ever-
increasing philosophical pessimism can be traced in his earlier literary expressions,
particularly in *Huckleberry Finn*. While my focus in primarily on how black characters in
the novel are (re)imagined and constructed as criminal39, white characters can be

39 Reconstruction and post-Reconstruction circumstances led to a break in what previously and primarily existed as the *imagined* black criminal that was materially and historically corroborated to the (re)imagination/construction of the black criminal. This break recognizes that once emancipation occurred, a different, overlapping discourse emerged that explicitly considered black Americans as pathologically criminal and a threat to the social, political, and cultural order. Commenting on the Thirteenth Amendment’s meaning, cultural historian and theorist Saidiya Hartman remarks her in *Scene of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century American* (1997),

The fears unleashed by black incorporation in the national state concerned the menacing proximity of the races, the impending demise of the white man’s government by the inclusion of blacks in the body politic, and the relation of the federal government to the states. In addition, misgivings abounded that the changes wrought by the Thirteenth Amendment would violate the sanctity of ‘domestic institutions’ other than slavery, if not the integrity of the white race, since equality and miscegenation were inextricably linked…In this way, the roots of freedom were located in slavery and the meaning of freedom was ascertained by its negation; consequently, contending narratives of slavery inaugurated the debate on freedom. (172)

I quote this passage at length for its theoretical implications and what I find to be underlying Hartman’s analysis. Given that my definitions of crime and criminality are capacious, I place the idea of fear, of a constant threat to the political order to be at the heart of the shift from emancipation to freedom. The fear was that black freedom might also mean black transgression—or black freedom was understood as black transgression. It is in the latter part of the nineteenth century that one observes, among other scientific fields, the rise of criminological atavism and the studies of Cesare Lombroso, among others, make their ways to the shores of the United States as an attempt to scientifically
included in this analysis and will be discussed first in order to situate criminality’s centrality.

While accounting for the actual structure of the (slave) jail and how it renders the subject as criminal, it also examines the free black male subject and his “criminal presence” in the geographical spaces of the North and South. Relatedly, I am interested in his sartorial representation, what Monica Miller calls in her 2009 work *Slaves to Fashion: Black Dandyism and the Styling of Black Diasporic Identity* “the crime of fashion” (81). Pap’s racist invective about what he refers to as “a free nigger there, from Ohio; a mulatter, most as white as a white man” (Twain 24) represents a historio-present threat to white social order within the contexts of the novel, both the time period it reflects and the period of its publication. He has the ability, audacity for sure, to engage in formal political processes by voting. He is also of esteemed intellectual caliber as a result of his professorship. What he wears, how he presents and represents himself, is just as much of a threat to Pap’s and the larger community’s sensibilities as it is to the political standards and expectations of the St. Petersburg. Clothes and profession become mechanisms on how crime is performed and read in its application on and implication of black people.

For clarity of argument, the chapter will be divided into six sections. This is to prevent confusion that may come as a result of argumentative and structural overlap. These sections separate intertextual/genre reading of the novel, criminal performed by white characters, and criminality constituted in black characters. As a result of its substantiate the existence of the black criminal. Therefore, there is a break (not a cessation) in what is inaugurating as the imagination of the black criminal primarily by cultural production in the first half of the nineteenth century to what becomes the (re)imagination and construction of the black criminal second half of the nineteenth century, specifically after the close of the Civil War.

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historical circumstances, the novel, in some ways, addresses the precarious situation for black Americans post-Reconstruction. Twain began composing *Huckleberry Finn* in 1877, the year federal troops pulled out of the South, effectively ending Reconstruction. Consequently, he was writing at a time when there was gradual increase in Ku Klux Klan activity, general suppression of black voters, and increase in the leasing of black convicts. Examining Mississippi as a microcosm of anti-black terrorism and legal repression, historian David Oshinsky in *Worst Than Slavery: Parchman Farm and the Ordeal of Jim Crow Justice* (1996) notes that “convict leasing did not fully take hold...until after 1875, when the Republican party [sic] was routed and the federal troops went home.” It was during this period that “[l]aw enforcement…meant keeping the ex-slaves in line” (37, 33). Therefore, *Huckleberry Finn* is composed at a period in which Southern law(lessness) was rampant as a result of federal withdrawal from its states.

It is important to keep in mind that I do not seek to read *Huckleberry Finn* in deterministic fashion, in which historical procedures and activities during the periods of its publication are primary critical lenses. Instead, I use history as a way to measure Twain’s imaginative powers in relations to his creation of black criminal subjects. I am fascinated by how the work speaks to late nineteenth-century history and reimagines the conditions of black Americans this time. Therefore, I want to analyze what culture has to offer to the historical and political workings of the period. Finally, I conclude by briefly situating the novel at the nascent point that foreshadow and articulate his literary and philosophical pessimism toward the turn of the century.
Before dealing with the novel’s content, I want to take time to discuss its print
history and its public reception. What follows is an attempt to situate *Huckleberry Finn*
within an (il)legal discourse, to argue how published works are greatly shaped by their
legal circumstances and how they are incorporated into a larger social regulatory schema.
What is offered in this section is an analysis that focuses the book as material, legal
artifact. From its inception, *The Adventures of Huckleberry Finn* was Twain’s most
controversial work to date. During its publication process, Twain and the novel
encountered serious problems with profound legal implications. In a March 14th, 1885
article titled “Current Literature” from the *San Francisco Bulletin*, an anonymous author,
in excoriating fashion, opines that Twain has “long since learned the art of writing for the
market”, that “[h]is recent books have the character of commercial ventures”, and that
“[n]o book,” prior to *Huckleberry Finn*’s publication, “has been put on the market with
more advertising” (1). According to the author, any news concerning Twain’s novel,
whether negative or advantageous, places him in the best possible position to financially
capitalize on the “many thousand dollars’ worth of free advertising” (269). What the
author references is an engraving prank that certainly would not have shamed characters
Tom Sawyer or Huckleberry Finn in its execution. After three thousand novels—by
subscription only—were produced by Webster & Co. and hundreds shipped, it was later
discovered by an agent in Chicago that an unknown artist had drastically—for some,
humorously—altered an illustration of Silas Phelps by placing a phallic symbol between
his legs; accompanied by Aunt Sally, as rendered by a November 27th, 1884 article in
*New York World*, “whose face was enlivened with a broad grin”; and, standing fully erect
with hand on hip, Huck (4). The illustration’s caption reads, “In a Dilemma; What Shall I Do?” The drawing was immediately retracted and replaced with a more sensible engraving. Yet, this did not signal the absence of the illustration, for “[s]everal opposition publishers got hold of copies of the cut…and these now adorn their respective offices (4) The salacious scandal, rather than injuring future sales for the novel, increased its financial success.

After subscriptions sales were finalized, bookstores and libraries carried *Huckleberry Finn* for purchase. Reviews were mixed: some favorable, such as William Ernest Henley’s, published in the December 27th, 1884 edition of *Anthenaeum*, who writes, “We shall content ourselves with repeating that the book is Mark Twain at his best” (1). Others reviewers did not share his opinion, such as The Concord Library Committee, which found Twain’s magnum opus to be “a very low grade of morality…couched in the language of a rough, ignorant dialect….It is also very irreverent…The whole book is of a class that is more profitable for the slums than it is for respectable people, and it is trash of the veriest [sic] sort” (1). Concord’s stringent judgment led to banning the novel from its shelves, which made headlines across the country. However, Twain welcomed the financial and social benefits accrued from the committee’s obstinate decision. In an March 18th, 1885 letter to his publisher, Charles Webster, Twain succinctly writes, “Dear Charley,—The committee of the Public Library of Concord, Mass., have given us a rattling tip-top puff which will go into every paper in the country. They have expelled Huck from their library as ‘trash suitable only for the slums.’ That will see 25,000 copies for us, sure” (452-453). Three days later, *Boston*
*Commonwealth* echoed Twain’s personal correspondence by having more faith in the inquisitiveness and curiosity of the public.

But why don’t these good people [of the Concord Public Library Committee] do all this [censorship] quietly, without getting into the newspapers with their disapprobation? We venture to say every boy and girl in Concord will make a point to get that book and read it. They will want to know if it is indeed an improper book. As for Twain himself, he is probably laughing in his sleeves at the advertisement his book has received in Concord, with every newspaper referring to it. There are some things best accomplished by quiet suppression, and a bad book is one of them. (6)

Eventually, Concord made amends with Twain by awarding him honorary membership in its Free Trade Club and restoring his “vile,” “contemptible” novel to its shelves.

One of the aspects that links these two cases together is how the illicit, as a consequent of both the novel’s illicitness and concomitant media attention, not only sells, but disseminates an ideological representation carried by both the material book and the content that lies within. Silas Phelps’ phallic photo was removed and, upon publication, *Huckleberry Finn*, in the case of the Concord Library, was censored, creating in both cases illicit ideology of the book before its contents were widely read. One may be inclined to argue that the book, rather than being illicit—a term with an immediate association with the law—was culturally taboo, thereby mitigating its legal stakes. Yet, it is important to note the legal apparatus associated with and involved in publication and the materiality of the book itself. Agents, authors, and publishers construct and discuss contracts, potentially agreeing upon their final terms; they sign documents with and
sometimes without legal representation; agents issue subscriptions with advertised expectations that materials will be delivered to customers as precise times; and parties revisit copyright laws. Materially, factories were responsibility for reproducing multiple copies, engravers were charged with the task of creating illustration that correspond to the specific content of a chapter, and canvasing agents for subscribers were supposed to persuasively make a case for the book. These activities were connected in a capitalist network of both intellectual and material labor held together by legal documents.

Therefore, the book’s very being, its materiality and presence as book, due to two well-publicized controversies, took on a different life, one that was legal and that carried potential, as it was argued in the finalized version of *Huckleberry Finn*, to ruin respectable sensibilities of late nineteenth-century youths. In other words, the presence of Twain’s novel, in its raw form, in its emergence from the factory, in its representation

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40 In *Writing Huck Finn: Mark Twain’s Creative Process* (1991), scholar Victor A. Doyno persuasively argues that Twain’s dual concerns regarding literary and copyright shape the entire novel in a way that tackles issues of “the deceptive power of books” (174, 175). He notes that “[a]lthough Twain at one early point thought that the lack of international copyright laws in America would lead to inexpensive European literature and would help America, he later viewed romanticized stories of nobility as corrupters of American youth” (175). While my purpose will be to discuss how crime operates in the novel, Doyno ambitiously illustrates how *Huckleberry Finn*’s content is influenced by, indeed infused with, at the very least, legal sensibilities. To further indicated and implicate the legality of “the book” even more, one may examine Twain’s role as plaintiff in a lawsuit, in which “the well-known publishing house of Estes & Lauriat” was sued by Twain for attempting to sell his novel for a discounted price $2.25 rather than subscription plan price of $2.75. Before the book was published, subscribers called the publishing house in question and were informed that the book would be sold at its discounted rate. The terms were not negotiated by Twain, Charles Webster, and “their canvassing agents” (*Literary World* 66). Estes & Lauriat based the discounted price on previous business with Twain and Webster, in which previous works by the author were offered to them to be sold at $2.25. Once the lawsuit was issued, the publishing house removed the discount advertisement and “do not propose to distribute any more catalogues containing the advertisement” (*Literary World* 66).
through advertisement both negative and favorable, and its existence in the hands of those who read it, constitute it as transgressive.

A curious, but quite obvious, question emerges from the second case: why would a nineteenth-century public library in Massachusetts want to remove a novel from a renowned author from its shelves? This question’s overarching theme is that of the public sphere and its ideological orientation, specifically what is known among scholars as the “public library movement.” From its beginnings, as Matthew Battles asserts in *Library: An Unquiet History* (2003), establishing institutions of erudition, classical literature, and archival material to be used by the public was never an innocuous enterprise—in fact, it was a deeply contentious ideological, racialized, and gendered battle that was concerned with “the work of turning privileged boys into power men” (87). Texts housed in public libraries were to be used to train respectable individuals—mostly white men—to be leaders in civil society. Primarily analyzing dime novels and its critical role in shaping working-class Americans (a genre of fiction to which I will return regarding its relationship to *Huckleberry Finn*) Michael Denning in *Mechanic Accents: Dime Novels and Working-Class Culture in America* (1987) determines the following:

Indeed the public library movement in the United States in the late nineteenth century, and particularly the controversies over the place of fiction in the library, are significant parts of…the ‘reformation’ of working class culture. And though the American state was a diffuse and underdeveloped entity in the nineteenth century, it played a significant role in regulating popular fiction, particularly through Post Office regulations. (26)
One can certainly add *Huckleberry Finn* to this list. Such insistence on regulating books speaks to both the subversiveness of the text as material entity and as ideological disseminator. It also signals more nuanced regulatory schema. In this instance, social control, social categorization, operate on what I call a *literatextual* level. This neologism combines and plays with the shared etymology of *literal* and *literature*, in which its Late Latin derivative is *litteralis*, or *litteral*, meaning letter. The first part of the term, “litera” also denotes the generally understood meaning of “literal.” *Textual*, the second addition to my neologism, attempts to connote the materiality of the text itself, along with its content—that is, its etymology, which comes from the Latin *textus*, meaning “tissue, literary style.” *Literatexual* is used in this context as a way of centralizing the roles of text and textuality in social regulation in the constitution of the public library and specifically the novel’s censorship. African American women and men, along with white women, were included in the strategies *literatexual* social regulation through their precise exclusion or the deemphasis on their presence in these literary, indeed public, spaces.41

41 I am reminded by Elizabeth McHenry’s insightful arguments presented in her intelligent book, *Forgotten Readers: Recovering the Lost History of African American Literary Societies* (2002). She writes, “New directions in the study of black readers and reading need…to decenter formal education as the primary institutional force behind the reading of literature. Historically, black Americans have been denied access to formal educational opportunities, and the public education that has been provided for them has been of inferior quality.” Therefore, she continues, it is critical for scholars to “expand our perspective beyond the classroom to a series of nonacademic venues” where literacy, readership, and readers were formed. This means that scholars must direct their attention from public institutions, including the library, to *counter-public* spaces such as “churches, private homes, and beauty parlors that have, since the nineteenth century, been sites for the dissemination of literacy and for literary interaction for members of the black community traditionally excluded from the nation’s elite liberal arts colleges and universities” (10). The implications of her findings are serious: precisely due to exclusionary and marginalizing social practices, black Americans were able to create a
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In his second nonfiction work, *Green Hills of Africa* (1935), writer Ernest Hemingway famously proclaims, “All modern literature comes from one book by Mark Twain called *Huckleberry Finn*. If you read it, you must stop where nigger Jim is stolen from the boys. That’s the real end. The rest is just cheating” (21). Myra Jehlen’s “Banned in Concord: *Adventures of Huckleberry Finn* and Classic American Literature” (1995) suggests, along with Hemingway, that it was its “down and dirty,” “dissonant” qualities of the novel that separates it from writers such as Emerson and Hawthorne (94, 96). For Jehlen, however, it is precisely due to the novel’s status as what she calls a “populist classic”—one that distorts standards of high art and culture—and its “dissonance” as a work that combines many literary genre as hodgepodge that makes the novel so controversial. Here, it is important to establish what makes the novel’s content so scandalous, along with how critical crime is to the plot of the novel, by looking at how the novel incorporates an important popular genre, among others, of nineteenth-century literature, the dime novel. Through this examination, I am looking for way to explore what may be called *literary criminality*—a violation of taste and a literatextual concern of and for literature.

Briefly recalling his time as a child, T.S. Eliot, in his introductory essay of the novel, writes the following:

*Huckleberry Finn* is, no doubt, a book which boys enjoy. I cannot speak from specific kind of readership, one that was, as a result of its very constitution as such, subversive and, in some cases, illegal. On white terroristic responses to black women’s education in the antebellum North, see Kabria Baumgartner dissertation, “Intellect, Liberty, Life: Women’s Activism and the Politics of Black Education in Antebellum America” (2011).
memory: I suspect that a fear on the part of my parents lest I should acquire a premature taste for tobacco, and perhaps other habits of the hero of the story, kept the book out of my way. But *Huckleberry Finn* does not fall into the category of juvenile fiction. The opinion of my parents that it was a book unsuitable for boys left me, for most of my life, under the impression that it was a book suitable only for boys. (44)

I want to focus on two aspects of this passage, which are, as Eliot indicates, connected: the categorization of Twain’s novel and its readership, particularly young boys. When “Tom Sawyer’s Gang” is organized in the novel’s early stages, “[e]verybody that wants to join has got to take an oath, and write his name in blood” (8). All the boys present agree to criminal stipulations of swearing allegiance. Some of its tenets have legal repercussions if violated. Huck describes that the boys should “never tell any of the secrets; and if anybody done anything to any boy in the band, whichever boy was order to kill that person and his family must do it, and he mustn’t eat and he mustn’t sleep till he had killed them and hacked a cross in their breasts, which was the sign of the band” (8). Furthermore, if an individual who is not a member of Tom’s gang uses the band’s sign, he “must be sued”; if done again, the individual “must be killed” (8). Other transgressions of the oath often result in the death of its member or someone indirectly related to Tom’s gang. The point is not how well the gang understands litigation and the legal implications associated with murder (the reader later learns that Tom does not understand what “ransomed” means). For sure, such a scenario comes off as whimsical and makeshift. However, what is critical is how these legal terms and ideas *shape*, in fact *organize*, Tom Sawyer’s Gang. The gang exposes how, following Peter Linebaugh in his critical work
on eighteenth-century crime and political economy *The London Hanged: Crime and Civil Society in the Eighteenth Century*, “[t]he division between legitimate and criminal transactions was never clear at any level” (175). These organizations, Linebaugh continues, were “not completely lawless…When necessary [they] developed [their] own kinds of written self-organization,” such as “oath[s] or club rules” (150, 151). Indeed, the boys have a basic, rudimentary sense of copyright law: one could be sued if one uses the gang’s symbol without its consent, which comes in the form of being one of its members. Therefore, within Tom’s criminal enterprise comes a sense of self-law, self regulation that does not seems entirely different and divorced from formal legal structures not in terms of orientation, but formation.

Possibly due to its structure, the gang agrees that the oath is beautiful—it possesses a kind of structural artistry. Pleased with what Tom has produced, the members curiously ask if he made it all up, “got it out of his own head”, to which Tom rejoins by revealing that much of his (il)legal knowledge has been acquired “out of pirate books, and robber books” (8). In different stages of the novel, even in his jocular but serious attempt to free Jim, Tom is adamant about not “doing different from what’s in the books” so as not to “get things all muddled up”, as the gang members begins to question the morality behind what they consider to be senseless, gratuitous killings (8). It is important to note that their inquisitiveness does not make the gang and its impending criminal activities completely unattractive. Instead, what they are seeking from Tom is clarification: they do not want to blindly follow the books Tom has read—they want him to make sense of these unnamed texts, to analyze them, critique them. In this sense, the gang desires Tom to be a literary critic for them by interpreting these texts they have not
read. He goes from not knowing what ransomed means to conjecturing that “per’aps…it means that we keep them till they’re dead” (9). Tom’s analysis proves sufficient, but what is so fascinating about the gang’s formation by its leader is Tom’s literacy or, in this case, literacy of crime. The reader is informed later in the novel about one book he read, *Don Quixote*; but it is possible that on a micro-level, Tom and, unequivocally, Twain himself had access to and read the popular literature geared toward young boys known as dime novels.

