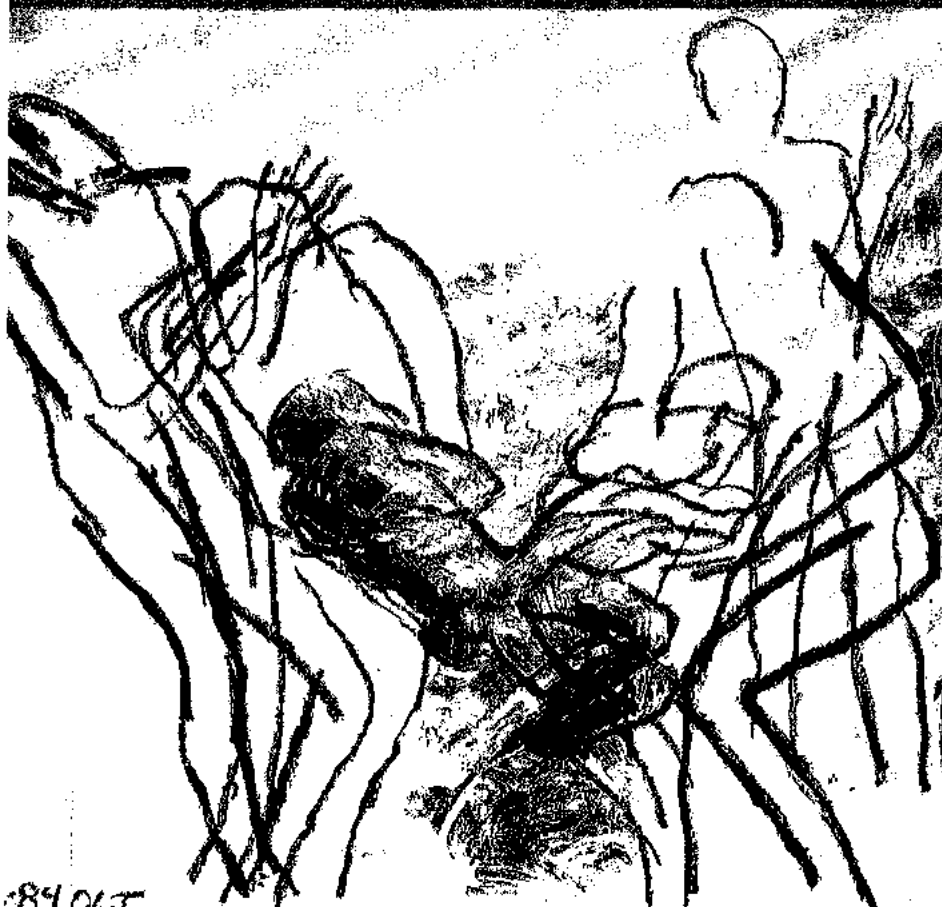


# SCENES OF Subjection

TERROR, SLAVERY, AND SELF-MAKING  
IN NINETEENTH-CENTURY  
AMERICA



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SARDIYA V. HARTMAN

## *Scenes of Subjection*

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**TERROR, SLAVERY, AND SELF-MAKING  
IN NINETEENTH-CENTURY AMERICA**

**Saidiya V. Hartman**

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*land, California*  
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S. V. H.

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## *Scenes of Subjection*





## *Introduction*

The “terrible spectacle” that introduced Frederick Douglass to slavery was the beating of his Aunt Hester. It is one of the most well-known scenes of torture in the literature of slavery, perhaps second only to Uncle Tom’s murder at the hands of Simon Legree. By locating this “horrible exhibition” in the first chapter of his 1845 *Narrative of the Life of Frederick Douglass*, Douglass establishes the centrality of violence to the making of the slave and identifies it as an original generative act equivalent to the statement “I was born.”<sup>1</sup> The passage through the blood-stained gate is an inaugural moment in the formation of the enslaved. In this regard, it is a primal scene. By this I mean that the terrible spectacle dramatizes the origin of the subject and demonstrates that to be a slave is to be under the brutal power and authority of another; this is confirmed by the event’s placement in the opening chapter on genealogy.<sup>2</sup>

I have chosen not to reproduce Douglass’s account of the beating of Aunt Hester in order to call attention to the ease with which such scenes are usually reiterated, the casualness with which they are circulated, and the consequences of this routine display of the slave’s ravaged body. Rather than inciting indignation, too often they immure us to pain by virtue of their familiarity—the oft-repeated or restored character of these accounts and our distance from them are signaled by the theatrical language usually resorted to in describing these instances—and especially because they reinforce the spectacular character of black suffering. What interests me are the ways we are called upon to participate in such scenes. Are we witnesses who confirm the truth of what happened in the face of the world-destroying capacities of pain, the distortions of torture, the sheer unrepresentability of terror, and the repression of the dominant accounts?<sup>3</sup> Or are we voyeurs fascinated with and repelled by exhibitions of terror and suffering? What does the exposure of the violated body yield? Proof of black sentience or the inhumanity of the “peculiar institution”? Or does the pain of

do they merely provide us with the opportunity for self-reflection? At issue here is the precariousness of empathy and the uncertain line between witness and spectator. Only more obscene than the brutality unleashed at the whipping post is the demand that this suffering be materialized and evidenced by the display of the tortured body and endless recitations of the ghastly and the terrible. In light of this, how does one give expression to these outrages without exacerbating the indifference to suffering that is the consequence of the benumbing spectacle or contend with the narcissistic identification that obliterates the other or the prurience that too often is the response to such displays? This was the challenge faced by Douglass and other foes of slavery, and this is the task I take up here.

Therefore, rather than try to convey the routinized violence of slavery and its aftermath through invocations of the shocking and the terrible, I have chosen to look elsewhere and consider those scenes in which terror can hardly be discerned—slaves dancing in the quarters, the outrageous darky antics of the minstrel stage, the constitution of humanity in slave law, and the fashioning of the self-possessed individual. By defamiliarizing the familiar, I hope to illuminate the terror of the mundane and quotidian rather than exploit the shocking spectacle. What concerns me here is the diffusion of terror and the violence perpetrated under the rubric of pleasure, paternalism, and property. Consequently, the scenes of subjection examined here focus on the enactment of subjugation and the constitution of the subject and include the blows delivered to Topsy and Zip Coon on the popular stage, slaves forced to dance in the marketplace, the simulation of will in slave law, the fashioning of identity, and the processes of individuation and normalization.

## Human Flesh

When Charlie Moses reflected on his years of slavery, the “preacher’s eloquence” noted by the Works Progress Administration interviewer who recorded his testimony did not blunt his anger. In recounting the harsh treatment received by colored folks, he emphasized that the enslaved were used like animals and treated as if they existed only for the master’s profits: “The way us niggers was treated was awful. Marster would beat, knock, kick, kill. He done ever’ thing he could ’cept eat us. We was worked to death. We worked Sunday, all day, all night. He whipped us til some jus’ lay down to die. It was a poor life. I knows it ain’t right to have hate in the heart, but, God almighty!” As if required to explain his animosity toward his former owner who “had the devil in his heart,” Moses exclaimed that “God almighty never meant for human beings to be like animals. Us niggers has a soul an’ heart an’ a min’. We ain’ like a dog or a horse.”<sup>4</sup>

In some respects, Tom Windham’s experience of enslavement was the opposite of that described by Charlie Moses; he reported that his owner had treated him well. Nonetheless, like Moses, he too explained the violation of slavery as being made a part of burden. While Moses detailed the outrages of slavery and highlighted the cruelty of the institution by poignantly enumerating the essential features of the slave’s humanity—a soul, a heart, and a mind—Windham, in conveying the injustice of slavery, put the matter simply: “I think we should have our liberty cause us

ain't hogs or horses—us is human flesh.”<sup>5</sup> The flesh, existence defined at its most elemental level, alone entitled one to liberty. This basic assertion of colored folks' entitlement to freedom implicitly called into question the rationales that legitimated the exclusion of blacks from the purview of universal rights and entitlements. As Moses and Windham were well aware, the discourse of humanism, at the very least, was double-edged since the life and liberty they held in esteem were racial entitlements formerly denied them. In short, the selective recognition of humanity that undergirded the relations of chattel slavery had not considered them men deserving of rights or freedom. Thus in taking up the language of humanism, they seized upon that which had been used against and denied them.

However, suppose that the recognition of humanity held out the promise not of liberating the flesh or redeeming one's suffering but rather of intensifying it? Or what if this acknowledgment was little more than a pretext for punishment, dissimulation of the violence of chattel slavery and the sanction given it by the law and the state, and an instantiation of racial hierarchy? What if the presumed endowments of man—conscience, sentiment, and reason—rather than assuring liberty or negating slavery acted to yoke slavery and freedom? Or what if the heart, the soul, and the mind were simply the inroads of discipline rather than that which confirmed the crime of slavery and proved that blacks were men and brothers, as Charlie Moses had hoped.

Here I am interested in the ways that the recognition of humanity and individuality acted to tether, bind, and oppress. For instance, although the captive's bifurcated existence as both an object of property and a person (whether understood as a legal subject formally endowed with limited rights and protections, a submissive, culpable or criminal agent, or one possessing restricted capacities for self-fashioning) has been recognized as one of the striking contradictions of chattel slavery, the constitution of this humanity remains to be considered. In other words, the law's recognition of slave humanity has been dismissed as ineffectual and as a *volte-face* of an imperiled institution. Or, worse yet, it has been lauded as evidence of the hegemony of paternalism and the integral relations between masters and slaves. Similarly, the failure of Reconstruction generally has been thought of as a failure of implementation—that is, the state's indifference toward blacks and unwillingness to ensure basic rights and entitlements sufficed to explain the racist retrenchment of the postwar period. I approach these issues from a slightly different vantage point and thus consider the outrages of slavery not only in terms of the object status of the enslaved as beasts of burden and chattel but also as they involve notions of slave humanity. Rather than declare paternalism an ideology, understood in the orthodox sense as a false and distorted representation of social relations, I am concerned with the savage encroachments of power that take place through notions of reform, consent, and protection. As I will argue later, rather than bespeaking the mutuality of social relations or the expressive and affective capacities of the subject, sentiment, enjoyment, affinity, will, and desire facilitated subjugation, domination, and terror precisely by preying upon the flesh, the heart, and the soul. It was often the case that benevolent correctives and declarations of slave humanity intensified the brutal exercise of power upon the captive body rather than ameliorating the chattel condition.

Likewise, in considering the metamorphosis of chattel into man catalyzed by the abolition of slavery, I think it is important to consider the failure of Reconstruction not simply as a matter of policy or as evidence of a flagging commitment to black rights, which is undeniably the case, but also in terms of the limits of emancipation, the ambiguous legacy of universalism, the exclusions constitutive of liberalism, and the blameworthiness of the freed individual. Therefore I examine the role of rights in facilitating relations of domination, the new forms of bondage enabled by proprietorial notions of the self, and the pedagogical and legislative efforts aimed at transforming the formerly enslaved into rational, acquisitive, and responsible individuals. From this vantage point, emancipation appears less the grand event of liberation than a point of transition between modes of servitude and racial subjection. As well, it leads us to question whether the rights of man and citizen are realizable or whether the appellation "human" can be borne equally by all.<sup>6</sup>

In response to these questions, I contend that the recognition of the humanity of the slave did not redress the abuses of the institution nor the wanton use of the captive warranted by his or her status as chattel, since in most instances the acknowledgment of the slave as subject was a complement to the arrangements of chattel property rather than its remedy; nor did self-possession liberate the former slave from his or her bonds but rather sought to replace the whip with the compulsory contract and the collar with a guilty conscience. Put differently, I argue that the barbarism of slavery did not express itself singularly in the constitution of the slave as object but also in the forms of subjectivity and circumscribed humanity imputed to the enslaved; by the same token, the failures of Reconstruction cannot be recounted solely as a series of legal reversals or troop withdrawals; they also need to be located in the very language of persons, rights, and liberties. For these reasons the book examines the forms of violence and domination enabled by the recognition of humanity, licensed by the invocation of rights, and justified on the grounds of liberty and freedom.

In exploring these issues, I do not intend to offer a comprehensive examination of slavery and Reconstruction or to recover the resistances of the dominated but to critically interrogate terms like "will," "agency," "individuality," and "responsibility." As stated previously, this requires examining the constitution of the subject by dominant discourses as well as the ways in which the enslaved and the emancipated grappled with these terms and strived to reelaborate them in fashioning themselves as agents. For these reasons, the scenes of subjection at issue here consider the Manichaean identities constitutive of slave humanity—that is, the sated subordinate and/or willful criminal, the calculation of humanity, the fabrication of the will, and the relation between injury and personhood. While the calibration of sentence and terms of punishment determined the constricted humanity of the enslaved, the abased and encumbered individuality of the emancipated resulted largely from the equation of responsibility with blameworthiness, thereby making duty synonymous with punishment. The enduring legacy of slavery was readily discernable in the travestied liberation, castigated agency, and blameworthiness of the free individual. By the same token, the ubiquitous fun and frolic that supposedly demonstrated slave contentment and the African's suitedness for slavery were mirrored in the panic about idleness, intemperate consumption, and fanciful expressions

of freedom, all of which justified coercive labor measures and the constriction of liberties. Apparent here are the entanglements of slavery and freedom and the dutiful submission characteristic of black subjectivity, whether in the making and maintaining of chattel personal or in the fashioning of individuality, cultivation of conscience, and harnessing of free will.

In light of these concerns, part I examines a variety of scenes ranging from the auction block and the minstrel stage to the construction of black humanity in slave law. In this part, issues of terror and enjoyment frame the exploration of subjection, for calculations of socially tolerable violence and the myriad and wanton uses of slave property constitutive of enjoyment determine the person fashioned in the law and the blackness conjured up on the popular stage. Part II interrogates issues of agency, willfulness, and subjection in the context of freedom. In particular, it examines the liberal discourse of possessive individualism, the making of the contractual subject, and the wedding of formal equality and black subjugation. The period covered thus extends from the antebellum era to the end of the nineteenth century. Despite the amazing tumults, transitions, and discontinuities during the antebellum period, Reconstruction, and the Gilded Age, I feel this scope is justified by the tragic continuities in antebellum and postbellum constitutions of blackness. The intransigence of racism and the antipathy and abjection naturalized in *Plessy v. Ferguson* recast blackness in terms that refigured relations of mastery and servitude. Thus, an amazing continuity belied the hypostatized discontinuities and epochal shifts installed by categories like slavery and freedom.

The first chapter, "Innocent Amusements: The Stage of Sufferance," examines the role of enjoyment in the economy of chattel slavery. Specifically it considers enjoyment in regard to the sanctioned uses of slave property and the figurative capacities of blackness. In this chapter, I contend that the value of blackness resided in its metaphorical aptitude, whether literally understood as the fungibility of the commodity or understood as the imaginative surface upon which the master and the nation came to understand themselves. As Toni Morrison writes, "The slave population, it could be and was assumed, offered itself up as surrogate selves for meditation on problems of human freedom, its lure and its elusiveness."<sup>7</sup> Indeed, blackness provided the occasion for self-reflection as well as for an exploration of terror, desire, fear, loathing, and longing.<sup>8</sup> In examining the torturous constitution of agency and the role of feelings in securing domination, the chapter looks at popular theater, the spectacle of the slave market, and the instrumental amusements of the plantation. At these sites, the reenactment of subjection occurs by way of coerced agency, simulated contentment, and the obliteration of the other through the slipping on of blackness or an empathic identification in which one substitutes the self for the other.

In these instances, the exercise of power was inseparable from its display because domination depended upon demonstrations of the slaveholder's dominion and the captive's abasement. The owner's display of mastery was just as important as the legal title to slave property. In other words, representing power was essential to reproducing domination. As James Scott states, a significant aspect of maintaining relations of domination "consists of the symbolization of domination by demonstrations and enactments of power."<sup>9</sup> These demonstrations of power consisted of

forcing the enslaved to witness the beating, torture, and execution of slaves, changing the names of slave children on a whim to emphasize to slave parents that the owner, not the parents, determined the child's fate, and requiring slaves to sing and dance for the owners' entertainment and feign their contentment. Such performances confirmed the slaveholder's dominion and made the captive body the vehicle of the master's power and truth.

The innocent amusements and spectacles of mastery orchestrated by members of the slaveholding class to establish their dominion and regulate the little leisure allowed the enslaved were significant components of slave performance. Consequently, it is difficult, if not impossible, to establish an absolute and definitive division between "going before the master" and other amusements. Moreover, this accounts for the ambivalent pleasures afforded by such recreations. The vexed character of good times and the reelaboration of orchestrated amusements for other ends are the focus of the second chapter, "Redressing the Pained Body: Toward a Theory of Practice." In "going before the master," the enslaved were required to sing or dance for the slave owner's pleasure as well as to demonstrate their submission, obsequiousness, and obedience. What was demanded by the master was simulated by the enslaved; yet the capitulation of the dominated to these demands must be considered as pragmatism rather than resignation since one either complied with the rules governing socially sanctioned behavior or risked punishment. In addition, these performances constituted acts of defiance conducted under the cover of nonsense, indirection, and seeming acquiescence. By virtue of such tactics, these performances were sometimes turned against their instrumental aims; at the same time, the reliance on masquerade, subterfuge, and indirection also obscured the small acts of resistance conducted by the enslaved. After all, how does one determine the difference between "puttin' on ole massa"—the simulation of compliance for covert aims—and the grins and gesticulations of Sambo indicating the repressive construction of contented subjection? At the level of appearance, these contending performances often differed little. At the level of effect, however, they diverged radically. One performance aimed to reproduce and secure the relations of domination and the other to manipulate appearances in order to challenge these relations and create a space for action not generally available. However, since acts of resistance exist within the context of relations of domination and are not external to them, they acquire their character from these relations, and vice versa. At a dance, holiday fete, or corn shucking, the line between dominant and insurgent orchestrations of blackness could be effaced or fortified in the course of an evening, either because the enslaved utilized instrumental amusements for contrary purposes or because surveillance necessitated cautious forms of interaction and modes of expression.

The simulation of agency and the enactment of willful submission in the domain of law are examined in the third chapter, "Seduction and the Ruses of Power." It contends that the rhetoric of seduction—the power ascribed to the dependent and the subordinate—deployed in the law licensed extreme acts of violation in the name of feelings, intimacy, and reciprocity rather than recognizing the influence of the weak. Issues of sexual violation and domination are the particular focus of the chapter, and in this regard, seduction is considered "a meditation on freedom and slavery" and willfulness and subjugation in the arena of sexuality.<sup>10</sup> In effect, seduction is consid-

ered a story of intimacy and power that dissimulates the violence of the law and the violation of the enslaved. In exploring these issues, the chapter reads Harriet A. Jacobs's *Incidents in the Life of a Slave Girl, Written by Herself*, as an effort to deform the masterful rhetoric of seduction by positioning the "slave girl" as a willful agent determined to obtain freedom rather than her owner's affection and employing cunning and duplicity in the narrative. In this regard, the reversibility of seduction both legitimates violence and enables an enactment of rebellion and a usurpation of power in Jacobs's narrative.

Jacobs's narrative is also instructive regarding the issue of freedom. The critique of freedom exemplified by the loophole of retreat—a space of freedom that is at the same time a space of captivity—and the difficulties experienced in trying to assume the role of free and self-possessed individual prefigure the critique of emancipation advanced by former slaves in the postbellum context.<sup>11</sup> The entanglements of slavery and freedom underlined by Jacobs's continued servitude and vastly improved yet far from ideal condition are the central issues examined in the second half of the book. Part II focuses on the extended servitude of the emancipated, the fashioning of the obligated and blameworthy individual, and the injurious constitution of blackness. In this section I consider the changes wrought by emancipation and the shifting registers of racial subjection. Chapter 4, "The Burdened Individuality of Freedom," serves as an introduction to part II. Primarily it focuses on the legacy of slavery in the postbellum context and the instability and ambivalence of rights discourse. The fifth chapter, "Fashioning Obligation: Indebted Servitude and the Fetters of Slavery," extends this discussion by examining the contractual subject represented in pedagogical manuals for the freed. Basically, it contends that will and responsibility replaced the whip with the tethers of guilty conscience. Of particular interest are liberal notions of responsibility modeled on contractual obligation, calculated reciprocity, and, most important, indebtedness since debt played a central role in the creation of the servile, blameworthy, and guilty individual and in the reproduction and transformation of involuntary servitude.

Chapter 6, "Instinct and Injury: Bodily Integrity, Natural Affinities, and the Constitution of Equality," examines issues of rights, equality, and exclusion. Based upon the argument advanced in the preceding chapters regarding the entanglements of slavery and freedom, I maintain that the vision of equality forged in the law naturalized racial subordination while attempting to prevent discrimination based on race or former condition of servitude. What concerns me here are the corporeal politics spanning the divide between slavery and freedom—the bodily degradation of the African espoused in the majority opinion of *Dred Scott v. Sandford* by Judge Roger Taney (which Taney insisted excluded blacks from the "person" of the Constitution imagined by the founding fathers and was sufficient reason for their continued exclusion) and the feared loss of white bodily integrity that upheld the separate-but-equal doctrine in *Plessy v. Ferguson*. I argue that *Plessy* exemplifies the corporeal anxieties of the liberal order and illuminates the double bind of equality and exclusion that distinguishes modern state racism from its antebellum predecessor rather than simply providing an instance of the dismantling of the civil rights agenda legislatively enacted in the years 1865–1875. Thus this reading does not consider *Plessy v. Ferguson* an aberration of liberal ideals but rather a striking

example of the commonplace—the wedding of equality and exclusion in the liberal state. Of signal importance in *Plessy* are the strategies of disavowal that remove the state from the domains that it in effect constitutes, the primacy granted to affect in determining the scope and enjoyment of rights and the duties of the state, and the reinscription of degradation in the elaboration of the separate-but-equal doctrine.

In short I argue that despite the shift from the legal-status ascriptions characteristic of the antebellum period, the emphasis on the blood, sexuality, and commingling in postemancipation racial discourse ultimately refigured the status-race of chattel slavery. Here again, sentiment sanctions black subordination because affinity and desire ultimately eclipse equality. While the inferiority of blacks was no longer the legal standard, the various strategies of state racism produced a subjugated and subordinated class within the body politic, albeit in a neutral or egalitarian guise. Notwithstanding the negatory power of the Thirteenth Amendment, racial slavery was transformed rather than annulled. As suggested earlier, this transformation was manifested in debt-peonage and other forms of involuntary servitude that conscripted the newly emancipated and putative free laborer, an abiding legacy of black inferiority and subjugation, and the regulatory power of a racist state obsessed with blood, sex, and procreation. The encumbrances of emancipation and the fettered condition of the freed individual, at the very least, lead us to reconsider the meaning of freedom, if they do not cast doubt on the narrative of progress.

### A Note on Method

How does one tell the story of an elusive emancipation and a travestied freedom? Certainly, reconsidering the meaning of freedom entails looking critically at the production of historical narratives since the very effort to represent the situation of the subaltern reveals the provisionality of the archive as well as the interests that shape it and thereby determine the emplotment of history. For example, the imperative to construct a usable and palatable national past certainly determined the picture of slavery drawn in the testimonies gathered by the Works Progress Administration, not to mention the hierarchical relations between mostly white interviewers and black interviewees. Bearing this in mind, one recognizes that writing the history of the dominated requires not only the interrogation of dominant narratives and the exposure of their contingent and partisan character but also the reclamation of archival material for contrary purposes. As Gayatri Spivak remarks, “The ‘subaltern’ cannot appear without the thought of the ‘elite.’”<sup>12</sup> In other words, there is no access to the subaltern consciousness outside dominant representations or elite documents. Accordingly, this examination of the cultural practices of the dominated is possible only because of the accounts provided by literate black autobiographers, white amanuenses, plantation journals and documents, newspaper accounts, missionary tracts, travel writing, amateur ethnographies, government reports, et cetera. Because these documents are “not free from barbarism,” I have tried to read them against the grain in order to write a different account of the past, while realizing the limits imposed by employing these sources, the impossibility of fully recovering the experience of the enslaved and the emancipated, and the risk of reinforc-



ing the authority of these documents even as I try to use them for contrary purposes.<sup>13</sup>

The effort to “brush history against the grain” requires excavations at the margins of monumental history in order that the ruins of the dismembered past be retrieved, turning to forms of knowledge and practice not generally considered legitimate objects of historical inquiry or appropriate or adequate sources for history making and attending to the cultivated silence, exclusions, relations of violence and domination that engender the official accounts. Therefore the documents, fragments, and accounts considered here, although claimed for purposes contrary to those for which they were gathered, nonetheless remain entangled with the politics of domination. In this regard, the effort to reconstruct the history of the dominated is not discontinuous with dominant accounts or official history but, rather, is a struggle within and against the constraints and silences imposed by the nature of the archive—the system that governs the appearance of statements and generates social meaning.<sup>14</sup>

My interest in reading this material is twofold: in interpreting these materials, I hope to illuminate the practice of everyday life—specifically, tactics of resistance, modes of self-fashioning, and figurations of freedom—and to investigate the construction of the subject and social relations contained within these documents. Consequently, this effort is enmeshed with the relations of power and dominance that it strives to write against; in this regard, it both resists and complies with the official narratives of slavery and freedom. My reliance on the interviews conducted by the Works Progress Administration raises a host of problems regarding the construction of voice, the terms in which agency is identified, the dominance of the pastoral in representing slavery, the political imperatives that informed the construction of national memory, the ability of those interviewed to recall what had happened sixty years earlier, the use of white interviewers who were sometimes the sons and daughters of former owners in gathering the testimony, and so on. The construction of black voice by mostly white interviewers through the grotesque representation of what they imagined as black speech, the questions that shaped these interviews, and the artifice of direct reported speech when, in fact, these interviews were transcribed non verbatim accounts make quite tentative all claims about representing the intentionality or consciousness of those interviewed, despite appearances that would encourage us to believe that we have gained access to the voice of the subaltern and located the true history after all.<sup>15</sup>

With all this said, how does one use these sources? At best with the awareness that a totalizing history cannot be reconstructed from these interested, selective, and fragmentary accounts and with an acknowledgment of the interventionist role of the interpreter, the equally interested labor of historical revision, and the impossibility of reconstituting the past free from the disfigurements of present concerns.<sup>16</sup> With all these provisos issued, these narratives nonetheless remain an important source for understanding the everyday experience of slavery and its aftermath. Bearing the aforementioned qualifications in mind, I read these documents with the hope of gaining a glimpse of black life during slavery and the postbellum period while remaining aware of the impossibility of fully reconstituting the experience of the enslaved. I don’t try to liberate these documents from the context in which they were collected but do try to exploit the surface of these accounts for contrary purposes and

to consider the form resistance assumes given this context. My attempt to read against the grain is perhaps best understood as a combination of foraging and disfiguration—raiding for fragments upon which other narratives can be spun and misshaping and deforming the testimony through selective quotation and the amplification of issues germane to this study.

Of course the WPA testimony is interested, provisional, and characterized by lapses of forgetting, silences, and exclusions, but what sources are immune to such charges? John Blassingame has detailed the difficulties inherent in using the WPA sources because of the power differential between white interviewers and black interviewees, the editing and rewriting of these accounts, and the time lapse between the interview and the experience of slavery; nonetheless he concedes that they are an important source of information about slavery.<sup>17</sup> I agree with Blassingame's assessment and would also add that there is no historical document that is not interested, exclusive, or a vehicle of power and domination, and it is precisely the latter that I am trying to bring to the fore in assessing everyday practices, the restricted confines in which they exist, and the terms in which they are represented. Besides, contemporaneous narratives and interviews are no less selective in their representations of slavery. The WPA testimony is an overdetermined representation of slavery, as are all of the accounts. Therefore, the work of reconstruction and fabulation that I have undertaken highlights the relation between power and voice and the constraints and closures that determine not only what can be spoken but also (the identity of) who speaks. In so many words, I approach issues of subjectivity and agency by examining the possibilities and constraints of various practices from performance to the rhetorical strategies of law. Again, my reading of slave testimony is not an attempt to recover the voice of the enslaved but an attempt to consider specific practices in a public performance of slavery that encompasses the slave on the auction block and those sharing their recollections decades later.<sup>18</sup> In this regard, the gap between the event and its recollection is bridged not only by the prompting of interviewers but also by the censored context of self-expression and the uncanny resemblance between "puttin' on ole massa" and the tactics of withholding aimed at not offending white interviewers and/or evading self-disclosure.

The effort to examine the event of emancipation is no less riddled by inescapable ironies, the foremost of these being the discontinuity between substantial freedom and legal emancipation. Inevitably one is forced to confront the discrepant legacy of emancipation and the decidedly circumscribed possibilities available to the freed. In short, how does one adequately render the double bind of emancipation—that is, acknowledge the illusory freedom and travestied liberation that succeeded chattel slavery without gainsaying the small triumphs of Jubilee? Certainly one must contend with the enormity of emancipation as both a breach with slavery and a point of transition to what looks more like the reorganization of the plantation system than self-possession, citizenship, or liberty for the "freed." In the place of the grand narrative of freedom, with its decisive events and incontrovertible advances, I offer an account that focuses on the ambivalent legacy of emancipation and the undeniably truncated opportunities available to the freed. Lacking the certitude of a definitive partition between slavery and freedom, and in the absence of a consummate breach through which freedom might unambivalently announce itself, there is at best

a transient and fleeting expression of possibility that cannot ensconce itself as a durable temporal marker. If periodization is a barrier imposed from above that obscures the involuntary servitude and legal subjection that followed in the wake of slavery, then attempts to assert absolutist distinctions between slavery and freedom are untenable. Fundamentally, such assertions involve distinctions between the transient and the epochal, underestimate the contradictory inheritance of emancipation and the forms of involuntary servitude that followed in the wake of slavery, and diminish the reign of terror that accompanied the advent of freedom. Put differently, does the momentousness of emancipation as an event ultimately efface the continuities between slavery and freedom and the dispossession inseparable from becoming a "propertied person"? If one dares to "abandon the absurd catalogue of official history," as Edouard Glissant encourages, then the violence and domination perpetuated in the name of slavery's reversal come to the fore.<sup>19</sup> From this vantage point, emancipation seems a double-edged and perhaps obfuscating label. It discloses as well as obscures since involuntary servitude and emancipation were synonymous for a good many of the formerly enslaved. This is evidenced in "common-sense" observations that black lives were more valuable under slavery than under freedom, that blacks were worse off under freedom than during slavery, and that the gift of freedom was a "hard deal." I use the term "common sense" purposely to underline what Antonio Gramsci described as the "chaotic aggregate of disparate conceptions" that conform with "the social and cultural position of those masses whose philosophy it is." It is a conception of world and life "implicit to a large extent in determinate strata of society" and "in opposition to 'official' conceptions of the world."<sup>20</sup> In this case, common sense challenges the official accounts of freedom and stresses the similarities and correspondencies of slavery and freedom. At a minimum, these observations disclose the disavowed transactions between slavery and freedom as modes of production and subjection.

The abolition of chattel slavery and the emergence of man, however laudable, long awaited, and cherished, fail to yield such absolute distinctions; instead fleeting, disabled, and short-lived practices stand for freedom and its failure. Everyday practices, rather than traditional political activity like the abolition movement, black conventions, the struggle for suffrage, electoral activities, et cetera, are the focus of my examination because I believe that these pedestrian practices illuminate inchoate and utopian expressions of freedom that are not and perhaps cannot be actualized elsewhere. The desires and longings that exceed the frame of civil rights and political emancipation find expression in quotidian acts labeled "fanciful," "exorbitant," and "excessive" primarily because they express an understanding or imagination of freedom quite at odds with bourgeois expectations. Paul Gilroy, after Seyla Benhabib, refers to these utopian invocations and the incipient modes of friendship and solidarity they conjure up as "the politics of transfiguration."<sup>21</sup> He notes that in contrast to the politics of fulfillment that operate within the framework of bourgeois civil society and occidental rationality, "the politics of transfiguration strives in pursuit of the sublime, struggling to repeat the unrepeatable, to present the unrepresentable. Its rather different hermeneutic focus pushes towards the mimetic, dramatic and performative." From this perspective, stealing away, the breakdown, moving about, pilfering, and other everyday practices that occur below the threshold

of formal equality and rights gesture toward an unrealized freedom and emphasize the stranglehold of slavery and the limits of emancipation. In this and in other ways, these practices reveal much about the infrapolitics of the dominated and the contestations over the meaning of abolition and emancipation.

The intervention made here is an attempt to recast the past, guided by the conundrums and compulsions of our contemporary crisis: the hope for social transformation in the face of seemingly insurmountable obstacles, the quixotic search for a subject capable of world-historical action, and the despair induced by the lack of one. In this regard, it is hoped that the instances of insurgency and contestation narrated herein and the relentless proliferation of small acts of resistance perhaps offer some small measure of encouragement and serve to remind us that the failures of Reconstruction still haunt us, which in part explains why the grand narratives continue to hold sway over our imagination. Therefore, while I acknowledge history's "fiction of factual representation," to use Hayden White's term, I also recognize the political utility and ethical necessity of historical fiction. As Walter Benjamin remarked, "Only that historian will have the gift of fanning the spark of hope in the past who is firmly convinced that *even the dead* will not be safe if the enemy wins."<sup>22</sup>

PART ONE

*Formations of Terror  
and Enjoyment*



# I

## *Innocent Amusements*

### THE STAGE OF SUFFERANCE

Innocent amusements, when under proper regulations and when partaken of with moderation, conduce to morality and virtue. . . . Negroes are naturally prone to gaiety, and I conceive it a duty to ourselves as well as them not to change this inclination in them, but rather to promote it by every prudent and allowable means.

—N. Herbemont, *On the Moral Discipline and Treatment of Slaves* (1836)

Everything like rational enjoyment was frowned upon, and only those wild and low sports peculiar to semicivilized people were encouraged.

—Frederick Douglass, *Life and Times of Frederick Douglass* (1892)

In an epistle to his brother, John Rankin illumined the “very dangerous evil” of slavery in a description of the coffle, detailing the obscene theatricality of the slave trade: “Unfeeling wretches purchased a considerable drove of slaves—how many of them were separated from husbands and wives, I will not pretend to say—and having chained a number of them together, hoisted over the flag of American liberty, and with the music of two violins marched the woe-worn, heart-broken, and sobbing creatures through the town.”<sup>1</sup> Rankin, aghast at the spectacle and shocked by “seeing the most oppressive sorrows of suffering innocence mocked with all the lightness of sportive music,” decried: “My soul abhors the crime.” The violation of domesticity, the parody of liberty, and the callous defiance of sorrow define the scene in which crime becomes spectacle. The “very dangerous evil” of slavery and the “agonizing groans of suffering humanity” had been made music.<sup>2</sup>

Although Rankin conceded that the cruelty of slavery “far exceed[ed] the power of description,” he nonetheless strove to render the horrors of slavery. And in so doing, Rankin makes apparent that the crimes of slavery are not only witnessed but staged. This is a result of the recourse to terms like “stage,” “spectacle,” and “scene” in conveying these horrors, and, more important, because the “abominations of slavery” are disclosed through the reiteration of secondhand accounts and circulating stories from “unquestionable authorities” to which Rankin must act as surrogate witness. In the effort to “bring slavery close,” these circulating reports of atrocity, in essence, are reenacted in Rankin epistles. The grotesqueries enumerated in documenting the injustice of slavery are intended to shock and to disrupt the

comfortable remove of the reader/spectator. By providing the minutest detail of macabre acts of violence, embellished by his own fantasy of slavery's bloodstained gate, Rankin hoped to rouse the sensibility of those indifferent to slavery by exhibiting the suffering of the enslaved and facilitating an identification between those free and those enslaved: "We are naturally too callous to the sufferings of others, and consequently prone to look upon them with cold indifference, until, in imagination we identify ourselves with the sufferers, and make their sufferings our own. . . . When I bring it near, inspect it closely, and find that it is inflicted on men and women, who possess the same nature and feelings with myself, my sensibility is roused" (56-57). By bringing suffering near, the ties of sentiment are forged. In letter after letter, Rankin strove to create this shared experience of horror in order to transform his slaveholding brother, to whom the letters were addressed, as well as the audience of readers. In this case, pain provides the common language of humanity; it extends humanity to the dispossessed and, in turn, remedies the indifference of the callous.<sup>3</sup>

The shocking accounts of whipping, rape, mutilation, and suicide assault the barrier of indifference, for the abhorrence and indignity roused by these scenes of terror, which range from the mockery of the coffin to the dismemberment and incineration of a slave boy, give rise to a shared sentience between those formerly indifferent and those suffering. So intent and determined is Rankin to establish that slaves possess the same nature and feelings as himself, and thereby establish the common humanity of all men on the basis of this extended suffering, that he literally narrates an imagined scenario in which he, along with his wife and child, is enslaved. The "horrible scenes of cruelty that were presented to [his] mind" as a consequence of this imagining aroused the "highest pitch of indignant feeling." In addition, this scenario enables Rankin to speak not only for but literally in the place of the enslaved. By believing himself to be and by phantasmically becoming the enslaved, he creates the scenario for shared feelings:

My flighty imagination added much to the tumult of passion by persuading me, for the moment, that I myself was a slave, and with my wife and children placed under the reign of terror. I began in reality to feel for myself, my wife, and my children—the thoughts of being whipped at the pleasure of a morose and capricious master, aroused the strongest feelings of resentment; but when I fancied the cruel lash was approaching my wife and children, and my imagination depicted in lively colors, their tears, their shrieks, and bloody stripes, every indignant principle of my bloody nature was excited to the highest degree. (56)

The nature of the feelings aroused here is rather complicated. While this flight of imagination enables a vicarious firsthand experience of the lash, excoriates the pleasure experienced by the master in this brutal exercise of power, and unleashes Rankin's fiery indignation and resentment, the phantasmic vehicle of this identification is complicated, unsettling, and disturbing. Although Rankin's fantasy culminates in indignant outcries against the institution of slavery and, clearly, the purpose of this identification is to highlight the crimes of slavery, this flight of imagination and slipping into the captive's body unlatches a Pandora's box and, surprisingly, what comes to the fore is the difficulty and slipperiness of empathy. Properly



speaking, empathy is a projection of oneself into another in order to better understand the other or "the projection of one's own personality into an object, with the attribution to the object of one's own emotions."<sup>4</sup> Yet empathy in important respects confounds Rankin's efforts to identify with the enslaved because in making the slave's suffering his own, Rankin begins to feel for himself rather than for those whom this exercise in imagination presumably is designed to reach. Moreover, by exploiting the vulnerability of the captive body as a vessel for the uses, thoughts, and feelings of others, the humanity extended to the slave inadvertently confirms the expectations and desires definitive of the relations of chattel slavery. In other words, the ease of Rankin's empathic identification is as much due to his good intentions and heartfelt opposition to slavery as to the fungibility of the captive body.

