

**LITERARY GOVERNMENTALITIES: RACE AND RESISTANCE IN MODERN
WESTERN LAW AND TONI MORRISON'S FICTION**

**THESIS SUBMITTED FOR THE AWARD OF THE DEGREE OF DOCTOR OF
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Literary Governmentalities: Race and Resistance in modern western law and Toni Morrison's fiction

submitted by me for the award of the Degree of Doctor of Philosophy in Arts at Jadavpur University is based upon my work carried out under the Supervision of Prof. Manas Ray (Retired).

And that neither this thesis nor any part of it has been submitted before for any degree or diploma anywhere / elsewhere.

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INTRODUCTION

Modern fiction, especially the nineteenth-century novel form of prose writing, has been traditionally assumed as subversive because it democratized the reading public in the Euro-American west by being accessible to the masses, unlike the earlier epic/classical literary formations available only to the educated elite. The novel thus challenged power, but when power was viewed as repressive and negative. But how can the novel or fiction in general, challenge power when power becomes productive, of individual subjects and human life? This thesis explores the possibility of literary resistance in the age of what Michel Foucault calls discipline and biopower through three fictional works of Toni Morrison – a much-acclaimed novel (*Beloved*), an experimental short story ('Recitatif'), and a lyrical play (*Desdemona*). In texts like *Discipline and Punish* (1997), and lecture series like *Society Must be Defended* (1997), Foucault describes disciplinary power and biopower as those that operate through norms emanating from non-sovereign sources to produce docile subjects. This is different from the earlier sovereign power that emanated from the unified body of the king. The novel or literature, in general, becomes relevant when considered as a non-sovereign means normalizing or disciplining the reading public towards the production of docile bodies. While literary historians since the late 1980s like Mark Seltzer, John Bender, D.A Miller, Arne de Boever, and Christopher Breu studied the coeval rise of the modern novel and the modern powers (roughly in the late eighteenth century but more firmly in the nineteenth century Europe) thereby questioning the assumption of novel's subversiveness, they did not explore its 'excesses' – by which I mean possibilities of resistance written into the structure of the novel itself and not outside it – that could transgress normative boundaries. Studying select texts of Toni Morrison, this thesis aims to locate the 'excesses' of these three literary forms – novel, short story, and play – to show how they can be renewed as instruments of resistance to the modern powers.

First, the thesis attempts to bring Michel Foucault and Toni Morrison into a theoretical dialogue on the question of normalized racism – that is, how in the modern regime racism runs through the social fabric as a norm, not a deviation. Texts studied in this regard are (again) Foucault’s *Discipline and Punish: The Birth of the Prison*, *History of Sexuality Vol.1: An Introduction*, and *Society Must be Defended: The Birth of Biopolitics*; and Morrison’s non-fictional works *Playing in the Dark: Whiteness and the Literary Imagination* (1992), and ‘Site of Memory’ (1987). This helped construct a theoretical framework in which literary genres, archives, and canons are revealed to operate with ‘law-like’ regularities or norms that have historically relegated black subjects or characters to the borders of literary or public consciousness. Secondly, using the Derridean notion of ‘justice as excess of law’, the research borrows from Ben Golder and Peter Fitzpatrick’s *Foucault’s Law* (2009), a poststructuralist approach to modern law identifying its two dimensions – a ‘determinate’ dimension on the side of the norm, and a ‘responsive’ dimension resisting that norm. Finally, the research will contend that like modern law, literature too has those two dimensions – ‘determinate’ and ‘responsive’. It will show how Morrison’s pivotal/titular characters in *Beloved*, ‘Racitafif’, and *Desdemona* are in ‘excess’ of the ‘juridico-historical’ function of the genre, archive, and canon respectively thus transgressing their own normative boundaries.

The thesis combines novel studies, social-legal studies, and Foucauldian jurisprudence to first show how in the age of discipline and biopower, law operates not only through legal codes but norms, emanating from extra-legal or extra-sovereign sources. Then, it will show how these norms are inherently racist in nature. In thus demonstrating the legalist/racist/normative underpinnings of these discourses, the research will claim that they can be renewed as instruments of resistance through their ‘responsive’ dimension, or possibilities written within their own structures. By borrowing this notion of ‘responsiveness’ - which the thesis will eventually reveal as the ‘fictionality’ of law - from socio-legal studies

to identify the ‘legality’ of literature, the research can further contribute to new imaginings for the field of ‘law and literature.’ Here the conjunctive ‘and’ is not only a contested place giving this interdiscipline its political compass (Grahn-Farley 2005), but also that the ‘excesses’ can be manifest here, opening up spaces for resistance.

A Theoretical Overview of the Thesis:

My thesis aims to understand the relationship between law and literature through the concept of ‘race’. I will advance a Foucauldian notion of ‘race’ in which, especially since the nineteenth century, it runs through the social fabric not as deviation but as a norm. This means ‘race as a norm’ will be central in understanding the interconnection between law and literature. At this point it will become imperative to offer a brief history of Michel Foucault’s own engagement with the concept of the ‘norm’ through his study on the birth of the modern technologies of power—the ‘individualizing’ disciplinary power, and the ‘massifying’ biopower—in his three select texts of *Discipline and Punish: The Birth of Prison* (1977), *History of Sexuality Vol. 1: An Introduction* (1978), and the lecture series “*Society Must be Defended*” (1997). The aim of engaging with these texts is to understand the transformative journey of the character of race and racism since the eighteenth and the nineteenth centuries—the journey from deviation to the norm.

In light of this theoretical context, I will then problematize both sides of the ‘law and literature’ nexus by bringing in scholarships that have approached these two disciplines/institutions through a Foucauldian lens—Ben Golder and Peter Fitzpatrick for law; and Toni Morrison, D.A Miller, and Arne de Boever for literature. The theoretical concern that these authors share from their respective positions on Foucault is, whether it is the law and the norm, or literature and the norm, both operate in a dynamic of reciprocal constitution and can be jointly articulated in modernity in a way that is largely compatible with racism. That is, the

institutions of law and literature are complicit with racism as they both perpetuate the norm. I will substantiate this critical observation through D.A Miller's *The Novel and the Police* (1988) which examines the nineteenth-century Victorian novel as an enforcer of social discipline, and Arne De Boever's self-explanatory *Narrative Care: Biopolitics and the Novel* (2013) that examines the coeval growth of the novel as a genre and the modern technologies of discipline and biopower predominantly in the nineteenth-century. Although the critical works of Morrison that I consider for my chapters, especially her *Playing in the Dark: Whiteness and the Literary Imagination* (1992) do not engage with Foucault directly, their respective views on race and racism do come close, thus provoking a dialogue. I propose that the theoretical paradigm brought to the fore through this dialogue between Foucault and Morrison also accommodates Miller and Boever.

From the side of the law, Golder and Fitzpatrick's *Foucault's Law* (2009) takes a poststructuralist approach to read Foucault in the field of law and legal theory and departs from the conventional studies on Foucauldian jurisprudence that would typically understand the norm to have superseded the law in the modern regime. That is, as far as the place of law within the Foucauldian scholarship is concerned, the prevailing understanding is that the regime of the norm has replaced the regime of the law.¹ Instead, Golder and Fitzpatrick argue that the norm and the law share a constitutive relation in the modern regime that can be jointly expressed to perpetuate racism. However, the book's thesis lies beyond this understanding, one that also allows me to take the next step in my own thesis. It argues that the norm's reduction of the modern law in terms of itself is never total and that something uncontainable is always 'spilling' over. Taking the Derridean notion of 'justice as excess of law' as a conceptual resource, Golder and Fitzpatrick identify this 'spilled over' part of the law as its 'fictionality'

¹ On how Foucault has relegated law in modernity, see Alan Hunt, and Gary Wickham, *Foucault and Law: Towards a Sociology of Law as Governance* (London: Pluto Press, 1994).

with an orientation towards possibilities and alterity that again connects law intimately with literature. This means, despite being an accomplice to racism the authors here make a case for the modern law to be still capable of justice (in other words, resistance) by bringing fiction 'back in' the very heart of it. In a similar vein, despite being co-opted by the racist norm, Toni Morrison makes a case for literary narratives to be the promise for justice.

At this point I would examine some of Morrison's own writings and her tackling of the 'race question' through her first, rather experimental short story, *Racitatif* (1983); and then her novel *Beloved* (1987) in both of which she conjures up the power of imagination to visit sites that history has not recorded. The theme of justice should not appear abrupt here for in a regime of biopolitical racism what is at stake is the representation of racial subjects in both literary and juridical narratives. Thus, having abstracted 'fictionality' separately from law and literature and identified its political compass, I will then bring it to bear on the intellectual paradigm of 'law and literature.' I will argue that foremost to the connection between these two disciplines is the understanding that this intellectual endeavor must include the fecundity of imagination and its capacity for political power if it has to be concerned with racial injustices. In doing so I partly draw upon an existing scholarship that argues for the conjunctive 'and' which, in joining the two fields together, gives it the political compass by opening up spaces for subjects that cannot be represented in accepted disciplinary boundaries (Grahn- Farley 2005, 269- 78). I extend this argument by saying that the fecundity of imagination is manifest in this very conjunctive 'and' that joins the constituent disciplines of the 'law and literature' nexus and opens up a site for especially racial subjects who cannot be justly represented in either of the two disciplines.

Thesis Summary

Chapter 1 lays out the theoretical framework of the thesis by bringing French poststructuralist philosopher Michel Foucault into conversation with the African American novelist Toni Morrison on the question of normalised racism in western governmentalities, in this case through modern law and the novel. While literary historians in the late 1980s like D.A Miller, and Arne de Boever studied the novel form of prose writing from the perspective of Foucault's analysis of power – that is, how the modern novel is an apparatus of state power (disciplinary power and biopower) aimed at disciplining the reading public into docile subjects – these studies have usually considered fiction as a field of application rather than as a theoretical tool itself. Through the conversation between Foucault's *Discipline and Punish, Society Must be Defended, History of Sexuality Vol. 1* and Morrison's *Playing in the Dark* and 'The Site of Memory', this thesis attempts to fill this gap in novel studies by aiming to forge a theoretical paradigm in which fiction's transgression of its own limit imposed by state powers is foregrounded. Towards this, the chapter ends, borrowing from Peter Fitzpatrick and Ben Golder's *Foucault's Law*, with a Derridean understanding of 'justice as excess of law' in which the norm's reduction of literature (as a microphysics of power) is never total and something is always 'spilling over' oriented towards alterity (method/lens of analysis). The following chapters will aim at showing these 'excesses' as possibilities of literary resistance.

Chapter 2 studies Morrison's short story 'Recitatif' and the novel *Beloved* with a focus on their narrative time. I explore the concept of 'excess' as introduced in the first chapter to show how 'Recitatif' manipulates and resists key imperatives of modern powers – in this case a comprehensive knowledge of its literary subjects – by expunging racial codes from the language of the text and then replacing them with unequivocal social code. Similarly, drawing upon Elizabeth Grosz's concept of non-linear time in *The Nick of Time: Politics, Evolution, and the Untimely* (2004), I show how *Beloved* manipulates disciplinary power's use of clock

time to produce ‘untimely’ subjects instead of docile ones. ‘Recitatif’ and *Beloved* respectively demonstrate that ambiguous narrative language and non-linear narrative time are ‘excesses’ of the law/power of the genre.

Chapter 3 further takes forward the notion of ‘excess’ into the legal archive of Margaret Garner on whom *Beloved* is based. It argues that historical facts – in this case, the fugitive slave trial of Garner – often leave the domain of history and law, and enter the jurisdiction of fiction. Taking cues from Marc Nichanian’s *The Historiographic Perversion* (2009), and Shoshana Felman’s *The Juridical Unconscious* (2002) – texts dealing with how the archive and the law together may corrupt truths instead of establishing them, the chapter aimed at exploring how fiction can restore the human half of slaves from the antebellum archive’s predisposition of inscribing them into the discourse of property. The chapter thus claims that Garner’s interior life, as imaginatively reconstructed in *Beloved*, is in ‘excess’ of the archive whose laws of documentation could only represent her as property.

Chapter 4 rounds up the notion of ‘excess’ with literary canon formation focusing on Morrison’s play *Desdemona*. Here Morrison re-imagines the character from Shakespeare’s *Othello* both in her reconstructed girlhood and afterlife and gives her a titular role with a narrative voice she was earlier denied in Shakespeare’s play. However, beckoning a comparison with the original, the analysis of *Desdemona* demonstrates the dynamism implicit in the comparison between the canonical *Othello* and the radical re-reading of it resurrecting *Desdemona*. The chapter aims at showing how the power/law of the canon and its exclusionary underpinnings can be resisted through reciprocity between elements being compared. In discourses of comparison, this reciprocity has been called ‘in/commensurability’ by Susan Stanford Friedman in the essay ‘Why Not Compare?’ (2011). The chapter claims that the dialogic tension inherent in such comparisons opens up possibilities where the radical re-

imaginings of canonical characters are in ‘excess’ of the power/law of the canon, thereby resisting canon’s racist underpinnings.

Projected Contribution to knowledge

My research contributes to the existing knowledge on novel studies in general and African American fiction in particular, by employing insights from poststructuralist jurisprudence into the study of literature to show the possibility of literary resistance in the age of discipline and biopower. Among poststructuralists, Foucault’s influence on law has been minimal as the prevalent understanding is that the norm has superseded the law by turning it into a pliant instrument of power (Wickham and Hunt, 1994). But Fitzpatrick and Golder’s *Foucault’s Law* (2010) argues that the modern law’s two dimensions – determinate and responsive, one on the side of law and the other resisting that law – make resistance to modern powers still possible. My thesis takes these two dimensions of law and brings them to literature by arguing that like law, literature too has its own determinate and responsive dimensions. The thesis finally claims that literary resistance in the modern regime is possible because of the ‘responsive’ dimension of literature that is in ‘excess’ of power (of the genre, archive, and canon) as will be shown in the chapter analyses. In thus exposing the legalist or determinate dimension of literary formations and subsequently exploring their responsive dimension, my research also contributes to a nuanced understanding of governmental rationality that works through cultural formations traditionally assumed subversive, or what I call ‘literary governmentalities’.

Chapter Introductions

Chapter 1 – “‘Narrative Care’: Law, Literature, and the modern technologies of power’ –lays out the theoretical framework of the thesis by bringing together Michel Foucault and Toni Morrison into conversation with each other on the question of normalized racism in modern regime of discipline and biopower. Through this conversation, the chapter aims to show how

modern powers operate through norms emanating from extra-sovereign means, and not only through law. It has three sections. The first section ‘On the Normality of Race and Racism’ discusses select texts of Foucault to show how race and the norm are jointly deployed in modernity to produce docile subjects. The second section ‘Law, Literature, and the Norm’ discusses select critical works of Morrison to show how the American literary canon operates as one of those extra-sovereign norms to systematically misrepresent black historical or literary characters. The third section ‘Fictionality: Approaching the Conjunction’ uses a Derridean notion of ‘justice as excess of law’ to show how the norm’s co-option of law and literature is never total with something always ‘spilling over’ oriented towards alterity. The following chapters locate these ‘excesses’ in literary genres, archives, and canons for possibilities of literary resistance.

Chapter 2 – ‘Race and Time in Toni Morrison’s fiction: towards a possibility of literary resistance’ – explores the notion of ‘excess’ in Toni Morrison’s two select texts – a short fiction ‘Recitatif’, and a novel *Beloved* – focusing on the treatment of race and time respectively. The chapter aims to show how these two texts manipulate key imperatives of the modern powers to resist being co-opted into docile subjects. It has four sections. The first section ‘Western European Novel and Neo-liberal Governmentality’ discusses the nuanced variety of resistance in the age of discipline and biopower where it is a form of power, not outside it. The second section ‘Race in Recitatif’ analyses Morrison’s treatment of race where, by expunging racial codes and replacing them with equivocal social codes, the story resists a comprehensive knowledge of its literary characters – a key imperative for control. The third section ‘The Time of Power, and the Power of Time’ speculates Foucault’s conceptions of time in his analyses of modern powers and compares them with Elizabeth Grosz’s notion of ‘untimely subjects’ – those born outside the contingencies of linear clock time, unlike docile subjects. The fourth section ‘Time in *Beloved*’ combines Grosz’s notion

of the ‘untimely’ with Gerard Genette’s concept of narrative time to show how the novel’s temporal structure is inconsistent with the modern powers’ notion of time. The chapter claims that ‘race’ and ‘time’ in ‘Recitatif’ and *Beloved* are in excess of the legalist underpinnings of their respective genres.

Chapter 3 – ‘Slavery in archive and fiction: the case of Margaret Garner’ – further takes forward the notion of ‘excess’ into the legal archive of Margaret Garner on whom *Beloved* is based. The chapter aims to show that historical facts – in this case, the fugitive slave trial of Garner – is neither always historiographic (archival) nor legal. Rather, facts may leave the domain of history and law, and enter the jurisdiction of fiction. The first section, titled ‘The Trial of Margaret Garner: The Juridico-Historical Context’ analyses select precedent cases that would eventually determine the outcome of the Garner trial. The second section titled ‘Slavery in Print: The nineteenth-century slave narratives’ studies the autobiographical tradition of slave writing and their legal incompetence as testimony. The third section titled ‘Toni Morrison’s *Beloved*: Revisiting the Testimony of Margaret Garner’ takes cues from Marc Nichanian’s *The Historiographic Perversion*, and Shoshana Felman’s *The Juridical Unconscious* – texts dealing with genocide and arguing that testimonies of surviving victims are corrupted by the archive because genocide bases itself on the destruction of the archive, or in the other words, the archive is the very condition of the possibility of genocide. The chapter claims that only fiction can restore the human half of slaves like Margaret Garner and Morrison accomplishes this by imagining her private life living in the aftermath of slavery during Reconstruction. This necessary act of imagination is hypothesized in Morrison’s essay ‘The Site of Memory’. Thus, Garner’s interior life is in ‘excess’ of the archive that, following Nichanian, only fiction can narrate.

Chapter 4 – ‘De-racing the literary canon: a comparative analysis between Shakespeare’s *Othello* and Toni Morrison’s *Desdemona*’ – rounds up the notion of ‘excess’

with literary canon formation which according to Morrison is akin to ‘empire building’. The chapter aims at revealing African presences in white canonical texts that have the power to move the narrative in new directions. It focuses on the lyrical play *Desdemona* where Morrison not only re-imagines the titular character from Shakespeare’s *Othello* both in her girlhood and afterlife but also resurrects her mother’s African maid Barbary who had existed only on the fringes of the main text. The play, in these resurrections, thus beckons a comparison with the original, but the analysis will demonstrate the dynamism implicit in the comparison between the canonical *Othello* and the radical re-reading of it resurrecting Desdemona and Barbary. The chapter claims that the power/law of the canon and its exclusionary underpinnings can be countered through reciprocity between elements being compared. In discourses of comparison, this reciprocity has, at one point, been called ‘in/commensurability’ by Susan Stanford Friedman. The dialogic tension inherent in such comparisons opens up possibilities where it is not a question of leaving the canon altogether but ‘rearranging’ it through radical re-imaginings.

Chapter 1: “Narrative Care”: Law, Literature, and the modern technologies of power

Introduction

Working at the intersections between the two disciplines of law and literature, my thesis aims to achieve an alignment between the three major components—theoretical studies of modern (Western) law, the various Foucauldian regimes of modern powers, and Toni Morrison’s literary criticisms and writings. The concept that binds these three components is that of the ‘norm’. In the first section of this chapter, ‘On the Normality of Race and Racism’, I will show, drawing upon both Michel Foucault and Toni Morrison, that any act of normalisation imports racism. I will pursue in detail a few select texts of both Foucault and Morrison to bring the two authors into a dialogue bringing forth a theoretical framework. However, before beginning the sections, I will provide a brief overview of the interdisciplinary field of ‘law and literature’ as it developed in the U.S. in the 1970s. The aim of this brief overview is to arrive at how and when ‘race’ became an important point of contention in the interconnection of these two disciplines. This is imperative before I situate my own question within it through a specific notion of ‘race’ foregrounded through the conversation between Foucault and Morrison.

i. Law and Literature: Overview of an Interdisciplinarity:

As an interdiscipline ‘law and literature’ was first institutionalised in the U.S. during the 1970s with the publication of the first textbook in the field, James Boyd White’s *The Legal Imagination* in 1973. With the publication of this 1000-page magisterial work, this interdiscipline firmly and formally moved into the American academy. White’s own focus in the book was on the ‘life of imagination’ (xii) working within the inherited law and legal materials. According to him law was not merely a system of rules acting in some sort of regularity but also ‘habits of mind and expectations—what might also be called a culture’ (xiii). Literature was plugged into law in a way that it began questioning the ‘subjective’ dimension

of the law-making activity—that law is not just ‘an object of reverence, a source of authority external to the will (or mere preference) of those momentarily in political power’ (xii). A cultural view of law, deeply attached with class interests, began emerging, and by the 1980s this ‘configuration’ of law and literature had already become a ‘movement’ (Peters 2003, 443).

For methodological convenience, this project of law and literature can be divided into three phases from the 1970s to the 1990s—‘humanism’, from the 1970s to the early 1980s focussing largely on the canonical literary texts of Western thought; ‘hermeneutics’, for most of the 1980s and focussing on literary theory; and ‘narrative’, from the late 1980s to the 1990s focussing on legal cases.² During its first phase when White was writing, the field was largely committed to a humanistic vision about the law, a ‘legal humanism’ as it were, as a counterforce to the earlier law and economics model that relied on the sterile technicality of the social sciences to dislodge the legal discipline from moral philosophy and rhetoric in its attempt to make law more oriented towards actual social needs.³ This legal economists’ position was challenged by the legal humanists of the 1970s by turning towards the canon of ‘great works’ to add value judgements to the legal discipline in order to make it more ‘humane’. However, this position of the legal humanists was complicated by the deconstructionists in the ‘hermeneutical’ phase of the interdiscipline for whom an ‘ethics of reading’ (Miller 1987, 181-191) revealed the ideological side of such canonical works that only represented partisan human values. The boom of interpretative options brought about by the literary hermeneutics in the late 1970s and the 1980s—especially the deconstructionist theories of Jacques Derrida, Paul de Man, and Barbara Johnson—challenged traditional humanism, the integrity of the

² The taxonomy that is being followed here is that of Jane B. Baron, ‘Law, Literature and the Problems of Interdisciplinarity’, *Yale Law Journal*, 108 (1999), 1059-85 (pp. 1063-66).

³ This is not to mean that the law and literature is about to replace the law and economics model altogether. The latter was in fact successful in bringing about actual social changes. At this point it is worth recalling that famous social science footnote in *Brown v The Board of Education of Topeka* (347 U.S 483 [1954]), whose famous footnote 11 cites the evidence of social science research findings that segregation in public schools is inherently unequal and hence unconstitutional.

human subject, and the ‘canon of great works’ as the repository of all values. This also exposed the reality of those groups of people who have been systematically excluded from all the circulating understandings about the canonical works in law and literature as disciplines—women and racial minorities. Therefore, this ‘hermeneutic’ turn is best complemented by the ‘narrative’ turn in the field in the late 1980s and the 1990s, a turn that was brought about by the feminist theory thereby launching another movement in the field, a movement that came to be known as the ‘narrative jurisprudence’ or the ‘legal storytelling movement’ (Peters 2003, 447).

ii. Narrative Jurisprudence and the question of Race:

By the late 1980s when law and literature had a much stronger hold in the American academy, two notable institutional formations further revolutionized the field—feminism and the critical race theory. In 1987 Elizabeth Villiers Gemmette conducted a survey in 38 law schools across the US and noticed an alarming masculinist bias of the field (1989, 267- 340). The usual suspects in the field were Fyodor Dostoevsky, Herman Melville, Nathaniel Hawthorne, Charles Dickens, Mark Twain, Marcel Proust, Franz Kafka, James Joyce, and of course William Shakespeare. Towards the end of the 1980s, with Gemmette’s survey as an empirical reference, ‘canon’ returned as the form of critique, and this timely intervention came from the African-American feminists.⁴ Now almost two decades of ‘law and literature’ in the academy it seemed as if this field had created its own canon of ‘great’ books to be read and re-read and passed on. In 1990 Carolyn Heilburn and Judith Resnik attested to the same observation in a seminal article titled “Convergences: Law, Literature, and Feminism” (1912- 56). In 1994 Gemmette conducted a follow-up survey on the courses of law and literature and there were significant

⁴ See Gaurav Desai, Felipe Smith, and Supriya Nair, ‘Introduction: Law, Literature, and Ethnic Subjects’, *MELUS*, 28.1, *Multi-Ethnic Literature and the Idea of Social Justice* (Spring 2003), 3-16.

changes in the titles of the survey from the previous one. Gender was becoming an important locus in the scholarly debate in the field.

Yet another issue remained unaddressed and following gender this further influenced the ‘legal storytelling’ movement. The concern at this point became that of the field’s engagement with the new forms of literary scholarship, especially with the many powerful writings from racial minorities. The critique of canonicity needed to be kept alive even after feminism’s initial success. Like law, a canon does not function in some sort of regularity, and is deeply attached to people who are temporarily in power deciding what to read and what to teach. That is, the critique of canonicity needed to be kept alive at least until ‘race’ had entered the debate, alongside gender. The ‘oppositional narratives’ could now ‘humanize’ the law by turning no longer to the canonical works or to the rhetorical style of Cicero, but to the unrecorded and non-archived voices of the ‘Other’ (Peters 2005, 447). It was, as if, with the influence of feminism and the critical race theory the politics of this promising field of ‘law and literature’ was getting even more clear and focussed—social justice in terms of representation of racial and gendered subjects. The field now must find a way to ‘enhance canon readings without enshrining them’ (Morisson 1995, 369- 398)⁵, and addressing the ‘race question’ was the way. Consequently, the concern also shifts to that of a renewed understanding of the relation between law and literature through the concept of ‘race’.

⁵ Toni Morrison, ‘Unspeakable Things Unspoken: The Afro-American Presence in American Literature’, in *Within the Circle: An Anthology of African American Literary Criticism: From the Harlem to the Present*, ed. by Angelyn Mitchell (Durham and London: Duke University Press, 1995), pp. 369-398. The essay, however, was first delivered as Tanner Lectures on Human Values at the University of Michigan in 1988. All following references of the essay will be cited from this online article of her Tanner lectures.

Toni Morrison, ‘Unspeakable Things Unspoken: The Afro-American Presence in American Literature’, *The Tanner Lectures on Human Values*, (October 7, 1988), 123-163 (p. 138) <http://tannerlectures.utah.edu/documents/a-to-z/m/morrison90.pdf> [accessed 30 December 2015]

iii. 'Race' in the field of law and literature:

While the post-structuralist and feminist critique of canonicity posed the question of race rather centrally than ever before, and the critical race theory's focus on narratives encouraged thinking in the direction of previously ignored struggles, 'race as a norm' is still largely absent in the field⁶. This engagement is crucial because it can further challenge the conventions of the field by advancing an idea of race in which it runs through the social fabric not as an aberration but as 'normal'. Perhaps this is due to the fact that Michel Foucault's work has not been as keenly felt in the theoretical studies of law as it has been in the literary studies (Golder and Fitzpatrick 2009, 1)⁷.

Therefore, drawing upon Foucault, the idea of 'race' that I am going to advance in my thesis is that of its 'metaphorical' afterlife in which, ideologically and politically, the discourse of racial purity retains its clout even after the scientific concept has been declared a myth (Krimsky and Solan 2011, 2). The texts that would mainly inform much of my theoretical positioning in their respective orientation towards this 'metaphorical' race are—Foucault's "*Society Must be Defended*" (1997) where he talks about the birth of a new power called the 'biopower' roughly from the mid-eighteenth century onwards, and the nineteenth century biopolitical racism modelled on war (243); and Toni Morrison's 'Unspeakable Things Unspoken: The Afro-American Presence in American Literature' (1988), and *Playing in the Dark: Whiteness and the Literary Imagination* (1992) in both of which she talks about the

⁶ In the thirty two years that the *Cardozo Studies in Law and Literature* has been in publication, only six articles had 'biopolitics' in their titles and keywords. However, none of them explicitly dealt with race as one of the main biopolitical concerns, besides sex.

It is important to contextualize these interventions at this point. This founding journal of the field ran as the *Cardozo Studies in Law and Literature* till 2001, and as *Law and Literature* from 2002 onwards. Till 2001 the journal had two issues per year, and after it was renamed, three per year. This means till 2001, it had twenty-six issues, and from 2002-15, forty-two issues, with only one issue published so far in 2016. Therefore, in summary, out of a total of sixty-nine issues till 2016, only three explicitly dealt with race so as to appear in the keywords, and six with biopolitics. However, the two together- biopolitics and race- did not appear in the keywords of any article so far in my research.

⁷ In fact, the only monograph before the publication of *Foucault's Law* that has explicitly dealt with Foucault in the field of law and legal theory is that of Alan Hunt, and Gary Wickham, *Foucault and Law*.

formation and maintenance of the American literary tradition from the nineteenth century onwards as the literary process modelled on war (45). With the nineteenth century as the focus of both their enquiry, I propose a dialogue between Foucault and Morrison in understanding historical (Foucault) and literary (Morrison) processes which, in both cases, culminate into a view of racism that is very constitutive of the norm and/or the canon itself. In such a ‘normalised’ view of racism, the crisis that ‘law’ and ‘literature’ separately as institutions face is that of representation, especially of racial and gendered subjects. For to subsist and yet pass unnoticed, racism now occupies terrains where it can exist as other than what it is, like an alias, thus bringing in considerations of various institutions all of which have contributed towards maintaining this ‘afterlife’ of racism by transforming its character altogether—racism functions through less visible and less violent modalities since the nineteenth century, and hence so entrenched that it is perhaps more on display than ever before. Therefore, my own contribution to the interdisciplinary field of ‘law and literature’ takes place through a re-imagining of this interconnection by posing the following question—how does the relationship between ‘law and literature’ configure itself in the light of a ‘normalised’ view of racism as conceptualised by both Foucault and Morrison?

Towards answering this question, this chapter will foray into a Foucauldian register of cognizing both the modern law and the development of the novel as a genre to extrapolate the normality of racism that runs through both these modern institutions and/or disciplines (section I, A& B). I shall then argue, with literary and legal examples, that despite being complicit with racism the same institution can also be a source of redress to racial injustices if fictionality can be brought ‘back in’ at the very heart of it, after identifying fiction’s capacity for political power (section II, A & B). The chapter will then approach towards a nuanced understanding of the ‘law and literature’ nexus by focussing on its conjunctive ‘and’ as the site where this

fictionality is manifest and which can open spaces especially for racial subjects who cannot be justly represented in accepted disciplinary boundaries (section III).

I. On the Normality of Race and Racism: From Michel Foucault to Toni Morrison

A. ‘Race and the Modern Technologies of Power’

Power is war, the continuation of war by other means. (Foucault 1997, 15).

Canon building is empire building. Canon defense is national defense (Morrison 1995, 277).

The above two quotations respectively from Michel Foucault’s lecture series “*Society Must be Defended*” and Toni Morrison’s essay “Unspeakable Things Unspoken: The Afro-American Presence in American Literature” provoke a conversation in the authors’ mutual appreciation of ‘war’ as an exemplar to understand historical and/or literary processes. However, as the quotations themselves propose, this war is not an actual war between races for territorial conquests but a reconstruction of it into a model, perhaps a metaphor, to understand the changing contours of the race question since the nineteenth century. That is, the theme of race does not disappear altogether with the disappearance of actual wars in the modern regime, but gets refolded into something very different. While for Foucault it is the birth of the modern technology of power called the ‘biopower’ of which race becomes an integral part; for Morrison, it is the formation and maintenance of literary canons that modify race war and serve as an apparatus in the advancement of such racist power. It is precisely the evocation of war as a model and the engagement with race as a theme that join the two authors in conversation, in spite of their two quite different intellectual undertakings of the same question.

Historically, the concept of ‘race’ has been steeped in paradox, embraced by ideology, adopted and rejected by science, but nevertheless remains an indisputable part of the public discourse (Krimsky and Solan 2011, 2). Therefore, if it still forms part of our everyday parlance, how do we then proceed to understand the ordinariness of the word, ordinary not in the sense of being unimportant but in terms of abundance, salience and visibility? Race thinking in public discourse bears the imprint of Enlightenment’s attempts to develop a scientific concept of race as part of its larger taxonomic project (Hardimon 2003, 437). Yet the word has grown out of any such specialised discourse and developed a life of its own. Though serious race-thinking had its deep roots in the Enlightenment project and racism had served as a powerful ideology for imperialism, opinions about race have always existed in the public discourse, quite strongly and in fact for a very long time.⁸ Of the many opinions that had entered the public discourse during liberalism in the eighteenth and the nineteenth centuries, race was one of them. These opinions must compete with each other to attain the status of public opinion, for that is the aim of every opinion—to win the consent of the people—and the anarchy of competing opinions must pave the way for ideologies (Arendt 1994, 37). Of the multitude of opinions that have entered and competed during liberalism ‘race’ has tenaciously survived the ideological battle so much so that culturally and politically the discourse of racial difference retains its clout even today. Even though many states today are constitutionally responsible for the protection of its citizens, all equal before the law, ‘race’ continues to be embraced by

⁸ In the ‘Lecture Four’ of “*Society Must be Defended*” Foucault argues that race struggles, ‘history of two groups’ (p. 77) had always existed well before the Enlightenment and that it was not necessarily bad. It was rather a counterhistory to the then prevalent Roman historical discourse which was also the discourse of power because it only recorded the sovereign’s victories. ‘History was a ritual that reinforced sovereignty.’ (p. 69). He further writes:

What is specific about the new form of discourse that appeared precisely at the very end of the Middle Ages, or really, in the sixteenth and the early seventeenth centuries is that [...] Historical discourse was no longer the discourse of sovereignty...but a discourse about races, about a confrontation between races, about the race struggle that goes on within nations and within laws. (p. 69).