Literary scholar Michael Denning’s detailed study of dime novels and nineteenth-century cultural and economic production notes that the genre was one of three “[p]opular fiction narratives” that appeared “between the 1840s and 1890s”, with the other two being story paper and the cheap library (10). Between the 1870s and 1890s, emphasis was placed on “outlaw tales, tales of urban life, and detective stories”, the decades in which Twain published *The Adventures of Tom Sawyer, The Adventures of Huckleberry Finn*, and *The Tragedy of Pudd’nhead Wilson*. Consequently, not only does *Huckleberry Finn* offer commentary on the social and political conditions of the antebellum and postbellum periods, but also their literary conditions. Dime novels emerge prior to *The Adventures of Tom Sawyer* and *Huckleberry Finn*; but both works, particularly the latter, make temporal-cultural points as it relates to crime. The production of dime novels are most certainly involved in a larger network of (cultural) capital: they are made quickly and cheaply, and are marketed toward a working-class demographic who found the “prohibitive prices of hard bound books” difficult to afford, as Vicki Anderson points out in her 2005 work, *The Dime Novel in Children’s Literature* (81). While all dime novels do not deal with outlaws and malefactors, what they offer, along
with *Huckleberry Finn*, is how through the production, marketing, and content of dime novels, there is an attempt to establish, and later inculcate, both a working-class and *criminal-class* consciousness, even in hyperbolic fashion as it relates to Tom Sawyer’s Gang. Perhaps this may explain the desire to create more sensationalized dimes between 1870 and 1890.

In his concluding chapter, Denning refers to *Huckleberry Finn* as exposing the dime novel’s narrative limitations, which also implies Twain’s reliance on the genre (209). His work encourages readers to think of dime novel’s readership “not as small-town Tom Sawyers sneaking a ‘read’ behind the woodshed but as young factory workers” (16). While his interests lay in analyzing the creation of a national proletariat through its reading of dime novels, I am interested not only in “small-town Tom Sawyers”, but also, and most importantly, in how crime is communicated through these novels. Although dime novelist and editor Eugene Sawyer proclaimed, “It is not…only ‘the submerged tenth’ who reads cheap stories”, noting that he witnessed “bankers and capitalists gravely paying their nickels for the same tales as their elevator boys read”, Denning, in specific detail, maintains that the audience “seems to be predominantly young, ‘lowbrow’, and internally divided by gender. It includes, depending on one’s [sic] rhetoric, the ‘producing classes’ or the ‘lower classes’, encompassing German and Irish immigrants and ethnics but excluding Blacks and Chinese immigrants and ethnics” (29, 30). Mandatory education laws established as a result of Reconstruction increased literacy in the South. By the end of the nineteenth century, there was a sharp decline in illiteracy rates among farmers and laborers (31).

As a result of their proletarian status and the expensive costs of hardbound books,
dime novels most certainly were a part of the working class’s reading diet. Anderson remarks, “Dime novels were the main source of entertainment for the common man, giving some excitement, romance and escape, both for the city people and rural population” (80). The sensational content, romance and escape within dimes, however, were of great concern in relation to crime among youth and larger issues of social regulation. Anderson continues by aptly observing that

[t]he importance of the dime novel also came at the same time as the study of the social sciences in the United States. This included the belief in a scientific approach to criminology and penology, because this was a way of finding out why crime was committed. It was also believed that reading could be either a benefit or a curse, so controlling what children read was important to the morals of these children. Ideally, the working classes were expected to read stories that stressed work, family, self-improvement and similar books (81).

Two points are noticeable from Anderson’s observation. The first point is the simultaneity shared between dime novels, criminology, and penology. Understanding crime rates and criminal proclivities was not solely focused on cranial structures, pathologies, and social conditions, but also on literature and readership, literary and literacy demographics. This concern was stressed in The Young Malefactor: A Study in Juvenile Delinquency, Its Causes and Treatment by Thomas Travis (1908). Interested in what factors and conditions are responsible for the increase in juvenile delinquency at the start of the twentieth century, something that, as the introduction of his text points out, “pertains to all children”, Travis is driven to test “the theory of evolution” used by the Italian School of Criminologists like Cesare Lombroso to explain “the phenomena of
criminality”, in which “emphasis was placed on the atavistic characteristics of the offender” (x, xxiii). Finding a neglected gap between environmentalist and atavistic positions on criminality in terms of selected subjects, Travis examines crime rates among children in the United States. His findings lead him to eight conclusions or “theses.” Important among them are that “at least 90% and 98% of first court offenders are normal” concerning their “physical, mental, and ethical conditions”; the physical, mental and ethical conditions of delinquents’ parents are also considered normal, but that the percentage of the above delinquents are such as a result of their “economic condition” and “material condition” of their homes; and some of the “two to ten percent of first court offenders” are “insane, others morbid and some few perhaps atavistic”—these individuals “might be called in a metaphoric sense ‘born criminals’ ” (xxvi-xxvii). From his findings, it is clear that Travis stresses environmental and economic factors of criminality, particularly those that exist within a delinquent’s domicile and the overall performance of parental figures.

However, he does not entirely eliminate the possibility that a small percentage of adolescents and teenagers could be considered criminals at birth, including black youths. One example in particular stands out. In an effort to look at crime from the culprit’s standpoint, Travis notes “some bizarre crime that is surely the result of morbid nerve, much more which is the result of heredity and training, but most of all from immaturity and accident” (28). He continues with the following observation:

…[A] negro boy in one of our juvenile classes would expose himself in the presence of children and teacher. He would begin masturbation and attempt homosexuality in the presence of the teacher or in public. He was decidedly
lacking in mentality. This is abnormal nerves, a form of insanity, and it is so rare that the writer has seen one case in several hundred delinquents. (28-29)

It should be remembered that Travis classifies such behavior among the two to ten percent of juveniles who could be considered born criminals. Homosexuality and masturbation, especially their public displays, are labeled as abnormalities, accidents, the latter of which Travis leaves undefined. These activities, rarities as he perceives them, are brought forth to the reader by way of a young black body. His vices are peculiar, attributable to a genealogical lineage, distortion perhaps, passed along through generations. Travis’s example partially revises by racializing Michel Foucault’s analysis in *The History of Sexuality: An Introduction, Vol. I* (1976) 42. Sexuality, particularly homosexuality, is strongly linked to juridical procedures—specifically to sodomy laws—psychiatric classifications, and literary allusions. However, there is a link just a strong and tenacious that connects homosexuality to a racialized narrative that naturalizes and biologizes it (*scientia sexualis*) through the study of criminal behavior. Consequently, Travis establishes a juridico-scientific study by examining the black body that undergirds criminal classification and naturalizes it all the more. For Travis, to be a born criminal is not only to be a homosexual, but it is, through his example, to be a black homosexual youth. The example becomes the paradigm, the lens through which the reader understands hereditary criminality. To be sure, the solution for white delinquents,

42 In this book, Foucault describes how homosexuality in the nineteenth century became naturalized through the same language that medically disqualified it, but was still associated with processes of jurisprudence, psychiatry, and literature (101). Although Foucault’s focus is homosexuality’s nineteenth-century emergence as a classificatory term, which later becomes apart of a discourse of naturality, I heed his suggestion in *The Order of Things* (1966) that discourses overlap; therefore, Travis’s publication in the first decade of the twentieth century articulates a discourse that was alive in the previous century and still had intellectual and scholarly viability in the succeeding century.
including immigrants, was for their homes to have proper parental figures, primarily with a stern father. For black children who display said abnormalities, no such solution would be enough, nor would it be an option.

Nevertheless, Travis’s purpose is to challenge atavistic studies by focusing on environmental conditions. Included among these factors are the kinds of literature to which a child is exposed. Prior to his discussion of the influence of dime novels, Travis coins the term “Fagin” to describe a kind of apprenticeship of criminality, in which older youths train their younger protégés in enterprises such as pick pocketing (160). Obviously, this is an allusion to Charles Dickens’ 1838 novel *Oliver Twist* where the antagonist Fagin, leader of a criminal gang of children, attempts to corrupt the innocent orphan, Oliver Twist. This term has transatlantic implications and considers the larger role literature plays with regards to scientific discourse and its terminology. Continuing, “Bad literature”, writes Travis, “has an effect in this realm” and may be a potential cause of delinquency (160). “Diamond Dick” from the *Diamond Dick* series was a bandit of “the usual type”; therefore, “[i]t is not unknown to find counterfeiting and even murder springing from bad literature.” In fact, there was at least one case in 1904, in which “a child of ten held up another and robbed him of three dollars. The robber had read dime novels from the age of seven. He was particularly interested in Jesse James and knew more of him than of Washington” (161). What is important here is not any potential exaggeration or even the *post-hoc* argument offered by Travis. Rather, what I find to be critical is how literature becomes an avenue to explain criminal behavior, classify youths as criminal, and socially control and regulate this demographic. Culture, specifically literature, becomes ground on which concerns about criminal behavior are analyzed in
conjunction with economic and social circumstances. In fact, literature is part and parcel of those very conditions to be confronted by and corrected for Travis.

In the case of literature that had negative moral influences on children, the solution was not to censor or suppress it (perhaps a note was taken on the failure of Concord Library in this endeavor). Quite the contrary, a more viable resolution was to provide children with

cheap, wholesome literature for these new, unsophisticated readers. Throughout the century both religious societies and profit making publishers attempted to provide this alternative…the most successful of these did not attempt to moralize, but tried instead to provide fiction slanted toward what they considered more desirable social behavior. (Anderson 81)

Efforts to alter criminal behavior took place with reformist efforts that were not dissociated from capitalist interests. This scenario complicates negative analyses of social control and institutional regulation, for at the precise time when the asylum, the penitentiary, and the school were under reform, there were also attempts to reform popular literature. Sensationalist literature was not ideologically displaced or censored: some of the same publishers responsible for placing such literature on the market were simultaneously producing more dime novels of ethical varieties. The attractiveness of crime and scandal in dime novels did not cease with the genre’s decline; instead, they shifted to pulp fiction. If one focuses on dime novel production and the mode of production in which it exists, what is revealed is the profitability of criminality through sensationalism that may have had potential implications in terms of how a criminal subject was constituted, as well as the profitability of combating criminality not through
dogmatic rhetoric, but through secular narratives. Literature in this sense, which includes the dime novel and *Huckleberry Finn*, is not a terrain of warring content and ideas as much as it is a field on which two seemingly oppositional narratives of the same genre function in circulation, interchange, and interplay that simultaneously constitute the criminal and the reformed subject, operating in the realm of capitalist production. There is equal reliance on mischievous literature in order to establish conditions of possibility for its reform held within a capitalist economic framework.

IV

If Huck does not offer his temporary guardian, Miss Watson, to be killed by Tom Sawyer’s Gang, he would have been excluded from an imaginary, imaginative world of crime. After its assembly, the gang, attempting to be in the “business” of “[n]othing [but] only robbery and murder”, disbands after a month for failing to actually rob and kill anyone; they were, as Huck frustratingly puts it, “only just pretended” (12). His disappointment in the gang’s unsuccessful endeavors may lay bare palpable restrictions and shortcomings of criminal imagination. But the point here is that it is through such failure, through such expansive imaginative qualities that Tom’s gang is able to situate themselves as criminal types in relation to the law. Although the boys do not execute any crimes, they view themselves as (il)legal subjects who have an understanding, oftentimes inaccurate, of (il)legality and their associated consequences. Furthermore, the formation and constitution of Tom’s gang is a precursor of Huck’s departure from civilization and his subsequent interactions at the precise point when he is becoming accustomed to school and Miss Watson’s teachings. Even when the reader is first introduced to “Miss Watson’s nigger, Jim”, Huck, rather than offering money he acquired from the judge for
Jim’s advice regarding Pap, hands Jim an “old slick counterfeit quarter that warn’t no good” (16). The reader’s initial encounter with Jim is predicated upon, at best, dishonesty from his soon-to-be sidekick with outdated—that is, illegal—coinage.

Huck’s criminality and identity formation stem from his impressive imaginative capabilities. When he finds Jim on Jackson’s Island, one understands that Huck’s viewing himself as a fugitive similar to Jim is false. Even though he is falsely assumed by Mrs. Judith Loftus as a “runaway ’prentice” who has “been treated bad, and made up [his] mind to cut”, and despite his declaration that “[t]hey’re after us [Huck and Jim]”, the town’s people are not and cannot be after Huck, for he is assumed dead (51, 53). Huck certainly suspects as much when he first encounters the fleeing duke and dauphin in the middle of the novel. Thinking that he was a “goner”, Huck discloses, “…whenever anybody was after anybody I judged it was me—or maybe Jim (101). It is important that a startled Huck centralizes himself by italicizing, emphasizing himself, for he must believe that he, too, is a criminal. But it is clear that the townspeople of St. Petersburg are after his murder suspects, Pap and, most likely to be found guilty of murder, Jim. This is further illustrated by Huck taking blame for Jim’s escape as a peculiar way of legitimating his own rebelliousness and criminality. Early in chapter sixteen when the duo sense that Jim’s freedom is on the horizon, Huck begins to “tremble and feverish too…because I begun to get it through my head that he was most free—and who was to blame for it? Why, me.” Huck wrestles with his conscience—the power and pull of slavery—attempting to convince himself that he “warn’t to blame, because I didn’t run Jim off from his rightful owner”, but it was to little avail (74, emphasis in original). And as he admits, one of the worst names to be considered in criminal effort to help Jim
escape Jackson Island is a “low down Abolitionist [sic]” (37). He faces this dilemma again when he decides that he willing to go to hell in order to rescue Jim from the slave jail on Silas Phelps’ property. Jim does not help Huck get over his deathly feelings on the matter, attributing his possibility of freedom primarily to Huck. Charles H. Nilon’s essay, “The Ending of Huckleberry Finn: ‘Freeing the Free Negro’ ” (1992), posits that despite Illinois—the state Jim wants to get to—being a free state, “fugitive slave laws were in effect, and Huck too would have been subject to arrest” (66, my emphasis). Similar to Nilon’s analysis, Elaine Mensh and Harry Mensh in their collaborative study, Black White, and Huckleberry Finn: Re-imagining the American Dream (2000), argue that as Jim is caught, St. Petersburg’s citizens “will also catch Huck and return him to a civilization that will surely punish him for consorting with an escaped slave” (45). There may be some truth to this, but there is also false equivalence between the civilization Huck yearns to escape and the punishment (not legal consequence) that may ensue if returned, and the unquestionable, surely inevitable, legal consequences Jim will be forced to endure. Important to keep in mind is that the reader learns that when Jim is recaptured towards the end of the novel, he does not inform his captors who freed him. Jim’s loyalty to Huck and Tom is clear: it is not only that Jim needs Huck to achieve freedom, for he is genuinely committed to their well-being. Furthermore, Huck’s sudden “resurrection” from death would have been incredibly surprising, thereby leaving him virtually and veritably unscathed from any legal consequence associated with Jim’s escape. That is, there is a difference in value between direct legal repercussions connected to Jim’s fugitivity and suspicion of murder versus the metaphorical cost assigned to Huck’s return to civilization. As a result, Huck’s imaginative construction of his own criminality is
based on a moral dilemma that pits how he perceives black Americans, particularly
slaves, in the social sphere against his espousal of freedom. Although Huck’s criminality
is not entirely imaginative and imagined, his fugitivity is and has very little, if any, dire
legal consequence.

Illegality, rather than inhibiting Huck’s pursuit of freedom, propels it forward,
drives him to the river itself, the novel’s metaphor of open movement and unrestricted
liberty; and it also displays, among other scenes in the novel, his intuitive, yet meticulous
knowledge. At this point, it is important to return to Huck faking his own murder as an
attempt to free himself from his abusive, constantly inebriated father. His plan is
impressively imaginative, a strategy of escape that he knows Tom Sawyer would have
appreciated and to which he would have contributed by “throw[ing] in the fancy touches”
(29). Huck’s scheme requires great labor, both intellectual and physical: a pig is
slaughtered, dragged throughout the cabin and into the river; big rocks are gathered to
weigh down the pig and to create a trail indicating that robbery took place; he pulled his
own hair out to be placed on the murder weapon, an axe, as additional evidence of
murder, a move that suggests limited, underdeveloped forensic understanding; and takes
a “bag of meal” not only for consumption, but also to further suggest murder and
robbery. Huck also exhibits rudimentary, self-acquired limnology and geography: he
knows the lake before him is shallow, “five miles wide and full of rushes—and ducks
too, you my say, in the season. There was a slough or a creek leading out of it on to the
other side, that went miles away, I don’t know where, but it didn’t go to the river” (29-
30). His knowledge is further revealed when he finally gets on the river towards Jackson
Island. Huck informs his audience, “I shot past the head at a ripping rate, the current was
so swift, and then I got into the dead water and landed on the side towards the Illinois shore. I run the canoe into a deep dent in the bank that I knowed about…” (31). It is his intelligence and cognizance of his environment in the pursuit of escape that does not come from his formal education, but from his very desire to retreat from authority. Miss Watson’s project is to reform him, to deter him from truancy and his best friend, Tom. Therefore, his knowledge of escape partially comes from his resistance to, or displeasure of, reform, for it is presented as insufferable, suffocating confinement. In this scene, Huck’s plan cleverly evinces his juvenility, resourcefulness, and sophistication, while offering a critique of what can be called *judiciality* and its outcomes. His abusive father, who, too, is a criminal, also compels Huck’s escape. Comparing the two characters, the novel “contains a wealth of evidence suggesting that Huck is…‘every inch Pap’s son’ ” (Pitofsky 55) not only in terms of racist sensibilities, but also regarding the conception of crime. What follows is not to suggest biological determinism, but instead to understand the novel’s duel analysis of judiciality, the different orientation and stakes associated with crimes committed by Pap as opposed to those committed by Huck, and how these crimes shape their understanding as racialized and criminal subjects.

To touch on the last point first, Pap appears before Huck and the reader as a fleshy apparition. Huck provides the following unflattering, spectral description of his father:

He was most fifty, and he looked it. He hair was long and tangled and greasy, and

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43 I define this term as the quality, state, character or condition of being judicial. Characters such as Widow Douglas and Judge Thatcher are deeply committed to a formal legal process. Moreover, the judicial process is depicted as rigid in order to unveil its defects. While other characters such as Pap are cognizant of the legal process, they do not heavily rely on its formality, and they occasionally transgress it.
hung down, and you could see his eyes shining through like he was behind vines. It was all black, no gray; so was his long, mixed-up whiskers. There warn’t no color in his face, where his face showed; it was was; not like another man’s white, but a white to make a body sick, a white to make a body’s flesh crawl—a tree toad white, a fish-belly white (17-18).

What should one make of this uncommon, “not like another man’s white”? He mysteriously appears when Huck does not expect him; and if one recalls, Huck has traumatic memories of his father, as suggested in *The Adventures of Tom Sawyer*. He fears his father—Pap, through his depiction, being the embodiment of terror—because of his physical abuse. Pap’s physical and psychological terror as a literary trope of whiteness, suggests Richard Lowry, draw connections “with the stoke figure of abolitionist literature: the evil slave-owner or overseer”, evoking specter-like characteristics held by Covey, Simon Legree, and Dr. Flint (58). Lowry’s point loosely touches Harold Beaver’s argument of Jim’s intellectual shrewdness and partial agency if viewed through the lens of slave narratives in “Run, Nigger, Run: *Adventures of Huckleberry Finn* as Fugitive Slave Narrative” (1974), along with Shelley Fishkin’s provocative study, *Was Huck Black: Mark Twain and African-American Voices* (1993). An interesting implication then emerges: if Pap is a different kind of white, a white with which Huck is unfamiliar and appalled by; and if the narrative voice of Huck’s description of Pap parallels those found in slave narratives, an Africanist rhetorical presence of sort, then one may deduce that Huck’s voice attempts to draw connections with the fugitive slave, the black criminal. This further explains Huck’s efforts to equate his fugitivity, his criminality with Jim’s. However, my general reading heads in a
different direction as it relates to Huck in that I am curious about how Huck’s understanding of his whiteness—an understanding of himself in relation to black and white characters, to freedom and unfreedom—is distinct to, but inseparable from, his understanding of Pap’s whiteness that is mediated through crime or, in this case, child abuse. Widow Douglas’s and Miss Watson’s attempts to reform Huck are certainly part of a larger civilizing effort, but it is also in specific relation Pap: to reform and educate Huck is to ensure that he does not turn out like his father, a frequently incarcerated drunkard. Pap is quite aware of this and is resentful. He is insistent that Huck cease “putting on frill”, for Pap, as a result of Huck’s gradual, hard-earned reform, can no longer see his reflection in Huck, inferring that Huck may not see himself in Pap. The latter says as much when he annoyingly declares, “I never see such a son” (18). The point is for Huck to continue Pap’s tradition: among other aspects, to remain uneducated and to wear rags as opposed to being a “sweet-scented dandy” (18, 19).