By making the suffering of others his own, has Rankin ameliorated indifference or only confirmed the difficulty of understanding the suffering of the enslaved? Can the white witness of the spectacle of suffering affirm the materiality of black sentience only by feeling for himself? Does this not only exacerbate the idea that black sentience is inconceivable and unimaginable but, in the very ease of possessing the abased and enslaved body, ultimately elide an understanding and acknowledgment of the slave's pain? Beyond evidence of slavery's crime, what does this exposure of the suffering body of the bondsman yield? Does this not reinforce the "thingly" quality of the captive by reducing the body to evidence in the very effort to establish the humanity of the enslaved? Does it not reproduce the hyperembodiment of the powerless? The purpose of these inquiries is not to cast doubt on Rankin's motives for recounting these events but to consider the precariousness of empathy and the thin line between witness and spectator. In the fantasy of being beaten, Rankin must substitute himself and his wife and children for the black captive in order that this pain be perceived and experienced. So, in fact, Rankin becomes a proxy and the other's pain is acknowledged to the degree that it can be imagined, yet by virtue of this substitution the object of identification threatens to disappear. In order to convince the reader of the horrors of slavery, Rankin must volunteer himself and his family for abasement. Put differently, the effort to counteract the commonplace callousness to black suffering requires that the white body be positioned in the place of the black body in order to make this suffering visible and intelligible. Yet if this violence can become palpable and indignation can be fully aroused only through the masochistic fantasy, then it becomes clear that empathy is double-edged, for in making the other's suffering one's own, this suffering is occluded by the other's obliteration. Given the litany of horrors that fill Rankin's pages, this recourse to fantasy reveals an anxiety about making the slave's suffering legible. This anxiety is historically determined by the denial of black sentience, the slave's status as object of property, the predicament of witnessing given the legal status of blacks, and the repression of counterdiscourses on the "peculiar institution." Therefore, Rankin must supplant the black captive in order to give expression to black suffering, and as a consequence, the dilemma—the denial of black sentience and the obscurity of suffering—is not attenuated but instantiated. The ambivalent character of empathy—more exactly, the repressive effects of empathy—as Jonathan Boyarin notes, can be located in the "obliteration of otherness" or the facile intimacy that enables identification with the other only as we "feel ourselves into those we

imagine as ourselves." And as a consequence, empathy fails to expand the space of the other but merely places the self in its stead.<sup>5</sup> This is not to suggest that empathy can be discarded or that Rankin's desire to exist in the place of the other can be dismissed as a narcissistic exercise but rather to highlight the dangers of a too-easy intimacy, the consideration of the self that occurs at the expense of the slave's suffering, and the violence of identification.<sup>6</sup>

As well, we need ask why the site of suffering so readily lends itself to inviting identification. Why is pain the conduit of identification? This question may seem to beg the obvious, given the violent domination and dishonor constitutive of enslavement, the acclaimed transformative capacities of pain in sentimental culture, the prevalence of public displays of suffering inclusive of the pageantry of the trade, the spectacle of punishment, circulating reports of slavery's horrors, the runaway success of *Uncle Tom's Cabin*, and the passage through the "bloodstained gate," which was a convention of the slave narrative, all of which contributed to the idea that the feelings and consciousness of the enslaved were most available at this site. However, what I am trying to suggest is that if the scene of beating readily lends itself to an identification with the enslaved, it does so at the risk of fixing and naturalizing this condition of pained embodiment and, in complete defiance of Rankin's good intention, increases the difficulty of beholding black suffering since the endeavor to bring pain close exploits the spectacle of the body in pain and oddly confirms the spectral character of suffering and the inability to witness the captive's pain. If, on one hand, pain extends humanity to the dispossessed and the ability to sustain suffering leads to transcendence, on the other, the spectral and spectacular character of this suffering, or, in other words, the shocking and ghostly presence of pain, effaces and restricts black sentience.

As Rankin himself states, in order for this suffering to induce a reaction and stir feelings, it must be brought close. Yet if sentiment or morality are "inextricably tied to human proximity," to quote Zygmunt Bauman, the problem is that in the very effort to "bring it near" and "inspect it closely" it is dissipated. According to Bauman, "Morality conform[s] to the law of optical perspective. It looms large and thick close to the eye."<sup>7</sup> So, then, how does suffering elude or escape us in the very effort to bring it near? It does so precisely because it can only be brought near by way of a proxy and by way of Rankin's indignation and imagination. If the black body is the vehicle of the other's power, pleasure, and profit, then it is no less true that it is the white or near-white body that makes the captive's suffering visible and discernible.<sup>8</sup> Indeed, the elusiveness of black suffering can be attributed to a racist optics in which black flesh is itself identified as the source of opacity, the denial of black humanity, and the effacement of sentience integral to the wanton use of the captive body.<sup>9</sup> And as noted earlier, this is further complicated by the repressive underside of an optics of morality that insists upon the other as a mirror of the self and that in order to recognize suffering must substitute the self for the other.

While Rankin attempts to ameliorate the insufficiency of feeling before the spectacle of the other's suffering, this insufficiency is, in fact, displaced rather than remedied by his standing in. Likewise, this attempt exacerbates the distance between the readers and those suffering by literally removing the slave from view as pain is brought close. Moreover, we need to consider whether the identification forged at

the site of suffering confirms black humanity at the peril of reinforcing racist assumptions of limited sentience, in that the humanity of the enslaved and the violence of the institution can only be brought into view by extreme examples of incineration and dismemberment or by placing white bodies at risk. What does it mean that the violence of slavery or the pained existence of the enslaved, if discernible, is only so in the most heinous and grotesque examples and not in the quotidian routines of slavery?<sup>10</sup> As well, is not the difficulty of empathy related to both the devaluation and the valuation of black life?

Empathic identification is complicated further by the fact that it cannot be extricated from the economy of chattel slavery with which it is at odds, for this projection of one's feeling upon or into the object of property and the phantasmic slipping into captivity, while it is distinct from the pleasures of self-augmentation yielded by the ownership of the captive body and the expectations fostered therein, is nonetheless entangled with this economy and identification facilitated by a kindred possession or occupation of the captive body, albeit on a different register. In other words, what I am trying to isolate are the kinds of expectations and the qualities of affect distinctive to the economy of slavery. The relation between pleasure and the possession of slave property, in both the figurative and literal senses, can be explained in part by the fungibility of the slave—that is, the joy made possible by virtue of the replaceability and interchangeability endemic to the commodity—and by the extensive capacities of property—that is, the augmentation of the master subject through his embodiment in external objects and persons.<sup>11</sup> Put differently, the fungibility of the commodity makes the captive body an abstract and empty vessel vulnerable to the projection of others' feelings, ideas, desires, and values; and, as property, the dispossessed body of the enslaved is the surrogate for the master's body since it guarantees his disembodied universality and acts as the sign of his power and dominion. Thus, while the beaten and mutilated body presumably establishes the brute materiality of existence, the materiality of suffering regularly eludes (re)cognition by virtue of the body's being replaced by other signs of value, as well as other bodies.

Thus the desire to don, occupy, or possess blackness or the black body as a sentimental resource and/or locus of excess enjoyment is both founded upon and enabled by the material relations of chattel slavery. In light of this, is it too extreme or too obvious to suggest that Rankin's flight of imagination and the excitements engendered by suffering might also be pleasurable? Certainly this willing abasement confirms Rankin's moral authority, but what about the pleasure engendered by this embrace of pain—that is, the tumultuous passions of the flighty imagination stirred by this fantasy of being beaten? Rankin's imagined beating is immune neither to the pleasures to be derived from the masochistic fantasy nor to the sadistic pleasure to be derived from the spectacle of sufferance. Here my intention is not to shock or exploit the perverse but to consider critically the complicated nexus of terror and enjoyment by examining the obviated and debased diversions of the capricious master; the pleasure of indignation yielded before the spectacle of sufferance; the instability of the scene of suffering; and the confusion of song and sorrow typical of the coffle, the auction block, performing before the master, and other popular amusements.

By slipping into the black body and figuratively occupying the position of the enslaved, Rankin plays the role of captive and attester and in so doing articulates the

crisis of witnessing determined by the legal incapacity of slaves or free blacks to act as witnesses against whites. Since the veracity of black testimony is in doubt, the crimes of slavery must not only be confirmed by unquestionable authorities and other white observers but also must be made visible, whether by revealing the scarred back of the slave—in short, making the body speak—or through authenticating devices, or, better yet, by enabling reader and audience member to experience vicariously the “tragical scenes of cruelty.”<sup>12</sup> If Rankin as a consequence of his abolitionist sentiments was willing to occupy the “unmasterly” position, sentimentalism prescribed the terms of his identification with the enslaved, and the central term of this identification was suffering. For Rankin, the pageantry of the coffle and sportive music failed to disguise “the sorrows of suffering innocence.” However, for others who also possessed antislavery sentiments, the attempt to understand the inner feelings of the enslaved only effaced the horrors of slavery and further circumscribed the captive’s presumably limited capacity for suffering. For many eyewitnesses of the coffle, the terrors of slavery were dissipated by song and violence was transformed into a display of agency and good cheer.

What concerns me here is the spectacular nature of black suffering and, conversely, the dissimulation of suffering through spectacle. In one respect, the combination of imagined scenes of cruelty with those culled from unquestionable authority evidences the crisis of witnessing that results from the legal subjection of slaves. At the same time, the spectacular dimensions of slavery engender this crisis of witnessing as much as the repression of black testimony since to the degree that the body speaks it is made to speak the master’s truth and augments his power through the imposition and intensification of pain.<sup>13</sup> All of this is further complicated by the “half-articulate” and “incoherent song” that confounds the transparency of testimony and radically complicates the rendering of slavery. In light of these concerns, this chapter wrestles with the following questions: Does the extension of humanity to the enslaved ironically reinscribe their subjugated status? Do the figurative capacities of blackness enable white flights of fantasy while increasing the likelihood of the captive’s disappearance? Can the moral embrace of pain extricate itself from pleasures borne by subjection? In other words, does the scene of the tyrannized slave at the bloodstained gate delight the loathsome master and provide wholesome pleasures to the upright and the virtuous? Is the act of “witnessing” a kind of looking no less entangled with the wielding of power and the extraction of enjoyment? Does the captive’s dance allay grief or articulate the fraught, compromised, and impossible character of agency? Or does it exemplify the use of the body as an instrument against the self?

The scenes of subjection considered here—the coerced spectacles orchestrated to encourage the trade in black flesh; scenes of torture and festivity; the tragedy of virtuous women and the antics of outrageous darkies—all turn upon the simulation of agency and the excesses of black enjoyment. The affiliation of performance and blackness can be attributed to the spectacularization of black pain and racist conceptions of Negro nature as carefree, infantile, hedonistic, and indifferent to suffering and to an interested misreading of the interdependence of labor and song common among the enslaved.<sup>14</sup> The constitution of blackness as an abject and degraded condition and the fascination with the other’s enjoyment went hand in hand. More-

over, blacks were envisioned fundamentally as vehicles for white enjoyment, in all of its sundry and unspeakable expressions; this was as much the consequence of the chattel status of the captive as it was of the excess enjoyment imputed to the other, for those forced to dance on the decks of slave ships crossing the Middle Passage, step it up lively on the auction block, and amuse the master and his friends were seen as the purveyors of pleasure. The amazing popularity of the "darkies" of the minstrel stage must be considered in this light. Contending variants of racism, ranging from the proslavery plantation pastoralism to the romantic racialism of abolitionists, similarly constituted the African as childish, primitive, contented, and endowed with great mimetic capacities. Essentially, these characteristics defined the infamous and renowned Sambo. This history is of central importance when evaluating the politics of pleasure, the uses of slave property, the constitution of the subject, and the tactics of resistance. Indeed, the convergence of terror and enjoyment cannot be understood outside it.

The pageantry of the coffle, stepping it up lively on the auction block, going before the master, and the blackface mask of minstrelsy and melodrama all evidenced the entanglements of terror and enjoyment. Above all, the simulated jollity and coerced festivity of the slave trade and the instrumental recreations of plantation management document the investment in and obsession with "black enjoyment" and the significance of these orchestrated amusements as part of a larger effort to dissimulate the extreme violence of the institution and disavow the pain of captivity. Indeed, the transubstantiation of abjection into contentment suggested that the traumas of slavery were easily redressed and, likewise, the prevalence of black song confirmed blacks' restricted sentience and immunity to sorrow. Most important, enjoyment defined the relation of the dominant race to the enslaved. In other words, the nefarious uses of chattel licensed by the legal and social relations of slavery articulated the nexus of pleasure and possession and bespoke the critical role of diversion in securing the relations of bondage. In this way, enjoyment disclosed the sentiments and expectations of the "peculiar institution."

### The Property of Enjoyment

From the vantage point of the everyday relations of slavery, enjoyment, broadly speaking, defined the parameters of racial relations, since in practice all whites were allowed a great degree of latitude in regard to uses of the enslaved. Before proceeding to limn the important features of antebellum enjoyment, a gloss on enjoyment and its relation to use and possession would be helpful here.<sup>15</sup> *Black's Law Dictionary* defines the term "enjoy" as "to have, possess, and use with satisfaction; to occupy or have the benefit of." While enjoyment encompasses these rudimentary features, it also denotes more extensive capacities. It entails "the exercise of a right; the promise and function of a right, privilege or incorporeal hereditament. Comfort, consolation, contentment, ease, happiness, pleasure and satisfaction. Such includes the beneficial use, interest, and purpose to which property may be put, and implies rights to profits and incomes therefrom." At the outset, it is clear that to take delight in, to use, and to possess are inextricably linked and,

moreover, that enjoyment entails everything from the use of one's possession to the value of whiteness, which can be considered an incorporeal hereditament or illusory inheritance of chattel slavery.

Since the subjection of the slave to all whites defined his condition in civil society, effectively this made the enslaved an object of property to be potentially used and abused by all whites; however, to speak at all of the civil condition of the slave, as George M. Stroud remarked, is a kind of solecism.<sup>16</sup> It is a tricky matter to detail the civil existence of a subject who is socially dead and legally recognized as human only to the degree that he is criminally culpable. Yet it is the anomalous status of the enslaved that determines the specific uses of the slave as object of property and the relation between citizens and those who can be identified as civil subjects in the most circumscribed and tentative fashion. Hence what is striking here are the myriad and nefarious uses of slave property and the ways in which slaves become the property of all whites, given their status in civil society. In this effort, let us turn to William Goodell's *American Slave Codes* and Stroud's *A Sketch of the Laws Relating to Slavery in the Several States of the United States of America*. In chapter 3, Stroud examines the condition of the slave as a member of civil society. As identified by Stroud, the notable features of this anomalous civil condition are: the slave cannot be a witness against a white person, either in a civil or criminal cause; the slave cannot be a party to a civil suit; the benefits of education are withheld from the slave; the means for moral or religious education are not granted to the enslaved; submission is required of the slave, not to the will of his master only but to that of all other white persons; the penal codes of the slave-holding states bear much more severely upon slaves than upon white persons; and slaves are prosecuted and tried upon criminal accusations in a manner inconsistent with the rights of humanity.<sup>17</sup>

Here I want to focus on a singular aspect of the slave's existence in civil society—the submission of the slave to all whites. As Stroud notes, the great concession to the power of the master and to all whites was evidenced by laws that prohibited the slave from defending himself from the master to avoid vindictive punishment or from striking any white in self-defense. Such laws not only exacted strict submission extending to bloodshed and murder but also “furnish[ed] a pretext” and an inducement to oppress and tyrannize the enslaved. Consequently, the enslaved were forced to “patiently endure every species of personal injury, which a white person, however brutal or ferocious his disposition . . . may choose to offer.”<sup>18</sup> Along similar lines, Goodell, after reviewing state statutes that prohibited the slave from defending himself against the assault of any white person and punished such offenses by cropping ears, inflicting thirty lashes on a bare back, or bringing about death, concluded that “if civil government were designed for human demoralization and torture, it is not easy to see how its ends could be more effectually reached.”<sup>19</sup>

To be sure, the laws of slavery subjected the enslaved to the absolute control and authority of any and every member of the dominant race. At the very least, the relations of chattel slavery served to enhance whiteness by racializing rights and entitlements, designating inferior and superior races, and granting whites' dominion over blacks. In light of such considerations, the contours of antebellum enjoyment reveal less about “the nature of the Negro” than the terms of interracial interaction that engendered the understanding and imputation of black excess. Given this, let

me suggest that not only were the rights and privileges of white citizens undergirded by the subjection of blacks but, moreover, that enjoyment in turn defined the meaning of subjection. The interdiction against self-defense and the inability of a slave to testify against whites permitted the slave to be used in any capacity that pleased the master or whomever. And as Goodell noted, in a rather indirect fashion, the uses of property also included the sexual violation of the enslaved. The few restrictions placed upon the uses of slave property concerned only the master's rights of property.<sup>20</sup> Indeed, the dissolute uses of slave property came to define the identity of the captive and hence the nature of the Negro. As well, these actual or imagined usages established the parameters of interracial association.

Indeed, there was no relation to blackness outside the terms of this use of, entitlement to, and occupation of the captive body, for even the status of free blacks was shaped and compromised by the existence of slavery. Although, as I have argued, enjoyment was predicated on the wanton uses of slave property, it was attributed to the slave in order to deny, displace, and minimize the violence of slavery. As a result, in spectacles like the coffee, it appeared not only that the slave was indifferent to his wretched condition, but also that he had nonetheless achieved a measure of satisfaction with that condition. Thus the efficacy of violence was indicated precisely by its invisibility or transparency and in the copious display of slave agency. Like the imputation of lasciviousness that dissimulated and condoned the sexual violation of the enslaved, and the punitive recognition of will and responsibility that justified punishment while denying the slave the ability to forge contracts, testify, or sustain natal and conjugal relations, enjoyment registered and effaced the violence of property relations.

Thus, as I have tried to suggest, the fixation on the slave's "good times" conceals the affiliations of white enjoyment and black subjection and the affective dimensions of mastery and servitude. From this perspective, the seemingly casual observations about black fun and frolic obscure this wanton usage and the incorporation of the captive body in realizing the extensive and sentient capacities of the master subject. As Slavoj Žižek notes, fantasies about the other's enjoyment are ways for us to organize our own enjoyment. In this context, he asks: "Does not the Other's enjoyment exert such a powerful fascination because in it we represent to ourselves our own innermost relationship toward enjoyment?"<sup>21</sup> What is revealed about this innermost relationship toward enjoyment? An indifference to suffering or a keen investment in it? Whose unease was allayed by the dance? If the excess of enjoyment imputed to the enslaved displaced what we would think of as disturbing circumstances, it did so only by obscuring violence and conflating it with pleasure.

### (In)sufferable Pleasures

Rankin was not alone in his desire to slip into blackness and experience the suffering of slavery "firsthand," so to speak. On the contrary, the popularity of *Uncle Tom's Cabin* and *The Octoroon* indicates the willingness of others to suffer, too. The elasticity of blackness and its capacious affects enabled such flights and becomings. Moreover, in this case, the figurative capacities of blackness and the

fungibility of the commodity are directly linked. The fungibility of the commodity, specifically its abstractness and immateriality, enabled the black body or blackface mask to serve as the vehicle of white self-exploration, renunciation, and enjoyment.<sup>22</sup> Therefore, the ability to put on blackness must be considered in the context of chattel slavery and the economy of enjoyment founded thereupon. Antebellum formations of pleasure, even those of the North, need to be considered in relation to the affective dimensions of chattel slavery since enjoyment is virtually unimaginable without recourse to the black body and the subjection of the captive, the diversions engendered by the dispossession of the enslaved, or the fantasies launched by the myriad uses of the black body. For this reason the formal features of this economy of pleasure and the politics of enjoyment are considered in regard to the literal and figurative occupation and possession of the body. This reading attempts to elucidate the means by which the wanton use of and the violence directed toward the black body come to be identified as *its* pleasure and dangers—that is, the expectations of slave property are ontologized as the innate capacities and inner feelings of the enslaved, and moreover, the ascription of excess and enjoyment to the African effaces the violence perpetrated against the enslaved. In light of these issues, the schematic analysis of minstrelsy and melodrama that follows focuses on the convergence of violence and pleasure, which is identified as one of the primary attributes of this economy of enjoyment, rather than providing a close reading of the texts of minstrelsy and melodrama. Scant attention is paid to the white spectator's identification with blackface characters. Instead, the major issue explored is the relation between pleasure and violence—that is, the facility of blackness in the other's self-fashioning and the role of pleasure in securing the mechanisms of racial subjection. In other words, this economy of enjoyment is interrogated through a consideration of the dynamics of possession and close scrutiny of the object of property and its uses.

Despite differences between their respective conventions and stylistic devices, the uses made of the black body established continuities between minstrelsy and melodrama that surpassed their generic differences.<sup>23</sup> Although the ethical valence of such violence differed, it nonetheless delivered a significant pleasure. Blows caused the virtuous black body of melodrama to be esteemed and humiliated the grotesque black body of minstrelsy. Uncle Tom's tribulations were tempered by the slaps and punches delivered to Topsy. The body's placement as ravaged object or as the recipient of farcical blows nonetheless established a corporeal language that marked Zoe, Tom, and Topsy as identifiably black and exposed the affiliations between the auction block and the popular theater.<sup>24</sup> Affect, gesture, and a vulnerability to violence constituted blackness. Thus, despite the antislavery blackface of *Uncle Tom's Cabin*, the violation of the ersatz black body engendered pleasure, whether a monopathic wholeness engendered by the Manichaean struggle of good or evil or the bawdy pleasures of Topsy's comic antics and the brutish response to them.<sup>25</sup> Torture and torment both generated enjoyment.

Not unlike the legal interpellation of slave humanity, injury and punishment defined the personhood of these characters. Whether venerated as an opportunity for Christian endurance or legitimated by darky pretensions and trespasses, violence nonetheless engendered blackness. The virtuous suffering and ethical submission of



sentimentalism and the social transgression enacted and punished in farce conspired to make the corporeal enactment of blackness a pained one.<sup>26</sup> Melodrama presented blackness as a vehicle of protest and dissent, and minstrelsy made it the embodiment of unmentionable and transgressive pleasures. In both instances, the fashioning of blackness aroused pity and fear, desire and revulsion, and terror and pleasure. And as we shall see, this ambivalent complex of feelings describes not only the emotional appeals of the popular stage but also the spectacle of the auction block.<sup>27</sup>

Black characters rarely appeared as heroes or heroines in melodrama, except in the moral drama of antislavery plays. As dictated by convention, slavery was staged as the clash of villainy and virtue. "The very dangerous evil" of slavery and, in particular, the crimes of the slave trade were well suited to the stage of melodrama. The crime of the trade was seen as a crime of the heart—"the outrages of feelings and affection." (For example, Professor E. A. Andrews, in his treatise on the slave trade, argued for the abolition of the trade on the grounds that "domestic relations [were] the foundation of all virtue, and consequently of all the happiness of society, and everything inconsistent with the perpetuity of these relations ought at once, everywhere, and forever, to cease."<sup>28</sup> The offense against virtue perpetuated in the sundering of families offended sentiment and easily transformed slavery's crimes into the stuff of melodrama. Thus when one is considering the crimes of slavery, the popular theater is as central as the courthouse.) Virtue, imperiled and unrecognized, positioned slaves as innocents held captive by the pernicious institution, and blackness was the emblem of this tortured innocence. Melodrama provided the dramatic frame that made the experience of slavery meaningful in the antinomian terms of the moral imagination. The emotional power of melodrama's essential language of good and evil armed antislavery dissent with the force of moral right and might. Abolitionist discourse shared melodrama's obsession: virtue, virginity, and the sanctity of the family. After all, what was the coffin but a drama of moral life accompanied by the music of violins? The descriptions of Rankin and other nineteenth-century observers rendered the trade and the coffin in the style of the melodramatic tableau—the frozen moment in which gestures and attitudes take the form of moral emblems.<sup>29</sup> Woe-worn, "loaded with chains," and driven by "unfelling wretches," the slaves are mute while their music conveys the message of anguish. Song, therefore, became the emblem of oppression, and in these songs, sorrow was as palpable as the chains that bound the flesh, and yet it was ineffable, too.

Yet melodramas were also replete with minstrel fare; the antics of plantation darkies provided levity amid catastrophe. Generally, representations of blackness were restricted to stock "darky" characters or low-comedy types, with the exceptions of the tragic mulatto and the dignified, pathetic, and suffering slave.<sup>30</sup> In antislavery dramas, beleaguered slave heroes and heroines supplemented rather than replaced darky fanfare. Ironically, the maintenance of racial boundaries occurred through the donning of the blackface mask or the display of tragically bifurcated racial bodies. For example, in the case of *Uncle Tom's Cabin*, the grammar of sentiment and the rhetoric of minstrelsy set the stage for a performance of slavery that wed cruelty and festivity.<sup>31</sup> Abolitionists' politics allied with blackface techniques created an ambivalent portrait of slavery that denounced the institution as it supplemented minstrelsy's range of darky fare.

Blackness was a masquerade in melodrama no less than in minstrelsy since the roles of the black subjects of melodrama were usually performed by white actors in blackface.<sup>32</sup> Like the mask of blackness on the minstrel stage, melodrama's black mask was ambivalent and contradictory. While it proclaimed truth and virtue, which were manifested in bodily expression, since the body was to be read as an ethical allegory, it, too, manipulated the disparity between substance and surface. The pleasures of duplicity were inextricably linked with its dangers. Melodrama explored the pleasures and dangers of racial travesty in tales of distressed quadroons and octoroons. Moreover, while mulatto figures, who were usually women, represented a crisis of racial legibility, they nonetheless made blackness more palatable. At the same time, the disparity between identity and appearance contributed to the hero's or heroine's affliction and his or her usually tragic end. In these moral dramas, the battle of good and evil was waged at the site of the tortured and chaste black body; suffering announced virtue. Tom's chained and beaten body proclaimed his saintliness; Zoe's self-immolation conveyed her great love and humility. Meanwhile, black characters bearing a striking resemblance to Zip Coon, Jim Crow, and Coal Black Rose, the bumbling, loyal, and childish Sambos and wenches of minstrel fare, provided the comic b(1)ackdrop of virtue's triumph.

Blackness in *Uncle Tom's Cabin*, *The Escape*, *Dred*, and *The Octoroon* was also delineated by darky antics—lying, loafing, stealing, and breakdown dancing. Even saintly Tom's performance was embellished with minstrelsy.<sup>33</sup> The convergence between abolitionism's sentimental structure of feeling with that of proslavery discourse was evidenced in the stage productions of *Uncle Tom's Cabin*. Uncle Tom sang a rendition of "Old Folks at Home," a popular minstrel song written by Stephen Foster, and even "Uncle Tom's Religion" resembled a minstrel air. The lyrics to "Old Folks at Home" clearly make the case:

Way down upon de Swanee ribber,  
Far, far away  
Dere's wha my heart is turning ebber,  
Dere's wha de old folks stay.  
All up and down de whole creation,  
Sadly I roam,  
Still longing for de old plantation,  
And for de old folks at home.  
All de world am sad and dreary,  
Ebry where I roam,  
Oh! darkeys how my heart grows weary,  
Far from de old folks at home.<sup>34</sup>

Dissembling tricksters, fools, and wenches also populated the stage of melodrama. Fancy footwork, sexual flourishes, and deceit were accompanied by the blows that grounded the body and returned the trespasser/dissembler to his place. On stage, Topsy was as great an attraction as Tom. As much as the audience enjoyed scenes of suffering innocence, terrifying villainy, and the triumph of virtue, they enjoyed the bawdy and outrageous acts of minstrelsy no less. The imperiled body of melodrama and the dangers of the lower bodily realms gratified the audience's desire to witness and experience the prohibited and the repressed. The indiscriminate use of the black

body made possible the pleasure of terror and the terror of pleasure. Within this framework, suffering and shuffling were complementary.

The convergences between the bodily politics of minstrelsy and those of melodrama might be said to center on the redemptive and recreational use of violence.<sup>35</sup> Certainly, the disciplinary vengeance of farce exercised in minstrelsy reproduced black subjection, albeit accompanied by laughter.<sup>36</sup> On the minstrel stage, the comic inversions, bawdy humor, and lampooning of class hierarchies nonetheless operated within the confines of the tolerable, particularly since this transgression of order occurred by reproducing the abject status of blackness. While the dynamics of "romance and repulsion," to borrow Eric Lott's terms, enabled acts of transgression licensed by the blackface mask, blackness was also policed through derision, ridicule, and violence; thus, in the end, the white flights of imagination and transgressive exploits facilitated by donning blackface ultimately restored the racial terms of social order.<sup>37</sup> The abrogation of social order and the loosening of the strictures of identity enabled by the blackface mask in turn fortified a repressive and restrictive reception of blackness, which, although elastic enough to permit white self-exploration, could not trespass the parameters established to maintain racial hierarchies. Thus minstrelsy flouted high culture and cultivated a common sense of whiteness only as it reinforced the subjugated status of blacks. As David Roediger notes, minstrelsy articulated a white working-class consciousness "by racializing conflict more than directly articulating class grievances."<sup>38</sup> The Manichaeism at the heart of minstrelsy was the division between the races. The seeming transgressions of the color line and the identification forged with the blackface mask through aversion and/or desire ultimately served only to reinforce relations of mastery and servitude. As Michael Rogin observes, "Far from being a failed union of black and white workers, minstrelsy realized the Jacksonian dream of allying the northern popular classes with slave labor."<sup>39</sup> It is no surprise that the relations of mastery and servitude, which determined the meaning of white identity, the character of citizenship, and the scope of rights and entitlements, were also essential to antebellum formations of pleasure.<sup>40</sup>

Minstrelsy's plantation nostalgia returned Jim Crow to his happy home and affirmed the institution of slavery in happy scenes of the plantation and carry-me-back-to-the-old-plantation songs of ex-slaves; moreover, those who entertained foolish aspirations of being like white men were summarily punished.<sup>41</sup> Songs like "Away Down Souf," "My Old Kentucky Home," and "Old Folks at Home" all celebrate the glories of the South and the desire to return to the plantation home where "de corn-top blossom and de canebrake grow." Stephen Foster's renowned "Massa's in de Cold Ground" was replete with the sentimentalism of plantation nostalgia:

Massa made de darkeys love him, cayse he was so kind  
 Now de sadly weep above him, mourning cayse he leave dem behind.  
 I cannot work before tomorrow, cayse de tear drops flow  
 I try to drive away my sorrow, pickin on de old banjo.<sup>42</sup>

The most famous of these Southern pastorals was Dan Emmett's "I Wish I Was in Dixie's Land," which was written in the spring of 1859. Years later Emmett, clarifying the origin and authorship of the tune, stated that "Dixie" "is nothing but

a plain simple melody with plantation words, the purport of which is that a negro in the north feels himself out of place, and thinking of his old home in the south, is made to exclaim, in the words of the song--I wish I was in Dixie."<sup>43</sup> The purport of this simple tune, as succinctly outlined by Emmett, was to return the Negro to his proper place, which brings to mind George Fredrickson's observation that in the antebellum world, the "good negro" was always in his place and the "bad nigger" outside it.<sup>44</sup> By extension, this dominative logic of return and suitable placement can also be applied to tunes like "Loozyanna Low Grounds," "De Ole Jaw Bone," "De Floating Scow of Ole Virginia," and other "carry-me-backs" whose typical themes were recollection of the good old days on the plantation, the separation from family and home as a result of the move north, and a fervent desire to return to the old home.<sup>45</sup> The sentiment of the carry-me-backs is illuminated by the following stanzas of "I'm Going Home to Dixie," written by Dan Emmett in 1858.

There is a land where cotton grows, a land where milk and honey flows  
I'm going home to Dixie! Yes! I'm going home.

I've got not time to tarry, I've got no time to stay.  
'Tis a rocky road to travel, to Dixie far away.

I've wander'd far both to and fro'  
But Dixie's heaven here below  
I'm going home.

O list to what I've got to say  
Freedom to me will never pay!  
I'm going home.

In Dixie Land the fields do bloom  
And color'd men have welcome room  
I'm going home.

I will proclaim it loud and long  
I love old Dixie right or wrong.  
I'm going home.<sup>46</sup>

Thus the representations of slavery rendered in the minstrel show created a plantation pastoral in which "Gayly de Niggas Dance[d]." <sup>47</sup> Even sentimental plays and tunes that explored issues of separation implied that the loss of family and friends was the result of Cuff's or Sambo's choice.

Thus minstrelsy dramatically resolved the tension between domination and intimacy by recourse to sentimental tropes of reciprocity, domesticity, and kinship. Like the orchestrated amusements of the master, minstrelsy elaborated and fixed blackness in a theatrical presentation both violent and celebratory. Whippings were to minstrelsy what tears were to melodrama. If grotesque bodily acts like rolling eyes, lolling tongues, obscene gestures, shuffling, and the like animated the body, blows invested it with meaning. Beatings, blows, and brawls reestablished the identity of those who defied the boundaries of race and status. The vain displays of Zip Coon and the inept self-promotion of would-be strivers like Jim Dandy were the source of ridicule. Plays like *Oh, Hush!* and *Old Zip Coon* and songs like "Dandy

Jim from Caroline," "Pompey Squash," "Jim along Josey," and "High Daddy" mocked such pretensions.<sup>48</sup> In the same vein, characters like Sambo Johnson, Doctor Quash, or 'Meriky, a colored fashion plate, put on airs and, more important, strove to be something greater than they were and thereby trespassed the racist logic of suitable placement. In the end, however, these vain aspirations were punished and blacks returned to their proper stations.<sup>49</sup> Whenever Zip Coon slipped out of place, he was brutally returned there. When 'Meriky converted to Episcopalianism, she was beaten by her father until she regained her senses and declared that she was "a deep-water Baptist." By the same token, Doctor Quash, the sham physician and mangler, is beaten, murdered, revived, and forced to run a gauntlet.<sup>50</sup> Moreover, his name alone obviates the inextricable link between fashioning blackness and violence. Sambo Johnson's pretense of literacy and buffoonish display of skill and learning are rewarded with a humiliating unmasking and whipping by Cuff. In this fashion, the duplicitous and the pretentious were herded into the acceptable confines of the social. As it turned out, these performances of blackness regulated the excess they conjured up with the threat of punishment and humiliating discovery.