According to him, racism or ‘racist discourse was really no more than an episode, a phase, the reversal, or at least the reworking, at the end of the nineteenth century, of the discourse of race war.’ (p. 65). ‘Racism was born at a point when the theme of racial purity replaces that of race struggle, and when counterhistory begins to be converted into biological racism.’ (p. 81).

disciplines and institutions thus paradoxically making it both a scientific myth and a social reality ((Krimsky and Solan 2011, 2) a paradox in historical time. So the question is—how? Has ‘race’ transformed itself in some cunning manner by which it still manages to cohabit with the logic of the welfare states which is to protect, maintain and multiply human life? How does one then begin to critique state as a political formation when, in spite of its constitutional responsibility for the welfare of its people, it keeps witnessing (and tolerating) racial violence? How does one rationalise racism when the ‘scientific’ concept of race has already been declared unsound? How does one establish and maintain hierarchic differences among people when these differences are no longer ‘visible’ as they were during Enlightenment when race was still a scientifically viable concept? Has ‘race’ changed its register of cognition? In short, what is racism without the scientific concept of ‘race’ today, and to add to it, what is the states’ contribution in managing this transformed character of racism, especially since the nineteenth century? More simply and generally, what are the different modalities of power through which racism is perpetuated in a way that it does not appear as an aberration but as ‘normal’ and hence ordinary?

In summing up all the above questions three texts make appearance almost immediately—Michel Foucault’s *Discipline and Punish: The Birth of Prison* (1997), *History of Sexuality Vol. 1: An Introduction* (1978), and his lecture series “*Society Must be Defended*” (1997), especially the latter’s eleventh and last lecture where he tracks the transition of the modern technologies of power—from the sovereign power of the eighteenth century to a different undercurrent of power called the ‘biopower’ in the nineteenth. A brief summary of these three texts, especially “*Society Must be Defended*”, at this point is imperative in providing a useful lens to view Toni Morrison’s critique of the formation and maintenance of the American literary tradition since the nineteenth century as a racist activity driven towards disciplinary purity.

In tracking the transition of race in “*Society Must be Defended*”, Foucault begins by referring to the classical theory of sovereignty as the backdrop. One of the basic attributes of the sovereign power was his right over the life and death of his subjects. While trying to theorize this right over life and death Foucault describes this right as rather ‘strange’ (240). It is strange on two grounds: *firstly*, it explicates the subject as a *neutral* category. The fact that the subject is alive or dead does not depend on the will of the subject itself, but on the will of the sovereign. It is the sovereign who would decide if the subject should be alive or dead. Thus life or death no longer remains a phenomenon which is unproblematically primal, but an event that intimately falls within the field of power. *Secondly*, there is a structural asymmetry in this right. The onus is more on death than on life. It is only in the event of the subject’s death that the sovereign's control over the subject's life can be realized. A suitable instance of this could be found in the opening passages of Foucault's *Discipline and Punish* where we have a rather graphic description of a spectacular torture being carried out before the Church of Paris for a crime of regicide (3). As a crime, regicide is specific insofar it explains the role of the sovereign. The sovereign is the representative, the supreme deputy of god on earth. In other words, the king is a mortal god whose will represents the will of god, and any acts of disobedience of that will imply violation of god's law. So punishment in the form of terminating that life was the logical consequence of any such disobedience, and it is at this moment of torture and death that the sovereign power's effect on the subject’s life is fully realized. In short, it is precisely the “right to take life or let live” (Foucault 1997, 241) that characterizes sovereign power.

Immediately after the description of this spectacular torture we have another instance of punishment, but this time in the form of laying down of time-table for the prisoners (Foucault 1997, 6-7). Both are instances of punishment but each defined a certain punitive style. The difference in time between these two styles is less than a century but it witnessed the emergence

of a new age for penal justice. Of all changes, the most important one is the disappearance of torture as a public spectacle. Instead, 'humanization' became an important penal feature with an essentially 'corrective character' (8). The body in the nineteenth century ceased to be the major target for penal repression and justice. So for Foucault the question now poses itself as how this 'non-corporeal' (16) punishment would look like. The 'corrective character' of the modern penal system's objective is not to publicly punish or torture the offender as the sovereign would do, but to alleviate the criminal tendencies of the person in question with an aim to continue with the corrected behaviour henceforth. In short, the functioning of the penal system is such that the aberrant could be 'disciplined' which now became one of the principle aims of the modern regime.

If this insistence on discipline is that which marks the shift from the earlier sovereign power, then the notion of the 'body' would also require certain reformulations. The nineteenth century discovered the body as rather 'docile' that could be manipulated, transformed and improved. In other words the body has a utility value which could be obtained through subtle coercion on it and Foucault calls this relation of 'docility-utility' as 'disciplines'(135- 141). But this 'body', in and through which the disciplinary mechanism works, is an 'individual' one. That is, confusion of the masses is eliminated by an art of distribution of the bodies by spatially distributing them, separating them, aligning them, surveilling upon them. In other words, space became an important marker that created an entire field of visibility. Now each individual has a specific space of his own; each space is thus individualized. An individual can be identified by the space he occupies in a grid, which Foucault calls 'rank' (135- 141). There were other techniques too for enhancing the functioning of the body—through drill, exercise which became even more qualified with technical transformation, like that of the rifle, that correlated body and machine for more productive ends. Such was the focus on the individual body which

Foucault calls the “anatomy-politics of the body” (Foucault 1978, 135- 159) that was established in the course of eighteenth century but more firmly in the nineteenth.

In the second half of the eighteenth century something very new and different was also emerging—a new technology of power which was not only disciplinary but was endowed with a supplementary function too. It did not replace the disciplinary power altogether, but qualified it, complemented it to use it on a different scale on a different bearing area altogether—the masses, instead of the individual bodies. That is, it re-folded the earlier sovereign and disciplinary power into a newer one revealing new surfaces—the population—where it could be applied. Therefore, the first change was this area of applicability. Unlike the disciplinary mechanism that used “man-as-body”, this new mode of power uses “man-as-species” which means that this mode of power does not only seize the body to individualize it, but seizes the population to massify it (Foucault 1997, 242- 43). So ‘population’ as the new bearing area of this power now emerged as a category. This is no longer the “anatomy-politics” of the human body, but as Foucault calls, the “bio-politics of the human race” (243).

Consequentially the concerns of this bio-politics, with population as its newfound area of applicability, changed too—birth rate, mortality rate, death rate and so on which implies that unlike the disciplinary mechanism where ‘space’ was an important factor, in the bio-political regime ‘time’ becomes important without which one cannot have the notion of rates. These rates then became the markers through which a population can be known and regularized. Since the focus is now on life, this new biopower re-theorized death which it now sees as only an accident and hence medicalization of the population begins to improve ‘life’ in general. Its field extended to make room for chance or anomalies—insurance, and other such safety measures being examples of such. The rise of statistical thinking in the nineteenth century was another important phenomenon that functioned to enlist the population so as to categorize them

for effective governance.⁹ The idea is to make an intervention to life at the level of generality. Therefore, unlike the sovereign as well as disciplinary power both of which had a demarcated, geographical territory to exert their power upon, this new power was rather an abstracted and deterritorialized power where the target was the population and the collective phenomena that effected the population as a whole. Its new objective was not to discipline the individual body but to regularize the population so as to affect life in general. In short, this new power worked to optimize the state of life, and unlike the sovereign power, the agenda of this bio-political power is to “make live and let die” (Foucault 1997, 241). Having thus intervened at the level of the biological (246), biopower aimed at improving the condition of human life in general so much so that in this ‘making life’ project death became outside the domain of power. Unlike the death spectacles during the sovereign regime, in the biopolitical regime death, with no power to exhibit in its spectacles anymore, became a private affair, like a shame and a failure to the biopolitical promise. Death was disqualified as a spectacle.

In this generous ‘making life’ project a question still throbs underneath and puts such projects under pressure—how do we account for the numerous killings that still go on across the world; how do we account for murders; how do we account for atomic bombs and war when not just individual life but entire population and life itself can be wiped out? It is in such instances that we can locate the paradoxes of biopower as it reaches its limits. The atom bomb represents the deployment of a sovereign power that kills life, and hence cannot be a biopower, or in other words it is a biopower but in excess of sovereign right. In that case, how do we account for the resident sovereign in the biopower?

Foucault here is careful at not insinuating any binary opposition between the two temporalities of power. Rather, these two power series can in fact be superimposed and be

⁹ See Ian Hacking, *The Taming of Chance* (Cambridge: CUP, 1980).

jointly articulated as productive mechanisms concerned with fostering and managing life. Therefore, for Foucault, it is indeed possible to account for the resident sovereign and the death function residing within the very heart of the life-enhancing claims of these two productive powers and it is done with racism as the precondition. Racism buttresses the logic of the biopower. It should be noted here that ‘race’ in the biopolitical regime means the entire human race and any threat to this race must be eliminated. Racism joins biopower to interrupt the biological continuum of human races by segregating certain population of people that is threatening to the entire human race in general. Foucault calls this as establishing “biological-type caesura” (255) which means to subdivide and interrupt the population on the basis of ‘abnormalities’ which can then be hierarchized according to their relative distance from the norm. Racism now coincides with the logic of evolutionism as it comes to mean a constant war, in fact a social war, against the abnormal or the developmentally deficient within the population itself oriented towards self-purification. If this racism leads to killings, the modern regime reorients it in a way as to make it compatible with biopower. The death of a bad race would be something that will make human race in general improve and purify which then fits completely well with the bio-political agenda. In other words, killing now has to be justified through racism. That is, racism becomes the rationale or the precondition for murder. Therefore, war takes on a different connotation; it is no more simply destroying a political adversary but about annihilating a biological threat from within. It is the question of purifying the human race. This is the new bio-political racism modelled on war. In Foucault’s own words ‘(Bio) Power is war, the continuation of war by other means’ (15).

As an example, Foucault uses the Nazi regime that generalized both biopower and sovereign power in its absolute sense. It was not an aberration but the logical extreme of biopower that was superimposed with both sovereign as well as disciplinary power. And that is the paradox that Foucault draws our attention to—a society that claims to improve life must

be necessarily and implicitly racist because the disqualification of impure races falls squarely under the agenda of biopower which is to optimize the state of life itself. The enemy is another race and must be destroyed in order to preserve, purify and multiply the human race in general. The modern racism no longer needs any scientific concept of race to justify it. What must also be noted is that racism had broadened its scope of meanings now. Unlike the traditional meaning of racism during the Enlightenment when it had meant differences on the basis of skin-colour and descent, modern racism means *any* difference or anomalies to the norm—criminality, madness, sexual debauchery—all can be now conceptualised in racist terms (258). What emerges is that in a normalizing society ‘racism’ has become a rubric under which any deviation can be accommodated and then eliminated in the larger preservation of human life. Therefore, I argue that in the modern regime, any process of normalization imports racism. The modern state acts as a ‘protector of the integrity, the superiority, and the purity of human race’ (81) within this broad racial spectrum, and this racial purification extends beyond the strictly racial contexts or territories and functions as the main biopolitical drive to shape and discipline the population.

If (bio) power is the continuation of race war by other means according to Foucault, it is those ‘other means’ that my next section will engage with. I will elaborate the ‘metaphorical’ afterlife of racism more concretely now through Toni Morrison’s literary criticisms where she re-imagines the construction and protection of the American literary tradition as a modified race war impelled by disciplinary purity.

B. Race and the American Literary Canon

I extrapolate two crucial observations from my previous section on disciplinary power and biopolitical racism—*one*, that every act of normalization imports racism and the discourse of

racial purity; *two*, that in a normalizing society this racism functions through shifts and displacement¹⁰. That is, racism must embed itself in fields where it can persist in disguise and not as what it really is. A complex power with such capacities for disguise, operating through shifts and extra-sovereign means, becomes of interest more in relation to the study of those institutions that implicitly participate in its circulation by distracting our attention from its regulatory aspect.

In *Playing in the Dark* (1992) Toni Morrison identifies the novelistic narratives of the nineteenth and twentieth century America as one such institution that has actively participated in ‘normalizing’ racism. Four years earlier, in 1988 with the Victorian novel as the case in point, D.A Miller in his *The Novel and the Police* had already recognized the genre as the ‘less visible, less visibly violent’ (Miller 1988, viii)¹¹ enforcer of discipline with a normalizing function. Arguing for ‘the possibility of a radical entanglement between the nature of the novel and the practice of the police’ Miller had enquired in that book how ‘the novel—as a set of representational techniques—systematically participates in the general economy of policing power’(2). Announcing his project as ‘a Foucauldian reading of the Novel’ (viii) Miller’s thesis in this book is to view the Victorian novel (and the novelistic genre in general) as part of the extra-sovereign series of ‘micro-powers’ which Foucault has called ‘discipline’.

In such a normalized worldview, racism can no longer be an exceptional aberration that temporarily sets the social order off balance beckoning the law to restore it. Rather it is entrenched in common parlance, so ordinary and abundant now that it is perhaps more on display than ever before—in institutions, attitudes, sentiments, imagination and in many other mundane places where it is usually not sought for. Morrison’s own speculation about the

¹⁰ I use the term ‘displacement’ here in no special psychoanalytical sense, but rather commonsensically.

¹¹ The novels under study here are—Willie Collin’s *The Moonstone* and *The Woman in White*, Charles Dickens’ *Bleak House*, and Anthony Trollope’s *Barchester Towers*, thematically falling in the detective, realist, and sentimental traditions.

dominant literary genre in America since the nineteenth century and its literary criticism as a form of knowledge is that ‘in matters of race, silence and evasion have historically ruled literary discourse [...] It is further complicated by the fact that the habit of ignoring race is understood to be a graceful, even generous, liberal gesture. To notice is to recognize an already discredited difference’ (Morrisson 1992, 10). According to this logic, what is ever more on display and an indisputable part of daily discourse is also completely capable of evading notice or attention *as if* it is absent. To enforce such invisibility by being ubiquitous is to transform the character of racism altogether. Being no more an exception to the norm it is ‘a way of referring to and disguising forces, events, classes, and expressions of social decay and economic division far more threatening to the body politic than biological ‘race’ ever was’ (63). So in this non-fictional work Morrison tracks this ubiquitous afterlife of racism—from being a once simple, noticeable aberration, to an unsound scientific concept and up until its full blown metaphorical life.

She selects novels written by white writers featuring black characters across the two centuries and undertakes to map out a literary terrain to understand how the black characters have been positioned and represented within the world of the narratives, especially since the nineteenth century when the novel became the dominant literary genre. As a genre the novel had been reflecting the nation’s freedom following its independence in 1776, its new promises and rights of man, and rightly so. In *Revolution and the Word: The Rise of the Novel in America* (1986) Cathy N. Davidson views the genre’s anti-hierarchical and subversive potential in performing the cultural work in the advancement of democracy. To the utmost discomfort of the gentry, the novel was embraced by the nation’s disenfranchised—the women, and the lower classes—who found opportunities at self-education and self-worth in it. According to Davidson ‘the novel imagined an unbridled version of the nation, [...] and provided an alternate public

forum on democracy' (Davidson 1986, 6-7). It was a source of hopes and support for a fuller participation of the disenfranchised minorities in the making of the American society.

Such views incite disagreements too. Even though the early novel was the voice of a large fraction of the nation's disenfranchised, it still did not speak for or speak to 'the many inhabitants of the new republic—notably slaves—who could not read or who lived in the oral subculture where books other than the Bible were practically unknown' Gilmore 1987, 486).¹² Davidson's plea for the 'disenfranchised' is still a limited category as the new literary form could not be intellectually available to a certain section of people. Bringing in the insights from Miller's book one could also disagree with Davidson on grounds that the novel increases its normalising power in its very 'act of arranging for it to "disappear"' (Miller 1988, 50)—that is, by appearing subversive, inclusive, and even celebrating misconduct. With the slaves being effaced from both the colonialist and nationalist narratives, a throbbing question waits to be asked and answered—can freedom mean anything without the spectre of enslavement (Morrison 1992, 55)? The metaphor of war always seems to be hovering in the background of such a question.

In light of the fact that *Playing in the Dark* was written only four years after Morrison's Tanner lectures on human values, 'Unspeakable Things Unspoken: The African-American Presence in American Literature' (1988), an essay that carried many ideas to be later developed in the non-fictional work, it is important to note once again Morrison's own understanding of the American canon formation as a literary process modelled on war. For, it is in this understanding that she comes close to Foucault as she views canon defense as national defense,

¹² The same review would also criticise how Davidson's 'insistence on seeing the novel as oppositional [...] overlooks the form's complicity in the emergent order of liberal capitalism. The first American fictions, while weakening the hierarchy, helped create the individualism necessary to the free market.' (p. 485).

and canon war as a race war. Her critique of the formation and maintenance of a literary canon is indeed very close to what Foucault has described as ‘a continuation of war by other means’.

The essay begins with the ‘clash and swirl’ of two phonetically close words—‘cannon’ and ‘canon’—and Morrison’s aim in this lecture on human values seems to provide a strikingly unusual explanation of the American literary canon premised on the exemplar of war. She writes:

the etymology of the first [‘cannon’] includes *tube*, *cane*, or *cane-like*, *reed*; of the second [‘canon’] sources include *rod* becoming *body of law*, *body of rules*, *measuring rod*. When the two words faced each other, the image became the shape of the cannon wielded on (or by) the body of law; the boom of power announcing “an officially recognized set of texts.” (123)

It was *as if* the ‘canon’ is the war-size ‘cannon’ capable of devouring up ‘readily available people/texts of little value’ (123) as mere fodder to keep the American literary tradition clean and pure, free from the unsettled and the unsettling black population residing at the heart of the nation. While debates over the canon usually orient themselves towards the aesthetic and humanistic value attached to works regarded ‘canonical’ by common and national wisdom, Morrison’s own critique of the canon has been to problematize ‘value’ itself recognizing the ‘whitemale’ (124) roots of those values and definitions that only disguised temporal, political and cultural specific program under some universalist pretension. If quality is that which produces works of canonical status, Morrison has been questioning ‘quality’ itself and the travelling/circulating definitions of it, to raise doubt about it, and to recognize that only the dominant culture or gender can be in a position to pass judgements on quality, then distribute it or even withhold it (125). Consequently, her critique of the American literary canon, and as the canon debates in general should be, is directed towards resisting appropriations of definitions of quality, definitions that sometimes do not change for reasons of the state. ‘Race’ again is a crucial aspect or metaphor to break that fixity.

With this lecture being delivered four years before the publication of *Playing in the Dark* (1992), one consistent thought is the painstakingly elaborate but an ornamental absence of the African Americans in the literature of the nineteenth century when the nation was still a young republic. The nineteenth century novel, whose proponents included the likes of Edgar Allan Poe, was a literary form that reflected the young nation's aspirations, hopes and promises. But the question that was asked only much later is that why this young America, with all its desperation and enthusiasm to depart from European models, chose Romance as its genre that had deep European roots (36- 39). The answer that Morrison provides is strikingly simply yet so elusive to common and critical wisdom. With a thriving black presence lurking at the very heart of the American literary tradition, Romance as a genre offered an easy flight from blackness (Morisson 1995, 137). This means, blackness in all its ramifications and potential was never actively summoned to the plot and workings of the text. It was as if 'out there' ready for the taking and for meditations on the white self. The result was a scholarship whose purchase has been studiously and expensively secured, at the cost of carefully eliminating a thriving, resident blackness at the tradition's core. Blackness was like the ghosts in the machine that has the capacity to both distort the workings of the machine and yet run it (138). It is a constitutive blackness that created the American literary tradition from the nineteenth century onwards; the meditations of the white self and the improvement of the white characters in the novels were all possible due to this figurative 'all purpose' blackness (Morisson 1992, 78). In Morrison's words, the effects were a 'lobotomizing' of the American literary canon where black characters are kept only as ancillary, and the successful assertion of whiteness as ideology. To question this ideology of whiteness, to question the very idea of white progress and racial superiority is different from promoting abolitionism. With whiteness always having a relational superiority, the equation is already racist.

With the nineteenth century as the main focus of their inquiry, both Foucault and Morrison, I propose, speak to each other in terms of their common appreciation of the model of war ‘as a grid’ (Foucault 1997, 237) for understanding historical (Foucault) and literary (Morrison) processes. In both cases the inquiries culminate into a view of racism that is very constitutive of the norm and/or the canon itself bringing forth a theoretical paradigm where various institutional formations function as the generators or perpetuators of such norms. In the next section this view of a ‘normalised’ racism will be further substantiated through Morrison’s own select texts in her *Playing in the Dark* to show literature’s complicity with racism. This will supplement the theoretical paradigm that I want to foreground within which I shall next view law as being another narrative of modernity which, like literature, thrives on racism.

I. Law, Literature, and the Norm

A. Literature and the norm

To recall at this point Morrison’s own remark in *Playing in the Dark* of whether freedom could mean anything without the spectre of enslavement while explaining the effacement of the African Americans from both colonialist and nationalist literary narratives of the United States, the question in turn activates a series of other related questions. How are the black characters represented in the novels written by non-black writers? Do they speak in their own person? What narrative function do they fulfil? Why are they cast at all if the writers in consideration are all white? Is their casting only an uncritical liberal gesture of inclusion and compassion or do they serve some other narrative purpose?

Moving through the nineteenth and twentieth century novelistic narratives *Playing in the Dark* is one of the powerful analyses of race that understood its operations even in situations and texts where it is seemingly absent. According to Davidson the text

[...] documents an infusion of prose polemic that has no logical cause and that becomes explicable only a few paragraphs or pages later when a black character finally enters the scene. *That*—the mysterious disturbance, barely noticeable, even subliminal—is the affective universe of unconscious racism. (Davidson 1986, 41)

To examine such disturbing energy in white-authored texts Morrison chooses *The Narrative of Arthur Gordon Pym* (1838) by Edgar Allan Poe; the classic American novel *The Adventures of Huckleberry Finn* (1884-85) by Mark Twain; *To Have and Have Not* (1937) by Ernest Hemingway ; and *Sapphire and the Slave Girl* (1940) by Willa Cather. Spanning across two centuries, it is a curious mix in which the novels are published either before the American Civil War (1851-56) and the abolition of slavery (Poe), or after the Civil War while the historical time in the novels is still the antebellum America (Cather, Twain), or wholly much after the Civil War and into the twentieth century (Hemingway). Besides the casting of black characters in their plots, there is another conceptual and imaginative thread that connects the novels under study here—an attitude towards blackness and a stubbornness of it across centuries. Since the time of the novels written in the early years of the nation's freedom in which Poe was writing, this attitude towards 'darkness' has remained tenacious from which America's literature has been unable to extricate itself, according to Morrison (Morrison 1992, 33). She observes that these black characters, with their physical and figurative blackness and configured inevitably as serviceable, supply exactly that spectre of enslavement against which the white man can emerge in the world of the novel as free and moral. In such narratives the black characters are not necessarily represented as slaves (Hemingway) but somehow they are enslaved by the narrative itself even if that narrative is a critique of slavery (Twain). This is a very subtle enslavement clever enough to disguise itself and even pass as benevolence. They are the racial ingredients out of whose mix the free, moral white character has always emerged. The country's national literature, Morrison remarks, has grown around the architecture of this *new white man* (15, Italics in original). Inadvertently, the critique of slavery itself becomes racist.

I will next examine two cases from this non-fictional work about the American literary writing to make my point. The first case is Mark Twain's quintessential American novel *The Adventures of Huckleberry Finn* (1884). Traditionally the novel is a much acclaimed critique of slavery told from the point of view of a child narrator, and rightfully surviving the test of many generations. But, in her introduction to *The Oxford Mark Twain: Adventures of Huckleberry Finn* (1996), Morrison writes 'It (the book) provoked a feeling I can only describe now as muffled rage, as though appreciation of the work required my complicity in and sanction of something shaming' (2) As we will see by the end of that introduction 'that' something is complicity with racism, as if complimenting this work required one to be racist.

Given the success of this novel across generations such allegation can appear far-fetched, even improper, even to the most sensitive and critical readers. So she proceeds cautiously, and before she actually names her unease she raises a question first, after having described Huck's distress in a lonesome environment following his escape from an abusive family—'If the emotional environment into which Twain places his protagonist is dangerous, then the leading question the novel poses for me is, what does Huck need to live without terror, melancholy and suicidal thoughts? The answer is of course, Jim' (3)—the slave Huck befriended. Through calculated use of speech and speechlessness, comic or indirect expressions of Huck's love and affection towards Jim, Twain satisfied racist expectations of the time when a loving, fatherly relationship between a white child and a slave man was unacceptable. Morrison does not openly accuse Twain of any implicit racism, but her worry is that such accumulated silences on Huck's part towards Jim have ultimately contributed towards entrapping Jim in generations of readers (5).

In the course of the introduction Morrison also argues that the young Huck did need a father-figure after all, someone he could trust and love but without having any pressure of debt that a real father would demand (6). Simply, Huck needed a makeshift father whom he could control

and no white man could have served the purpose. According to Morrison 'This delicate and fractious problematic is thus hidden and exposed by litotes and speechlessness (6)'. It was as if racism was being smuggled into anti-racist narratives with or without the writer's knowledge.

My next select instance from *Playing in the Dark* is Ernest Hemingway's *To Have and Have Not* and Morrison's keen analysis of it. Written in 1937 the novel is well past the days of slavery in America. According to Morrison, Hemingway's portrayal of black characters in his novels was rather 'artless and unselfconscious [...] where the social unease required the servile black bodies in his work' (Morrison 1992, 69). Harry Morgan is the classic American hero who is at odds with his country's government because the latter has the power to limit his freedom and individuality. Ten pages into the novel a nameless 'nigger' makes his appearance that does not seem to possess or be in charge of any job. In part two of the novel he is named as 'Wesley'. Now there is a rather awkward narrative moment in part one itself when the 'nigger' is still unnamed and which required Hemingway to assume some dogged measures. The party is on a fishing expedition and at this point in the narrative the servile 'nigger' had to be given the job of steering the wheel because all other characters were engaged with some other jobs. When the boat enters promising waters—signalled by a flying fish beyond the prow of the boat—Wesley, being the man on the wheel was logically the first person to have sighted that. Now the problem is how to acknowledge that first sighting and continue the muzzling of this 'nigger' who, so far, has not said a word. The solution is rather awkward: '[...] I looked and saw he had seen a patch of flying fish' (72- 73). This is a breakdown of the narrative's logic but the risk was worth taking. The power of sighting belonged to Harry, and the narrative at all cost must reserve that power for him. If the 'nigger' had carried out the sighting and also been credited for it, the main (white) character, Harry would have to be defined and positioned quite differently. He would lose the complementarity of a figure that can be assumed in some way

bound, un-free and serviceable. Whiteness alone is pointless; it needs to be set off against a lurking blackness.

In this text what Morrison actually does is provide her readers with a political explanation behind the formation and maintenance of America's national literary tradition. In doing so she contemplates the African presence in the rise and growth of the nation's literature. Her observations are in fact simple, yet so elusive to an uncritical eye that they are rather 'archaeological'—a veritable enslavement thriving under the narratives of liberal modernity that needs to be excavated in order to render it visible. The American literary tradition, the way it came to be formed from the nineteenth century onwards, has been a racist activity so much so that even the narratives that are traditionally believed and taught as anti-racist are themselves racist. To make her point she supplies a visual metaphor—that of a fish bowl in which one would usually see the freshness of the water and the fish inside but rarely the outside of the glass that gives the bowl its shape and structure and holds the ordered life inside together (17). According to Morrison, that structure providing glass is what she calls 'Africanism'—an abiding presence at the heart of the American literary tradition (6).

One must note the subject of Morrison's discussion in this ground-breaking text. It is *not* exactly the African-Americans in the novels of the white writers in the nineteenth and twentieth centuries; the subject of the book is the writers themselves and their writerly imagination. Morrison invokes 'race' to understand what it does to this imagination. According to her, the formation of an Africanist presence seems to have followed roughly a three-part development: 'from its simplistic, though menacing, purposes of establishing hierarchic difference, to its surrogate properties as self-reflexive meditations on the loss of difference, to its lush and fully blossomed existence in the rhetoric of dread and desire' (63- 64). The first was the least complex stage, that of 'hierarchic difference.' It is from the second stage where the resident black population came to be constructed in the nation's literary imagination as 'surrogates' for

meditations on the white social self and on the white writerly consciousness (17). The presence of the enslaved people served as the field for the imagination in the construction of freedom and autonomy in the New World. In Morrison's words, this slave population had offered itself as surrogate selves for reflections of human freedom in terms other than abstractions of human potential and the rights of man (38). Freedom means nothing without the spectre of enslavement; slavery and freedom are rather interdependent. In the third and final stage 'race' assumes a full blown metaphorical life where blackness came to articulate the contradictions inherent in human nature- '[...] images of blackness can be evil *and* protective, rebellious *and* forgiving, fearful *and* desirable' (59). 'Nigger' became shorthand for common experiences shared by the writers and his readers. 'Race' now has the power to allude, without any direct articulation, to the whole range of human problems and ambiguous moral problematics (Klein and Amin 1994, 660- 61).. It is against this background of 'metaphorical' race that the white characters in the novels, and the writers themselves, gain experience and knowledge on human complexities. While they get enriched as they put on more layers of such complexities, it is possible only against a stereotyped background. Race now connotes and denotes (Morrison 1992, 6). It is imagination's playground.

Like many of Morrison's other works, this one too tries to give the black people their due acknowledgement in the making of the country's literary tradition. They lubricate the mental growth of their white counterparts and also the novel's plot, as shown by the example of Wesley. In fact, Morrison talks of one of her methods where she kept a file of those narrative moments where black characters have ignited critical moments of discovery in literature not written by them. She notes the almost breakdown of narrative logic because of the racialised setting in which the writer is producing his work (for example, Hemingway). This is not to say that writer is overtly racist; rather how a writer works within and responds to the pressures of a racialised setting over which he has no control. It is to understand how the writers are

implicated in societal structures of domination that impels Morrison to draw a critical geography where the black characters can be recast in crucial nodes to enable a fuller perspective—the container and the contained of American literary tradition, the complementarity of the fish and the fish bowl.

Morrison's choice of the image of the 'fish and the fish bowl' in a constitutive relation can be pushed a little further, perhaps turned around, in providing a visual metaphor for the theoretical paradigm that I want to bring forth in this chapter—the complementarity of literature and the norm. Despite being traditionally regarded as one of the most democratic forums, the novel, or even literature in general, does not fall outside the domain of power. Rather, it is the exact reverse—it falls intimately within the field of power as it advances its normalising function by, in D.A Miller's words, 'arranging for it to disappear'. That is, literature extracts its reputation of being subversive and anti-hierarchical through its seeming separation from a normalising and racist power, when in reality they are rather complementary. It is in this context of extracting identities through a theatrical opposition between two seemingly unlikely components that I want to view law in the next sub-section.

B. Law and the norm

Underpinned by the primacy of narrative again, of the many institutions of modernity that thrive on racism, I am choosing another one, besides literature—law—which, like the literary narratives, is another way of ordering a chaotic universe. Like that of literature law and power too can be jointly deployed in modernity (Golder and Fitzpatrick 2009, 26). However, in the liberal views of the world, law is expressly incompatible with racism (Fitzpatrick 1987, 119). To ask what law is and what it does for us, the answers are many and perhaps irreconcilable. Whereas such ontological questions implicitly demand some robust definitions that can define the term quickly and conclusively, it can break asunder at the slightest semblance of consensus.

Hence, to succeed in finding a signifier that can exhaustively contain all the things that the concept of ‘law’ could ever mean, in application or in instantiations, is a defeating task. In other words, it is about taking the question seriously of whether or not it is enough to say that law is something that settles conflict, decides right and wrong, is the command of the sovereign, *and* is the vehicle of justice (Fitzpatrick 2008, 1). I emphasize ‘and’ for two specific reasons here—first, to mark my own experience of attempting to articulate a definition of law but finding that this list is not exhaustive and the content not enduring. Second, I had to supply this ‘and’ out of practical necessity or this asyndetic listing would be endless. The list did not come to a closure naturally, but was made to stop by my decision.

To bring order to chaos is a compelling and sustaining anxiety (Aristodemou 2001, 1). The concern is of course with that of security. What narratives really do is supply us with a working point of origin from which we can then move on to a middle and then a predictable end (2). For the yearning to believe in a point of origin is as strong as the impossibility of its discovery (235). In other words, the yearning to believe in a point of origin is too strong to admit the impossibility of any such moment of discovery. Narratives are a way out of chaos; some narratives more privileged than others. Law is one such privileged narrative that tries to order a labyrinthine universe with the aim to reduce the irreducible. However, what must be reiterated here is that being a narrative it is not without its own assumptions and ideologies that have given rise to it in the first place. And as long as narratives are ideologically invested the question and suspicion of their epistemological adequacy must be kept alive.

While paradoxically law is a narrative invented to establish certainty and regularity, it is still something without a definitive answer. How do we then explain this seeming paradox- that we rely on something we do not seem to be able to know (Fitzpatrick 2008, 2)? However, we must not dismiss this reliance altogether for it is only in such reliance law begins to assume groundedness and exists finitely, as it were. In making something exist finitely, like law, an *act*

of beginning has to be performed which by its very nature necessarily ‘involves an act of delimitation by which something is cut out of great mass of material, separated from the mass, and made to stand for, as well as be, a starting point’ of it.¹³ In such a framework of ‘inaugural delimitation’ and ‘cutting down a very fat archive into manageable dimension’ (Said 1975, 16) law ‘begins’ from something which is much more than and beyond itself, boundless. More aptly, law is something that ‘emerged’; ‘law’ being the name of the emergence. As a narrative of modernity in a secular and post-Enlightenment age that has discredited God as the dispenser of truth and justice, we need an analogous, albeit non-theological, institution to offer legitimacy to human existence. In the absence of the God (or King), we call it ‘law’ but without admitting its theological roots. That is, even if we take out ‘God’ we need to keep the form and ‘law’ becomes the modern sovereign from which it ‘can come back to us’.¹⁴ We need this ‘externality’ of law and our own passivity in receiving it. The narrative of law and its self-appointed role to speak on the concepts of guilt and innocence cannot afford to admit its own constructedness and arbitrariness. It is a double relief—that our lives are not uncertain, and that believing in law saves humans from trusting each other (Fitzpatrick 2008, 6). Thus, in reality, we still need to keep the ‘King’s head’ (Foucault 1978, 89)¹⁵ for believing in such groundedness makes law falsely finite, and we need this finitude for our own necessity. It gives us a place to start from, anything for that matter. Such imaginings of law give a tenseless charge to it, making it concrete. It qualifies law’s existence as ‘determinate’ (Fitzpatrick 1998, 2); one that is arbitrary, yet necessary.