Pap visited Huck to get six thousand dollars being held on Huck’s behalf by Judge Thatcher. From the start of the novel, the judge, in his short treatment by Twain, represents the embodiment of the law. When there is confusion about Huck selling property to Judge Thatcher, it is the judge who clears up the matter. He writes a contract for Huck to sign, legally verifying the transaction. Later when Pap returns to obtain Huck’s money from Judge Thatcher and he refuses, Pap promises him that “he’d make the law force him” by suing Thatcher. The widow and the judge fight for custody of Huck, but the court granted it to Pap. As the presiding judge puts it, “courts mustn’t interfere and separate families if they could help it” (20). The community, prior to the hearing and after, understands Pap’s legal and social history, as he has a number of
adverse encounters with the law. Nothing about the custody procedure was incongruous. The only exception, if one can refer to it as such, is that the judge had no familiarity with the community, which would make him a disinterested party, a figure more apt to follow the letter of the law, thereby giving the hearing an objective veneer. Offered here is a critique and failure of judiciality through its accurate and even application, along with the reform that it entails, as represented by the judicial process and the two characters that embody social reform, the widow and the judge. Although Pap seeks legal recourse to obtain Huck’s money, he feels “[t]hat law trial was a slow business; appeared like they warn’t ever going to get started on it”; therefore, he (legally) runs off with Huck “up the river about three miles…where it was woody and there warn’t no houses but an old log hut in a place where timber was so thick you couldn’t find it if you didn’t know where it was” (21). In the realm of the novel, through its tone and portrayal by Huck, this seems like an unjust kidnapping, a devious, potentially criminal move performed by Pap. However, because Pap has been awarded legal custody of his son, removing Huck to the margins of St. Petersburg is morally problematic, but legally permissible. The reader learns that the judge and widow do not seek extra or additional judicial means to gain custody of Huck; instead, they “had to quit on the business” (20). For Widow Douglas and Judge Thatcher, the judicial process has exhausted itself, so there is no reason, no purpose, and no outlet to continue to fight for Huck’s reform, which is, for them, a fight for Huck. By refusing to wait for the law to play out through a lengthy process, Pap is still able to assert his authority and will. Later, the reader learns through Jim that Pap is dead and that Huck, after “freeing the free nigger”, will be adopted by Aunt Sally and be “sivilize[d]”; however, Huck “can’t stand it” because he has “been there before” (244).
His father’s death and the failure of judiciality differentiate Huck’s criminal practices that take place throughout the novel, potentially positing that an imaginative criminality is transgressive of civilization but different from the callousness attributed to Pap’s criminal behavior. To be sure, Pap’s death is not the abnegation of crime’s narrative importance, for his criminality is rigid, fixed, and easily detectable; it only lacks the same imaginative sophistication exemplified by Tom Sawyer’s Gang and Huck. Instead, his death, along with the critique of judiciality, decenters, displaces particular kinds of crime, calling for more attractive, adroitly executed criminal efforts.

Such criminal rigidity may explain the duke and dauphin’s tragedy that comprises the second half of the novel. Their crimes and ruses, although more detailed in their con-artistry, are perceived as heartlessly manipulative. Including Jim and Huck, four outlaws are now present on the stolen canoe. Prior to their encounter with the duke and “Your Majesty”, Huck and Jim were able to relatively move uninhibited. Now that the duke and dauphin have arrived in the novel, Jim status as a fugitive slave is highlighted. The two conmen serve as a reminder that Jim is, despite and, in part, because of his fugitivity, a slave. An intriguing, yet obvious point arises in this scene pertaining to Jim’s fugitivity: his subjectivity as slave is not suspended as a result of his fugitivity. In this case, it constitutes the freedom and criminality of the duke and dauphin, while simultaneously reconstituting both his fugitivity (he can be turned in at any moment) and his enslavement (he must now serve the duke and dauphin). This point cannot be understated in regards to larger questions of what Toni Morrison refers to as Jim’s “fugitiveness” (56). As along as the fugitive (slave) remains in proximity to white people, regardless of geographical
location, she and he are subject to enslavement. The Fugitive Slave Act of 1850 not only deemed aiding and abetting fugitive slaves a criminal act, but it also rendered the legal platform on which statuses such as free and slave, as constituted in and by black bodies, tenuous.

Furthermore, each character’s understanding of the differing values of crime and criminals becomes apparent. As mentioned, each person on the raft, in his own way, is a criminal; but it is Jim who is legally, monetarily, and, interestingly enough, criminally more valuable. Jim’s monetary and criminal value as a fugitive slave/murderer is important in relation to the duke and dauphin’s criminal activities. As earlier noted, Jim, along with Pap, is wanted for Huck’s murder; therefore, Jim’s criminality, in the minds of St. Petersburg residents, has increased twofold: not only is he a fugitive slave, but also he is a murderer on the run. Even when Tom has the opportunity to inform both Huck and Jim that the latter has been manumitted, it would not have changed the reality that he is wanted for murder unless he returns with Huck or Tom, and one of them speaks on his behalf. It is understood by the St. Petersburg community that because Jim has murdered Huck, he has fled. This is expressed by differences in pecuniary value between Jim and Pap. Jim’s capture is three hundred dollars, while Pap’s apprehension is worth one hundred dollars less. Both men’s accusations are coincidental—they both are absence from St. Petersburg the moment Huck is discovered missing. As Huck and Jim move deeper into slave territory, Jim’s fugitivity offers freedom for the duke and dauphin to continue their criminal enterprise. This is not only evident in Jim and Huck’s service to

⁴⁴ I place “slave” in parentheses to signal potential and, as a result of the generatively imaginative and constructive discourses of the century, perpetual black criminal subjects who are both legally enslaved and legally free(d).
the novel’s con artists, but also when the two con artists create a fraudulent handbill, advertising a two hundred dollar reward for Jim’s capture. Creating the handbill allows both men (also Huck and Jim) free movement down the river to rip off unsuspecting communities. Jim’s criminality, in short, enables the duke and dauphin’s criminal activities from the duke portraying himself as “The celebrated Dr. Armand de Montalban of Paris’ [who] would ‘lecture on the Science of Phrenology’ ” to both men’s attempt to scheme the Wilks family. It permits them to travel by imagining Jim as a captured slave being returned to his owner. By staging white criminals as the occasional center of his narrative—the duke and dauphin’s schemes comprise the bulk of the second half of the book—Twain is able to shift criminal centers by focusing his narrative attention on black criminals.

V

In the novel, Jim comes off as a minstrel figure. Literarily tracing Twain’s well-known love of minstrelsy, literary scholar Eric Lott argues in “Mr. Clemens and Jim Crow: Twain, Race, and Blackface” (1995), “The whole book may…conform to a tripartite of minstrel show structure of comic dialogues, olio, and Southern burlesque” (133). Similarly, novelist Ralph Ellison in his 1958 essay “Change the Joke and Slip the Yoke” writes, “Writing at a time when the blackface minstrel was still popular, and shortly after a war which left even the abolitionists weary of those problems associated with the Negro, Twain fitted Jim into the outlines of the minstrel tradition, and it is from behind this stereotype mask that we see Jim’s dignity and human capacity—and Twain’s complexity—emerge” (104). With their commentaries in mind, I want to focus on Twain’s use of exaggeration and stereotype through Jim in order to demonstrate one of its
purposes. The question I seek to answer is: what is the reason(s) for Twain’s use of minstrelsy? My purpose is not to offer an exhaustive account of this tradition as depicted in the novel; instead, I hope to connect a particular scene to a form of social and movement control in relation to slaves.

The reader first encounters Jim as the victim of Tom and Huck’s subterfuge. After Tom slips Jim’s hat off his head and hangs it above him, Jim wakes up and informs the “[n]iggers [who] would come miles to hear Jim tell about” the witches who have visited him and situated his hat differently. Later, the reader learns through Huck that “[n]iggers is always talking about witches in the dark by the kitchen fire” (7). This scene inaugurates what Lott, among others, refers to as Jim’s folk knowledge, which some scholars have depicted as one of Twain’s many minstrel incorporations. For Jim’s explanation, his belief in witches and the supernatural is predicated on a trick performed by Tom and Huck. Rather than focus on minstrelsy as a way of dismissing or supporting the novel’s political execution regarding Jim’s humanity, I am curious as to what kind of work does this scene perform regarding social regulation. “Niggers” always discussing witches in the dark may be considered a form of folk knowledge; however, it is a revelation, an exposure, of a surreptitious, shrewd form of social control associated with such knowledge.

The most obvious, blatant examples of social regulation and regulation of movement were slave patrollers and police forces, entities that were used to closely monitor and circumscribe the movement of slaves and black freepersons. Regarding the former, historian Stacy McGoldrick remarks in “The Policing of Slavery in New Orleans: 1852-1860” (2001), [The police] acted as enforcers of the slave order and representatives
of the laws concerning slavery” (398). Pertaining to slave patrollers, historian Sally Hadden, in her Slave Patrols: Law and Violence in Virginia and the Carolinas (2001), describes the role of slaves patrols as “perhaps most renowned for tracking down and capturing runaway slaves before they left the local area”, “handled a variety of tasks, such as searching slave cabins for weapons and dispersing slave meetings”, and “were primarily farmers or businessmen” (79, 80). Both scholars document connections between private and public forms of social regulation, complicating ideas that punishment and regulation of slaves was only a private affair, as well as describing the intricate network and energy involved in the management of nineteenth-century black Americans. Yet, complete reliance on concrete, material forms of surveillance and punishment would not suffice; instead, psychological and supernatural constructions were necessary. Gladys-Marie Fry’s Night Riders (1975) points out, “the use psychological control based on a fear of the supernatural” had “one primary aim: to discourage the unauthorized movement of Blacks, especially at night”; therefore, “[f]abricated stories and distorted information [such as folk tales] designed to deceive were passed along” (45, 47). When situated in Huck’s description of Jim’s folk knowledge, what is shown is how folk knowledge, as articulated by Jim and others slaves, is disseminated and circulated in a performance and execution of self-regulation. However, this scene slightly revises one’s understanding of psychological social control. Slaves from far and wide come to hear Jim’s intriguing story, in which multiple witches hypnotizes him and “rode him all over the State” (7). Jim then revises his narrative for his company by including a trip to New Orleans, then a fantastical global excursion. His story is attractive because of its difference: it is a story of local and cosmopolitan of movement. Through the same
method of social control, Jim slightly circumvents and subverts it. “Niggers,” explains Huck, “would come from all around there and give Jim anything they had” in order to capture a glimpse of a five-center piece that the devil gave him, which he can use to summon witches (7). Huck renders this story in a way that suggests slaves’ free movement or a detour from their original path of travel. Jim does not recount a fearful story of witches, but one that encourages and enables movement both in his story and among the slaves. Jim’s story does not unravel ways psychological control through a folk medium meanders through slave and free communities, nor does it entirely mitigate its puissance. Instead, his narrative exposes gaps for creative and imaginative processes within forms of social control. Additionally, his revision is integrative in relation to this particular narrative of social control: on the one hand, it departs from negatively constructed folk tales that limit slaves’ movement; on the other hand, it enters, and is a part of, a larger sphere regarding psychological control. Jim is the only person the novel describes as having supernatural communication. Therefore, while his narrative demonstrates his creative license, it also isolates him and his narrative, for he is the only one who possesses this ability, evidenced by slaves exchanging anything they possessed to hear his remarkable tale.

As a fugitive slave, Jim’s movement is under constant surveillance. There is intelligence involved in his attempted capture when he is suspected of Huck’s murder—one that is similar to Huck’s strategic details when feigning his murder. When Huck visits town disguised as a girl in order to learn what is being discussed about his recent “death,” what he ascertains is the procedure used to capture Jim from Jackson Island. Three hundred dollars is what Jim’s apprehension is worth, informs Judith Loftus, the
woman Huck encounters on his return to St. Petersburg. Her husband and his colleague, intrigued by the reward’s monetary amount, decide to check out Jackson Island for any traces of Jim. Wisely, this will occur at after midnight, using the cloak of darkness and Jim’s fatigue to their advantage. There is also hope that the midnight air will be chilly enough for Jim to set a fire; this will signal his presence to these slave catchers. These are calculated considerations that proclaim the slave catchers’ knowledge, but also knowledge of the fugitive slave as represented by Jim. For sure, “the nigger [could] see better, too” if Judith’s husband and colleague pursued Jim with daylight as their guide (50). Therefore, a game is played, in which cleverness is not taken for granted and knowledge is not assumed absent.

Jim’s absence and theft of himself—indeed, the constitution and recognition of himself as property (object) and subject (fugitive, slave, and criminal who steal property)—are represented by both his fugitive slave status and his sartorial

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45 I defer to Sarah Hadden’s distinction between slave patrollers and slave catchers in *Slave Patrols*. She writes, “Slave catchers were not appointed by their local communities; they merely advertised their ability to capture runaway slaves, and masters hired them for short-term jobs, typically paying ten, fifteen, or twenty-five dollars for capturing a runaway” (80). Hadden indicates a formality, a structured apparatus in the formation of social control and the subjects responsible for its expressions. Her study, however, does not draw as much attention on the informality of social control, on the ways in which social control and its associated responsibilities extended beyond institutional players, integrating other members of southern (and northern) communities. This was often incentivized through monetary reward; but what was at stake were the persistence, maintenance, and continuation of what could be considered normative race relations of the period.

46 Fugitive slaves represent a double-layered criminal, creating a duality of both subject and object. To be a fugitive is to be a criminal person, which certainly applies personhood to the enslaved in the form of crime. But the fugitive slave as property is not eliminated in her and his departure from the owner. Historian Thomas Morris’s exhaustive study, *Southern Slavery and the Law, 1619-1860* (1996), comments, “The last of the ‘absolute’ rights of man was the ownership of property. Abolitionists and
performance. When running into people along the river, Huck, and later the duke and dauphin, desire to dress Jim in the fashion of a captured fugitive slave. Now with the duke and dauphin, and with the fraudulent hand bill for Jim’s capture created, Jim would be left alone on occasion, but not without being tied down “because if anybody happened on him all by himself and not tied, it wouldn’t look must like he was a runaway nigger, you know” (132). Because it would be difficult for Jim to remained tied for prolong periods (and possibly necessitate his escape), the duke decides to dress Jim “in King Lear’s outfit”, in which he would have a “wig and whiskers”, and covered his body in “dead dull solid blue, like a man that’s been drownded nine days.” A sign accompanies Jim’s peculiar minstrel costume: “Sick Arab—but harmless when not out of his head” (132). To have Jim dress like a fugitive slave when the duke, dauphin, and Huck are absent would be to sartorially reconstitute his subjectivity, serving as a reminder of his present status. Interestingly, this presentation of his fugitivity could potentially prevent him from being “actually” apprehended—or at least that was the idea until the fraudulent handbill landed Jim in Silas Phelps’ slave jail (it is important to recall that Jim is in a precarious position: he is re[intro]duced to the practices of slavery on Huck’s stolen canoe when his is in the duke and dauphin’s proximity). His depiction as a “sick Arab” certainly plays on fears of the Other; but the fascinating aspect about this scene is how the sartorial attracts, compels, and repels. If the duke’s original plan were carried out, Jim would have possibly been apprehended as a result of disseminated social responsibility

proslavery writers agreed that slaves had no right to property” (337). Stealing oneself is therefore becomes an act of a mobile subject/object. Interestingly and criminally, the fugitive slave asserts her and his right to herself and himself (property). Consequently, the fugitive slaves assertion of property rights contests the rejection of such rights for the fugitive slave, which constitutes the property rights of freemen.
regarding fugitive slaves and any associated financial incentive. Hence, Jim’s fugitivity augmented by his dress and posture would have attracted and compelled his arrest and return to Miss Watson to be sold. However, performing a mentally and physically ill Arab, in which “you take the average man, and he wouldn’t wait for [Jim]” to perform insanity repels apprehension and arrest. Consequently, Twain’s characterization of slaves in the antebellum period challenges notions of Othering as constituted in the black body prior to the end of the Civil War when placed in conversation with capital and associated monetary incentives. The duke’s initial idea for Jim’s fugitive attire could be considered the inverse of what literary scholar Monica Miller refers to as the “crime of fashion,” a term that,

describes the racial and class cross-dressing that was, as practiced by blacks, a symbol of a self-conscious manipulation of authority and, as seen in blackface, an attempted denigratory parody of free blacks’ pride and enterprise. In [the antebellum period], the black dandy is thus both a perpetrator and a victim of crimes of fashion, a figure that both escapes and falls into pat definitions of blackness, masculinity, and sexuality. (80)

In this instance, Jim’s sartorial representation should be aptly limned as the “fashion of crime”, which can be defined as an ever-fluctuating sartorial signifier of a criminal subject. Here, such a signifier is not divorced from what it signifies: Jim must not only be a fugitive slave in his illegal departure from Miss Watson, but also to ensure that there is no confusion of his status, he must look the part, appear as the subject he is through his illegality, his fugitivity.

Let us now consider Miller’s critical term in relation to other black characters in
the novel, specifically the “free nigger…mulatter” from Ohio (24). Pap’s invective towards this man as “most as white as a white man” is not solely based on his pigment, for he also considers his style, occupation, and political participation. It is worth quoting Pap at length to capture the enormity of this figure’s criminal subjectivity through dress and political exercise:

He had the whitest shirt on you ever see, too, and the shiniest hat; and there ain’t a man in that town that’s got as fine clothes as what he had; and he had a gold watch and chain, and a silver-headed cane—the awfulest old gray-headed nabob in the State. And what do think? they said he was a p’fessor in a college, and could talk all kinds of languages, and knowed everything. And that ain’t the wust. They said he could vote, when he was at home. Well, that let me out. Thinks I, what is the country a-coming to? It was ’lection day, and I was just about to go and vote…but when they told me there was a State in this country where they’d let that nigger vote, I drawed out…I says to the people, why ain’t this nigger put up at auction and sold?—that’s what I want to know. And what do you reckon they said? Why, they said he couldn’t be sold till he’d been in the State six months, and he hadn’t been there that long yet. There, no—that’s a specimen. They call that a govment that can’t see a free nigger till he’s been in the State six months. Here’s a govment that calls itself a govment, and lets on to be a govment, and thinks it is a govment, and yet’s got to set stock-still for six whole months before it can take ahold of a prowling, thieving, infernal, white-shirted free nigger, and—. (24-25)

The target of Pap’s diatribe is not only a black professor, but also his style: he dresses
above a status assigned to him by white community members. In a sense, this dandified professor “appropriates or wittily mocks the status of a gentleman” by “dress[ing] the part from slavery to freedom…often to criminal or characteristically scandalous effect” (Miller 80). Here, the professor mocks Pap’s lack of refinement via appropriation. His professional attire intertwines with his political involvement through voting, although the latter is “wust.” Pap’s divulges as much when he admits that he would have voted if he were not drunk. Moreover, the professor voting calls into question the legitimacy of the government. For Pap, it is impossible for a government to deem itself as such when it allows a free black person to vote and offer a six-month grace period before he can be sold into slavery. The professor’s attire, profession, and political engagement violently disrupts Pap’s conception of government, branding him social deviate in the eyes of Huck’s father.