The pretensions of high culture and the society of manners were lampooned by focusing on black buffoonery and the ridiculously impossible aspirations, or should I say perspirations, of blacks trying to improve themselves—that is, putting on airs and trying to be white. According to the tenets of minstrelsy, the only ambition fitting for blacks was "showing de science of his heels."<sup>51</sup> "High Daddy" mocked the aspirations to be white and, in this case, free in a more direct fashion:

I know a darkie and his name it was Joe,  
 I met High Daddy in the morning,  
 I know it was, for he once told me so;  
 I met High Daddy and I wont go home any more, any more.  
 He used to hoe and dig up all the land,  
 I met High Daddy in the morning,  
 But now he says that work is contraband.  
 I met High Daddy and I wont go home any more, any more.

He drank skimm'd milk from morn 'till night,  
 I met . . .  
 Somebody said that it would make him white;  
 I met . . .  
 But let him drink until he gets his fill,  
 I met . . .  
 He always bound to be a darkie still!  
 I met . . .<sup>52</sup>

"Bound" to be a darky, whether slave, contraband, or free, is at the very nexus of the economy of enjoyment I am trying to elaborate here. Within this economy, the bound black body, permanently affixed in its place, engenders pleasure not only ensuant to the buffoonery and grotesqueries of Cuff, Sambo, and Zip Coon but above all deriving from the very mechanisms of this coercive placement; it is a pleasure obtained from the security of place and order and predicated upon chattel slavery. In this regard, the donning of blackface restaged the seizure and possession

of the black body for the other's use and enjoyment. The culture of cross-racial identification facilitated in minstrelsy cannot be extricated from the relations of chattel slavery.

Overwhelmingly the donning of the blackface mask reiterated racial subjection, however much this subjection might provide a liberatory vehicle for white working-class consciousness or a sense of white integrity and wholeness effected by the policing of racial boundaries.<sup>53</sup> In blackface, as elsewhere in antebellum society, the fashioning of whiteness in large measure occurred by way of the subjugation of blacks. The illusory integrity of whiteness facilitated by attraction and/or antipathy to blackness was ultimately predicated upon the indiscriminate use and possession of the black body. The appropriation of Sambo's affect, the donning of blackface, and the audience's consequent identification with the minstrel mask provided whiteness with a coherence and illusory integrity dependent upon the relations of mastery and servitude and the possession of a figurative body of blackness, whether to incite abolitionist passions or cultivate white working-class consciousness.

As it turned out, both minstrelsy and melodrama (re)produced blackness as an essentially pained expression of the body's possibilities. Paradoxically, racial subterfuge and the exploration of artifice reproduced essential and repressive definitions of blackness. The punitive pleasures yielded through the figurative possession of blackness cannot be disentangled from the bodily politics of chattel slavery. Blackness facilitated prohibited explorations, tabooed associations, immodest acts, and bawdy pleasures. The terror of pleasure—the violence that undergirded the comic moment in minstrelsy—and the pleasure of terror—the force of evil that propelled the plot of melodrama and fascinated the spectator—filiated the coffle, the auction block, the popular stage, and plantation recreations in a scandalous equality. At each of these sites of performance, suffering was transformed into wholesome pleasures. As Zoe, the heroine of *The Octoroon*, imagined it: "Our race has at least one virtue—it knows how to suffer!"<sup>54</sup>

### The Coffle

Upon observing a mournful procession of slaves "loaded with chains," singing a "little wild hymn of sweet and mournful melody," and headed to market, George Tucker could only wonder: "What is their crime? And what is to be their punishment?"<sup>55</sup> Astonished by the gross incongruence of the display, we are also left to ponder how sweet wild hymns and crime coexist, whether the origin of American theater is to be found in a no-longer-remembered primal scene of torture, and whether song bears the trace of punishment. The pageantry of the trade, the unabashed display of the market's brutality, the juxtaposition of sorrow and mirth, and the separation of families accounted for the trade's declared status as the most horrible feature of the institution of slavery.<sup>56</sup> The coffle was described by nineteenth-century observers as a domestic middle passage, piracy, a momentous evil, and, most frequently, a crime. George W. Featherstonhaugh, though revolted by the coffle, could not help but exclaim that it was "the most striking spectacle ever witnessed." The incongruity of those shackled and bound for market being cajoled

to sing "Old Virginia Never Tire," a minstrel tune no less, to the accompaniment of a banjo inspired his incredulity and amazement. Although the procession of the coffle, in Featherstonhaugh's words, was "disgusting" and "hideous," the march of despair was obviously not without its festivities. As Featherstonhaugh observes, the slave drivers, aware of the slaves' disposition to mutiny, "endeavor to mitigate their discontent by feeding them well on the march, and by encouraging them to sing 'Old Virginia never tire,' to the banjo." Given that the "poor negro slave is naturally a cheerful, laughing animal, and even when driven through the wilderness in chains, if he is well fed and kindly treated, is seldom melancholy," the lively stories, oranges, and sugar to be had achieved their ends and effected a singular docility.<sup>57</sup>

Although this "melancholy spectacle" aroused Featherstonhaugh's revulsion and sympathy, what is interesting for my purposes is the movement from the "disgusting" and "hideous" display to the cheerful laughing Negro, who seems conjured up rather than situated within the spectacle, or from repulsion to romance. Although Featherstonhaugh definitely recognizes the driver's instigation of song and provides ample details of the hideous scene, he nonetheless suggests that the enslaved are cheery and contented, based upon his musings about black character and the slave's minimal longing for animal comforts—sufficient food, kind treatment, and warmth. The incongruence first attributed to the spectacle is no less marked in Featherstonhaugh's divergent assessments. He both decries the revolting and the hideous and projects comfort and cheer, and as a result the ghastly scene is itself severed from the characters shackled within it. Moreover, despite the initial revulsion that the coffle induced, the melancholy spectacle remains at an emotional and contemplative distance, and musings about Negro character displace the hideous with the entertaining. This is all the more disturbing precisely because this scene gives expression to Featherstonhaugh's abolitionist sentiments. In other words, the fixation on comfort and gratification is not indifferent to suffering. Although Featherstonhaugh winds up reconciling the two, it is not by virtue of the promiscuous coexistence of song and shackle in the spectacle but by way of speculations about character and animal comforts. The gaze shifts from the spectacle to the inner recesses of feeling and desire—that is, the emotional substrate that presumably resides within the "poor slave," which mutes the shock of the scene and mitigates its ghastly incommensurability with the suggestion of contentment.

The profane association of song and suffering raises a host of issues that exceed the fascination or disapprobation incited by the apparently unsettling juxtaposition of the festive and the obscene. Foremost among these issues is the thorny status of pleasure, given such instrumental uses, the instability of agency when conspicuous displays of willfulness only serve to undermine the subject, and the perviousness of pain and pleasure at various sites of amusement, inclusive of slaves striking it smart on the auction block, the popular stage, and the breakdown performed in the quarters. The affiliations between these diverse sites of performance outline a problematic of enjoyment in which pleasure is inseparable from subjection, will indistinguishable from submission, and bodily integrity bound to violence. The observations of Tyrone Power, an Irish traveler journeying through the United States in the 1830s, are revealing in this regard. Upon encountering a caravan of fifty to

sixty slaves moving southwest with their owners, Power surmised: "Judging fairly by their deportment and loud merriment, despite the great fatigue and constant exposure, the affair was taken in a sort of holiday spirit, no way warranted by their half-naked miserable appearance."<sup>58</sup> If the holiday spirit is, as Power asserts, unwarranted, judging by the miserable appearance and the wretched condition of the enslaved, it leads us to interrogate whose pleasure is being considered at the site of such encounters—the observers' or that of the fettered slaves within this hideous parade—as well as the relation of song and suffering.

When Lincoln encountered a slave coffle aboard the steamboat *Lebanon* en route to St. Louis, he was prompted to consider "the effect of condtion upon human happiness," not the crime of the trade or the distress of the slaves:

A gentleman had purchased twelve negroes in different parts of Kentucky and was taking them to a farm in the South. They were chained six and six together. A small iron clevis was around the left wrist of each, and this fastened to the main chain by a shorter one at a convenient distance from the others; so that the negroes were strung together precisely like so many fish upon a trot-line. In this condition they were being separated from the scenes of their childhood, their friends, their fathers and mothers, and brothers and sisters, and many of them, from their wives and children, and going into perpetual slavery where the lash of the master is proverbially more ruthless and unrelenting than any other where; and yet amid all these distressing circumstances, as we would think of them, they were the most cheerful and apparently happy creatures on board. One whose offence for which he had been sold was an over-fondness for his wife, played the fiddle almost continually; and others danced, sung, cracked jokes, and played various games with cards from day to day. How true it is that "God tempers the wind to the shorn lamb," or in other words, that He renders the worst of the human condition tolerable, while He permits the best, to be nothing but tolerable.<sup>59</sup>

Lincoln's observations would suggest that song, dance, and game discredit any and all claims of pain. However, it is interesting to note that the cheerful disposition of the enslaved not only established the suitedness of the slave's nature to the condition of slavery but provided the occasion on which to muse about the adequacy of the human condition. Lincoln surmises, based upon this scene, that the worst of the human condition mirrors the best in being simply bearable. What I am trying to get at here are the dimensions of this investment in and fixation with Negro enjoyment, for these encounters with the enslaved grant the observer access to an illusory plentitude of fun and feeling. I contend that these scenes of enjoyment provide an opportunity for white self-reflection, or, more broadly speaking, the elasticity of blackness enables its deployment as a vehicle for exploring the human condition, although, ironically, these musings are utterly indifferent to the violated condition of the vessel of song. The utility of what Toni Morrison has described as the "Africanist persona" resides in these reflexive capacities; in short, it enables meditations on the self and explorations of dread and desire.<sup>60</sup> While it is not surprising or unusual that the extreme and incongruous display of the coffle prompted reflection upon the human condition, what is remarkable is the way violence becomes neutralized and the shocking readily assimilated to the normal, the everyday, the bearable. In effect, reflection acts to normalize the scene and deny the presence of violence by characterizing it as within the context of the socially endurable; and, accordingly, the scene



shifts from one of despair to one of contentment and endurance. Remarkably, the emotional resources, animal needs, and limited affections of the enslaved are made responsible for this shift.

Worse yet, the liberal extension of feeling to those shackled like a herd of cattle or strung together like a line of fish only serves to efface violence and circumscribe the captives' sentience through such attributions of contentment or evaluations of the bearable. As reported, either their feelings seem unwarranted considering their condition—holiday spirit incongruously paired with a half-miserable and wretched condition—or this proverbial cheer especially suited them for enslavement. As a consequence of this, the very effort to engage the predicament of slavery culminates in a selective acknowledgment of sentience that only reinforces the tethers of subjection. Certainly Lincoln's discernments of sentiment harmonize chattel slavery with the verities of the human condition. In order to understand the condition of the enslaved, Lincoln basically likens them to himself to address the human condition. The assimilative character of empathy can be blamed in part for this, for approximation overtakes the proximity essential to ethical conduct and the violence of this obliteration and assimilation is no less great, albeit of a different character, than the racist antipathy that can only envision the enslaved as object and dehumanized other. Those shackled to one another do not document the disparities of the human condition or, most obviously, the violation of natural liberty or cause Lincoln to reflect on the liberties and entitlements that he enjoys but merely provide an opportunity for self-reflection and a narrative digression within an otherwise "most dull and silly" letter. The separation of fathers and children, the lash, the small irons attaching the enslaved like so many fish upon a trotline, ruthless masters, et cetera, et cetera, although distressing conditions as "we" might imagine them, appear to have little effect on these apparently happy creatures. Songs, jokes, and dance transform wretched conditions into a conspicuous, and apparently convincing, display of contentment. As a result, this circumscribed recognition of black humanity itself becomes an exercise of violence.

For the moment, suffice it to say that such indulgence in song reflected neither an embrace of slavery nor a unity of feeling but, when not simply prompted by the sting of the whip, was a veiled articulation of the extreme and paradoxical conditions of slavery, often mistaken for nonsense or joy. Yet as Douglass remarked, these seemingly meaningless and incoherent songs, though difficult for those outside and within the circle of slavery to understand, revealed more about the horrors of the institution than did volumes of philosophy. While I will undertake a more extensive discussion of the politics of cultural production later, here let me stress the complexity and opacity of black song and the difficulty of clarifying, with any degree of certainty or assuredness, the politics of slave song and performance when dissolution and redress collude with one another and terror is yoked to enjoyment. This investigation, following the path laid by Douglass and W. E. B. Du Bois, turns upon the veiled and half-articulate messages contained in song, or, to quote Paul Gilroy, the politics of a lower frequency and the "unsayable claims to truth" that can never be communicated.<sup>61</sup> Hence my task is neither to unearth the definitive meaning of song or dance nor to read song as an expression of black character as was common among nineteenth-century ethnographers but to give full weight to the opacity of

these texts wrought by toil, terror, and sorrow and composed under the whip and in fleeting moments of reprieve. Rather than consider black song as an index or mirror of the slave condition, this examination emphasizes the significance of opacity as precisely that which enables something in excess of the orchestrated amusements of the enslaved and which similarly troubles distinctions between joy and sorrow and toil and leisure. For this opacity, the subterranean and veiled character of slave song must be considered in relation to the dominative imposition of transparency and the degrading hypervisibility of the enslaved, and therefore, by the same token, such concealment should be considered a form of resistance. Furthermore, as Glissant advises, "the attempt to approach a reality so hidden from view cannot be organized in terms of a series of clarifications."<sup>62</sup> The right to obscurity must be respected, for the "accumulated hurt," the "rasping whispers deep in the throat," the wild notes, and the screams lodged deep within confound simple expression and, likewise, withstand the prevailing ascriptions of black enjoyment.

### Disavowing the Claims of Pain

For those forced to "step it up lively," the festivity of the trade and the pageantry of the coffle were intended to shroud the violence of the market and deny the sorrow of those sold and their families. These extravagant displays elided the distinction between submission and willfulness in the purposive denial of pain. This disavowal of the captives' pain operates on a number of levels, from simple denial of pain to the stipulation of an excessive enjoyment.<sup>63</sup> The terms of this disavowal are something like: No, the slave is not in pain. Pain isn't really pain for the enslaved, because of their limited sentience, tendency to forget, and easily consolable grief. Lastly, the slave is happy and, in fact, his happiness exceeds "our" own. As a consequence of this operation, the initial revulsion and horror induced by the sight of shackled and manacled bodies gives way to reassurances about black pleasure.

Sellie Martin, who was sold at age six along with his mother and ten-year-old sister, described the "heart breaking scene" when the coffle departed for market: "When the order was given to march, it was always on such occasions accompanied by the command, which slaves were made to understand before they left the 'pen,' to 'strike up lively,' which means they must sing a song. Oh! what heartbreaks there are in these rude and simple songs! The purpose of the trader in having them sung is to prevent among the crowd of negroes who usually gather on such occasions, any expression of sorrow for those who are being torn away from them; but the negroes, who have very little hope of ever seeing those again who are dearer to them than life, and who are weeping and wailing over the separation, often turn the song demanded of them into a farewell dirge."<sup>64</sup> By turning the song into a farewell dirge, the coerced performance becomes a veiled articulation of the sorrow denied the enslaved by the demand for song.

Martin's account of his experiences was echoed by that of William Wells Brown. As a speculator's assistant, Brown prepared the slaves held in the pen for inspection and sale. In effect, he set the scene for the buyers' entry: "Before the slaves were

exhibited for sale, they were dressed and driven out into the yard. Some were set to dancing, some to jumping, and some to playing cards. This was done to make them appear cheerful and happy. My business was to see that they were placed in those situations before the arrival of the purchasers, and I have often set them to dancing when their cheeks were wet with tears."<sup>65</sup> Brown's account of the rituals of the marketplace, like that of Martin, frames the ersatz merriment of the enslaved as an inducement to exchange. Likewise, Stephen Dickinson remembered being paraded about the streets for an hour by an auctioneer who compelled one slave to carry a red flag and the other to ring a bell.<sup>66</sup> Jollity from this perspective is not an index of the expressive capacities of the enslaved but rather a means toward the enhancement of value, the emblem of coercion, and an incident of fungibility.

Contrary to our expectations, gaiety articulates the brutal calculations of the trade. The self-betrayal enacted by stepping it lively and enthusiastically assisting in one's sale underscores the affiliations of spectacle and sufferance. And, accordingly, fun and frolic become the vehicles of the slave's self-betrayal and survival.<sup>67</sup> By stepping it lively and "acting smart," the captive was made the agent of his or her dissolution.<sup>68</sup> The body of the slave, dancing and on display, seemingly revealed a comfort with bondage and a natural disposition for servitude. Those observing the singing and dancing and the comic antics of the auctioneer seemed to revel in the festive atmosphere of the trade and thus attracted spectators not intending to purchase slaves. According to Cato Carter, "They used to cry the niggers off just like so much cattle and we didn't think no different of it. . . . Everybody liked to hear them cry off niggers. The cryer was a clown and made funny talk and kept everybody laughing."<sup>69</sup> Catherine Slim remembered seeing a coffle of slaves chained together, going south, some were singing and some were crying.<sup>70</sup> Mary Gaffney ironically described the "fun" of the trade as "all the hollering and bawling."<sup>71</sup> Others, like James Martin, remarked upon the coerced theatricality of the trade: "And we sees others sol[d] on the auction block. They're put in stalls like pens for cattle and there's a curtain, sometimes just a sheet in front of them, so the bidders can't see the stock too soon. The overseer's standin' just outside with a big black snake whip and a pepper box pistol in his hand. Then they pulls the curtain up and the bidders crowd 'round. The overseer tells the age of the slaves and what they can do. . . . Then the overseer makes 'em walk across the platform. He makes 'em hop, he makes 'em trot, he makes 'em jump."<sup>72</sup> Polly Shine recalled being driven with others like cattle to the marketplace: "Our master would put us in the road ahead of them and they would be on horses behind us as we traveled and they would follow and we had to travel pert, no laggin behind if we did, he always had whip that he would tap us with boy! when he hit us across the legs we could step real lively and I don't mean maybe either."<sup>73</sup> True to form, this theater of the marketplace wed festivity and the exchange of captive bodies. The distribution of rum or brandy and slaves dancing, laughing, and generally "striking it up lively" entertained spectators and give meaning to the phrase "theater of the marketplace." James Curry noted the disparity between the journey to market and the "studied nicety" of the slave. When the coffle is being driven, "no attention is paid to the decency of their appearance. They go bare-headed and bare-footed, with any rag they can themselves find wrapped around their bodies. But the driver has clothing prepared for them to

put on, just before they reach the market, and they are forced to array themselves with studied nicety for their exposure at public sale."<sup>74</sup>

The stimulating effects of intoxicants, the simulation of good times, and the to-and-fro of half-naked bodies on display all acted to incite the flow of capital. The centrality of amusement to the slave trade is confirmed by an article in the *New Orleans Daily Picayune*: "Amusements seldom prove attractive here unless music is brought to the aid of other inducements to spend money. So much is this the custom and so well is this understood, that even an auctioneer can scarcely rally a crowd without the aid of the man with the drum. We do not feel called upon personally to be responsible for the character of all the music, but it is a solemn fact, that to rise in the world it is necessary to make a big noise."<sup>75</sup> Jollification was as standard to the trade as greasing black bodies to create an enhanced and youthful appearance. As well, this spectacle reconciled the self-evident truths of a liberal social order—liberty, equality, and property—with the existence of chattel slavery through the coerced enactment of indifference and the orchestration of diversions. As L. M. Mills stated, "When a negro was put on the block he had to help sell himself by telling what he could do. If he refused to sell himself and acted sullen, he was sure to be stripped and given thirty lashes."<sup>76</sup> By the same token, these displays of excess enjoyment seemed to suggest that the same natural law that established the liberty of all men also authorized slavery since the natural inclination of the enslaved was good cheer and they seemingly endured horrendous circumstances with ease.

Counterpoised to the intensity of this laughter were the lamentations of the enslaved. Dave Bryd recalled that "when one of them buyers bought a slave you never did hear such bawling and hollering in your life that would take place because they did not want to leave each other as we probably would not see them again."<sup>77</sup> As well, the shame and humiliation experienced in being paraded and sold like cattle at the market, in addition to being disrobed publicly, provide a stark contrast to the festive goings-on of the traders. Ethel Dougherty stated that at slave sales women were forced to stand half-naked for hours while crowds of rough-drinking men bargained for them, examining their teeth, heads, hands, et cetera, at frequent intervals to test their endurance.<sup>78</sup> According to Edward Lycurgas, enslaved women "always looked so shame[d] and pitiful up on dat stand wid all dem men standin' dere lookin' at em wid what dey had on dey minds shinin' in they eyes."<sup>79</sup> Shining in their eyes and expressed in "indecent proposals" and "disgusting questions," according to Tabb Gross, was the power, acquired and enjoyed by the owner, to use slave women as he pleased.<sup>80</sup> Millie Simpkins stated that before they were sold they had to take all their clothes off, although she refused to take hers off, and roll around to prove that they were physically fit and without broken bones or sores.<sup>81</sup> Usually any reluctance or refusal to disrobe was met with the whip.<sup>82</sup> When Mattie Gilmore's sister Rachel was sold, she was made to pull off her clothes. Mattie remembered crying until she could cry no more, although her tears were useless.<sup>83</sup>

The simulation of consent in the context of extreme domination was an orchestration intent upon making the captive body speak the master's truth as well as disproving the suffering of the enslaved. Thus a key aspect of the manifold uses of the body was its facility as a weapon used against the enslaved. It can only be likened to torture, which, as noted by Elaine Scarry, destroys the integral relation of body and

belief.<sup>84</sup> Here I would like to underline the disarticulation of body and belief without presupposing an a priori integral relation but by explicating the denotative capacities of the captive body. In *Slave Life in Georgia*, John Brown, in his as-told-to narrative, illumines this chasm between truth and the body by elaborating the role of violence and ventriloquy in enhancing slave value. In order to penetrate the simulated revelry of the trade, he painstakingly described the New Orleans slave pen in which he was held:

The slaves are brought from all parts, are of all sorts, sizes, and ages, and arrive in various states of fatigue and condition; but they soon improve in their looks, as they are regularly fed, and have plenty to eat. As soon as we were roused in the morning, there was a general washing, and combing, and shaving, pulling out of grey hairs, and dyeing the hair of those who were too grey to be plucked without making them bald. When this was over—and it was no light business—we used to breakfast, getting bread, and bacon, and coffee, of which a sufficiency was given to us, and that we might plump up and become sleek. Bob would then proceed to instruct us how to show ourselves off. . . . The buying commenced at about ten in the morning, and lasted till one, during which time we were obliged to be sitting in our respective companies, ready for inspection. . . . After dinner we were compelled to walk, and dance, and kick about in the yard for exercise; and Bob, who had a fiddle, used to play up jigs for us to dance to. If we did not dance to his fiddle, we used to have to do so to his whip, so no wonder we used our legs handsomely, though the music was none of the best. . . .

As the importance of "looking bright" under such circumstances may not be readily understood by the ordinary run of readers, I may as well explain that the price a slave fetches depends, in great measure, upon the general appearance he or she presents to the intending buyer. A man or woman may be well made, and physically faultless in every respect, yet their value be impaired by a sour look, or dull, vacant stare, or a general dullness of demeanor. For this reason the poor wretches who are about to be sold, are instructed to look "spry and smart": to hold themselves up, and put on a smiling, cheerful countenance.

When spoken to, they must reply quickly, with a smile on their lips, though agony is in their heart, and the tear trembling in their eye. They must answer every question, and do as they are bid, to show themselves off; dance, jump, walk, leap, squat, tumble, and twist about, that the buyer may see they have no stiff joints, or other physical defect. . . . Not a word of lamentation or anguish must escape from them; nor when the deed is consummated, dare they bid one another good-bye, or take one last embrace.<sup>85</sup>

An entire chapter of the narrative is dedicated to detailing the activities of the slave pen. For the most part, this enormous effort is expended in demystifying the ruses of the trade, attuning the reader to the difference between the apparent and the actual, narrating the repression of the "real" that occurs by way of this costuming of the contented slaves—hair dyed, faces greased, preening, primping, smiling, dancing, tumbling, et cetera. By now what is familiar in Brown's account is the use of the body against the slave in the enhancement of value and the masking of anguish—in other words, the possession of the captive body by the owner's intentions, which forces the poor wretches to look "spry and smart"; this conspiracy of appearances acts to repudiate the claims of pain. As well, Brown wrests with the legitimacy of slavery, particularly as it is grounded in such compulsory displays of good cheer;

therefore each detail of the chapter counters the “disposition for slavery” argument and anxiously unmask the captive’s good cheer as the trade’s artifice.

While *Slave Life in Georgia* “dare[d] not—for decency’s sake—detail the various expedients that are resorted to by dealers to test the soundness of a male or female slave,” instead preferring to settle for understatement and indirection in outlining the “horrible picture” of slavery, the WPA testimony is replete with the details of these indecent tests for soundness. As one former slave recounted, the woman displayed on the block “would have just a piece around her waist; her breast and thighs would be bare. De seller would turn her around and plump her to show how fat she was and her general condition. Dey would also take her breasts and pull dem to show how good she was built for raisin’ chillun.”<sup>86</sup> The sexual dimensions of the enjoyment of slave property were unashamedly expressed in regard to issues of breeding and in the prices fetched for “fancy girls.”<sup>87</sup>

The sale of Sukie, as recounted by Fannie Berry, a fellow slave, illuminates the sexual dimensions of possession. On the auction block, Sukie calls attention to the gaze—that is, the power exercised in looking that opens the captive body to the lewd desires and pecuniary interests of would-be owners. By defying the studied nicety of the trade, Sukie underscores the violence of the spectacle, issuing a threat of her own to those so intent on looking and probing. As Fannie Berry tells it:

Sukie was her name. She was a big strappin nigger gal dat never had nothin’ to say much. She used to cook for Miss Sarah Ann, but ole Marsa was always tryin’ to make Sukie his gal. One day Sukie was in the kitchen making soap. Had three gra’ big pots o’ lye just comin’ to a bile in de fireplace when ole Marsa come in for to git arter her ‘bout somep’n. He lay into her, but she ain’t never answer him a word. Den he tell Sukie to take off her dress. She tole him no. Den he grabbed her an’ pulled it down off’n her shoulders. When he done dat, he fo’got ‘bout whippin’ her, I guess cause he grab hold of her an’ try to pull her down on de flo’. Den dat black girl got mad. She took an push ole Marsa an’ made him break loose an’ den she gave him a shove an’ push his hind parts down in de hot pot o’ soap. Soap was near to boilin’, an it burnt him near to death. He got up holdin’ his hind parts an’ ran from the kitchen, not darin’ to yell, ‘cause he didn’t want Miss Sarah to know ‘bout it.

Well, few days later he took Sukie off an’ sol’ her to de nigger trader. An’ dey ‘zamin’d her an’ pinched her an’ den dey opened her mouf, an’ stuck dey fingers in to see how her teeth was. Den Sukie got awful mad, and she pult up her dress an’ tole de nigger traders to look an’ see if dey could find any teef down dere.<sup>88</sup>

The events that lead to Sukie’s sale as well as the event staged on the auction block raise a number of issues critical to the scene of subjection, the foremost of these being the issues of will, agency, and consent, which, in this particular instance, are enmeshed as seduction—from Berry’s description of the master’s attempted rape as “trying to make Sukie his gal,” which illustrates the conflation of rape and concubinage in the sexual economy of slavery, to Sukie’s threatening striptease, in which the interdiction, ironically, is issued as invitation. The next set of issues concerns the capacities of the performative in doing (as in making) and undoing the subject and, lastly, the status of the enslaved as a curious hybrid of person and property.

Let us first consider the issue of will as it relates to seduction. In one respect, Sukie’s performance can be understood as an arrogation of the will that undermines

her social existence as an object of property. This dramatic seizure of the will figuratively expropriates the power of the (would-be) master that animates and annexes the captive body. In this regard, Sukie's actions place her outside the law because she defies the fundamental tenet of slavery: the slave is subject to the master's will in all things. This breach of law enacted in the insolent disregard of the block's decorum, interestingly enough, provides the only possibility for the emergence of the subject, since criminality is the only form of slave agency recognized by law. Thus the fashioning of the subject must necessarily take place in violation of the law, and consequently, will, criminality, and punishment are inextricably linked. Furthermore, Sukie's performance exploits the charged linkage of property and sexuality, challenges the will-lessness of the object of property, and induces a category crisis for the spectators whose enjoyment is defined by wanton acts and the promiscuous uses of property.

This performance on the auction block defies the tricks of the trade and, by extension, the related practices that secure and reproduce the relations of mastery and servitude through a parodic enactment of the auction's devices. By staging this rebellion in the domain of sexuality, Sukie fills in the details of the "horrible picture," that which dare not be spoken without risk of breaching decency, in service of contesting the uses of slave property. The subversive reiteration of the potential buyer's splaying of the body, specifically Sukie's gesture to the teeth down there, delineates the debasing exhibition of the black body as object of property, as it was common for bidders to feel between women's legs, examine their hips, and fondle their breasts.<sup>89</sup>

By contrast, Sukie's gesture to the teeth down there launched a threat and explicitly declared the dangers that awaited further probing and pulling. In this case, the vagina *dentata* and the threat of castrating genitals transpose the captive body in its dominated and ravaged condition into a vehicle to be used against the would-be slave owner rather than in the service of his interests, wants, and desires. This threat of castration echoes the foiled attempt of her former master, whose "hind parts" were also placed in jeopardy, and promises retaliation for further efforts at examination and against those anticipating the sexual uses of property. By lifting her skirts, Sukie complies with the demand to expose herself and display her body to potential buyers, but she subverts this act of submission and compliance by alluding to the hazards that awaited the buyer or trader who would venture to make her "his gal." The gesture to the teeth down there calls attention to the bestializing display of black bodies in the market, the sexual violation of slave women, and the intersection of enjoyment and terror. This revolt staged at the site of enjoyment and the nexus of production and reproduction exposes the violence of the trade's spectacle in what merits being called a deconstructive performance. In this instance the infamous propensity of the Negro for mimicry and imitation is tantamount to insurgency.

As it turns out, what was being staged in these varied renderings of the coffee and the auction block was nothing less than slavery itself, whether in the effort to mute the extreme domination of slavery and the violence that enabled this sale of flesh through the simulated jollity of the enslaved or the clownish antics of the auctioneer, reconcile subjugation and natural law, document the repressive totality of the institution, or fashion a subject who might triumphantly negotiate her debasements. An

anxiety about enjoyment distinguishes the site of exchange. This can be seen in assurances to buyers about the jollity of the slaves on display and the intensity of abolitionist efforts to prove the commonplace that slaves were neither happy nor indifferent to being sold like cattle and separated from their families.<sup>90</sup> The apprehensive estimations and discriminating evaluations of the captives' myriad uses and the fear that black suffering would remain unnoticed bespeak concerns about the insufficiency and complicity of pleasure.

### The Pleasant Path

The parade of shackled bodies to market captured not only the debasements of slavery but also its diversions. Yet the convergence of pleasure and terror so striking in the humiliating exhibitions and defiling pageantry of the trade was also present in "innocent amusements." The slave dancing a reel at the big house or stepping it up lively in the cuffle similarly transformed subjugation into a pleasing display for the master, albeit disguised, to use Pierre Bourdieu's terms, by the "veil of enchanted relationships."<sup>91</sup> These "gentler forms" extended and maintained the relations of domination through euphemism and concealment. Innocent amusements constituted a form of symbolic violence—that is, a "form of domination which is exercised through the communication in which it is disguised."

When viewed in this light, the most invasive forms of slavery's violence lie not in these exhibitions of "extreme" suffering or in what we see but in what we don't see. Shocking displays too easily obfuscate the more mundane and socially endurable forms of terror.<sup>92</sup> In the benign scenes of plantation life (which comprised much of the Southern and, ironically, abolitionist literature of slavery) reciprocity and recreation obscure the quotidian routine of violence. The bucolic scenes of plantation life and the innocent amusements of the enslaved, contrary to our expectations, succeeded not in mollifying terror but in assuring and sustaining its presence.

Rather than glance at the most striking spectacle with revulsion or through tear-filled eyes, we do better to cast our glance at the more mundane displays of power and the border where it is difficult to discern domination from recreation. Bold instances of cruelty are too easily acknowledged and forgotten, and cries quieted to an endurable hum. By disassembling the "benign" scene, we confront the everyday practice of domination, the nonevent, as it were. Is the scene of slaves dancing and fiddling for their masters any less inhumane than that of slaves sobbing and dancing on the auction block? If so, why? Is the effect of power any less prohibitive? Or coercive? Or does pleasure mitigate coercion? Is the boundary between terror and pleasure clearer in the market than in the quarters or at the "big house"? Are the most enduring forms of cruelty those seemingly benign? Is the perfect picture of the crime the one in which the crime goes undetected? If we imagine for a moment a dusky fiddler entertaining at the big house, master cutting a figure among the dancing slaves, the mistress egging him on with her laughter, what do we see?

"Dance you damned niggers, dance," Epps would shout. Usually his whip in his hand, ready to fall about the ears of the presumptuous thrall, who dared rest a moment, or even



to stop to catch his breath. When he himself was exhausted, there would be a brief cessation, but it would be very brief. With a slash, crack and flourish of the whip, he would shout again, "Dance, niggers dance," and away they would go once more, pell-mell, while I, spurred by an occasional sharp touch of the lash, sat in a corner, extracting from my violin a marvelous quick stepping tune. . . . Frequently, we were thus detained until almost morning. Bent with excessive toil—actually suffering for a little refreshing rest, and feeling rather as if we would cast ourselves upon the earth and weep, many a night in the house of Edwin Epps have his unhappy slaves been made to dance and laugh.<sup>93</sup>

This passage from Solomon Northrup's *Twelve Years a Slave* exemplifies the permeability of pleasure and punishment in the ceremonies of slavery. The humiliations delivered the conscripts of Master Epps's terrorizing bacchanals and the brutal command to merrymaking suggest that the theatricality of the Negro emerges only in the aftermath of the body's brutal dramatic placement—in short, after the body has been made subject to the will of the master.<sup>94</sup> The uproarious behavior of Epps, slashing limbs with his whip while gaily dancing a quick step with the slaves, casts a different light on the dusky fiddler in the golden days of Southern glory. And the spree, as narrated by Northrup, resonates with the evil of twice-told tales about fiddlers abducted by Satan and the fiendish revels of hell.

Behind the facade of innocent amusements lay the violence the master class assiduously denied; but what else could jigs danced in command performances be but the gentle indices of domination? It was as much the duty of slaves "to devote themselves to the pleasure of their masters" as to work for the master's benefit, commented Jacob Stroyer.<sup>95</sup> He noted rather cryptically that "no one can describe the intense emotion in the negro's soul on these occasions when they were trying to please their masters and mistresses."<sup>96</sup> Such performances cast the slave as contented bondsman and elide the difference between volition and violation. However, as Northrup's narrative indicated, the contented slave appeared only after he had been whipped into subjection. In short, Sambo did not engender the stagecraft of slavery, as apologists would have it, but was one of its effects.

In the effort to cultivate docile and dutiful slaves, slaveholders promoted the slaves' "natural gaiety" by "all allowable means." Innocent amusements were designed to promote gaiety by prudent means, ameliorate the harsh conditions of slavery, make the body more productive and tractable, and secure the submission of the enslaved by the successful harnessing of the body. In effect, plantation ceremony endeavored to make discipline a pleasure, and vice versa.<sup>97</sup> Innocent amusements supplemented other methods of managing the slave body. According to Douglass, these ostensibly benevolent forms of management were designed to better secure "the ends of injustice and oppression."<sup>98</sup> In fact, such diversions were an important element of plantation management, as the internalization of discipline and reward was considered essential to the good order of the plantation, for the ideal model of plantation management stressed humanity and duty. Prizewinning essays on the ideals of management held that "industry and good conduct should be encouraged [and] the taste for innocent amusements gratified."<sup>99</sup> These designs for mastery troubled distinctions between leisure and labor and employed an extensive notion of discipline that included everything from the task system to the modes of singing

allowed in the field. As one planter commented, "When at work, I have no objection to their whistling or singing some lively tune, but no drawling tunes are allowed in the field, for their motions are almost certain to keep time with the music."<sup>100</sup> In light of these remarks, it is clear that productive diversions were also a means of cultivating particular forms of conduct. In this case, power extended itself in the form of recreation.