¹³ I am using this idea of ‘act of beginning’ from Edward Said’s *Orientalism* (London: Penguin, 1975), p. 16. Though Said is engaged with a completely different problematic in that book, I am using this idea of ‘act of beginning’ as a conceptual resource to make a case for law’s ‘beginning’.

¹⁴ This idea of ‘externality’ came from our discussion with James Martel on his book *Divine Violence: Walter Benjamin and the Eschatology of Sovereignty* (NY: Routledge, 2012) who was the writer-in-residence at the Birkbeck School of Law in 2015.

¹⁵ Foucault argues here that the ‘regicide’ of the political right still incomplete as law becomes the displaced God. This also implies that law has not been completely superseded by the modern disciplinary and the biopower as many commentators on Foucault would say, since for Foucault law and sovereignty shared an integral relationship as a system of law-and-sovereign. (p. 97).

Now all the preceding theories of ‘emergence’ or ‘act of beginning’ lead to the next question—where did law emerge from? What was it cut off from in order to begin as itself? Does it have a name and can we call it for what it is? The answer might lie in the very incapacity to ‘define’ law which, if we proceed to define it negatively like any other word in the linguistic system, produces a paradox in law’s own claim to universality. Law by nature is supposed to encompass everything and reach all equally. But if it can be defined negatively it implies that it is excluding something, something that it is not, thus creating an antithesis. But if it claims to be universal, how can it have an antithesis at the same time? Therefore, this antithesis has to be of a special kind. It must be utterly antithetical so as to have a different kind of existence altogether, or may be a ‘lower’ kind of existence (12). ‘Qualitatively different’ people are integral to the making of the disciplined, liberal subject such that liberalism and racism become mutually constitutive, not mutually exclusive. Law derives its identity through its separation from that which it excludes. Racism, it can be argued thus, is built within the very foundations of law. Under the condition of modernity law and racism look discrete or mutually exclusive of each other, and it is precisely how they extract their respective identities—they are identified through their mutual separation, in their seeming opposition to each other. Law and racism are rather interdependent and co-constitutive (Fitzpatrick 2009, 60).

In the ‘determinate’ view of orthodox accounts, law is supposed to deal with errors and aberrations, and is chiefly aimed at restoring the norm (Fitzpatrick 1978, 121). According to this observation racism can be addressed by the law as long as it is an aberration, a deviation to the norm, and by deviation it also means exceptional. Now for our own analytical purposes if we consider not exceptional instances of racism, but its quotidian forms where it does not necessarily have to be a legal transgression, what do law’s universalist claims yield? Speaking of the broad racial spectrum that we inhabit where race has acquired a metaphorical life far beyond economic instrumentality and is so embedded in daily discourse that it is rather prosaic

and unexceptional now, how do we account for law in terms of its intervention at the level of the quotidian and the ordinary?

At this point to enquire again what law is, the failure of the answer would be productive, as it is precisely this failure that will give law at least a veneer of justice. The concern of justice must not appear abrupt here for in a regime of biopolitical racism what is at stake is the representation of racial subjects in any narrative, juridical or literary. To recall the part where law is cut off from a ‘great mass of material’ to begin as itself and which makes it possible to imagine law finitely and determinately, the question that still has not been answered is what this ‘great mass of material’ consists of and what is law’s relationship to it. The answer lies with another dimension of law that works in tandem with its ‘determinate’ dimension—the ‘responsive’ dimension of law (Fitzpatrick 2008, 2). For law to be concerned with justice it must keep responding to that which is outside of itself and not yet a part of it. But by the very nature of law’s inability to be confined in definitions, this ‘response’ towards its outside will always be incomplete, rather failed, making this play between its ‘determinate’ and ‘responsive’ dimensions interminable and ever present. That is, to continue being just law has to fail to address racism completely. Justice is a theoretical paradox, and law’s claims for universality entail specific conditions of its own universality—racism is one such. Under modernity, racism not just has a life endowing capacity but a justice administering dimension too.

III. ‘Fictionality’: Approaching the Conjunction

The preceding sections, therefore, encapsulate into the following observation—whether it is the literature and the norm, or the law and the norm, both can operate in a relation of constitutive reciprocity in modernity. Together, they can be jointly deployed in a way that accommodates racism. To be noted and pursued here is that, progressing in such a direction of

constitutive reciprocity, none of the constituent parts of this relation (law/norm, and literature/norm) exists autonomously. That is, compelled by codes of normalization the two exclusively modern forms of power—disciplinary and biopower—are functionally dependant on various institutions where it could “disappear” and exist as other than what it really is. Since power for Foucault is mainly this power of dispersal¹⁶, the institutions are hence bound up with such an insinuating power that invests them in generating norms and by which they are co-opted. These are law, and/or literature as institutions ‘on the side’ (Golder and Fitzpatrick 2009, 71) of the norm—to be resisted and transgressed. However, in spite of such co-option, there is yet a certain dimension to both these institutions that still retain them as sources of justice.

From the side of the law, Ben Golder and Peter Fitzpatrick in *Foucault’s Law* (2009) read in Foucault another aspect of law, one that I have described as ‘responsive’ towards the end of my last section, which is always in excess over any ‘determinate’ content of law. That is, it argues that the norm’s co-option of the law is never complete and that something is always ‘spilling over’. In this, the argument is profoundly Derridean as it takes the notion of justice as something that is always in excess over law as a conceptual resource here¹⁷. However, the authors extend this argument by identifying this ‘spilled over’ part of law as its ‘fictionality’ that resides at the very heart of the modern law. In this dimension, law ‘extends itself illimitably

¹⁶ The idea of ‘dispersal’ runs through most of Foucault’s early, genealogical texts on ‘power’ during the 1970s, especially *Discipline and Punish*, and the *History of Sexuality, Vol. 1*. It means that, more dominantly since the nineteenth century, power is ‘de-individualized’ unlike the earlier sovereign power where it was concentrated on and embodied by the King. In modernity, this power is disembodied, spread out, and distributed throughout various institutions that then act as agents of such modern forms of power.

¹⁷ In the ‘Force of Law: The “Mystical Foundation of Authority”’ Derrida remarks that ‘Law is not justice. Law is the element of calculation, and it is just that there be law, but justice is incalculable, it demands that one calculate with the incalculable’. This means that justice introduces the element of the incalculable within the calculable, which is the law. In a similar logic, law is that which cuts the incalculable into a measurable dimension, and hence always in short of justice. That is to say, justice will always exceed the law in any regime of justice administration. It is in the very nature of justice not to be achieved in entirety. Jacques Derrida, ‘Force of Law: The “Mystical Foundation of Authority”’, in *Acts of Religion*, ed. by Gil Anidjar, (NY: Routledge, 2002), pp. 228-299 (p. 244).

in its attempt to encompass and respond to what lies outside its definite content.’¹⁸ It is this capacity of law to respond to newness and to what is not yet a part of it that orients it towards alterity and possibilities linking it intimately with literature’s own natural aesthetics.

From the side of literature, Toni Morrison again in her *Playing in the Dark* is interested ‘to identify those moments in which the American literature was complicit in the fabrication of racism, but *equally important, I (she) wanted to see when literature exploded and undermined it* (Morrison 1992, 16) [Emphasis mine]. That is, her concern lies in engaging with that intrinsic capacity of literature which is uncontainable and by which it can ‘spill over’ any disciplinary or biopolitical control. That capacity is, of course, literature’s own power of imagination, essentially oriented towards alterity and possibilities, much like law’s responsiveness. Her aim in that text is not only ‘to contemplate how Africanist personae, narrative, and idiom moved and enriched the text in self-conscious ways’, but also to ‘imagine up’ certain people whose lives have been lost to history and therefore, to register or inscribe that which has been unaccounted for.

At this point it would be rather useful to offer a few of Morrison’s own writings, her tackling of the ‘race’ question, and the kind of ‘archive’ of memories that she draws upon to build her own narratives. The idea is again to squeeze out subjects in her texts that are non-normative and transgress the disciplinary purity which Morrison had critiqued in her essay “Unspeakable Things Unspoken”. Therefore, in my next chapter I shall engage with a few select texts of Morrison—her short story, *Racitativ*, and the novel *Beloved* to arrive at that political power of fictionality by which it is capable of surpassing any normative control, in short, capable of resistance.

¹⁸ Golder, and Fitzpatrick, p. 71. Also see, Peter Fitzpatrick, ‘Reading slowly: The law of literature and the literature of law’, in *Reading Modern Law*, ed. by Ruth Buchanan, Stewart Motha, and Sundhiya Pahuja (NY: Routledge, 2012), pp. 193-210 (p. 203).

As Joseph Conrad had put it in *The Nigger of the "Narcissus"* (1998) that literature and literary language provide us with a 'glimpse of truth that we have forgotten to ask' (xlix). While literary narratives, in my choice those by Toni Morrison, do provide such glimpses of truth, there is however no consensus of what those glimpses should be like. After all, she recognizes her own work in the tradition of the neo-slave narratives. It is interesting to note and then ask the whole point of writing historical fictions today, of setting the narrative during and after 1850s while physically writing those narratives in the late twentieth and twenty-first centuries.¹⁹ The very act of writing the African-American neo-slave narratives today, as brilliant works of fiction, must imply that the legacy and the effects of race-based slavery are not quite over. They survive in those 'great works' of literature that can construct moral foundations from where to criticize every other position, thus reducing each one of them in their own terms. They survive in the silences, in tentative presences, in the unsummoned characters that have made up the foundational literature of America during its early years of freedom. It does not mean to say losing the entire American literary tradition altogether, but to be alert and ethical towards the 'fodder' that drives the canon/cannon. To make this 'fodder' the protagonist now there has to be different system of values altogether separate from those in power.

To enact at this point a rather delayed return to the 'law and literature' nexus with which I had introduced the chapter, the problems I have raised so far to complicate both sides of this interdiscipline are as follows—that both the institutions of law and literature separately can be invested and co-opted by the normalizing modern forms of power that imports racism in its very process of generating norms. This means, both law and literature separately as institutions have normalised racism thus making the representation of racial subjects rather unjust. In light

¹⁹ A suitable example is *Beloved* in which the novel is set partly before and after the American Civil War (1861-65) while Morrison was physically writing the novel in 1987.

of this view of a normalised racism, there is no repository of universal values that law can uncritically turn to in order to ‘humanise’ its mechanistic rigor. For, formation and preservation of canons fall intimately within the field of such normalizing power, as Morrison has persuasively argued. Therefore, in the regime of such insinuating power with a capacity to permeate any field of social expression, it is imperative to extract at least one faculty that is capable of ‘spilling over’ such gripping control. For both law and literature, this faculty is that of its innate ‘fictionality’ but endowed with the political power of surpassing modern powers’ grip over lives and institutions.

Thus having problematized both sides of the law and literature nexus and also having extracted ‘fictionality’ from each one of them, I propose that foremost to the connection between these two disciplines is the understanding that this intellectual endeavour must factor in this fecundity of imagination if it has to be concerned with matters of racial injustices. In doing so, I partly take sides with an existing scholarship that argues that the politics of this field lies in the conjunctive ‘and’ connecting the two constituent disciplines. It is not simply additive where one discipline adds itself onto the other. In that case, what is the character of this conjunctive then? What does it imply—hierarchy, love, amity or something else (Farley 2005, 269)? The essay in question argues that this ‘and’ is the space ‘in-between’ the two participating disciplines, a space that is never given as such but which always needs to be cleared, actively enabled, taken for subjects that cannot exist within conventional disciplinary boundaries. It is the space that gets created and filled at the same time. It had no existence before it was filled. It is visible only when it is occupied, peopled. It is a space for the ‘others’. And it is this search for and commitment to this space ‘in-between’ that gives law and literature its political compass. It is a project of opening up such ‘in-between’ spaces for the ‘others’ to occupy and speak (271).

I want to extend this argument, more explicitly in my later chapters, by saying that it is in this conjunctive ‘and’ that the fecundity of imagination is manifest as it opens up sites for especially racial subjects who cannot be justly represented in traditional disciplinary boundaries which are always at the risk of being co-opted by the racist normalizing modern powers. I shall develop this argument further in the course of this thesis to make my own intervention in the interconnection of the two disciplines by advancing this ‘in-betweenness’ as the fertile site for representation.

Needless to say, this in-betweenness is a site for constant struggle, a struggle for occupation. To avoid attaching any disciplinary criterion to a progressive political interdisciplinary field there cannot be any specific profile for those who would come to seize and exist in this conjunctive, ‘in-between’ space. And this is where the field needs to be alert to the discourse of canon or any such apparatus concerned with quality, because there will always be some canon or the other, whether or not there should be one, as it is in the interests of the literary or juridical community to have one. But this nexus, as long as it is concerned with representation and social justice, has to find a way to ‘enhance canon readings without enshrining them’ (Morisson 1995, 128). Perhaps in this, the interdisciplinarity of ‘law and literature’ can itself become a critique of disciplinary purity that fundamentally impels every institutional formation.

Chapter 2: Race and Time in Toni Morrison's fiction: Towards a possibility of 'literary' resistance

Introduction

'Today is always here,... Tomorrow never.' (Morrison 1987, 64)

The above quotation depicts a scene in Toni Morrison's novel *Beloved*. The protagonist Sethe's younger daughter, Denver wants to postpone the prospect of a painful hair-combing until the next day. The quotation is Sethe's answer to her daughter. But this is not just an answer, it is also a lesson. As an ex-slave coming to terms with her past, Sethe has little plans for the future. Rather, it is the present that matters. In traditional African temporality, time is cyclical than linear and has an infinite past instead of an infinite future as in Western discourse and ontology. In her lecture 'Future of Time: Literature and Diminished Expectations' (1996), Toni Morrison describes the present as something that feeds on the past. The past is rehearsed, like a rescue of sorts, to renew the present. In this way, the past enlarges. This attitude towards time is consistent with and apt for *Beloved*, a novel set in the Reconstruction era in which the characters are constantly grappling with their past to make a better present. That is why Sethe rebukes Denver when she wants to defer her hair-combing. She must learn that the future may be virtually absent for it has not yet taken place and hence does not constitute time. Actual time is therefore what is present and what was in the past. It moves backward rather than forward. Linear time is foreign to African thinking (Jennings 2008, 88-9).

In this chapter, I will focus on the treatment of time and race in Toni Morrison's works to explore the possibility of 'literary' resistance in the age of discipline and biopower. The question of resistance is urgent in the modern regime for literature may have become a pliant instrument of the two racist and normalizing powers—disciplinary power and biopower—as I have argued in the previous chapter. However, from the side of law, the previous chapter also argued that the modern law too may have become powers' instruments, but still retains its

capacity to resist this co-option. Ben Golder and Peter Fitzpatrick's *Foucault's Law* (2009) recognizes two dimensions of the modern law: 'determinate' dimension on the side of power, and 'responsive' dimension resisting that power. Both these dimensions operate in a sort of reciprocity not ultimately containable by the normalizing powers. In a profoundly Derridean vein, the authors further contend that something is always 'spilling over' norm's control and that is the source of resistance. In this chapter, I borrow this legal insight to argue that literature too has two dimensions and that there is something in 'excess' of it which the norm cannot fully control. I will explore this literary 'excess' in Toni Morrison's two select works: short story 'Recitatif' (1983) and the novel *Beloved*. The section on 'Recitatif' will focus on the treatment of race, and *Beloved* on the treatment of time. Through these two section analyses I aim to achieve an overall rearrangement of power relations in which literature, even if unable to exit power, can at least 'effect' it.

Towards this 'literary' resistance, the chapter will follow four stages: *first*, I will discuss the temporal connection between the modern novel and the modern powers, both rising coevally in the late eighteenth century but more firmly in the nineteenth century. This discussion is necessary as it poses the question of resistance very sharply. *Second*, I will analyze Morrison's short story 'Recitatif' to show how literature manipulates and resists certain key imperatives of modern powers—in this case a comprehensive knowledge of its subjects, literary or otherwise—by expunging racial codes from the textual language. *Third*, I will analyze time as embedded in the modern powers but which has received little attention in the Foucauldian studies. For this I will use two seminal Foucauldian texts—*Discipline and Punish: The Birth of the Prison* (1977), and the essay 'Nietzsche, Genealogy, History' (1977)—that espouse two different notions of time, linear and spiral respectively. Then I will discuss Elizabeth Grosz's *Nick of Time: Politics, Evolution, and the Untimely* (2004) to bring forth a concept of the 'untimely'—subjects born outside the contingencies of linear time—that further

illuminates Foucauldian genealogy and ‘effective history’. *Finally*, using Gerard Genette’s *Narrative Discourse* (1980), I will show how *Beloved*’s unique temporal structure thoroughly manipulates time as instrumentalised by the modern powers to produce subjects that are what Grosz calls ‘untimely’. I will then argue that it is through this unique narrative temporality and the production of the ‘untimely’ that *Beloved* resists powers’ co-option of it, a temporality inconsistent with the modern powers’ notion of time.

I. Western European Novel and Neo-liberal Governmentality

Roughly from the eighteenth century but more firmly in the nineteenth century, two major ‘modernising’ developments occurred in the spheres of culture and politics. The novel developed as the new literary form of prose writing, and the dominant mode of political power underwent transformation from the earlier sovereign power to the new and insinuating disciplinary and biopower. Seemingly disconnected, these two forms of western modernity, cultural and political, rose coevally during the eighteenth and nineteenth centuries (de Boever 2013, 9). But studies in the novel have traditionally addressed the form’s relation to the changing mode of economic production. That is, how the novel became the cultural correlative of capitalism and the rise of the bourgeoisie. Edward Said—one of the twentieth century’s most important theorists of the novel—has observed in the posthumously published *On Late Style* (2006, 4) that ‘...in Western literature, the form of the novel is coincidental with the emergence of the bourgeoisie in the late seventeenth century.’ Sporadic attention has been given to the novel’s possible relation with the modern powers until the 1980s when literary historians like Mark Seltzer, John Bender, D.A Miller, Arne de Boever, and Christopher Breu began to rethink

the history of the novel along with the history of political transformations²⁰. Through these studies, power was made to return at the heart of novelistic practices.

Traditionally, the novel has been regarded as a subversive genre as it creates an alternative forum for participation for a section of public who earlier did not have access to the specialised forms and language of classical knowledge, like women, and hence culturally advances the work of democracy. The novel is thus reputed to have an anti-hierarchical potential that could offer both entertainment and education to the ‘disenfranchised’. In this view the novel is a form that challenges power, if we consider the latter strictly in the negative sense where it only censors, limits and punishes. But how does the novel challenge power when it is no longer just repressive, but also productive of individuals and ‘life’ in general? In the opening passages of Foucault establishes this shift from power as negative (sovereign power) to power as positive (disciplinary power, later supplemented by biopower) first through a graphic description of punishment for the crime of regicide before the Church of Paris. Then, through the laying down of time table ‘for the House of young prisoners in Paris’, Foucault points out the change in the penal style where ‘[punishment] leaves the domain of more or less everyday perception and enters the domain of abstract consciousness; it is the certainty of being punished and not the horrifying spectacle of public punishment that must discourage the crime’ (1977, 6-9). In this disappearance of punishment as a public spectacle, power no longer derives from the body of the sovereign alone but various non-sovereign sources perform its work. Thus when punishment became the most hidden part of the penal process, the focus shifted on ‘humanising’ and ‘correcting’ abnormal behaviour, in short, on ‘normalization’. This tendency

²⁰ Mark Seltzer, *Henry James and the Art of Power* (Ithaca: Cornell University Press, 1984); Mark Seltzer, ‘Reading Foucault: Cells, Corridors, Novels’, *Diacritics*, Vol. 14, No. 1 (Spring, 1984), pp. 78-89; John Bender, *Imagining the Penitentiary: Fiction and the Architecture of Mind in Eighteenth Century England* (Chicago: University of Chicago Press, 1987); D.A Miller, *The Novel and the Police* (Berkeley and LA: University of California Press, 1988); Arne de Boever, *Narrative Care: Biopolitics and the Novel* (London: Bloomsbury = Publishing Inc, 2013); Christopher Breu, *Insistence of the Material: Literature in the Age of Biopolitics* (Minneapolis: University of Minnesota Press, 2014).

to 'normalize' is then dispersed across the social fabric and for Foucault power primarily means this 'power of dispersal'. In such a shift from an enforced form of control to a generalised form of control, the role of the novel must be reconsidered as it may mean one of those non-sovereign sources where power has dispersed itself. This poses the question of literary resistance sharply as the novel ceases to be the privileged counter-discourse located outside the matrices of power. Rather, the novel now operates within the larger network of disciplinary and biopolitical practices.

Insofar the power in question is a sovereign one, that is, negative and repressive, it may be fair to assume that power and resistance are two opposite categories. But in the modern regime where power is positive and productive, the character of resistance shifts as well. It is no longer a position of externality but a constituent core of power itself. Power and counter-power work as a unity jointly deployed in modernity for comprehensive control. In one of his 'literary' essays, 'A Preface to Transgression' (1963), Foucault explains that limit and its transgression, in other words, power and resistance, are not separable extremes but rather a conjoined totality where an experience of the limit can take place only through an act of its transgression. It exposes the limit as being devoid of any positive content and derives its content only through an experience of 'crossing over'. In this, transgression becomes nothing but an 'acting out' of finitude. If literature, or the novel form of prose writing, resists or transgresses the limits posed on it, it is not really an exit from power but an 'acting out' of its own limits. This transgression does not oppose power from an opposite direction but generate those points where power is applied and the transgressive is soon made to return to the domain of the 'uncrossable' (Foucault 1977, 29-52). Thus resistance in the age of the norm becomes only a form of power, the power to transgress.

From this point of view, the dominant understanding of the novel's subversiveness appears not as an escape from power but rather an instance of power's deployment. To adapt

Foucault's formulation, 'the irony of this deployment is in having us believe that our 'liberation' is in balance' (Foucault 1978, 159). That is, any transgression is pre-empted and calculated participating in the larger network of biopolitical and disciplinary practices. The very production of a 'literary' difference serves a double purpose. Through this production power not only extends its field of normalization but also makes us believe that there is indeed an alternative domain 'outside' the political from where resistance is possible. This is the whole argument of 'the repressive hypothesis—the lynchpin of biopower—(that) rests on the assumption of externality and difference' (Dreyfus and Rabinow 1982, 182) whereby regulation 'masks itself by producing a counter-discourse, seemingly opposed to it, but really part of a larger deployment of power' (132). Power is generally accepted and tolerated precisely through this projection of a domain that seems to lie 'outside' of it promising resistance. In a regime where transgression is assimilated 'into a general tactic of subjection' (Foucault 1977, 272), the more subjects or discourses transgress, the more they inhabit the normative scenario. Therefore, the novel's supposed subversion of power is not really an escape from it, but an aspect of power's operation that is 'masked' and as Foucault himself observes, 'power is tolerable only on condition that it mask a substantial part of itself' (Foucault 1978, 86).

In such an arrangement of power relations, the abiding question is how to 'resist', from the side of the novel, in a way that it *effects* power, if not exit it. At this point, it is useful to shift the focus on the relative lack of autonomy of the norm that takes deviancy as its source, and use a deconstructionist view to argue that the enforcement of the norm and its purported 'difference' from the anomalies serve to guarantee the arbitrariness of it and the inherent absence of norm's stability. It is the abnormal that is ascribed a definitive content and not the normal. The normal gains its own content through a negation of this abnormal, a content achieved through refusal and a regulated separation. The seeming opposition between limit and its transgression is further nuanced here because it disturbs the constrained notion of resistance

as outlined so far. The transgression not only is an effect of power but something that in turn ‘effects’ power. Resistance is not that which is circumscribed by power but also that which circumscribes power. The limit undergoes an alteration every time it is crossed over and finds itself exposed to its outside. So, for instance, in the *Order of Things* (1966), Foucault gives the example of Marquis de Sade whose obscene writings questioned the historical creation of reason/unreason of the time. They marked the edge of a mode of thinking that was in the process of becoming relegated in favour of a new one. Foucault calls this mode of thinking ‘episteme’, and de Sade’s obscene literary outputs transgressed the limits of the current episteme to forestall an upcoming one.²¹ In this way what transgresses makes the limit justify its existence, like ‘...the world that thought to measure and justify madness through psychology must justify itself before madness...’ (Foucault 1967, 231). The limit or the interior is thus ‘caught in the form of limitation’ (Elliot 1974)²² and cannot be rigidly determinate to refuse change and alteration. The limit must find itself in what it excludes that in turn changes its character, ‘the inside as an operation of the outside’ (Deleuze 2006, 81).

It is in this framework of the nuanced variety of resistance as outlined above, the role of the novel is further renewed as it can reject certain imperatives of power, in this case a comprehensive knowledge its (literary) subjects through a manipulation of time and space. In codifying such points of resistance, I will first analyse Toni Morrison’s short story ‘Recitatif’. The reasons for selecting a short story for a chapter written in the framework of the novel are two. *First*, I want to establish this short story as a work of literary criticism on critical race studies. In *Playing in the Dark: Whiteness and the Literary Imagination* (1992) Morrison explains that ‘The only short story I have ever written was an experiment in the removal of all

²¹ Foucault, *Order of Things: An Archaeology of the Human Sciences* (London: Tavistock Publications, 1970). He defines ‘episteme’ as that ‘which defines the conditions of possibility of all knowledge, whether expressed in a theory, or silently invested in a practice.’ (p. 168).

²² T.S Eliot, ‘Burnt Norton’, in *Collected Poems 1909-1962* (London: Faber and Faber, 1974)

racial codes from a narrative about two characters for whom racial identity is crucial' (Morrison 1992, xi). However, this sentence occurs in a parenthesis to elaborate the point preceding it: 'The kind of work I have always wanted to do requires me to learn how to manoeuvre ways to free up language from its sometimes sinister, frequently lazy, almost always predictable employment of racially informed determined chains' (xi). So this story is an experiment on how to interpret a text in which racial codes are removed and replaced by equivocal social codes. *Second*, this short story foreshadows Morrison's later novels like *Paradise* and *Jazz* with which *Beloved* shares a loose trilogy. That is, the non-disclosure and the ambiguous identity of the black character in 'Recitatif' repeats as a trope in these two novels and Morrison repeats this in order to expunge racial codes from the language of the text²³. The narrative thus produced refuses easy categorization and impedes the tendency to enter a text by marking characters racially, a tendency that has limited interpretation more than it has enabled it. Thus with 'Recitatif' Morrison begins the process of codifying points of resistance that can counter literature's co-option by a regime of power that takes racism as its linchpin and thrives on a comprehensive knowledge of its subjects, literary or otherwise.

II. Race in 'Recitatif'

'My mother danced all night and Roberta's was sick. That's why we were taken to St. Bonny's' (Morrison 1983, 247).

'Recitatif' opens with the narration of Twyla Benson. She recalls that time of her childhood when she was eight years old and was abandoned in the orphanage of St. Bonaventura, a shelter for neglected children, by her mother unable to take care of her. In that shelter she meets her roommate, Roberta Fisk, and Twyla recalls feeling 'sick to her stomach' when she first saw her. She was reminded of her 'dancing' mother's injunction that 'they never washed their hair

²³ For example, in the novel *Paradise* (NY: Knopf, 1988) begins with the sentence 'They shoot the white girl first,' and this leads to endless speculations about who the white girl is.

and they smelled funny’, and so for Twyla ‘...it was something else to be stuck in a strange place with a girl from a whole other race’ (247). The other kids rarely talk to them as they are not real orphans but dumped by parents too sick or too social to take care of them. They tease them by calling them salt and pepper. Thus the narrative from its very beginning sets up race as a crucial marker for the identities of both the children, but deftly conceals the information of their actual racial status. This racial uncertainty intensifies as the narrative progresses and Roberta and Twyla keep meeting each other almost serendipitously over the next thirty years. Consequently, most of the ‘Recitatif’ scholarship has been devoted to decoding this racial ambiguity.²⁴

In this section I will argue that preserving this racial ambiguity instead of decoding it gives the story its capacity for resistance. For the normalising powers to succeed an exhaustive knowledge of its literary characters is necessary. Therefore, Morrison’s experiment in this short fiction is to re-open race as a contested terrain by removing racial codes and replacing them with ambiguous social codes in order to ‘expose unarticulated racial codes that operate at the boundaries of consciousness’ (Abel 1993, 472). So codes like Roberta being a killer at the game of jacks, Mary’s (Twyla’s mother) green body hugging slacks and large hoop earrings, Roberta’s mother’s huge cross on her chest, Twyla’s chronic hunger, and Roberta’s taste for Jimi Hendrix do not help the reader to decode the racial identity of the characters conclusively. By withholding this crucial information Morrison disturbs the standard interpretative modes and deftly brings to light a social landscape divided along racial lines. The result is a narrative which, though infused with intimate racial details, the knowledge produced through such close

²⁴ See Elizabeth Abel, “Black Writing, White Reading: Race and the Politics of Feminist Interpretation”, *Critical Inquiry*, 19.3 (1993): 470-98; David David Goldstein-Shirley, "Race and Response: Toni Morrison's 'Recitatif,'" *Short Story* 5.1 (1997): 77-86; Ann Rayson, “Decoding for Race: Toni Morrison’s ‘Recitatif’ and Being White, Teaching Black,” in *Changing Representations of Minorities East and West*, ed. Larry E. Smith, and John Rieder (Honolulu: U of Hawaii Press, 1996): 41-46; Kathryn Nicol, "Visible Differences: Viewing Racial Identity in Toni Morrison's *Paradise* and 'Recitatif,'" in *Literature and Racial Ambiguity*, ed. Teresa Hubel and Neil Brooks (Amsterdam: Rodopi, 2002): 209-31.

documentation cannot be ‘generalized’ and instrumentalised. The interface between the ability and the inability to locate the characters racially is thus revealed as a shifting and unstable interface. This works against the projected stability of racial or other stereotypes. Therefore, race in this story becomes a supplementarity, an excess, lurking between the known and the unknown.

To further supplement the racial ambiguities of Twyla and Roberta’s identities, there is also a third person in the story towards whom the responses of even Twyla and Roberta remain undetermined: Maggie, the childlike kitchen help at St. Bonny’s. She is probably mute and deaf, but these disabilities are again left ambiguous because Maggie never talks or responds when the shelter girls tease her. As the narrative progresses and Twyla and Roberta keep meeting each other over the next thirty years, they both struggle to reconcile their memories about one particular event involving Maggie and the older ‘gar girls’ who beat her up in the shelter’s orchard. The two women argue whether or not they participated in that beating. More importantly, they cannot come to terms whether Maggie was white or black. Unlike Roberta, Twyla recalls that Maggie ‘wasn’t pitch-black, I knew’ (Morrison 1983, 259). Therefore, the racial ambiguities were not only applied to the readerly interpretation but also to the characters themselves. The anxiety ‘to know’ a character thoroughly operates both at the level of the readers and the characters in the story itself—an anxiety common to both the normalising powers and modern literary prose writing.

The inability to reconcile conflicting memories about Maggie also disturbs each of Twyla and Roberta’s remembrance of the past which thus makes memory, especially racialised memory, another contested terrain. This racial uncertainty is uniquely tied up with the figure of Maggie who holds the power to disturb the two women’s recalling of their past incidents at St. Bonny’s. So, when Twyla and Roberta try to recall an evening at Howards Johnson’s where Twyla was a waitress, each does the recalling differently:

‘Oh, Twyla, you know how it was in those days: black—white. You know how everything was.’ But I didn’t know. I thought it was just the opposite. Busloads of black and whites came into Howard Johnson’s together. They roamed together then (in the 1960s): students, musicians, lovers, protesters. You got to see everything at Howard Johnson’s and blacks were very friendly with whites in those days. (255)

This irresolution of racialised memories further deepens during those meetings when Twyla and Roberta repeatedly try to come to terms with the incident in the shelter’s orchard involving Maggie and the ‘gar girls’. In Twyla’s memory, who incidentally is also the narrator of the story, the incident was unencumbered by any violence even though the big girls laughed at Maggie’s falling and the younger ones just stood there without offering any help. But this memory again is conflicted when Roberta claims that ‘They (big girls) knocked her down. Those girls pushed her and tore her clothes. In the orchard’ (255).

This conflict in memories unfolds further as they keep meeting each other on various other occasions, but intensifies most when the two women find each other on the opposite sides of a racial strife in the form of school integration. Both their responses towards Maggie are revised once again: ‘May be I am different now, Twyla. But you’re not. You’re the same little state kid who kicked a poor old black lady when she was down on the ground. You kicked a black lady and you have the nerve to call me a bigot’ (255). This not only incriminates Twyla, who so far had a ‘non-violent’ memory of the day, into the violence inflicted upon Maggie, but the racial element brought to Maggie’s identity elevates the event into a more passionate, racial offense. Interestingly, the defense of Twyla was not exactly resisting Roberta’s allegation of her beating Maggie but resisting the ascription of race to Maggie’s identity:

What was she saying? Black? Maggie wasn’t black.

“Maggie wasn’t black”, I said.

“Like hell she wasn’t. And you kicked her. We both did. You kicked a black lady who couldn’t even scream.”

“Liar!”

“You’re the liar! Why don’t you just go on home and leave us alone, huh.” (257)

This sudden ascription of a race to Maggie’s identity by Roberta and its resistance by Twyla help preserve the ambiguity of the text which gives it the power to resist easy categorization.