Pap does not share harbor these sentiments alone. Scholars Elaine Mensh and Harry Mensh note,

The supposedly great divide between Pap and respectable citizens narrows if a reader detaches Pap’s sentiments from his disreputable character. Not only would proper, well-to-do townspeople be as outraged as Pap at a black man’s voting; they would also be as furious as the ragged Pap at the sight of a well-dressed fee black, albeit for a different reason: they would regard him as a deplorable example for their slaves. (70)

The professor represents more than himself: he is a threatening sign to white order both in terms of political equality and the disturbance of slavery. He disturbs slavery by, to use historian Ira Berlin’s words, potentially awakening “some slaves to the possibility of
liberty” (39). This possibility may be exacted through legal means—i.e. purchasing one’s freedom—or through escape. The point, however, is that the professor’s presence confuses and threatens legal bondage. Ironically, Pap’s harangue indicates difficulty in referring to the subject of his tirade as free when he is subject to be sold within six months, which, incidentally, is not entirely dissimilar from Missouri state law during the period reflected in the novel (1835-1845). Historians Lorenzo Thomas Greene, et. al., in *Missouri’s Black Heritage* (1980) remark that in 1835, “the Missouri legislature tried to restrict the movement of free blacks into and within the state” by designating they must carry a license based on “good behavior”; indeed, “[t]he burden of proof always rested upon the black person”, for “it was assumed that all blacks were slaves until they could prove otherwise. Brought before a justice of the peace, the freedman who was unable to persuade the court that he was free could be jailed as a common runaway or sold back into slavery”\(^\text{47}\) (64). Freedom, therefore, becomes a complicated, even specious, term, especially in relation to the document—i.e. passes. Both free and enslaved black Americans are required to carry passes, permitting them to move within written regulations. Its absence may prove dire, as they will be at the mercy of the court. Strangely and ironically, then, passes function as legally salvific—as long as they are honored, which is subject to the whims of southern white people—under the damning rubric of social control and surveillance. Passes establish slaves and freepersons as subjects permissible to travel. In a literatextual sense, their statuses and subject positions

\(^{47}\) The authors’ phrase “sold back into slavery” is based on the assumption that all free black people in Missouri in 1835 were once enslaved. An intriguing theoretical point comes from this: there is a blurred distinction between the social conditions experienced by free(d) black people and those experienced by the enslaved. Furthermore, it considers how free black persons intimately understood the conditions of slavery.
are determined by the text.

Looking closer at the professor then, one may conclude that it is not only his freedom that disturbs political and social order, but rather his performance of it, the way he represents it by being a “white-shirted nigger.” Considering that voting (proper) was a practice only men could exact, his presence as intelligent, well dressed, and politically involved situates his manhood above Pap’s. The professor, through Pap’s voice, represents urban minstrelsy (Zip Coon, Dandy Jim, Long-Tail Blue); but he also signifies penal/penile threat of sort. As Miller mentions, the free black man, sartorially dandified, signified “[t]he phallic nature” of his “iconography and mischief” (99). He is, at once, a marker of white obsession with the “rampageous black penis”, which also indicates white fascination with the organ, and disturber of the political, legal order—indeed, an act of political miscegenation. The professor can be understood as an intersection between sexualization, racialization, and criminalization. The elder Finn indicates something deeper, a matter far more invidious and vitriolic than his speech: to be an equal political agent, to be afforded the same rights, is to be superior to the political order and its beneficiaries. And it is also to raise the question posed who can be a gentleman in the antebellum south (Miller 102).

The above considerations allow a transition into final third of the novel, which concerns Jim’s incarceration. Huck has decided that he will go to hell as a result of becoming, along with Tom Sawyer, “a nigger stealer” (Twain 189). Silas Phelps’ farm does not disappoint this image, which is juxtaposed with typical “Sunday-like” conditions. The day was

hot and sunshiny…and there was them kind of faint dronings of bugs and flies in

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the air that makes it seem so lonesome and like everybody’s dead and gone; and if a breeze fans along and quivers the leaves, it makes you feel mournful, because you feel like it’s spirits whispering—spirits that’s been dead ever so many years—and you always think they’re talking about you. (182)

Similar to constructing himself as the center of fugitivity and including himself as the nucleus of Jim’s escape, Huck imagines the hell to be his to experience, one that he will undoubtedly face alone. Fortunately, Tom Sawyer’s unexpected arrival proves to be Huck’s resurrection, “for it was like being born again, I was so glad to find out who I was” (187). Huck’s resurrection, his rediscovery of who he is, takes place farther down the river, deeper in the heart of slave country. Consequently, his reemergence only belongs to him, while Jim languishes in the slave jail on Phelps’ farm. From this perspective, Huck’s revival is not only contingent upon Tom’s arrival, but also on Jim’s condition in jail and on his move deeper into slave territory. “Nigger stealer” and “steal[ing] that nigger out of slavery” implies this all the more, for Jim is still an object to be criminally retrieved (195). The only time he is granted personhood—and not the characterization of “nigger”—is when Huck and Tom imaginatively transform Jim from slave to prisoner, affording both characters the opportunity of play at Jim’s expense. Their imagination in this scene is central to how Jim is constituted as (“state”) prisoner (201).

Slave jails, similar to the one that confines Jim, were inadequately secured and poorly sanitized, according to historian Matthew Clavin in his essay, “‘The Floor was Stained with the Blood of a Slave’: Crime and Punishment in the Old South” (2012). Penitentiaries during this period were primarily located in the north; as a result,
“incarceration remained a local responsibility, and the southern jail was a demonstrably inadequate partner in any effort to modernize southern law enforcement” (264). The responsibility of incarceration was too enormous for jails to handle, leading to increased possibilities of escape. Regarding Jim’s confinement, the reader gets an exaggerated version of the slave jail’s architecture on the Phelps’ plantation. More importantly, Jim’s subjectivity as prisoner is established through imaginative processes predicated upon institutional lack. It is important to quote Tom at length, for his description of the slave jail’s architecture encompasses the imaginative processes necessary to construct Jim (and other slaves) as criminal subject through the jail itself:

Blame it, this whole thing is just as easy and awkward as it can be. And so it makes it so rotten difficult to get up a difficult plan. There ain’t no watchman to be drugged—now there ought to be a watchman. There ain’t even a dog to give a sleeping-mixture to. And there’s Jim chained by one leg, with a ten-foot chain, to the leg of his bed: why, all you got to do is life up the bedstead and slip off the chain. And Uncle Silas he trusts everybody; sends the key to the punkin-headed nigger, and don’t send nobody to watch the nigger. Jim could a got out of that window hole before this…Why, drat it, Huck, it’s the stupidest arrangement I ever see. You got to invent all the difficulties. (199)

Its design is careless, shoddy even, and external surveillance is placed in an untrustworthy slave’s hands. The jail loose structure is intended to highlight Jim’s ignorance: if he were deeply committed to his freedom, then he would immediately recognize the jail’s defects. Yet, Jim’s refusal to escape jail, to be a reluctant participant in Huck and Tom’s scheme, in which he is later compensated with forty dollars for
“being prisoner for us so patient, and doing it up so good” (243), speaks to how surveillance is extended throughout the south, leading to a form of Foucauldian subjectivity through a panoptic paradigm imparted through, in this instance, intertextual references. The slave, now prisoner, in jail does not have the opportunity to be subversive or use the space as such, as argued in “Universities of Social and Political Change: Slaves in Jail in Antebellum America” (2012) by historian Susan O’Donovan, due to Jim’s isolation as well as his imaginative transformation to prisoner. Since Jim is now imagined prisoner, “the regulations”, as Tom puts it, delineated by “Baron Trenck…Casanova…Benvenuto Chelleeny…[and] Henri IV” must be followed in order to “free the free nigger” (200, 242). Additionally, Jim, revealed to the reader as illiterate, is required to participate in textual production by keeping a journal. His status as prisoner is institutionally and, most importantly, textually concretized.

Although he is imprisoned inside the walls of the Phelps’ plantation, its slipshod architecture makes for easy escape. It is Huck and Tom’s plans that prolong Jim’s incarceration. It is through their transformation of Jim from slave to prisoner that has him perform prisoner nearly against his will, for he still entrust both boys with his freedom. Huck and Tom’s imagination of Jim as prisoner contain historical implications and allusions. It is difficult to deny that the last third of the novel critiques post-Reconstruction conditions for black Americans. Literary critic Steven Mailloux, among others, “locates Huckleberry Finn within the debates over racism after the end of Reconstruction, when the novel was first published” (108). Indeed, “freeing the free nigger” can be read as a implicit critique of convict leasing, a system that, as Frederick Douglass remarks in an 1883 essay in the Washington Chronicle titled “The Condition of
the Freedmen”, has incarcerated a “multitude…for crimes for which they are punished seldom rise higher than stealing a pig or a pair of shoes” (2). Nearly two decades later D.E. Tobias referred to convict leasing as a system that “manufactures” black criminals, declaring that if an actual perpetrator “cannot be found, bring in any negro! Of course, the negro is guilty whether he knows anything about the alleged offence [sic] or not, and so he must prove his innocence - which is absolutely impossible in a Southern court - or be sent to increase the prison ranks, which means financial profit to the State and to private individuals as well” (959-960). While Jim is incarcerated for being a fugitive slave who was actually manumitted two months prior, the leisure demonstrated by Huck and Tom at Jim’s expense cheapens, plays with, and trivializes any independent conceptualization of freedom he may engender. Tom withholds this vital fact, for to prematurely release Jim would be to sabotage Huck’s understanding of freedom as constituted in an unfree Jim. This draws parallels to the play of laws created after Reconstruction efforts dissolved, in which black Americans could be arrested and shipped to a convict labor camp for stealing a rail from a fence, stealing a pig, being without employment paper, and other seemingly capricious statues.

To imagine Jim as prisoner is to also imagine the slave jail as prison. This is similar to John Bender’s thesis in *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth-Century England* (1987), in which he argues “that the attitudes toward prison which were formulated between 1719 and 1779 in narrative literature and art—especially in prose fiction—sustained and, on my reconstruction, enabled the conception and construction of actual penitentiary prisons later in the eighteenth century” (1). In the United States, the penitentiary is inaugurated by legislative
efforts at penal reform in states like Maryland, Massachusetts, Vermont, and Virginia in 1819. These states “repealed early republican laws that banned the use of stocks, floggings, and irons in the penitentiary, and directed that the principal keeper could whip male convicts or throw them into the stocks or irons, provided that the penitentiary inspectors were present (the law prohibited the whipping of female convicts)”—these actions by legislatures helped establish the Auburn project in 1821 (McLennan 54, 56). Huck and Tom do not imagine or explore institutionally punitive measures as a way to constitute Jim as prisoner. Instead, they imagine architecture, additional apparatuses for Jim to breach. Nineteenth-century penal reform and the construction of the prison are reflected through Huck and Tom’s imagination with the black criminal, Jim, at the center of their creative enterprise. For sure, Tom does not have to tell Jim and Huck that the former is free; rather, the idea that Jim is imagined as prisoner momentarily displaces his status as slave, thereby constituting him in the mind of both Huck and Jim as a freeperson incarcerated, a free person so that he can be imaginatively incarcerated. It is in this sense that “freeing the free nigger” gesture towards black Americans’ experiences with the carceral state in the aftermath of Reconstruction.

VI

The conclusion of Huckleberry Finn sets the stage for the darker conclusion of The Tragedy of Pudd’nhead Wilson (1894), published two years before the famous Plessy vs. Ferguson Supreme Court ruling of 1896. When it is discovered through fingerprints that Valet de Chambre, the impostor Tom, was responsible for Judge Driscoll’s murder, he was initially incarcerated. But in learning that he is black by the laws of the South, it was necessary to sell him down the river rather than afford
punishment reserved for white people through confinement. Twain’s conclusion echoes historian Mark Kann’s analysis in his essay “Penitence for the Privileged” (2001), in which he argues that the penitentiary was related to philosophical and social understanding of liberty. Confinement in the penitentiary temporarily stripped liberty away from propertied white men so that it could be restored through reflection. Since liberty was not an ideal afforded to black Americans, the penitentiary theoretically was a space of brutality and punishment.

Although both novels’ respective outcomes differ, *Pudd’nhead Wilson*’s conclusion parallels *Huckleberry Finn*’s conclusion in its focus on a dismal, troubling future predicated on an equally disturbing past. This narrative alignment can be read as a setup, an arrangement toward pessimism reflected in the material historical situation concerning black Americans, or what historian Rayford Logan refers to as the “nadir” of race relations. But as literary historian and critic James Smethurst indicates in *The African American Roots of Modernism: From Reconstruction to the Harlem Renaissance* (2011), coinciding with this historical nadir is great cultural, literary production on black life and its concomitant social conditions, which would include works like *Pudd’nhead Wilson*. In this way, philosophical and literary pessimism, specifically espoused by Twain, should be viewed in a positive, productive sense: both novels challenge notions of human progress through currently established discourses and institutions, specifically asking “whether [scientific and institutional] improvements are inseparably related to a greater set of social costs that often go unperceived. Or ask whether these changes have really resulted in a fundamental amelioration of the human condition” (Dienstag 25). I find Twain approaching such questions in his circulation, displacement, and free play of
criminality, particularly performed by black Americans. While Jim is grateful for his freedom, along with the forty dollars Tom gives him for playing prisoner, Jim must enter a world of freedom where he “may live to see a negro burned in Union Square, New York, with fifty thousand people present, and not a sheriff visible, not a governor, not a constable, not a colonel, not a clergyman, not a law-and-order representative of any sort” (Twain 481). What lies beneath Twain’s southern humor is a bleak reality for Jim, indeed for nineteenth and early twentieth-century black Americans.
CHAPTER 4

W.E.B. DU BOIS’S LITERARY INTERVENTIONS IN THE DISCOURSES ON BLACK CRIMINALITY

1

This chapter analyzes the construction of black criminality in Du Bois’s literary imagination. Most scholarship on his criminological interventions focus his on well-known works such as “The Conservation of Races” (1897), The Philadelphia Negro, and “The Spawn of Slavery: Convict Leasing in the South” (1901), among others. During the close of the nineteenth century and the inauguration of the twentieth century—the fin de siècle—specifically to about 1910, Du Bois had a sustained intellectual, scholarly, and, for the purposes of this chapter, literary interest in criminality and its association to black people. Through selected unpublished short stories in the early part of his writing career, specifically “The Couple in the Drawing Room” (1906) and “The Jewel,” Du Bois, through his blurring of crime and detective fiction, literarily challenges prevailing scientific arguments that position black subjects—specifically black man subjects—as

48 Gabbidon traces Du Bois’s early interest in criminology to his first publication when he was a fifteen-years-old New York Globe correspondent. While Du Bois’s article on “[t]he Citizens of the town…forming a Law and Order Society to enforce the laws against liquor selling which have been sadly neglected for the past year or two,” and his attempt to solicit the involvement of “colored men” in this political endeavor, is certainly important regarding the ways Du Bois is conceptualizing and intellectualizing the criminal justice system, I seek to examine the writer’s sustained interest regarding criminality and its relation to black people. I identify this period beginning in 1897 and concluding in 1910. He intermittently handles criminological questions after 1910, but they do not return to be the center of his intellectual and aesthetic projects.

49 I am grateful to literary critic Britt Rusert for these discoveries.
naturally predisposed to criminal behavior\textsuperscript{50}. These stories, often incomplete, fragmented, and underdeveloped, intervene in the sociopolitical and the politico-scientific conversations on black criminality as well as Du Bois’s corpus on the subject. Furthermore, and intriguingly, Du Bois, similar to famed writers Edgar Allan Poe, Arthur Conan Doyle, and Mark Twain, incorporates forensic methods through his black protagonist. For an author who maintained fidelity to empiricism and the pursuit of “Truth” through the scientific method\textsuperscript{51}, associating his black protagonist with empirical capabilities performs important cultural and sociological work toward ruining baleful myths of a perpetual, inherent black criminal class by illustrating that a black working-class character is able to raise close investigative inquiries.

Moving forward in this chapter I want to first establish Du Bois’s thoughts and positions on criminality among black people and contextualize his position in the larger discourse on criminality that emerged in the immediate aftermath of the University of Chicago’s establishment of the first department in the United States dedicated to sociological study in 1892. I pay special attention to Frederick Hoffman’s \textit{Race Traits and Tendencies of the American Negro} (1896) as a text that blends the scientific rigor of

\textsuperscript{50} There are other unpublished short stories that can be examined, particularly “The Shaven Lady” and “A Race Riot,” both written in 1906. I omit these, but allude to them in my analysis, because “The Couple in the Drawing Room” contains many of the same tropes used in the stories omitted. Furthermore, “The Jewel” offers unique discursive play that allows the protagonist to take advantage of his criminality, rather than be a simple victim of it.

\textsuperscript{51} In retrospective contemplation, it has been documented by Du Bois in his autobiography text, \textit{Dusk of Dawn: An Essay Toward an Autobiography of a Race Concept} (1940), that “[t]he main result of my schooling had been to emphasize science and the scientific attitude” and that he was his “search for truth” was couched in “find[ing] a way of applying science to the race problem” (50, 54-55). His dedication to the pursuit of empirically grounded truth was not suspended in his literary projects, at least in his short stories.
sociology and biology in ways that influence and later produce additional studies that coincide with and challenge his research. In no way do I attempt to offer an exhaustive, comprehensive analysis of both Du Bois’s early writings on criminality among black people and the larger discourse that frames his thoughts. Instead, I strive to position his sociological and political expressions in a way that not only inaugurates his literary pronouncements, but converses with them. The larger point made here is the idea that not only is Du Bois in earnest, thoughtful discussion with black and white sociologists and criminologists of this era, but also in profound dialogue with novelists and, as a thinker who straddles both fields, himself. His sociological critiques dialogue with his literary strivings in ways that do not subvert or privilege either approach, but expand his corpus on the topic. In the course of situating his thoughts in aforementioned social scientific discourse, I also find it critical to succinctly position his musings in the context of convict leasing, a system that both exploited black labor in some of the harshest, most grotesque ways imaginable and shaped the way scholars and intellectual workers imagined, thought about, and conceptualized the black criminal. Additionally, I also place his remarks in the context of postbellum lynching. Here, I juxtapose Race Traits with Ida B. Wells-Barnett’s pamphlet, The Red Record: Tabulated Statistics and Alleged Causes of Lynching in the United States (1895), to argue that the legitimacy and objectivity of Hoffman’s discussion of lynching, and indeed his larger work, is contingent upon his exclusion, whether intentional or unintended, of studies produced by writers such as Wells-Barnett. Although lynching was an infrequent form of capital punishment in the eighteenth century, at times performed with the confluence of judicial and extrajudicial parties, it became, according to historian Michael J. Pfeifer’s Rough Justice: Lynching
and American Society, 1874-1947 (2004), increasingly racialized, primarily executed on black bodies, with its intensification beginning in the 1870s\textsuperscript{52} (14). One of the contributing factors to criminality of black people in the South, according to Du Bois, was the pervasive existence of anti-black racist mobs.