By encouraging entertainment, the master class sought to cultivate hegemony, harness pleasure as a productive force, and regulate the modes of permitted expression. Slave owners managed amusements as they did labor, with a keen eye toward discipline. According to Guion Griffis Johnson, promoting fun and frolic could alleviate unrest: "One South Carolina planter who was having trouble disciplining his slaves supplied his people with fiddle and drums and 'promoted dancing.' To his gratification the ill temper of the slaves disappeared and the peace was once more established on the plantation."<sup>101</sup> Nonetheless, the diversions the planter considered as placating ill temper created conflicts no less unsettling. When slaves were required to perform before the master and even when they eagerly partook of entertainment, such pleasures were tempered by their fettered condition and the ever-threatening exercise of the master's power.

Yet despite the forethought given to and the energy expended in orchestrating such diversions, proponents of these paternal forms of management nonetheless insisted that Africans' natural propensity for song did, in fact, reflect a disposition for servitude. A Georgia physician who fancied himself a physiologist of culture remarked that Negroes possessed a sixth sense—a musical sense—and that despite their kinship with hogs in nature and habit, the Negro has music in his soul. This physician described the enslaved as without regrets for the past or anxieties about the future and "full of fun and frolic," which were the standard assessments of black character shared by proslavery discourse and romantic racialism.<sup>102</sup> Whether this was the result of nature or condition was difficult for him to discern: "Our Southern negroes seem to have a natural gift for music, and such a thing as a non-singing negro is almost unknown. Now, whether this is peculiar to the negroes of the Southern states, and as a result of the happifying influences of slavery, we are not prepared to say; but certainly it does appear that music—and that, too, of a cheerful kind—would not be likely to become a passion, a very second nature, with a people so debased and downtrodden as Southern slaves are represented in certain quarters."<sup>103</sup> The physician therefore advised planters to encourage music because it added to the enjoyment and fitness of the slave. Put simply, music was the antidote to black sloth and torpidity.

In the June 1851 edition of *De Bow's Review*, a Mississippi planter recommended a management plan that he thought would contribute to the happiness of both master and slave. After offering suggestions regarding the arrangement of the quarters, meals, clothing, et cetera, he noted that he had "few sour looks and as little whipping" as was possible on a plantation of his size. Attributing the good-naturedness of his slaves to more than adequate care, he confessed that in addition to providing for the basic needs of his slaves, he literally "fiddled" them into contented submission: "I must not omit to mention that I have a good fiddler, and keep him well supplied with catgut, and I make it his duty to play for the negroes every

Saturday night until 12 o'clock. They are exceedingly punctual in their attendance at the ball, while Charley's fiddle is always accompanied with Ihurod on the triangle, and Sam to 'pat' [patting juba]."<sup>104</sup> According to the planter, the whip used sparingly, the fiddle, and the Bible formed the holy trinity of plantation management.

Even though "church brethren might think hard of it," a small farmer also confessed that he encouraged the playing of the fiddle in his quarters. He bought the fiddle and encouraged slaves to play it "by giving the boys [fiddlers] occasionally a big supper."<sup>105</sup> Plantation management plans clearly demonstrated that within the confines of the plantation and slaveholding society there were no "innocent" amusements. The hours from sundown to sunup were as important as those spent in the field in cultivating the productivity of the plantation household and maintaining social control. Slaveholders' managing of slave "leisure," surveillance of parties and dances, and financial investment in slave amusements, which were important enough for masters to provide fiddles for their slaves, teach them to play, and purchase slaves because they were musicians, document the value of pleasure. The testimony of the enslaved also confirms the utility of diversion. Adeline Jackson's master bought a slave just because he could fiddle: "Master Edward bought a slave in Tennessee just 'cause he could play de fiddle. Named him 'Tennessee Ike' and he played long wid Ben Murray, another fiddler. Sometime all of us would be called up into de front yard to play and sing and dance and sing for Miss Marion, de chillun and visitors."<sup>106</sup> Gary Stewart's owner taught his slaves to play the fiddle.<sup>107</sup> Henry Bland's owner furnished him with a fiddle, which he played at square dances, the chief form of entertainment on the plantation, and at weddings, frolics, and other special occasions.<sup>108</sup>

The master's role in these revels, whether as an observer, manager, or participant, is mentioned repeatedly in slave narratives. D. Davis's owner arranged Saturday frolics for the slaves where he filled the role of fiddler. Davis described the occasion as "going before the king": "Every person on de place, from de littlest child to de oldest man or woman, would clean deyselves up and put on dey best clothes for to 'go before de king.' Dat's what us called it. All would gather in back of de big house under de big oak trees and Marse Tom, he would come out with a fiddle under he arm . . . and set himself down in de chair what Uncle Joe done fetched for him. . . . Den Marse Tom, he start dat fiddle playin' right lively and all dem niggers would dance and have de best kind of frolic. Marse Tom, he get just as much fun oten de party as de niggers themselves."<sup>109</sup> In this case, the slave's good times were at the same time a performance for the slaveholder. To go before the king demonstrated the master's power and hinted at the affinities of pleasure and mortification—the day of judgment. With each step of the Virginia reel, domination was extended and reproduced, although on occasion, the reel was turned to contrary purposes.

It was not uncommon for slave owners to participate in the frolics they organized. They indulged the slaves with whiskey, sang and danced with them, served as musicians, and frequently were spectators. Slave owners loved to watch their slaves performing. Ed Shirley recalled that at Saturday dances "some old negro would play the banjos while the young darkies would dance and sing. The white folks would set around and watch; and would sometimes join in and dance and sing."<sup>110</sup> Ann

Thomas's master's son played the music for slave frolics: "He played the fiddle and liked to see the slaves dance 'cutting the pigeon wing.'" <sup>111</sup> According to Marinda Jane Singleton, anyone who could dance and sing well was taken to the big house to entertain the master's guests. <sup>112</sup> These performances pleased not only because of the abilities of those who performed but also because they served to display the owner's power and property since the captive body was an extension of the imperial body of the master and the prized object of his enjoyment. Moreover, the master's gaze served as a reminder that diversion could not be extricated from discipline or domination. In this regard, the owner's pleasure in looking was without question a form of surveillance and a way of policing the slave population.

Essays in *De Bow's Review*, *Southern Planter*, and other agricultural journals unanimously concurred on the importance of docile and contented slaves to the successful management of the farm or plantation. These essays enumerated the responsibilities of slaveholders and methods for promoting slave productivity. Plantation journals, guided by paternalistic ideals and anxious about the image of the institution of slavery, particularly in light of mounting opposition to slavery, not surprisingly were much more forthright about the use of rewards and recreation rather than violence to achieve submission. The kindly master cognizant of his duty to slaves need not make recourse to the whipping post but instead fostered docility via the pleasant path. Herbermont opined that guiding the pleasures of the slave was a task equivalent to the sovereign's direction of his subjects. Attending to the recreation of slaves was for their general good and therefore not beneath the dignity of the master, since the path of pleasantness was "much more likely to be followed willingly" than the path covered with thorns and briars. <sup>113</sup>

Yet when the less thorny road was pursued, the enslaved had little difficulty discerning in "beneficial recreations" another form of coercion. Eda Harper described her owner's promotion of song as malevolent: "My old master mean to us. He used to come to the quarters and make us chillum sing. He make us sing Dixie. Seems like Dixie his main song. I tell you I don't like it now. But have mercy! He make us sing it." <sup>114</sup> The ironies of the pleasant path are highlighted in Harper's case. Forcing the enslaved to sing "Dixie," a tune from the minstrel stage adopted for the cause of Confederate nationalism, discloses the collusion of coercion and recreation. According to Drew Gilpin Faust, "The adoption of 'Dixie' as the emblematic Confederate song underlined the emotional centrality of these pseudo slave performances as affirmations of the Confederate national mission and the master-class's cherished self-image of benevolent paternalism." <sup>115</sup> The self-representation of the slaveholding South depended upon such performances of blackness. Conceivably this explains why minstrelsy reached its zenith in the South during the Civil War.

Despite the general consensus regarding the efficacy of slave amusements, slaveholders' discussions of "slave culture" were tautological and fraught with contradictory assertions about nature and culture. On one hand, slave culture or, more aptly, the antics of administered amusements demonstrated the inferior and slavish nature of the African. Moreover, this "sixth sense" ill-equipped blacks for freedom. On the other, the necessity of encouraging forms of beneficial recreations revealed planter anxiety about restlessness, if not rebellion. After all, if the slave was natu-

rally predisposed to song, why the need to s(t)imulate merrymaking? At whatever cost, nature and condition were to be made compatible, and innocent amusements, in concert with combined forms of torture, punishment, and discipline, were to affect this union. Indeed, the slave would be made to appear as if born to dance in chains.

### Fraught Pleasures

The slaveholder's instrumental use of entertainment was duly criticized by abolitionists. Douglass, at the forefront of such criticism, argued that the abjection of slave amusements "appeared to have no other object than to disgust the slaves with their temporary freedom, and make them as glad to return to work as they had been to leave it."<sup>116</sup> Although he was speaking specifically of the holiday period between Christmas and New Year's, his condemnation of these diversions for cultivating submission, debasement, and docility is no less relevant to the routine amusements addressed above.<sup>117</sup> In this regard, his criticisms were not unlike those of Henry Bibb and others. Abolitionists emphasized the degraded character of these escapades and stressed the confluence of brutality and merrymaking in such activities. Bibb held slaveholders responsible for prompting demeaning sport: "When they wish to have a little sport of that kind, they go among the slaves, to see them dance, 'pat juber,' sing and play on banjo."<sup>118</sup> If slaves, unfortunately, participated in these debased amusements, their condition, not their nature, was to blame. Theodore Parker was less certain in this regard: "If the African be so low that the condition of slavery is tolerable in his eyes and he can dance in chains, then it is all the more a sin in the cultivated and strong, in the Christian, to tyrannize over the feeble and defenseless."<sup>119</sup> The permeable, shifting, and elusive boundary between instrumental amusements and the expressive culture of the enslaved was troubled and unsettling. Moreover, for those like Parker the ability of Africans to dance at all was unfathomable.

However, Douglass's searing criticism of these amusements concentrated on their function as "safety-valves to carry off the explosive elements inseparable from the human mind when reduced to the condition of slavery," as well as exposing a longing for a culture of resistance in this condemnation.<sup>120</sup> In order to disentangle the skeins of disapprobation and desire, Douglass's decrimal of slave holidays needs to be considered alongside his commentary on slave song. For the most part, his objections to these holidays pertain to the derailing of "dangerous thought" by diversion. In other words, these pleasures thwart the emergence of an oppositional consciousness: "To enslave men successfully and safely it is necessary to keep their minds occupied with thoughts and aspirations short of the liberty of which they are deprived. . . . These holidays served the purpose of keeping the minds of the slaves occupied with prospective pleasures within the limits of slavery. . . . A certain degree of attainable good must be kept before them. . . . But for these the rigors of slavery would have been forced to a dangerous desperation. . . . Not the slave's happiness but the master's safety was the end sought."<sup>121</sup> What Douglass yearns for is dangerous music and dangerous thought. As well, the relentlessness of

the critique and its broad strokes are intent upon destroying the discourse on indolence, servility, and contentment that licensed the institution. However, even in the context of this ruthless encounter with the pleasures afforded within the confines of slavery, he manages to catch hold of glimmerings of opposition—in this case “the sharp hits against slaveholders” in “jubilee patting.”

This search for an oppositional culture, or a symbolic analogue of Douglass's physical confrontation with Covey, the overseer and “nigger breaker,” alights on slave song:

They would sing . . . words which to many would seem unmeaning jargon, but which nevertheless, were full of meaning to themselves. I have sometimes thought that the mere hearing of these songs would do more to impress some minds with the horrible character of slavery, than the reading of whole volumes of philosophy on the subject could do. I did not when a slave, understand the deep meaning of those rude and apparently incoherent songs. I was myself within the circle; so that I neither saw nor heard as those without might see and hear. They told a tale of woe which was then altogether beyond my feeble comprehension; they were tones loud, long and deep; they breathed the prayer and complaint of souls boiling over with the bitterest anguish. Every tone was a testimony against slavery, and a prayer to God for deliverance from chains. The hearing of those wild notes always depressed my spirit, and filled me with ineffable sadness. I have frequently found myself in tears while hearing them. . . . To those songs I trace my first glimmering conception of the dehumanizing character of slavery.<sup>122</sup>

Yet these songs insufficiently meet the requirements of an oppositional culture, one capable of combating ostensibly beneficial diversions and poised to destroy these designs for mastery. While every tone testifies against slavery, sorrow rather than resistance characterizes such songs; furthermore, they are emblems of the “soul-killing effects of slavery.” The mere hearing of these songs impresses one with the horrible character of slavery. Above all, these songs are valued as dirges expressive of the social death of slavery and inchoate expressions of a latent political consciousness. In this regard, they belie popular portraits of happiness and contentment. The opacity of these sorrowful and half-articulate songs perplexes and baffles those within and without the circle of slavery. When a slave, Douglass was unable to see and hear as those without might have, yet those without too often misinterpreted these songs as evidence of satisfaction. Anticipating Du Bois's assessment of the sorrow songs as “the music of an unhappy people, of the children of disappointment; they tell of death and suffering and unvoiced longing toward a truer world, of mist wanderings and hidden way,” Douglass emphasized the singularity of sorrow, thus hoping to establish an absolute line of division between diversion and the glimmerings of protest.<sup>123</sup> Yet this distinction could not be sustained, for the promiscuous exchanges of culture and the fraught terms of agency muddled the lines of opposition, and as Douglass himself recognized, on rare occasions the pleasures available within the confines of slavery indeed possessed glimmerings of insurgency and transformation.

## *Redressing the Pained Body*

### TOWARD A THEORY OF PRACTICE

History is what hurts, it is what refuses desire and sets inexorable limits to individual as well as collective praxis, which its "ruses" turn into grisly and ironic reversals of their overt intention.

—Fredric Jameson, *The Political Unconscious* (1982)

LU Lee's owner encouraged the enslaved to have Saturday night dances even though he was a religious man and thought it wrong to dance. Lee remembered him saying, "Seek your enjoyment, niggers got to pleasure themselves someway." As argued earlier, the promotion of innocent amusements and harmless pleasures was a central strategy in the slave owner's effort to cultivate contented subjection. However, the complicity of pleasure with the instrumental ends of slaveholder domination led those like Mary Glover to declare emphatically, "I don't want [that] kind of pleasure." Generally, the response of the enslaved to the management and orchestration of "Negro enjoyment" was more complex than a simple rejection of "innocent amusements." Rather, the sense of operating within and against these closures made the experience of pleasure decidedly ambivalent. If "good times" were an index of the owner's profit and dominion, what possibilities could pleasure yield? For those like John McAdams, pleasure was less a general form of dominance than a way of naming, by contradistinction, the consumption and possession of the body and black needs and possibilities. It was more than a tendency for understatement that led McAdams to characterize his experience and that of other slaves as "no pleasure, as we had to work just as soon as [we] got large enough to work."<sup>1</sup>

Not only was pleasure posed in contrast to labor, but the negation or ambivalence of pleasure was to be explained by the yoking of the captive body to the will, whims, and exploits of the owner and by the constancy of the slave's unmet yearnings, whether for food or for freedom. Yet McAdams's remarks also suggest that "lack" insufficiently describes the vexed state of pleasure, since slaves also lived for Saturday night dances. The value attached to having a good time was its facilitation of collective identification: "We made good use of these nights as that was all the time the slaves had together to dance, talk, and have a good time among their own color."<sup>2</sup> And yet pleasure was ensnared in a web of domination, accumulation, abjection, resignation, and possibility. It was nothing if not cunning, mercurial, treacherous, and indifferently complicit with quite divergent desires and aspira-

tions, ranging from the instrumental aims of slave-owner designs for mastery to the promise and possibility of releasing or redressing the pained constraints of the captive body. It is the ambivalence of pleasure and its complicity with dominative strategies of subjection that is the theme of this chapter.

The struggles waged against domination and enslavement in everyday life took a variety of forms, including opportunities seized in the domain of permissible and regulated amusements. If these occasions were designed, as Frederick Douglass argued, to "better secure the ends of injustice and oppression," they also provided a context in which power was challenged and claims made in the name of pleasure, need, and desire.<sup>3</sup> Pleasure was fraught with these contending investments in the body. As Toby Jones noted, the Saturday night dances permitted by the master were refashioned and used for their own ends by the enslaved: "The fun was on Saturday night when massa 'lowed us to dance. There was a lot of banjo pickin' and tin pan beatin' and dancin' and everybody talk bout when they lived in Africa and done what they wanted."<sup>4</sup> Within the confines of surveillance and nonautonomy, the resistance to subjugation proceeded by stealth: one acted furtively, secretly, and imperceptibly, and the enslaved seized any and every opportunity to slip off the yoke.

In these pages, I outline the clandestine forms of resistance, popular illegalities, and "war of position" conducted under the cover of fun and frolic. Here I do not mean to suggest that everyday practices were strategies of passive revolution but merely to emphasize that peregrinations, surreptitious appropriation, and moving about were central features of resistance or what could be described as the subterranean "politics" of the enslaved. With this in mind, I endeavor in this chapter to illuminate the social struggle waged in "the Negro's enjoyment" and the challenges to domination launched under the rubric of pleasure. Yet, in order to do this, we must, first, situate performance within the context of everyday practices and consider the possibilities of practice in regard to specific forms of domination; second, defamiliarize fun and frolic or the performance of blackness in order to make visible the challenges that emerge in this arena; and, third, liberate the performative from the closures of sentiment and contented subjection in order to engage the critical labor of redress.<sup>5</sup>

### The Centrality of Practice

Exploiting the limits of the permissible, creating transient zones of freedom, and relaborating innocent amusements were central features of everyday practice. Practice is, to use Michel de Certeau's phrase, "a way of operating" defined by "the non-autonomy of its field of action," internal manipulations of the established order, and ephemeral victories. The tactics that comprise the everyday practices of the dominated have neither the means to secure a territory outside the space of domination nor the power to keep or maintain what it is won in fleeting, surreptitious, and necessarily incomplete victories.<sup>6</sup> The refashioning of permitted pleasures in the effort to undermine, transform, and redress the condition of enslavement was consonant with other forms of everyday practice. These efforts generally focused on the object status and castigated personhood of the slave, the pained and



ravished body, severed affiliations and natal alienation, and the assertion of denied needs. Practice is not simply a way of naming these efforts but rather a way of thinking about the character of resistance, the precariousness of the assaults waged against domination, the fragmentary character of these efforts and the transient battles won, and the characteristics of a politics without a proper locus.

The everyday practices of the enslaved encompassed an array of tactics such as work slowdowns, feigned illness, unlicensed travel, the destruction of property, theft, self-mutilation, dissimulation, physical confrontation with owners and overseers that document the resistance to slavery.<sup>7</sup> These small-scale and everyday forms of resistance interrupted, reelaborated, and defied the constraints of everyday life under slavery and exploited openings in the system for the use of the enslaved. What unites these varied tactics is the effort to redress the condition of the enslaved, restore the disrupted affiliations of the socially dead, challenge the authority and dominion of the slaveholder, and alleviate the pained state of the captive body. However, these acts of redress are undertaken with the acknowledgment that conditions will most likely remain the same. This acknowledgment implies neither resignation nor fatalism but a recognition of the enormity of the breach instituted by slavery and the magnitude of domination.

Redressing the pained body encompasses operating in and against the demands of the system, negotiating the disciplinary harnessing of the body, and counterinvesting in the body as a site of possibility. In this instance, pain must be recognized in its historicity and as the articulation of a social condition of brutal constraint, extreme need, and constant violence; in other words, it is the perpetual condition of ravishment. Pain is a normative condition that encompasses the legal subjectivity of the enslaved that is constructed along the lines of injury and punishment, the violation and suffering inextricably enmeshed with the pleasures of minstrelsy and melodrama, the operation of power on black bodies, and the life of property in which the full enjoyment of the slave as thing supersedes the admittedly tentative recognition of slave humanity and permits the intemperate uses of chattel. This pain might best be described as the history that hurts—the still-unfolding narrative of captivity, dispossession, and domination that engenders the black subject in the Americas.

If this pain has been largely unspoken and unrecognized, it is due to the sheer denial of black sentience rather than the inexpressibility of pain. The purported immunity of blacks to pain is absolutely essential to the spectacle of contented subjection or, at the very least, to discrediting the claims of pain.<sup>8</sup> The black is both insensate and content, indifferent to pain and induced to work by threats of corporal punishment. These contradictions are partly explained by the ambiguous and precarious status of the black in the “great chain of being”—in short, by the pathologizing of the black body—this abhorrence then serves to justify acts of violence that exceed normative standards of the humanely tolerable, though within the limits of the socially tolerable as concerned the black slave. In this regard, pain is essential to the making of productive slave laborers. The sheer enormity of this pain overwhelms or exceeds the limited forms of redress available to the enslaved. Thus the significance of the performative lies not in the ability to overcome this condition or provide remedy but in creating a context for the collective enunciation of this pain,

transforming need into politics and cultivating pleasure as a limited response to need and a desperately insufficient form of redress.

### The Closures of Sentiment

It is impossible to imagine the enslaved outside a chain of associations in which the captive dancing in literal or figurative chains, on the deck of a ship, in the marketplace, or before the master does not figure prominently. This indelible image of a prostrate yet perky Sambo conjures up an idealized and fetishized state of servitude, in which the imputed consciousness of the enslaved ensures submission and docility more effectively than either the whip or the chain. In other words, the figure reconciles infantilized willfulness with the abject status of the will-less object. Not only is this image paradigmatic; it is also so pervasive and repressive that it makes claims about the performative as a practice of resistance and redress quite tentative. For the "Pompey" of the missionary report somnambulantly reciting the catechism, the Jim Crow of the minstrel stage, and the contented slave singing for the master or dancing on the auction block conspire to eradicate the social experience of enslavement—its terror, suffering, captivity, exchange, objectification, and domination, to name just a few of the significant features in a possibly endless litany of violence—precisely as they appear to give "voice" to the slave. In the case of these anointed agents of the enslaved, the simulation of will effectively annuls any possibility of redress or resistance.

Is it possible to consider, let alone imagine, the agency of the performative when the black performative is inextricably linked with the specter of contented subjection, the torturous display of the captive body, and the ravishing of the body that is the condition of the other's pleasure? As well, how does one explicate the conditions of slave agency when the very expression seems little more than an oxymoron that restates the paradox of the object status and pained subject constitution of the enslaved? How is it possible to think "agency" when the slave's very condition of being or social existence is defined as a state of determinate negation? In other words, what are the constituents of agency when one's social condition is defined by negation and personhood refigured in the fetishized and fungible terms of object of property?

Generally, the representation of the performative has been inscribed in a repressive problematic of consensual and voluntarist agency that reinforces and romanticizes social hierarchy. The pastoral has been the dominant mode of this problematic of repression. In the social landscape of the pastoral, slavery is depicted as an "organic relationship" so totalizing that neither master nor slave could express "the simplest human feelings without reference to the other." Thus the master and the slave are seen as, if not peacefully coexisting, at the very least enjoying a relationship of paternalistic dependency and reciprocity. In this instance, paternalism minimizes the extremity of domination with assertions about the mutually recognized humanity of master and slave. Even the regime of production becomes naturalized as "the rhythms of work," as if slave labor were merely another extension of blacks' capacity for song and dance. The lure of the pastoral is in reconciling sentiment with

the brute force of the racial-economic order. Thus, the brutality and antagonisms of slavery are obscured in favor of an enchanting reciprocity. The pastoral renders the state of domination as an ideal of care, duty, familial obligation, gratitude, and humanity. The ruthless use of labor power and the extraction of profit are imagined as the consensual and rational exchange between owner and slave. This is accomplished by representing direct and primary forms of domination as coercive and consensual—in short, by representing slavery as a hegemonic social relation.

This repressive problematic of consent frames everyday practices in terms of mutual obligation and reciprocity between owners and the enslaved. Thus it stages the agency of the enslaved as a form of willed self-immolation in that what is "consented" to is a state of subjugation of the most extreme order. Consequently, the representations of slave agency have intensified the effects of subjugation and dispossession in the guise of will and denied the abject and ambivalent personhood of the captive in the facile and spurious attempt to incorporate the slave into the ethereal realms of the normative subject through demonstrations of his consent and/or autonomy. Certainly the notion of the autonomous self endowed with free will is inadequate and, more important, inappropriate to thinking through the issue of slave agency. The self-possessed subject with his inalienable attributes is quite unthinkable or unimaginable in this case. Nevertheless, by emphasizing complementarity, reciprocity, and shared values, this hegemonic or consensual model of slave relations neutralizes the dilemma of the object status and pained subject constitution of the enslaved and obscures the violence of slavery.<sup>9</sup> What do reciprocity, mutuality, and the recognition of the captive's humanity mean in the context of slavery? In other words, who is protected by such notions—the master or the slave?

This vision of mutuality and organic order finds expression in the pastoral.<sup>10</sup> As a mode of historical representation, the pastoral seizes upon the strains of song and story, invariably a part of slave life, as precious components in the depiction of the moral landscape of slavery in order to give voice to the values of the social order in the appropriately simple tones of the enslaved. Song, dance, and story become the emblems of an integral moral economy. Thus the grotesque speaking of "de bes' story" is the sentimental disguise of domination. The reverential status of the slave's voice, and more generally his or her agency, effectively links the exercise of will and contented subjection. The nonsense orthography provides the illusion of direct testimony, immediacy, and authenticity, which only serves to (re)produce the master's text, even if donning the rags of the slave.<sup>11</sup> (Certainly this mode is dominant in much of the historiography of slavery and in the slave testimony collected by the Works Progress Administration and underlines the difficulty of representing the experience of the enslaved, even when one has access to "firsthand" accounts. The politics, interests, and relations of power that condition such representations must be taken into account, even as one tries to use this testimony for contrary purposes, for the pastoral as mode of inquiry represses the relations of domination that make this knowledge of the past possible.)<sup>12</sup>

Within the enclosures of the avowedly total and reciprocal relations of master and slave in which the simplest expression of human feelings is impossible without reference to the other, the fetish or artifice of the slave's consent and agency effectively links the exercise of will and contented subjection.<sup>13</sup> Not surprisingly, song

and dance and a range of everyday acts, seemingly self-directed but actually induced by the owner, are the privileged expressions of this consenting agency. The paternal endowments of will, voice, and humanity deny the pained and punitive constitution of the slave as person and the necessary violence of racial slavery. Thus the performative is rendered as little more than scenes of revelry and good times that lighten the burden of slavery and bonded labor represented as an extension of leisure; thereby emphasizing the festive and celebratory character of servitude.<sup>14</sup> Most often these practices, when not envisioned as concessions of slaveholders designed to "win over" or to debase the enslaved, have been rendered through the idyllic lens of the pastoral, in which the "off times," not bondage and coerced labor, define slave life.<sup>15</sup> Certainly Douglass was aware of this double bind; it was responsible for the anxiety that accompanied his discussion of slave recreations. He negotiated it by identifying recreation with abasement and stressing the importance of interpretation and contextual analysis in uncovering the critical elements or "implicit social consciousness" of slave culture.

### The Character of Practice

In light of this, how might we reconsider the performative in order to illuminate the social relations of slavery and the daily practices of resistance that traverse these relations or represent the critical labor of these practices without reproducing the contented subject of the pastoral or the heroic actor of the romance of resistance? To render everyday practices with any complexity requires a disfigurement and denaturalization of this history of the subject as romance, even if a romance of resistance. This requires that we forgo simply celebrating slave agency and instead endeavor to scrutinize and investigate the forms, dispositions, and constraints of action and the disfigured and liminal status of the agents of such acts. In contrast to approaches that foreclose performance in the troubled frame of autonomy, arrogating to the enslaved the illusory privileges of the bourgeois subject or self-possessed individual, or performance as evidence of the harmonious order of slaveholder hegemony and the slave's consent to that order, or performance as a reprieve from the horrors of the system, what is considered here are precisely the ways in which performance and other modes of practice are determined by, exploit, and exceed the constraints of domination.

How do the forms, relations, and institutions of power condition the exercise of agency? The particular status of the slave as object and as subject requires a careful consideration of the notion of agency if one wants to do more than "endow" the enslaved with agency as some sort of gift dispensed by historians and critics to the dispossessed. Certainly the constraints of agency are great in this situation, and it is difficult to imagine a way in which the interpellation of the slave as subject enables forms of agency that do not reinscribe the terms of subjugation. Although it has become commonplace in Foucauldian approaches to power relations to conceptualize agency as an enabling constraint or an enabling violation, the problem with this approach is that it assumes that all forms of power are normatively equivalent, without distinguishing between violence, domination, force, legitimation, he-

gemony, et cetera.<sup>16</sup> Slavery is characterized by direct and simple forms of domination, the brutal asymmetry of power, the regular exercise of violence, and the denial of liberty that make it difficult, if not impossible, to direct one's own conduct, let alone the conduct of others. As Foucault remarks, "There cannot be relations of power [as opposed to domination] unless subjects are free. If one were completely at the disposition of the other and became his thing, an object on which he can exercise an infinite and unlimited violence, there would not be relations of power. In order to exercise a relation of power, there must be on both sides at least a certain form of liberty."<sup>17</sup> Certainly this seriously challenges facile assertions of slave agency and casts doubt on the capaciousness of transgression. In a state of domination, the operations of power appear more repressive than productive, and the attendant forms of subjection seem intent upon preventing the captive from gaining any measure of agency that is not met with punishment, thereby confirming the slave's existence as the object of violence.

Thus the question remains as to what exercise of the will, forms of action, or enactment of possibility is available to animate chattel or the socially dead or to the excluded ones that provides the very ground of man's liberty.<sup>18</sup> The double bind, simply stated, is: How does one account for the state of domination and the possibilities seized in practice? How does one represent the various modes of practice without reducing them to conditions of domination or romanticizing them as pure forces of resistance? To complicate the picture still further, how does one make any claims about the politics of performance without risking the absurd when discussing the resistances staged by an unauthorized dance in the face of the everyday workings of fear, subjugation, and violence? How does one calculate or measure such acts in the scope of slavery and its reasoned and routinized terror, its calibrations of subjectivity and pain, and the sheer incommensurability of the force that it deploys in response to the small challenges waged against it? Ultimately, the conditions of domination and subjugation determine what kinds of action are possible or effective, though these acts can be said to exceed the conditions of domination and are not reducible to them.

If the forms of power determine what kinds of practice are possible within a given field, what are the prospects for calculated action given that the very meaning of slave property is "being subject to the master's will in all things" and that issues of consent, will, intentionality, and action are utterly meaningless, except in the instance of "criminal" acts. Bearing this in mind, what possibilities for agency exist that don't put the enslaved at risk of a greater order of pain and punishment since the slave is a legal person only insofar as he is criminal and a violated body in need of limited forms of protection? In this case, the assignation of subject status and the recognition of humanity expose the enslaved to further violence in the case of criminal agency or require the event of excessive violence, cruelty beyond the limits of the socially tolerable, in order to acknowledge and protect the slave's person. Is it possible that such recognition effectively forecloses agency and that as subject the enslaved is still rendered without will or reinscribed as the object of punishment? Or is this limited conferral of humanity merely a reinscription of subjugation and pained existence? Does the designation of "criminal" or "damaged property" intensify or alleviate the onus of anguished and liable person?

In short, what I am trying to hint at here is the relation of agent and act—in particular, the anomalous status of the slave as subject and the circumscribed action characteristic of this condition. The cleavage or sundering of the slave as object of property, pained flesh, and unlawful agent situates the enslaved in an indefinite and paradoxical relation to the normative category “person.” One must attend to this paradox in order to discern and evaluate the agency of the enslaved because the forms of action taken do not transcend this condition but rather are an index of the particular figurations of power and modes of subjection.

Yet it is also important to remember that strategies of domination don’t exhaust all possibilities of intervention, resistance, or transformation. Therefore, it is necessary to investigate what possibilities exist given these determinants, the myriad and infinitesimal ways in which agency is exercised, the disposition or probability of certain acts, and the mechanisms through which these “ways of operating” challenge and undermine the conditions of enslavement. Is the agency of the enslaved to be located in reiterative acts that undermine and discursively reelaborate the conditions of subjection and repression?<sup>19</sup> Is it founded upon the desire to negate constraint, to restage and remember the rupture that produced this state of social death, to exceed this determinate negation through acts of recollection, or to attend to the needs and desires of the pained body?

### Performing Blackness

The difficulties posed in rethinking the relation of performance and agency are related primarily to the pervasiveness of the spectacle of black contentment and abjection, the repressive problematic of will and voluntarism, the pained, punitive, and burdened constitution of the slave as subject, and the extreme and violent enactments of power.<sup>20</sup> The dominative performance of blackness thwarts efforts to reassess agency because it has so masterfully simulated black “will” only in order to reanchor subordination. How does one discern “enabling conditions” when the very constitution of the subject renders him socially dead or subversively redeploy an identity determined by violent domination, dishonor, and natal alienation? In this case, does redemption rather than repetition become the privileged figure of the performative? How might it be possible to dislodge performance and performativity from these closures and reevaluate performance in terms of the claims made against power, the interruption and undermining of the regulatory norms of racial slavery, as a way of operating under duress and constraint and as an articulation of utopian and transformative impulses?

The import of the performative, as indicated by those like Toby Jones or John McAdams, is in the articulation of needs and desires that radically call into question the order of power and its production of “cultural intelligibility” or “legible bodies.”<sup>21</sup> Thus issues of redemption and redress are central to these practices, and the intended or anticipated effect of the performative is not only the reelaboration of blackness but also its affirmative negation. It is important to remember that blackness is defined here in terms of social relationality rather than identity; thus blackness incorporates subjects normatively defined as black, the relations among

blacks, whites, and others, and the practices that produce racial difference. Blackness marks a social relationship of dominance and abjection and potentially one of redress and emancipation; it is a contested figure at the very center of social struggle.<sup>22</sup>

Therefore, "performing blackness" conveys both the cross-purposes and the circulation of various modes of performance and performativity that concern the production of racial meaning and subjectivity, the nexus of race, subjection, and spectacle, the forms of racial and race(d) pleasure, enactments of white dominance and power, and the reiteration and/or rearticulation of the conditions of enslavement. It is hoped that "performing blackness" is not too unwieldy and, at the same time, that this unruliness captures the scope and magnitude of the performative as a strategy of power and tactic of resistance. The interchangeable use of performance and performativity is intended to be inclusive of displays of power, the punitive and theatrical embodiment of racial norms, the discursive reelaboration of blackness, and the affirmative deployment and negation of blackness in the focus on redress. I have opted to use the term "performing blackness" as a way of illuminating the entanglements of dominant and subordinate enunciations of blackness and the difficulty of distinguishing between contending enactments of blackness based on form, authenticity, or even intention.

These performances of blackness are in no way the "possession" of the enslaved; they are enactments of social struggle and contending articulations of racial meaning. The unremitting and interminable process of revision, reelaboration, mimicry, and repetition prevents efforts to locate an originary or definitive point on the chain of associations that would fix the identity of a particular act or enable us to sift through authentic and derivative performances, as if the meaning of these acts could be separated from the effects they yield, the contexts in which they occur, or the desires that they catalyze, or as if instrumental amusements could be severed from the prospects of pleasure or the performative from scenes of torture. Moreover, these performances implicitly raise questions about the status of what is being performed—the power of whiteness or the black's good time, a nonsensical slave song; or recollections of dislocation.

The emphasis on the joining of race, subjection, and spectacle is intended to denaturalize race and underline its givenness—that is, the strategies through which it is made to appear as if it has always existed, thereby denying the coerced and cultivated production of race. (This was particularly the case in the antebellum period, in which race was made an absolute marker of status or condition and being black came to be identified with, if not identical to, the condition of enslavement.) The "naturalization" of blackness as a particular enactment of pained contentment requires an extremity of force and violence to maintain this seeming "givenness." The "givenness" of blackness results from the brutal corporealization of the body and the fixation of its constituent parts as indexes of truth and racial meaning. The construction of black bodies as phobogenic objects<sup>23</sup> estranged in a corporeal malediction and the apparent biological certainty of this malediction attest to the power of the performative to produce the very subject which it appears to express.<sup>24</sup> What I am trying to argue here is not that the black body exists prior to the discourses and practices that produce it as such but that what is particular to the discursive constitution of blackness is the inescapable prison house of the flesh or the indelible drop of

blood—that is, the purportedly intractable and obdurate materiality of physiological difference.