The racial indeterminacy, as well as the physical muteness of Maggie, that so frustrates the two women in the story in organizing their responses towards her also operate at the level of the readers. They feel equally frustrated when racial disguises do not slip and their way into the text remains unmarked by racial stereotypes. In this, both the narrators in their attitude towards Maggie as well as the readers in their attitude towards Twyla and Roberta become ‘investigative’ as they attempt to conclude the identities of people, for whom race is crucial, from ambiguous social clues (Harries 2006; Morrison 2006, 117)²⁵. These clues can function symmetrically across races and there is none that can be concluded as characteristically belonging to either of the races. So if readers try to ascribe race to a mother who is ‘large’ and wears a cross on her chest ‘like two telephone poles’ and ‘six inches each way’; or takes away her daughter from Twyla because she belongs to another race; or wears brightly coloured and buttock-hugging slacks and brings no food for her daughter; or ‘dances all night’; or Twyla’s low-end waitress job; or Roberta’s taste for Jimi Hendrix of whom Twyla was completely ignorant and mistook it for a feminine name, these are still not conclusive markers of racial identities which can then influence and direct the interpretation of the story. As such, the readers as much as the characters of the story themselves are forced to interrogate their own assumptions about racial codes on which they rely so unquestioningly in their mutual interactions. By resisting this impulse of revealing the races of Twyla, Roberta, their mothers as well as of Maggie, Morrison challenges the way writers, their characters as well as readers have been relying on racial stereotypes to describe and arrange their responses towards black people. Race is thus revealed and reopened as a renewed surface of contest only by preventing its full disclosure in the text. The narrative thus produced prevents itself from being co-opted by the standard modes of interpretation that are normative, exclusionary and hence racist.

²⁵ See Trudier Harries, ‘Watchers watching Watchers: Positioning Characters and Readers in Baldwin’s “Sonny’s Blues” and Morrison’s “Recitatif,”’ in *James Baldwin and Toni Morrison: Comparative Critical and Theoretical Essays*, ed. Lovalerie King, and Lynn Orilla Scott (NY: Palgrave, 2006), pp. 103-120: 117.

To return to the point about literature's capacity to resist normative powers, it is imperative at this point to recall Morrison's essay 'Unspeakable Things Unspoken: The Afro-American Presence in American Literary Tradition,' later developed into *Playing in the Dark*, in connection to the present discussion on 'Recitatif.' Beginning with the 'clash and swirl' of two phonetically close words—'cannon' and 'canon'—Morrison's critique of the American literary tradition, and of canon formation in general, offers a ground breaking insight into the standard modes of representation as well as interpretation of black characters that warranty their presence, or the lack of it, in the canon. In this, the canon as a literary institution circulates certain norms whose conformity determines the value of the texts to be read, taught and passed on. 'Recitatif's' elusive and ambiguous racial categories, in resisting narrow profiling of the characters, not only complicate responses towards the text but also re-orient assumptions about literary works that do not fully comply with the normative standards of descriptions as well as interpretations. This is not to imply that a text must not aspire to be a part of the literary canon, but the canon itself undergoes a rearrangement through such texts. That is, texts like 'Recitatif' can 'effect' power, in this case the power of the canon, and perhaps this is what Morrison had meant when she asked to 'enhance canon readings without enshrining them' (Morrison 1989, 56). Perhaps this is also why, to enhance but not enshrine canon readings, Morrison writes her novel *Beloved* (1987) where she continues to resist the novel's as well as the modern powers' anxiety to closely document a subject. But this time she does so by manipulating the narrative time, and (re)writes and (re)invents the story of Margaret Garner, one that is discontinuous with the archive. *Beloved's* temporal structure 'resists' powers' total co-option by producing (literary) subjects that are abnormal, unsocial and untimely. That is, the way modern powers conceive and instrumentalise time to produce docile subjects is thoroughly manipulated by Morrison so that her subjects are born through nick or cracks in time. In effect, the novel

reaches a different plane of temporality inconsistent with the modern powers' conception of time, thus clearing another space for resistance.

III. The Time of Power, and the Power of Time

In this section I will explore modern powers' conception of time, and how it relates to subject formation to analyse later how the novel manipulates such temporal conceptions to produce 'untimely' as opposed to docile subjects. In *Discipline and Punish*, Foucault's genealogical analysis of the modern prison, he shows how linear, standardized, clock time is manipulated, calibrated and instrumentalised to produce docile subjects. Time is broken down to correspond particular human activities so that a correlation is produced. Foucault arrives at this correlation through a contrast between sovereign power and disciplinary power in the opening pages of the book. In the sovereign regime, royal power targets the criminal's body through ceremonial execution. On the other hand, in disciplinary society public torture disappears and an exhaustive time table for the prisoners takes its place. 'The prisoners' day will begin at six in the morning in winter and five in summer,' writes Foucault. 'They will work for nine hours a day throughout the year... Work and day will end at nine o'clock in winter and at eight in summer' (1977, 6). Between this start and end of the day, clock time is further divided so that each time segment correlates a certain human activity: 'At twenty minutes to eleven, at the drum-roll, the prisoners form into ranks, and proceed in divisions to the school' (6). Each signal, for example the drum-roll, is expected to trigger a particular human response. With the division of time being increasingly minute, an 'anatomy-chronological' (152) behaviour of the human body is achieved. Foucault thus admits that 'the disciplinary methods reveal a linear time whose moments are integrated, one upon another, and which is oriented towards a terminal, stable-point; in short, an 'evolutive time'' (160). Such a conception of time pre-empts formation of docile subjects. While disciplinary power is individualistic, biopower is massifying. It targets life process of individuals who are produced through disciplinary

methods. Thus, discipline and biopower supplement each other in the production of docile subjects, a docility that can be extended to literary subjects as well.

Despite the above analysis, it would be simplistic to assume that in the modern regime time is only linear and progressive. Even though in the Foucauldian oeuvre, the concern with space ruled over the concern with time, there are ample instances proving that Foucault was against a Hegelian notion of teleological time (Michon 2002).²⁶ For example, in the *Order of Things* (1966) Foucault explains that at the turn of the eighteenth and the nineteenth centuries, people began to question the lofty idea of the ‘origin’ as they became increasingly aware of the historicity of their temporal experience:

‘At the very moment when it became possible for it to denounce as fantasies the ideal genesis described in the eighteenth century, modern thought was establishing a problematic of the origin at once extremely complex and extremely tangled; this problematic has served as the foundation of our experience of time...’ (333)

This critique of the origin, sustained across the Foucauldian oeuvre, disturbs the comforting unity of time and instead reveals it as an utterly historical situation. By history, Foucault does not mean linear history. His enterprise has been called radical historicism where he investigates the effect of the idea that time is teleological following some universal scheme. During the 1970s in essays such as ‘Nietzsche, Genealogy, History,’ when the influence of Nietzsche was more determining than the earlier French historians like Braudel, Foucault engages with the concept of the ‘event’ and its explosive (not evolutive) time. That is, instead of seeking historical continuity and the lofty origin, the attention is turned towards sub-individual and dormant details as they erupt ‘untimely’ to become events. Contrary to the conception of time

²⁶ In Pascal Michon, ‘Strata, Blocks, Pieces, Spirals, Elastics and Verticals Six figures of time in Michel Foucault,’ *Time & Society* 11.2/3 (2002), 163-192, Michon writes ‘“Table of representations’ in *The Order of Things*, ‘dispersion plane of statements’ in *Archaeology of Knowledge*, ‘planning’ of town, ‘mapping’ of society, ‘panopticism’ in *Discipline and Punish*: there is in the Foucauldian texts an abundance of visual and spatial metaphors on which the commentators have insisted a lot, reinforcing, though unwillingly, the image of Foucault subjecting time to space. (pp. 163-164).

in *Discipline and Punish* as linear and evolutive, the time of the event as espoused in ‘Nietzsche, Genealogy, History’ is non-linear and eruptive that does not repeat the logic of the origin or the genesis. For Foucault, the marginalized enters history through these events. He calls such history writing *wirkliche historie* or ‘effective history.’ In a profoundly Nietzschean way, such history writing perceives time as not subjected to a transcendental or a metaphysical pole like the subject or the man. Such a time defies any synthetic logic. The ‘event’ then becomes one of singularity, one that appears at the nick or crack of (linear) time.

The conceptions of time as espoused in these two Foucauldian texts published at the same time, *Discipline and Punish* and ‘Nietzsche, Genealogy, History,’ reveals that Foucault himself directs towards a possibility of resistance. Again, it is to be recalled here that both power and resistance do not have a life without each other: ‘Resistances do not derive from a few heterogeneous principles; but neither are they a lure or a promise that is of necessity betrayed. They are the odd term in relations of power; they are inscribed in the latter as an irreducible opposite’ (Foucault 1978, 96). Observed in this way, what ‘effective history’ really does is not an exit from power, but a usurpation of power (of time) by the marginalized. It asserts the difference of the event that cannot be dissolved into an ideal continuity: ‘An event, consequently, is not a decision, a treaty, a reign, or a battle, but the reversal of a relationship of forces, the usurpation of power, the appropriation of a vocabulary turned against those who have once used it’ (Foucault 1994, 88). The ‘event’ is thus an eruption, a discharge eluding the grasp of power.

In light of the above analysis, I argue that Toni Morrison’s *Beloved* is the narrative of an ‘event’. That event is the resurrection of Beloved, a slave daughter killed by her mother in her second year of birth to prevent her return to slavery. To advance this argument, I borrow from, besides Foucault, Elizabeth Grosz’s *Nick of Time: Politics, Evolution and the Untimely* (2004) that argues that the ‘event’ is the prerogative of subjects born ‘untimely’ outside the

contingencies of linear time. The concept of the 'untimely' is particularly useful as it triggers a dialogue with Foucault's *wirkliche historie* or 'effective history' as explained in 'Nietzsche, Genealogy, History.' These effective histories are produced by subjects who so far have been silenced in normative, linear historical narratives, and can only erupt through a crack, nick, or fissure. Morrison's *Beloved* is that 'untimely' subject and the novel's temporal treatment clears a space for this event. For example, neither the readers nor the characters in the novel were prepared for *Beloved*'s arrival in the story. She appears abruptly when Sethe, Paul D. and Denver were all gone for a local carnival. When they returned, they found a twenty year old beautiful girl waiting in their porch. She was so thirsty and tired that Sethe welcomed her in. But soon the readers are given a sign that this could be Sethe's dead daughter. Immediately after seeing her, Sethe had an immense urge to urinate. 'She never made to the outhouse. Right in front of its door she had to lift her skirts and the water she voided was endless' (Morrison 1987, 62). This scene is reminiscent of Sethe's younger daughter, Denver's birth in a boat when Sethe was a runaway slave. The narrative soon moves to the actual scene of Denver's birth without a warning. In this way, one memory is placed on top of another such that there is no correspondence between story time and narrative time. The narrative is set free from the imperatives of linear time to make room for cracks to appear. *Beloved* is resurrected through those cracks, an afterlife that does not obey the forward movement of time. Rather, the past is constantly revisited, sought for renewals so that the present can be different from what it is. This constant excursion into the past is what Grosz explains as the fracturing of the present into its 'actual' and 'virtual' contents. That is, the present doubles up in time, as one it really is and as what it can be. The past is exploited to seek those contents that remained dormant and unactualized in the present. When such dormant contents erupt they become 'events'. Interestingly, this comes very close to Foucault's ideas on genealogy and effective history. What Grosz calls the 'virtual potentialities of the past' (2004, 254) are in Foucault's hands

‘entry of forces’ in which certain ‘unrealised’ errors of the past erupt in the present in a way that they are ‘unable to be mastered by the power of synthesis’ (1994, 94). The genealogist thus transforms the linear progress of time into a sort of counter memory—a totally different form of time than that found in narratives that provide uninterrupted linear accounts of cause and effects. In the next section I will analyse this treatment of time in *Beloved* in greater detail to argue how the novel’s unique temporal structure clears space for this event—the resurrection of Beloved—thus effectively the turning the novel into *wirkliche historie*.

IV. Time in Beloved

‘I was talking about time. It's so hard for me to believe in it’ (Morrison 1987, 88).

In an interview with Nellie McKay after the publication of her fourth novel, *Tar Baby*, Toni Morrison discussed the role of African oral tradition in her writings. She explained that ‘Black people have a story, and that story has to be heard. There was an articulate literature before there was print...They (these stories) are just told—meanderingly—as though they are going in several directions at the same time’ (McKay 1983, 427). Part of the reason why these stories were told meanderingly was that the storytellers were not authors themselves. In a way that is baffling for even the seasoned readers of the novel, *Beloved* offers an exemplar of this most natural narrative method borrowed from the tradition of storytelling. This bafflement, almost entirely, ensues from the novel’s unique temporal structure that thwarts any easy ordering of the story of the novel and its narrative. I borrow this classic distinction between the story and the narrative from Gerard Genette’s seminal text on narratology, *Narrative Discourse*, in which he breaks down the novel into three main typologies: story (the actual events taking place within the novel), narrative (the ordering of those events within the novel), and narration (the mechanisms of storytelling producing that narrative). In *Beloved*, the past and the present constantly collide, a collision that creates a constant tension between the story and the narrative. Therefore, my first attempt in this section will be to extrapolate the story from the narrative.

This is necessary to understand to what effects Morrison wanted to create such a tension. Lingering effects of slavery in the present cannot be free of the lingering effects of memory which will meander in a non-linear manner, contingent to pathos and anguish. Thus this split between story and narrative is necessary to accommodate such meandering movements of memory. Recalling Grosz, next I will argue that this split undercutting narrative linearity corresponds to a split in time: the present doubles up in time, between what it ‘actually’ is, and what it could ‘virtually’ be. This is another way of saying that the virtual is an underlay of the actual, thus making the past not only speculative but also eruptive. This is also reminiscent of Foucault’s conception of the ‘eruptive’ time of the event, as discussed in the previous section, which does not obey the logic of synthesis. Rather, the time of the event stands out as ‘autonomous’, free of the linear logic of cause and effects thereby provoking, as we will see, a dialogue with Genette’s narratological theory. Finally, through a close textual analysis of the novel, I will show how this constant excursion into the past clears space for the ‘untimely’ birth of *Beloved*, a resurrection that rearranges the virtual contents of the past into newer combinations so as to transform the present. As a result, Sethe is ‘invented’ as a mourning human whose motherly love is capable of embracing infanticide. By usurping the forces of time, *Beloved* thus becomes a history from below, or in Foucauldian terms, a *wirkliche historie*.

Beloved moves between two principle periods: 1850-55 (antebellum South) and 1873-74 (Reconstruction). Although the book’s past concentrates on 1850-55, Baby Suggs, Sethe’s mother-in-law’s experiences go back before 1840 when she and her last son, Halle are bought as slaves by Mr and Mrs Garner in the Sweet Home of Kentucky. In 1850 Mr Garner buys the thirteen year old Sethe to replace the ageing Baby Suggs in the kitchen. The following year Halle and Sethe are married and in four successive years the couple has four children—Buglar, Howard, *Beloved* and Denver. In 1855, Mr Garner dies and Mrs Garner invites the schoolteacher and his two nephews to manage the farm. Due their harsh treatment, Sethe’s

family plans to escape Kentucky that summer. Pregnant with Denver at the time of escape, Sethe gives birth to her by the side of Ohio River with the help of a white girl, Amy. Sethe then re-joins her children without Halle at Cincinnati. Two months after the escape, the schoolteacher arrives at their hiding swearing out a warrant that demands their return to slavery under the auspices of the Fugitive Slave Act. In a desperate attempt to save her children from slavery, Sethe tries to kill all her children but manages to kill only the two year old Beloved. In 1855, Sethe and Denver spend three months in prison for attempting to escape slavery while Baby Suggs falls sick and takes to bed. In 1862-63 Denver attends Lady Jones' 'school', in 1863-65 Denver learns about her mother's infanticide, in 1864-65 Howard and Buglar leave 124, the shorthand for the novel's setting at 124 Bluestone Road in Cincinnati, to escape the haunted spirit in the house, and in 1865 Baby Suggs dies.

The novel begins in the summer of 1873 when Paul D., one of Garner's five male slaves, arrives at Sethe's doorstep. At the time, the house was being haunted by the ghost of a two year old baby, supposedly the ghost of Sethe's dead daughter, Beloved. Paul D. manages to drive out the baby ghost and becomes Sethe's lover. On the day of carnival during that summer, a twenty year old girl calling herself Beloved arrives mysteriously at 124 and starts to live with Sethe's family. Soon Sethe is convinced that it is her dead daughter who has been reincarnated. In the winter of 1873, Paul D. comes to know about Sethe's infanticide from Stamp Paid, another male slave of Garner. Hearing this, Paul D. leaves the house. By this time, Sethe gets so involved with Beloved that she refuses to go to work and loses her job at the restaurant. Sensing the growing danger in the house, early in 1874 Denver ventures out of the house to find work with the local abolitionist brother and sister, the Bodwins. Her job was to look after the aging siblings. Just when one of the Bodwins comes to collect Denver for her first night's employment, Sethe mistakes him for the schoolteacher and tries to kill him with an ice pick.

She is stopped by Denver and the neighbourhood women. Beloved then disappears as mysteriously as she has appeared. Paul D. returns to 124 Bluestone.

The events in the actual story resemble very little, if at all, to the narrative. The novel begins in *medias res* when Paul D. in 1873 arrives at 124 Bluestone for the first time and is taken in by Sethe. Soon after Paul D.'s arrival, a thirsty and tired Beloved arrives at 124. They all start living together like one unhappy family. While Sethe is increasingly convinced that she is her reincarnated baby daughter, Paul D. is increasingly suspicious as Beloved 'Acts sick, sounds sick, but she don't look sick. Good skin, bright eyes and strong as a bull' (Morrison 1987, 67). Denver, on the hand, is also happy as she had been lonely and found a company in Beloved: 'Sethe looked at her daughter and thought, Yes, she has been lonesome. Very lonesome' (65). Overall, the beginning of the novel has the effect of creating discomfort for the readers as they are forced into the middle of something and asked to make sense of the jumps in time, place and causality. As Morrison explains in her essay 'Unspeakable Things Unspoken', she 'wanted the compelling confusion of being there as they (the characters) are; suddenly without comfort or succour from the author, with only imagination, intelligence, and necessity available for the journey' (Morrison 1989, 33). In effect, the distance between the story and the narrative is so great that a sequential, linear ordering of the events is impossible. The reader is compelled to attend to the connections and associations that those jumps and cuts in time create. In fact, Morrison here attempts to reinforce the idea that the 'untimely' birth of Beloved must take place through some sort of suddenness, and only a baffling sense of temporality could produce this effect.

As mentioned earlier, the interruption of temporal linearity plays out at the formal level as Morrison constantly manipulates the time of the story and the time of the narrative. In narratological terms, Gerard Genette in *Narrative Discourse* distinguishes between 'story' and 'narrative' (1988, 25- 27). 'Story' refers to a succession of events, real or fictitious, that are

subjects of the narrative. ‘Narrative’ on the other hand is the discourse that represents this story through a textual medium. Simply, ‘story’ is the signified or the narrative content and ‘narrative’ the signifier, statement, discourse or the narrative text itself. Each of these types has its own temporal order: the succession of events in the signified might not correspond to that in the signifier. Comparisons between these two temporal orders revealing any discordance produces what Genette calls ‘narrative anachronies’. However, narrative anachronies are one of the most traditional resources of Western literary narration. The epical custom of beginning in *medias res* with an expository return to the past has been adopted by many Western novels. A late twentieth century novel like *Beloved* too is replete with such anachronisms. But the novel’s constant shifts between the two temporal orders sometimes make it impossible to discern which event occurred first resulting in what Genette calls ‘temporal autonomy’ (85). Recalling an example mentioned earlier, when *Beloved* first appeared at 124 Bluestone, exhausted and thirsty, Sethe’s reaction was that her ‘bladder filled to the capacity...She never made the outhouse. Right in front of its door she had to lift her skirts, and the water she voided was endless’ (Morrison 1987, 61). As it went on and on, she thought that it was ‘more like flooding the boat when Denver was born.’ This scene is reminiscent of Sethe’s water breaking during her younger daughter, Denver’s birth. Denver was born in the river in a boat helped by a white girl, Amy. Chronologically, Denver’s birth occurs first in the ‘story’ but is recounted later in the ‘narrative’ producing narrative anachronism. In the ‘story’ Sethe, a pregnant fugitive, was found by a white girl, Amy who was kind enough not to send her to the slave catchers. Instead, she helped Sethe deliver Denver. When there was no hope for life, Amy and Sethe found an abandoned boat full of holes. They ‘stole’ the boat to cross over to the other side of the Ohio River. As soon as they got close to it, ‘her (Sethe’s) own water broke to join it,’ followed by an ‘announcement of labor’ (98). In a boat where water was seeping through every hole, Denver was birthed by Amy in water. These two anachronistic scenes, though held

together by the element water, apparently occur on two different temporal planes: the present of Cincinnati in 1873 (the narrative present), and Sethe's past as a runaway slave in the 1850s (the remembered past). Pages later Denver narrates the story of her birth to Beloved, her alleged sister. She hands down this story from her mother and grandmother to Beloved but interpolating it with finer details: 'And the more fine points she made, the more detail she provided, the more Beloved liked it. So she (Denver) anticipated the questions by giving blood to the scraps her mother and grandmother had told her—and a heartbeat' (92). But soon the past takes over the narrative present and Denver and Beloved are no longer present in it. Without warning the narrative goes back to the actual scene of Denver's birth with the fugitive Sethe telling Amy 'You ain't got no business walking round these hills, Miss' (92). This scene, apparently in the temporal order of the remembered past, takes over the narrative present of Denver recounting her birth story to Beloved. Thus memory not only recovers lost time but sets the narrative free from linear time. In these scenes one memory sets itself on top of another surreptitiously letting a narrative of remembered experience catch up and overtake the narrative present. Such narrative tactics leave the temporality of any event fluid and difficult to specify, fulfilling what Genette calls the narrative's capacity for 'temporal autonomy.'

This release of the text from the imperatives of linear time through the work of memory has the effect of dispersing time across spaces. That is, western conventions of time and space are 'de-temporalized' and 'de-spatialised' to accommodate issues that have historically affected black women. In such defiance, the pattern of events in the novel criss-crosses through the dimensions of time, thus enlarging the spaces they suggest. In a text where the past actively inhabits the present, western temporal and spatial dimensions are suspended to enable shifting, non-linear movements. This is best captured by the shifting presence of the house, 124 Bluestone, across the three sections of the novel—it is 'spiteful' in section one, 'loud' in section two, and 'quiet' in section three. In the essay '*Beloved: A Spiritual*' (1990), Karla FC Holloway

argues that a racial, feminist historiographical work like *Beloved*, male-centred formations of linear historical time must be replaced by something that could capture and ‘describe(s) an action in terms of its duration without a consideration of its place in time’ (Holloway 1992, 517, 524). She calls this ‘aspect’ because it replaces narrow temporal periodization with ‘duration’ of the state of being. Weeks, months, and years become irrelevant to the spite of 124. Focussing thus on the legacies of slavery, ‘aspect’ interrupts historical time by revealing that temporal linearity is not adequate to grasp the excesses of slavery.

This release of the text from linear temporal imperatives further reveals disengagement with the future. The novel’s narrative present does not direct towards a projected future, rather the analeptic and proleptic quality of temporal progression points to an unforeseen future: ‘But her (Sethe’s) brain was not interested in the future. Loaded with the past and hungry for more, it left her no room to imagine, let alone plan for the next day’ (Morrison 1987, 79). It is the present that enlarges by constantly rescuing elements from the past. Recalling Grosz here, the actual present is only a particular combination of the contents of the past, but those contents cannot be exhausted by the present alone. Traces that lie dormant or inactive in the past can be revitalised and rearranged to transform the present. This is accurately done by the work of ‘rememory’ (an enactment of the past in the present, remembering a memory), one that Morrison champions in *Beloved*. For example, the final scene of *Beloved* in which Sethe mistakes the Bodwin for schoolteacher and tries to kill him, takes an excursion into the past where Sethe was unable to kill the schoolteacher and instead kills her own baby daughter to prevent her return to slavery. This re-enactment of the past in the narrative present actually means to activate a dormant content of the past. In such a re-enactment, the past is rearranged and realigned so that a space is created for grief and mourning. According to Grosz, this is the crux of all radical politics: ‘It is precisely this un-actualized potential of the virtual that is the condition of all radical politics, which takes as its aim the transformation of the present’ (2004,

253). Morrison in the novel transforms Sethe's present by resurrecting Beloved so that she could mourn her death that she was earlier deprived of.

From a Foucauldian perspective, the narrative account of the 'untimely' resurrection of Beloved becomes a work of genealogy as espoused in 'Nietzsche, Genealogy, and History'. This brings in considerations of power at the very heart of novelistic practices. If power according to Foucault is a 'hazardous play of dominations' (1994, 83) in which various players contest for their finality, then a genealogical analysis of power means to shorten the gaze and attend to the details, chance, errors and divergence that lie 'outside of any monotonous finality' (76). That is, genealogy takes one to the realm of the virtual and dormant contents of the past and seeks those in apparently unpromising places like instincts, conscience, love and sentiments, or 'in what we tend to feel is without history' (76). It enters the site of dispersal that opposes itself from any lofty idea of origin and teleological attitude of evolution. As a result, genealogy is not only a 'haphazarding' of neat teleological events of objective histories, but also brings to light the power of errors that such neatness hides. It thus becomes a reversal of forces, in the current context, the reversal of the force of time.

In *Beloved* we find a similar reversal. By rearranging the dormant 'errors' of the past, Morrison enables a space where such errors could erupt and become events. The resurrection of Beloved is that event for she is the alleged representative of the millions of Africans who died in the Middle Passage and for whom not even a small bench by the road exists to commemorate their deaths. The afterlife of Beloved suggests a different form of time that does not obey the forward movement of time. In Morrison's work of memory in the novel, narrative time thus becomes resistant when it undercuts the linearity of traditional histories. By opening up a space for the 'untimely', Morrison challenges the practices of knowledge formations that frequently rely on an unequivocal conception of linear time, thereby turning her novel into a *wirkliche historie*.

In light of the above discussion on the power/knowledge nexus and its reliance on a linear conception of time, it is now useful to shift the focus back on subject formation. In a disciplinary society where a continuum of work and time produces docile bodies, it is necessary to question at this point how the novel breaks out of such docility, that is, how it resists. This certainly brings back those studies with which I began this chapter—that the novel too is disciplinary apparatus. That is, the documentary protocols of disciplinary power as well as the novel form of prose writing jointly function as a conjoined totality whose ultimate aim is a comprehensive knowledge of the subjects. Subjects are then controlled through this knowledge achieved by manipulating time and space. But in this novel, the abiding question is, who is Beloved? Scholars interpret her as a representative of those millions of African slaves and the novel's epigraph enables this interpretation: the novel is dedicated to the 'sixty million and more'. But there is no definitive clue that Beloved is actually Sethe's daughter. She is unknowable, a haunting spectre who had no space in the real world. Her afterlife is the only form of time she could reclaim. As such the narrative must make room for her resurrection by challenging the power of linear time. For, it is only through its cracks that she could be born, those that alter the linear continuum of time and (in) human activity. Beloved is an incomprehensible subject, in Foucauldian terms perhaps that 'abnormal' which erupted to put history under pressure. Thus *Beloved*, far from being powers' apparatus, codifies points of resistance and effectively produces a narrative of disruption.

V. Conclusion

In conclusion I will add that Beloved is Morrison's only character that has a traceable afterlife that maps the ontological movement of the living dead through a backward, counter-clockwise movement of standard linear time. Very creatively, the novel presents a revised concept of death in which death is not necessarily an end of life implying only a forward movement of time, but a forceful process commencing in the present but protractedly receding into the past.

As explained through Genette, Foucault and Grosz through their respective concepts of ‘temporal autonomy’, ‘event’ and the ‘untimely’, the aleatory dimension of each of these concepts rearranges contents of the past into a different narrative present. In such a rearrangement, *Beloved* relegates future to no time and delimits the forward movement of time. This is reminiscent of the remark with which I started the chapter: ‘Today is always here, tomorrow never’ (Morrison 1987, 256). Denver should learn that only the present and the past count as actual time, not the future. So she must undergo the painful process of hair combing just today.

Through such counter-clock wise spatialization of traditional time, *Beloved* reveals how the novel can challenge the power regime for which such linearity is crucial in the production of docile subjects. The ‘untimely’ resurrection of Beloved goes against such docility producing an excess which spills over powers’ synthetic logic. From the side of law, Ben Golder and Peter Fitzpatrick identify this excess as law’s fictional side and its implicit similarity to literature. From the side of the novel, this excess reveals other potentialities of resistance. For example, from being only a property in the archives, Margaret Garner who inspired Morrison to write *Beloved*, is ‘invented’ as Sethe in the novel, a full human grieving the death of her child. This journey from property to humanity, in other words from archive to fiction, reinforces the novel’s capacity to resist archive’s enforced identity of Garner as a property, a topic to be taken up in the next chapter.

Chapter Three: Slavery in the Archive: The Fugitive Case of Margaret Garner

Introduction

In literary studies, Toni Morrison's *Beloved* (1987) renewed interest in the 1856 fugitive case of Margaret Garner, a Kentucky-based slave who attempted to kill her children to save them from slavery. In historical studies, Steven Weisenburger's *Modern Medea* (1998) was the first archival study that sought to reconstruct the life of Margaret Garner from the little documentary records available on her. However, the paucity of those records led Weisenburger to provide a cultural history of Margaret Garner's fugitive trial centered around her canonization into a cultural icon in pre-Civil War America. Weisenburger argues that Garner's transition from property to myth eventually removed her from public consciousness as neither the discourse of property nor of culture took into account her actual personhood. But Weisenburger's detailed procedural analysis of Garner's trial foregrounded important legal dilemmas of the time — for instance, the contention between the law of precedence and the constitutionality of the Fugitive Slave Act of 1850 — as well as threatened robust cultural assumptions — for instance, the image of a mother whose love embraced infanticide. In this, Weisenburger is consistent, as I will discuss progressively in this chapter, with Morrison's *Beloved* (and with the tradition of neo-slave narratives in general) in tearing off many masks.

While *Modern Medea* is a secondary source of narrative history that fleshed out the systemic ways — cultural, legal, historiographical — in which Margaret Garner's ordinary life was 'nonnarratable', Mark Reinhardt's *Who Speaks for Margaret Garner?* (2010) collects and arranges primary sources from the Garner archive — mainly newspaper coverages of Garner's fugitive trial — that still 'retains its power to disturb' (Reinhardt 2010, xii) traditional notions of truth and factuality established by the law and the archive. Departing from Weisenburger's

focus on the life histories of the Garners in their Kentucky plantation, Reinhardt focuses on the contested meanings of Garner's act of killing her own daughter imposed by partisans on both sides of the Fugitive Slave Act of 1850. That 'their story is narrated through familiar genres and stock characters, taking much of its texture, even its political meaning, from the language and techniques of melodrama and sentimental fiction' and thus 'Turned into national symbols, they were spoken about and spoken for' (Reinhardt 2010, 3), Reinhardt foregrounds the inconsistencies antebellum sources in general posit for historical analysis. As such, those inconsistencies are still gaping open beckoning newer approaches to sew 'a layer of flesh onto a figure who has been rendered an apparition by the sources ... and a voice that had been silenced' (Taylor 2016, 5).

Toni Morrison's *Beloved* re-opens Garner's life, based very little on the Garner archive, through fiction. Imaginatively reconstructing Garner's 'interior life' (Morrison 1995, 91), Morrison attempted to establish her human half because the archive attested only to her propertied half. Though recent anthropological turns in archival studies²⁷ have turned attention to the re-deployments of documents past their intended uses so that subjects of previous archival gaze could appropriate archive's logic to reclaim their sovereignty and agency, Karla FC Holloway in *Legal Fictions: Constituting Race, Composing Literature* (2014) contends that slave archives and narratives still root back to the constitutional origins of property, contract, and evidence (Holloway 2014, 7). The modern practice of establishing truths through the archival route is thus less relevant for a slave who is only viewed as property by the archive. In *The Historiographic Perversion* (2009) Marc Nichanian, in the context of the Armenian genocide, argues that the archive has a perverse side of destroying its own evidence, of going against its own documentary impulse — in this case, the prosaic, undocumented human life

²⁷ See Catherine Trundle, and Chris Kaplonski, 'Tracing the Political Lives of Archival Documents', *History and Anthropology*, Vol. 22, No. 1 (2011), pp. 407-414.

under slavery. That scant or no records available on the humanity of slaves mean that their humanity as a historical truth has not been fully established yet. To spill over the bounds of the archive and its ‘juridico-historical’ function, documents in the archive must be re-deployed so that they may enter another jurisdiction, that of the fiction. So Nichanian, drawing upon a few post-Holocaust thinkers like Theodor W. Adorno, Jacques Derrida, and Emmanuel Levinas and their philosophical discussions of race, calls fiction as ‘history’s paradigmatic other’ (Nichanian 2009, 217) in cases where the archive has corrupted historical truths by negating them.

Through Margaret Garner’s archive and Toni Morrison’s *Beloved*, this chapter will explore archives’ excesses, in other words, the spillage of the archive onto fiction. It will analyze *Beloved’s* re-deployment of Margaret Garner’s testimony in court, her only first-person narration in the archive, to enable another subject formation as a mourning and healing mother in fiction. Towards this, the chapter will follow the following stages. First, it will establish the historical context of Margaret Garner’s trial to broadly understand the contours of the fugitive slave trials in antebellum America through select legal precedents. In light of this juridico-historical as well as literary context, the second section will focus on the Garner archive treating its characteristic inconsistencies and informalities as fiction’s playing ground. It will show how Margaret’s testimony was pre-ordained to corruption by the law and the archive because both accounted only for her propertied self and not her personhood. Indicating the necessity of freeing Garner’s testimony from the discourse of property law, the third section will outline the twentieth-century neo-slave narratives tradition that – free from the earlier slave narratives’ burden of publishing through white editors and targeted toward white readers – had been rehabilitating slave testimony in fiction through the imaginative and speculative deployments of archival details. This section will help transition to the fourth and final section of the chapter that will analyze *Beloved’s* deployment of the Garner archive. In this foregrounding of the

archive's limits and fiction's transgressions of them, the chapter will conclude that Garner's 'interior life' as imagined up in *Beloved*, is in 'excess' of the Garner archive not ultimately containable by the governmental rationality of literary genres or legal documentation.