Furthermore, I seek to capture the literary and cultural energies of the period as a way of locating and foregrounding Du Bois’s literary enterprise in the short stories that will be discussed. One of his contemporaries, novelist Charles Chesnutt, addressed questions of an allegedly inherent black criminal in his work The Marrow of Tradition (1901). The purpose of citing this text is not to closely analyze it, but to anchor Du Bois’s short stories in their proper cultural and literary context. Like Du Bois and others, Chesnutt infuses detective fiction tropes into this novel. He also provides piercing discussion of the black criminal and concomitant incarceration of this threat in ways that meandered through his narrative. Chesnutt’s work precedes Du Bois’s literary

\textsuperscript{52} Despite increasing with ferocious intensity in the 1880s and 1890s, the racial (not black) constitution of lynching was present in the antebellum South. A September 18\textsuperscript{th}, 1857 New York Times article, “Lynching an Abolitionist in Mississippi,” describes the formality, structure, and processes of a lynch mob “in the neighborhood of Abberville” (1). An entire (extra)legal procedure was conducted, in which “Mr. Yancey Wiley was called to the Chair, and made some inquiring remarks, which were answered by several of our influential citizens, somewhat recommending mob law, which was received with applause” (1). Although there was opposition to the idea, and while the lynching was never fully accomplished on the white abolitionist accused of “organizing an insurrection among the negroes,” what fascinates me in this case is the dissolution of the false dichotomy between what are considered formal juridical procedures and external or extrajudicial formations. Prominent citizens, sometimes straddling both formal and informal legal arenas, are solicited to facilitate white democratic processes to determine the fate of black subjects and their white accomplices. Extrajudicial legal methods of this kind often replicate legitimate legal procedures with slight variations. In this case, the accusation(s) is articulated before a representative body of citizens, oppositional and supporting cases are made, and, as is often the case in (extra)legal activities, confessions are encouraged. Finally, punishment is rendered according to the severity of the crime, accusation, or both.
concentrations on black criminality may have influence his approach of short stories and their structure. For example, the use of the porter car as the moving symbol of Jim Crow racism, segregation, and labor dynamics prominently emerge in *The Marrow of Tradition* and Du Bois’s short stories of the period. This discussion also establishes the quite obvious question that surfaces when contiguously placing his short stories in conversation with his sociological and literary writings on black criminality during this period: Why does Du Bois aesthetically invest in writing fiction on the black criminal during the time he is simultaneously committed to sociological interventions on the matter? Also, what kind of work does literature perform for Du Bois that sociological and political narratives are unable to perform? Lastly, where can one locate gaps in his fictional writings that do not lend themselves to being construed as literary shortcomings and deficiencies, but instead as possibilities and windows that offer unique critiques on the subject at hand?

These inquiries lead to analyze Du Bois’s short stories as texts that infuse then invert the intellectual and scientific notions of the black criminal as biologically constructed. Here, I make the argument that his short stories, due in no small part to their imaginative buoyancy, afford different opportunities to address black criminality by borrowing and playing on the same tropes that posited spurious notions of criminality inherently installed in the black body. I do not simply seek to reveal how Du Bois challenges the sociological discourse of the era with his short stories. If this was the chapter’s endeavor, then explanation, or at least speculation, would have to be made as to why so many of his stories written in this period went unpublished and, in a number of cases, unfinished. The work his short stories attempt to carry out in challenging studies
about the black criminal is important; but I am equally interested in how his short stories add to aesthetic and literary conversations of the time despite their occasional fragmentation and incompletion. It is here that I describe how Du Bois not only incorporates literary tropes commonly associated with crime and detective fiction writers à la Poe, Dickens, Collins, Gaboriau, Doyle, Twain, and others, but also adds to the genre itself. These stories, I posit, can be read as literary experiments that expose Du Bois as a writer of fiction who is committed to writing quality literature for political and aesthetic purposes.

II

One can get a sense of Du Bois’s interests in literary conversation about black criminality early in the first chapter of *The Souls of Black Folk* (1903). In it, he describes the diverse responses offered by young black men when encountering “a vast veil” that impedes their access to promising possibilities (8). However, the precocious Du Bois was determined to destroy his preclusion from the broad world of meritorious opportunity and well-earned success through cerebral measures. Conversely, in their bitter responses and pained feelings, other black boys were not so resolute. Instead, writes Du Bois, they would acridly ask, “Why did God make me an outcast and a stranger in mine own house?” He then continues by employing a metaphor of the prison: “The shades of the prison-house closed round about us all! walls strait and stubborn to the whitest, but relentlessly narrow, tall, and unscalable sons of night who must plod darkly on in resignation, or beat unavailing palms against the stone, or steadily, half hopelessly, watch the streak of blue above” (8). The implications contained within this small passage hide themselves between what precedes and succeeds it: the author’s stinging recognition that
he was, upon having his visiting card rejected by a tall white girl, “different from the others” and the Negro’s “twoness” (8). How his own house is transformed into the more sinister, suffocating prison-house is undetermined; yet, the black man\textsuperscript{53} subject occupies that once cozy, but now damnable space. His constitution changes from accustomed occupant to objectionable stranger. Concomitantly, as a result of his house’s transmutation from domicile to prison, the black man in this passage now takes on the subjectivity of the prisoner. He notices the shades that surround the prison, his prison, begin to shut. This prison, like most, is nearly escapable, especially to “sons of night”—for those who attempt such an insurmountable feat must grimly climb attenuated white walls in the dark\textit{ as} dark. Fugitivity seems futile. Other black men who have sadly surrendered their spirit of escape will languish with their eyes fixed upon the blue sky of hope and glorious “Opportunity” (9).

Although Du Bois’s question of how the subject and his space has been transformed into a prisoner and prison, what is implied is the idea of criminality that has constituted the subject as prisoner. If the black man subject has perpetrated any legal

\textsuperscript{53} Being attentive to what literary scholar Hazel Carby posits in her essay, “The Souls of Black Men,” I refer to the black subject presented in\textit{ The Souls of Black Folk} as man rather than male or a pluralized form of subject. Carby argues that the Du Boisian “sacrifice of individual desire to become an intellectual and a race leader is a conceptual framework that is gender-specific; not only does it apply exclusively to men, but it encompasses only those men who enact narrowly and rigidly determined codes of masculinity” (235). Shifting away from the intellectual, my use of the black man subject is to highlight whom Du Bois imagines as the black criminal in his literary strivings. In other writings on black criminality, Du Bois mentions women prostitutes and women paupers; however, his remarks are quite limited in this regard. He is not acquiescing to default gender pronouns and androcentric discussions—\textit{we} are familiar with his various writings on women, particularly black women. Rather, Du Bois is quite deliberate in his selection of the black man subject as a way of subverting notions of inherent criminality absorbed in black skin. To parallel Carby’s explanation, this selection may also be based on the idea of implanting and articulating a scientific intelligence in black men through the always-man protagonist in his short stories.
transgression, it remains a mystery, even elusive, to him. The subject embodies criminality as prisoner. The label, the classification this subject implies is that some crime has been committed. Left unknown, the realization and actuality of his crime(s) are manifested in his very being. Considering the possibility that external evidence exists against the prisoner, to be innocent of the crime does not necessarily mean that a crime has not been committed, at least in relation to the law. It simply means that the signifier—in this case, crime—has been inaccurately applied to the signified—the subject. Assuming no particular race—which is to assume, by default, whiteness—the concept of crime is inextricably attached to a subject: *someone must have committed this crime*, for crime does not commit itself. Criminal culpability must be assigned. Inside Du Bois’s passage is a historically radical inversion: the signifier is the black man subject, while the signified is crime or, to include the conditions, degrees, and qualities of crime, *criminally*. Assumed in his very presence inside his home-now-prison—or prison-as-home—is connoted criminality that defines not only the black man subjects’ existence in relation to other bodies and beings in the country, but transforms the institutions that surround him. Criminality is the immaterial notion that the black man subject references. His body form signifies, personifies criminality.

Du Bois’s metaphorical employment of the prison as a device to articulate the social and structural racism that scars young black men and, by extension, although occasionally omitted, black women, is not peculiar, nor is it capricious. Even prior to beginning his research for what was to become *The Philadelphia Negro* (1899), the Sage of Great Barrington possessed profound interest in criminological studies and its application to black people. As a logical juridical corollary of criminal activity and of
felonious involvement as a result of Census Bureau statistics, the prison was an institution Du Bois analyzed as a way of reversing his reading regarding black people’s association with the criminal justice system. What intrigues me about the quoted passage in *Souls* is not necessarily its evocation of the prison as a metaphor, but instead the way the passage reads or renders the black man subject as allegorical criminal as a direct result of his figurative imprisonment, which is related to the oppressive conditions associated with Jim Crow.

II

“Crime,” writes Du Bois in *The Philadelphia Negro*, “is a phenomenon of organized social life, and is the open rebellion of an individual against his social environment” (41). This phenomenon contained within operations of sociality was not merely an inquiry that deserved scholarly treatment. Two years earlier, in a typed draft speech titled “The Problem of Negro Crime,” Du Bois avers that “there is no more significant measure of civilization than the character and extent of its crime” (2). Given the overwhelming social scientific focus on the question of crime among black people, particularly in urban settings, analyses on this subject would be a statistically based barometer of black progress after Emancipation and Reconstruction. “Naturally then,” he continues in his Philadelphia work, “if men are suddenly transported from one environment to another, the result is lack of harmony with the new conditions; lack of harmony with the new physical surroundings leading to disease and death or modification of physique; lack of harmony with social surroundings leading to crime” (41). Du Bois offers an environmental, social explanation for criminal activity. Supplementary contributions to what he describes as an increase in crime among black people are the
privileging of the rich in criminal courts and racial profiling\textsuperscript{54}. The economically driven aspects of the criminal justice system did not precipitously fall by the wayside in Du Bois’s analysis. Two years later, written in the backyard of convict-labor camps at his “Atlanta School,” Du Bois, in essay “The Spawn of Slavery: The Convict-Lease System in the South” (1901), notes, “Throughout the South laws were immediately passed authorizing public officials to lease the labor of convicts to the highest bidder…whose sole object was to make the most money possible.” This arrangement made “the state…a dealer in crime,” in which it “profited…so as to derive a new annual income for her prisoners” (85). The profit-motive that undergirded and facilitated the invidious practice of abducting African American women, children, and men to toil in chain gangs created “schools of crime which hastened the appearance of the confirmed Negro criminal upon the scene.” This led to a “lowered respect for the courts” and a “public sentiment which would not consent to considering the desert of a criminal apart from his color” (85).

Tantamount to the way factories and workers produce commodities, for the author of The Souls of Black Folk the convict-lease system had a generatively criminal effect: rather than quelling crime, it created it; rather than sustaining an equitable criminal justice system, convict leasing eviscerated it by equating blackness with criminality. His findings were not dissimilar to those offered by his contemporary such as Mary Church

\textsuperscript{54} To be fair and accurate on Du Bois’s position, he also accounted for the moral debasement found in what he classified as “Grade 4. The lowest class of criminals, prostitutes and loafers; the ‘submerged tenth’ ” (311). Consistent with late-nineteenth and early twentieth-century uplift politics, Du Bois felt that the class of black businesspersons, intellectuals, and philanthropists had a moral responsibility to ameliorate this group or else their presence would taint their achievements. Such internal, intra-critique did not absolve white policy makers from their obligation to improving the conditions of black people, especially when these conditions were created and perpetuated by economic, political, and social discrimination and repression.
Terrell who argued that black crime was manufactured in “Peonage in the United States: The Convict Lease System and the Chain Gangs” (1907). Du Bois’s work, along with the studies produced by notable sociologists and thinkers like Terrell, D.E. Tobias, and Monroe Work, was produced in a context that largely attributed the increase in black incarceration, arrests, and crime rates to inherent black inferiority, primarily of the biological variety. Although his daughter, Gina Lombroso-Ferrero, did not translate Cesare Lombroso’s positivistic *Criminal Man* in English until 1911 (it was originally published in 1887 in Italian) the impact of his studies were international in reach. As scholar Nicole Hahn Rafter shows in her book *Creating Born Criminals* (1997), “biological theories of crime shaped new policies and institutions for individuals considered criminal, insane, or feebleminded in the United States. A number of American criminologists became conduits for Lombroso’s thought, thus compensating for the paucity of English translations of his work” (6). It is important to emphasize that Lombroso’s work reverberated in the minds and pens of criminologists and, later, sociologists prior to his daughter’s English translation. In another work titled “Criminal Anthropology: Its Reception in the United States and the Nature of Its Appeal” (2006), Rafter writes that Lombroso’s work landed on US shores through five main texts. They are as follows:

[F]irst, Moriz Benedikt’s book *Anatomical Studies upon Brains of Criminals*, translated and published in the United States in 1881; second, articles by Americans who knew of Lombroso’s work indirectly or directly; third, Havelock Ellis’s *The Criminal* (1890), a popular book based heavily on Lombroso’s *Criminal Man*; fourth, translations of Lombroso’s work, although for the most
part these were not available until after 1910; and fifth, American books that popularized Lombroso’s theory. (166-167)

Although his work was not translated for a wider readership of English texts until the second decade of the twentieth century, its impact was felt throughout the English-speaking world. Furthermore, fields such as sociology, statistics, psychiatry, and public health were in their infancy in the US—this meant that scientists relied on anthropological studies for answers concerning criminal behavior and tendencies (164-166). From the latter half of the nineteenth century, the topography of social and natural scientific discourse was transcontinental in scope and orientation, which functioned as a discursive network that circulated knowledge about the criminal constitution of black subjects.

To be sure, Du Bois’s definition of crime was a direct affront to the pervasive sociological narrative of the time, one that designated criminality to be ensconced in the biological makeup of black people. His words were also written in the discursive belly of the perpetuated idea of black inferiority, along with the inauguration of statistical data to buttress the argument. Although the case for what was called “negro inferiority” took shape in works such as Richard H. Colfax’s *Evidence Against the Views of the Abolitionists, Consisting of Physical and Moral Proofs, of the Natural Inferiority of the Negroes* (1833), in which the author, writing against the stance held by “total abolitionists” regarding the shared similarities between black and white people, describes the marked physical distinctions between both races couched in difference in complexion, such positions were not supported with statistical data (6,7). Yet, what late nineteenth-century statistical data provided, specifically prison records, for race-relation writers of
the period remarks was “an objective and unifying basis by which to measure and judge black fitness and behavior for survival, labor, and citizenship in a newly-modernizing nation,” which “became the linchpin of an emerging which supremacist discourse on saving the nation through knowledge and acceptance of black death and self destruction” (Muhammad 15-16). In the period where the “Negro Problem” became a central question for the conceptualization of US citizenship and polity, “in no area were scientists more unified, and thus more influential, than in the area of race theory” (Lange 451). Unifying social scientists of the time was the belief that the black criminal was biologically predetermined.

Emerging from this striving toward empirical exactness were influential texts such as Frederick L. Hoffman’s Race Traits and Tendencies of the American Negro, published in 1896, the same years as the landmark Plessy vs. Ferguson Supreme Court ruling, and three years before Du Bois’s Philadelphia study. As historians have noted, Hoffman worked with the purpose of ensuring that his study of the “longevity and physiological peculiarities among the colored population” was “free from the taint of prejudice or sentimentality” (v). His German extraction supplied additional weight to his pursuit of objectivity. His book was a pivot that represented the confluence of the biological, atavistic arguments of racial inferiority and the statistical research that draws among social conditions experienced by black people. On the question of infant and

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55 Khalil Muhammad’s influential work The Condemnation of Blackness (2010) makes allusions to this point, but does not explicit state the overlap of biological and sociological discourses concerning black inferiority. His work is more invested in a break, a rupture that departs from atavistic arguments that are inaugurated by Cesare Lombroso’s critical 1877 work Criminal Man (published in English in abbreviated form in 1911) and introduces the use of statistical data to analyze black inferiority and, to be more specific, black criminality. For me, the break is not as clear, as evidenced by one of
adult mortality, which “may well be considered the most important phase of the so-called race problem,” it is statistically obvious for the author of *Race Traits* that black people demonstrate “the least power of resistance in the struggle for life,” which, if left unchecked…must lead eventually to the extermination, at a rate far more rapid than the recent census returns would indicate” (36, 37). In order to remain empirically and methodologically sound, Hoffman analyzes a number of geographical sites, most prominently northern cities, military units, and penitentiaries. His focus on northern cities such as Providence, Rhode Island and Boston, Massachusetts are based on the idea that if scientists examine black life in the South, where prejudice and anti-black sentiments are ostensibly confined, then the results and conclusions will be deeply inexact and ultimately unreliable. Conversely, life in the North, due to its free-market practices and liberal, fair justice system, provides an equitable milieu by which to study black people. Penitentiaries and military constabularies are sites that offer another objective, undisrupted environment free of racism and prejudice, for prisoners, regardless of race, are treated with the same care. Hoffman highlights this fact when citing two knowledgeable figures on the subject. “It is true,” writes Hoffman, “that the Surgeon-General of the Army, as well as Dr. Cunningham of the Alabama Penitentiary, have called attention to fact that under the same conditions”, such as environment, food, clothing, and regulations, “the negro is still subject to a higher death rate” (50). As if anticipating Du Bois’s Philadelphia study, as well as the studies of those who emphasize social environment as the *raison d’etre* of crime, the findings “of these two high

the works that is central to discussions of black criminality at the time. Statistical data was used to buttress arguments of the atavistic variety—Hoffman’s *Race Traits* functions as a textual space that allows biology and sociology to converse on the question of the black subject.
authorities have never been duly considered by those who believe so firmly in the all powerful effect of the ‘milieux’ " (50). With all environmental and social factors equal, black people, as an unfortunate result of their “constitutional weakness,” “inherited organic weakness,” and “individual neglect,” experienced higher rates of mortality than their white counterparts in multiple medical categories\textsuperscript{56} (67, 69).

One can read Hoffman’s section on black mortality rates as a preface to his analysis of black criminality. Similar to Du Bois’s judgment, the author of Race Traits found that “[c]rime, pauperism, and sexual immorality are without question the greatest hindrances to social and economic progress” (217). Primarily examining police reports and penitentiary statistics, Hoffman concluded that crimes such as wife beating, gambling, theft, and murder—all considered “crimes against property and persons”—were largely performed by African Americans considering per capital equivalence. Furthermore, as a result of the “low state of sexual morality among the colored population,” black men possessed a higher propensity to rape than white men (235). It is for this reason, argued Hoffman, that “[t]he crime of lynching is the effect of a cause, the removal of which lies in the power of the colored race” (234). Following a popular myth of the time, Hoffman argues that the primary cause for lynching is the rape of white women by black men. Here, it is worth quoting Hoffman at length in order to illustrate the way that white culpability is fully absolved and is replaced with black culpability.

Rape is only one of the many manifestations of an increased tendency on the part

\textsuperscript{56} Hoffman did not completely discount obvious influence of environmental conditions that contributed to high mortality rates among black people. These factors, however, were negligible and did not adequately explain the inherent medical deficiencies (69). Ironically, even medical ignorance is contributed to cultural inferiority inherent among African Americans (65-69). Incidentally, Lombroso also did not discount environmental influences as attributable forces to criminal behavior.
of the negro to misconstrue personal freedom into personal license, and this
tendency, persisted in, must tend towards creating a wider separation of the races.
The face that lynchings should be frequent is a natural consequence of a social
and political condition under which the frequent commission of the crime of rape
is possible. Until the negro learns to respect life, property, and chastity, until he
learns to believe in the value of personal morality operating in his everyday life,
the criminal tendencies…will increase. (234)

Hoffman did not question the fact that lynching was a criminal practice that challenged
and compromised the sacred integrity of the judicial process. His focus was not on the
crime itself, but instead on what he perceived as causes that spurred lynching. Anti-black
racism both inside and outside the justice system was not an attributable element to be
considered when investigating the racial component of lynching. Yet, Hoffman’s post
hoc conclusion, albeit concerning, was not the major thrust of his argument in this
passage and in his larger discussion of black criminality. Instead, it was the way black
people—in this case, black men—were not only responsible for their crimes, whether
exaggerated, fabricated, or concrete, but were also responsible and, most importantly, the
cause of white criminality in the form of lynching. It was, as put by Hinton Rowan
Helper in his 1868 work *The Negroes in Negroland: The Negroes in America; and
Negroes Generally*, “the crime-stained blackness of the negro” that was “foul,” which
made them complicit in any crimes they committed, as well as the crime committed by
their white brethren (xi, 250). Therefore, if black people firmly espoused positive sexual
ethicality free of vice and indignity, then the end of lynching would follow suit.

Obviously, Hoffman either did not consider Ida B. Wells-Barnett’s findings
outlined in her pamphlet, *The Red Record*, published one year prior to Hoffman’s study in 1895. Its diminutive form did not take away from its sociological importance.