Thus despite the effort to contextualize and engage blackness as a production and performance, the sheer force of the utterance “black” seems to assert a primacy, quiddity, or materiality that exceeds the frame of this approach. The mention of this “force” is not an initial step in the construction of a metaphysics of blackness or an effort to locate an “essence” within these performances but merely an acknowledgment of the sheer weight of a history of terror that is palpable in the very utterance “black” and inseparable from the tortured body of the enslaved. It acts as a reminder of the material effects of power on bodies and as an injunction to remember that the performance of blackness is inseparable from the brute force that brands, rapes, and tears open the flesh in the racial inscription of the body. In other words, the seeming obstinacy or the “givenness” of “blackness” registers the “fixing” of the body by terror and dominance and the way in which that fixing has been constitutive.

If, as I have argued, the dominant performances of blackness are about the spectacle of mastery and the enactment of a willed subjection, then can the instances in which the dominant is used, manipulated, and challenged be read as disruptive or refigured articulations of blackness? Outside the productions of race enacted in the performative, which have thus far been elaborated primarily in terms of the staging of power and subjection, in what other modes are racial meanings produced? Are there stylistic markers that distinguish the differential articulations of “blackness”? Are the performances considered here at all concerned with creating the sense of a coherent black identity? Or are the articulations of blackness primarily concerned with and inseparable from the desire for freedom, redress, and restored affiliations? In other words, how are Saturday night dances articulations or reelaborations of racial meaning? Or do such performances only inadvertently give meaning or form to blackness? If blackness is reelaborated, then how, in what terms, and by what means? If the condition of bondage is by definition a racial and class ascription, then is any effort to address, critique, or undermine racial dominance and enslavement necessarily a performance of blackness? How is race transformed and refigured in practice?

If blackness is produced through specific means of making use of the body, it is important to consider this “acting on the body” not only in terms of the ways in which power makes use of the body but also in terms of pleasure. Pleasure is central to the mechanisms of identification and recognition that discredit the claims of pain but also to those that produce a sense of possibility—redress, emancipation, transformation, and networks of affiliation under the pressures of domination and the utter lack of autonomy. Much attention has been given to the dominative mode of white enjoyment, but what about forms of pleasure that stand as figures of transformation or, at the very least, refigure blackness in terms other than abjection? Certain ways of making use of the body are diacritically marked in practice as “black” or as self-conscious forms of racial pleasure: “having a good time among our own color,” to quote McAdams. These acts become productions of race focused on particular patterns of movements, zones of erotic investment, forms of expression, and notions of pleasure. Race is produced as an “imaginary effect” by a counter-



investment in the body and the identification of a particular locus of pleasure, as in dances like the snake hips, the buzzard lope, and the funky butt. This counterinvestment in all likelihood entails a protest or rejection of the anatomo-politics that produces the black body as aberrant. More important, it is a way of redressing the pained constitution and corporeal malediction that is blackness.

### Defamiliarizing the "Negro's Enjoyment"

The sense of black community expressed by "having a good time among our own color" depends upon acts of identification, restitution, and remembrance. Yet the networks of affiliation enacted in performance, sometimes referred to as the "community among ourselves," are defined not by the centrality of racial identity or the selfsameness or transparency of blackness nor merely by the condition of enslavement but by the connections forged in the context of disrupted affiliations, sociality amid the constant threat of separation, and shifting sets of identification particular to site, location, and action. In other words, the "community" or the networks of affiliation constructed in practice are not reducible to race—as if race *a priori* gave meaning to community or as if community was the expression of race—but are to be understood in terms of the possibilities of resistance conditioned by relations of power and the very purposeful and self-conscious effort to build community.

Despite the "warmly persuasive" and utopian quality that the word "community" possesses, with its suggestion of a locality defined by common concern, reciprocity, unity, shared beliefs and values, and so on, it cannot be assumed that the conditions of domination alone were sufficient to create a sense of common values, trust, or collective identification.<sup>25</sup> The commonality constituted in practice depends less on presence or sameness than upon desired change—the abolition of bondage. Thus, contrary to identity providing the ground of community, identity is figured as the desired negation of the very set of constraints that create commonality—that is, the yearning to be liberated from the condition of enslavement facilitates the networks of affiliation and identification.

Yet it is important to recognize that the relations among slaves were characterized as much by antagonisms, distrust, contending interests, values, and beliefs as by mutual cooperation and solidarity. As one ex-slave put it, "They taught us to be against one another and no matter where you would go you would always find one that would be tattling and would have the white folks pecking on you. They would [be] trying to make it soft for themselves."<sup>26</sup> For example, the dangers posed by surreptitious gatherings included not only discovery by the owner or the patrollers but also the possibility that a fellow slave would betray the meeting. Certainly this is documented by the number of planned slave revolts and rebellions that were defeated by informers.<sup>27</sup> Acts of betrayal, complicity, and collusion reveal the limits of community, in that they illuminate the antagonisms and contending interests of the enslaved and the exclusions inevitably a part of the making of community. As an episode recounted by a former slave illustrates, complicity and collusion were punished by exclusion from the boundaries of community:

I 'member once he built a house for young master and he said he was gonna let the darkies have a dance there, and they thought he was sure 'nough; but he didn't so they decided to have a dance anyhow. It was a moonlight night, and they had this big dance in the field, and the padderollers come and caught one man and threw him right on me, and he come and got me and said "God dama you," and kept his hand right in my collar and held me and took me home to master. He told master that he had told me that if I would tell who all was there he wouldn't whip me, but if I didn't he would whip me all day light, and you ought to heard me telling! It was around the time when the niggers was rising, and they asked me did I hear them shooting? "Did you see any guns?" And I said, "No, I didn't see no guns, but I heard them shooting." I hadn't heard a thing, but I knowed what they wanted to hear, so I said that I did. . . . I couldn't go to none of the parties after that. The niggers would kick me out if they saw me; they wouldn't have me there.

Therefore, an assessment of community must take into account the differences constitutive of the enslaved, the significance of "community among ourselves" as a utopian figure of transformation, and the fact that most acts of everyday resistance usually were solitary or involved only one other person.<sup>28</sup> The collective enactment of the assault on the law and the authority of the slave owner distinguished these gatherings from other forms of everyday resistance that usually were solitary. Both the enslaved and slave owners recognized the possibility and the danger enabled by these collective gatherings.

The pleasure associated with surreptitious gatherings was due, in part, to the sense of empowerment derived from collective action and the precariousness and fragility of "community." What was valued about these gatherings was "company with others." As John McAdams recalled: "Of course us negroes just lived for them negro dances we had every Saturday night there on the farm—no one to bother or interfere with us and believe me son, we made good use of these nights as that was all the time the slaves had together to dance, talk and *have a good time among their own color*. The white people they never bothered us on these times at all unless we raised too much hell, then they would come and make us behave ourselves" (emphasis mine).<sup>29</sup> Yet the intersubjective and collective identification facilitated in these contexts should not be overestimated. These practices were important because they were vehicles for creating and experiencing supportive, enjoyable, and nurturing connections. They were enactments of community, not expressions of an a priori unity. The language of community has been shaped by an organic vision of social relations, as contrasted with the instrumentalist, utilitarian, violent, and distanced relations of society or social order. Thus, as it is traditionally invoked, community offers us a romance in place of complex and contentious social relations. However, to reify the social relations of enslavement via the romance of community is to fail to recognize both the difficulty and the accomplishment of collectivity in the context of domination and terror. This is not to minimize or neglect the networks of support and care that existed among the enslaved but to keep in mind the limits and fractures of community attributable to the extremity of domination, surveillance, terror, self-interest, distrust, conflict, lack of autonomy, tenuous and transient connections, and fear. Moreover, it is crucial to engage the issue of community through the disruptive antagonisms that are also its constituents. In this regard, we might think about the

significance of conjuring as an articulation of envy and contestation within the slave community and not simply as an African "survival."<sup>30</sup>

"Community among ourselves" is an articulation of an ideal and a way of naming the networks of affiliation that exist in the context of difference, disruption, and death.<sup>31</sup> The significance of becoming or belonging together in terms other than those defined by one's status as property, will-less object, and the not-quite-human should not be underestimated. This belonging together endeavors to redress and nurture the broken body; it is a becoming together dedicated to establishing other terms of sociality, however transient, that offer a small measure of relief from the debasements constitutive of one's condition.<sup>32</sup> Here it is useful to think about the production of these shared identifications and interests as being constantly refigured and negotiated and as fractured by differences and antagonisms rather than defined by stasis and continuity. Rather than invoking community as an ideal of homogeneity or selfsameness or as arena of idealized values in opposition to the conflicts and violence of the social order, we must grapple with the differences that constitute community and the particular terms of community's enactment in their specificity in order to fully understand the value of "having a good time among their own color." In other words, the networks of affiliation or "politics of identification" enacted in practice traverse a range of differences and create fleeting and transient lines of connection across those differences.

The common set of identifications experienced in "having a good time among their own color" or "talking about when we were free in Africa" is not fixed but a fleeting, intermittent, and dispersed network of relations. These relations can neither be reduced to domination nor explained outside it. They exceed the parameters of resistance in creating alternative visions and experiences of subjectivity, though they do indeed challenge the dominant construction of blackness. This shared set of identifications and affiliations is enacted in instances of struggle, shared pleasures, transient forms of solidarity, and nomadic, oftentimes illegal, forms of association.

### Politics without a Proper Locus

In considering the determinations and limits of practice it becomes evident that resistances are engendered in everyday forms of practice and that these resistances are excluded from the locus of the "political proper."<sup>33</sup> Both aspects of this assessment are significant because too often the interventions and challenges of the dominated have been obscured when measured against traditional notions of the political and its central features: the unencumbered self, the citizen, the self-possessed individual, and the volitional and autonomous subject. The importance of the concept of practice is that it enables us to recognize the agency of the dominated and the limited and transient nature of that agency. The key features of practice central to this examination of the agency of the enslaved are the nonautonomy of the field of action; provisional ways of operating within the dominant space; local, multiple, and dispersed sites of resistance that have not been strategically codified or integrated; and the nonautonomy and pained constitution of the slave as person. The barring of these practices from the political, as traditionally conceived, has a range

of consequences and effects that concern the constitution of the subject, the feasibility and appropriateness of certain forms of action, the incommensurability of liberal notions of will and autonomy as standards for evaluating subaltern behavior, the inscription of agency as criminal or, at the very least, as deserving of punishment, and the inadequacy and incompleteness of redress.

Thus when thinking about these practices as the "infrapolitics of the dominated," to use James Scott's term, or as a "politics of a lower frequency," to use Paul Gilroy's term, it is important to note both the effects yielded by the popular illegalities or popular intransigence of the enslaved and their remove from the proper locus of the political.<sup>34</sup> This is especially important in the case of the enslaved if we are to engage the particularities of the subject constitution and object status of the enslaved. The bourgeois individual, the unencumbered self, and the featureless person that give meaning to the term "political" in its conventional usage, with all the attendant assumptions about the relation of the subject and the state, cannot incorporate the enslaved, for how does one express an individual will when one is without individual rights? After all, the rights of the self-possessed individual and the set of property relations that define liberty depend upon, if not require, the black as will-less actant and sublime object. If white independence, freedom, and equality were purchased with slave labor, then what possibilities or opportunities exist for the black captive vessel of white ideality?<sup>35</sup>

The slave is the object or the ground that makes possible the existence of the bourgeois subject and, by negation or contradistinction, defines liberty, citizenship, and the enclosures of the social body. As Edmund Morgan has argued, the meaning and the guarantee of (white) equality depended upon the presence of slaves. White men were "equal in not being slaves."<sup>36</sup> The slave is indisputably outside the normative terms of individuality to such a degree that the very exercise of agency is seen as a contravention of another's unlimited rights to the object. (Even labor is not considered agency because it is the property of another, extracted by coercive means, and part of the bestial capacities of the black; it simply personifies the power and dominion of the owner.) Not surprisingly, the agency of the enslaved is only intelligible or recognizable as crime and the designation of personhood burdened with incredible duties and responsibilities that serve to enhance the repressive mechanisms of power, denote the limits of socially tolerable forms of violence, and intensify and legitimate violence in the guise of protection, justice, and the recognition of slave humanity. This official acknowledgment of agency and humanity, rather than challenging or contradicting the object status and absolute subjugation of the enslaved as chattel, reinscribes it in the terms of personhood.

Though this examination of slave agency primarily concerns issues of resistance, restitution, and redress, it is equally attentive to the constraints of domination and the brutal exercise of power that give form to resistance. Mindful of the aforementioned concerns regarding the subject, this exploration of agency and resistance is less concerned with issues of heroic action and oppositional consciousness than with the inadvertent, contingent, and submerged forms of contestation.<sup>37</sup> This approach emphasizes both the preponderance of resistance and the absence of a proper locus that would grant autonomy to these practices. These practices are significant in that they are local assaults and pedestrian challenges to slavery, the slave owner, the law,

and the state and, at the same time, they are provisional and short-lived and exploit the cleavages of the social order. However, the focus on the contingent and transient character of these practices is not an attempt to underestimate the magnitude of these acts, for they are fraught with utopian and transformative impulses that are unrealizable within the terms of the current order precisely because of the scope of these implicit, understated, and allegorical claims for emancipation, redress, and restitution.

The plurality of resistances enacted in everyday life is produced by and details the relations and mechanisms of power. The dangers posed by these practices and the threats issued to the dominant order provide a map of the specific mechanisms of repression and power in antebellum social relations. For example, both the very incongruence or incommensurability of purported dangers posed by slave gatherings and the great force used to meet and crush them document the crisis of slavery and the attempt to manage this crisis by a combined strategy of paternalism and brutal repression. In the context of crisis, infinitesimal assaults to the slave order acquire even greater significance. The import of these practices is evidenced not only in the testimony of the enslaved or the formerly enslaved and the terms in which they represent their experience but in the power exercised both to encourage and manage slave amusements and to constrain, prohibit, and police such activities. The disruptions caused by a small act like sneaking off to a dance or attending a praise meeting catalyzed a chain of events that was disruptive, short-lived, and, to some degree, expected. The enslaved defied and redefined their condition of absolute subjection in acts of minor transgression: movement without a pass to visit a loved one, stealing, unpermitted gatherings, et cetera.

Certainly it would be difficult to describe such acts as revolt or as a threat to bring the state to its knees, yet the very excess of force that met such acts certainly serves to illustrate the terror that is part and parcel of the everyday landscape of slavery and, more important, the difficulty of action in such circumstances. How is resistance registered in a context in which being found with a pen or pencil is almost as bad as having murdered your master, according to Elijah Green? Or in which being caught at a dance without a pass might result in being stripped and given twenty-five lashes if you're lucky or a severe and life-threatening beating if you aren't? How does one enact resistance within the space of the permissible or exploit the "concessions" of slave owners without merely reproducing the mechanisms of dominance? What shape does resistance or rebellion acquire when the force of repression is virtually without limit, when terror resides within the limits of socially tolerable, when the innocuous and the insurgent meet an equal force of punishment, or when the clandestine and the surreptitious mark an infinite array of dangers? In this context, might not a rendezvous at an unauthorized dance, attending a secret meeting, or sneaking off to visit your companion suddenly come to appear as insurgent, or, at the very least, as quite dangerous, even when the "threats" posed are not articulated in the form of direct confrontation but expressed in quite different terms?

As Toby Jones recalled, such gatherings engendered a liberatory and utopian structure of feelings. Raymond Williams defines a structure of feelings as "a kind of feeling and thinking which is indeed social and material, but each in an embryonic phase before it can become fully articulate and defined exchange."<sup>38</sup> This inchoate

and practical consciousness is expressed by Jones as the recollective anticipation of freedom and by others as an impulse or "instinct that we was going to be free."<sup>39</sup> Obviously, this structure of feeling existed in a troubled relation to slavery, for if a slave entertaining thoughts of freedom was discovered, he would be lucky to escape with a beating. Other slaves were usually forced to witness this beating and threatened with the same treatment if they were caught.<sup>40</sup> As one ex-slave commented, "Whipping darkies was the joy of the white man back in those days."<sup>41</sup>

John McAdams recounted that even small challenges to slavery could have disastrous effects: "The only way the slaves could go from one plantation to another was they had to have a pass from their Mas[t]er or Mistress; if they went without a pass, woe be unto that negro, for the mas[t]er of the place would ask us for our pass, and if we could not show one, it was just too bad. He would give us one of the worst whippings we ever got. Of course I use to slip off and go to see my girl on another farm, but I was very careful that I did not let anyone catch us."<sup>42</sup> Even a child's display of rebelliousness could be met with the threat of death. As a child, Susan Snow would "fight and scratch" with other children, black and white. In order to break her of this habit, her master forced her to look at the bodies of slaves who had been hanged for harming a white man.<sup>43</sup>

How does one survive the common atrocities of slavery yet possess a sensibility, a feeling, an impulse, and an inexplicable, yet irrepressible, confidence in the possibilities of freedom? It is hard to imagine possibility, let alone freedom, within the context of such fatal incommensurabilities: cruel whippings and courting, death and dance. Extreme acts of violence are depicted matter-of-factly because of their regularity. The recollections of Susan Snow and Mingo White catalog the coexistence of the mundane and the unimaginable, the constancy of the unbearable, and the diffusion and rationality of terror. The grotesque incongruence of act and punishment and the violence that awaited even the smallest transgression document the provisional, tentative, and restricted character of these practices or any claims that might be made on their behalf. As well, these instances demonstrate that even in contexts of direct and primary forms of domination there are innumerable sites of confrontation and struggle, and perhaps even more important, they indicate the great cost of such acts.

In order to illuminate the significance of performance and the articulation of social struggle in seemingly innocuous events, everyday forms of practice must be contextualized within the virtually unbounded powers of the slave-owning class, and whites in general, to use all means necessary to ensure submission. Thus it is no surprise that these everyday forms of practice are usually subterranean. I am reluctant to simply describe these practices as a "kind of politics," not because I question whether the practices considered here are small-scale forms of struggle or dismiss them as cathartic and contained.<sup>44</sup> Rather, it is the concern about the possibilities of practice as they are related to the particular object constitution and subject formation of the enslaved outside the "political proper" that leads me both to question the appropriateness of the political to this realm of practice and to reimagine the political in this context. (As well, I take seriously Jean Comaroff's observations that "the real politik of oppression dictates that resistance be expressed in domains seemingly apolitical.")<sup>45</sup>

The contradictory status of the enslaved, their ambiguous relation to the state, and the nonautonomy of both their social status and their practice determine this limited

and tentative use of the political and informs this effort to wrench the political from its proper referent. Given the exclusion of the slave from the sphere of the political, what forms do the assertion of needs and desire acquire? What assumptions of the political are at all relevant or adequate to their social location? Slaves are not consensual and willful actors, the state is not a vehicle for advancing their claims, they are not citizens, and their status as persons is contested. Assimilating these practices into the normative frame of the political is less important than examining the relation of subjectification and practice and the form the political acquires for the enslaved. In what ways are the (im)possibilities of practice related to, if not determined by, the closures of politics? How are the claims of the dominated articulated or advanced or their needs addressed or accommodated?

The historical and social limits of the political must be recognized in order to evaluate the articulation of needs and the forwarding of claims in domains relegated to the privatized or nonpolitical. If the public sphere is reserved for the white bourgeois subject and the public/private divide replicates that between the political and the nonpolitical, then the agency of the enslaved, whose relation to the state is mediated by way of another's rights, is invariably relegated to the nonpolitical side of this divide. This gives us some sense of the full weight and meaning of the slaveholder's dominion. In effect, those subjects removed from the public sphere are formally outside the space of politics.

The everyday practices of the enslaved generally fall outside direct forms of confrontation; they are not systemic in their ideology, analysis, or intent, and, most important, the slave is neither civic man nor free worker but excluded from the narrative of "we the people" that effects the linkage of the modern individual and the state. The enslaved were neither envisioned nor afforded the privilege of envisioning themselves as part of the "imaginary sovereignty of the state" or as "infused with unreal universality."<sup>46</sup> Even the Gramscian model, with its reformulation of the relation of state and civil society in the concept of the historical bloc and its expanded definition of the political, maintains a notion of the political inseparable from the effort and the ability of a class to effect hegemony.<sup>47</sup> By questioning the use of the term "political," I hope to illuminate the possibilities of practice and the stakes of these dispersed resistances. All of this is not a preamble to an argument about the "prepolitical" consciousness of the enslaved but an attempt to point to the limits of the political and the difficulty of translating or interpreting the practices of the enslaved within that framework. The everyday practices of the enslaved occur in the default of the political, in the absence of the rights of man or the assurances of the self-possessed individual, and perhaps even without a "person," in the usual meaning of the term.

### Stealing Away, the Space of Struggle, and the Nonautonomy of Practice

When the enslaved slipped away to have secret meetings, they would call it "stealing the meeting," as if to highlight the appropriation of space and the expropriation of the object of property necessary to make these meetings possible.<sup>48</sup> Just as runaway slaves were described as "stealing themselves," so, too, even short-

lived "flights" from captivity were referred to as "stealing away." "Stealing away" designated a wide range of activities, from praise meetings, quilting parties, and dances to illicit visits with lovers and family on neighboring plantations. It encompassed an assortment of popular illegalities focused on contesting the authority of the slave-owning class and contravening the status of the enslaved as possession. The very phrase "stealing away" played upon the paradox of property's agency and the idea of property as theft, thus alluding to the captive's condition as a legal form of unlawful or amoral seizure, what Hortense Spillers describes as "the violent seizing of the captive body from its motive will, its active desire."<sup>49</sup> Echoing Proudhon's "property is theft," Henry Bibb put the matter simply: "Property can't steal property." It is the play upon this originary act of theft that yields the possibilities of transport, as one was literally and figuratively carried away by one's desire.<sup>50</sup> The appropriation of dominant space in itinerant acts of defiance contests the spatial confinement and surveillance of slave life and, ironically, reconsiders the meaning of property, theft, and agency. Despite the range of activities encompassed under this rubric, what these events shared was the centrality of contestation. Stealing away was the vehicle for the redemptive figuration of dispossessed individual and community, reconstituting kin relations, contravening the object status of chattel, transforming pleasure, and investing in the body as a site of sensual activity, sociality, and possibility, and, last, redressing the pained body.

The activities encompassed in the scope of stealing away played upon the tension between the owner's possession and the slave's dispossession and sought to redress the condition of enslavement by whatever limited means available. The most direct expression of the desire for redress was the praise meeting. The appeals made to a "God that saves in history" were overwhelmingly focused on freedom.<sup>51</sup> For this reason, William Lee said that slaves "couldn't serve God unless we stole to de cabin or de woods."<sup>52</sup> West Turner confirmed this and stated that when patrollers discovered such meetings they would beat the slaves mercilessly in order to keep them from serving God. Turner recounted the words of one patroller to this effect: "If I ketch you here servin' God, I'll beat you. You ain't got no time to serve God. We bought you to serve us."<sup>53</sup> Serving God was a crucial site of struggle, as it concerned issues about styles of worship, the intent of worship, and, most important, the very meaning of service, since the expression of faith was invariably a critique of the social conditions of subordination, servitude, and mastery. As Turner's account documents, the threat embodied in serving God was that the recognition of divine authority superseded, if not negated, the mastery of the slave owner. Although by the 1850s Christianity was widespread among the enslaved and most owners no longer opposed the conversion or religious instruction of slaves, there was nonetheless an ethical and political struggle waged in religious practice that concerned contending interpretations of the word and styles of religious worship. Even those slaves whose owners encouraged religion or sent them to white churches found it important to attend secret meetings. They complained that at white churches they were not allowed to speak or express their faith in their own terms. "We used to slip off in de woods in de old slave days on Sunday evening way down in de swamps to sing and pray to our own liking. We prayed for dis day of freedom. We come from four and five mites to pray together to God dat if we don't live to see it, to please let



our chillen live to see it, to please let our chillen live to see a better day and be free, so dat they can give honest and fair service to the Lord and all mankind everywhere. And we'd sing 'our little meetin's about to break, chillen, and we must part. We got to part in body, but hope not in mind. Our little meetin's bound to break.' Den we used to sing 'We walk about and shake hands, fare you well my sister's, I am going home.'"<sup>54</sup> These meetings held in "hush arbors" or covertly in the quarters illuminate the significant difference between the terms of faith and the import of Christianity for the master and the enslaved. For example, the ring shout, a form of devotional dance, defied Christian proscriptions against dancing; the shout made the body a vehicle of divine communication with God in contrast to the Christian vision of the body as the defiled container of the soul or as mere commodity. And the attention to the soul contested the object status of the enslaved, for the exchange of blacks as commodities and their violent domination were often described in terms of being treated as if one did not have a soul.<sup>55</sup>

Freedom was the central most important issue of these meetings. According to William Adams, at these meetings they would pray to be free and sing and dance.<sup>56</sup> The avid belief in an imminent freedom radically challenged and nullified the gospel of slavery, which made subordination a virtue and promised rewards in the "kitchen of heaven." Elizabeth Washington stated that ministers would "preach the colored people if they would be good niggers and not steal their master's eggs and chickens and things that they might go to the kitchen of heaven when they died." It was not uncommon for slave owners to impart a vision of Christianity in which the enslaved would also attend to them in the afterlife. As one mistress stated, "I would give anything if I could have Maria in heaven with me to do little things for me."<sup>57</sup> For the enslaved the belief in a divine authority minimized and contained the domination of the master. As well, these meetings facilitated a sense of collective identification through the invocation of a common condition as an oppressed people and a shared destiny. Serving God ultimately was to be actualized in the abolition of slavery.

Stealing away involved unlicensed movement, collective assembly, and an abrogation of the terms of subjection in acts as simple as sneaking off to laugh and talk with friends or making nocturnal visits to loved ones.<sup>58</sup> Sallie Johnson said that men would often sneak away to visit their wives.<sup>59</sup> These nighttime visits to lovers and family were a way of redressing the natal alienation or enforced "kinlessness" of the enslaved, as well as practices of naming, running away, and refusing to marry a mate not of one's choosing or to remarry after a husband or wife was sold away; all of these were efforts to maintain, if not reconstitute, these ties.<sup>60</sup> Dora Frank's uncle would sneak off at night to see his woman. On one occasion, he failed to return by daylight, and "nigger hounds" were sent after him. He was given 100 lashes and sent to work with the blood still running down his back.<sup>61</sup> Dempsey Jordan recognized that the risks involved in such journeys were great but slipped off at night to see his girl in spite of them: "I was taking a great chance. I would go and see my girl lots of nights and one time I crawled 100 yards to her room and got in the bed with her and lay there until nearly daylight talking to her. One time I was there with her and them patter rollers come that night and walked all around in that room and this here negro was in her bed down under that moss and they never found me. I sure was

scared.<sup>62</sup> The fact that the force of violence and the threat of sale did not prevent such actions illustrates the ways in which the requirements of property relations were defied in the course of everyday practices.

The consequences of these small-scale challenges were sometimes life threatening, if not fatal. Fannie Moore remembered the violence that followed the discovery of a secret dance. They were dancing and singing when the patrollers invaded the dance and started beating people. When Uncle Joe's son decided it was "time to die" because he couldn't sustain another beating and fought back, the patrollers beat him to death and whipped half a dozen others before sending them home.<sup>63</sup> According to Jane Pyatt, if slaves had a party or a prayer meeting and they made too much noise, patrollers would beat them and sometimes would sell them. The patrollers took two of her brothers, and she never saw them again.<sup>64</sup> Generally, the punishment for unlicensed assembly or travel was twenty-five to fifty lashes.

Stealing away was synonymous with defiance because it necessarily involved seizing the master's property and asserting the self in transgression of the law. The trespasses that were invariably a part of stealing away were a source of danger, pride, and a great deal of boasting. Garland Monroe noted that the secret meetings he participated in were held in the open, not in huts or arbors. They were confident that they could outwit and defy patrollers. If the patrollers came, the slaves took advantage of a superior knowledge of the territory to escape capture or detection.<sup>65</sup> Physical confrontations with patrollers were a regular feature of these accounts, and a vine stretched across the road to trip the patrollers' horses was the most common method of foiling one's pursuers.<sup>66</sup> As James Davis bragged, "I've seen the Ku Klux in slavery times and I've cut a many grapevine. We'd be in the place dancin' and playin' the banjo and the grapevine strung across the road and the Ku Klux come ridin' along and run right into it and throw the horses down."<sup>67</sup> The enslaved were empowered by the collective challenge posed to power and the mutual reinforcement against fear of discovery or punishment. From this perspective, pastoral and folksy slave gatherings appear like small-scale battles with the owners, local whites, and the law.

These day-to-day and routine forms of contestation operated within the confines of relations of power and simultaneously challenged those very relations as these covert and chameleonic practices both complied with and disrupted the demands of the system through the expression of a counterdiscourse of freedom. In the course of such gatherings, even the span of the Potomac could be made a bridge of community and solidarity. As James Deane remembered, they would blow conch shells at night to signal a gathering. "We would all meet on the bank of the Potomac River and sing across the river to the slaves in Virginia, and they would sing back to us."<sup>68</sup> Such small-scale infringements of the law also produced cleavages in the spatial organization of domination. The play on "stealing," "taking or appropriating without right or leave and with the intent to keep or make use of wrongfully" or "to appropriate entirely to oneself or beyond one's proper share," articulates the dilemma of the subject without rights and the degree to which any exercise of agency or appropriation of the self is only intelligible as crime or already encoded as crime.<sup>69</sup> As well, it highlights the transgression of such furtive and clandestine peregrinations since the very assertions and activity required to assemble at praise meetings, dances, et

cetera, were nothing less than a fundamental challenge to and breach of the claims of slave property—the black captive as object and the ground of the master's inalienable rights, being, and liberty.

The agency of theft or the simple exercise of any claims to the self, however restricted, challenged the figuration of the black captive as devoid of will.<sup>70</sup> Stealing away ironically encapsulated the impossibility of self-possession as it exposed the link between liberty and slave property by playing with and against the terms of dispossession. The use of the term “play” is not intended to make light of the profound dislocations and divisions experienced by the enslaved or to imply that these tentative negotiations of one's status or condition were not pained or wrenching but to highlight the performative dimension of these assaults as staged, repeated, and rehearsed—what Richard Schechner terms “twice-behaved behavior.”<sup>71</sup> Through stealing away, counterclaims about justice and freedom were advanced that denied the sanctity or legitimacy of rights of property in a double gesture that played on the meaning of theft. Implicit within the appropriation of the object of property was an insistence that flew in the face of the law: liberty defined by inalienable rights of property was theft. Stealing away exploited the bifurcated condition of the black captive as subject and object by the flagrant assertion of unlicensed and felonious behavior and by pleading innocence, precisely because as an object the slave was the very negation of an intending consciousness or will. The disruptive assertions, necessarily a part of stealing away, ultimately transgressed the law of property.

Similarly, stealing away defied and subversively appropriated slave owners' designs for mastery and control—primarily the captive body as the extension of the master's power and the spatial organization of domination. Stealing away involved not only an appropriation of the self but also a disruption of the spatial organization of dominance that confined slaves to the policed location of the quarters unless provided with written permission of the slaveholder to go elsewhere.<sup>72</sup> As well, the organization of dominant space involved the separation of public and private realms; this separation reproduced and extended the subordination and repression of the enslaved. If the public realm is reserved for the bourgeois citizen subject and the private realm is inscribed by freedom of property ownership and contractual transactions based upon free will, then in what space is the articulation of the needs and desires of the enslaved at all possible?<sup>73</sup> How does one contest the ideological codification and containment of the bounds of the political? Ultimately, the struggle waged in everyday practices, from the appropriation of space in local and pedestrian acts, holding a praise meeting in the woods, meeting a lover in the canebrake, or throwing a surreptitious dance in the quarters to the contestation of one's status as transactable object or the vehicle of another's rights, was about the creation of a social space in which the assertion of needs, desires, and counterclaims could be collectively aired, thereby granting property a social life and an arena or shared identification with other slaves. Like de Certeau's walker who challenges the disciplinary apparatus of the urban system with his idle footsteps, these practices also create possibilities within the space of domination, transgress the policed space of subordination through unlicensed travel and collective assembly across the privatized lines of plantation households, and disrupt boundaries between the public

and private in the articulation of insurgent claims that make need the medium of politics.<sup>74</sup>

### Embodied Needs and the Politics of Hunger

The collective assertion of need politicizes the longings of the enslaved and challenges the privatization of subordination within respective plantation households.<sup>75</sup> As Patricia Williams remarks, however, the assertion of black need has not been heard as political but only "against the background of their erstwhile musicality."<sup>76</sup> Yet it is the insistent and unceasing expression of black need that largely defines the critical labor of the performative and a subordinate politics characterized by the impossibility of decisive autonomy, membership in the nation-state, or the entitlements of the subject in its normative terms—man and citizen. An example as commonplace as juba illuminates this politics of need. In the case of juba, a popular vernacular dance that is simply one example of any number of performances that could be considered in this regard, there is both the counterinvestment in the body as a site of pleasure and the articulation of needs and desire.

Juba was a coded text of protest. It utilized rhythm and nonsense words as cover for social critique. The content of juba songs examined the relations of captivity, appropriation, and domination that defined slavery and addressed the needs of the enslaved. The critique of slavery centered on the use of the slave for the master's wealth and amusement and on the unmet longings of the ravished and ravenous black body.<sup>77</sup> Both the consumption of that body's possibility and the constancy of hunger are at the center of juba's often witty critique of slavery.<sup>78</sup> The most important characteristic of juba, besides "patting" or the rhythmic use of the body, was the songs. Juba, even when the exact nature of its steps, whether jig, reel, or shuffle, was uncertain, could be identified by the repertoire of juba songs that accompanied it.<sup>79</sup> Generally, the songs enacted resistance and aired dissent in the guise of play and sheer nonsense.<sup>80</sup> Solomon Northrup mistakenly characterized them as "unmeaning songs, composed rather for [their] adaption to a certain tune or measure, than for the purpose of expressing any distinct idea."<sup>81</sup> And the guise of sheer play and nonsense led those like William Smith, after stumbling upon a performance of juba, to conclude that "slaves were the happiest of the human race."<sup>82</sup>

Douglass designated patting juba as "jubilee beating" to emphasize the revolutionary scope of redress and the possibilities of emancipation, sated needs, and nonpunitive embodiment. Although it was performed on the minstrel stage, he characterized juba as an exclusively Southern performance and claimed that every farm had its juba beater because it "supplied the place of violin or other musical instrument." However, juba also accompanied instrumental music.<sup>83</sup> Douglass's discussion of juba emphasized the insurgent aspects of performance, the condemnation of slavery, and the slave's yearnings for freedom: "The performer improvised as he beat the instrument, marking the words as he sang so as to have them fall pat with the movement of his hands. Once in a while among a mass of nonsense and wild frolic, a sharp hit was given to the meanness of slaveholders." The song details the

cruelties of slavery, the exploitation of slave labor, and the appropriation of the slave's product by slave owners. Amid the seeming nonsense of the juba song was a bid for freedom:

We raise de wheat,  
 Dey gib us de corn;  
 We bake de bread,  
 Dey gib us de crust;  
 We sif de meal,  
 Dey gib us de huss;  
 We peel de meat,  
 Dey gib us de skin;  
 And dat's de way  
 Dey take us in;  
 We skim de pot,  
 Dey gib us de liquor,  
 And say dat's good enough for nigger.  
 Walk over! Walk over!

Your butter and de fat;  
 Poor nigger, you can't get over dat!  
 Walk over!<sup>84</sup>

Douglass's version of the juba song was similar to a version sung by Bessie Jones, a folk performer from the Georgia Sea Islands. Jones stated that the juba song she learned from her grandfather was a cryptic message about the abhorrent conditions of slave life, in particular the slop they were forced to eat.