I. The Trial of Margaret Garner: The Juridico-Historical Context

This section will discuss the juridico-historical context of Margaret Garner's trial that took place in Ohio in 1856 for a period of twenty-eight days, the longest ever fugitive trial before the Civil War. The juridico-historical context will help establish the contours of fugitive trials in the decade before the Civil War, focusing on how these trials were conflicted between anti-slavery morality and the constitutionality of the Fugitive Slave Act, a conflict emblematic of the tension between state sovereignties and the logic of comity in antebellum America²⁸. In doing so, the juridico-historical context will also reveal how gothic and sentimental fiction of the time often became touchstones to interpret civil laws.²⁹ Anti-slavery lawyers often used passionate excerpts from anti-slavery fiction to make a case for the unconstitutionality of the Fugitive Slave Act (for example, Garner's lawyer John Jolliffe frequently used the metaphor of Virginius from James Sheridan Knowles' play *Virginius: A Tragedy in Five Acts* (1820)); and fugitive slaves often became the fictional counterparts of anti-slavery novels (for example, Garners' lawyer John Jolliffe's heroines in his novels *Belle Scott; Or, Liberty Overthrown! A Tale for the Crisis* (1856) and *Chattanooga* (1858) are based on Margaret Garner). The entwined nature of the period's law and literature indicated that they both lacked evidence of the interior lives of the fugitive slaves. The law and the archive together viewed the slave as property, while their humanity could only lie in the realm of speculation and fiction.

²⁸ For a compelling discussion on slavery and the logic of comity, see Paul Finkelman, *An Imperfect Union: Slavery, Federalism and Comity* (Chapel Hill: The University of North Carolina Press, 1981).

²⁹ For detailed discussions on the role of American gothic in the depictions of African slavery, see Teresa Goddu, *In Gothic America: Narrative, History, and Nation* (New York: Columbia University Press, 1997); and Cindy Weinstein, 'The Slave Narrative and Sentimental Literature', in *The Cambridge Companion to African American Slave Narrative*. ed. Audrey A. Fisch (Cambridge and New York: Cambridge University Press, 2007): pp. 115-134.

This juridico-historical context of Margaret Garner's trial will focus on three major areas – first, the legal framework erected by the anti-slavery lawyers by obtaining writs of habeas corpus to delay the fugitives' inevitable return to slavery. Second, the central legal questions of the major precedents and subsequent case laws in Margaret's trial, namely, *United States v. The Ship of Garonne* (1837); *Strader v. Graham* (1844-51); the case of Rosetta Armstead (1855); *Dred Scott v. Sanford* (1857); and *Ableman v. Booth* (1859) to show how transit cases did not have the power to emancipate slaves. Finally, the necessity of a state forum to manipulate conditions under which an owner could not reclaim a runaway slave, for example, the exceptional case of Rosetta Armstead.³⁰

Taken altogether, the section aims to reveal the desperate courtroom strategies of anti-slavery lawyers to counter the pro-slavery law of precedence, the procedural hazards to liberate slaves, and the acceptance of state sovereignties insofar they are pro-slavery. Margaret Garner's protracted trial at the historical juncture of a nation irrevocably progressing towards a Civil War throws up questions of many legal conundrums, chief among them being the contradiction between the rule of law and the moral law of universal freedom.

II A Trial in two Acts: Habeas Corpus and the Fugitive Slave Act of 1850

On 28th January 1856 Margaret Garner, a female slave of owner Archibald K. Gaines attempted to escape slavery from their Kentucky plantation with her husband, Robert, his parents, and their four children to the free soil of Cincinnati, Ohio, and ultimately to Canada via the infamous Underground Railroad.³¹ But they were apprehended the very next day when their owners arrived at their Cincinnati hiding, swearing out a warrant issued by a federal

³⁰ For scholarly accounts of the case, see Robert Cover, *Justice Accused: Anti-Slavery and the Judicial Process* (New Haven: Yale University Press, 1975): pp. 183-44; and Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1981): pp. 175-77.

³¹ The escape, the murder, and the subsequent legal trial of Margaret Garner were covered on a daily basis by *The Cincinnati Enquirer* and *The Cincinnati Gazette*, the two leading local dailies of Cincinnati. The narrative in this chapter is largely compiled from the coverage of these two local newspapers.

commissioner John Pendery. In a desperate attempt to save her children from returning to slavery, Margaret tried to kill all of them but managed to slit the throat of her two-year daughter, Mary. The federal marshals immediately detained Margaret's family at the local Hamilton County jail – for escape from slavery (not the murder of the child) – under the aegis of the Fugitive Slave Act of 1850 that empowered owners to pursue slave properties across state borders if they could produce certificates of their ownerships.³²

Margaret's detention broke a dispute between the federal marshals and the state officials of Ohio, many of whom were anti-slavery lawyers, over the issue of rightful jurisdiction of the fugitives' custody. As a federal statute, the Act empowered commissioners to issue arrest warrants, marshals to arrest fugitives without public interference, and owners to reward commissioners with ten dollars if they ruled in their favor, compared to five dollars if freed the slaves³³. In comparison, the anti-slavery lawyers could only advance the 'free soiler' argument based primarily on moral grounds to claim the fugitives' emancipation on free soil³⁴. Through procedural analyses of select precedent cases, the next sub-section will highlight that the 'free soiler' argument had little sway in fugitive slave trials when compared to the constitutionally guaranteed Fifth Amendment property rights of the slave owners³⁵.

³² *Prigg v. Pennsylvania*, 16 Peters 539, 613 (1842). See also, Section 9 of The Fugitive Slave Act of 1850 that states 'That, upon the affidavit made by the claimant of such fugitive, his agent or attorney, after such certificate has been issued, that he has reason to apprehend that such fugitive will be rescued by force from his or their possession before he can be taken beyond the limits of the State in which arrest is made, it shall be the duty of the officer making the arrest to retain such fugitive in his custody, and to remove him to the State whence he fled, and there to deliver him to said claimant, his agent, or attorney.' Full text of the Act cited in Mark Reinhardt, *Who Speaks for Margaret Garner?* (Minneapolis and London: Minnesota University Press, 2010): pp. 268-274.

³³ Section 8 of the Act states '...and in all cases where the proceedings are before a commissioner, he shall be entitled to a fee of ten dollars in full for his services in each case, upon the delivery of the said certificate to the claimant, his agent or attorney; or a fee of five dollars in cases where the proof shall not,...' Cited in Mark Reinhardt, *Who Speaks for Margaret Garner?* p. 272.

³⁴ *Commonwealth v. Aves* 35 Mass. 193, 18 Pick. 193 (1836).

³⁵ The Fifth Amendment clause to the U.S. Constitution states 'No person shall...be deprived of life, liberty, or property without due process of law'. A Due Process Clause prevents random deprivations of 'life, liberty, or property'.

The next strategy of the anti-slavery lawyers was to delay the, often inevitable, outcome of the fugitives' return to slavery by obtaining a writ of habeas corpus to challenge the detention of the fugitives by federal marshals on free soil. On informal grounds, the delay could mean arranging for passage to Canada through the Underground Railroad. On legal grounds, such a writ of habeas corpus was to foreground the sovereignty of state laws or the 'doctrine of states' rights' that empowered individual states to interpret the Constitution and limit federal encroachment³⁶. In Margaret's case, her lawyer John Jolliffe obtained this writ of habeas corpus from the district probate Judge Burgoyne, and while that writ was waiting to be heard at the court of Judge Humphrey Leavitt on February 26, Jolliffe went a step ahead to obtain an indictment for murder charge against Margaret from the same Judge Burgoyne for killing little Mary. The murder indictment was expected to further prolong the family's stay in Ohio with the possibility of either illegal escape to permanent freedom to Canada or an Ohio state court holding the murder trial where local laws would prevail³⁷. Thus, starting with habeas corpus and then the murder indictment, a legal framework was erected to keep Margaret's family on free soil for the longest possible time in a desperate attempt to enforce state sovereignty during times of increased federal supremacy in the form of the Fugitive Slave Act. In other words, erecting this legal framework was necessary during times when the threat of nationalized slavery loomed largely.

On the hearing of Margaret's family's writ of habeas corpus on February 26, U.S. District Judge Humphrey Leavitt rejected it finding no basis for Ohio to detain the fugitives³⁸. The Slave Act of 1850 being a federal statute, the federal marshals had full authority to uphold

³⁶The 10th Amendment to the U.S. Constitution, the Bill of Rights, reserves for the powers of the states 'not delegated to the United States by the Constitution, nor prohibited by it to the States.'

³⁷ As John Jolliffe would later quote Robert Garner, Margaret's husband, in court that as a family they would all "go singing to the gallows" rather than return to slavery. Quoted in Steven Weisenburger, *Modern Medea: A Family Story of Slavery and Child-Murder from the Old South* (New York: Hill and Wang, 1998): p. 279.

³⁸ For a full summary of Leavitt's decision on the writs of habeas corpus, see *Ex parte Robinson* 20 Federal Cases (1856): pp. 965-969.

it and detain the fugitives for escaping their due service from their slaveholding state, Kentucky. Despite personally opposing slavery, Leavitt was thus forced to defend the constitutionality of the Act which was often a legal conundrum faced by anti-slavery judges at the time – the conflict between constitutionality of the Act and anti-slavery morality³⁹.

Next, in the hearing of the owners' application to recover their slaves on the same date of February 26, Judge Pendery ruled in favor of the owners remanding Margaret's family to slavery⁴⁰. Pendery's dismissal of Jolliffe's 'free soiler' argument was based on two major precedents – *United States v. The Ship of Garonne* (1837), and *Strader v. Graham* (1844-51). Both the precedents dealt with slaves transiting through free soil to another slaveholding state. While *Garonne* reinforced the owner's right to pursue their slave properties across state borders, *Strader* reinforced the dismissal of slaves' right to freedom if they had voluntarily returned with their masters from free soil to the slaveholding state. In the next sub-section, the procedural details of not only these two precedents but also the subsequent case law of Dred Scott will help establish the contours of fugitive slave trials in antebellum America within which Margaret's trial can be situated, foregrounding the facts that slave transit cases were insufficient precedents to emancipate existing slaves, and then that African-Americans were not federal citizens. In short, there were no laws to counter the Fugitive Slave Act, emancipate slaves, and declare them American citizens.

³⁹ 'Humphrey Howe Leavitt (1796-1873), a federal judge from 1834 to 1871, was at this time judge of the U.S. district court in Cincinnati. Despite personal sentiments against slavery, he upheld the constitutionality of federal fugitive slave laws.' Cited in John Niven ed. *The Salmon P. Chase Papers Volume 1 Journals, 1829-1872* (Kent, Ohio: Kent State University Press, 1993): p. 287.

⁴⁰ See 'The Fugitive Slave Cases: Decision of Commissioner Pendery: The Fugitives remanded back to Slavery'. *Cincinnati Daily Gazette*, February 27, 1856. Full coverage is also cited in Reinhardt, *Who Speaks for Margaret Garner?* pp. 113-118.

i. **Legal precedents: *United States v. The Ship of Garonne*⁴¹; *Strader v. Graham*⁴²; & The habeas corpus of Rosetta Armstead**

Garonne was a French ship libeled in 1837 by the Louisiana Court of Appeals under the provisions of “An Act to Prohibit the Importation of Slaves into any Port or Place Within the Jurisdiction of the United States” from and after January 1, 1808⁴³. The ship was carrying a slave woman named Priscilla from Havre to New Orleans. The central legal question of the case was whether a slave after being transported out of the U.S. could be readmitted into the U.S. as a slave again. The court ruled in favor of the owner, Mrs. Smith as well as the ship Garonne because the status of Priscilla as a slave never changed whether in New Orleans or in Havre – she had the relevant passport to allow her back into the U.S. after her temporary sojourn to France. More importantly, the passengers’ list of Garonne compiled by the captain of the ship identified her as a slave. At the time, declarations of the captain about the transactions of the vessels were considered competent evidence of the voyage (Curtis 1855, 342-344). So, neither Garonne nor Mrs. Smith committed any offense in intending to hold Priscilla a slave throughout her journey back and forth from the U.S. The 1808 Act of Congress prohibited the introduction of new slaves within the jurisdiction of the U.S. from foreign lands. It did not quite interfere with the owners’ Fifth Amendment constitutional right to private property if those people of color were already slaves and intended to be held as such in the future. Priscilla’s passport and Garonne’s passenger list confirmed this intent. Therefore, the 1808 Act of Congress did not mean the emancipation of existing slaves due to temporary sojourns to free lands with their masters. Thus, a slave was always a slave according to the laws of the slave-holding state.

⁴¹ *United States v. the Ship Garonne, William Skiddy and others*, 36 U.S. 11 Pet. 73 (1837)

⁴² *Strader v. Graham*, 51 U.S.10 How. 82 (1851).

⁴³ “Documents in Law, History, and Diplomacy.” *The Avalon Project*. New Haven: Lillian Goldman Law Library, 2008. https://avalon.law.yale.edu/19th_century/sl004.asp.

If the central legal question for *States v. The Ship of Garonne* was the owners' right to retain their slaves across country borders, for *Strader v. Graham* (1844-51) it was the owners' right to recapture fugitive slaves across state borders within the U.S. Simply put, both questions involved whether temporary visits to free states, within or outside the U.S., as a fugitive or with the consent of their masters, made the slaves automatically free. *Strader v. Graham* involved a certain Dr. Christopher Graham of Kentucky and his three mulatto slaves who were trained musicians in Graham's holiday resort at Harrodsburg. The slaves' musical training meant they had good 'value' because of their talent and musical instruments. They were 'scientific' musicians trained in music theory in the free states of Ohio and Indiana. However, Graham's slaves did obtain permanent freedom in Canada via Cincinnati after escaping from a steamboat named Pike and were irrevocably lost to the owner. So, Graham filed a suit against one of the owners of the steamboat Pike, Jacob Strader based on the 1824 Kentucky statute. This statute made owners, masters, and the boats responsible for a slave escape if taken 'out of the limits of the state'⁴⁴ without the owners' permission. The suit amounted to almost 3000\$ including the cost of the musical instruments, and Graham's earlier travel expenses up and down Canada to persuade the slaves in vain to return to slavery. The defendants advanced the 'free soil' argument but lost because federal statutes prevailed settling the damage at 1000\$. But Graham was not satisfied with the settlement as he considered the amount too little compared to the evidence of his ownership of the slaves. So, both parties requested a fresh trial at the Kentucky Courts of Appeals, the state's highest and the only appellate court.

In the Kentucky Court of Appeals, Judge Thomas Marshall ruled in favor of Graham stating that voluntary returns of the slaves to their plantations from free soil made them slaves again. Departing from the earlier *Rankin v. Lydia* (1820)⁴⁵ where the Kentucky Court of

⁴⁴ 1824 Ky. Acts 406-07. Quoted in Robert G. Schwemm, "*Strader v. Graham*: Kentucky's Contribution to National Slavery Litigation and the *Dred Scott* Decision", *Kentucky Law Journal* 97, no. 3 (2009): 362.

⁴⁵ *Rankin v. Lydia*, 9 Ky. 2 A.K. Marsh (1820)

Appeals had ruled in favor of the slave Lydia on the grounds that her master's decision to take permanent residence in the free state of Indiana had made Lydia permanently free, the same court ruled in favor Graham on grounds that temporary sojourns to free territories did not make the slaves free, unlike Lydia. The defendants or the owners of Pike next filed a 'writ of error'⁴⁶ in the U.S. Supreme Court on grounds whether the state courts had the ultimate power to determine the permanent status of the slaves. But the Supreme Court Chief Justice Robert Taney, a one-time slave owner, rejected the defendants' claim on grounds that the Supreme Court did not have the jurisdictional power to review the decision of the said state court. Taney's decision was instrumental in establishing total state power of the slave-holding states (Schwemm 2009, 406-411)⁴⁷. This was now 1851, and the constitutionality of the Slave Act still did not merit discussion. Slavery was yet to become a moral issue. Federal supremacy was still a threat to anti-slavery morality.

Increased federalism, at the same time, meant a more pressing necessity to secure a state forum in order to manipulate conditions under which a slave owner could not invoke the Slave Act, and organize strategies to counter-argue the conflictual relation between the law of precedence and the emancipation of slaves. One such rare example was Rosetta Armstead⁴⁸. In 1855, Rosetta Armstead, a child of sixteen and a property of a Louisville-based Episcopal clergyman named Reverend Henry M. Dennison, was sought for release by the antislavery forces of Ohio when she was brought to Columbus. After his wife's death, Dennison hired out young Rosetta to a certain Dr. Miller as a nurse to the latter's little girl in Virginia. But the

⁴⁶ In American law, a 'writ of error' is submitted to the Supreme Court by an appellate court to review, correct, or reverse the judgment of a lower court.

⁴⁷ For a journalistic account of the Strader case and Taney's decision, see 'Important Slave Case Decision', *Cincinnati Daily Enquirer*, Jan. 14, 1851, p. 2.

⁴⁸For scholarly accounts of the case, see Robert Cover, *Justice Accused: Anti-Slavery and the Judicial Process* (New Haven: Yale University Press, 1975): pp. 183-44; Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1981): pp. 175-77; and J. Blaine Hudson, *Fugitive Slaves and the Underground Railroad in the Kentucky Borderland Slaves* (Jefferson, North Carolina, and London: McFarland & Company, Inc., Publishers, 2006): pp. 141-143.

doctor had to travel by rail and stopped over at Columbus as the Ohio River was frozen. Soon the news of a slave girl's arrival on free soil spread and a writ of habeas corpus was immediately filed by a colored Baptist minister named Reverend Wm. B. Ferguson at the Probate Court. Dr. Miller, now in charge of Rosetta, wanted to wait for Dennison but in the meantime, Rosetta declared that she intended to remain free in Ohio. Apparently, on her way to Cincinnati, a colored fellow man informed Rosetta of her right to be free in Ohio, to which she had expressed consent (Hudson 2002 142). The probate court appointed Rosetta a guardian, Mr. Vandyke (or VanSlyke), and while she was at his place Dennison hastily arrived to persuade her to return to slavery. Surprisingly, Dennison first honored her desire to remain in freedom as an employee of Dr. Coulter. However, probably because Dennison changed his mind soon after, Rosetta was re-arrested by a federal marshal on charges of being a fugitive from service under the aegis of the Fugitive Slave Act of 1850. The guardian in turn obtained another writ of habeas corpus from the state court and the child was released again. In the end, Rosetta was duly freed as the federal commissioner, John Pendery announced Rosetta was not a fugitive and cannot be reclaimed as a slave through the Act. She was brought to Ohio with the consent of her master, or to whoever his master has entrusted her charge.

What Rosetta's case proved was that, even though the federal power reigned over state courts when it came to retaining the integrity of the slave institution, it was still necessary to secure a state forum for at least the following reasons – first, it permitted the testimony of the alleged fugitive; second, the benefit of a guardian in the case of a minor; third, if those testimonial facts established that the alleged fugitive did not escape from service but was voluntarily brought to free soil, the commissioner, however pro-slavery in their opinions, would be compelled to free them out of respect for the rule of law; and fourth, state proceedings could prolong the matter during which arrangements could be made to ensure passage to freedom for the slave (Cover 1975, 184). Thus, it was imperative to secure a state forum not

only to assert state sovereignties during times of threatening federalism but also that a state forum could maneuver federal laws despite the latter's reigning supremacy. As will be seen in the next section on Margaret Garner's trial, the same route of securing a state forum was taken in a desperate attempt to emancipate her by lawyer John Jolliffe in the court of the same commissioner as Rosetta's, John Pendery.

ii. Post-Strader, Graham, and Rosetta Context: *Dred Scott v. Sanford*⁴⁹ &

***Ableman v. Booth*⁵⁰**

That the slaves always remained slaves according to the laws of the slave-holding states would be a key point in the *Dred Scott v. Sanford* (1857) case. Scott was a Virginia-born slave sold to an army surgeon John Emerson at St. Louis, Missouri. He frequently accompanied Emerson to Illinois and Wisconsin, states that were declared free under the Missouri Compromise of 1820⁵¹. Scott became Mrs. Emerson's slave after the army surgeon's death, and in 1846 Scott along with his wife claimed freedom from Mrs. Emerson's services at the St. Louis Circuit Court on grounds of the time spent in free states for several years with Mr. Emerson. In 1850, the Circuit Court ruled in favor of Scott but in 1852 Mrs. Emerson appealed the judgment to the Missouri Supreme Court which overruled Circuit Court's decision and remanded Scott to slavery. By this time, *Strader* had already laid the jurisdictional precedent of non-interference with the state court judgments because of which Scott could not appeal his judgment to the Missouri Supreme Court. Thus, having declared a permanent slave under the Missouri law, Scott's next move was to file a federal suit in the U.S. Federal Court in St. Louis against Mrs.

⁴⁹ *Scott v. Sanford*, 60 U.S. (19 How) 393 (1857)

⁵⁰ *Ableman v. Booth*, 21 Howard 506 (1859)

⁵¹ The Missouri Compromise of 1820 attempted to end slavery in the state of Missouri with a further clause to emancipate existing slaves if they have reached the age of 25. The Compromise was the beginning of prolonged sectional strife between the North and the South over the issue of slavery. For a scholarly account of the Compromise and its role in the American Civil War, see Joshua Michael Zeitz, 'The Missouri Compromise Reconsidered: Antislavery Rhetoric and the Emergence of the Free Labor Synthesis'. *Journal of the Early Republic* 20, No. 3 (2000): pp. 447-485.

Emerson's brother, a New York-based John Sanford, now responsible for the Emerson estate. This suit was possible because of the federal court's diversity jurisdiction—a provision where a federal court can hear cases in which plaintiffs and defendants are from different states, in this case, Missouri for Scott and New York for Sanford.

On March 6, 1857, the final decision, principally authored by U.S. Chief Justice Taney went against Scott⁵². It stated that the U.S. federal court had no diversity jurisdictional power because to invoke the diversity provision, the claimant must be a U.S. citizen first, and being a state citizen (of Missouri) did not necessarily establish the former. Thus, Taney rejected Scott's claim arguing that he or African Americans could 'never' become citizens of the U.S. Next, on whether Scott was still a slave under the Missouri law, Taney repeated his judgment in the *Strader* case—that voluntary and temporary sojourns with masters to free soil did not make slaves automatically free.

In the conflict between state power biased towards slave-holding state laws and the federal merit of slavery, the constitutionality of the Slave Act never became the central legal question that could actually counter the impasse of the law of precedence in conflict with the right to freedom. However, the first moment of this challenge to the constitutional authority of the Slave Act took place in 1854 in the *Booth v. Ableman* case involving a Kentuckian fugitive Joshua Glover recaptured by his owners in Milwaukee, Wisconsin. Sherman Booth, a local abolitionist and the editor of the newspaper 'Wisconsin Free Democrat', was one of the many anti-slavery forces that resisted Glover's return to slavery but was arrested by federal marshals. As was the common legal strategy of the time, Booth filed a writ of habeas corpus over his wrongful detention by one federal marshal named Stephen V. Ableman. For the first time, the

⁵² Of the voluminous scholarly works on Dred Scott, see the latest Kelly M. Kennington, *In the Shadow of Dred Scott: St. Louis Freedom Suits and the Legal Culture of Slavery in Antebellum America* (Athens: The University of Georgia Press, 2017): pp. 172-174 for a competent summary of Taney's decision on Scott and its implications on African-American citizenship rights.

Wisconsin Supreme Court ruled the Slave Act of 1850 unconstitutional which meant the question of its violation by Booth was redundant. Booth, though granted bail, was contested again by Ableman at the U.S. Supreme Court headed by Taney. While Booth's attorney made a case for the Acts' unconstitutionality in an attempt to overturn the *Prigg v. Pennsylvania* (1842) judgment (that allowed owners to pursue their slaves across state borders without any interference from the law or the public), Taney rejected Booth's writ of habeas corpus against Ableman at the Wisconsin Supreme Court. For the first time, state courts were prohibited to issue writs of habeas corpus against federal marshals, and Booth was re-arrested. By then it was 1859 with a Civil War brewing over increased federalism encroaching state rights that advocated freedom from slavery.

Thus, considering the fugitive trial cases from 1837 (*Strader*) to 1859 (*Booth*), the historical-legal context so established signals the eventual inevitability of Margaret Garner's trial outcome, to be discussed in detail in the next section. Cases before and after Garner's offer the landscape where legal conundrums throw up questions of the constitutionality of laws, and the moralities of the universal right to freedom. The section thus followed the gradual dismantling of the legal framework erected by anti-slavery lawyers to rescue slaves, most significant among them being the prohibition of the issue of writs of habeas corpus by state courts that could prolong slaves' stay on free soil. This was followed by a simultaneous endowment of power on pro-slavery state laws to declare the permanent status of slaves and a divesting of power of anti-slavery state laws through increased federal supremacy. In this contest between state and federal laws, the logic of comity favored the sovereignty of pro-slavery state laws than the sovereignty of anti-slavery personal liberty laws.

I.II The Trial of Margaret Garner

Margaret Garner's trial in 1856 can be situated within two key historical moments in the legal history of antebellum America – the *Strader*, and the *Dred Scott* cases⁵³. The *Strader* case had already laid the legal precedence of declaring slaves permanent under the laws of the slave-holding states irrespective of whether the slaves had temporarily traveled to the free soil. On the other hand, *Dred Scott* would soon declare that African-Americans could never be federal citizens and no habeas corpus issued by state courts could withhold a fugitive slave from returning to bondage. Between these two key historical moments, Margaret's protracted trial became a battlefield where the state and the federal laws fought for each other's sovereignties. This battle was fought out in the period's newspapers that often functioned as political organs expressly giving partisan views. *The Cincinnati Gazette* (also called *The Cincinnati Daily*, and *Cincinnati Daily Times*) and *Cincinnati Daily Enquirer* were the two major newspapers extensively covering the Garner trial for twenty-eight days and beyond. While the *Enquirer* was a pro-slavery newspaper with greater political influence, the *Gazette* was its major anti-slavery rival in Cincinnati. Reinhardt writes, 'The editorial page had not yet emerged as a wholly separate, clearly demarcated section of the paper, and the idea of ideology of journalistic 'objectivity' was still well in the future.' (Reinhardt 2010, 29).⁵⁴ Because of the absence of journalistic standards, expressing partisan values was not the only issue, factuality

⁵³ For a comprehensive reading on *Dred Scott*, see Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (NY: Oxford University Press, 1978); Walter Ehrlich, *They Have No Rights: Dred Scott's Struggle for Freedom* (Westport, CT: Greenwood Press, 1979); Don E. Fehrenbacher, *Slavery, Law, and Politics: The Dred Scott Case in Historical Perspective* (NY: Oxford University Press, 1981); Paul Finkelman, *Dred Scott v. Sanford: A Brief History with Documents* (Boston: Bedford Books, 1997); Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil* (Cambridge: Cambridge University Press, 2006); David Thomas König, Paul Finkelman, and Christopher Alan Bracey, eds. *The Dred Scott Case: Historical Perspectives on Race and Law* (Athens: Ohio University Press, 2010); Earl M. Maltz, *Dred Scott and the Politics of Slavery* (Lawrence: University Press of Kansas, 2007).

⁵⁴ For scholarly works on nineteenth-century American journalism, see Michael Schudson, *Discovering the News: A Social History of American Newspapers* (New York: Basic, 1978): pp. 4-5; and Hazel Dickens Garcia, *Journalistic Standards in Nineteenth-Century America* (Madison: University of Wisconsin Press, 1989): pp. 32, 89. For a discussion on the relationship between the American Civil War and the evolution of editorial policies, see the latest David B. Sachsman, S. Kittrell Rushing, and Roy Morris Jr., eds. *Words at War: The Civil War and American Journalism* (West Lafayette: Purdue University Press, 2008).

too was. As the Garner archive will show, there were inconsistencies in the most basic details of the case. For example, the sex of the murdered child was reported as male – ‘*His throat was cut from ear to ear* (italics original) (Reinhardt 2010, 55) – in one of the earliest reprints of the case by the *Louisville Daily Courier*.

The story of the Garners’ escape and the eventual killing of the child was first published on the 29th and 30th January 1856 in the *Enquirer* and *Gazette* respectively.⁵⁵ While the *Enquirer’s* coverage was replete with sensational descriptions, the *Gazette’s* was relatively precise with only the key highlights. For example, the *Enquirer’s* first coverage ended with investing the affair with ‘fearful, although romantic interest’ in which the ‘Abolitionists regard the parents of the murdered child as a hero and heroine, teeming with lofty and holy emotions, who Virginius like, would rather imbue their hands in the blood of their offspring than allow them the shackles of slavery’(Reinhardt 2010, 52- 53). In contrast, the *Gazette’s* first coverage ended with the coroner’s jury verdict, ‘That said the child was killed by its mother, Margaret Garner, with a butcher knife with which she cut its throat’ (59). The *Enquirer* also made explicit compliments on the appearance of the ‘good-looking, hearty negress’ with a quote from Mr. Marshall stating that ‘he has always treated him (Robert) more as a companion than as a slave; they have been playmates in childhood and have grown up together’ (52) to insinuate the benevolence of the slave institution. The *Gazette*, on the other hand, and notwithstanding the factual inconsistencies generic to newspaper reporting of the time, presented only the skeletal details of the trial – at this stage, establishing Margaret as the killer of the child, and the claimants’ application of the Garners’ recovery under the Fugitive Slave Act before

⁵⁵ *Cincinnati Daily Enquirer*, ‘A Tale of Horror! An Arrest by the U.S. Marshal. A Deputy U.S. Marshal Shot. A Negro Child’s Throat Cut from Ear to Ear by the Father or Mother, and Others Wounded! Coroner’s Inquest. Writ of Habeas Corpus Taken Out. Great Excitement!’ Jan 29, 1856.

Cincinnati Daily Gazette, ‘Arrest of Fugitive Slaves: A Slave Mother Murders Her Child rather than see it Returned to Slavery.’ Jan 30, 1856.

Commissioner Pendery – ‘It is expected the examination of the fugitives will commence this morning before Commissioner Pendery’ (59).

On the morning of 30th January 1856, in the court of commissioner John Pendery, was the first hearing on the claims of James Marshall and Archibald Gains over their slaves under the Fugitive Slave Act of 1850, a hearing that would continue till February 1. While the *Enquirer* focussed on the speeches of the claimants’ lawyers, the *Gazette* focussed on the defense lawyers’ arguments (60). The claims being made by two different slave owners, Pendery split them up into two — first, he heard Thomas Marshall, Archibald Gains’ son’s claim over Simon, Robert, and Mary Garner; then he heard Gains’ claim over Margaret and her children. ‘Because Margaret’s case came second, the most substantial arguments and many of the most dramatic moments would appear in the case of her husband and in-laws’ (61).

Expectedly, the slave owners’ claims took most of the court time, but this was also the day when Judge Burgoyne was scheduled to issue the writs of habeas corpus over who had the jurisdiction, the state or the federal marshals, to detain the Garner family. From the side of Mr. Jolliffe, the defense lawyer, the writ of habeas corpus held more significance for it is through these writs the custodial battle of which jurisdiction had the right to detain the slaves would be determined. This had larger implications for state sovereignties, beyond Margaret Garner.

Mr. Jolliffe motioned for continuance — a reasonable delay to hear the defenses’ witnesses — on the grounds of ‘issuing of the rite of habeas corpus by Judge Burgoyne, and the action of the Sheriff of Hamilton County in returning to the Marshal of the Southern District of Ohio the fugitives on an alleged informality in the said writ of habeas corpus, he (Mr. Jolliffe) had not caused any subpoena to issue for witnesses on the part of the defense’ (62). In short, Jolliffe had to prepare the writs of habeas corpus for the court of Judge Burgoyne, so he did not have the time to issue subpoenas to the defenses’ witnesses to be presented at the court

of Commissioner Pendery. He requested time to prepare witnesses to corroborate the slaves' affidavits claiming they had been to the free soil of Ohio many times before their final escape, and hence their right to be free was overdue. The prosecuting lawyer, Colonel Chambers, objected to this on the grounds that 'the warrant upon which the fugitives are held had been issued on the 28th of January, thus allowing the attorney, Mr. Jolliffe, ample time to have his subpoenas issued, served, and returned' (62).

The subpoenas to Garners' witnesses held more significance for Mr. Jolliffe as it is through these witnesses that he wanted to prove the Garners' visits to the free soil prior to their final escape. Further, the issue of Margaret's murder warrant would give Mr. Jolliffe more time to prepare those witnesses. On the other hand, 'The law of 1850, provides that no warrant, in any event, shall be served upon the fugitives in case they are remanded to the custody of their owner. Not even a warrant for murder could prevent their being returned from bondage' (67). This meant that Commissioner Pendery would allow the issuance of the murder warrant for the four adult Garners once the fugitive trial has come to an end. For, if the fugitives were remanded to slavery, the murder warrant would be unnecessary.

On the morning of February 1, Commissioner Pendery declared that subpoenas for the Garners' witnesses need not depend on the murder warrant, for 'The (Fugitive Slave) law provides for the serving of the subpoenas issued by the masters, but none for behalf of the slaves' (68). This meant that Jolliffe could bring them to court right away without further waiting, but he pressed for the legal route. A special deputy Marshall, a light-colored mulatto named Wm. Beckley was appointed to serve these subpoenas. Colonel Chambers resisted this appointment, but the subpoenas were eventually served. Finally, it was time to hear the Garners' affidavits claiming each of them had been to Ohio several times before their grand escape.