Perspicaciously, Wells-Barnett understood the discourse she was entering: “The student of American sociology will find the year 1894 marked by a pronounced awakening of the public conscience to a system of anarchy and outlawry which has grown in a series of ten years to be so common, that scenes of unusual brutality failed to have any visible effect upon humane sentiments of the people of our land” (1). For her, lynchings were the quintessence of dysfunctional government and criminality run amok. More to the point, it pervasiveness in the American South, Midwest, and western territories deserved careful study by sociologists in order to understand the causes and conditions of what was termed “rough justice” (Pfeifer 3-4). Debunking the popular myth of the aggressive, hypersexual black man whose lusts for white women is unquenchable, she continued to note that the primary accusation of lynchings in the South was murder, real or alleged, followed by rape. But exposing this unmistakable reality was not Wells-Barnett’s major point. It is important to keep in mind that both Wells-Barnett and Hoffman relied on newspaper accounts to calculate the number of lynchings and the accusations associated with them. Therefore, one could easily get caught in a game of numbers. Instead, she highlights these statistics in order to juxtapose them with the kind of punishment received by whites accused of similar crimes. It is worth quoting Wells-Barnett at length because in the passage that follows she reveals the unjust imbalance of punishment meted out by southern courts by using the very statistics amassed by white scholars:

> Not all nor nearly all of the murders done by white men, during the past thirty years in the south, have come to light, *but the statistics as gathered and preserved*
by white men, and which have not been questioned, show that during these years more than ten thousand Negroes have been killed in cold blood, without the formality of judicial trial and legal execution. And yet, as evidence of the absolute impunity with which the white man dares to kill a Negro, the same record shows that during all these years, and for all these murders only three white men have been tried, convicted, and executed. As no white man has been lynched for the murder of colored people, these three executions are the only instances of the death penalty being visited upon white men for murdering Negroes. (1, my emphasis)

Her interest does not lie in desires to interrogate statistics submitted by sociologists who are immersed in the study of black criminal tendencies and the criminality that surfaces and circulates based on race relations, despite being one of the first individuals “to call the racialization of crime statistics into question” (86). While she does cast strong uncertainty on the substructure of accusations pervasive in the South on the question of lynching—the idea that the rape of white women was the leading cause of black men being lynched—I find her critique in this passage to be more internal than external. One could read her refusal to scrutinize such statistics as the impetus of her reading of them.

According to Wells-Barnett, rough justice carried out on black men and black women by white mobs was not applied to white men and white women who were found guilty, not accused of, indistinguishable offenses. The glaring omissions—or, at best, misreadings—left out in works by Hoffman, Helper, Nathaniel Southgate Shaler, Walter Willcox, and others, added to their scholarly integrity. To not consider Wells-Barnett’s study was not only a form of willful scholarly racism, but it was also, and most importantly, one of the
very pillars of their methodological foundation and one of “conditions of possibility” for such sociological discourse to coalesce with biological articulations of black inferiority.57

The allegation of black people’s “crime-stained blackness” was not only espoused and propagated social scientists like Hoffman. Thomas Dixon’s first novel, *The Leopard’s Spots* (1902), afforded an early twentieth-century literary account of Reconstruction and its detrimental impact. Two years after the Civil War, the narrator remarks that Thaddeus Stevens “pass through Congress his famous bill destroying the government of the Southern states…enfranchising the whole negro race” at the expense of “one-fourth of the whites.” Consequently, “[t]he negroes laid down their hoes and plows and began to gather in excited meetings. Crime of violence increased daily. Not a night passed but that a burning barn or home wrote its message of anarchy on the black

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57 Two works by Michel Foucault come to mind in this analysis: *The Order of Things* (1966) and *The Archaeology of Knowledge* (1969). For my purpose, the historical *a priori* that guides the works of Hoffman, Shaler, and others is the exclusion of scholarship by black authors, particularly those who do not subscribe to statistically buttressed atavism. What constitutes this discourse is the permissibility of a statement at the moment of its production. My analysis differs from Foucault in that he does not account for race, the openly expressed constitution of one’s physical makeup. Indeed, the reason statements are regulated in the sociological discourse of the period is predicated on the subject’s/author’s race coupled with the perspective the author has; in the case of Wells-Barnett and Du Bois, the perspective centers the socioeconomic milieu. A condition of possibility during this period of sociological production is the subject’s race. Moreover, it is important to keep in mind that Du Bois, in a way not too dissimilar to that of Hoffman, omits Wells’s research on the subject of lynching. In “Profeminism and Gender Elites: W.E.B. Du Bois, Anna Julia Cooper, and Ida B. Wells-Barnett,” scholar Joy James notes that although he denounced the oppression experienced by black women, “Du Bois veiled the individual achievements of women such as Cooper and Wells-Barnett to the political landscape” (71). While James argues that the most “glaring omission” of Wells-Barnett’s work appears in *Dusk of Dawn*, Du Bois, in his essays on lynching at the height of its execution, was likely to have known of, and possibly read, *The Red Record*. Therefore, the condition of possibility that allows particularly statements—that is, texts—to be uttered, produced, and disseminated must obviously account for the exclusion, the silencing of certain works based on the gender of the subject.
sky” (90). I am not so much interested in Dixon’s historical depiction than I am in what investment he has in offering a literary reading of Reconstruction at the precise moment of intellectual intrigue with criminality. Furthermore, I am curious about the contribution this passage, and the entire work through this passage and others, makes in the larger discourse around black criminality.

Dixon’s novel seems to situate criminality as an innate feature in the black subject that is greatly influenced and evoked through social conditions and events. In the immediate aftermath of the bill’s passage, former slaves ceased their labor and began ruminating over their villainous plan of attack. Turnover is instantaneous, as if these nefarious, felonious wrestlings were part of their very being. Ominously, Dixon’s narrator, at this moment, takes his framing of the black criminal much further than Hoffman. For the author of Race Traits, his purpose was to examine the internal destruction and eventual demise of African Americans. Prior to the American Economic Association publishing his work, Hoffman, as it reads on the cover, produced his study as a “[s]atistician to the Prudential Insurance Company of America.” As a result of his profession, he missions was to measure black vitality. Based on his results, insuring black people would be considered “a drain on [Prudential’s] revenue,” despite the speciousness of this claim (Wolff 86). Criminality among them, among other innate susceptibilities, was construed as a dangerous financial liability. Dixon, on the other hand, portrays black criminality as a threat to the republic. Arson illuminated the ominous black sky above, spelling doom to the future of American democracy. The lack of control the South had over its emancipated population only encouraged a lack of governmental stability and the disfranchisement of a portion of the white populace. Consistently, black freedom is
criminal because it led to white unfreedom and curtailment in the political process. Dixon continues by negotiating innate black criminality with its instruction. He describes “strange negroes” loitering and walking through Southern towns, “firing pistols and muskets” without provocation (32). Speaking on his community’s behalf, Rev. John Durham, the preacher described as “throw[ing] his life away,” pleads to the Commandant of the black unit to control its refractory behavior, looking “to you for protection. The town is swarming with vagrant negroes, bent on mischief. There are camp followers with you organizing them into some sort of Union League meetings, dealing out arms and ammunition to them…teaching them insolence and training them for crime” (32).

*Race Traits* should not be underestimated, for it functioned as the critical merger of the scientificity of statistics and atavism, while gesturing toward the inauguration of social science as a field with fidelity to empiricism and objective rigor. In his nearly six-page review of Hoffman's work, published in *The Annals of the American Academy of Political and Social Science*, Du Bois notes that Hoffman’s work indicates “the beginning of a new phase in the study of the Negro Question” that combines “the statistical method to the study of the condition and development of the American Negro” and “the physical constitution of the Negro,” in which the main physical difference that could be drawn was “chest measurements” (127). Although Du Bois disagreed with many of Hoffman’s conclusions and application of the statistical method, particularly his monomaniacal focus on the Eleventh Census and the logical fallacies apparent throughout his work, he found the investigation to be representative of an eventual epistemological shift moving toward “the general increase of interest in sociological study” (127). While the discursive and epistemological terrain was a space in which
important scholarly interventions needed to take place by figures such as Du Bois, Wells-Barnett, and others, the political violence and repression experienced by black people were critical to Du Bois’s intellectual and literary writings.

III

The wedding between sociology with biology did not occur in a discursive vacuum. During this same period was the continuation of a cultural apparatus that infused the socio-biological with the literary imaginary. Literature’s interest in criminological tropes, along with the use of scientific inquiry, perhaps began with Arthur Conan Doyle’s 1887 two-part transcontinental novel, *A Study in Scarlet*\(^ {58}\). Chemistry and physics are prominently introduced in Sherlock Holmes’s discoveries—readers learn that Holmes is “an enthusiast in some branches of science,” who “is well up in anatomy, and he is a first-class chemist” (5). One notes that Holmes’s greatest achievement does not lie in a particular case he solves or in the retrieval of precious, stolen items. Rather, as enthusiastically stated by his companion and biographer, Dr. John Watson, Holmes’s success is based on efforts in bringing “detection as near an exact science as it will be brought in this world” (33). In his important study of Sherlock Holmes and scientific inquiry, *The Scientific Sherlock Holmes: Cracking the Case with Science and Forensics* (2013), literary historian and scholar James O’Brien contends that Holmes’s scientific sophistication and fidelity went beyond chemical calculations. He had admiration for the

\(^{58}\) I am differentiating Doyle’s famous protagonist, Sherlock Holmes, from other important Western crime and detective stories such as Edgar Allen Poe’s “The Murders in the Rue Morgue” (1841), Charles Dickens’ *Bleak House* (1853), Wilkie Collins’ *The Moonstone* (1868), to name a few. While logic, analytics, and impressive intuition are the main characteristics among the texts’ detectives, Doyle’s work stands out as the first detective fiction that explicitly evokes a scientific method along with scientific tools and apparatuses to solve criminal mysteries.
French police officer and student of biometrics Alphonse Bertillon’s “measurement system, or anthropometry,” particularly in relation to his studies of repeat criminal offenders, later known as recidivists (49). Sciences of fingerprints and footprints are also considered in Holmes’s profession as a “consulting detective” in the first two stories, *A Study in Scarlet* and *The Sign of the Four* (1890) (Doyle 17). Saliently, works such as Mark Twain’s *Pudd’nhead Wilson* integrated Francis Galton’s groundbreaking fingerprint discoveries as a potential method for crime solving. As noted in the previous chapter, the novel’s employment of fingerprinting not only presages its use by police units throughout the country, but also indicates how a racialized criminal must be presupposed and hypothesized prior to any scientifically based investigation.

One can only speculate as to whether Du Bois read Doyle’s famous detective fiction during the first decade of the twentieth century. Du Bois was his literary contemporary, writing fragments of short stories as early as 1889 and beginning his interest in crime and detective fiction at the turn of the century. However, the important point to be made is that Du Bois is drawing upon the literary genre, and certainly the literary energies of the time, to raise critical questions about black criminality and the scientific intelligence of black men. For example, the narrator introduces the reader to the black porter, George Gaines, in “The Couple in the Drawing Room.” In a clever literary move, Du Bois gives his protagonist this name. Larry Tye, author of *Rising from the Rails: Pullman Porters and the Making of the Black Middle Class* (2004), mentions how the Pullman porter was, for many white patrons, a figure “shrouded in mystery and born of ignorance,” who was “in a world filled with insults and indignities, one where he was
called George or worse, and forced to beg for tips to support a family”59 (193). Du Bois plays on this insult, while simultaneously subverting it when giving George the surname, “Gaines.” This was not a capricious decision or performed happenstance. In his other crime fiction, such as “The Shaven Lady” (1906) and “The Jewel” (1906), there is an innominate black porter who observes and narrates mysteries, but never uncovers them. Indeed, this namelessness employed by Du Bois gives the porters a somewhat amorphous identification. Their occupation—therefore, class—can be identified; and their profession immediately signified their race. But their names are not given, adding to the porter’s mysteriousness and protected disposition (Tye 193). While it is unknown if Du Bois engaged in any rigorous onomastic study during this period of high literary concentration on crime fiction, one learned that “Gaines,” according to the *Dictionary of American Family Names* (2013), is a moniker for a “crafty or ingenious person” (463). The reader is not given George’s history outside his occupation as a porter and his name; therefore, one is left to question if his first name is actually George. While the name certainly represents an insult uttered from the lips of white patrons, the meaning and very rendering of his last name destabilizes the slanderous sting that is associated with it.

Before this story was given its relatively cryptic title, Du Bois was initially more explicit, which stated, in no uncertain terms, the nature of the mystery to be uncovered. In his one-page outline of the story, he refers to it as “The Murder in the Drawing Room” (1). His initial title does not seem to signify any title written by Doyle, although

59 Tye’s work is one of the most comprehensive studies on the history of Pullman porters and the economic relations that shaped them. He is certainly on to something when he writes, “Books were the first place the porter turned up, in fiction and non,” particularly in Emma Goldman’s 1931 memoir (194). Interestingly, Du Bois invests literary stock in the stories of Pullman porters at the start of the twentieth century, over two decades prior to Goldman’s work.
“[m]urder is the most common offense, occurring in twenty-seven” of his stories (O’Brien xix). It seems to shares a titular resemblance with Edgar Allen Poe’s 1841 story, “The Murders in the Rue Morgue.” This is where the similarity ends, for George is not limited to his analytical capabilities and deductive reasoning. Instead, he fashions his inquiries in a strongly scientific way. When a woman walks on the train, the conductor, having experience in the various styles of sauntering, notices how unusual her movements are. His knowledge of postures, gestures, and overall physical features of his guests leads him to center her for his analysis. She enters the drawing room, presumably to freshen up, and leaves; but she does not depart without leaving an exorbitant tip of “three one-hundred dollar bills” (1). All this is profoundly unusual for George, and it seems that this is where the mystery begins. However, Du Bois pencils out these details in his typescript and does not replace them. Similar to the way a jury is required to dismiss evidence or testimony when its presence or trajectory transgresses legal etiquette and protocol, both writer and reader are supposed to disregard what has now been excised. But the trace and its memory remain, “mak[ing] its necessity felt before letting itself be erased” (Derrida 123). In the actual document, the pencil cannot remove what has been written, leaving the reader and writer to see what was once—but still is—there. Its absence, present both in the subsequent writing of the story and the document itself, necessitates and makes possible the rest of the story.

The reader returns to the story with a white gentleman now occupying the room left vacant by the unknown woman and where the money was left. The gentleman’s presence is unexplained—he furtively enters the story with the personal pronoun, “he.” Traveling passed Charlottesville, Virginia, moving deeper south, the porter is worried
that the gentleman will oversleep, thereby missing his stop in Lynchburg. George retrieves the train conductor to wake the man, only to discover that he is dead.

“Immediately,” remarks the narrator, “every sense in the porter became alive. Porters are the *natural* scapegoats for everything that happens on the pullman [sic] cars” (2, my emphasis). Murderous guilt imposes itself on George’s physical makeup, awakening and heightening his senses. The biological association the black man subject, in this case, George, has with criminality has not ceased, but ferociously persists. But what is so fascinating about George’s reaction is how he subscribes to his guilt. It is not the gentleman’s stiff corpse that concerns him; instead, it is the reality that is soon to come, for “[i]t would not be long he was quite sure before he would be suspected of some complicity” (2). This presentation of a naturally presumed black criminal is quite consistent in Du Bois’s short stories of the period. In “The Shaven Lady,” for example, the story begins with the unnamed narrator searching for his missing watch. Anticipating the patron’s accusation, “[t]he porter looked at me with sharp, unsmiling eyes” (1). Once he discovers in both his watch and his absentmindedness, he tries to offer conciliatory reassurance: “Oh, I didn’t think you had it,” said the smiling narrator. The porter, revealing an unsettling truth and his humanity, rejoins, “You know a porter is supposed to steal everything that is missing on a Pullman car” (1). While the tone is clearly sarcastic, even caustic, the porter is speaking to a presupposed dictum. It is not merely that the porter is wrongly accused of stealing or carrying out any criminal infraction on board the Pullman train; rather, he is, due to the very presupposition, *required* to be a

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60 Tye argues that the Pullman porter “remained a dark silhouette” who never “revealed much” in order to protect and isolate himself from aspersions (193-194). In his unusual, indeed improbable, interaction between porter and patron, Du Bois gives voice to the porter, allowing him to speak about the unjust nature of loose criminal applications.
theft. Such a requirement is meant to confirm the presupposition, to transform it into a material fact, as opposed to an immaterial one. That is, the criminality that precedes the porter must be executed by him—he must play his criminal role in order to maintain the social relations on the train, a point to which I will return.

One locates similar articulations and components in Charles Chesnutt’s *The Marrow of Tradition*. Finally having a chance to read the novel, Du Bois, in a correspondence addressed the novel’s publisher, found the work to be “one of the best sociological studies of the Wilmington Riot [of 1898] which I have seen” (210). Du Bois was not being hyperbolic in his assessment, but was pointing to the way these discourses communicated with each in ways that addressed and shaped conversations about the black criminal. For example, once word circulates about the mysterious murder of Polly Ochiltree, the community’s thoughts are already set in motion as to the identity of the murder. The narrator offers the following:

Suspicious was at once directed toward the negroes, as it is always when an unexplained crime is committed in a Southern community. The suspicious was not entirely an illogical one. Having been, for generations, trained up to thriftlessness, theft, and immorality, against which only thirty years of very limited opportunity can be offset, during which brief period they have been denied in large measure the healthful social stimulus and sympathy which holds most men in the path of rectitude, colored people might reasonably be expected to commit at least a share of crime proportional to their numbers. The population of the two was at least two thirds colored. The chances were, therefore, in the absence of evidence, at least two to one that a man of color had committed the
crime. The Southern tendency to charge the negroes with all the crime and immorality of that region, unjust and exaggerated as the claim may be, was therefore not without a logical basis to the extent above indicated. (108)

The narrator then continues by undermining the very idea that logic would be necessary to accuse black people of any criminal wrongdoing. “The mere suggestion that the crime had been committed by a negro was equivalent to proof against any negro that might be suspected and could not prove his innocence” (108). Chesnutt’s narrator, similar to Wells-Barnett and Du Bois, does not challenge the demographical composition of the fictional town of Wellington, based on 1898 Wilmington, North Carolina. Instead, it is the way the data are used to extrapolate and exaggerate the notion of a black criminal.

The narrator is also positioning an environmental argument about black crime. Due to the criminality that was necessitated under the conditions of slavery, black women and men, in self-assertive acts of agency, survival, and resistance, tested the limits of property law through acts of theft, whether through the abduction of small items and foods or themselves in acts of fugitivity. However, the critical point raised in this passage relates to the expansion of law in relation to classifying the black subject as criminal. The speculation of criminal activity in Wellington expands guilt to all black people in the community. Obtaining evidence to pinpoint the guilty party is not the primary concern—the evidence lies within one’s hue. The placement of criminality in the contours of black pigment does not adjourn historical content. On the contrary, it is associated with a historical criminal occurrences and accusations that provide material grounding. This alludes to what Sherlock Holmes refers to as the “history of crime,” defined as “a strong family resemblance” of criminal “misdeeds” (17). All crimes, according to Holmes, have
a connection, specific traits that form a network binding them together. Such a network does not ignore the uniqueness of certain crimes; instead, “if you have all the details of a thousand [crimes] at your finger ends, it is odd if you can’t unravel the thousand and first” (Doyle 17). In the case of the black criminal, the history of property crimes and the unique discourse of the hypersexualization of the black subject that emerges in the late nineteenth and early twentieth century are contained in one obvious characteristic that has remained consistent despite its variation in complexion, their skin. It is not that black people, like most racial groups, do not have a history of crime, even while enslaved. What is different for writers like Chesnutt, Wells-Barnett, and certainly Du Bois is that such a history is racially compartmentalized and then expanded to encompass all black people and the precise idea of crime itself. Furthermore, what is important to keep in mind is how criminology, sociology, science, and literature are engaged in interplay: before some of these methods are actually used by police forces to fashion knowledge about criminals, literature is doing more than infusing the scientific method: it is expanding its reach and producing ideas that offer ideas for how to reconsider and reframe black subjects into their inquiries and investigations.