Juba this and Juba that  
 Juba killed a yella cat  
 Get over double trouble, Juba.  
 You sift the meal,  
 You give me the husk.  
 You cook the bread,  
 You give me the crust  
 You fry your meat,  
 You give me the skin.  
 And that's where mama's trouble begin.<sup>85</sup>

The body of the song is almost identical to that recounted by Douglass. Jones interpreted this section of the song as follows: "The mother would always be talking to them about she wished she could give them some of that good hot cornbread, hot pies or hot what not. But she couldn't. She had to wait and give that old stuff that was left over. And then they began to sing it and play it."<sup>86</sup> In both Douglass's and Jones's version, it is clear that juba enacted resistance and foregrounded slave exploitation in the tacitly political content of coded lyrics and covert acts of protest.

The form of redressive action at work in juba involves using the body for pleasure and protesting the conditions of enslavement. The repertoire of songs address the body's need—in particular, the condition of hunger—and the unjust distribution of

resources between the producers and the owners. As suggested earlier, in this case, the art of need entails the utilization of the body as a literal vessel of communication, attending to unmet longing and expressing dissent. Beating the body like a drum and for one's own ends delivers a certain measure of pleasure, comforts the pained body, and offers a fleeting glimpse of dominion. In this sense, juba can perhaps be seen as "a claim of one's body against power."<sup>87</sup> Furthermore, these forms of everyday practice redefine the political in the appropriation of space, the assertion of needs, the critique of subordination, and the use of pleasure as a vehicle of dissent and transformation. In this case, the art of need is nothing less than a politics of hunger.

### Memory and History

The appropriation of space consequent to everyday practice not only enabled needs and desires to be aired but implicitly addressed the relation of the history of violence and dislocation that produced the captive and the possibilities of redress. This appropriated space of social collectivity, in accordance with Henri Lefebvre's definition of representational space, is "redolent with imaginary and symbolic elements" that have their source in the violent history of the people.<sup>88</sup> The violence and dishonor and disaffiliation constitutive of enslavement and the radical breach introduced by the Middle Passage are articulated within these everyday practices and determine the possibilities or the impossibility of redress. Therefore, not only is the dominant space pilfered and manipulated in giving voice to need and in making counterclaims about freedom, humanity, and the self (a reconstructed self that negates the dominant terms of identity and existence), but also this space becomes ineffably produced as a sacralized and ancestral landscape. These sacralized and ancestral elements are created, imagined, and remembered in the use of prayer trees and inverted pots, performed in the shout, and called up in sacred gatherings. Devotional dances to ancestral spirits, remembering things they have not witnessed or experienced like "when they lived in Africa and done what they wanted," and an insurgent nostalgia that expressed a longing for a home that most could only vaguely recall or that lived only in imagination transformed the space of captivity into one inhabited by the revenants of a dismembered past.

In this context, the lived relations of domination and subordination did not simply coexist with the evocation of the ancestors and the recollective anticipation or expectation of freedom; within these practices, the dislocation and displacement of enslavement were marked in varied and multifarious ways. The goal here is not to create an index of African survivals or retrievals of Kongo, Fon, Ibo, or Yoruba traces but to consider the everyday historicity of these practices—that is, the way in which the quotidian articulates the wounds of history and the enormity of the breach instituted by the transatlantic crossing of black captives and the consequent processes of enslavement: violent domination, dishonor, natal alienation, and chattel status. Everyday practices are texts of dislocation and transculturation that register in their "perverse lines of origin" the violence of historical process and, in so doing, offer witness. This witnessing has little or nothing to do with the veracity of recollec-

tion or the reliability or fallibility of memory. Of concern here are the ways memory acts in the service of redress rather than an inventory of memory.<sup>89</sup>

For example, the inverted pot used to evade detection during secret meetings and dances exemplifies the ways in which practices are sedimented with traces of a past, which perhaps are neither remembered nor forgotten but exist as a "memory of difference."<sup>90</sup> In the accounts of stealing to meetings, there is usually an emphasis on the methods used to prevent being detected by owners or patrollers. The inverted washtub or pot is the most frequently mentioned means of avoiding detection. Millie Simpkins stated that at quilting parties, while the older people worked on quilts and the young ones danced and had a good time, they would place a pot at the door to keep white people from hearing them. Mary Gladly remembered their gathering as often as two or three times a week to hold prayer and experience meetings. They placed a large iron pot against the door to keep their voices from escaping. After singing, praying, and sharing experiences all night long, they would leave believing that freedom was in the offing.<sup>91</sup>

The use of an overturned cooking or wash pot to evade detection is mentioned throughout the narratives. According to Anderson and Minerva Edwards, "When we prayed by ourselves we daren't let the white folks know it and we turned a wash pot down to the ground to catch the voice. We prayed a lot to be free and the Lord done heered us. We didn't have no songbooks and the Lord done give us our songs and when we sing at night it jus' whispering to nobody. Nobody hear us."<sup>92</sup> "They would turn the kettle down outside the door, raised so that the sound can get under there and you wouldn't hear them. If they heard the women pray, the next morning they would hit them fifty lashes for praying."<sup>93</sup> Patsy Hyde said that the pot not only kept white folks from hearing what they said but also showed that God was with the slaves.<sup>94</sup>

This practice has been related to the use of sacred water pots and drums in Africa.<sup>95</sup> Sidney Mintz has suggested that it may be an inversion that compensates for the prohibition of drumming, in that the overturned tub consumes or absorbs sound rather than producing it.<sup>96</sup> Albert Raboteau speculates that it may be a fragmentary emblem of Eshu Elegba because in orisha tradition "it is obligatory to begin worship with an offering to Eshu Elegba in order to insure that the order and decorum of the service is not disturbed."<sup>97</sup> The use of the inverted pot is analogous to the placing of inverted flowerpots on African-American gravesites to signify departed spirits. Robert Farris Thompson argues that in these gestures to the dead are traces of Kongo culture: "Inversion signifies perdurance, as a visual pun on the superior strength of the ancestors, for the root of *bikinda*, 'to be upside down, to be in the realm of the ancestors, to die' is *kinda*, 'to be strong,' because those who are upside down, who die, are strongest."<sup>98</sup>

Yet rather than attempting to locate the origins of these practices or to classify Africanisms, I want to explore the way in which these practices witness and record the violent discontinuities of history introduced by the Middle Passage, the contradiction of captivity and enslavement, and the experience of loss and affiliation. In this case, these traces of memory function in a manner akin to a phantom limb, in that what is felt is no longer there. It is a sentient recollection of connectedness

experienced at the site of rupture, where the very consciousness of disconnectedness acts as mode of testimony and memory. The recognition of loss is a crucial element in redressing the breach introduced by slavery. This recognition entails a remembering of the pained body, not by way of a simulated wholeness but precisely through the recognition of the amputated body in its amputatedness, in the insistent recognition of the violated body as human flesh, in the cognition of its needs, and in the anticipation of its liberty. In other words, it is the ravished body that holds out the possibility of restitution, not the invocation of an illusory wholeness or the desired return to an ordinary plenitude.

The status of the past, whether figured as "life in Africa when we were free" or embodied by an African parent or grandparent or an unviolated natality (against the natal alienation of enslavement) or as an understanding of the self in relation to the millions gone and/or those on the other side of the Atlantic, is experienced most significantly in the terms of loss and discontinuity.<sup>99</sup> This past cannot be recovered, yet the history of the captive emerges precisely at this site of loss and rupture. In the workings of memory, there is an endless reiteration and enactment of this condition of loss and displacement. The past is untranslatable in the current frame of meaning because of the radical disassociations of historical process and the discontinuity introduced into the being of the captive as he is castigated into the abstract category of property. The Middle Passage, the great event of breach, engenders this discontinuity. Thus the reiterative invocation of the past articulated in practice returns to this point of rupture. In this instance, memory is not in the service of continuity but incessantly reiterates and enacts the contradictions and antagonisms of enslavement, the ruptures of history, and the disassociated and dispersed networks of affiliation. It is by way of this reiteration or differential invocation of the past and by way of this memory of difference that everyday practices are redolent with the history of captivity and enslavement. This working through of the past is a significant aspect of redress.

The discussion of memory in black cultural practice has been interpreted most often through continuist narratives of tradition grounded in the foundational status of Africa. However, it is absolutely necessary to demystify, displace, and weaken the concept of Africa in order to address the discontinuities of history and the complexity of culture practice. As Paulin Hountondji argues, one must enfeeble the concept of Africanity "by dissipating the mystical halo of values arbitrarily grafted on this phenomenon by the ideologues of identity." In order to engage the complexity of history and tradition(s), "it [is] necessary to weaken resolutely the concept of Africa, to rid it of all its ethical, religious, philosophical, political connotations, etc., with which a long anthropological tradition overloaded it and the most visible effect was to close the horizon, to prematurely close history."<sup>100</sup> Moreover, the very identification and cataloging of Africanisms is usually mired in a primitive and reductive metaphysics of Africanity that produces Africa as the temporal other of the West and the values of Africanity as little more than a shorthand for sensuousness, instinct, rhythm, superstition, improvisation, naturalness, and physical prowess.<sup>101</sup>

I have endeavored to attenuate the mystical and homogenizing Africanity of the discourse of "survivals" and instead to emphasize the historicity of these practices by alternately describing the operation of memory and interrogating Africanity.<sup>102</sup>



Contrary to the metaphysics of Africinity and the "submission to consanguinity," what is at stake here is precisely the *body* of memory—that is, the dominated social collectivity of enslaved Africans and the brutal operation of power on these captive bodies.<sup>103</sup> Thus history is illuminated not only by the recitation of the litany of horrors that characterized the "commercial deportation of Africans," but also by performance practices that serve as a means of redressing the pained body and restaging the event of rupture or breach that engendered "the other side." The (counter)investment in the body as a site of need, desire, and pleasure and the constancy of unmet needs, repressed desires, and the shortcomings of pleasure are articulated in the very endeavor to heal the flesh and redress the pained body.

The limits of an ethnological and continuist account of memory have been belabored in order to clear a space for considerations of memory that focus on rupture, breach, discontinuity, and crisis. In this regard, let us again consider the example of *juba* from the vantage point of subterranean and repressed histories rather than as a recollection of distant but retrievable origins or as the eternal recurrence of essentialist particularisms within a folksy and pastoral *milieux de memoire*. This approach to memory confronts head-on the issues of dislocation, rupture, shock, and forgetting and the texture of its fragmented existence. The concern is not to recover the past but to underscore the loss inscribed in the social body and embedded in forms of practice. Therefore my aim is not to retrieve the prehistory of the captive but to examine what Edouard Glissant describes as our nonhistory: "the experience of shock, contradiction, painful negation, and explosive forces which make a totalitarian philosophy of history an impossibility."<sup>104</sup> To describe it as a subterranean history is to underscore the millions of "unceremoniously buried" that mark the transatlantic crossing.<sup>105</sup> In this light, it is possible to describe *juba* as a practice of countermemory distinguished by rupture and dispersion. (Counter)memory disrupts the narrative of progress from ethnohistory or prehistory to history, or from *milieux* to *lieu*.<sup>106</sup> It is allied to redress in that it attends to the breach instituted by the Middle Passage and to the violated, dismembered, captive body.

## The Body of Memory

The subterranean history of death and discontinuity informs everyday practice in myriad ways.<sup>107</sup> Perhaps the most significant ways are the memory of difference and the role of repetition in performance. Repetition or iterability is what enables us "to regenerate ourselves through the continuing process of redefinition."<sup>108</sup> Yet the failure of full recovery or recompense, the inability to fully occupy an imagined prior condition or to bridge the divide of the split subject, is what drives redress and deems it inadequate. It is also this failure that necessitates repetition. If repetition "continually 'cuts' back to the start" or is homage to an "original generative instance or act," as Snead argues, then what is returned to is the inevitable loss or breach that stands at the origin and engenders the black "New World" subject and "neo-African" forms like *juba*. As well, the "cut" returns to denied and unmet needs.<sup>109</sup>

The event of rupture is articulated in a variety of ways. The discontinuity in *juba*'s descent makes impossible the recuperation of origins: was it an African circle dance,

a jig, or a square dance? Isolated gestures insinuate the divergent lines of descent but refuse definitive classification. Mnemonic traces of past practices cannot be followed to one site of origin. The impossibility of origins might also be conceptualized in relation to the sexual economy of slavery: the uncertainty of descent, the negation of paternity, the interdiction regarding the master-father's name, and the ambiguous legacy of inheritance and dispossession.<sup>110</sup> This approach to descent "fragments what was thought unified; it shows the heterogeneity of what was imagined consistent with itself."<sup>111</sup>

The very designation "juba" refers to a range of practices: the percussive use of the body, slapping out rhythms on chest, thighs, and knees while tapping or dancing a short step, shuffle, or jig; a circle dance of competition where the dancer pats or those in the circle keep time or create complex rhythms for the central dancer or couple; and a solo performance comprising mainly patting chest, knees, and thighs.<sup>112</sup> It was commonly described as "a kind of reel with a calling leader" and as a jig, a designation that applied to the "Irish jig" and to an "impolite bacchanalian dance of grotesque manner" identified as "African."<sup>113</sup> The very term "juba" invokes this uncertainty and the submarine roots of the black Atlantic. The etymology of this revision or misrecognition has been traced to Bantu words like *juba*, *diuba*, or *guiba*.<sup>114</sup> Yet in the space of this revision and repetition emerges the subterranean history of rupture. Repetition is an outcome, a consequence, or an accumulation of practice, and it also structures practice.<sup>115</sup> Repetition enables the recognition of the self and points to that which can never be fully recollected and to the impossibility of restoring that which has been breached. The constancy of repetition is catalyzed by the inadequacy of redress and the regularity of domination and terror. These factors induce "rememory"; in other words, the compulsion or propensity for repetition is induced by the ungovernable processes of the social.<sup>116</sup> Breach triggers memory, and the enormity of the breach perhaps suggests that it can be neither reconciled nor repaired.

The forms of redress enacted in performance are a necessarily incomplete working through of the event of breach because of the constancy of assault and the inability to transform social relations through such practices or generate an event that would result in the reversal of forces. In other words, while the breach could never be fully compensated for, at the very least, the efforts to set things right would entail a revolution of the social order—the abolition of slavery, racism, domination, and exploitation, the realization of justice and equality, and the fulfillment of needs. Thus the inadequacy of the redressive action undertaken in everyday practices does not signal the failure of these practices but highlights the way in which pleasure or the counterinvestment in the body at stake here serves as a limited figure of social transformation.

## Redress

If redress does not or cannot restore or remedy loss, redeem the unceremoniously buried, or bridge the transatlantic divide, then what possibilities for relief, restitution, or recovery does it provide? First, redress is a re-membering of the social body that occurs precisely in the recognition and articulation of devastation,

captivity, and enslavement. The re-membering of the violated body must be considered in relation to the dis-membered body of the slave—that is, the segmentation and organization of the captive body for purposes of work, reproduction, and punishment. This re-membering takes the form of attending to the body as a site of pleasure, eros, and sociality and articulating its violated condition. Second, redress is a limited form of action aimed at relieving the pained body through alternative configurations of the self and the redemption of the body as human flesh, not beast of burden. Third, redress concerns the articulation of needs and desires and the endeavor to meet them. It is an exercise of agency directed toward the release of the pained body, the reconstitution of violated natality, and the remembrance of breach. It is intended to minimize the violence of historical dislocation and dissolution—the history that hurts. Redressive action encompasses not only a heightened attention to the events that have culminated in the crisis but also the transfiguration of the broken and ravenous body into a site of pleasure, a vessel of communication, and a bridge between the living and the dead. The event of captivity and enslavement engenders the necessity of redress, the inevitability of its failure, and the constancy of repetition yielded by this failure.

In this regard, the body is both the “eroding witness” to this history of terror and the object of redress. Obviously, the body broken by the regime of work, the regularity of punishment, the persistence of torture, and the violence of rape and sexual exploitation is in dire need of restitution. Yet the very conditions that have produced the broken and disciplined body and the body as object, instrument, and commodity ensure that the work of restoration or recompense is inevitably incomplete. The limited means of redress available to the enslaved cannot compensate for the enormity of this loss; instead, redress is itself an articulation of loss and a longing for remedy and reparation. It is impossible to fully redress this pained condition without the occurrence of an event of epic and revolutionary proportions—the abolition of slavery, the destruction of a racist social order, and the actualization of equality. The incompleteness of redress is therefore related to the magnitude of the breach—the millions lost in the Middle Passage and the 15 million and more captured and enslaved in the Americas—and to the inadequacy of remedy.<sup>117</sup>

I have adopted the term “redress” from Victor Turner’s quadripartite schema of social drama, though my model of the social differs significantly from his with its social totality of schism and integration. In Turner’s model, redressive action is about limiting or containing a breach. Nonetheless, the need to contain or reconcile the breach is no less desperate because of its impossibility and inevitable failure, especially when the crisis is unceasing and acts of breach are endlessly perpetuated.<sup>118</sup> In the redressive phase of what Turner calls “disharmonic processes”—in my terms, the contradictions and antagonisms of the social—“pragmatic techniques and symbolic action reach their fullest expression.”<sup>119</sup> Redress has liminal characteristics, the quality of being “betwixt and between”; it is poised between breach and mounting crisis and, as such, furnishes “a distanced replication and critique of the events leading up to and composing the crisis.”<sup>120</sup> These techniques concern remedying disrupted affiliations, caring for the violated and broken body, and reconstituting the terms of subjectivity for the socially dead. The symbolic actions range from the redemptive “march to heaven,” another way of describing the shout, to mundane activities like exchanging stories, staying up all night talking with your

lover, or singing across the Potomac to slaves on the other side. The incompleteness of redress and the constancy of breach and crisis are primary determinants of the force of repetition in black performance and the ambivalent formation of pleasure.

Therefore, rather than think of these practices as providing a reprieve from domination, we must think about pleasure not only in the context of domination but also as an articulation of these tensions, limits, fissures, wounds, and ravages. The ambivalence of the pleasures afforded in the context of slavery was documented in numerous accounts of "fun and frolic." When Anna Lee described Saturday night dances, she emphasized the fact that these dances provided the only occasion for collective gatherings and having fun: "We *had to have* some way to see the other sex and be together, and that was the only time that our master allowed us to be together just among ourselves, and we sure made the best of it cause we generally danced, hollered and had our fun all night long."<sup>121</sup> Rather than the dance providing an occasion for forgetting or escaping the "reality" of slavery, the pleasure such opportunities afforded were bittersweet, fleeting, and tempered by the perpetuity of bondage. Moreover, the pleasure to be had was infected with despair, fear, dissatisfaction, and a desire for freedom, and surreptitious gatherings were haunted by the fear of discovery and reprisal.

If through performance the enslaved "asserted their humanity," it is no less true that performance articulated their troubled relation to the category "human," if only because no absolute line could be drawn between the pleasant path of slave management and the collective articulation of needs, solidarity, and possibility. While the pleasures afforded within the confines of slavery were vulnerable to Douglass's critique of debased amusement and reactionary diversions, they also provided the occasion for small-scale assaults against slavery and opportunities for collective reflection on one's condition. Thus, in this regard, it is impossible to separate the use of pleasure as a technique of discipline from pleasure as a figuration of social transformation.<sup>122</sup> The confusion of the slave's good time and stealing away in these short-lived transports therefore mitigates against absolute assertions about pleasure. The claims made on behalf of pleasure are tenuous, provisional, and double-edged.

In short, pleasure was inseparable from the expenditure and ravishment of the body. As Celeste Avery recalled, at weekly frolics and dances folks would get "broke down from so much dancing."<sup>123</sup> Parties were called drag downs, hoe downs, or dig downs, according to Charles Anderson, because folks would "dig right into it, and give it all they got."<sup>124</sup> Thus it appears that pleasure was inescapably ensnared with expenditure and dissolution—bodies exhausted and restored, lost and regained, anguished and redressed. This state of expenditure, according to Victor Turner, is an integral part of performance process, for in the "breakdown," the individual is "reduced or ground down in order to be fashioned anew."<sup>125</sup> However, the breakdown also illuminates the dilemma of pleasure and possession since the body broken by dance insinuates its other, its double, the body broken by the regimen of labor and (dis)possessed by the chattel principle.<sup>126</sup> This doubling of the body bespeaks the ambivalence of pleasure and illuminates the brutal and myriad uses of slave property and the infinitesimal and innumerable assaults posed in the expression of desire.

## *Seduction and the Ruses of Power*

In the very nature of things, he [the slave] is subject to despotism. Law as to him is only a compact between his rulers, and the questions which concern him are matters agitated between them.

—Justice D. L. Wardlaw, *Ex parte Boylston* (1845)

You never knew what it is to be a slave; to be entirely unprotected by law or custom; to have the laws reduce you to the condition of chattel, entirely subject to the will of another.

—Harriet A. Jacobs, *Incidents in the Life of a Slave Girl*,  
Written by Herself (1861)

The relation between legal interpretation and the infliction of pain remains operative even in the most routine of legal acts.

—Robert Cover, "Violence and the Word" (1986)

I went to converse with Celia (defendant) at the request of several citizens. The object of my conversation was to ascertain whether she had any accomplices in the crime. This was eight or ten days after she had been put into the jail. I asked whether she thought she would be hung for what she had done. She said she thought she would be hung. I then had her to tell the whole matter. She said the old man (Newsome, the deceased) had been having sexual intercourse with her. That he had told her he was coming down to her cabin that night. She told him not to come and if he came she would hurt him. She then got a stick and put it in the corner. He came down that night. There was very little fire in the cabin that night. When she heard him coming she fixed the fire to make a little light. She said his face was towards her and he was standing talking to her when she struck him. He did not raise his hand when she went to strike the first blow but sunk down on a stool towards the floor. Threw his hands up as he sunk down. . . . The stick with which she struck was about as large as the upper part of a . . . chair, but not so long. . . . She said after she had killed him, the body laid a long time, she thought an hour. She did not know what to do with it. She said she would try to burn it.

—*State of Missouri v. Celia, a Slave* (1855)

**I**n nineteenth-century common law, rape was defined as the forcible carnal knowledge of a female against her will and without her consent.<sup>1</sup> Yet the actual or attempted rape of an enslaved woman was an offense neither recognized nor punished by law. Not only was rape simply unimaginable because of purported black lasciviousness, but also its repression was essential to the displacement of white

culpability that characterized both the recognition of black humanity in slave law and the designation of the black subject as the ordinary locus of transgression and offense. The cases of *State of Missouri v. Celia, a Slave*<sup>2</sup> and *George v. State* averred that the enslaved were not subjects of common law, thus not protected against rape. In other words, slaves were placed solely under the regulation of statutory law (slave codes) and not covered by the common law, though the rape of slave women was not a statutory offense either. ~~Therefore, the repression or effacement of rape can be explained only in part by the inapplicability of common law to the enslaved.~~ Rather, the repression and the negation of this act of violence are central not only to the pained constitution of blackness but also to the figuration and the deployment of sexuality in the context of captivity. Moreover, the disavowal of rape most obviously involves issues of consent, agency, and will that are ensnared in a larger dilemma concerning the construction of person and the calculation of black humanity in slave law since this repression of violence constitutes female gender as the locus of both unredressed and negligible injury.<sup>3</sup>

The dual invocation of person and property made issues of consent, will, and agency complicated and ungainly. Yet the law strove to contain the tensions generated by this seemingly contradictory invocation of the enslaved as property and person, as absolutely subject to the will of another, and as actional subject by relying on the power of feelings or the mutual affection between master and slave and the strength of weakness or the ability of the dominated to influence, if not control, the dominant. The dual invocation of the slave as property and person was an effort to wed reciprocity and submission, intimacy and domination, and the legitimacy of violence and the necessity of protection. By the same token, the law's selective recognition of slave humanity nullified the captive's ability to give consent or act as agent and, at the same time, acknowledged the intentionality and agency of the slave but only as it assumed the form of criminality. The recognition and/or stipulation of agency as criminality served to identify personhood with punishment. Within the terms of the law, the enslaved was either a will-less object or a chastened agent.

If the definition of the crime of rape relies upon the capacity to give consent or exercise will, then how does one make legible the sexual violation of the enslaved when that which would constitute evidence of intentionality, and thus evidence of the crime—the state of consent or willingness of the assailed—opens up a Pandora's box in which the subject formation and object constitution of the enslaved female are no less ponderous than the crime itself or when the legal definition of the enslaved negates the very idea of "reasonable resistance"?<sup>4</sup> We might also consider whether the wanton and indiscriminate uses of the captive body can be made sense of within the heteronormative framing of sexual violation as rape. If a crime can be said, in fact, to exist or is at all fathomable within the scope of any normative understanding of rape, perhaps it can only be apprehended or discerned precisely as it is entangled with the construction of person in slave law and the punitive stipulation of agency as abasement, servility, or criminality. Basically, I attempt to interrogate the legal definition of rape and the limits of the law by looking at issues of will and consent, the relationship between subjectivity and injury, and instances of sexual violence that fall outside the racist and heteronormative framing of rape—that is, the sexual exploitation of slave women cloaked as the legitimate use of property and the

castration and assault of slave men. I feel it is warranted to look at this range of violence as sexual violation because enslaved men were no less vulnerable to the wanton abuses of their owners, although the extent of their sexual exploitation will probably never be known, and because of the elusiveness or instability of gender in relation to the slave as property and the erotics of terror in the racist imaginary, which range from the terrible spectacle of Aunt Hester at the whipping post to the postbellum specter of lynching. In this chapter, I also try to make visible the "crimes" licensed and disavowed by the law by highlighting the state's crimes of omission and the categorization of negligible injury.

What Thomas Jefferson termed the boisterous passions of slavery, the "unremitting despotism" of slave owners, and the "degrading submissions" of the enslaved were curiously embraced, denied, inverted, and displaced in the law of slavery.<sup>5</sup> The boisterous passions bespeak the dynamics of enjoyment in a context in which joy and domination and use and violence could not be separated. As well, this language of passion expresses the essential conflation of force and feeling. The confusion between consent and coercion, feeling and submission, intimacy and domination, and violence and reciprocity constitutes what I term the discourse of seduction in slave law.<sup>6</sup> The discourse of seduction obfuscates the primacy and extremity of violence in master-slave relations and in the construction of the slave as both property and person. To paraphrase John Forrester, seduction is a meditation on liberty and slavery and will and subjection in the arena of sexuality.<sup>7</sup> Seduction makes recourse to the idea of reciprocal and collusive relations and engenders a precipitating construction of black female sexuality in which rape is unimaginable. As the enslaved is legally unable to give consent or offer resistance, she is presumed to be always willing.<sup>8</sup>

If the legal existence of the crime of rape depends upon evaluating the *mens rea* and *actus rea* of the perpetrator and, more important, the consent or nonconsent of the victim, then how does one grapple with issues of consent and will when the negation or restricted recognition of these terms determines the meaning of enslavement?<sup>9</sup> If the commonplace understanding of the "will" implies the power to control and determine our actions and identifies the expressive capacity of the self-possessed and intending subject, certainly this is far afield of the condition or terms of action available to the enslaved. Yet the notion of the will connotes more than simply the capacity to act and to do; rather, it distinguishes the autonomous agent from the enslaved, the encumbered, and the constrained. Furthermore, not only does the extremity of power and the absolute submission required of the slave render suspect or meaningless concepts of consent and will, but also the sheer lack of limitations regarding the violence "necessary" to the maintenance of slave relations—that is, black submission—unmoors the notion of "force." What limit must be exceeded in order that the violence directed at the black body be made legible in the law? In the case of slave women, the law's circumscribed recognition of consent and will occurred only in order to intensify and secure the subordination of the enslaved, repress the crime, and deny injury, for it asserted that the captive female was both will-less and always willing. Moreover, the utter negation of the captive's will required to secure absolute submission was identified as *willful* submission to the master in the topsy-turvy scenario of onerous passions. Within

this scenario, the constraints of sentiment were no less severe than those of violence. The purportedly binding passions of master-slave relations were predicated upon the inability of the enslaved to exercise her will in any ways other than serving the master, and in this respect, she existed only as an extension or embodiment of the owner's rights of property. To act outside the scope of willful submission was to defy the law. The surety of punishment awaited such transgressions.

### The Violence of the Law

In *State of Missouri v. Celia, a Slave*, Celia was prosecuted for the murder of her owner, Robert Newsome. The first time Newsome raped Celia was on the day he purchased her. He only stopped four years later when she killed him. Celia was found guilty by the court and sentenced to death by hanging. Although her attorney argued that the laws of Missouri concerning crimes of ravishment embraced slave women as well as white women and that Celia was acting to defend herself, this argument was rejected by the court. *Missouri v. Celia* raises critical questions about sexuality, agency, and subjectivity. Perhaps this is why the case was never reported or published. Certainly the fact that this case was neglected for over 145 years because it was not cited in any legal index but abandoned in a file drawer at the Callaway County Courthouse is significant. Cases involving cruelty of a sexual nature were often not reported or were omitted from the report of cases.<sup>10</sup> The few cases involving issues of rape and sexual violence that are available in legal indexes, not surprisingly, are civil cases concerned with the recovery of damages for the loss of slave property or criminal cases in which the enslaved and their "crimes," usually efforts to resist, defend, or flee from such violations, are on trial. For example, *Humphrey v. Utz*, a case in which a slave owner sued his overseer for the death of a slave brutally beaten by the overseer and subjected to a range of cruelties that included having his penis nailed to a bedpost, was also omitted from the state report of cases like *Missouri v. Celia*. Similarly, it illuminates the regularity of sexual violence directed at the enslaved and the obscene way in which these atrocities entered the legal record as suits for damage to property or criminal charges made against the enslaved.

As *Missouri v. Celia* demonstrated, the enslaved could neither give nor refuse consent, nor offer reasonable resistance, yet they were criminally responsible and liable. The slave was recognized as a reasoning subject who possessed intent and rationality solely in the context of criminal liability; ironically, the slave's will was acknowledged only as it was prohibited or punished. It was generally the slave's crimes that were on trial, not white offense and violation, which were enshrined as legitimate and thereby licensed, or, obviously, the violence of the law, which in the effort to shift the locus of culpability is conceptualized here in terms of the crimes of the state.<sup>11</sup> In positing the black as criminal, the state obfuscated its instrumental role in terror by projecting all culpability and wrongdoing onto the enslaved. The black body was simply the site on which the "crimes" of the dominant class and of the state were externalized in the form of a threat. The criminality imputed to blacks disavowed white violence as a necessary response to the threatening agency of



blackness. I employ the terms "white culpability" and "white offense" because the absolute submission mandated by law was not simply that of slave to her owner but the submission of the enslaved to all whites.<sup>12</sup>

The assignation of right and blame and privilege and punishment was a central element in the construction of racial difference and the absolute distinctions of status between free white persons and black captives. As the case of *State v. Tackett* made clear, "The relation between a white man and a slave differs from that which subsists between free persons." In this case, the Supreme Court of North Carolina reversed a lower court ruling that convicted a non-slave-owning white for the murder of a slave. (*State v. Tackett* also involved the sexual arrangements of slavery and the conjugal relations of the enslaved, although they were considered incidental to the case. Daniel, the murdered slave, had accused Tackett of "keeping his [Daniel's] wife," Lotty, and threatened to kill him if he did not leave Lotty alone.) The court held that common-law standards of provocation and mitigation were not applicable to the relation between a white man and a slave: "The homicide of a slave may be extenuated by acts, which would not produce a legal provocation if done by a white person."<sup>13</sup> The extenuating circumstances included arrogance, insult, trespass, and troublesome deportment. Acts of homicide, battery, and mayhem were sanctioned if not deemed essential to proper relations of free white persons and black captives and the maintenance of black submission.<sup>14</sup>

White culpability was displaced as black criminality, and violence was legitimated as the ruling principle of the social relations of racial slavery, just as Newsome's constant violations were eclipsed by the criminal agency of Celia. *Missouri v. Celia* illustrates how difficult it is to uncover and articulate the sexual violation of enslaved women exactly because the crime surfaces obliquely and only as the captive confesses her guilt. Ultimately the motive for Celia's act was deemed inadmissible, and her voice was usurped and negated for her white inquisitors spoke for her during the trial. As neither slaves nor free blacks were allowed to testify against whites, the "crime" that precipitated the murder of Newsome was denied.

To assert that Celia was raped is to issue a provocation. It is a declaration intended to shift our attention to another locus of crime. It is to envision the unimaginable, excavate the repressed, and discern the illegible. It is to reveal sentiment and protection as the guise of violence in the legal construction of the captive person and, in particular, the slippage of desire and domination in the loosely constructed term "sexual intercourse." In the trial record, the "sexuality" of Celia was ensnared in the web of others' demands, and the trace of what I risk calling her "desire" was only discernible in the compliance and defiance of these competing claims.<sup>15</sup> As the trial record stated, Newsome had been having "sexual intercourse" with Celia, he "forced her" on the day he purchased her, and, last, George, Celia's enslaved companion, "would have nothing to do with her if she did not *quit* the old man." "Coercion," "desire," "submission," and "complicity" are the circulating terms that come to characterize the sexuality of Celia, or the enslaved female, less than the way in which she is inhabited by sexuality and her body possessed.<sup>16</sup> Simply put, Celia embodied the vested rights of others.

The abjection of the captive body exceeds that which can be conveyed by the designation of or difference between "slave" women and "free" women. In this

case, what is at issue is the difference between the deployment of sexuality in the contexts of white kinship—the proprietorial relation of the patriarch to his wife and children, the making of legitimate heirs, and the transmission of property—and black captivity—the reproduction of property, the relations of mastery and subjection, and the regularity of sexual violence—rather than the imputed “freedom” of white women or free black women. The engendering of race occurs within these different economies of constraint and by way of divergent methods of sexual control. Kinship and captivity designate radically different conditions of embodiment that reveal the determinacy of race in the deployment of sexuality and underline the particular mechanisms through which bodies are disciplined and regulated.

The (re)production of enslavement and the legal codification of racial subordination depended upon various methods of sexual control and domination: anti-miscegenation statutes, rape laws that made the rape of white women by black men a capital offense, the sanctioning of sexual violence against slave women by virtue of the law’s calculation of negligible injury, the negation of kinship, and the commercial vitiation of motherhood as a means for the reproduction and conveyance of property and black subordination.<sup>17</sup> *Alfred v. State* illuminates the convergence of these varied techniques in maintaining the domination of the enslaved and cultivating the pained and burdened personhood of the enslaved. In *Alfred v. State*, Alfred, a slave, was indicted for the murder of his overseer, Coleman. A witness testified that Alfred admitted having killed the overseer: “The defendant wanted to introduce a witness on his behalf, a slave named Charlotte, who stated that she was the wife of the prisoner. . . . Prisoner’s counsel then proposed to prove, by Charlotte, that about nine or ten o’clock in the morning . . . Coleman ‘had forced her to submit to sexual intercourse with him’; and that she had communicated the fact to the prisoner before the killing.”<sup>18</sup> Although the defense attempted to introduce Charlotte as a witness and thereby prove that Alfred’s action was motivated by the rape of his wife, the district attorney objected to Charlotte’s testimony. The court sustained the objection; the prisoner was convicted and sentenced to death by hanging.<sup>19</sup>

What is at issue here are the ways in which various mechanisms of sexual domination—the repression of rape, the negation of kinship, and the legal invalidation of slave marriage—act in concert. In this instance, sexuality is a central dimension of the power exercised over and against the slave population and entails everything from compulsory couplings to the right to manage life.<sup>20</sup> Charlotte’s testimony was rejected because her relation to Alfred had no legal status, and thus it could not provide an alibi or motive for Alfred’s action. The disallowance of the marital relation, in turn, rendered superfluous Charlotte’s sexual violation.<sup>21</sup> In the rejection of Charlotte as witness, her status as wife and partner of Alfred was negated, her rape displaced as adultery and then dismissed, and the violence that precipitated the overseer’s murder repressed.

It is also significant that the rape of Charlotte is interpreted narrowly within the frame of “outrages of conjugal affections” and as adultery. The defense’s argument focused on the violation of Alfred’s rights as a “husband” rather than on the rape of Charlotte. Alfred’s counsel unsuccessfully argued that “the humanity of our law . . . regards with as much tenderness the excesses of outraged conjugal affections in the negro as in the white man. The servile condition . . . has not deprived

him of his social or moral instincts, and he is as much entitled to the protection of the laws, when acting under their influence, as if he were freed." The discussion of a husband's conjugal rights, even if that "husband" is a slave, supplants the rape of the "wife."<sup>22</sup> In all likelihood, the court denied Alfred the right to vindicate this outrage because the decedent was white. However, in cases of this nature involving other slaves, the court sometimes recognized the husband's exclusive sexual rights in his wife and "the sudden fury excited by finding a man in the very act of shame with his wife."<sup>23</sup> Ultimately, the motive for Alfred's act was deemed irrelevant because of the need to maintain black subordination and the presumably negligible status of the injury.