Reading out the affidavits, of both the Garners and their masters, was the first of the many dramatic moments in the court of Commissioner Pendery because these affidavits would determine if the Garners' freedom was long overdue or if they permanently belonged to bondage. The claimants' witnesses were sought first for their testimonies on whether they had seen the Garner family in Ohio before. The claimants' witnesses – James Corbin, Thomas Marshall, G.W Marshall, James Marshall, and W.B Murphy – contradicted every account of what Jolliffe would present on behalf of the fugitives' past sojourns into Ohio. They all agreed that they had never seen young Simon or the rest of this family in Ohio, with or without their masters. At this point, Mr. Jolliffe while cross-examining, attempted twice to counterargue the prosecution's witnesses. First, he attempted to dismiss Robert's arrest warrant on a technicality – that it was not sealed by the Commissioner, and that his real name was Robert Garner and not young Simon. To this, Pendery replied 'that a seal was not necessary' for the warrant of a fugitive and that 'The Congress that passed the Fugitive Slave Law had failed to provide a seal for the Commissioner...' (69), adding to the string of informalities. Next, Mr. Jolliffe attempted to shift attention to the murder during capture, but Colonel Chambers objected saying 'he did not wish to go into all these fancy matters' (71) and pressured him to reason why he would bring up the matter of a dead child that belonged to another court. At this point and in another dramatic move, Mr. Jolliffe took the opportunity to claim the unconstitutionality of the Act as part of the hearing because it after all drove a mother to kill her child – 'The law was of such a character that its execution required human hearts to be wrung and human blood to be spilt' (72). But morals did not belong to the case just as yet, and before adjourning the court for the next day, Commissioner Pendery approved of the continuance motioned by Mr. Jolliffe to gather Mary Garner's witnesses.

On February 2, testimony on behalf of the slaves began, the key question being whether the Garners had been seen in Ohio before their escape with or without their masters. As many

as fifteen testimonies were collected compared to the handful collected for the owners, and the *Gazette* was precise in highlighting the key points in the testimonies including descriptions of the witnesses — from ‘black’ to ‘copper colored’ to ‘light mulatto’. The first round of testimonials was for Robert and his parents, Mary Garner and Simon Sr. One colored woman named Charlotte Armstrong confirmed seeing Mary Garner at the Church and the marketplace in Cincinnati in the last three to four years. In fact, Mary Garner frequently visited Cincinnati with her owner’s friend Cas Warrington to attend worship in the Methodist Episcopal Church where Mary eventually became a member. Then, Joseph and Eliza Kite (in whose house the family hid after their escape) confirmed having seen all the Garners on the Christmas of 1855. Two witnesses — George J. Guilford and James Elliott — were called to contradict Gaines’ and his son Thomas Marshall’s claims that the slaves had never been brought to Ohio, during which it was revealed that Marshall had confided in Mr. Guilford that the fugitives had indeed ‘been to this side of the river frequently’ (76). When cross-examined by Col. Chambers, Mr. Guilford confirmed “that is the man...” pointing out to young Marshall, Gaines’ son and the fugitives’ co-owner (76). Similarly, two colored men of Cincinnati – Alfred Gilmore, and Spencer Cash; one Cincinnati policeman W.M Marshall; and two colored women – Sarah Kite, and Eliza Kite identified young Simon or Robert to have visited Cincinnati in the last few years. ‘A very light mulatto, John Farrar’ (80) confirmed seeing old Simon in Cincinnati last Christmas, while Jacob Rice, a German butcher confirmed seeing both old and young Simon accompanying Thomas Marshall in selling hogs to him last year. One small window of doubt appeared when Jacob Rice could not definitively identify Thomas Marshall, but this was dispelled when Jacob Rice’s daughter Margaret Fisher unequivocally identified Marshall and Robert because they had stayed overnight at their house. Thus, the testimonies on behalf of the fugitives so far proved that Robert and his parents had indeed been to Ohio many times before the attempted escape.

Before Pendery's court resumed collecting testimonies for Margaret and her children, on February 4 lawyers from both sides – J.W Finnell (Col. Chamber's assistant), and James Gitchell (John Jolliffe's assistant) – argued for and against the case of Robert and his parents' past visits to Ohio. On February 5, the *Enquirer* reported a sympathetic reading of J.W Finnell's argument emphasizing the constitutionality of the Fugitive Slave Act whose slave provision is more important than Ohio laws prohibiting slavery, and that integrity of the comity is more important than state sovereignties: 'I say we stand here not as citizens of Kentucky nor of Ohio, but of the Union,...' and 'claim these people (the Garners) for my client not under the law the State of Ohio but under the Constitution of the United States...' (84). The contradiction of this argument by John Jolliffe and his assistant James Gitchell took place on February 5 and was printed by the *Gazette* on the February 7. While James Gitchell argued that the creation of federal commissioners (such as Pendery) by Congress violated constitutional strictures of appointment of judges, 'no papers seemed interested in the jurisprudential substance of these arguments...' (88). In short, Gitchell questioned the suitability of commissioners as judges in federal cases. But it was Jolliffe's central, unprecedented argument that the Slave Act violated the First Amendment guarantee of religious liberty that was widely reported by anti-slavery newspapers, mainly by the *Gazette* (87- 89).

Taking the example of Mary Garner who became a member of the Episcopal Methodist Church in Cincinnati, Jolliffe argued that if the Act was allowed to run its course, Mary would never be able to come back to Cincinnati's church to pray: 'The Constitution says (1st Amendment) "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof"' (90). Thus, Jolliffe argued that under slavery one cannot practice religion freely, hence violating the First Amendment, also granted by the same Constitution, and posed the moral question: 'Don't you see that the Bible is one side and the Fugitive Slave law on the other?' (92). Constantly attempting to foreground the moral side of

slavery, in another dramatic move, Mr. Jolliffe invoked a Shakespearean dialogue from *Macbeth* “I tear the nipple from its boneless gums and dash its brains out”, followed by another Shakespearean allusion to *The Merchant of Venice* “Take your pound of flesh, but not one drop of blood”, emphasizing a mother’s dilemma between freedom and bondage, and the dichotomy between religious liberty and slave laws.

On February 9, the trial of *Archibald K. Gaines, Claimant vs. Margaret Garner and her three children* began and was first reported by the *Gazette* on February 11. The deposition described Margaret as a mulatto whose ‘African part appears in the broad nose and thick lips’ (96). She had a nine months old child showing off red tinge in her cheeks wrapped around her arms, and two boys aged four and six years. The deposition also described ‘The murdered child as almost white—and was a little girl of rare beauty’ (97). The next significant part of Margaret’s deposition stated that she had been to Ohio several times in the past, both as a child and as an adult. Her previous owners, John P. Gaines, and Eliza Gaines had brought Margaret to Cincinnati to nurse their baby daughter, Mary Gaines when Margaret was a small girl. Since that visit, Margaret had been visiting Cincinnati on several other occasions throughout her adulthood during which her children were born. This meant that Margaret had given birth to her children while she was constantly sojourning into Ohio from Kentucky. Mr. Jolliffe then made the obvious move to press for more time to obtain the witness of John P. Gaines who by then had moved to Oregon. But, given the protracted nature of the trial, Pendery’s court decided to continue with the trial with the provision of obtaining the said witness at a later point. As had been the pattern in the trial, the claimant’s testimonies were given primacy and the court directed Archibald Gaines’ witnesses to be brought in.

Two witnesses for the claimant, Archibald Gaines were called in on February 9 – Dr. Elijah Smith Clarkson, Gaines’ family physician since the time of John P. Gaines; and Major Wm. B. Murphy, Gaines’ neighbor in Kentucky. Both identified Margaret as Gaines’ slave

who had been living on Gaines' plantation since she was two years old. The witnessing for the claimant continued till February 11 when three others were brought in – Peter Nolan who had worked with Gaines for the last five to six years; John Ashbrook who had known Margaret for the last fifteen years; and Archibald Gaines' son, James Marshall (100- 105). All of them testified knowing Margaret as a slave of Archibald Gaines while James Marshall, the owner of Robert or young Simon and his parents, went another step further – when cross-examined by Mr. Jolliffe he referred to the 'Statutes of Kentucky... where it states a slave after five years of possession, becomes absolute property, so that no proof of title or bill of sale is necessary' (102).

Following the testimonies on behalf of the claimants, five colored women and one doctor were sworn in to testify on behalf of Margaret Garner – Ann Smith, Mary Lipscom, Ann Cox, Mrs. Lewis, Mrs. Dianah Baker, and physician Dr. William Price. They were called in to testify to the practice of slave children nursing their owners' infants. All of them confirmed that slave children of five or six years of age were frequently employed to nurse white babies, not to have the entire charge but to assist in nursing. In fact, Ann Smith testified to having herself 'Commenced nursing between 5 and 6 years of age' (102- 05). A rebutting testimony to Garners' witnesses on child nursing came when James Marshall stated 'Never knew a child 7 years old employed as a nurse in Kentucky; never heard of the like before to-day' (105). Though it had been well established by this point that Margaret was indeed appointed as a child nurse in Cincinnati and that child nursing was a practice not often acknowledged by the slave-owning community, the most dramatic moment was yet to come – when Jolliffe called in Margaret Garner as a witness and testify on her own behalf.

Section 6 of the Slave Act prohibits fugitives to speak in their first-person – 'In no trial or hearing under this act shall the testimony of such alleged fugitive be admitted in evidence...' (271). So, citing the law, Col. Chambers objected to Margaret's own witnessing. But

Commissioner Pendery allowed Margaret to testify in court following the precedent of Rosetta Armstead (1855). She was first asked about the scar on her forehead to which she replied ‘white man beat me’ (104). On inquiring about her past sojourns into Ohio, Margaret’s testimony continued as follows:

MARGARET GARNER (the mother of the three living and of the murdered child) being sworn, was asked: Were you ever in Ohio before? Ans. Yes, sir. Ques., When? Ans. I came here when I was about seven years old. (To other questions from time to time, her answers were as follows :) I came here with John Gaines and his wife; her name was Elijah Gaines. They came on a visit to Mr. Bush’s who lived in Covington, and staid there a week. During that time they spent one day over here, and they brought me over to nurse the baby; that was Mary Gaines. Mary wasn’t quite as large then as my baby. (Her baby is about nine months old.) They brought me across the river to Cincinnati. We came over pretty soon in the morning, and staid tolerable late in the evening.

Don’t know whether it was a tavern or private house they stopped at. Don’t remember the name of the people where they stayed. Was never over any other time than that. I’ll be 23 years old on the 4th day of next June. Miss Mary Gaines is very near 17 years old. She’s at her uncle Archibald’s in Boone county. John P. Gaines was my master at that time. That was before he sold me to Archibald K. Gaines. Don’t recollect anything particular on that day I was over here, except that my mistress was very particular in keeping me close by her. Kept me sitting by her side all the time. Don’t know what they came over here for. Mrs. John. P. Gaines is dead. She died in Oregon. John P. Gaines is in Oregon. Pretty near 7 years since he went there. These three children here with me are mine. All been born since I was here in Ohio with John P. Gaines.

As far as I understood old Mrs. Gaines owned me; I lived with her; often heard her say, when Mr. Gaines was by, that I was her servant; never heard him deny it; never heard him say it was so. (104- 05)

Following Margaret’s testimony, three other witnesses – W.D Griffing, John C. Hughes, and John Armstrong were sworn in during cross-examination and all made the same statement as Thomas Marshall – that they had never heard of slave children being employed as child nurses to their owners’ infants in the state of Kentucky. Margaret’s brief testimony describing her

travails with her owners into the free state of Ohio ended here, and after this, no documentary evidence is available of her own speech.

From February 12 to 14, the *Enquirer*, and the *Gazette* published pieces on the concluding remarks of the lawyers on both sides. Three lawyers, Samuel S. Fisher, Gitchell, and Jolliffe concluded statements for the Garners, while Samuel T. Wall concluded for the claimants, Archibald Gaines and Thomas Marshall. Only the *Enquirer* provided a detailed reportage on the closing remarks of Wall for the Gaines, while the *Gazette* was the only other paper to cover Fisher's closing remarks. Surprisingly, no newspaper covered Jolliffe's closing remarks even though his First Amendment argument of religious freedom to limit the Fugitive Slave Act was unprecedented in the fugitive trials of antebellum America (Reinhardt 2010, 105). In his conclusion, Fischer compared Margaret with the Roman Virginius for he believed that 'it was the love of liberty that had something to do with it (the killing of their own daughters)' (106). When Mr. Jolliffe took the stage next, the abolitionist suffragist Lucy Stone Blackwell was present who, on February would deliver a speech admiring the courage of Margaret and emphasizing her maternal love – 'If in her deep maternal love she felt the impulse to send her child back to God, to save it from the coming woe, who shall say she had no right to do so?' (112). On the other hand, Wall's remarks termed the slave mother's act as barbaric and her testimony without substance. His view of slavery in Kentucky was that of a benevolent institution far more desirable than 'the poverty of the North' — the slave economy more benevolent than the wage-labor economy. Quite expectedly, as had been the prosecutors' position so far, Wall refrained from entering the moral zone of slavery or the constitutionality of the Act – 'It is not my province to argue the moral right or moral wrong of slavery...' (110).

Commissioner Pendery delivered his decision on February 21, preponing it from March 12 (113- 18). His decision was an unequivocal acceptance of the owners' claim over their slave properties. As mentioned earlier, the central legal question in the Garners' case was whether

temporary visits to free soil had made the Garners automatically free. Upholding the law of precedence, Pendery based his decision on *Strader v. Graham* and *United States v. The Ship of Garonne* stating that temporary visits to free soil do not necessarily mean renouncing the right to slave property – ‘The owner of a slave who resides in Kentucky, who permits his slave to go to Ohio in charge of an agent for a temporary purpose, does not forfeit his right of property in such slave.’ However, ‘Had they refused to return to Kentucky, it is possible that the owner would have invoked the aid of the legal process to compel their return in vain.’ Because no charge of ‘violent abduction’ was made by the slaves, their ‘right to be free was waived’ (116-17). Pendery too emphasized ‘The question is not of humanity...but a question of property’ (117). Hence the slaves were remanded back to slavery, amidst anti-slavery protests observing the ‘funeral of the sovereignty of the state of Ohio’ (122).

On February 27, the *Gazette* published Judge Leavitt’s decision on the habeas corpus of the federal officer *Marshall Robinson vs. Ohio police Sheriff Brashears* that would put an end to the custodial battle between the state and the federal marshals. Since this habeas corpus was issued by the Ohio state court, it was already subservient to the judgment of the federal case – the claimants’ pursuit of the Garners under the Fugitive Slave Act. The federal case having gone in favor of the Garner’s claimants, the custodial battle of whose jurisdiction the fugitives belonged was now fully lost to the Ohio police. Leavitt did not assert ‘that they (fugitives) are not liable to punishment, but merely, that if they are in custody of an officer, under a law of the US before their arrest for crime against the state law (of Ohio), the latter cannot be enforced till the disability existing by the prior arrest is removed’ (121). He further added that the fugitives can be requisitioned and extradited at a later date from Kentucky to Ohio to answer for the latter’s violated law.

After the trial got over, from March to April of 1856 newspapers like the *New York Daily Tribune*, *Cincinnati Gazette*, *Cincinnati Daily Times*, *Anti-Slavery Bugle*, *Liberator*,

Provincial Freeman, *Frederick Douglass Papers*, among others editorialized Garners' trial, especially the lawyers' and judges' positions on both sides of the Slave Act. Anti-slavery newspapers criticized abolitionist Governor Salmon P. Chase of Ohio for requisitioning late by nine days for the extradition of Margaret from Kentucky back to Ohio. During this time, Margaret was sold off from Arkansas to the deep South in New Orleans in a slave market. Kentucky Governor Morehead's passive resistance to the Garners' extradition was also obvious when he did not requisition all the other Garners as accessories to the child murder but to only Margaret. On April 2 1856, Margaret alone was brought back to a Covington jail. Weisenburger claims that there was no official record announcing her arrival to Covington, hence no Ohio officials came to collect her. (Weisenburger 1999, 234-35). It was as late as April 9 that the Ohio Governor Salmon Chase, who had requested the extradition, wrote to the Hamilton County prosecuting attorney Joseph Cox telling him the 'fresh news' of Margaret's arrival in Covington only a day earlier on April 8, and that she would be available for retrieval only till the next day, April 10. So, Gaines' letter to the *Enquirer* on April 15 titled 'Just in time to be too late' (137- 39) was a tactical move to convey his obedience to the law even though that did nothing for Margaret. As a law-abiding citizen, Gaines did obey Morehead's order but nothing more. Probably because Margaret's earlier testimony in court could have been spun to reveal scandals in Gaines' plantation — her daughter's 'almost white' skin indicating rape and scars on her forehead from 'white man's beating'. Only that testimony could have redeemed to prove Margaret's humanity, but in court, it got re-inscribed in the discourse of property law. Margaret Garner eventually died of typhoid fever in a cotton plantation deep South.

Thus, Margaret Garner's protracted trial, situated at a crucial juncture of antebellum America's legal history, not only exposed critical legal and moral challenges of the time – chief among them being the contradiction between the constitutionality of the Fugitive Slave Act and the morality of universal freedom – but also revealed that there were no apposite forms to

establish the ordinary life of a slave. The law, the archive, and the press altogether functioned as political organs of institutional slavery where a slave could only be mere property, despite their occasional testimonies in court. Those first-person testimonies, attesting to the humanity of the slaves, could have otherwise been assembled to break the impasse between the pro-slavery constitutional laws and anti-slavery morality, but the governmental logic of the law and the archive re-produced them as property only. The next section, ‘Slavery in Print’, will show how the tradition of slave autobiographies, from the nineteenth century to the late twentieth century, began the task of reviving first-person narratives of ex-slaves to counter the limits of the law and the archive and enable the belated subject formation of the slave as a human.

II. Slavery in the print: The 19th-century slave narratives

The nineteenth-century slave narratives, an autobiographical form of anti-slavery writing by ex-slaves, were a rising genre at the time of Margaret Garner’s trial, and more generally in the decades before the American Civil War⁵⁶. Dating from the mid-eighteenth century and developing more firmly in the nineteenth century, the most widely known slave narratives were those by Phyllis Wheatley (1773), Olaudah Equiano (1789), Mary Prince (1831), Frederick Douglass (1845), William Wells Brown (1847), Henry Bibb (1849), Sojourner Truth (1850), Solomon Northrup (1853), Charles Ball (1858), William Craft (1860), and Harriet Jacob (1861) (Edwards et. al 2018, 9). Closely connected to the melodrama characteristic of the genre of sentimental fiction, slave narratives were the major literary form of anti-slavery expression available at the time, written with the political goal of abolition of slavery. ‘Written by themselves’ was the most common form of authorship of these slave narratives to indicate the

⁵⁶For a comprehensive reading on the evolution of the African-American slave narratives, see Dickson D. Bruce, Jr. *Black American Writing from the Nadir: The Evolution of a Literary Tradition, 1877 – 1915* (Louisiana: Louisiana State University Press, 1992); Dickson D. Bruce, Jr. *The Origins of African-American Literature, 1680 – 1865* (Virginia: University of Virginia Press, 2001); John Ernst, *Chaotic Justice: Rethinking African American Literary History* (North Carolina: University of North Carolina Press, 2009); and Eric Gardner, *Unexpected Places: Relocating Nineteenth-Century African American Literature* (Mississippi: University of Mississippi Press, 2009).

ex-slaves' will to literacy. But slave narratives came in other forms of authorships too – for example, 'dictated by himself' (Lewis Clarke 1845); 'narrated by himself' (Josiah Henson 1849); 'taken from his own lips' (Thomas Anderson ca. 1854); 'written by a friend' (Andrew Jackson 1847); and 'written from a statement of facts made by himself' (Henry Box Brown 1849). Some other authorships came in mixed forms and often sent varied messages – for example, Harriet Jacob's *Incidents in the Life of a Slave Girl* (1861) was 'written by herself', 'edited by L. Maria Child', and 'published for the Author'. Thus, slave narratives, especially those written before the Civil War and in the decades before and after Margaret Garner's trial, were variously authored – ghost-written, transcribed, interpolated, edited to the point of being authored, and dictated – or what Teresa Goddu calls 'corporate authorship' (Goddu 2018, 152).

One disadvantage of mixed authorships of the antebellum slave narratives was that they could not be considered historical evidence of a slave's ordinary life in the plantations. While the print medium did provide more space for anti-slavery expression than the court, legislature, and the press, it still lacked the objectivity necessary for historical writing. The abolitionist rhetoric, sensational dialogues, application of literary devices simply beyond the knowledge of an illiterate slave, and most importantly being edited to the point of authoring by white editors made the slave narratives inadequate evidence of slavery. In the essay 'Using the Testimony of Ex-Slaves: Approaches and Problems' (1975), John Blassingame notes that slave narratives like *Memoirs of Eleanor Bride* (1838), *Aunt Sally; or, The Cross the Way to Freedom* (1858), and *Memoirs of Margaret Jane Blake* (1834) are replete with features romanticizing a slave's flight from bondage (Blassingame 1975, 478). However, some of the white editors did exhibit fidelity to facts of slave life. Blassingame also provides an impressive list of anti-slavery white editors 'noted for their integrity,' and who had little or no contact with the professional abolitionists of the time (Blassingame 1975, 474). One such editor was David Wilson, a lawyer, and a congressman, who edited and published Solomon Northrup's *Twelve Years A Slave*

(1968). But the editors who did not adhere to the historical facts of slavery were far too many, which reflected poorly on the genre. Hence, due to this assumed lack of historical objectivity, written testimonies of ex-slaves published in the form of edited autobiographies during the antebellum period, did not qualify as accurate historical accounts of slavery.

Though antebellum slave autobiographies did not yet meet the requirements for historical writing, other forms of anti-slavery expressions, mostly written by white abolitionist authors, were frequently instrumentalized to liberate existing slaves in spheres other than the print. Mark Reinhardt in *Who Speaks for Margaret Garner?* (2010) comments on how such anti-slavery outputs were often invoked to sentimentalize court proceedings and their subsequent reportage in the press. In the context of Margaret Garner's trial, Reinhardt handpicks two such anti-slavery writings that were instrumentalized to transform Margaret into the myth of a self-sacrificing heroine in court – James Sheridan Knowles' *Virginius: A Tragedy in Five Acts* (1820), and Harriet Beecher Stowe's *Uncle Tom's Cabin* (1852). While Garners' anti-slavery lawyers have frequently invoked the Roman heroine Virginius in court (as mentioned in the previous section) and imagined Margaret in that mold, pro-slavery commentators took the opportunity to devalue Stowe's abolitionist novel and label Margaret's act of infanticide (as well as that of the protagonist Cassey in the novel) as 'deluded matricide' whose example was 'Uncle Tomatised.' (Reinhardt 2010, 196). Weisenburger suggests that for both the partisans on either side of the Fugitive Slave Act, the 'icon (of the murderous mother) had always awaited or demanded a Margaret Garner (Weisenburger 1999, 247). Thus, the real horrors of slavery translated into cultural icons through gothic and sentimental fiction whereas their lived reality remained inaccessible from their interior lives. In effect, anti-slavery expressions remained an unreliable source of plantation slavery despite their booming publication.

The postbellum slave narratives did not see much change in the said direction either, though the narratives could now be compared with certain antebellum sources for factual discrepancies. For example, ex-slaves like Lewis and Milton Clarke, Josiah Henson, William and Ellen Craft, Henry Box Brown, Solomon Northrup, and Olaudah Equiano had written letters and speeches before publishing their narratives (Blassingame 1975, 479). When such antebellum sources are compared with their narratives, it could have been possible to separate facts from rhetoric and sentiments. But, while postbellum slave narratives could have been definitive accounts of life under slavery, the number of such slave narratives published after the Civil War was far too less compared to the actual number of slaves in the plantations of the South. Further, Blassingame notes that slave narratives written and published by women ex-slaves were even lesser, constituting only 12 percent of all the slave narratives (Blassingame 1975, 480)⁵⁷. Hence, because of the small size of such autobiographies, postbellum slave narratives were still not considered a representative sample of slavery.

In short, slave narratives, antebellum or postbellum, were not historical evidence of a slave's life. From mixed authorships, and abolitionist rhetoric to the smallness and gendered aspect of the representative sample of such narratives, slave autobiographies did not meet the criteria of historical objectivity. While fiction gave more voice to a slave than the law or the archive did, their written testimonies had the same outcome as they had in a court – they did not quite reveal the interior life of an ordinary slave because narratives written by gifted writers outnumbered those written by an average slave. In fact, an average unlettered slave did not write at all. So, what is at stake here is the truth about a slave's interior life and also the notion of historical objectivity itself. Based on written records, history as a discipline was not yet equipped to include diversities in the archive, such as oral testimonies, or complexities in the

⁵⁷ For a new assortment of slave narratives written by women, see Annie L. Burton and others, *Women's Slave Narratives* (Mineola, New York: Dover Publications Inc., 2006)

publication process. As the chapter will progressively reveal, it was only with the ‘social’ turn in the historical discipline during the 1970s, that slave narratives came to be reconsidered as historical evidence of slavery.

II.I Slave Narratives Reconsidered: Diversifying the archive

While slave narratives, written by mostly male, exceptional slaves who were often fugitives, did not qualify as historical evidence just yet, the Federal Rights Project (FPA) under the auspices of the Works Progress Administration (WPA) started bridging this gap between 1936 and 1938. Aimed at collecting first-hand accounts of ‘average’ slaves, a collection stored at the Library of Congress, the WPA narratives consist of over two thousand interviews with former slaves and have been considered by several scholars, like Benjamin A. Botkin (1945), Norman R. Yetman (1967), George P. Rawick (1972), and Eugene D. Genovese (1972) among others, as a reliable representation of the total slave population with no abolitionist rhetoric and sentiments biasing them (Blassingame 1975, 480). Yet, Blassingame lists issues that make these accounts still inadequate as historical sources, the major one being the lack of suitable conditions under which these interviews were conducted mostly by white interviewers – ‘Since many of the former slaves still resided in the same areas as their masters’ descendants and were dependant on whites to help them obtain their age-old pensions, they were naturally guarded in their responses to certain questions’ (481-482). This was further corroborated by Sharon Ann Musher in the essay ‘The Other Slave Narratives: The Works Progress Administration Interviews’ (2014) labeling the narratives as biased as the respondents ‘framed their accounts by descriptions of their current needs...for daily survival in Jim Crow South’ (Musher 2014, 107). Blassingame further suggests that the historical discipline, being based on written records only, the white American historian lacked methodological tools to apply to the oral testimonies and arrive at an objective interpretation of them (Blassingame 1975, 481). The last but not the least of the problems of the WPA interviews was that most of the respondents were elderly

blacks, nearing 80 years of age or above, for whom the age-old pensions were a more pressing need than the abstract goal of reminiscing their childhood memories of slavery. So, 'When federal writers showed up on their doorstep asking to hear about slave days, many of the former slaves assumed that they were social workers who could help them apply for old-age pensions.' (Musher 2018, 107). Overall, the earlier white publishers now seemed to have been replaced by white interviewers, and the WPA slave narratives, despite their richness and inclusivity, did not yet merit historical authenticity.

It was only during the 1970s that the slave narratives, including the WPA narratives, came to be reconsidered as historical evidence. This was possible because of the 'social' turn in the historical discipline that began reassessing the notion of evidence. Emerging in opposition to political history that focused on statecraft and national politics (Tilly 1985, 13), and borrowing methodological tools from the social sciences, 'social historians have offered a "populist" vision of historiography, premised on the notion that not merely elites but also large number of ordinary people experience and make historical events and long-term trends.' (Skocpol 1987, 19). In doing so, unremarkable sources, like the Civil War pension records, became veritable historical sources to construct the lives and experiences of non-elite individuals, often with little regard to linear timelines. Michel Foucault's essay 'Nietzsche, Genealogy, History' (1966) offered a theoretical backbone to writing social history resurrecting subjugated knowledges of subjects earlier denied entry into history. In the context of the slave narratives, John Blassingame's *The Slave Community: Plantation Life in the Antebellum South* (1972) was the first pioneering work in writing a social history of slaves in the pre-Civil War America. Considering all the relevant aspects of the slave's African heritage, culture, and personality, Blassingame resurrected the human side of the slaves by claiming that they too have cultural practices like music and folklore. In such a revisionist historical writing, slave testimonies became a class of evidence that could not be evaluated with the traditional tools of

the historical discipline, but one that needs to be reconsidered from various vantage points. As such, the slave testimonies became ‘layered’ (Ernst 2014, 13) in a way that the inner life of an average plantation slave could not be localized in any specific archive, but a variety of unexpected sources like police and court records and parish registers (Skocpol 1987, 19), became evidence of a slave’s life. Thus, due to the shift in perspectives on what constitutes historical evidence, slave narratives were reconsidered for historical writing. In effect, the slave archive, traditionally assumed to be frugal, became diverse when autobiographies and other non-traditional sources came into consideration due to the ‘social’ turn in the historical discipline.

This ‘diversity’ in the slave archive is further set in motion when slave narratives are viewed as material objects rather than literary texts only. Teresa Goddu writes, ‘A material approach to the slave narrative sets the multiplicity of the archive against the monolith of the genre’ (Goddu 2014, 150). That is, the perspectival shift of the slave narrative, from a literary text to a material object, is a pathway of opening up the archive of the slave narrative, from scanty official records to the material contexts of producing the slave narrative. As discussed earlier through Goddu’s framework of ‘corporate authorship’, slave narratives came in various forms of authorships which is why print culture and book history methodologies could take the slave narratives beyond the bounds of a printed book, the literary genre, and the archive, and foreground the actual writing and publication processes of the time. A slave in a bid for freedom should not only ‘write themselves into being’ (Davis and Gates 1985, xxiii) but also ‘print themselves into being’ (Goddu 2014, 151). The relationship of the slave author to the publication market was similarly ‘layered’ like the writing and editing process — ‘published by himself’ (Lunsford Lane 1842); ‘published by the author’ (Henry Bibb 1849; William Grimes 1855); ‘published for the author’ (Harriet Jacobs 1861); ‘published for the author’ (Sojourner Truth 1850). In addition, anti-slavery periodicals like *The Liberator* or *The National*

Anti-Slavery Standard regularly reprinted and published original slave narratives, taking the genre beyond the bounds of a published book. For example, North Carolina-born slave James Curry published a short autobiography named *Narrative of James Curry, A Fugitive Slave* – the only source of information about his life – in *The Liberator* in 1840. The diversity in the archive in turn ‘effected’ diversity in the literary genre of slave autobiographies as they came in the form of news stories as well.

Cindy Weinstein corroborates the ‘diversity’ in the literary genre of the slave autobiographies when she argues for the opposite – that it is the sentimental fiction applying the conventions of the slave narratives and not the other way around as is traditionally assumed⁵⁸. She writes, ‘Instead, we might ask how sentimental novels might be deploying conventions of the slave narratives’ (Weinstein 2007, 118). Resonances between the slave narratives and sentimental fiction are indeed many. Protagonists of both genres experience hardships, severance with family, constant forced movement from one family to another, and an emphasis on the readers’ sympathy. Yet, the existential differences between a bourgeois sentimental heroine and a slave are fundamentally different. The sentimental heroine finally achieves a happy ending where she marries a family presumed to be better than her biological one, whereas for a former slave freedom is a life-long pursuit. Overall, the sentimental genre is based on an eventual epiphany of knowledge, whereas the slave narrative is based on the lack of it.

Yet, Weinstein insists on the resonances between slave narratives and sentimental fiction to magnify their fundamental differences. One such difference is the theme of disguise. With the help of select examples like *Running a Thousand Miles for Freedom* or *The Escape*

⁵⁸ For other references to the relationship between the sentimental novel and the slave narratives, see Hazel Carby, *Reconstructing Womanhood: The Emergence of the Afro-American Woman Novelist* (Oxford: Oxford University Press, 1987), and Karen Sánchez-Eppler, *Touching Liberty: Abolition, Feminism and the Politics of the Body* (Berkeley: University of California Press, 1993).

of *William and Ellen Craft from Slavery* (1860) ‘involving cross-dressing, passing, and all manner of disguise’ (Weinstein 2007, 120), Weinstein shows how disguise and concealment are central to the slave’s journey to freedom. In fact, a slave’s necessary disguise is quite complicated. This is evident when William is disguised as his wife’s slave and ‘involves the reproduction of the very master-slave relationship that they are trying to escape’ (Weinstein 2007, 120). However, the trope of disguise is central to sentimental fiction too, but the sentimental heroine makes disguises a plot to her narrative journey, and the nature of that disguise is far less complex than that of a slave heroine. For the slave, the disguise can be revealed only through the act of writing the slave narrative, meaning after the slave has achieved their freedom. To be revealed before freedom means re-enslavement, and hence no writing at all. On the other hand, the sentimental heroine’s revelation of her disguise ends in a reward – marriage – as well as the discovery of her heritage in the novel’s denouement. For a slave, this discovery of one’s heritage is impossible due to the institutional abolition of slave families. Thus, the sentimental heroine’s simple disguise and the slave heroine’s complex disguise are in a dialectical relationship in which ‘the two genres intersect with, challenge, and speak to one another’ (Weinstein 2007, 117) making the conventions of the slave autobiographies spill beyond the bounds of its own genre.

In the aftermath of such diversifications of the slave archive as well as the genre of the slave narratives, a new social logic developed in the 1960s that led to the emergence of a new variety of slave narratives – the neo-slave narratives. The term was popularised by Ashraf Rushdy in the essay ‘Neo-slave Narrative’ (1997), where this new genre of slave narratives challenged the historiography of slavery by reworking the antebellum slave autobiographies to produce new narrativity of slavery⁵⁹ through fictional representations of the slaves’ interior

⁵⁹ For other compelling accounts on the genre of slave narratives, see Bernard W. Bell. *The Afro-American Novel and Its Tradition* (Amherst: University of Massachusetts Press, 1987); Madhu Dubey. “Neo-slave Narratives.” In *A Companion to African American Literature*. Edited by Gene Andrew Garrett (Malden, MA: Wiley-

lives. Partly due to the changes brought by social history methodologies in the historical discipline that studied disenfranchised subjects and resurrected subjugated knowledges, and partly due to the Civil Rights and the Black Power Movement in the 1960s that brought back the issue of slavery to the center stage, this new form of fictional representation of African American slavery adopted the first-person voice of the antebellum slave narratives to enter into a constant dialog with its moment of origin – the publication of William Styron’s *The Confessions of Nat Turner* (1968) that appropriated the slave’s first-person voice to write on the subject of slavery. For example, Sherley Ann Williams’ *Dessa Rose* (1986) was a direct response to Styron in rehabilitating the slave voice. A key reason for the later neo-slave narratives writers of the 1980s, like Sherley Ann Williams and Toni Morrison to name a few, to adopt the conventions of the antebellum slave narratives was, besides contributing to the American literary canon, to rehabilitate the black political subject in the form where the slaves had first expressed their own experiences through white editors and publishers. Thus, the neo-slave narratives since the 1980s were a matter of subject formation. As the next section will demonstrate, Toni Morrison’s *Beloved* is an attempt to rehabilitate the testimony of Margaret Garner to enable a new subject formation earlier denied to her by the property discourse – that of healing, mourning mother.