Returning to “The Couple in the Drawing Room”, in the face of the ostensible naturality of the black criminal, George begins to investigate the inexplicable presence of the gentleman, as well as the hefty tip of three hundred dollars left for him by the now-missing woman in Drawing Room B. He is able to identify the white gentleman’s criminal history through “identifying marks on laundry and in pocket book [sic]” (3). What is important to note here is that George, the story’s protagonist and black porter, is engaged in a forensically focused pursuit of the legally responsible criminal. He knows
the murdered gentleman’s laundry will leave some markers of identification that will then lead him to learn that “[h]e was a New York bank clerk and had embezzled $10,000 the day he disappeared” (3). Such proto-forensic investigative methods continue throughout the story: he learns about the poor gambling habit of the murdered gentleman, who is later referred to as Albert, and his travels from New York to New Jersey; and he obtains information about the perpetrator’s former lover, Mary, and her former fiancé, Bardsley Davis. He extracts this information from “the kitchen of the apartment house where Mary for a time had lived” (4). George also expands his methodology by conducting field interviews at locations where she was last seen, retracing her steps in ways that finally lead him to her home in Spartanburg, South Carolina.

His methodological commitment through forensics introduces a critical point Du Bois makes through George. He complicates ideas of the black criminal by using a working-class, degraded black man as the crime-solver of his story. But the larger issue Du Bois addresses is the intellectual and scientific capability of black men, especially those from working-class backgrounds. Historians and cultural critics have commented about Du Bois’s subscription to uplift politics, something Du Bois describes as one of the social prescriptions for ameliorating black Philadelphia in The Philadelphia Negro. Through George, however, Du Bois argues that dedication to empirical inquiry and investigative study is not sequestered to a black educated class. Arguments about the criminality of educated black people do not emerge in their full form until the second decade of the twentieth century (Muhammad 107). Part of the alleged pervasiveness of criminality among black people was based on their ignorance and lack of serious intelligence. But through his occupation and investigation, George and, without question,
Du Bois take on and challenges these arguments on terms of literary engagement.

The intervention Du Bois makes regarding the constitution of an innate black criminal is further illustrated through narrative slippage and its incompleteness. Although George’s raises questions about the gentleman’s identity, he “was closely questioned,” with “the Lynchburg chief of police look[ing] at [him] speculatively (3). These inquiries are blurred, causing difficulty in who is assigned detective authority. Questions superimpose one another, which are occasionally assigned to George; yet, one cannot be certain due to the absence of a clear shift in literary voice. Therefore, it seems as if Du Bois’s literary arrangement here disorganizes the power dynamics of the natural criminal and police, establishing both as equal parties in the resolution of the murder. But even with the obfuscation of power dynamics, the notion of the black criminal through the spectacle of arrest lingers. The black porter is not detained or arrested, for “[n]othing was proven” (4). But as a result of the naturality of his criminal constitution, the police officer’s speculative gaze “arrests” George, presuming his guilt. Arresting and arrestive gazes function as surveilling eyes: the reader learns that “George was released on suspension from his job,” which means that “[h]e was going to be followed by detectives for a good long time” (4). Not being found guilty of any criminal misconduct, George is indefinitely suspended from his position as a porter.

As a persistent detective, his quest for the actual perpetrator continues. He travels

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61 I differentiate these terms in order to highlight the simultaneity of gazing and capturing processes involved in the spectacle of arrest. Denoting the present participle, arresting describes the spectacle of arrest at its exact moment. The pursuant or, in this instance, the interrogator seizes the constructed, construed criminal now with his gaze. Arrestive, as the suffix designates, has the “nature of” arrest. The black subject’s exposure to criminal and auxiliary justice systems as a “framed” present reality speaks to the legal procedure of arrest.
to the Pullman headquarters in New York “where he had a high-placed friend,” the superintendent (3). This unusual social relationship comes as a striking revelation, and tells the reader more about George and the dire circumstances under which porters worked. At this time, George, along with other porters, did not have union protection (the Brotherhood of Sleeping Car Porters was not established until 1925). As a consequence, they had little legal and labor protection against unwarranted terminations (Tye 97, 122-136). He informs his esteemed friend of this precarious situation in no uncertain terms: “If I didn’t know you…I wouldn’t be here” (3). Consequently, a suspension would most likely lead to permanent termination without the possibility of return—it would “be a long time before [George could] get another pullman [sic] job unless” he was able to clear his name (3). George’s important connection deems him an extraordinary, exceptional case: it allows him, at the very least, to investigate the consequences of the suspension and, ipso facto, murder for a fee. Quite explicitly, he informs his confidant that he “would like to do a little detective work…I have some theories and he laid down the wallet with its three bills” (3). What separates George from Sherlock Holmes or even Poe’s C. Auguste Dupin is that criminal detection for George is conducted out of economic necessity and personal protection, not hobby or attachment to professional occupation: it is “[p]recisely” the reason “why [he] came here” (3). He has no interest in the law or, to be more exact, solving this case unless it can lead to a lift of his suspension. One is unsure if George would have even inquired about the murder if his job did not hang in the balance. To discover the criminal is not to support the legal process, but it is, in an honestly practical way, to support his livelihood and to save his life. A factor that goes unquestioned, however, is how George is able to have and keep such a connection
that crosses class and social lines. While the reader may learn more about George’s relationships, the reader is also left in the dark as to the ways such a relationship was forged, thereby adding to the mysterious of both George and the story.

Ultimately, George gets to the bottom of the murder. He also ascertains the cause of death—poison. At the behest of Davis, Mary intentionally planted the three hundred dollars in the drawing room to place already-established blame on George and to “lead the trail away from [Davis]” (5). Rather than reporting his findings to the police, George relays them to his trusted confidant, the superintendent. This decision reemphasizes his singular interest in reclaiming his job and his refusal to communicate with the police.

There is no compensation for his efforts and “[t]here was no reward; but the superintendent, in a sardonic tone that nearly betrays the trust George and he share, states, “George, it is possible that now and then we can use you on little pullman [sic] mysteries” (5). The labor power, both physical and intellectual, exerted by George is neither monetarily nor sentimentally accounted. Unquestionably, murder is a grave offense; and when the subject is already presumed guilt is embedded in the pigment of the black subject, the act is highlighted as a characteristic of the entire race. However, its severity is significantly mitigated as a result of who solves the crime, the black porter.

Du Bois, in the conclusion of this story, raises the question of value in relation to crime. Crime, whether murder or theft, is valuable when it is the perpetrator matches the presumption established by legal authorities. Conversely, its value is reduced not only when the presumption falls apart—indeed, its high-value remains, for it does not dismantle the notion and fear of the innate black criminal—but especially when the presumably guilty subject absolves himself of guilt by solving the crime. In his act of
agency and intelligence, George is unable to dismantle the powerful discourse that constructs him as criminal.

Written in 1906, “The Jewel” is a clever typescript story, in which a black porter tells the story of a white somnambulant who hands him an elegant jewel, but ends in an unusual way. It begins with a frame story of a white man patron departing from the train’s smoking room and sitting next to the black porter. “Surprised” to see such a “evidently…costly” ring on his finger, the passenger “curiously” asks, “You like jewels?,” to which the porter hesitantly replies “Yes, I like jewels, I’m crazy about them” (1). Similar to George in “The Couple in the Drawing Room,” the porter subverts the narrative of his criminality by playing along with it. He is already aware that the patron’s inquiry is leading: there is a sense that the porter obtained the jewel through illegal means. Certainly he could not have purchased such an ostentatious piece with his menial salary; therefore, it only seems natural that the innominate porter acquired it in a way that is legally problematic. The porter’s reluctant response is a projection aimed at his status and color from the white passenger. The ring is observed closely and often; it is a “peculiar” jewel—all the more peculiar as a result of the porter’s ownership of it. Noticing the commuter’s suspicious eyes, the porter immediately shifts to a story about a showpiece, removing the attention away from his possession of it and any suspicion regarding its acquisition. Almost as if he knew the passenger before, had seen his eyes before, and had felt his misgivings about his peculiar procurement, he inquires, “Did I ever tell you about the Jewel that was on the train one time?” This is an odd, yet brilliantly cunning question due not only to its circumstance within the context of suspicion—raised to divert suspicion—but also because the context allows for the porter
to play with language. He does not assign location or specificity to the jewel on his finger. That is, he does not ask, “Did I ever tell you about how I came to possess this jewel?” or a similar variation. Instead, he uses the definite article to describe an item that is common knowledge to both porter and patron. To be sure, the porter’s evocation of the story he is prepared to explain calms the patron’s distrust as he “settled back expectantly” to listen (1).

The train travels from New York to Atlanta. While performing his nightly duties, the porter notices a white woman, sleepwalking almost as if a bleached specter, slowly approaching him. Startled, the porter freezes in his seat. With eyes clearly closed, she bends over to him closely and he “could feel her breath on my forehead” (2). The nameless, amorphous sleepwalker then hands him a small black jewelry case with a “long, great” sigh of relief as if she was glad to have relinquished such a tormenting item. Within the porter’s communication of his tale, he notes that he was quite fortunate that the somnambulist was not alarmed or perturb, for he “suppose[d] there would have been a lynching or something like by the time she was through yelling” (2). The potentiality of crazed, hysterical responses from a white woman disturbed in her sleepwalk would have been immediately read as sexual assault—or at least a sexual advance—committed by the porter. Because he is fully cognizant of and familiar with such an unfortunate context he is not only hesitant to take the jewelry box from her hand, but is also, and most important, conscious of his movements and the movement of the white woman. Even with closed eyes, the woman “arrests” the porter. Hanging in the air is the threat of capture by sleepwalker, the police, and a possible lynch mob. The repressive state and juridical apparatuses are not precluded from the energies of this text. They are intensified in her
movement and the potential of being caught. Incessantly concerned about being captured with jewel in hand, the porter maneuvers himself in attempts to avoid arrest. If the woman is startled, awaken from her walking slumber, the porter’s guilt would be marked. It is, in fact, already implicated: only he is fortunate to have not been caught standing before her, being the reason of her feverishness. In this small passage is the material, internal reality of presumed guilt ensconced in the black body. As a consequence, the porter’s presumed criminality is twofold. Given the Jim Crow context the passage and story evokes, there is an external imposition of criminality on the porter—it is not of his creation. Simultaneously, one must be attentive to what Fred Moten describes in his illuminative essay “Uplift and Criminality” (2006) as “a quality of the act or the person that is called deviant” and the “specific interiority of the deviant (act or person or act-as-person)” (328). Black criminality is not merely something that is externally conferred, but it is internally held and performed, sometimes in the form of resistance. The porter’s reluctance to take the jewel from the woman’s hand is a conveyance of extrajudicial repercussions and performance of criminality as a form of resistance (a point to which I will return when discussing the story’s conclusion).

Once he receives the jewel from her, he becomes more meticulous with his movements, surveils them, transforming himself into the subject/object to be watch. He does this so as “not to wake her” when returning the jewel to her berth. The jewel’s mysteriousness is centered once the woman, still asleep while walking, returns to the porter for a second time to hand him the jewel. Her face is troubled, distressed, implying a connection between her anguish and the jewel that “looked liked a great drop of sunlight of that reddish yellow sunlight that comes toward sunset, brilliant, wonderful,
changing” (5). She must get rid of it, and it must be given to the porter. A sudden, overwhelming wave of temptation washes over him. He wonders, “Who knew I had it?—not she surely, and no one else” (5). It is at this moment when a carelessly dressed elderly man stands behind him and surprising the porter, “It [the jewel] is very beautiful.” Once again the porter is seized, arrested in his chair. In order to absolve himself of any wrongdoing or deviance, he “tried to answer carelessly, ‘Yes. Is it yours?’ ” (5). When the elderly gentleman who unknowingly entered the train attempted to inspect the jewel closely, its allure compelled the porter to snap shut the box. Growing tired, yet saliently circumspect, the porter begins to watch the old man but falls asleep. When the conductor awakens him after oversleeping, the porter, after executing a few of his services, notices that the jewel is missing from his pocket. Indeed, he knew it would be missing and “felt a certain relief about it” (6). His association and attachment to the jewel, at this moment, was transiently severed. Criminality’s exteriority, in this specific situation, is momentarily halted and he happily, assuredly goes about his work.

However, he happens to recall the sleepwalker’s absence from her room. The conductor, seeming to know the porter’s thoughts in this scene, informs him that the woman joined her husband in a town that shows up in “The Couple in the Drawing Room,” Spartanburg. Exiting the woman’s room, the porter and the conductor find the old man in a terrible state, in which the cause is unknown. Here, the porter accurately presumes that the jewel was in the old man’s possession. He removes the item from the man’s pocket and places it into his. Once the infirmed gentleman recognizes the jewel’s removal, he sharply watches the porter, while the porter encounters the man who is assumed as the woman’s husband. As this peculiar, potentially problematic event unfolds,
the porter decides that he will no longer take part in this criminal theater—“I changed my tactics” (7). His change of strategy is a desire, an impulse to dissolve the explicit, exterior criminal threat before him. To save himself from the exterior trouble from such a criminal conferment, he approaches the couple and hands them the jewel. Both parties clearly do not want it, but the husband unenthusiastically accepts it.

Over the course of the trip to Atlanta, fights ensue among the passengers for the jewel, which leads to a newsboy’s death. When the porter reaches this scene of the story, he pauses, returning the reader to the frame narrative. Captivated by the story, yet suspicious about its veracity, the white passenger asks, “Is it true?,” to which the porter replies, “Substantially.” When the passenger curiously questions which parts and scenes were exaggerated and fabricated, the porter, removing the center of tale, rejoins, “the jewel” (15). Expected assumptions drawn from the jewel’s presence on the porter’s ring to the dizzying tale he limns, the white passenger who carefully listens is left without a bottom. He does not get an explanation as to how the jewel landed in the porter’s possession, and he does not get a developed story due to the porter’s abrupt ending and equally abrupt exit. Instead, what the passenger is left with is confusion. What the porter is left with is the jewel. The assumption that he illegally obtained it is not suspended, but is left in the room with the white passenger and the narrative—it is, quite simply, curtailed.

IV

Fascinatingly, Du Bois challenges biological determinist arguments regarding black criminality not only through the publication of sociological investigations and journalistic endeavors, but also through and in literature. Many of his short stories written
in this period (1896-1907)—there are about nine in total—are underdeveloped and fragmented. The inclusion of empirical implications in some of these stories, especially in “The Couple in the Drawing Room” concentrates the larger argument of black people’s intellectual capabilities and use of deductive reasoning. In “The Jewel,” Du Bois underlines how criminological constructions are also discursive and that the dismantling of the black criminal should account for the ways language operates as a way to buttress and concretize the naturality of the black criminal. Although these and other short stories of the period are narratives that afford Du Bois the opportunity to ruminate over questions of criminality among black people, he offers unique ways of reading crime fiction by situating his narrative on Pullman cars in the aftermath of the “separate but equal” decision of *Plessy vs. Ferguson*. In these short stories that have never seen the light of legal publication, Du Bois’s choice to have the Pullman car as the setting is not accidental. While the black criminal continued to be the center of sociological discussions in this era, Du Bois, through the perceived black criminal—i.e. the porter—calls into question both the discourse and the legitimacy of Jim Crow discrimination.
“Our ultimate gratitude to art.—If we had not welcomed the arts and invented this kind of cult of the untrue, then the realization of general untruth and mendaciousness that now comes to us through science—the realization that delusion and error are conditions of human knowledge and sensation—would be utterly unbearable. Honesty would lead to nausea and suicide. But now there is a counterforce against our honesty that helps us to avoid such consequences: art as the good will to appearance. […] As an aesthetic phenomenon existence is still bearable for us, and art furnishes us with eyes and hands and above all the good conscience to be able to turn ourselves into such a phenomenon. At times we need a rest from ourselves by looking upon, by look down upon, ourselves and, from an artistic distance, laughing over ourselves or weeping over ourselves. We must discover the hero no less than the fool in our passion for knowledge; we must occasionally find pleasure in our folly, or we cannot continue to find pleasure in our wisdom”\(^ {62} \)—Friedrich Nietzsche, *The Gay Science* (78).

“The Imagination and Construction of the Black Criminal in American Literature, 1741-1910” seeks to address ways cultural production and literary efforts contribute to discourses about black crime. In my undertaking, I have tried to be analytically meticulous by examining interchanges of philosophically negative and positive iterations of black criminality. Black women and men imagined as criminally inclined—a negative rendering—not only significantly assisted in the production of works such as Daniel Horsmanden’s *Journal of the Proceedings*, confessional literatures transcribed by white

\(^ {62} \) For this quote and its explication, also see Sarah Kofman’s *Nietzsche and Metaphor* (1994).
amanuenses, and even Mark Twain’s *Huckleberry Finn*, but also works by Absalom Jones and Richard Allen, William Wells Brown, and W.E.B. Du Bois. Furthermore, the latter group of writers often utilized and appropriated tropes of black criminality in creative ways to challenge its pervasiveness, while ironically reconstituting its power. During the confessional period, Rose Butler, prior to her execution, stole approximately £300 from her mistress and purchased “a Silk dress for her Aunt Sally with part of the money”, along with enjoying carriage ride and music with her and others” (1). Her theft was included in the unedited version of her confession as a way to further portray her as criminal. Yet, Rose’s mistreatment at the hands of her mistress complicates her thievery and enjoyment. Contrary to Saidiya Hartman’s argument on slave pleasure, Rose’s enjoyment was neither for mistress nor master, but criminally for herself. Black crime entered the practice of writing and fugitivity during the antebellum period with Brown’s composition of *Clotel*. Evading external laws regulating literacy, copyright, movement, and plagiarism, he found space to intertextually mimic his fugitivity while reinforcing troubling ideas of black inauthenticity. In the late nineteenth and early twentieth century, Twain and Du Bois draw upon pervasive notions of black criminality to speak of its value in relation to white illegality. Twain does this through the free play of crime, while also emphasizing the value of the black criminal in its various representations. In more explicit ways than his contemporary, Du Bois in his unpublished short stories places criminal blame on his black protagonist, only for him to solve his own mysteries. Literarily, he ingeniously blurs distinctions between crime and detective fiction in ways that enable him to creatively discuss black crime that are not as fluid in his sociological studies.
Before mass incarceration became amassed contemporary currency to describe disproportionate rates of black women, children, and men under U.S. prisons, jails, and judicial surveillance, confessional literature, literary fugitivity, and detective fictions were popular genres where black criminals were prominently featured. Rather than simply coincide with early rates of black incarceration during the early national period through the postbellum period and beyond, I believe these works played critical roles in early black incarceration primarily, but not solely, due to their popularity. Black criminality, therefore, became a political, social, and cultural terrain where black and white authors creatively expressed themselves in ways that had important, yet grave stakes that contemporarily resonate.

Illustrative of my thesis is David Claypool Johnston’s 1863 abolitionist broadside, “The House that Jeff Built” (Appendix D), a caustic literary and visual indictment of Confederate president Jefferson Davis and slavery. Alluding to the legendary nursery rhyme, “The House that Jack Built”, it is made up of twelve vignettes that operate as specific, but connected scenes of enslavement. By using this memorable nursery rhyme as the lyrical, rhythmic impetus for his broadside, Johnston perverts it: innocence does not exist in slavery. Instead, what lives and thrives are the most baleful, rancorous expressions of humanity. Slavery is not only to be viewed, but it is also to be read; therefore each scene contains an accompanying verse, progressing the reader/viewer through the story. The first vignette features the slave pen. Its door is made of wood with

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63 For numbers on and reasons for early national black incarceration rates, see Mark Kann’s *Punishment, Prisons, and Patriarchy: Liberty and Power in the Early American Republic* (2005) and Leslie C. Patrick-Stamp’s “The Prison Sentence Docket for 1795: Inmates at the Nation’s First State Penitentiary” (1993). Not for nothing, one should keep in mind that the first inmate in Eastern State Penitentiary was Charles Williams, a burglar with “Light Black Skin” who “Can Read.”
key lock and door handle. Menacing in presence, the sign above the door reveals its purpose—SLAVE PEN. Both in title and purpose, it is distinct from southern jails, “in which authorities rarely made any attempt to isolate inmates from each other, never mind from the external world” (O’Donovan 125). This damning edifice was reserved only for the enslaved. “SLAVE SALE…AUCTION…PRIME LOT…COTTON” is posted to the reader/viewers left, while cold, dark bars are situated to the door’s right. Arranging the slave pen in this way nefariously exhibits one of the damning paradoxes of slavery: violently savage confinement and severely regulated movement.