*Alfred v. State* illuminates the legal mechanisms by which sexuality and subordination were yoked in securing the social relations of slavery. On the one hand, the management of slave sexuality indifferently translated the rape of slave women into adultery or sexual intercourse; on the other, it refused to recognize or grant any legitimacy to relations forged among the enslaved. The rape of black women existed as an unspoken but normative condition fully within the purview of everyday sexual practices, whether within the implied arrangements of the slave enclave or within the plantation household. This is evidenced in myriad ways, from the disregard for polite discourse and the evasion and indirection that euphemized rape as ravishment or sex as carnal knowledge to the utter omission and repression of the crime in slave statute and case law. In this case, the normativity of rape is to be derived from the violence of the law—the identity or coincidence of legitimate uses of slave property and what Hortense Spillers terms "high crimes against the flesh." In this case, the normativity of sexual violence establishes an inextricable link between racial formation and sexual subjection.<sup>24</sup> As well, the virtual absence of prohibitions or limitations in the determination of socially tolerable and necessary violence sets the stage for the indiscriminate use of the body for pleasure, profit, and punishment.

The legal transposition of rape as sexual intercourse shrouds this condition of violent domination with the suggestion of complicity. Sexual intercourse, regardless of whether it is coerced or consensual, comes to describe the arrangements, however violent, between men and enslaved women. (Enslaved women were also raped by slave men. Women were not protected in these cases either.) What does sexuality designate when rape is a normative mode of its deployment? What set of effects does it produce? How can rape be differentiated from sexuality when "consent" is intelligible only as submission? How can we discern the crime when it is a legitimate use of property or when the black captive is made the originary locus of liability?<sup>25</sup> Does the regularity of violation transform it into an arrangement or a *liaison* from which the captive female can extract herself, if she chooses, as a lover's request or adultery would seem to imply?<sup>26</sup> Can she use or wield sexuality as a weapon of the weak? Do four years and two children later imply submission, resignation, complicity, desire, or the extremity of constraint?<sup>27</sup>

It is this slippage that Celia's act brings to a standstill through the intervention of her will or what inadequately approximates desire. To speak of will or desire broaches a host of issues that revolve upon the terms, dimensions, and conditions of action. Moreover, the term "will" is an overextended approximation of the agency of the dispossessed subject/object of property or perhaps simply unrecognizable in a

context in which agency and intentionality are inseparable from the threat of punishment. It is possible to read this act as a liberation of the captive body, however transient this liberation, or as a decisive shift in embodiment, a movement from Newsome's Celia to Celia's body, though my intention is merely to underscore the act's complexity. The full dimensions of this act and the resignation, courage, or glimpse of possibility that might have fueled it defy comprehensive analysis since we have access to Celia's life only as it has been recorded by her interrogators and rendered as crime. The fateful negotiation of autonomy at the site of the expended and exploited body affirms both the impossibility of consent and the struggle to mitigate the brutal constraints of captivity through an entitlement denied the captive—"no," the prerogative of refusal. Ultimately, Celia was hanged for this refusal. This effort to reclaim the body and experience embodiment as full, inviolate, and pleasurable, not as an extension of another's will or right or as a condition of expenditure or defilement, led Celia to construct a boundary at the threshold of her cabin that would shield her from the tacit violence seen as "befitting" the relation of slave owner and enslaved female. As Leon Higginbotham remarks, the Missouri court in pronouncing Celia's guilt "held that the end of slavery is not merely 'the [economic] profit of the master' but also the joy of the master in the sexual conquest of the slave."<sup>28</sup> Thus, Celia's declaration of the limit was an emancipatory articulation of the desire for a different economy of enjoyment.

### The Bonds of Affection

The effacement of rape in the context of enslavement concerns matters of necessary and tolerable violence, the full enjoyment of the slave as thing, and the form of captive embodiment. The eliding of rape must also be considered in relation to what is callously termed the recognition of slave humanity and the particular mechanisms of tyrannical power that converge on the black body. In this instance, tyranny is not a rhetorical inflation but a designation of the absoluteness of power. Gender, if at all appropriate in this scenario, must be understood as indissociable from violence, the vicious refiguration of rape as mutual and shared desire, the wanton exploitation of the captive body tacitly sanctioned as a legitimate use of property, the disavowal of injury, and the absolute possession of the body and its "issue." In short, black *and* female difference is registered by virtue of the extremity of power operating on captive bodies and licensed within the scope of the humane and the tolerable.<sup>29</sup>

The violence commensurate with the exercise of property rights and essential to the making of perfect submission was dissembled in regard to sexual violation by black female "excesses"—immoderate and overabundant sexuality, bestial appetites and capacities that were most often likened to those of the orangutan, and an untiring readiness that was outstripped only by the black females' willingness.<sup>30</sup> Lasciviousness made unnecessary the protection of rape law, for insatiate black desire presupposed that all sexual intercourse was welcomed, if not pursued. The state's crimes of omission and proaction—the failure to extend protection and the sanctioning of violence in the name of rights of property—disappeared before the

spectacle of black concupiscence. The nonexistence of rape as a category of injury pointed not to the violence of the law but to the enslaved woman as a guilty accomplice and seducer. However, the omissions of law must be read symptomatically within an economy of bodies in which the full enjoyment of the slave as thing depended upon unbounded authority and the totalizing consumption of the body in its myriad capacities.<sup>31</sup>

The construction of black subjectivity as will-less, abject, insatiate, and pained and the instrumental deployment of sexuality in the reproduction of property, subordination, and racial difference usurped the category of rape. Sexuality formed the nexus in which black, female, and chattel were inextricably bound and acted to intensify the constraints of slave status by subjecting the body to another order of violations and whims.<sup>32</sup> The despotic ravages of power made violence indistinguishable from the full enjoyment of the thing. The tensions generated by the law's dual invocation of property and person, or by "full enjoyment" and limited protection to life and limb, were masked by the phantasmal ensnaring agency of the lascivious black.<sup>33</sup> Rape disappeared through the intervention of seduction—the assertion of the slave woman's complicity and willful submission. Seduction was central to the very constitution and imagination of the antebellum South for it provided a way of masking the antagonistic fissures of the social by ascribing to the object of property an ensnaring and criminal agency that acted to dissimulate the barbarous forms of white enjoyment permitted within the law.

The discourse of seduction enabled those disgusted and enraged by the sexual arrangements of slavery, like Mary Boykin Chesnut, to target slave women as the agents of their husbands' downfall. The complicity of slave women displaced the act of sexual violence. According to Chesnut, decent white women were forced to live with husbands degraded by the lowliness of their enslaved "mistresses": "Under slavery, we lived surrounded by prostitutes, yet an abandoned woman is sent out of any decent house. Who thinks any worse of a Negro or mulatto woman for being a thing we can't name?"<sup>34</sup> The sexual exploitation of the enslaved female, incredulously, served as evidence of her collusion with the master class and as evidence of her power, the power both to render the master weak and, implicitly, to be the mistress of her own subjection. The slave woman not only suffered the responsibility for her sexual (ab)use but also was blameworthy because of her purported ability to render the powerful weak.

Even those like Fanny Kemble, who eloquently described the "simple horror and misery" that slave women regularly experienced, were able to callously exclaim, when confronted with the inescapable normativity of rape and the "string of detestable details" that comprised the life of enslaved women, after yet another woman, Sophy, shared her experience of violation: "Ah! but don't you know—did nobody ever teach any of you that it is a sin to live with men who are not your husbands?!"<sup>35</sup> Sophy, appropriately and vehemently, responded, "Oh, yes, missis, we know—we know all about dat well enough; but we do anything to get our poor flesh some rest from the whip; when he made me follow him into de bush, what use me tell him no? He have strength to make me."<sup>36</sup>

The equivocations that surround issues of consensual sexual relations under domination, the eliding of sexual violence by the imputation of the slave woman's

ensnaring sexual agency or lack of virtue, and the presumption of consent as a consequence of the utter powerlessness of her "no" (the "no means yes" philosophy) are important constituents of the discourse of seduction. In a more expansive or generic sense, seduction denotes a theory of power that demands the absolute and "perfect" submission of the enslaved as the guiding principle of slave relations and yet seeks to mitigate the avowedly necessary brutality of slave relations through the shared affections of owner and captive. The doctrine of "perfect submission" reconciled violence and the claims of mutual benevolence between master and slave as necessary in maintaining the harmony of the institution. The presumed mutuality of feelings in maintaining domination enchanted the brutal and direct violence of master-slave relations. Bearing this in mind, the term "seduction" is employed here to designate this displacement and euphemization of violence, for seduction epitomizes the discursive alchemy that shrouds direct forms of violence under the "veil of enchanted relations"—that is, the reciprocal and mutual relations of master and slave.<sup>37</sup> This mining of the discourse of seduction attempts to illuminate the violence obscured by the veil through an interrogation of the language of power and feelings, specifically the manipulations of the weak and the kindheartedness and moral instruction of the powerful.

The benign representation of the paternal institution in slave law depicted the master-slave relationship as typified by the bonds of affection and thereby transformed relations of violence and domination into those of affinity. This benignity depended upon a construction of the enslaved black as one easily inclined to submission, a skilled maneuverer wielding weakness masterfully and a potentially threatening insubordinate who could only be disciplined through violence. If what is at stake in social fantasy is the construction of a nonantagonistic, organic, and complementary society, then the ability of the South to imagine slavery as a paternal and benign institution and master-slave relations as bound by feelings depended on the specter of the obsequious and threatening slave, for this Manichaean construction undergirded both the necessary violence and the bonds of affection set forth in slave law. As well, this fantasy enabled a vision of whiteness defined primarily by its complementary relation to blackness and by the desire to incorporate and regulate black excess.<sup>38</sup> Seduction thus provided a holistic vision of social order, not divided by antagonisms and precariously balancing barbarism and civilization, violence and protection, mutual benevolence and absolute submission, and brutality and sentiment. This harmonious vision of community was made possible by the exercise of violence, the bonds of affection, and the consonance of the weak and the powerful.

How does seduction uphold perfect submission and, at the same time, assert the alluring, if not endangering, agency of the dominated? It does so by forwarding the strength of weakness. As a theory of power, seduction contends that there is an ostensible equality between the dominant and the dominated. The dominated acquire power based upon the identification of force and feeling. As Jean Baudrillard writes, "Seduction play[s] triumphantly with weakness."<sup>39</sup> The artifice of weakness not only provides seduction with its power but also defines its essential character, for the enactment of weakness and the "impenetrable obscurity" of femininity and blackness harbor a conspiracy of power.<sup>40</sup> The dominated catalyze reversals of power, not by challenges presented to the system but by succumbing to the system's logic. Thus

power comes to be defined not by domination but by the manipulations of the dominated. The reversibility of power and the play of the dominated discredit the force of violence through the assertion of reciprocal and intimate relations. In this regard, the recognition of the agency of the dominated and the power of the weak secures the fetters of subjection, while proclaiming the power and influence of those shackled and tethered.

The proslavery ideologue George Fitzhugh, like Baudrillard, also celebrated the reversibility of power enacted through surrender. In *Cannibals All or, Slaves without Masters*, Fitzhugh argued that the strength of weakness disrupts the hierarchy of power within the family, as well as the master-slave relationship. Appearances conspire to contrary purposes; thus the seemingly weak slave, like the infant or (white) woman, exercises capricious dominion: "The dependent exercise, because of their dependence, as much control over their superiors, in most things, as those superiors exercise over them. Thus and thus only, can conditions be equalized."<sup>41</sup> Seduction appears to be a necessary labor, one required to extend and reproduce the claims of power, though advanced in the guise of the subaltern's control and disruptions: "The humble and obedient slave exercises more or less control over the most brutal and hard-hearted master. It is an invariable law of nature, that weakness and dependence are elements of strength, and generally sufficiently limit that universal despotism, observable throughout human and animal nature."<sup>42</sup> If, as Fitzhugh insists, the greatest slave is the master of the household, and the enslaved rule by virtue of the "strength of weakness," then, in effect, the slave is made the master of her subjection.

As Fitzhugh envisioned, kindness and affection undergirded the relations of subordination and dependency. As a model of social order, the patriarchal family depended upon duty, status, and protection rather than consent, equality, and civil freedom. Subjection was not only naturalized but also consonant with the sentimental equality of reciprocity, inasmuch as the power of affection licensed the strength of weakness. Essentially, "the strength of weakness" prevailed due to the goodness of the father, "The armor of affection and benevolence." The generosity of the father enabled the victory claimed by the slave, the tyrannical child, and the brooding wife. The bonds of affection within the slaveholding family circle permitted the tyranny of weakness and supplanted the stranglehold of the ruling father. Ironically, the family circle remained intact as much because of the bonds of affection as because of the tyranny of the weak. Literally, the forces of affection bound the interests of the master and those of the slave in a delicate state of equilibrium, as one form of strength modified the other.<sup>43</sup> Thus we are to believe that the exercise of control by the weak softens universal despotism, subdues the power of the father by commanding his care, and guarantees the harmony of slave relations.

Seduction erects a family romance—in this case, the elaboration of a racial and sexual fantasy in which domination is transposed into the bonds of mutual affection, subjection idealized as the pathway to equality, and perfect subordination declared the means of ensuring great happiness and harmony. The patriarchal model of social order erected by Fitzhugh marries equality and despotism through an explicit critique of consent, possessive individualism, and contractual relations.<sup>44</sup> Feelings rather than contract are the necessary corrective to universal despotism; therefore,

duty and reciprocity rather than consent become the basis for equality. The despotic and sovereign power celebrated by Fitzhugh could only be abated by the "bonds of affection," a phrase that resonates with the ambivalence attendant to the attachments and constraints that characterize the relation of owner and object.

If a conspiracy of power resides within seduction, then questions arise as to the exact nature of this conspiracy: Who seduces whom? Does the slave become entrapped in the enchanted web of the owner's dominion, lured by promises of protection and care? Does the guile and subterfuge of the dependent mitigate the effects of power? Are the manipulations and transgressions of the dominated fated to reproduce the very order presumably challenged by such actions? Or do such enactments on the part of the owner and the enslaved, the feigned concessions of power and the stylized performance of naïveté, effect any shifts or disruptions of force or compulsively restage power and powerlessness?

Seduction reifies the idea of submission by proclaiming it the pathway to ostensible equality, protection, and social harmony. As expounded by proslavery ideologues like Fitzhugh or as a legal principle guiding master-slave relations, seduction professed that power and protection were acquired through surrender. To reiterate the tautology, the dominated exert influence over the dominant by virtue of their weakness, and therefore more formal protections against despotism or guarantors of equality are redundant, if not unnecessary. The insinuation that the dominated were mutually invested in their subjugation recast violence in the ambiguous guise of affection and declared hegemony rather than domination the ruling term of order.<sup>45</sup> The assertion that coercion *and* consent characterized the condition of enslavement can be seen in the implied and explicit promises of protection extended by the law.

The incessant reiteration of the necessity of submission—the slave must be subject to the master's will in all things—upheld submission as the guiding principle of slave relations, if not the central element in the trinity of savagery, sentiment, and submission. Slave law ensured the rights of property and the absolute submission of the slave, while attending to limited forms of slave subjectivity. The law granted slave owners virtually absolute rights and militated against the abuses of such authority by granting limited protection to slaves against "callous and cold-blooded" murder, torture, and maiming, although procedural constraints, most notably the fact that a slave or free black could not act as witness against a white person, acted as safeguards against white liability and made these laws virtually impossible to enforce. In the effort to attend to the interests of master and slave, the law elaborated a theory of power in which the affection of slave owners and the influence of the enslaved compensated for its failures and omissions. It contended that affection and influence bridged the shortcomings of law concerning the protection of black life. The ethic of perfect submission recognized the unlimited dominion of the slave owner yet bounded this dominion by invoking the centrality of affections in regulating the asymmetries of power in the master-slave relation.<sup>46</sup> The dual existence of the slave as property and person and the interests and absolute dominion of the slave owner were to be maintained in precarious balance by forwarding the role of affection in mitigating brutality.



The case of *State v. Mann*, although it doesn't specifically involve issues of sexuality or rape, is important in considering the place of affection, violence, and surrender in the law. Mann was indicted for assault and battery upon Lydia, a slave of Elizabeth Jones whom he had hired for a year: "During the term, the slave had committed some small offence, for which the Defendant undertook to chastise her—that while in the act of so doing, the slave ran off, whereupon the Defendant called upon her to stop, which being refused, he shot and wounded her."<sup>47</sup> The lower court convicted Mann, finding him guilty of "cruel and unwarrantable punishment, and disproportionate to the offense committed by the slave." However, in an appeal to the North Carolina Supreme Court, the decision was reversed. While the liability of the hirer, Mann, to the owner for an injury presumably impairing the value of slave property was left to general rules of bailment, the charges of criminal battery were overturned. Even if the injury diminished the value of slave property, it was not indictable as cruel and unreasonable battery. The court held that the power of the master was absolute and not a subject for discussion.<sup>48</sup>

The higher court ruling held that the master had absolute power to render the submission of the slave perfect; yet it was also argued that the harshness of such a principle would be regulated not by existing legislation but by feelings—the benevolence and affection between master and slave and the ruling moral code. In other words, the court considered affection to be an internal regulating principle of slave relations. The Supreme Court reversed the decision of the lower court on the following grounds: the power of the master had to be absolute in order "to render the submission of the slave perfect" although "as a principle of moral right, every person in his retirement must repudiate it. But in the actual condition of things it must be so." Yet the harshness implied by this difficult yet unavoidable decision would be regulated by "the protection already afforded by several statutes (which made it illegal to murder a slave in cold blood), . . . the private interest of the owner, the benevolence toward each other, seated in the hearts of those who have been born and bred together, [and] the . . . deep execrations of the community upon the barbarian, who is guilty of excessive cruelty to his unprotected slave" (emphasis mine).

Although the court acknowledged that the scope of such absolute rights of property left the enslaved open to violent abuses, it also recognized that the right to abuse had to be guaranteed for the perpetuation of the institution, since the amorphous "public good" mandated the absolute subordination of the enslaved. The opinion amended this brutal admission with the assurance that the rights of ownership generally precluded such abuses because of self-interest, that is, pecuniary considerations. The rights of ownership, even temporary rights of possession, permitted any and all means necessary to render perfect submission; however, it was hoped that the use of excessive force was unnecessary because of the reciprocal benevolence of master-slave relations.

Rather than distinguish between implied relations and absolute dominance or separate affection from violence, the court considered them both essential to the maintenance and longevity of the institution of slavery. In short, the ethic of submission indiscriminately included absolute power and human feelings, for on one hand, the court admitted that the obedience of the slave was "the consequence only of uncontrolled authority over the body." How else could perpetual labor and submis-

sion be guaranteed? The services of one "doomed in his person and his posterity" and "without knowledge or the capacity to make anything his own, and to toil that another may reap the fruits" could only be expected of "one who has no will of his own" and "who surrenders his will in perfect obedience to that of another."<sup>49</sup> To be sure, the power of the master had to be absolute to produce this surrender of the will.

Not only was perfect submission an ordering principle of the social, to be accomplished by whatever violent means necessary, regardless of how brutal, but also this conceptualization of power relations depended upon feelings, not law, to guarantee basic protections to the enslaved. Submission not only encompassed the acquisition of power but also explicitly addressed the power of affection in influencing relations between master and slave, although the court distinguished between the relationship of master and slave and other domestic relations it was frequently compared with, like those of a parent and child, tutor and pupil, and master and servant. The centrality ascribed to the role of feelings implicitly acknowledged the unrestricted violence the *Mann* opinion had licensed yet minimized the consequences of this through an appeal to "moral right" rather than the actual condition of things. Feelings were to balance the use and role of force. As Judge Ruffin states: "I must freely confess my sense of the harshness of this proposition; I feel it as deeply as any man can; and as a principle of moral right every person in his retirement must repudiate it. But in the actual condition of things it must be so."

The importance attributed to the intimacies of domination illustrates the role of seduction in the law. As the opinion clearly stated, power resided not only in the title to slave property but also in the bonds of affection. Feelings repudiated and corrected the violence legitimated by law. Material interests and mutual benevolence would "mitigat[e] the rigors of servitude and ameliorat[e] the condition of the slave" and protect the slave from the ravages of abuse unleashed by the ruling. In other words, the brutal dominion guaranteed by the law was to be regulated by the influence of the enslaved—their pull on the heartstrings of the master. Slave law contradictorily asserted that absolute dominion was both necessary and voluntary. The intimacy of the master and the slave purportedly operated as an internal regulator of power and ameliorated the terror indispensable to unlimited dominion. The wedding of intimacy and violent domination as regulatory norms exemplifies the logic through which violence is displaced as mutual and reciprocal desire.

The significance attributed to feelings, attachment, and the familiarity of domestic slavery rendered domination in a heartwarming light. The power of influence invested in the enslaved—the power of the weak to sway the powerful—and the place attributed to feeling in regulating the excesses of market relations refigured relations of domination and exploitation in the garb of affection, family, and reciprocal obligations. Such reasoning held that violence was both necessary and tolerable, while insisting that feelings determined the character of the master-slave relationship and informed social, familial, and political organization. In short, slave relations were dependent upon and determined by "the action taking place in individual hearts."<sup>50</sup>

The contradictory appeal to the public good contended that public tranquillity required violence and, at the same time, served as the guarantee that this entitlement to virtually unlimited power need never be exercised. The invocation of the public

good authorized necessary violence and established minimal standards for the recognition of slave humanity. Just as the appeal to the public good mandated absolute submission, it also required that certain provisions or protections be granted to the enslaved, like housing, clothing, food, and support for elderly and infirm slaves. Yet this concern for the welfare of the enslaved and the provisions granted them should not be mistaken for a dispensation of rights. As a judge commented in another case that hinged on determining degrees of necessary and excessive violence, although excessive violence "disturbed the harmony of society, was offensive to public decency, and directly tended to a breach of peace," the rights of the slave were extraneous to such considerations: "The same would be the law, if a horse had been so beaten. And yet it would not be pretended that it was in respect to the rights of the horse, or the feelings of humanity, that this interposition would take place."<sup>51</sup> The public good mandated absolute submission and minimal protections intent upon maintaining harmony and security. Even when the entreaty made in the name of the public good acted minimally on the behalf of the enslaved, it did so, not surprisingly, by granting these limited entitlements in a manner that "recognized" black humanity in accordance with minimal standards of existence. This truncated construction of the slave as person, rather than lessening the constraints of chattel status, enhanced them by making personhood conterminous with injury.

Although the public good served as the arbiter of care and coercion, the precarious status of the slave within this sphere raises questions about the meaning of the slave person, the protections advanced on the slave's behalf, and the limited concerns of public decency. Contrary to pronouncements that sentiment would abate brutality, feelings intensified the violence of law and posed dire consequences for the calculation of black humanity, for the dual existence of the slave as object of property and person required that the feelings endowed to the enslaved be greatly circumscribed. While the slave was recognized as a sentient being, the degree of sentience had to be cautiously calibrated in order to avoid intensifying the antagonisms of the social order. How could property and person be reconciled on the ground of mutual benevolence and affection? How could the dual invocation of humanity and interest be sustained?

The dual existence of the slave as person and property was generated by the slave mode of production.<sup>52</sup> The law attempted to resolve the contradiction between the slave as property and the slave as person/laborer or, at the very least, to minimize this tension by attending to the slave as both a form of property and a person. This effort was instrumental in maintaining the dominance of the slave-owning class, particularly in a period of national crisis concerning the institution. The increasing recognition of the slave person in the period 1830–1860 was an effort to combat the abolitionist polemic about the degradations of chattel status and the slave's lack of rights.<sup>53</sup> In any case, the dual invocation of slave law was neither a matter of an essential ethical contradiction nor a conflict between bourgeois and slave relations but an expression of the multivalence of subjection. The dual invocation quite easily accommodated the restricted recognition of the slave as person and the violence necessary to the accumulation of profit and the management of a captive population, since the figuration of the humane in slave law was totally consonant with the domination of the enslaved. The constitution of the slave as person was not at odds

with the structural demands of the system, nor did it necessarily challenge the social relations of the antebellum world.

Rather, the dual invocation of law designated the limits of rights of ownership and extended and constricted these rights as was necessary for the preservation of the institution. On one hand, there was increased liability for white violence committed against slaves; and on the other, the law continued to decriminalize the violence thought necessary to the preservation of the institution and the submission and obedience of the slave. If anything, the dual invocation of law generated the prohibitions and interdictions designed to regulate the violent excesses of slavery and at the same time extended this violence in the garb of sentiment. The recognition of the slave as subject and the figuration of the captive person in law served to explicate the meaning of dominion. To be subject in this manner was no less brutalizing than being an object of property.<sup>54</sup>

In the arena of affect, the body was no less vulnerable to the demands and the excesses of power. The bestowal that granted the slave a circumscribed and fragmented identity as person in turn shrouded the violence of such a beneficent and humane gesture. Bluntly stated, the violence of subjection concealed and extended itself through the outstretched hand of legislated concern. The slave was considered a subject only insofar as he was criminal(ized), wounded body, or mortified flesh. This construction of the subject seems rather at odds with a proclaimed concern for the "total person."<sup>55</sup> However, it does not mean that the efforts to regulate the abuses of slavery were any less "genuine" but that in the very efforts to protect the enslaved from the ravages of the institution, a mutilation of another order was set in motion. Protection was an exemplary dissimulation for it savagely truncated the dimensions of existence, inasmuch as the effort to safeguard slave life recognized the slave as subject only as he violated the law or was violated (wounded flesh or pained body). Thus rendered, "person" signified little more than a pained body or a recalcitrant in need of punishment.<sup>56</sup>

The designation of person was inescapably bound to violence, and the effort to protect embodied a degree of violence no less severe than the excesses being regulated. Despite the law's proclaimed concern for slave life or recognition of black humanity, minimal standards of existence determined personhood, *for the recognition of the slave as person depended upon the calculation of interest and injury*. The law constituted the subject as a muted pained body or a trespasser to be punished; this agonized embodiment of subjectivity certainly intensified the dreadful objectification of chattel status. Paradoxically, this designation of subjectivity utterly negated the possibility of a nonpunitive, inviolate, or pleasurable embodiment, and instead the black captive vanished in the chasm between object, criminal, pained body, and mortified flesh.<sup>57</sup> The law's exposition of sentiment culminated in a violent shuttling of the subject between varied conditions of harm, juggled between the plantation and the state and dispersed across categories of property, injury, and punishment.

### The Measure of Humanity

In *Inquiry into the Law of Negro Slavery*, Thomas Cobb explicated the conditions in which the dominion of the master and the person of the slave were to be

accommodated in the law. In examining the dual character of the slave as person and property and the particular dimensions of personhood in common law and slave statutes, Cobb contended that the slave was recognized first as person and second as property, largely because in all slaveholding states "the homicide of a slave is held to be murder, and in most of them, [this] has been so expressly declared by law"; and even when not expressly declared by law, the principles of Christian enlightenment extend protection to life and limb.<sup>58</sup> Notwithstanding, he argued that slaves were not proper subjects of common law and proposed a minimal definition of protection of life and limb.

The calculation of slave existence was determined by base conditions necessary for functioning as an effective laborer, and the extent of protection to life and limb was decided by diminutions in the value of capital. Within these boundaries, degrees of injury and magnitudes of labor decided the meaning of the slave person. It is difficult to acknowledge this savage quantification of life and person as a recognition of black humanity, for as argued earlier, this restricted stipulation of humanity intensified the pained existence of the enslaved. This scale of subjective value was a complement rather than a corrective to the decriminalization of white violence that was the foundation of slave law.<sup>59</sup> Although this recognition of slave humanity was intended to establish criminal liability for acts of violence committed upon slaves, in the end it relied upon the diminutions in the value of property in determining and recognizing injury. In other words, the "corrective" resembled the ailment in that the effort to recognize humanity resulted in the reinscription of black life as property, for the scale of subjective value was inescapably bound to the use and value of property. The consequences of this construction of person intensified injury in the very name of redress. Moreover, the selective inclusion of the slave into the web of rights and duties that comprised the common law demonstrated the tentativeness of this recognition of personhood.

Not surprisingly, Cobb's calibrations and the law's severely circumscribed dimensions of person constituted "woman" as a condition of negligible and unredressed injury in its dismissal of sexual violence as an "offense not affecting the existence of the slave."<sup>60</sup> I argue that this constituted woman as a condition of negligible injury in slave law because unlike other forms of violence like maiming or battery, rape was not penalized by slave statute, nor were owners likely to pursue suits for "trespasses" on their property. This simultaneously made the body prey to sexual violence and disavowed this violence and injury. The ravished body, unlike a broken arm or leg, did not bestow any increment of subjectivity because it did not decrease productivity or diminish value—on the contrary, it might actually increase the captive's magnitude of value—nor did it, apparently, offend the principles of Christian enlightenment. It was declared to be inconsequential in the calculation of slave subjectivity and not within the rights and protections granted the enslaved:

If the general provision of the law against murder should be held to include slaves, why not all other penal enactments, by the same course of reasoning, be held to include similar offences when committed on slaves, without their being specifically named? . . . The law, by recognizing the existence of the slave as person, thereby confers no rights or privileges except such as are necessary to protect that existence. All other rights should be granted specially. Hence, the penalties for rape would not and should not, by such implication, be made to extend to carnal forcible knowledge of a

slave, that offense *not affecting the existence* of the slave, and that existence being the extent of the right which the implication of the law grants.<sup>61</sup>

Cobb, concerned with the neglect of sexual injury and the failure to protect slave women from rape in slave law, stated that "although worthy of consideration by legislators," it need not cause undue concern because "the occurrence of such an offense is almost unheard of; and the known lasciviousness of the negro, renders the possibility of its occurrence very remote."<sup>62</sup> As the black male's nature made "rape too often an occurrence," the black female's imputed lasciviousness removed it entirely from consideration. It is not simply fortuitous that gender emerges in relation to violence—that is, gender is constituted in terms of negligible and unredressed injury and the propensity for violence. The en-gendering of race, as it is refracted through Cobb's scale of subjective value, entails the denial of sexual violation as a form of injury while asserting the prevalence of sexual violence due to the rapacity of the Negro. While Cobb's consideration of sexual violation initially posits gender differences within the enslaved community in terms of female victim and male perpetrator, ultimately the "strong passions" of the Negro—in this instance, lust and lasciviousness—ultimately annul such distinctions and concomitantly any concerns about "the violation of the person of a female slave." Since, according to Cobb, blacks were endowed less with sexuality than with criminality, they were in need of discipline rather than protection, since as sexual subjects they were beyond the pale of the law and outside the boundaries of the decent and the nameable.

In *George v. State*, George, a slave, was indicted for rape under a statute making it a crime to have sex with a child under ten years of age. The Mississippi Supreme Court overturned a lower-court ruling that convicted George for the rape of a female slave under ten years old and sentenced him to death by hanging. The attorney for George cited Cobb's *Law of Slavery* in his argument before the court, declaring that "the crime or rape does not exist in this State between African slaves. Our laws recognize no marital rights as between slaves; their sexual intercourse is left to be regulated by their owners. The regulations of law, as to the white race, on the subject of sexual intercourse, do not and cannot, for obvious reasons, apply to slaves; their intercourse is promiscuous, and the violation of a female slave by a male slave would be mere assault and battery."<sup>63</sup> According to George's attorney, the sexual arrangements of the captive community were so different from those of the dominant order that they were beyond the reach of the law and best left to the regulation of slave owners. The Mississippi Supreme Court concluded that based on a "careful examination of our legislation on this subject, we are satisfied that there is no act which embraces either the attempted or actual commission of a rape by a slave on a female slave. . . . Masters and slaves cannot be governed by the same common system of laws: so different are their positions, rights, and duties." The lower court's judgment was reversed, the indictment quashed, and the defendant discharged on the grounds that "this indictment cannot be sustained, either at common law or under our statutes. It charges no offence known to either system." The opinion held that slaves were not subject to the protection of common law and that earlier cases in which whites were prosecuted for the murder of slaves under common law were founded on "unmeaning twaddle. . . . 'natural law,' 'civilization

and Christian enlightenment,' in amending *proprio vigore*, the rigor of the common law."

If subjectivity is calculated in accordance with degrees of injury and sexual violation is not within the scope of offenses that affected slave existence, what are the consequences of this repression and disavowal in regard to gender and sexuality? Does this callous circumscription of black sentience define the condition of the slave female, or does it challenge the adequacy of gender as a way of making sense of the inscription and exploitation of captive bodies? Put differently, what place does the enslaved female occupy within the admittedly circumscribed scope of black existence or slave personhood? As a consequence of this disavowal of offense, is her scope of existence even more restricted? Does she exist exclusively as property? Is she insensate? What are the repercussions of this construction of person for the meaning of "woman"?

The "too common occurrence of offence" and an "offence not effecting existence" differentiated what Cobb described as the strongest passion of blacks—lust—into gendered categories of ubiquitous criminality and negligible injury. Such designations illuminate the concerted processes of racialization, accumulation, engenderment, domination, and sexual subjection. Here it is not my intention to reproduce a heteronormative view of sexual violence as only and always directed at women or to discount the "great pleasure in whipping a slave" experienced by owners and overseers or eliminate acts of castration and genital mutilation from the scope of sexual violence but rather to consider the terms in which gender—in particular, the category "woman"—becomes meaningful in a legal context in which subjectivity is tantamount to injury. The disavowal of sexual violence is specific not only to engendering "woman" in this particular instance but also to the condition of enslavement in general. In cases like *Humphrey v. Utz* and *Werley v. State*, essentially what was being decided was whether acts of genital mutilation and castration (legally defined as acts of mayhem) were crimes when perpetuated against the enslaved or acts of just and reasonable violence. Obviously, the quotidian terror of the antebellum world made difficult the discernments of socially tolerable violence versus criminal violence. How did one identify "cruel" treatment in a context in which routine acts of barbarism were considered not only reasonable but also necessary?

To return to the central issues, the law's selective recognition of slave personhood in regard to issues of injury and protection failed to acknowledge the matter of sexual violation, specifically rape, and thereby defined the identity of the slave female by the negation of sentience, an invulnerability to sexual violation, and the negligibility of her injuries. However, it is important that the decriminalization of rape not be understood as dispossessing the enslaved of female gender, but in terms of differential production of gendered identity or, more specifically, the adequacy or meaning of gender in this context. Therefore, what is at stake here is not maintaining gender as an identitarian category but rather examining gender formation in relation to property relations, the sexual economy of slavery, and the calculation of injury.

The weighing of person and property—the limited recognition of the slave as person, to the extent that it did not interfere with the full enjoyment of the slave as

thing—endowed the enslaved with limited protections and made them vulnerable to injury, precisely because the recognition of person and the calibration of subjectivity were consonant with the imperatives of the institution. The protection of property (defined narrowly by work capacity and the value of capital), the public good (the maintenance of black subordination), and the maintenance and reproduction of the institution of slavery determined the restricted scope of personhood and the terms of recognition.<sup>64</sup> These concerns also governed the regulation and nullification of mothering and the protections extended to white women in order to control their sexual conduct and consolidate black subordination.<sup>65</sup> The affiliation of sexuality, property, and injury and the particular determination of “offences to existence” and alienable or extricable features of the slave person are illuminated by the negation of black parenting and the law’s protection of white women.