III. Toni Morrison’s *Beloved*: Revisiting the Testimony of Margaret Garner

Margaret Garner’s event initially created a huge stir among the anti-slavery forces of the time. It inspired stories, poems, and paintings canonizing the slave mother to the status of myth. A case in point is lithographer Thomas Satterwhite Noble’s infanticide tableaux called the ‘Modern Medea’ that depicted the slave mother standing over the outstretched bodies of her

Blackwell, 2010): 332–346; and Valerie Smith “Neo-slave Narratives.” In *The Cambridge Companion to the African American Slave Narrative*. Vol. 1. Edited by Audrey Fisch (Cambridge, UK: Cambridge University Press, 2007): 168–185

children⁶⁰. Surprisingly, despite such memorialization, the incident dropped from the cultural memory of the nation. More than a century later in 1987, it reappeared through Toni Morrison's novel *Beloved* based on Margaret's fugitive slave case. But this is not a depiction of Garner's legal trial, but rather a 'novel writing' (Morisson 1990, 189- 190) based on imagining a possible private life of the slave mother. Whereas Garner's testimony in the courtroom could not affect any change in her situation or establish her as a full human, Morrison's *Beloved* reworks that moment to offer a different kind of testimony, one that is poised towards testimony's true function—change and healing through mourning.

This section deals with the relationship between fiction, especially the novel, with testimony that in turn beckons questions on truth, fact, and validity. I will argue that the truth or fact of an event, in this case, the event of Garner's escape and murder, is neither always historiographic (archival) nor legal. Rather, releasing truth from its 'juridico-historical' function, truth is here fictional. This argument will develop in the following three stages: first, I will analyze Margaret's testimony in the courtroom as outlined in the previous section in the context of property law. For this I will use Karla FC Holloway's insightful remarks in *Legal Fictions: Constituting Race, Composing Literature* (2014) that African American slave narratives and neo-slave narratives are constantly grappling with the question of untangling the lives of the freed slaves from their propertied past. In this way, all such narratives in one way or the other root back to the constitutional origins of property, contract, and evidence. Second, I will analyze Toni Morrison's own reasons for imaginatively re-writing the private life of

⁶⁰ Other select outputs in poetry and fiction depicting Margaret as a heroine were 'The Slave Tragedy in Cincinnati' (February 9, 1856) published by a white anti-slavery activist and editor of *New York Daily Tribune*; a poem 'Freedom's Altar' by poet William Wallace Hebbard published in March 1856; 'The Night of Freedom: An Appeal in Verse, Against the Great Crime of our Country, Human Bondage!', a poem of 798 lines of heroic couplets by a freeborn black woman and anti-slavery activist, Frances Ellen Watkins published in 1857 first in a chapbook called 'The Slave Mother, A Tale of the Ohio' and then in *Poems on Miscellaneous Subjects* in 1857; and the novel *Liberty or Death; or Heaven's Infraction of the Fugitive* by Hattia M' Keehan, self-published in 1856. This is the only novel that fictionalizes Garner's case, a whitened Gazella, implying sexual relation between Margaret and her owner.

Margaret Garner post- Reconstruction without visiting the archival materials available on her. For this, I will first use Morrison's short essay 'Site of Memory' (1995) where she explains her method of imagining a possible 'interior' life of Margaret Garner. Then, I will use Shoshana Felman and Dori Laub's *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History* (1992) as well as Shoshana Felman's *The Juridical Unconscious: Trials and Trauma in the Twentieth Century* (2002) to understand how Morrison 'textualizes' the context to complement 'contextualization of the text' in order to draw an interior life of Garner. In this, Garner's testimony is freed from the context of property and is directed towards the true function of testimony: change and healing by enabling the process of mourning. In *Beloved*, Garner's dead daughter returns to life so that the brutal memory of her killing could be revised, remembered, and then forgotten in order to move on.

Finally, I will argue that only fiction can conclude the task of testimony, that is, change and healing, by releasing it from its realist and documentary function. In this way, Garner's act of killing her daughter (for which she was never tried in court) is neither a historiographic nor a legal fact. Rather, its 'factuality' leaves the domain of history and law and enters the jurisdiction of fiction, the only place where testimony is safe from the juridical function of the archive. For this, I will use Marc Nichanian's *The Historiographic Perversion* (2009) which argues, in the context of the Armenian genocide, that genocide is not a fact because the modern recourse to the archive does not establish its factuality. Rather, genocide bases itself on the destruction of the archive. Therefore, the truth about an event like genocide can only be found in fiction. Nichanian further argues that in cases like these, literature becomes history's paradigmatic other.

As indicated in the previous sections, two charges were leveled at Margaret Garner—one for escaping slavery, and the other for murdering her daughter. Interestingly, these two charges split up the existence of Garner between her human and inhuman halves. The first

charge treats her as a mute property while the second one treats her as a person, for only a human could commit murder. However, Garner was tried only for the first charge, eventually remanding her to slavery. She could never be extradited from Kentucky to be tried for the murder charge. Therefore, the surviving testimony of Garner was related only to the Fugitive Slave Act where the claimants were the slave owners, Thomas Marshall and Archibald Gaines. Her testimony was brief, concerning only her genealogy, travails with her masters, and exchange of hands.

In *Legal Fictions*, Karla FC Holloway argues that Garner's killing of her daughter is an extra-legal performance as she acted outside the contingencies of property—only a human could commit murder. This sole act thus creates confusion between person and property which the law has to settle under the auspices of the Fugitive Slave Act. But since this Act could only deal with the propertied half of the slaves, the law fails to totalize this confusion. Holloway further argues that this failure is the novel's playing field. Under the Act, Garner's 'propertiness' is stability; her personhood is flight, and the instability between the two is fiction's fertile ground. The tidy resolutions seemingly available through law become a productive terrain to imaginatively engage law's contradictions and complexities, and the figure of the fugitive slave aptly reveals such incommensurability between the geographies of the slave's identity. So, Holloway writes, 'The very potential of a fugitive, or an outlaw, acting in a way that suggests a credible synthesis between a human person and an entity like property gives fiction its extraordinary potential and makes legal precedent a visible cartography of that geography of identity' (Holloway 2014, 26-27). She observes that systems of American slavery had left little room for slave families. This also resonates with Saidiya Hartman who in *Lose Your Mother* (2011) succinctly writes that torn from kin and community, 'The most universal definition of the slave is a stranger' (Hartman 2011, 5). Whatever relations slave masters had with their female slaves, none of them faced the threat to their right to property. In fact,

plantation owners were assured that children from sexual encounters with female slaves concurrently meant both an increase in their property and a relief from any heritable claims from those children. It is thus not surprising that Morrison would compose *Beloved*, a novel based on the legal execution of the idea of a generation. Further, and most importantly, the novel included within it a narrative ‘...of how a mother’s love could embrace infanticide in order to resist the law of generation that would make property of any child Sethe had. Her body (as well as her children’s) mattered more than its geographies’ (Holloway 2014, 32). This is because not only could she be remanded to slavery and reclaimed as a property under the Fugitive Slave Act that controls the novel’s narrative, but also her children would be taken away from her.

In the context of property, Garner’s testimony mattered little as testimony, in this case, did not mean change and healing achieved through witnessing one’s own life. Rather the testimony re-inscribes Garner as a property with little or no regard for her humanity. Here her testimony is a further attestation to her ‘propertiness’. She did not witness to her human half, rather she bore witness to her genealogy, travails with her masters, and exchange of hands. Little wonder that the truth of her humanity could not be found in the legal archives, but rather in a different domain altogether where this testimony is freed from its function of attesting only to the propertied half, that is, its documentary and realist function. So, Morrison seizes this ‘speaking’ moment of Garner and reworks it to testify to her human half, one that could not be found in institutionalized archives. The truth about the slave mother’s humanity enters fiction’s jurisprudence.

In the essay ‘Site of Memory’ (1995) Toni Morrison unequivocally explains that *Beloved* was ‘novel writing’. Only the germ of the novel was provided by a short newspaper clip that appeared in the *National Anti-Slavery Standard*, ‘Visit to the Slave Mother Who Killed Her Child.’ The rest was indeed imaginative fiction, for Morrison wanted to ‘invent’ (Morrison

1995, 91-92)⁶¹ Garner's life. A survey of Morrison's essays and interviews reveals three explicit reasons why a fictional re-invention of Garner's life was necessary. First, there were no historical markers, like even a small bench by the road, created in memory of enslaved Africans. Therefore, this book had to exist⁶². Second, popular representations of Margaret Garner could not sustain a monolithic narrative on the evils of slavery and oscillated between two discourses, one exposing the horrors of slavery and the other heightening the horror of Garner's act itself. A case in point is Noble's infanticidal tableaux, the "Modern Medea." Third, and perhaps the most important reason is that documentary realism of the nineteenth-century slave narratives often dropped 'a veil over proceedings too terrible to relate' (Morrison 1995, 91-92). The power to abolish slavery lay in the hands of the white reading public who needed to be convinced of the humanity of the slaves through the emancipatory promise of print literacy. These testimonial narratives were thus clearly focused on the abolition of slavery and not 'of self-reification and discovery (like a confession) but of self and social transformation' (Taylor 2009, 188). Therefore, with a focused aim at social change, the writers had to be cautious of not shocking their white readers with too many sordid details of slave life and so frequently took refuge in the literary convention of the time, the sentimental novel. Often these slave narratives were mediated by white editors who may or may not be abolitionists. If they were abolitionists, they sometimes interpolated and abolitionist sentiment overrode. If they were not abolitionists, it was doubtful whether they at all believed in the emancipation of the slaves. A case in point is the American editor, pastor, reformer, philanthropist, and founder of the Washington University at St. Louis, William Greenleaf Eliot (1881-1887) who 'during the antebellum period frequently castigated "fanatical abolitionists" and adhered rigidly to his

⁶¹ For further reading, see Marsha Darling, 'In the Realm of Responsibility: A Conversation with Toni Morrison', in *Conversations with Toni Morrison*, ed. Danielle Taylor-Guthrie (Mississippi: University of Mississippi Press, 1994), pp. 246-248.

⁶² In an interview in the *World Magazine*, Morrison bemoans the lack of historical markers for the African Americans, so she thinks that this book (*Beloved*) had to exist. *World Magazine*, January/February, 1989.

belief in gradual emancipation' (Blassingame 1975, 475). Thus, even though the slaves wrote prolifically about their own enslavement, the reliability of slave autobiographies as sources on the plantation lives is still doubtful, as discussed previously. It was hence imperative for Morrison to lift that veil 'from proceedings too terrible to relate' and transmute that silence into a work of fiction. Morrison shows that silence does have a transmitting power that can be explored through fiction. Her claim that 'the rest was novel writing' thus created its own archive for the voiceless. I argue that only fiction has the power to represent silence in a way the archive cannot.

It must be noted that Morrison's distrust of the archive does not necessarily mean that the context does not matter. Rather, the contours of Garner's trial are translated, radically rethought, and fundamentally worked over by the novel. For instance, there are two charges against Garner, one as a property and the other as a person. Only a murder trial could establish the humanity of Garner. But the slave mother's love to embrace infanticide is much more than mere killing. Even if the murder trial had taken place, it could not have fully totalized the humanity of Garner. Law again would have failed to grasp the full extent of her act. Law chose to overlook the evidence of her personhood in favor of the evidence of her 'propertiness'. This invisible zone, the zone of her personhood that law overlooked, is what Shoshana Felman in *Juridical Unconscious* calls 'the legal trauma' and makes a bold claim that 'law is structured like a trauma' (Felman 2002, 62). Through a chain of legal precedents such trauma accumulates and returns and repeats. *Beloved* reopens those wounds that the law failed to totalize by narrating an imaginative interior life of Garner in which she mourns the loss of her child who has now come back from the dead. Thus, it would be incorrect to dismiss the context altogether because only a 'textualization of context' can produce new perspectives in which the scope of witnessing, in this case, the witnessing of Garner's humanity, can be expanded beyond the law. This shuttle between the text and the context is what Felman and Dori Laub call the

‘contextualization of the text’ that is complemented by the less familiar yet necessary work of ‘textualizing the context’ in *Testimony: Crises of Witnessing in Literature, Psychoanalysis, and History* (Felman and Laub 1992, xiv-xv). In this moving between the text and the context, *Beloved* created the possibility of witnessing the personhood of Garner when all other forms have been precluded. By expanding the scope of witnessing, the trauma of killing one’s own child is released and fiction here thus offers a different form of testimony.

It can be further argued that Morrison’s imaginative witnessing of Garner’s interior life and Garner’s own testimony to her life as property in the court of law are two incommensurable topographical and cognitive positions between which discrepancies cannot be breached. In fact, this is the perfect example of what Felman calls the shuttle between the contextualization of the text and the textualization of the context: two cognitive positions that reveal the two aspects, half-human, and half-property, of Garner’s life. The novel is a gathering of the witness when the witness itself is split between person and property. However, this shuttle between text and context, the joining together of incommensurate witnessing positions and nature does not aim to totalize. That is, the novel does not aim to achieve a monologic sum about the life of Garner. Rather, it explodes any possible closure, a kind of closure that law would seek. Fiction is a celebration and illumination of this non-closure.

In the context of the Armenian genocide during the Ottoman Empire in 1915, Marc Nichanian in his *The Historiographic Perversion* (2009) boldly claims that ‘genocide is not a fact because it is the very destruction of the fact, of the notion of fact, of the factuality of fact’ (Nichanian 2009, 1). This means that the modern recourse to the archive cannot establish the factuality of the genocidal event because the perpetrators of mass murder left no records that could trail back to them. In this way, the historians, jurists as well as murderers partake of the consensus on ‘fact’ – that only the archive can establish it. In the absence of the archive, the genocidal event ceases to exist as a ‘fact’ and this leads Nichanian to further claim that ‘the

power of the archive is what has made possible the genocidal will as such' (16). The archive is the condition of possibility for genocide for without the destructive force inherent in the archive's self-preservation, the genocide could not have happened. In order to remove any memory of the genocide, the archive must be destroyed. However, testimony could seemingly offer a threat to this genocidal will. But this threat could be easily neutralized by the fact that since the factuality of the genocidal event is under question, the testimonies lose their point of reference. More so, the moment a testimony is uttered, it becomes part of the archive which is the very condition of possibility for the genocidal will. Thus, the testimony must be saved from the archive, and Nichanian later writes 'Only literature could take this experience to its conclusion' (9). 'Literature did not intend to speak reality. Its intention, its function, its task—was the redemption of testimony' (17).

Taking a cue from Nichanian's insightful book, one could ask if there is any record of Garner's personhood in the legal archive. The answer must be a unanimous no. Archives only attest to slaves as commodities. Garner's testimony was delivered in the context of property law which soon became part of the archive. This only reified her as property. Testimony here was without its true objective – change and healing. Testimony and archive together reinscribed Garner as a commodity to be exchanged and it is little wonder that she was remanded to slavery. If Garner were tried for the murder charge, the trial would still have failed to consider infanticide as a part of the mother's love. The law and the archive together would corrupt Garner's killing by framing her as a murderer. That is why, the life of the slave mother, her genealogies, travails with her masters, and her relationship with her children must be liberated from the archive, and only fiction can take this task to its conclusion. Only an imaginative interior life of the slave mother could have no archive because the archive will always reveal her as either a property or a murderer. Seeking Margaret Garner in the archive will thus always be corruptive and this is why Morrison wanted to 'invent' her life. Literature,

as well as testimony, requires more than what Coleridge refers to as ‘the willing suspension of disbelief.’ It must be complemented with the less familiar yet the necessary work of ‘willing suspension of belief’ (Anijdar 2009, 151). Engaging with the ‘unreal’ as that which is beyond documentation and facts, reality (as history and law define them) must also be suspended to account for the other side of the fact, one that does not exist in the archive. Nichanian writes, ‘it is with this—the suspension of faith or belief, with simulation and simulacrum—that literature in the proper sense of the word begins’ (Nichanian 2002, 245). Garner’s imaginative witnessing of her personhood in *Beloved* is that other side of fact, one that is safe from the archive.

The silences in the archive, in this case, the silence regarding Garner’s personhood, preclude the possibility of mourning. The killing of one’s own daughter out of love also needs to be mourned. Literature, in this case, the novel *Beloved*, emerges as that monument of mourning. So, ‘against the document, against the archive, Nichanian proposes monument, literature as monument’ (151). Literature becomes another name for ‘monumental historiography’ (152). Only as a monument, can a testimony be read without being corrupted by its documentary function, without the archive. *Beloved* here reworks Garner’s testimony to seek the other side of the property—the person—which can be only achieved through a fictional re-invention of her life. It opens up a space for mourning which is exemplified by the final scene in the novel in which the primal scene of *Beloved*’s killing is re-enacted and Sethe is reborn: ‘For Sethe it was as though the Clearing had come to her with all its heat and simmering leaves, where the voices of women searched for the right combination, the key, the code, the sound that broke the back of words...It broke over Sethe and she trembled like the baptized in its wash’ (Morrison 1987, 308). But this time Sethe mistakes her elder daughter, Denver’s abolitionist employers for slave catchers and tries to kill them before she is stopped by the community of women who approaches from the other direction. Amidst this, *Beloved*

disappears. Thus, the primal scene is re-enacted so that the community of women as well as Sethe herself could bear witness to Beloved's disappearance. In order to mourn, the killing must be witnessed and admitted to memory. Garner's testimony attached to the archive precluded the possibility of mourning because she is a mere property in the documents. *Beloved* delivers this act of mourning and as such it rightly emerges as the 'monument to mourning', or rather as the 'monument to the impossibility of mourning' (Nichanian 2009, 152).

Therefore, in this section, I have argued how the true objective of testimony, that is change and healing through the work of mourning, can be achieved only through fiction. Morrison's imaginative re-invention of Garner's interior life freed testimony from its juridico-historical function by engaging with the other side of this fact, fact as defined in historical (archival) and legal terms. This other side is the human half of the slave mother. This humanity of Garner is a silence in the archive that despite its visibility remains unseen. Felman calls this invisible zone 'abyss' (Felman 2002, 89) which the novel illuminates. *Beloved* re-opens the trauma inherent in the law's structure. Through a set of legal precedents, such trauma accumulates and adds layers to the legal memory. Thus, in the memory of the law and the archive, slaves like Margaret Garner are always property. This leads Holloway to ask if it is fully possible to untangle the present and the future from the propertied past. With a narrative time set in the post Reconstruction era and published in the late twentieth century, *Beloved* is a novel steeped in the legacies of slavery. This further leads Holloway to compare 'rememory', a term Morrison uses in *Beloved*, with legal precedents. She writes, 'In the way that precedent contours jurisprudence, memory—especially an instantiated memory of race—is a construct that retains its solidity and presence despite the passage of time' (Holloway 2014, 14). The passage of time has not disentangled freed slaves from the past in which they were mute properties and any testimony only further reified such muteness. This is why Nichanian considers testimony, in archival and legal terms, a corrupted document that fails to heal and transform. By imagining

an afterlife of such testimony originally uttered in the context of property law, *Beloved* redeems it through ‘novel writing’. In doing so, the novel conforms to the tradition of neo-slave narratives and their commitment to newer subject formations of the ex-slaves – restoring their humanity.

IV. Conclusion

In conclusion, I will draw upon Nichanian’s *The Historiographic Perversion* to reiterate that fiction is history’s paradigmatic other. In other words, fiction is the archive’s excess – the spilling of the archive into another terrain. In this, the chapter is consistent with the theoretical framework as laid out at the beginning of the thesis – that there are always two dimensions to the law (of the archive) – one that complies, and the other that transgresses. The chapter demonstrated that this transgression took place through Toni Morrison’s *Beloved*, based on the testimony delivered by the fugitive slave Margaret Garner in court in 1856. However, *Beloved* is far removed from the historical trial of Garner, one that was situated at a critical temporal juncture in the American legal history when the nation was irrevocably progressing towards a Civil War over the issue of slavery. Trapped between constitutional morality and the universal rights of freedom, the chapter showed how the Garner trial, situated in the larger context of fugitive slave trials, was already a defeat for the Garner family. In such a context, the testimony of Garner, though a historic moment in itself as slaves were disallowed by the law to speak in their own person, was fated to get re-inscribed in the discourse of property. By allowing a fictional invention of Garner’s life, *Beloved* re-deploys Garner’s testimony in court to enable a slave’s new subject formation – that of a human. This re-deployment of the archive, where Garner exists only as property, is an excess or a transgression of the law of the archive. As I have argued in the previous chapters, following Ben Golder and Peter Fitzpatrick’s framework of determinate and responsive dimensions of law, this excess is ‘fictionality’ one that is poised

towards change and alterity. In the context of the current chapter, this alterity is the formation of a healing and mourning mother whose love had embraced infanticide.

Chapter 4: De-racing the Literary Canon: A Comparative Analysis between Shakespeare's *Othello* and Toni Morrison's *Desdemona*

Introduction

Consistent with the notion of 'excess' as outlined in the previous chapters, this final chapter explores 'excess' with respect to the Western literary canon formation by indicating a counter canon resurrecting subaltern voices. To set up the context for a counter canon, I recall two specific instances from the previous chapters – Ernest Hemingway's *To Have and Have Not* (1937), and Toni Morrison's short story 'Recitatif' (1983). Specifically, I recall Toni Morrison's analysis of the racial undercurrents in these two texts that could move the narratives in newer directions. In *To Have and Have Not*, the black character Wesley (whose name was revealed only much later in the novel) had an opportunity to claim the narrative – when he spotted a flying fish behind the prow of the boat signaling promising waters. Being temporarily in charge of the steering wheel, Wesley was naturally the first one to experience this moment of promise. But the narrative reserved the right of the sighting as well as that of speech for the classic white American hero, Harry Morgan, who then said '[...] I looked and saw he had seen a patch of flying fish...' (Hemingway 1937, 8) This may be a logical breakdown but the risk was worthy. In *Playing in the Dark: Whiteness and the Literary Imagination* (1992), Morrison explains that had Wesley been given the voice, Harry would at least partly lose his because whiteness alone is pointless and needs to be set off against an abiding black presence (Morrison 1992, 73). Morrison calls this presence 'Africanism' (Morrison 1992, 6) – a lurking blackness moving at the margins of the texts, and of the literary canon at large.

On the other hand, in the short story 'Recitatif', Morrison presents race as slipping, and ambiguous by deftly concealing the racial information of the characters. The three main characters in the story – Twyla, Roberta, and a disabled Maggie, for all of whom race was of

utmost importance – were never revealed as definitively black. Rather, the readers are tricked to pick up racial cues from ambiguous social codes. While the theme of race has been vociferously studied to interpret black texts, Morrison contends that it may have also limited interpretations in crucial ways (Morrison 1992, xi). Hence her experiment of concealing racial information in the story is an attempt to open up fresh surfaces of interpretations when the race is revealed not as a stable stereotype, but rather as a supplementarity or an excess.

In the interest of the chapter, I point at two major significances from the above examples – first, in both the examples race does function as a presence, but either unacknowledged or concealed. In this way, it can be argued that they may be similar. Second, in Hemingway’s novel, race operates as a presence lurking only at the fringes, while in Morrison’s text, race operates centrally, however, concealed. In this way, it can be argued that they are different. When compared, these two kinds of race representations reveal one as frugal, though ever-present (Hemingway), and the other as excess, though always absent (Morrison). The simultaneity of sameness and difference is a distinct cognitive position that has been called ‘in/commensurable’ in discourses on comparison by Susan Stanford Friedman in the essay ‘Why Not Compare?’ (2011). By this Friedman means that by comparing canonical texts (Hemingway) with marginal ones (Morrison), values enshrined in the literary canon are challenged and rendered non-universal. In the context of the above two examples, the race is decontextualized when removed from standard modes of representation as in Hemingway’s *To Have and Have Not*, and recontextualized when presented as ambiguous and slipping as in Morrison’s ‘Recitatif’. This recontextualization opens up fresh perspectives on how race functions across space and time, as both similar and different, in short, as ‘in/commensurable’. As Friedman writes ‘The dialogic pull of in/commensurability invites a comparative methodology that sets things being compared side by side, not overlapping them, not setting up one as the standard of measure for the other, not using one as an instrument to serve the

other' (Friedman 2011, 758). In other words, Morrison here resists being reduced in terms of a canonical text like Hemingway's. This is not to imply that a text must not aspire to be a part of the literary canon, but as I will argue, the canon itself undergoes a rearrangement through texts like 'Recitatif'.

Taking 'in/commensurability' as a conceptual resource and comparison as a methodology, this chapter will focus on Toni Morrison's lyrical play *Desdemona* where Morrison not only re-imagines the titular character from Shakespeare's *Othello* both in her girlhood and afterlife but also resurrects her mother's African maid Barbary who had existed only on the fringes of the main text. The play, in these resurrections, thus beckons a comparison with the original, and the chapter will demonstrate the dynamism implicit in the comparison between the canonical *Othello* and the radical re-reading of it resurrecting Desdemona and Barbary. The chapter claims that the power/law of the canon and its exclusionary underpinnings can be countered through the reciprocity implicit in the elements being compared.

Towards this, the argument will proceed in the following stages – the first section '*Othello* and *Desdemona*: A comparison of plots' will highlight the key differences in the two texts, mostly attending to the character of Barbary, and other suppressed female characters in the source text. The second section '*Desdemona*: Adaptation or Appropriation?' will critically engage with the differences between the two processes to finally show how *Desdemona* appropriates the source text for contemporary relevance. The third section 'On Comparison: Theoretical Perspectives' will select and study two texts on comparative politics to indicate a possibility of newness and alterity in comparing *Othello* and *Desdemona*. The concluding section 'Conclusion: Towards a theory of Comparison' will close with the notion of the 'excess' as the outcome of the comparative act but not its finality.

I. *Othello and Desdemona: A comparison of plots*

In Act IV Scene III of Shakespeare's *Othello* (1602-03), there is a brief discussion of female desires between Desdemona and her lady-in-waiting and Iago's wife, Emilia. While Desdemona believes in absolute fidelity to one's husband, Emilia believes that women have the same desires as men. This ideological difference between the two women is highlighted in the scene because it follows the scene where Othello, suspicious of Desdemona's alleged affair with Cassio, calls her 'the whore of Venice'. After Othello leaves, only to return to kill Desdemona, Desdemona requests Emilia to help her prepare for bed. At this point, Desdemona hums a 'willow song', a song that she cannot get out of her head. She then tells Emilia:

My mother had a maid called Barbary
She was in love, and he she loved proved mad
And did forsake her. She had a song of willow,
An old thing 'twas, but it expressed her fortune,
And she died singing it. That song tonight
Will not go from my mind.

(4.3, 170)⁶³

While the 'willow song' indicates Desdemona's impending doom later that night at the hands of Othello, the mention of Barbary is the greater point here, as far as the text at large is concerned. In one line, Shakespeare informs us of two missing women in the text – Desdemona's mother, and her maid Barbary. While Desdemona's mother, Madam Brabantio is mentioned only twice, this is the only time the reader is informed about Barbary – a name that triggers a series of African images in Elizabethan England. Theatre director Peter Sellars in the forward to Toni Morrison's *Desdemona* explains:

⁶³ All references to *Othello* are from Burton Rafeel, *The Annotated Shakespeare: Othello* (New Haven and London: Yale University Press, 2005).

In seventeenth-century London, “Barbary” meant Africa. The Barbary pirates were hijacking British vessels off the coast of Africa, enslaving their white, British crews. In 1600, a delegation of ambassadors from the Barbary court, Africans of high degree, splendidly dressed, arrived in London to negotiate with Queen Elizabeth. That advent stirred much discussion in London. That Shakespeare, writing *Othello* in 1603, uses the name “Barbary”, implies that there is another African character in the play. (Sellers 2012, 2)

This is also corroborated by Jo Eldridge Carney in *Women Talk Back to Shakespeare: Contemporary Adaptations and Appropriations* (2022) which lists a series of sources adapted for Shakespeare’s conception of *Othello*, the ‘Moor’, one of which was a diplomatic visit of the Moroccan Ambassador Abd el-Ouahed with his ministers to London in 1600-1601. The entourage stayed for six months amidst curiosity and xenophobia towards the racial other. That *Othello* was written only a year after in 1602 with the Moor as the tragic hero is not an easy coincidence but was most likely influenced by the Moroccan ambassador’s visit and the Londoners’ response to him (Carney 2022, 12). In the forward to Morrison’s text, Sellers claims that the project of *Desdemona* arose out of that astonishing line in *Othello* – ‘My mother had a maid called Barbary’ who died of a broken heart.

Desdemona is a collaborative project among Toni Morrison, Malian musician and composer Rokia Traoré, and theatre director Peter Sellers that explores the afterlives of the characters in Shakespeare’s *Othello*. The text is a series of monologues by Desdemona that in turn beckons dialogs with other characters in the source play, with songs and performance interludes by the singer Rokia Traoré. The play opens with the line “My name is Desdemona. The word, Desdemona, means misery. It means ill-fated. It means doomed...I am not the meaning of a name I did not choose.” Thus, though Desdemona explains the meaning of her name, she rejects its implications. At the outset, the play sets the stage for Desdemona to resurrect herself and others from the source play. The stage is minimally decorated with props indicating a Malian graveyard because Morrison’s *Desdemona* is set in *Othello*’s afterlife. Free from the constraints of time, *Desdemona* clears space for a backward look at life. In *Women*

Talk Back to Shakespeare, Carney writes ‘Desdemona is also an unusual addition to the body of Othello revisions because it is both prequel and sequel to Shakespeare’s tragedy; it expands the temporal parameters of the play by imagining Desdemona’s girlhood as well as her story from the other side of the grave...’ (10)

While *Desdemona* is a play that resurrects the missing and mysterious characters from the source play, the tragedy of *Othello* is a story of love, revenge, and brotherhood. Opening with the elopement of a Venetian white, aristocratic princess with a Moor serving the military, the plot soon progresses towards a hint of bloody revenge and hatred when Iago, Othello’s rival, threw racial slurs at Desdemona’s father, Brabantio addressing the Moor as the one with ‘the thick lips’ and provoking Brabantio to imagine a sexual image of his own daughter – ‘an old black ram/Is tugging your white ewe...’ In fact, Iago was the one to bring the news of Desdemona’s elopement with Othello to Brabantio. It was indeed a double transgression for Desdemona – to choose a husband who is black, and accompany him to war. Though in Shakespearean tragedies, women frequently had diminished roles, in *Othello* it might appear at the beginning that Desdemona displays some agency. She rejected all her other suitors, and actively participated in listening to the military exploits of the Moor when he was invited to Brabantio’s court to tell exotic stories. Critics like Heather James ascribe agency to Desdemona’s sympathetic listening to the Moor’s fantastic stories (James 2001, 376). She publicly confesses her love for the Moor – ‘I do perceive a divided duty’, Desdemona tells her father, and continues ‘To you I am bound for life and education./ My life and education both do learn me/How to respect you. You are the lord of duty./ I am hitherto your daughter. But here’s my/ husband’. (I.iii)

This initial agency is soon foiled when Desdemona’s innocence succumbs to Iago’s plot, and her character begins diminishing to docile and submissive. Iago, fuelled by his hatred towards a superior Moor, convinces his reluctant wife Emilia to steal Desdemona’s

handkerchief and plant it with Cassio to insinuate their adultery. When Othello asks Desdemona about the lost handkerchief and she is unable to answer, he endows it with suspicious sentimental value:

That handkerchief
Did an Egyptian to my mother give.
She was a charmer, and could almost read
The thoughts of people. She told her, while she kept it
'Twould make her amiable and subdue my father
Entirely to her love, but if she lost it
Or made a gift of it, my father's eye
Should hold her loathèd, and his spirits should hunt
After new fancies.

(3.4, 130)

This sudden ascription of mystic value to the handkerchief is rather a threat – ‘...but if she lost it/...my father's eye/Should hold her loathèd,... that confuses Desdemona and she turns to her lady-in-waiting Emilia for comfort. Emilia, not knowing the full extent of Iago's scheme against the couple and its possible outcome, tries to console Desdemona in the ‘unpinning scene’ – a scene explored by future adaptations and performances to portray female camaraderie about marriage and infidelity not found in the original Shakespearean text (Carney 2022, 17). But female friendships are ultimately insufficient in the world of Shakespearean tragedy. Rather, Iago's successful instigation of Othello's rage and jealousy indicates that homosocial bonds among men are more powerful. For example, later in *Desdemona*, Toni Morrison will provide an important backstory about Iago and Othello's military exploits where the two men rape women while a child watches with fear. The shame and secrecy of the incident bind the two men into a mutual allegiance, evoking trust. Thus, while female camaraderie may be based on openness, male camaraderie is based on secrecy.

In a fit of rage about the lost handkerchief, Othello calls Desdemona ‘whore’ and ‘strumpet’ and accuses her of falsehoods, despite Desdemona’s consistent claim of her innocence. Othello next interrogates Emilia about Desdemona’s sexual conduct to which Emilia responds that Desdemona is the most chaste. However, in the patriarchal and misogynistic world of Shakespearean tragedy, women’s opinions are less valued and so Emilia’s opinion of Desdemona’s chastity is easily dismissed by Othello because he thinks Emilia herself could be ‘a simple bawd’, meaning pimp, a debased enabler. He then proceeds toward a sleeping Desdemona and once again accuses her of infidelity. He repeatedly provokes her to confess her sin, insisting that he had seen the prized handkerchief with Cassio – ‘Therefore confess thee freely of thy sin/... Thou art to die’. Threatened, Desdemona pleads for mercy but Othello ultimately smothers her.