Reading from left to right, vignette six showcases ball and chain attached to a wooden post. The following stanza accompanies the image:

These are the shackles, for slaves who suppose
Their limbs are their own from fingers to toes;
And are prone to believe say all that you can,
That they shouldn’t be sold by that thing call’d a man.
Whose trade is to sell all the chattels he can
From yearlings to adults of life’s longest span:
In and out of the house that Jeff built. (15-21)

From vignette five to twelve, the final four lines of this stanza, in different variations, conclude the stanzas. Inversion in the eighteenth line ironically indict, yet reconstitute human as chattel. Vignette five informs the reader/viewer that “thing call’d a man” is a slave auctioneer. Assuming that no human being could possibly sell another human life, he is given chattel status, “a thing”. In the succeeding line, however, the auctioneer is referred to as “he.” Lines fifteen and sixteen seemingly indicate humaneness in the slave.
She and he have “limbs” with “fingers” and “toes.” However, these limbs belong to them—or as the speaker puts it, “Their limbs are their own…”, thereby conceptualizing themselves as property through the speaker’s voice. Moreover, by placing the sixth vignette between the auctioneer with gavel in hand and purchasers poised to buy an enslaved woman, this stanza and its meaning is lyrically, symbolically, and visually submerged in property relations. Slaves’ limbs, signifying and constituting their humanity are owned by them and should therefore determine how they should be used. Returning to line fifteen, alliteration is featured by centering “sh” and “s”, giving the line a meandering, snake-like quality. However, its tonal movement is juxtaposed with “shackles” and the image, conveying stifling confinement and regulated, controlled movement. Images of punishment and sorrow inundate Johnstone’s broadside, only with the twelfth vignette ushering a day of hope through the complete destruction of the symbols of the slave power. Among slavery’s insidious legacies is its perpetuation of property relations symbolized through bodies. Despite Johnstone’s noble abolitionist broadside, he cannot escape, at least in verse, the institution’s perpetual, ever-haunting specter.

I want to now shift my attention to implications raised by the specter of slavery in order to transition to a conversation about the question of social death, a concept to which my project speaks. Since the publication of Orlando Patterson’s pivotal *Slavery and Social Death* (1982), historians and literary critics who study slavery have participated in perennial discussions about social death’s meaning and appropriate application to slavery’s on-the-ground realities. Patterson defines social death as “the loss of natality as well as honor and power” (46), predicated upon intrusive and extrusive modes.
Intrusively, “the slave was ritually incorporated as a permanent enemy on the inside…He did not and could not belong because he was the product of a hostile, alien culture” (39). Pertaining to the extrusive mode of social death, “the dominant image of the slave was that of an insider who had fallen, one who ceased to belong and had been expelled from normal participation in the community because of a failure to meet certain minimal legal or socioeconomic norms of behavior” (41). “Natal alienation” differentiates slaves from other forms of human property (e.g. wives, children, etc.) because they were disallowed opportunities to “freely…integrate the experience of their ancestors into their lives, to inform understanding of social reality with the inherited meanings of their forbearers, or to anchor the living present in any conscious community of memory” (5). Honor and power were mediated by, and belonged to, slaves’ masters. Violence was an essential ingredient to the removal of power and honor: slaves were stripped of names and were physically brutalized. Social relationship, too, were determined by the master. Combined and coalesced, dishonor, powerlessness, and natal alienation established social death in slaves “a state of being alive while socially irrelevant” (Roberts 17). In the legal realm, similar to social death is what Jeanine DeLombard calls, “civil death”, the closure and rejection of black people “out of both the public sphere and the liberal state through their enslaved or outlaw status…” (29). For Patterson, DeLombard, and others, life among the enslaved and free black populations was scarce, while death was eerily bountiful.

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64 According to DeLombard, white merchants and mariners also could experience civil death in their disavowal of criminal culpability in their participation of illegal slave trafficking (257).
Debates among scholars continue as to the correct application of social death. In his essay “Social Death and Political Life in the Study of Slavery” (2009), historian Vincent Brown argues that some historians and literary critics have taken Patterson’s “metaphorical ‘social death’ as the basic condition of slavery” (1233). For him, the concept “is a distillation…a theoretical abstraction that is meant not to describe the lived experiences of the enslaved so much as to reduce them to a least common denominator that could reveal the essence of slavery in an ideal-type slave, shorn of meaningful heritage” (1233). Because the term was “to situate U.S. slavery in a broad context rather than to discuss changes as the institution developed over time”, the concept has proven itself obsolete (1234). Yet, this has not prevented historians and others to employ the concept as a descriptor of the lives of the enslaved, a problematic pursue for Brown.

I do not discuss social death along with one of its prominent critics in order to exhaustively engage literature on the subject. Instead, I raise social death and its problems to posit a dialogue on what I call slaves’ stale afterlife in the Western world, one in which experience social death, but also embodied rebirth. My approach echoes that of theorist Jared Sexton, who writes, “Rather than approaching (the theorization of) social death and (the theorization of) social life as an ‘either/or’ proposition…why not attempt to think them as a matter of ‘both/and’? Why not articulate them through the supplementary logic of the copula?” (22). Through my focus on slaves’ stale afterlife, I evoke Brown’s important study The Reapers Garden: Death and Power in the World of Atlantic Slavery (2009) while challenging his critique on the obsolescence of social death. In order for social death to occur, a social life perceived, recognized, and understood as such must exist. In what follows, however, the afterlife I describe is not
one of (black) optimism. Rather, the stale social afterlife of slaves is something akin to zombie, a being who has died and, in some instances, is in a perpetual, yet stagnant process of dying, with the expectation of returning to life as dead and as a living symbol of death. “[Z]ombies”, writes Gerry Canavan, “are other people, which is to say they are Other people, which is to say they are people who are not quite people at all” (432).

Equally useful, Elizabeth McAlister notes that the zombie and its “narratives…interrogate the boundary between life and death, elucidate the complex relations between freedom and slavery, and highlight the overlap between capitalism and cannibalism” (459).

65 In his essay “Blackness and Nothingness: Mysticism in the Flesh” (2013), critical theorist and poet Fred Moten, responding and contrary to the Afro-pessimism espoused by fellow critical theorists Frank Wilderson and Jared Sexton, asserts that “black life…is irreducibly social”, and that what is at stake is not social, but political death in that black life is lived in a dying political (or a politically dying) world. The kind of blackness he envisions is not one of “nothingness”, as posited by Wilderson, but rather “the potential to the [political] world” (739). Moten’s skeptical, tortured black optimism—he warily and reluctantly uses optimism as a term to describe his evasive, non-standpoint or, quoting Bryan Wagner’s introduction in Disturbing the Peace, its “‘existence without standing’”—is located in the pathogenic, while he considers Afro-pessimism’s approach situated in the pathologic. This makes for strange theoretical bedfellows for Afro-pessimists (for example, Daniel Patrick Moynihan), as admitted by Jared Sexton in his essay, “The Social Life of Social Death: On Afro-Pessimism and Black Optimism” (2011). In other essays, particularly “The Case for Blackness”, much of Moten’s intriguing, beautifully crafted arguments are not found in concrete content, but in fugitive form. I believe this evasiveness reflects his linguistic and formal desire to avoid reducibility, to remain, through writing, fugitive.

What’s at stake is fugitive movement in and out of the frame, bar, or whatever externally imposed social logic—a movement of escape, the stealth of the stolen that can be said, since it inheres in every closed circle, to break every enclosure. This fugitive movement is stolen life, and its relation to law is reducible neither to simple interdiction nor bare transgression. (179)

Throughout my dissertation, what I have attempted to reveal is the openness and overlap of (il)legalities in form, practice, and execution—the multiplicity of law, which is to also say the multiplicity of crime. Fugitivity elicits illicitness in all its forms, the law included. Black expression, literacy, literary practices, freedom, indeed black life from the eighteenth to the early twentieth century was rendered criminal; therefore, it remained transgressive and discursively indicting in multiple—not reducible—ways.
Death implies particular forms and expressions of life. Focusing on the social meaning of death for slaves and planters in Jamaica, Brown writes, “Death served as the principal arena of social life and gave rise to its customs” (59). Because the island had higher mortality rates than the rate of slave importation, the different meanings of death among all actresses and actors of slavery intrigued Brown for his study. Although his historical lens centralizes Jamaica, I use Brown’s argument of social life inaugurated by death and combine it with Patterson’s social death metaphor in order to posit the slave as social zombie, dead but living, (in)animate. Rather than rising from recent horror films, zombie derives from zonbi, an Afro-Haitian term that “appear[ed] in writing as far back as colonial Saint-Domingue, glossed by travel writer Moreau de Saint-Méry (1797) as the slaves’ belief in a returned soul, a revenant” (McAlister 459). Slaves’ physical lives in Haiti, and even Jamaica, constantly encountered death: overwork, starvation, and punishment on sugar plantations were the norms in the seventeenth and eighteenth centuries. Paradoxically, death possessed different social meanings—whether through suicide or the torturous conditions of plantation life, it was escape, “seen as a return to Africa, or lan guinée (literally Guinea, or West Africa)” (Wilentz 1). The dead who were not permitted access to lan guinée were considered zonbin or zombies. It was “to be dead and still a slave, an eternal field hand” (1). But zonbis also epitomized what Sarah Juliet Lauro and Karen Embry call a “symbolic duality, “a boundary figure” that represented rebellion (90). Therefore, the history of the zombie in Haitian folklore is that of a dead, but laboring entity, frozen in a condition of perpetual servitude, toil, and insurrection.

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66 Citing Thomas O. Ott’s *The Haitian Revolution, 1789-1804* (1973), Lauro and Embry note that “Voodoo rituals were commonly used to communicate and motivate antiwhite sentiments”; [and] [i]n many accounts, there is some suggestion that the hordes
Providing this brief history of the Haitian zombie locates my discussion of the slave as social zombie in a diasporic tradition. Furthermore, it points to African retentions that illustrate life in the living-dead. African cultures were not fully effaced in slavery, nor were they fully retained. Traditions and practices kept by Africans in the New World were mixed and modified with other peoples, cultural practices, and legal codes. The partial death of some activities brought to life others practices, while altering what remained. Therefore, my use of the social zombie accounts for the tragedy of partial loss of the slave’s social life and her social death. Both socially and civilly dead, the slave brings added meaning to socially, civilly living beings. Yet, the slave represents both spaces of being—that is, death not as end, but as perverted afterlife. The socially living strives to avoid the social death represented by the slave. “[T]he zombie represents, responds to, and mystifies fears of slavery, collusion with it, and rebellion against it…and is inextricable from the ‘culture of terror’ of the plantation” (McAlister 461). Moreover, the socially, civilly living provides meaning to the dead—for their lives are inextricably, inevitably juxtaposed with the socially deceased. Walking and working among the living, the social zombie continues to toil, blurring seemingly clear, demarcating lines between life and death. Finally, social zombies embody captivity, fugitivity, and racial fear. Living in movement, they are confined to and by death: their possibilities are limited in and to dead (social) bodies they are unable to escape. Ironically, they defy death in their mobility, in their liveliness: their animate death functions as evasion from the very death that rose up to throw off the yoke of oppression had, through Voodoo practices, rendered themselves insensible to pain” (87).

67 A massive body of scholarship exists on African retentions so I mindfully use this term not to address or supply scholarly breadth on the subject, but to highlight complexity in diasporic expressions and treatments of life and death.
that they are. “Because zombies mark the demarcation between life (that is worth living) and unlife (that needs killing), the evocation of the zombie conjures not solidarity but racial panic” (Canavan 433). The dead are to remain dead; however, the zombie, in distorted, physically mutilated fashion, persistently rises, seeking retribution against the living.

Like Patterson’s social death, the slave as social zombie is obviously metaphorical; however, this does not make either concept any less potent and applicable. Returning for a moment to Brown’s essay, he is interested in examining “what the enslaved actually made of their situation” (1236, my emphasis). It is Brown’s “actually” that I seek to address. His critique of social death is not that it lacks usefulness; rather, using social death as a foundational analysis in describing slaves’ quotidian activities is outdated at best and misguided at worst, for one then misses Patterson’s metaphorical use of the term. For Brown, metaphor has little analytical power in investigating set, factual realities that existed in New World slavery. Yet, he seems to miss (or dismiss) how vital metaphor is not only in analysis, but also in shaping the very reality of slavery and beyond.

Undoubtedly, my point here comes down to a question of language and how it forms concepts, understandings, and “realities.” Quotations surround “realities” in order to distinguish what Sarah Kofman in Nietzsche and Metaphor (1994) calls “metaphorical activity” and “rhetorical activities” from metaphor as mere transposition (33). Reality and realities, two language signs, are rhetorical practices, in which, man…takes what is ‘given’ to him in order to transpose it elsewhere (which is what constitutes metaphor), [and] what is given to him has always already been
tamed by the ‘camera obscura’ or sifted through consciousness. The conscious world is a language which symbolizes a text written originally by unconscious activity, and which consciousness knows only in a masked and transposed form. The transposition is achieved by carrying over the ‘known’ on to the unknown. (33)

The conscious world is how humans establish matters of truth and untruth. Since the conscious world is a language and language is how concepts are arranged and understood, humans are able to grasp reality, a metaphor. “Man”, writes philosopher Friedrich Nietzsche, “does not by nature exist in order to know: truthfulness (and metaphor) have produced the inclination for truth…Thus he transfers his own inclination to the world and believes that the world must also be true to him” (108). Language is general insofar as it necessitates communicability; yet, it is also specific enough to generate individual interpretations. Interpretative activities are not innocuous or inconsequential—in fact, Nietzsche contends that these activities, “which are influenced by our…need to rely on language, metaphors, and signs, leads to a conceptual rearrangement of the world that allows us to survive in an otherwise incomprehensible environment” (Emden 136). In order to make sense of the slaves’ world—or any world—interpretation, metaphor, and language are essential. Agreeing with Brown, then, social death is indeed a metaphor, but a constitutive one as it pertains to our conceptualizations of slaves’ lived experiences.

My dissertation concludes with a story about slaves’ lived experiences, language, and dissolved optimism—a love story found in Philander Q.K. Doesticks’s *What Became of the Slaves on a Georgia Plantation: Great Auction Sale of Slaves, at Savannah,*
In the section titled “The Love Story of Jeffery and Dorcas”, what emerges is how slave relations in their most noble and endearing forms cannot help but be shaped and determined by surrounding oppressive conditions. Jeffery, “chattel no. 319”, and Dorcas, “chattel no. 278” are both slaves at “[t]he largest sale of human chattel that has been made in Star-Spangled America….at a Race-course near the City of Savannah, Georgia” (3). The total amount of slaves at the racecourse was over 436, comprising of black women, children, and men, valued at well over one million dollars. Despite their condition and impending fate, Jeffery and Dorcas fall in love and informally marry. When a slave speculator shows interest in purchasing Jeffery, he determines that he does not want to live without his beloved bride. Attempting to reason with his potential buyer, Jeffery eagerly pleads,

I loves Dorcas, young Mas’r; I loves her well an’ true; she says she loves me, and I know she does; de good Lord knows I loves her better than I loves any one in de wide world—never can love another woman half so well. Please buy Dorcas, Mas’r. We’re be good servants to you long as we live. We’re be married right soon, young Mas’r, and de chillum will be healthy and strong, Mas’r, and dey’ll be good servants too. Please buy Dorcas, young Mas’r. We loves each other a heap—do, really true, Mas’r. (16)

After his depressing cries, Jeffery realizes that “no loves and hopes of his are to enter into the bargain at all” (16), so he must take a different approach and speak language his potential master understands. Consequently, he highlights her bodily features: “Dorcas prime woman—A1 woman, sa. Tall gall, sir; long arms, strong healthy…” (16). He then transitions to her capacity for work, transforming her from his subject of love, to his
master’s object of labor: “can do a heap of work in a day. She is one of de best rice hands on de whole plantation; worth $1200 easy, Mas’r, an’ fus’rate bargain at that” (17). Love dies and labor lives, with the hope that love can flourish in spite of their enslavement. With this hope, they anticipate to carve their own world that runs contrary to, but is sadly informed by, the peculiar institution.

Jeffery change in tone and language seem to have worked, for his potential purchaser gives Dorcas a closer look. Desiring to love Jeffery as much as he loves her, she performs to his words, while the buyer eyes her as (sexual) prey:

She makes the accustomed curtsy, and stands meekly with her hands clasped across her bosom, waiting the result. The buyer regards her with a critical eye, and growls in a low voice that the ‘gal has good p’ints.’ Then he goes on to a more minute and careful examination of her working abilities. He turns her around, makes her stoop, and walk; and then he takes off her turban that no wound or disease be concealed by the gay handkerchief; he looks at her teeth, and feels her arms, and at last announces himself pleased with the results of his observations...(17)

Upon completion, the buyer ensures Jeffery that he will purchase Dorcas “if the price isn’t run up too high” (17). This welcomed news brings a smile to Jeffrey and Dorcas’ faces for the first time while confined to the horse stables of the racecourse.

Two slaves bounded by love share each other’s happiness, only for it to be severed by slavery’s swift, unyielding blade. Suddenly, Jeffery and the buyer learn that Dorcas has a family of four, immediately increasing her price. In an ironic twist of humanity, the auction’s major stipulation was that families could not be sold apart. The
outcome: “So Dorcas is sold, and her toiling life is to be spent in the cotton fields of South Carolina, while Jeffery goes to the rice plantation of the Great Swamp” (17-18).

Like the story above, the narrative of the black criminal from the eighteenth century to the early twentieth century is one comprised of tension, movement, and the simultaneity of the discursive, cultural, political and social moment in which it is couched. Resistance, in its various forms and games, necessitates oppression’s response. It signals the continuation of a struggle that reconstitute conditions of possibility for both oppression and resistance to exist together in a network of action. As my study attempts to suggest, black crime as a cultural and political project of resistance is only possible in the discursive, political, and cultural milieu in which it is embedded. Inevitably, it will borrow from and recapitulate the very notions and oppressive practices it strives to overthrow. Quite simply, black criminality, like black love, is firmly predicated upon the cultural, political, and legal conditions in which it is located.
APPENDIX A

FLOGGING
Another method of fixing the poor victims on a ladder to be flogged, which is also occasionally laid flat on the ground for severer punishment.
APPENDIX B

MOUTHPIECE

A front and profile view of an African's head, with the mouth-piece and necklace, the hooks round which are placed to prevent an escape when pursued in the woods, and to hinder them from laying down the head to procure rest.—At A is a flat iron which goes into the mouth, and so effectually keeps down the tongue, that nothing can be swallowed, not even the saliva, a passage for which is made through holes in the mouth-plate.

An enlarged view of the mouth-piece, which, when long worn, becomes so heated, as frequently to bring off the skin along with it.

A view of the leg-holts or shackles, as put upon the legs of the slaves on shipboard, in the middle passage.

An enlarged view of the boots and spurs, as used at some plantations in Antigua.

Courtesy of the Library Company of Philadelphia
APPENDIX C

“TEARING UP FREE PAPERS”

In the Southern States, every colored person is presumed to be a slave, till proved to be free; and they are often robbed of the proof.

Courtesy of the Library Company of Philadelphia
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