At this point, Emilia and Iago enter the scene, and upon seeing Desdemona dead, Emilia bursts out in tears and horrors. She confesses that it was her that found the handkerchief ‘by fortune’ and gave it to Iago, upon the latter’s insistence. Iago repeatedly charges his wife to go home but Emilia, determined to ‘...speak as liberal as the north’ informs Othello about Iago’s falsehoods. In the final scene, Othello, now remorseful and disgraced, stabs himself and requests Lodovico to tell his story not with ‘malice’ but with details of his military chivalry and righteous love. The play ends with Lodovico leaving for Venice to tell ‘This heavy act with heavy heart relate’.

Toni Morrison’s *Desdemona* is not a tragedy, but closure and attainment of knowledge. *Desdemona* is also not the first feminist retelling of *Othello*. Some previous examples include Ann-Marie MacDonald’s *Goodnight Desdemona (Good Morning Juliet)* (1988) in which the central character subconsciously enters the tragic worlds of Othello and Romeo and Juliet, finds and reinstates a wise fool, and converts the tragedies into comedies with the help of Desdemona and Juliet; Paul Vogel’s *Desdemona: a Play about a Handkerchief* (1994) in which three

female characters in the original play – Desdemona, Emilia, and Bianca – discuss love, marriage, fidelity, and female friendships backstage while the tragedy unfolds onstage; Caleen Jennings’s *Casting Othello* (1996) in which a multi-racial theatre company contemplates about the casting of the Moor indicating the racial fault lines immanent to the Shakespearean text; Canadian playwright Djanet Sears’s *Harlem Duet* (1997) that moves through two temporalities, one set in present-day Harlem where Othello leaves his wife for a white woman, and the other in a mid-nineteenth cotton plantation where Othello woos his wife with his mother’s handkerchief; and Lolita Chakrabarti’s *Red Velvet* (2012) that takes place in the early 1800s England where a white English actor is replaced by a black actor for the role of Othello, the first ever incident of such racial import in London’s Theatre Royal⁶⁴. But what possibly sets apart Toni Morrison’s *Desdemona* is its timelessness. Set in the afterlife of the characters in *Othello*, the play has the gift of time to make amends, seek forgiveness, and upend the tragic finality of the original play – *Desdemona*’s ‘Late has no meaning here’ is thus a rejoinder to *Othello*’s ‘It is too late’.

Desdemona is not Toni Morrison’s first engagement with a Shakespearean text. In the novel *The Bluest Eye* (1970), the protagonist Pecola Breedlove goes mad like Ophelia in *Hamlet* (the novel explicitly mentions Ophelia to indicate parallels between her and Pecola), while in the novel *Tar Baby* (1982) Morrison critiques the colonialist ideology inherent in the traditional readings of *The Tempest* (Carney 2022, 21). In the essay “‘My Mother’s Fussing Soliloquies’: Toni Morrison’s *The Bluest Eye* and Shakespeare’ (2013), Chris Roark argues ‘that *The Bluest Eye* attacks hierarchical structures associated with Western aesthetics and challenges the concept of the isolated hero/artist, as epitomized by Hamlet...’ (2), and reads the novel’s emphasis on song’s communal potential as a resistance to the ‘soliloquy sense of self’

⁶⁴ African-American actor and activist Paul Robeson was the first black actor to play Othello in England in 1930. For a comprehensive reading of the casting of a black actor in the role of a Shakespearean tragic hero, see Lindsey R. Swindall, *The Politics of Paul Robeson’s Othello* (Jackson: University Press of Mississippi, 2011).

(2). On the other hand, in the essay ‘Toni Morrison’s *Tar Baby*: Re-figuring the Colonizer’s Aesthetics’ (1993), Malin LaVon Walther argues that ‘Morrison constructs the setting and themes of *Tar Baby* to suggest an intertextual parallel with *The Tempest*’ by ‘placing most of the (novel’s) action on a Caribbean island’ and ‘Thus...situates *Tar Baby* squarely within colonialist dynamics’ (140)⁶⁵. In so engaging with Shakespearean texts held sacred in traditional criticisms, Morrison has been responding to the Eurocentric values inherent in canonical literature not only in the form of ‘re-visions but also as performances’ (Novy 1993, 2).

In the words of Katherine Steele Brokaw, Toni Morrison’s *Desdemona* is a performance of sound – ‘of music and story, and of “deep listening created by women”’ (Brokaw 2012, 361-62). Combined with song lyrics in the Malian vernacular language Bambara by Rokia Traoré, Morrison’s play-text (and the performance) is inspired by *Desdemona*’s memory of her mother’s African maid, Barbary whose real name was Sa’ran. Set in the afterlife of the characters in *Othello*, *Desdemona* could transgress not only the boundaries of time but also of the narrative. For example, in *Othello* *Desdemona* mentions Barbary to Emilia in the ‘unpinning scene’ as her mother’s maid – ‘My mother had a maid called Barbary...’ (4.3) – whereas, in Toni Morrison’s play-text, Barbary is *Desdemona*’s childhood nurse – ‘My solace in those early days lay with my/nurse, Barbary’ (18). The narrative also accommodates new characters – *Desdemona* and *Othello*’s mothers meet, discuss, and jointly grieve over their children’s deaths⁶⁶. When *Desdemona* meets *Othello* in their afterlives, Morrison does not imagine a happy reunion, but rather a reciprocal understanding through sharing of backstories, and acceptance of hubris. Morrison made this

⁶⁵ For an anthologized reading combining feminist criticism with black and postcolonial criticism, as well as literature with Shakespearean theatre, see *Cross-Cultural Performances: Differences in Women’s Re-visions of Shakespeare*, ed. Marianne Novy (Urbana and Chicago: University of Illinois Press, 1993).

⁶⁶ For a (mis)representation of motherhood in Shakespearean drama, see Mary Beth Rose, ‘Where are the Mothers in Shakespeare? Options for Gender Representation in the English Renaissance’, *Shakespeare Quarterly*, Vol. 43, No. 3, (Autumn 1991), pp. 291-314.

narrative latitude possible by cutting short Iago's encompassing presence in *Othello*. Instead, and as Carney suggests, *Desdemona* insinuates that Othello had known Iago's plans, yet chose to believe him over Desdemona because of 'the power of "brotherhood"' (30). This narrative strategy in Morrison's play-text is effective in clearing space for Desdemona, as well as the other women surrounding her, and impacting her life so that she could emerge pivotal claiming her own narrative. The play thus aptly begins with Desdemona rejecting the connotations of her name's meaning – 'My name is Desdemona/I am not the meaning of a name I did not choose' (Morrison and Traoré 2012, 13).

Other narrative freedoms that Morrison's play-text offers are characterization and extended conversations with other female characters in *Othello*. Desdemona, being the dominant presence in both the text and the performance, voices other characters using separate accents for each, except for the character of Cassio whose presence is significantly minimized and heard only in the background. These narrative strategies foreground a fuller characterization of Desdemona herself by placing her in relation to other female characters surrounding her. While the original 'unpinning scene' between Desdemona and Emilia did not focus on female friendships, in *Desdemona*, female friendships are foregrounded and revealed as fraught with class tensions. For example, when Desdemona tells Emilia that she considers her a friend, a pragmatic Emilia reminds her that despite all her claims of friendship, she is only a servant – "My cloak Emilia," "My night gown, Emilia"/ "Unpin me, Emilia". "Arrange my bedsheets,/Emilia." That is not how you treat a friend; that's how you treat a servant.' (43) Thus, in resurrecting the female characters of *Othello* and their potential for friendships, Morrison does not intend any easy reconciliations, but understanding and reciprocity, hence filling the gaps between characters.

Similar understanding and reciprocity are shown between Desdemona and her childhood maid Barbary – the centerpiece of the play text and the performance. The first change

brought to their relationship is that Barbary is not Desdemona's mother's maid, as in *Othello*, but her childhood nurse – 'My solace in those early days lay with my/nurse, Barbary' (18), indicating at the outset that Barbary's love, generosity, and storytelling replaced that of Desdemona's own mother's.⁶⁷ It also proved that Othello was not Desdemona's very first encounter with a black person, but rather Barbary's 'stories of other lives, other countries...Where nature is not a crafted, pretty thing, but wild, sacred and instructive' (Morrison and Traoré 2012, 18) found a human form in the figure of the Moor. When Desdemona meets Barbary in the afterlife, like that in the encounter with Emilia, Desdemona's presumed friendship and love for Barbary are re-evaluated by Barbary's direct and unequivocal rebuke:

I mean you don't even know my name.
Barbary? Barbary is what you call Africa.
Barbary is the geography of the foreigner,
the savage. Barbary? Barbary equals the
sly, vicious enemy who you must put down
at any price; held down at any cost for the
conquerors' pleasure....
I was your slave...I am black-skinned.
You are white-skinned....
So you don't know me. Have never known me.

(Morrison and Traoré 2012, 45-46)

Barbary then reveals that her real name is Sa'ran, and this moment of naming oneself is pivotal to Morrison's project of drawing 'a map, so to speak, of a critical geography and use that map to open as much space for discovery,...without the mandate for conquest (Morrison 1992, 3). Desdemona makes this discovery of Barbary possible, which had only existed at the margins

⁶⁷ For reading on the relationship between black nannies and white children in 17th century England, see Sujata Iyengar, 'Woman-Crafted Shakespeares: Appropriation, Intermediality, and Womanist Aesthetics,' In *A Feminist Companion to Shakespeare*, 2nd ed., ed. Dymphna Callaghan (Hoboken: Wiley Blackwell, 2016): 507–519.

of Western literature. Yet, this discovery does not indicate any easy reconciliations as the racial differences between the characters make ‘the gulf between Sa’ran and Desdemona seems almost insurmountable’ (Thompson 2021, 503). Like in the encounters with Emilia, and the mothers of Othello and Desdemona, Morrison’s play text actually lays bare the impossibility of happy reunions. Instead, the play text is ambiguous in retaining some possibility of mourning the deaths of so many characters in *Othello* through difficult encounters never found in the main Shakespearean text. Mourning here is also the reckoning of differences that leave no common grounds between characters, but does leave room for acknowledgments, in short, ‘deep listening’. *Desdemona* is *Othello*’s underworld, extended geography of the original text, where characters do not have that ‘mandate for conquest’. As Peter Erickson notes, *Desdemona* is *Othello*’s ‘second chance’ (2013, 1).

II. *Desdemona*: Adaptation or Appropriation?

While Shakespeare’s *The Tempest* has been frequently revisited in the late twentieth century for postcolonial revisioning mainly through the character of Caliban (Alden T. and Vaughan 1991; Hulme and Sherman 2000; Zabus 2002; Goldberg 2004), *Othello* too has been similarly revisited and revised ‘to examine the tensions of multicultural societies in the modern era (Sanders 2006, 52). For example, in Vishal Bhardwaj’s Hindi film *Omkaara* (2006), the story is set in Meerut in western Uttar Pradesh, India where caste determines social mobility. The protagonist Omi (Omkaara) is a gangster who makes his way into the politics of the state and later elopes with an upper-caste girl, Dolly (Desdemona). After entering politics, Omi appoints Kesu (Cassio) over Langda (Iago) because the former is an upper-caste, college-educated young man who had a better chance of winning the young voters than Langda who is from a lower caste and is uneducated. Enraged that his long experience as Omi’s gang member did

not qualify him to become the successor, Langda plots revenge against Omi by poisoning Omi's mind about an alleged affair between Dolly and Kesu. Like in *Othello*, the handkerchief was stolen by Emilia and planted on Cassio to suggest the affair between Desdemona and Cassio, in *Omkara*, it was an expensive piece of jewelry gifted to Dolly by Omi that Langda's wife Indu (Emilia) steals from Dolly. Later, Langda passes on this jewelry to Kesu and convinces him to gift it to his girlfriend, Billo. When Omi demands proof of Dolly's affair with Kesu, Langda makes arrangements for the jewelry to be dropped at Kesu's door. Now convinced of the affair, Omi smothers Dolly on their wedding night. Discovering Dolly's corpse, Indu admits to having stolen the jewelry upon Langda's insistence. Omi then shoots himself and dies beside Dolly.

The point of proximation is the justification for outlining this Hindi adaptation of *Othello*. The concept 'movement of proximation' was originally propounded by Gerard Genette in *Palimpsests: Literature in the Second Degree* (1997) and defines it as the process in which 'the hypertext (the adaptive or the appropriative text) transposes the diegesis (narrative/plot) of its hypotext to bring it up to date and closer to its own audience (in temporal, geographic, or social terms)' (1997, 304). Simply put, the source text (hypotext) is updated to make it relevant to the contemporary audience, or as Sanders defines it 'an updating or the cultural relocation of a text to bring it into greater proximity to the cultural and temporal context of the readers or audiences' (2006, 163). In the context of the example outlined above, by setting *Omkara* in a caste-ridden Indian society, the Shakespearean hypotext is brought closer to the audience and made more comprehensible and relevant for modern Indian viewers.

While the concept of proximation may suggest an easy transposition of the hypotext into an adaptive or appropriative hypertext, it may not be always so as the final material may be loaded with cultural significations. I argue that Toni Morrison's *Desdemona* is one such text that in many ways challenges its source text by foregrounding elements that can potentially

change how modern readers may look at the source text. In such a re-reading of the source text, Linda Hutcheon's definition of adaptation is useful – 'an adaption is a derivation that is not derivative – a work that is second without being secondary. It is its own palimpsestic thing' (2006, 9). It is a work of repetition but one that is geared towards the transformation of the source text. By foregrounding marginal characters in *Othello*, Morrison's *Desdemona* does not do just that – giving voice to the characters on the fringes of the hypotext. But rather, the play-text has larger canonical implications. Her project of expanding the scope of the western literary canon, as outlined in her theoretical work *Playing in the Dark: Whiteness and the Literary Imagination* (1992) is consistent in re-mapping the trajectories of the Africanist presences in white canonical literature. As was the case of Wesley in *To Have and Have Not* – an example I briefly described at the beginning of this chapter – speaking power is not traditionally vested in the black characters that could have moved the narratives in unforeseen and newer directions, directions not necessarily co-opted by the canon and the values it enshrines. Instead, these new trajectories could 'talk back' to the source text by either expanding or contracting its source. Morrison's *Desdemona*, I argue, is a contraction that does more by doing less. Getting rid of the overwhelming presence of Iago, and preserving only an indicative presence of Cassio in the background, the play expands the speaking power of its female characters, mainly Desdemona and Barbary. By recasting them in pivotal roles, Desdemona is indeed what Peter Erickson calls 'a second chance' (2013), a second chance in imagining the possibility of an outcome other than a tragic one. In this, Linda Hutcheon's definition of adaption is again useful. Adaptations need not come 'after' or 'second' to the source text. Rather, the source text is 'recast' or 'transformed' (Hutcheon 2006, 9) giving rise to a new material where a tragic love story between a Moor and a Venetian woman is transformed into a much larger project of the exclusionary politics of canon formation.

So far, I have been using adaptation and appropriation rather interchangeably, and the critical difference between the two now calls for attention. In *Adaptation and Appropriation* (2006), Julie Sanders attempts to critically define the two processes and products. Placing the two in ‘the over-arching practice of intertextuality’ (Sanders 2006, 17) – intertextuality as defined by Julia Kristeva in ‘The Bounded Text’ (1980) and ‘Word, Dialogue, Novel’ (1986) in which ‘texts invoke and rework other texts in a rich and ever-evolving cultural mosaic (Sanders 2006, 17) – Sanders defines adaptation as signaling ‘a relationship with an informing sourcetext or original’ whereas ‘appropriation frequently affects a more decisive journey away from the informing source into a wholly new cultural product and domain’ (26). Comparing the two terms, while adaptations might be aimed at proximations and making source texts relevant to the present times, appropriations invite for ‘a wholesale rethinking of the terms of the original’ (Sanders 2006, 28). In this light, I argue that Morrison’s *Desdemona* is an appropriation of Shakespeare’s *Othello* because not only does it bestow voice to the smothered female and African characters in the original, but it also questions the value system under which Shakespeare’s *Othello* was operating. Simply put, it questions the ‘what ifs’ – what if Emilia and Desdemona had the chance of evolving their friendship? Would Emilia still had stolen her handkerchief at her husband’s behest? What if Barbary was given a full characterization? Would Desdemona still be enamored by Othello’s exotic storytelling? Appropriations pose these questions for the readers, the answers to which cannot be traced back to the source text. Rather, the source text in effect becomes open-ended too, throwing up questions and many interpretations. In short, the source text does not remain the same because appropriations lift open a veil.

To this mix of terms – adaptation and appropriation, and sometimes hybridity as propounded by Homi K. Bhabha (1995)⁶⁸ – I now bring in another term ‘comparison’ posing the question in the next section, what new knowledge does a comparison between Shakespeare’s *Othello* and Morrison’s *Desdemona* yield with respect to canon formation? The aim is to suggest a dialogic pull between the canonical *Othello* and the re-reading of it in *Desdemona* through character resurrections to indicate a counter-canon of marginal voices.

III. On Comparison: Theoretical Perspectives

In the essay ‘Why Compare?’ (2009) (later elaborated in *Theory in an Uneven World* (2003)) R. Radhakrishnan argues that any project of comparison cannot escape the hegemony of centrism (470). In the very act of comparison, the two entities being compared shed some of their own ‘indigenusness’ to make the comparison feasible as such. After all, comparison bases itself on similarities, and not differences. The shedding of the elements’ own provenance is thus an a priori violence. When Radhakrishnan asks ‘why compare?’ his answer is ‘that a knowledge based on comparison could be more sophisticated, progressive, worldly, and cosmopolitan than a form of knowledge that is secure in its own identity and provenance’ (456). In short, comparative acts are geared towards producing new knowledge. But the author expresses doubts about the sovereignty of this new knowledge. Ideally, ‘Comparisons should open up a mobile space of the “between” that is non-sovereign – a space that cannot be owned and administered as property’ (459). However, the challenge is who validates this new knowledge. In such quests for validation, comparisons usually fall into the trap of the self/other binary indicating that comparison is a linear movement from one point to the other. That is, one work is compared in terms of another thereby installing an inescapable hierarchy. Inviting

⁶⁸ Homi K. Bhabha, ‘Cultural Diversity and Cultural Differences’, in Bill Ashcroft, Gareth Griffiths, and Helen Tiffin eds. *The Post-Colonial Studies Reader* (London and New York: Routledge, 1995).

the reader to compare western realism and third-world realism (454), Radhakrishnan brings home the point about centrism – that the latter is usually compared in terms of the former. But centrism is not the only issue. The author next provokes the reader with a thought experiment of a Venn Diagram.

In a Venn Diagram, two circles overlap while portions of them remain detached. These portions remain outside the zone of comparison. So, Radhakrishnan next asks ‘Would these areas be abandoned from critical-theoretical consideration as mere hinterlands whose function is nothing more than prepping and propping up the avant-garde area of comparison?’ (457). Simply put, the question is whether these ‘hinterlands’ have a place in the new, sophisticated knowledge that comparison should yield. Next comes the issue of coevalness and unevenness. Again, taking the example of western realism and colonial realism, the two dashes of realism have developed unequally, but coevally. For comparison to shore up the effect of epistemological transformation, how does it come to terms with the double bind of coevalness? In short, how does a comparison, typically based on similarities, account for the differences or the ‘indigenoussness’ of the elements being compared? To discard this indigenoussness as the mere hinterland, the project of comparison once again falls into the trap of centrism, or, the self/other binary. In the end, the essay urges its readers to imagine, alongside doubting, a neutral act of comparison.

In the essay ‘Why Not Compare?’ (2011) Susan Stanford Freidman takes Radhakrishnan’s contention about the pitfall of universalisms inherent to the project of comparison as her point of departure. In *Theory in an Uneven World*, Radhakrishnan writes ‘The point is that in a world structured in dominance, comparisons are initiated in the name of those values, standards, and criteria that are dominant. Once the comparison is articulated and validated, the values that underwrote the comparison receive instant axiomatization as universal values... Let me reiterate that behind the will to comparison lies the will to judge and

evaluate.’ (74). Friedman proceeds from another direction. Firstly, she argues that comparison is a cognitive imperative, meaning, that comparison is the central mode of cognition as metaphor, metonymy, simile, and analogy are constantly employed to explain concepts (Friedman 2011, 754). Secondly, while agreeing with the danger of decontextualizing and recontextualizing that comparison inheres, Friedman next argues that by not comparing, consequences may be far worse than the dangers of dehistoricizing – that is removal of elements from their habitats. This danger, Friedman argues, can become a political act of sustaining in-built hierarchies and universalisms without challenging them through acts of comparison (755). Finally, Friedman argues that acts of comparison help move beyond particularity and enable abstraction or theory – ‘By “theory” I mean the cognitive capacity to conceptualize, generalize, and see patterns of similarity as part of a broadly systematic form of thinking’ (756). However, by ‘patterns of similarity’ Friedman does not mean insistence on sameness between elements being compared, as will be obvious in her following statements about commensurability and incommensurability, or what she calls, the model of ‘in/commensurability’ (758).

Contrary to Radhakrishnan’s Venn Diagram as a conceptual model for comparison, Friedman proposes a juxtapositional model of comparison – ‘A juxtapositional model of comparison sets things being compared side by side, not overlapping them as in a Venn Diagram, not setting up one as the standard measure for the other, not using one as an instrument to serve the other’ (758). Rather, this model allows the elements being compared to foreground both their generalities and particularities. One specific juxtapositional model that Friedman advocates in her essay is Radhakrishnan’s concept of ‘reciprocal defamiliarization’ as proposed in *Theory in an Uneven World* (759). In such a model of comparison, Friedman following Radhakrishnan suggests that elements, taken out of their own habitats, expose themselves to other hybridizing influences such that both are characteristically transformed. That is, the elements being compared influence each other reciprocally. This reciprocity is

central to the project of comparison, especially in the context of this chapter where *Othello* and *Desdemona* may be imagined to have been juxtaposed for new knowledge productions.

Placed within the over-arching framework of Friedman's notion of 'in/commensurability', *Othello* and *Desdemona*, I argue exhibit a dialogic pull so that neither can be instrumentalized to serve the other. As will the next concluding section will summarize, in/commensurability is not a play of dominance, or reinforcing universalisms, but rather a play of reciprocity in which the elements being compared/juxtaposed are enmeshed in a dialectic of progress.

IV. Conclusion: Towards a theory of comparison

In the essay 'Unspeakable Things Unspoken: The Afro-American Presence in American Literature' (1995), Toni Morrison writes 'There must be a way to enhance canon readings without enshrining them' (128). By this, Morrison means that the goal of marginal works of literature may not be to leave the literary canon altogether necessarily, but the hierarchical values maintained through the canon must be challenged and de-universalized through such marginal works. In the same essay, Morrison also states that 'canon building is empire building' (277). It is common knowledge that Shakespeare's works had been deployed in the colonies as part of the British imperial project. Values of the colonizer or the ruling class have been enshrined in these works to produce docile subjects amenable to imperialist disciplinary control. Chapter 1 highlighted the survey studies conducted by Elizabeth Villiers Gemmette in 1987 (at the height of canon wars) in the American law and literature departments on how Shakespeare, alongside many white, male canonical authors, were the usual suspects in course curricula. With little or no feminist, critical race, or queer interventions in these Shakespearean works at the time, it may be presumed that the values prescribed by these canonical texts passed on unchallenged. Morrison's critical intervention in questioning the value system within which

these canonical works fall aimed to refresh surfaces on which new analysis and interpretations can be enabled. As she states in the opening passage of *Playing in the Dark: Whiteness and the Literary Imagination* (1992), her project is to expand the map of the western literary canon to make suppressed territories, characters, their voices, and their stories appear. This extended map is what she calls a ‘critical geography’ – opening the cartographic bounds of the canon but without the mandate for conquest (3). Morrison’s play text *Desdemona* is a text from that extended geography, one that adapted and appropriated the canonical *Othello*. In resurrecting subaltern voices from the source text, Morrison’s project is not to transpose *Desdemona* to a new and fixed habitat. Rather, the play text showed the endless possibilities that a canonical text can inhabit through interpretations in the ever-extending cartography of the western literary canon.

The task of comparison between the canonical *Othello* and a subaltern *Desdemona* may be replete with theoretical conundrums. There are no easy answers if the juxtapositional model of ‘reciprocal defamiliarization’ is sustainable or whether it fundamentally transforms the way readers read the two texts. Further, *Desdemona* will be more engaging to an audience who has prior knowledge of the source text, implying that the source text still holds a higher position. Yet, the character of Barbary is resurrected with the sole aim to educate the readers about the presence of fringe characters who, if had a voice, could have taken the plot to new territories, just like Wesley in *To Have and Have Not*. Hence, what juxtapositional comparison between the two texts reveals, despite theoretical conundrums, is the gradual revealing of the Africanist presence in white western literature. In keeping with the overall theoretical framework of my thesis, I call this newly risen Africanist presence an ‘excess’, a supplementarity, and not in Radhakrishnan’s words, a ‘hinterland’ – places outside the ambit of comparison. Instead, I argue that this ‘hinterland’ is rather an excess that gives a literary work a new dimension of fictionality. In Morrison’s words, values of the canon need not be enshrined, but its law (and

exclusionary underpinnings) must be strived to surpass through radical re-imaginings and re-arrangements of the canon.

CONCLUSION

The conclusion reviews what the chapters on the literary genres of novel, short story, archive, and play revealed about the possibility of literary resistance in the age of discipline and biopower. Situated within a Foucauldian framework, it contributes to an understanding of these literary genres as cultural apparatuses of modern powers vested with normalizing function. Through textual analyses of select texts and archival materials, the thesis further illuminates how every act of normalization imports racism. Consequently, it analysed how these sites can be renewed as tools of resistance by borrowing the notion of ‘excess’ from poststructuralist studies of Foucauldian jurisprudence and applying it to studies in literary genres. The conclusion is organised in three ways. First, I outline the four aims of the study and link them to the gaps in the existing literatures on the topics. Second, I discuss how those aims were achieved, and how they enhance respective field knowledge. Finally, I indicate directions for future research.

Aims:

The central aim of the study was to show ways in which literature can resist its co-option by the normative powers of discipline and biopower. It began with constructing a theoretical framework by bringing into conversation Michel Foucault and Toni Morrison on their respective views on normalized racism from the sides of politics and culture. It argued that in the modern regime – roughly from the late eighteenth century but more firmly in the nineteenth century – literary formations, for instance the canon, are invested with policing powers that perform the work of law and governance as norms. Thus, to locate possibilities of literature’s resistance to the norm, the aims more specifically were to show i. how Toni Morrison’s short story ‘Recitatif’ resists a key imperative of the modern powers – a comprehensive knowledge of its subjects to render them docile – by expunging racial codes from the language of the text and replacing them with equivocal social codes; ii. how

Morrison's novel *Beloved* manipulates linear clock time and instead uses cyclical narrative time to resist another key imperative of the modern powers – the correlation between time and work – producing 'untimely' subjects instead of docile bodies; iii. how *Beloved* again as a historical fiction resists the 'juridico-historical' function of the archive in which Margaret Garner's testimony (based on which *Beloved* is written) is re-imagined to restore the human half of the fugitive slave, thus attempting to release her from the discourse of property; and finally iv. how Morrison's lyric play *Desdemona* re-imagines the character from Shakespeare's *Othello* both in her reconstructed girlhood and imaginary afterlife, and gives her a titular role with voice and assertiveness she was earlier denied in the main play, thus resisting the law of the canon by radically re-arranging it through subaltern voices.

Throughout its chapters, the thesis is consistent in its understanding of law in the modern regime of discipline and biopower – that it operates not only through formal legal doctrines but also 'law-like' regularities can emanate through extra-legal or extra-sovereign sources as norms. In other words, the thesis begins with, critiques, and finally resists the understanding that the modern law has been co-opted by the norm.

Claims and their methods:

The first aim of how Morrison's 'Recitatif' resisted comprehensive knowledge of its characters' racial identities was achieved by showing that preserving their racial ambiguity made them transgressive of the norm's control. Existing scholarship has mostly attempted to decode these ambiguities to interpret the text. Morrison in her non-fictional work *Playing in the Dark* had described 'Recitatif' as 'experimental' – whether racial identities can be decoded from social codes. While Elizabeth Abel's essay 'Black Writing, White Reading' (1993) was possibly the only other work that argued in support of the text's racial indeterminacy, it however aimed at exposing 'unarticulated racial codes that operate at the boundaries of consciousness' (Abel, p. 472). In other words, her essay aimed at exposing the

stability of racial stereotypes even where racial markers are absent or ambiguous. This thesis contributes to Abel's argument by claiming that race in 'Recitatif' is not only re-opened as a contested terrain for re-interpretations, but also that it becomes an 'excess', a supplementarity lurking between the stability and instability of stereotypes. In thus renewing 'race' as a differentiated terrain through non-disclosure of racial identities, the story claims its own ambiguity as transgressive of the realist/documentary function of the normative powers that underpin cultural narratives.

The second aim – how *Beloved's* temporal structure resisted linear clock time embedded in modern powers – was achieved by bringing into conversation Foucault's genealogical method of writing history or 'effective history' with Elizabeth Grosz's notion of 'untimely' subjects born outside or nicks or cracks in linear time. In Foucauldian studies, time (like law) has received only sporadic attention, though in *Discipline and Punish* Foucault had mentioned the correlation between time and work for the production of docile bodies, and in 'Nietzsche, Genealogy, History' he had described spiral time with no such correlation. In bringing Grosz's 'untimely' alongside Foucault's 'effective history' based on spiral time, the thesis contributes to the gap in the study of 'time' in Foucauldian scholarship. With this theoretical framework in place, the thesis analyses the temporal structure of *Beloved* and claims the novel to be a work of 'effective history' with the central character as an 'untimely' subject born outside the contingencies of linear time. While Karla FC Holloway in her essay 'Beloved: A Spiritual' had previously analysed temporality in *Beloved* with the notion of 'aspect' – duration or sustained experiences of slavery beyond temporal periodization – interrupting masculinist understanding of linear time, this thesis complements 'aspect' with Grosz's 'untimely' and Foucault's 'effective history'. Thus, when analysed through these three lenses – 'untimely', 'effective history', and 'aspect' – the novel's

temporal structure resists modern powers' conception of time producing 'untimely' subjects instead of docile bodies.

The third aim – the spillage of the archive, as an apparatus of power, onto fiction as 'excess' resisting its 'juridico-historical' function – was achieved by another level of textual analysis of *Beloved*, combining cultural, legal, and historiographical perspectives. It claims that fiction has the power to interrupt traditional notions of truths established by law and the archive, in this case the truth about the human half of the Kentucky fugitive slave Margaret Garner. In other words, it claims that truth is neither always legal nor historiographical, but fictional. In this, it takes cue from Marc Nichanian's *The Historiographic Perversion* to argue that the modern law and the archive jointly operate to produce subjects that are limited in their formations. For instance, the documentary records on Garner attest only to her propertied half inscribing her in the discourse of property only. Previous studies on the archival records of Garner – Steven Wiesenberger's *Modern Medea*, on the cultural history of Garner, and Mark Reinhardt's *Who Speaks for Margaret Garner?*, on the documentary history of Garner – admitted that the Garner archive takes the historian away from the Garners as neither myth (Weisenburger) nor ventriloquism (Reinhardt) established the personhood of the slaves. Thus this study examines the spillage of archive onto fiction through Morrison's re-deployment of Margaret Garner's testimony in court to enable another subject formation in the novel *Beloved* – mourning and healing mother whose love embraced infanticide. Drawing upon Nichanian's claim that fiction is 'history's paradigmatic other', this study demonstrates this claim by arguing Morrison's 'novel writing' as an 'excess' of the 'juridico-historical' function of the archive.

The fourth and final aim is achieved by comparing Morrison's lyrical play *Desdemona* with Shakespeare's *Othello*, by demonstrating the dynamism implicit in the comparison between the canonical *Othello* and the radical re-reading of it resurrecting

Desdemona and her mother's African maid Barbary. It claims is that the power/law of the canon and its exclusionary underpinnings can be resisted through reciprocity between elements between compared. In discourses of comparison, this reciprocity has been called 'in/commensurability' by Susan Stanford Friedman. The dialogic tension inherent in such comparisons opens up possibilities where it is not a question of leaving the canon altogether but 'rearranging' it through radical re-imaginings.

Future directions:

Chapters 3 and 4 can be further extended for a grounded analysis of archive and canon, and how they can be deployed for new forms of resistances. While chapter 3 builds its narrative through primary sources of Margaret Garner's fugitive case trial, chapter 4 remains a secondary research on counter-canon discourse through a textual/comparative analysis of *Desdemona* and *Othello*. 'The Toni Morrison Papers' collected at the Princeton University Library is a rich source of Morrison's private documents (drafts, correspondence letters, pictures, newspaper clips for research, etc.) many of which were collected during the 1980s at the height of canon debates. For example, the collection includes Morrison's correspondence with Houston Baker (1987-2002) whose *Blues, Ideology, and Afro-American Literature: A Vernacular Theory* was published in 1987; Amiri and Amina Baraka (1981-2004) who have anthologised a collection of short fiction where Toni Morrison's only short story 'Recitatif' was first published in 1983; Henry Louis Gates (1983-2008) whose famous critical work *The Signifying Monkey: A Theory of African-American Literary Criticism* was published in 1988; Nellie McKay (1981-1983) who published *Critical Essays on Toni Morrison* in 1988; and Hortense Spillers (1975-1989) whose most famous article 'Mama's Baby, Papa's May be: An American Grammar Book' was published in 1988. These sources could be mined to establish a finer context in which a counter-canon (as indicated in chapter 4) can work together with

counter-archives (as indicated in chapter 3) to resist the normality of racism in the age of discipline and biopower.

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