In the case of motherhood, the reproduction and conveyance of property decided the balance between the limited recognition of slave humanity and the owner’s rights of property in favor of the latter. The maternal function was not enshrined with minimal or restricted rights but indistinguishable from the condition of enslavement and its reproduction. Motherhood was critical to the reproduction of property and black subjection, but parental rights were unknown to the law. This negation was effected in instances that ranged from the sale and separation of families to the slave owner’s renaming of black children as a demonstration of his power and dominion. The issue of motherhood concerned the law only in regard to the disposition and conveyance of property and the determination and reproduction of subordinate status. The concept of “injury” did not encompass the loss of children, natal alienation, and enforced kinlessness. The law’s concern with mothering exclusively involved questions of property: diminutions in the value of slave property if the slave female was unable to reproduce or disputes regarding the conveyance and loss of property—lest we forget, we are talking about children here. Motherhood, specifically, and parenting, in general, were social relations without legal recognition in terms of either positive or negative entitlements.<sup>66</sup>

The relations between protection, injury, and property and the constituents and entitlements of “woman” are also illuminated by the laws concerning miscegenation, seduction, and rape, for the protection extended white women reveals not only the indeterminacy of rights but also the way in which these entitlements are used to secure, if not intensify, subordination. In this case, “protection” operated in concert with the maintenance of racial and gender hierarchies and as an instrument of social control. For example, the civil remedy for seduction required an action by the father in which the suit for damages was conducted under the guise of the master-servant relationship. Damages were awarded on the basis of lost services.<sup>67</sup> In cases of seduction, the protection extended women was articulated not in the form of their embodied rights but in terms of the master’s entitlement to his servant’s services and the right to compensation for the injury or impairing of his servant. These laws sheltered white women from harm as they intensified the regulation and control of white female sexuality, since this security depended upon chaste and virtuous behavior and an allegiance to racist regulatory norms. The selective protection of the law only encompassed “respectable” women, and this respect ultimately depended upon the legitimate proprietary rights of men over female sexuality. (As neither



black fathers nor husbands bore any sanctioned or lawful relation to black women, they existed outside the circle of protection in this regard, too.)

Proper and legitimate relations determined a white woman's respectability. In cases of rape involving white women and black men, the charges were sometimes dismissed if these women were known to associate with blacks. White women's interracial liaisons with black men denied them the protection of the law. As well, the fact that the rape of black women was not a crime had important consequences for white women. The minimal conditions of existence deemed tolerable for slave women made it necessary to secure whiteness in order to guarantee that only white women received certain protections. The fact that slave women were not subject to the protection of common law (or slave law) regarding rape mandated that the whiteness of white women raped by slave men or by free black men had to be established in order to prosecute the assailant. Cases were dismissed in which the race of white women was not explicitly declared.

In *Commonwealth v. Jerry Mann*, Mann had been indicted, tried, and convicted for "feloniously making an assault upon a woman, with intent to ravish her. The law declares that if a slave shall attempt to ravish a white woman, he shall be adjudged a felon."<sup>68</sup> However, the judgment was arrested because "it was nowhere in the indictment stated, that Mary M'Causland was a white woman." In *Grandison (a Slave) v. State*, Grandison was convicted of assault and battery with intent to ravish Mary Douglass.<sup>69</sup> He was sentenced to death. But the judgment was reversed and arrested, and the prisoner was remanded to jail because "such an act committed on a black woman, would not be punished with death. . . . This fact [that the woman assaulted was white] gives to the offence its enormity. . . . [It] must be charged in the indictment and proved on trial." Yet the "enormity of offence" and "offences not effecting existence" are neither endowments nor dispossessions of gender but instead demonstrate the manner in which deployments of sexuality act concertedly with processes of racialization, accumulation, and domination.

It is necessary to belabor the issue because too often it has been argued that the enslaved female existed outside the gendered universe because she was not privy to the entitlements of bourgeois women within the white patriarchal family. As a consequence, gender becomes a descriptive for the social and sexual arrangements of the dominant order rather than an analytic category. As well, it naturalizes the discourse of protection and mystifies its instrumental role in the control and disciplining of body, and, more important, maintains the white normativity of the category "woman." What I am attempting to explore here is the divergent production of the category woman rather than a comparison of black and white women that implicitly or inadvertently assumes that gender is relevant only to the degree that generalizable and universal criteria define a common identity. Can we employ the term "woman" and yet remain vigilant that "all women do not have the same gender?"<sup>70</sup> Or "name as 'woman' that disenfranchised woman whom we strictly, historically, geopolitically *cannot imagine* as a literal referent" rather than reproduce the very normativity that has occluded an understanding of the differential production of gender?<sup>71</sup> By assuming that woman designates a known referent, an a priori unity, a precise bundle of easily recognizable characteristics, traits, and dispositions, we fail to attend to the contingent and disjunctive production of the category.

In other words, woman must be disassociated from the white middle-class female subject who norms the category. Thus the disregard for the sexual violation of enslaved women, the reproduction of subordination, and the negation of kinship cannot simply be explained or explained away as the absence of normative conditions of womanhood, for the work of feminist criticism is precisely the interrogation and deconstruction of this normativity rather than the determination of who is or is not woman in accordance with this measure. How can we understand the racialized engenderment of the black female captive in terms other than deficiency or lack in relation to normative conditions and instead understand this production of gender in the context of very different economies of power, property, kinship, race, and sexuality?

As well, if we approach this disavowal of violence and disregard of injury as specific to female engenderment and as largely defining the category "woman" rather than "captive," do we reproduce the presumed masculinity of the categories "person" and "slave"? What happens if we assume that the female subject serves as a general case for explicating social death, property relations, and the pained and punitive construction of blackness? What would be made possible if, rather than assuming the subject, we began our inquiry with a description of subjectification that did not attempt to name or interpret anything but to simply describe its surfaces? How would woman be cast in this process? Could we, in fact, release the category of woman from its fixity and white normativity and likewise examine racial subjection in articulation with engenderment? What possibilities of resignification would then be possible?<sup>72</sup>

The disregard of sexual injury does not divest slave women of gender but reveals the role of property relations—the possession of the enslaved—and racial subjugation in the constitution of gender and sexuality. In this case, possession occurs not via the protections of the patriarchal family and its control of female sexuality but via absolute rights of property. Therefore terms like "protection," "domesticity," and "honor" need to be recognized as specific articulations of racial and class location. The captive female does not possess gender as much as she is possessed by gender—that is, by way of a particular investment in and use of the body. What "woman" designates in the context of captivity is not to be explicated in terms of domesticity or protection but in terms of the disavowed violence of slave law, the sanctity of property and the necessity of absolute submission, the pathologizing of the black body, the restriction of black sentience, the multifarious use of property, and the precarious status of the slave within the public sphere. For example, the instrumental deployment of sexuality operated in disregard of white regulatory norms like chastity and marriage because of the civil status of the enslaved, the strategies of domination, and the constituent features of slavery as a mode of production—the fungibility of life, the ownership of labor, and the value of the slave as both a direct producer and a commodity. Within this economy, legitimate and proper relations were foreclosed. The particular investment in and exploitation of the captive body dissolved all networks of alliance and affiliation not defined by property ownership. This was evidenced by the courts' description of slave children neither as illegitimate nor bastards but as simply "not legitimate."<sup>73</sup>

At issue here is the construction of "woman" not as a foundational category with given characteristics, attributes, or circumstances but within a particular racial

economy of property that intensified its control over the object of property through the deployment of sexuality. Despite the proclaimed ties of affinity between those born and bred together, the enslaved female was subjected to violence within the plantation household and within the public arena. Within the private realm of the plantation household, she was subject to the absolute dominion of the owner and also experienced abuse within the slave enclave, and in the public sphere absolute submission defined the relation of the "public" to the black body. The law's failure to recognize rape as neither crime nor injury can be related to the prerogatives and entitlements of the private sphere, the full enjoyment of property that defined the rights of slave owners, and, in the public sphere, the necessity of black submission and the decriminalization of white violence requisite to preserving the public good.

What becomes clear is the contingency of woman as a category. While in the context of slave law, woman is figured, in this instance, in relation to the negation of injury, in the context of slave relations, men are also subject to forms of sexual violation and, notwithstanding, the enslaved fashion themselves as gendered subjects in accordance with their own norms of masculinity and femininity. Therefore, I do not claim or think it is possible to establish the constancy of woman across these varied territories. In many respects, the exploitation of the captive body makes the experience of men and women more similar than different, yet the enslaved recognized themselves as gendered subjects and the law also constructed gendered subjects, if only in regard to the severity of punishment and disavowal of injury.<sup>74</sup> In light of these remarks, what does the name "woman" designate within Cobb's restricted scope of subjective value? Does it merely mark the disavowed violence and pained condition of enslavement or make palpable the negligible injury? Does the condition of the enslaved female suggest an obtuseness to pain and injury? By interrogating gender within the purview of "offenses to existence" and examining female subject-formation at the site of sexual violence, I am not positing that forced sex constitutes *the* meaning of gender but that the erasure or disavowal of sexual violence engendered black femaleness as a condition of unredressed injury, which only intensified the bonds of captivity and the deadening objectification of chattel status.<sup>75</sup> Unlike the admittedly indispensable and requisite violence of *State v. Mann*, or the protections extended to other forms of injury, and the criminalization of particular acts of violence—homicide, mayhem, and battery—despite the procedural restrictions that made prosecution extremely difficult, if not nearly impossible, rape was unredressed and disavowed. Ironically, the intervention of affection and the calculation of black sentience intensified the violence legitimated within the scope of the law, and, in this way, the effort to regulate violence simply underscored the categories of unredressed injury. In the very effort to recognize the slave as person, blackness was reinscribed as pained and punitive embodiment and black humanity was constituted as a state of injury and punishment.

### The Shadow of the Law

The failure to recognize the damage of sexual violation, the negation of the captive's will except as an incitement to punishment, and the cynical recognition of slave humanity fashioned female gender so as to relegate the aforementioned

crimes against the flesh to the category of negligible injury and thereby reduce the already brutally circumscribed scope of black humanity. Moreover, this neglect of injury comes to represent the pained and punitive calculation of subjectivity not only in its various nominations—black, chattel, woman—but also in ways that defy a singular or sovereign axis of dispossession. The negligible injury of the violated female body exemplifies the differential production of domination as it concerns the engenderment of blackness, the defiling conditions of enslavement, the racialization of gender, and the varied inroads of power. In the confines of chattel slavery, gender is discernible primarily in terms of the uses and conveyances of property, calculations of sentence, evaluations of injury, and determinations of punishment.

The indifference to injury, the extended use and dispossession of the captive body, the negation of motherhood, and the failures and omissions of law are explored in Harriet A. Jacobs's *Incidents in the Life of a Slave Girl, as Written by Herself* as primary determinations of gender and as the very elements that inaugurate the crisis of consent or consensual sexual relations under domination. Jacobs requires that we consider not only the restricted scope of black humanity but also the effort to act as a desiring subject in a context in which consent inadequately designates the enactment of possibility and the constraints of agency.<sup>76</sup> By exploring these issues within the frame of seduction, the narrative precludes facile distinctions that would enable us to disentangle desire and domination or purportedly willed exchange from coercion. By underlining the unwieldiness of sexuality—the entanglements of instrumentality and pleasure—and the crisis induced by this contradictory state of affairs, *Incidents* challenges conventional interpretations that deem issues of desire and consent irrelevant in the context of enslavement or celebrate desire as the triumph of the captive will. To the contrary, the narrative illuminates the equivocations that surround agency, the unavoidable linkages of desire and domination, and the dangers of seduction. The nexus of desire, consent, and coercion that situates the discussion of the slave girl's sexuality perhaps entails a reconsideration of seduction that attends to the agency of the dominated in terms other than those we have previously considered, for if not a conspiracy of power, seduction in this instance enables opportunities for disruption and offers a glimpse of possibility in the context of peril.

The dangers of seduction, as stated earlier, concern the insinuation and simulation of the subordinate's will and the containment of agency within a repressive problematic of consent in order to legitimate the arrangements of power and dominance. This repressive problematic of consent enacts the captive will through the displacement of culpability and the designation of the enslaved as the ordinary locus of transgression, liability, and shame. The question that we have yet to decide is whether there is more at stake in seduction than the legitimation and disavowal of despotic power and the displacement of culpability via the simulation of the slave's agency. However, *Incidents*, by utilizing seduction and inquiring into its dangers, suggests the possible gains to be had by "making do" with or "using" seduction. Such an effort is fraught with perils precisely because there is no secure or autonomous exteriority from which the enslaved can operate or to which they can retreat. The double-edged nature of this gaming with power threatens to intensify constraints, rend the body, or

result in inevitable losses since within this domain the chances of safeguarding gains are already foreclosed. Therefore, how does one act without exacerbating the constraints of captivity or the violation of surrender?

The question arises as to whether seduction can provide a way of acquiring power or remains the exclusive purchase of the dominant—that is, a strategic disavowal of power that masks the violence of property relations and the despotism of the domestic institution behind the guise of the subaltern's willed surrender and consent to subjection. Can seduction also serve as a weapon of the weak or a vehicle for the articulation of needs and desires? Is it possible to consider the contested interaction of the captive female and white man/owner within this frame? Do points of resistance inhabit the enactment of willed surrender, or is it a surrender of another order? If the latter is the case, then the delineations of power are murky and uncertain. This does not mitigate the brutality or instrumentality of seduction but signals a use of tactics or possibilities previously unconsidered. As deployed in Jacobs's narrative, seduction suggests both agency and subjection. However, the exploration of seduction in *Incidents*, unlike that of slave law, strives to differentiate between the constraints of circumstance, which render consent inadequate as an explication of the negotiation and manipulation of power enacted by the enslaved, and the coercive annexation of the captive body, which makes it prey to the unrestricted uses and whims of the other. As well, the relation of injury and subjectivity is revisited at crucial sites of the law's repression and omission—the sexual violation of the captive female, the negation of kinship, and the (dis)possession of the body and its issue. These elements or "incidents" determine the condition of enslavement and engenderment. Unlike the law's discourse of seduction, in which the equivocations of will and submission are taken as the guarantees of reciprocity and possible reversals of power, the equivocations of seduction in *Incidents* concern issues of calculation, coercion, and the rendering of fact in the law's domain. More important, the textual staging of the scenario of seduction provides an opportunity to explore the meaning of consent from the perspective of the dispossessed and non-contractual subject. This exploration of consent specifically addresses the possibilities for action, recognition, and relationality that exist in the default of consent, for "deliberate calculation" reckons with the possibilities for agency that exist under conditions of duress, coercion, dispossession, manipulation, and constraint. Seduction, as the vehicle of this exploration, raises the question of whether a noncontractual subject can give consent and, if so, under what terms?

### The Narrative of Seduction

*Incidents* makes use of seduction and recasts it by emphasizing the degradations of enslavement, the perverse domesticity of the paternal institution, and the violence enacted on the captive body within an arena purportedly defined by ties of sentiment, mutual affection, and interest. The narrative recounts endless episodes of violence as a way of exposing the tacit entitlements of property relations and the "living death" of slavery and attending to the unredressed injury of the enslaved. In this deployment of seduction, the law's production of injury is roundly condemned,

precisely as the inadequacy of consent and the enactment of desire in the context of domination is considered. This exploration implicitly renders a more complex vision of power and the possible and circumscribed terms of agency by refusing to pose the question of desire in terms of compulsion versus unhindered choice. By doing so, the text represents the complicated terrain of the sexual and the limited possibilities for action under constraint and duress. This is accomplished by demystifying virtue and disclosing the legal mechanisms that secure and safeguard it. Virtue and consent are resituated through an analysis of the sexual contract—marriage, paternity, and the protection of the daughter's purity.<sup>77</sup> The textual performance of seduction historicizes virtue by revealing the role of the law in sustaining and defiling virtue. The work of narrative entails making visible the mechanisms that deny, repress, and redescribe injury and that produce and sustain chastity as a racial and class entitlement. Furthermore, it strives to grapple with the risky enterprise of desire and the pleasures of inviolate and nonpunitive embodiment.

"A Perilous Passage in the Slave Girl's Life" enacts the dilemma of seduction in the navigation of fated surrender and compulsion. As the following passage makes clear, the "deliberate calculation" of interest and the hope to avoid degrading and coerced submission rather than the freedom to choose the objects of one's affection determine what might be described as an "exchange" for freedom: "It seems less degrading to give one's self, than to submit to compulsion. There is something akin to freedom in having a lover who has no control over you, except what he gains by kindness and attachment. A master may treat you as rudely as he pleases, and you dare not speak. . . . Revenge and articulations of interest were added to flattered vanity and sincere gratitude for kindness. I knew nothing would enrage Dr. Flint so much as to know that I favored another; and it was something to triumph over my tyrant even in that small way."<sup>78</sup> Although "giv[ing] one's self" occurs without the coercion of violent threats, ownership, and direct control and is described as "akin to freedom," it is within the scope of power and domination that invariably structure the relations between white man and slave woman. It is important to note that it is not equality or the absence of constraint that is celebrated in this inscription of "calculation" but the possible gains to be made within the context of domination. Jacobs emphasizes this by describing Linda Brent's (Jacobs's pseudonymous identity) act as "something akin to freedom" but different from the freedom to choose the object of one's affection enjoyed by white women because of the legitimate/legal domestic arrangements of the white family (54).

Linda's choice cannot be explicated within the range of options available to white women. "Akin to freedom" expresses the limited possibilities, constraint, despair, and duress that condition the giving of the self, not unlimited options, freedom, or unencumbered choice. Even if we understand protection as an idealization of the control and regulation of white female sexuality, the point is that the "fall from virtue" is only intelligible in a context in which there is customary and legal protection of women, whether realized through the legitimation of marriage, the recognition of paternal right, or the criminalization of sexual violence. The status of this act, whether a "headlong plunge" or a revengeful and interested bid for freedom, matters less than the exercise of quite restricted agency over and against coercion and compulsion. It is an option that is the "less degrading" and intelligible

only within the scope of "laws [that] reduce you to the condition of chattel" and that make slaves "entirely subject to the will of another" (55).

Thus the issue of consent is framed by the law's negation of the captive will and the violent domination of slave relations.<sup>79</sup> Yet if this restricted or truncated state of consent is determined by the law's failures and omissions, it also critically refracts the nonconsent that ever and always stipulates the willingness of the captive female. Certainly the belabored comparison between the domestic arrangements of free white Northern women and those of slavery is intended to expose the role of the law in the construction and negation of consent in the patriarchal family and in the plantation household. In this regard, it is appropriate that Dr. Flint can only make sense of Linda's calculated defiance, this "acting out" or acting on behalf of hoped-for freedom, revenge, kindness, and affection, as a crime, thereby reinscribing any limited exertion of will, outside the scope of the master's dominion and not for his use, as crime: "Linda . . . you have been criminal towards me." The sovereignty endowed to the slave owner extends itself in this inversion of crime and law in which the law acts to inflict injury and then deny it, and crime, in its elasticity, encompasses all efforts to escape, expose, and redress injury. The repeated use of the term "crime" throughout the narrative documents the displacement of culpability onto the enslaved and crime as a predominant mode of black subjection.<sup>80</sup>

The feat of *Incidents* is not simply its representation of the normativity of sexual violence but also the endeavor to actualize something "akin to freedom" in this context, even if it affords little more than having a lover whom one is thankful not to despise. The narrative's reconsideration of virtue and attention to injury serve to expose not only the violence of law and the inadequacy of consent but also the fact that consent is predicated on the presumption of virtue and chastity, since it is impossible for an unchaste woman to be raped. The entitlement and negation of choice thus come to depend not only on one's civil status but also on the presumption of virtue. If, as I have argued above, virtue designates a racial entitlement not accorded to the enslaved, then consent is nullified not only on the grounds of one's civil status but also on the basis of presumed sexual predilections, which in the case of slave women come to be defined by default.

### The Seduction of the Reader

The seduction enacted in "A Perilous Passage" recounts the slave girl's "fall from virtue" in order to recontextualize virtue within the economy of slavery and trouble distinctions between the virtuous and the fallen. The enactment of seduction encompasses Linda's deliberate calculations and Sands's (Linda's white lover and the father of her two children) temptations and flattery and overcomes the resistances of the reader by an orchestrated display of weakness. The shamefaced appeals to the reader and the narrative's confessional tone ultimately expose the contingency of virtue. More important they effect a reversal in which the standards of virtue are deemed inappropriate in measuring the lives of enslaved women.<sup>81</sup> The chapter's language of guilty prostration lures the reader by manipulating her investments and desires. The seemingly naive and apologetic declarations work their

designs upon the reader. This enactment of seduction exemplifies the necessary cunning required to survive slavery.<sup>82</sup> As Jacobs writes elsewhere, "Who can blame slaves for being cunning? They are constantly compelled to resort to it. It is the only weapon of the weak and oppressed against the strength of their tyrants" (100-101). The exercise of cunning ensnares the reader at precisely the point in the narrative where the contemporaneous readership was most likely to sever identification with the slave girl because of her "recklessness." However, with the aid of the "weapon[s] of the weak," the narrator masterfully exercises her authority and sustains the reader's empathic identification.

The narrator guides us through the perilous passage in the slave girl's life by documenting the constant obstacles that confront the enslaved female and the inevitability of her violation. It is the cumulative effects of these "adverse circumstances" that are responsible for her "degraded condition." The narrator's appeal situates the reader in the position of the slave girl and implores the implied reader not to judge from the virtuous perspective of those whose homes are protected by law.<sup>83</sup> After all, it is desperation, despair, and "living death" that drive Linda into the arms of Sands. Her recklessness registers the inexorability of her undoing, as well as her despair. The naïveté of a fifteen-year-old girl and the slave's longing for freedom facilitate Linda's seduction by Sands's eloquent words. By detailing the defilements that characterize the slave girl's life, the narrator instructs the reader that the "degraded condition" of the slave woman must be contextualized within the tyranny of the master-slave relationship and not naturalized as a racial predilection or propensity for sexual excess. The inescapability of this violated condition provides the narrator with the license to speak the indelicate, within defined limits, and, at the same time, forestalls the condemnation of white Northern women. The narrative creates a dramatic vortex that engulfs the reader and vividly displays the relentless forces of sexual undoing; even the most obdurate reader cannot resist such entreaties.

As is most of the narrative, "A Perilous Passage" is narrated in the mode of recollection. However, the metered mode of recollection is disrupted here by the narrator's urgency. "And *now*, reader, I come to a period in my unhappy life, which I would gladly forget if I could" (emphasis mine).<sup>84</sup> The use of "now" in Linda's recollection seems to indicate that the entire narrative had been leading to this point. "Now" reflects the urgency of the effort to keep the reader's empathy and refers to the relationship between narrative and reader, at a place where narrative control is in jeopardy. It signals an endangered moment of negotiation between reader and narrator. It indicates not only the narrative location but also the self-reflexivity of the narrative about the crisis of its authority as it attempts to navigate the contemporaneous readership through the perilous passage.<sup>85</sup> The revisited event of crisis flashes before the reader by way of this temporal eruption, which figures the fall as the imperiled present, thereby placing the reader in the moment of danger and enabling her to apprehend the enormity of the crisis and the fatedness of the slave girl's undoing. This instant of peril flashes before the reader, beckoning her to fully experience this moment of danger, this "hour of extremity" (57). The reader, overwhelmed by the pain, shame, sorrow, pleas, and guilt, falls prey to the narrator's eloquent words just as Linda fell prey to Sands.



"There may be sophistry in all this," acknowledges the narrator; however, sophistry is essential to the seduction of the reader. Though concealed by the confessional tenor and proclaimed naïveté of the narrative, the duplicity of the narrative lies in its appeal to the reader for sympathy and understanding, while actually deposing the reader as judge. While seemingly conceding the higher moral ground to the good women of the North, it introduces them to the situational ethics of the enslaved and the necessary practices of cunning, duplicity, and sophistry: "Slaves, being surrounded by mysteries, deceptions, and dangers, early learn to be suspicious and watchful, and prematurely cautious and cunning" (155). As a narrative strategy, this duplicity involves conforming to the reader's desire in order to advance contrary arguments and transform the reader's incredulity and resistance into identification and empathy.<sup>86</sup>

The crisis of seduction is ameliorated by the seductiveness of the narrative.<sup>87</sup> Conforming to the readers' desires includes pandering to their sense of moral superiority only to topple the pedestal on which they stand and unmooring them in the storm of events. The narrative explicitly states that white Northern women cannot judge the slave girl by the same standards with which they judge themselves. The narrator's humbling appeal to the reader covertly forwards her own desires and secures a recognition of those desires. The identification of the slave girl as "victim" does not negate her role as agent.

However, the narrative's negotiating of desire and violation does not entirely escape the displacement of violence and omission of injury that characterize the discourse of seduction in slave law. The displacement of violence is inscribed as what the narrator "dares not speak." The urgent and desperate effort to keep the reader within the narrator's authority creates disruptions in the narrative and provides a line of exit that enables brutal facts to be avoided. On the one hand, we are to believe that Linda eludes her master, despite the extremity of violence exercised by Flint to force her "to change this line of policy."<sup>88</sup> On the other hand, the narrator's recurring maxim—that she dare not tell the worst—the author's constant reminders that "no pen can give adequate description of the all-pervading corruption produced by slavery," and the slave girl's belief that "resistance is hopeless" would seem to make escape impossible.<sup>89</sup>

The impossibility of adequately representing the violence of slavery is due not only to the enormity of the degradation and the unwillingness of the reader to believe the extremity or obscenity of violence but also to the fact that by speaking of these crimes the narrator carries the burden of the indecent and the obscene (28). On those occasions within the frame of the narrative when Linda tries to disclose her abuse to her mistress, confide in her grandmother, or act to escape Flint's assault, she becomes the object of reproach and is encumbered with guilt, crime, and disgrace. The double bind is that she must offer testimony about these degradations in order to help her sisters in bondage but that speaking of these crimes places the burden of guilt upon her. To speak of the foul wrongs committed against her is to enact the indecent and unveil the unspeakable. As a consequence of this double bind, rape is only represented in terms of its effects—mute, pregnant women and near-white offspring. This is also the case in Elizabeth Keckley's narrative, *Behind the Scenes or Thirty Years a Slave and Four Years in the White House*, in which children stand as the

embodiment of undisclosed and unspoken sexual violence: "Suffice it to say, that he prosecuted me for four years, and I—I—became a mother." The elisions articulate both the literal absence of rape in the law, "the edicts of that society which deemed it no crime to undermine the virtue of [slave] girls," and the textual crisis engendered by the effort to represent it.<sup>90</sup>

The unspoken and the censored haunt the narrative: "The degradations, the wrongs, the vices, that grow out of slavery are more than I can describe. They are greater than you would willingly believe."<sup>91</sup> The constraints on what can be said, the impossibility of representing the magnitude of slavery's violence, and the pain of recollection account for the selective character of the narrative: "I know that some are too much brutalized by slavery to feel the humiliation of their position; but many slaves feel it most acutely, and shrink from the memory of it."<sup>92</sup> Is the evasion of rape in the narrative thus an evasion of memory? Does anticipated disbelief on the part of the reader and the pain of recollection prohibit a full disclosure? Or can Jacobs's evasion be attributed to a concern for the reader's sensibility and delicacy? The avowedly fragmentary character of the narrative and the inhibitions to full disclosure prevent us from easily championing Linda's purported escape from Dr. Flint's sexual assault(s).

The anxiety and withholding that characterize the accounts of sexual violence in the narrative are determined by a complex of factors: the law's disavowal of violence, the strictures of decency, the pain of recollection, the resistance of the reader, and the conventions of sentimental literature.<sup>93</sup> In a letter to Amy Post, Jacobs described the difficulty involved in presenting a full account of her past because of the degradations she experienced and the pain of remembrance: "I have striven faithfully to give a true and just account of my own life in slavery. There are some things that I might have made plainer—Woman can whisper her cruel wrongs into the ear of a dear friend much easier than she could record them." The dashes in Jacobs's letter to Post, like the admittedly selective incidents of the narrative, obscure the materiality of violence in order to avoid the pain and humiliation necessarily a part of its retelling. If one thinks of these dashes and elisions as literal and figurative cuts in the narrative, then they display and displace the searing wounds of the violated and mute body, a body that acts out its remembrances without the symbolic endowments to articulate its history of injury. The dashes, ellipses, and circumlocutions hint at the excluded term by way of the bodies of slave women. The bodies of these women are textual enigmas to be interpreted by the reader since they are literally pregnant with the secrets of slavery. These figures dramatize the predicament of embodiment. This is not uncommon in sentimental fiction, where "bodily signs are adamantly and repeatedly presented as the preferred and most potent mechanisms both for communicating meaning and marking the fact of its transmission."<sup>94</sup> The sheer magnitude of violence exceeds the scope of the representable and prevents a full disclosure of slavery's crimes. Even descriptions that "fall far short of the facts" risk prurience and entail a Sisyphean effort to unveil that which is said not to exist in the law's domain of fact.

The anxiety that attends Jacobs's understated and avowedly selective narration of these crimes must also be attributed to the ensnaring character of crime—its ability to engulf its object and dislodge responsibility onto its victim. In the absence of a

licit space for the captive female's desire, it, too, becomes engulfed as crime. Not only do the enslaved bear the burden of crime, the onus of guilt indissociable from speaking of the foul wrongs of slavery, and the punishment essential to the constitution of the subject, but also the inability to marry renders all desire illegitimate, as it is unlicensed, extralegal, and without a sanctioned domain. Consequently, the defilements and violations of slavery are incorporated as shame. Just as sophistry articulates the constraints of agency, shame reveals the legal predicament of the subject, defined by the negation of will and illicit and unlawful willfulness. Shame symptomatically articulates the inevitable construction of desire, willfulness, and agency in terms of the illicit, the dishonorable, and the unlawful. Within the economy of slavery, neither love nor desire is legitimated through the formal recognition of relationality, as in marriage, consensual relations, or parenting. They are simply not legitimate. In short, they are neither recognized nor endowed with legal right. In order to create a space for desire, fully cognizant of this absence of right, the narrative emphasizes the role of law in determining the (il)legitimacy of desire and the inevitability of wrongdoing. As a structure of feeling, shame expresses the devaluation of chattel status, the dissolution experienced in being absolutely subject to another, and the recognition of one's abjection. It denotes the affective dimension of the general condition of dishonor constitutive of enslavement.<sup>95</sup> In this regard, being "shamefaced at the telling" cannot be explained solely by contrasting it with virtue or true womanhood; it registers the particular mechanisms of subjection.

Ironically, Linda's feelings of disgrace are conditioned by the very act that grants a limited and provisional freedom. If deliberate calculation is unable to effect an "event," a reversal of forces in the relations of domination, it is clearly double-edged, for the bid for freedom culminates in another "tie" or "link" to bondage. The same act both holds out the possibility of freedom and intensifies the burdens and constraints of enslavement. If this negotiation of desire is eclipsed by shame, it is also important to recognize the transience of this desire and its resolutely ambivalent character. It is renounced and justified. It is fueled by the need for recognition, protection, and reciprocity and by revenge, yet it can be neither sustained nor actualized because of the absence of a proper domain. As a consequence, desire presupposes guilt. However, since Jacobs foregrounds the role of the law in the construction of the "not legitimate," guilt must be seen as the social production of wrongdoing due to the absence of lawful networks of exchange, the inability to form contracts, and the negation of sociality, and as a result, calculation rather than courtship, purchase rather than proposal, manumission rather than marriage delimit the circuits of desire in the economy of slavery.

These circuits or perilous passages occur in the default of legal, sound, or suitable arrangements. Outside the shadow of law, compulsion eclipses choice, as neither right nor protection secures the line between consent and nonconsent. Therefore, the effort to distinguish between being compelled to submit and "giving oneself" relies on Flint's vile proposals and assaults in order to define choice by contradistinction. Nonetheless, the line between something akin to choice and nonconsent is permeable and uncertain because an absolute distinction between them cannot be sustained in the context of slave relations. This uncertainty expresses the dilemma of consent for the noncontractual subject. The very term "deliberate calculation," in contrast

o "free choice," illuminates the incommensurability of consent and its indebtedness to a contractual model of social relations. Choice is a legal entitlement beyond the scope of the enslaved, who are reduced to chattel, unprotected by law, and 'entirely subject to the will of another' (55). At the same time, the narrative endeavors to represent Linda's choice, precisely in order to make claims for freedom, claims that are only intelligible within the terms of willed exchange, self-possession, and the alienability of the self as property definitive of liberty.

Despite the effort to differentiate between compulsion and "giving oneself," coercion and calculation become interwoven in the narrative as in the law. Largely because the assertion of consent requires an impossible approximation, it assumes a space of desire defined neither by white dominance ("a lover who has no control over you") nor by coercion, but by kindness and willed exchange ("it seems less degrading to give one's self"). In addition, this "giving of the self" presupposes a degree of autonomy over the self in order to be able to facilitate this transaction. This 'deliberate calculation' acts as a transmutation of property in which chattel, absolutely subject to the will of another, gives way to property in the self. As in the case of "stealing away," the slave's property in the self is defined not by possession or legal title, customarily understood as inalienable rights, but by appropriation and theft. The relation of the enslaved to the self is possible only by way of wrongful possession or possession without right or permission. Thus the deliberate calculation reinscribes the status of the self as property in order to undo it. This is true on a formal and substantive level in that Linda hopes this exchange will result in freedom for herself and her children. Consequently, this state "akin to freedom," like freedom itself, reveals the indebtedness of liberty to property and to an alienable and exchangeable self.

The effort to represent desire and momentarily grant it a space requires that a degree of choice, however constrained, be exercised, or else there is no basis on which to differentiate Linda's relation with Sands from her relation with Flint or choice from nonconsent. Yet in the effort to distinguish between "giving one's self" and "submit[ing] to compulsion," the narrative reinscribes the paradox of seduction. Force, will, and submission become entangled in ways that obscure violence and disavow injury. This is particularly attenuated in regard to the slave girl's resistance and Linda's refusal to "yield" to Flint. Jacobs repeatedly asserts that the slave girl's resistance to her master's violation is hopeless and her degradation inevitable. However, unlike other slave girls whipped and starved into submission, Linda eludes this fate. This is attributed to her determined will.

This assertion seems to contradict the main thrust of Jacobs's argument, which maintains that being forced to submit to the will of the master in all things defines the predicament of enslavement, yet this condition of subjection, resignation, and enforced will-lessness imposed by domination should not be mistaken for compliance or assent. It simply registers the fact that resistance is hopeless. This, coupled with the demystification of virtue, dislodges the burden of guilt that had been foisted onto the slave girl in the course of her violation. Nonetheless, in depicting Flint's assault and Linda's seemingly successful evasions of his intended rape, Jacobs contravenes this argument and inadvertently reinforces the idea that if determined enough, one can escape violation, thereby implicitly suggesting that submission is to some degree

an act of compliance and that utmost resistance establishes the meaning of nonconsent. Clearly, she does not intend to imply that the absence of physical resistance instantiates consent or that utmost resistance exclusively defines nonconsent. Nonetheless, when moving from the general to the specific, from the slave girl to Linda, she attempts to establish her innocence by strict adherence to this formula. The inability to resist one's master does not imply consent, but utmost resistance is required to establish nonconsent. These assertions are at cross-purposes and act to displace and extend the discourse of seduction, while fully illuminating the double bind of agency. This is compounded by the representation of Flint's assaults that are directed at securing Linda's submission precisely as an admission of her consent and willful participation in the coerced arrangements. Thus rather than illustrating the utter negation of consent and the triumph of violence, the event of rape would be taken as the very emblem of willful submission.

In the effort to reveal the violence requisite to acquiring submission and to document resistance, Jacobs must resort to extreme measures in order to hypothesize an exercise of will not yoked to submission. In other words, utmost resistance becomes the means by which she extricates willlessness and willfulness or perfect submission and consent. If the possibility of refusing or evading Flint is precluded, then Linda's choice of Sands cannot be differentiated from the indiscriminate use of her body by Flint. As well, the presumption that only a chaste woman can exercise nonconsent requires that coercion be actively resisted in order to disentangle nonconsent and consent.<sup>96</sup>

The opportunity for nonconsent is required to establish consent, for consent is meaningless if refusal is not an option. Nonetheless, the very effort to demonstrate consent reveals its impossibility if consent is understood as a voluntary agreement free from constraint or compulsion or as unimpinged by relations of power and dominance. After all, if desperation, recklessness, and hopelessness determine "choosing one's lover," absolute distinctions between compulsion and assent cannot be sustained. Yielding to another or giving one's self is no less subject to constraint, though it is certainly different from and preferable to being forced to submit. Consent is unseemly in a context in which the very notion of subjectivity is predicated upon the negation of will. The impossibility of an absolute disassociation of choice and compulsion and the inability to escape the entanglements of willlessness and willfulness constitutive of the subject of slave law condition the ambiguous representation of sexual violence in the narrative and culminate in the displacement of rape as seduction.

In light of this, how can one account for the force of determined will without reproducing the dilemmas of seduction—facile declarations of reciprocity and reversal that serve to obscure the violence of law, the extremity of domination, and the regularity of injury or reproduce injurious norms in the very effort to elude violence? It appears that seduction inevitably entails a calculated misreading or misrecognition of the state of domination, which presumes a degree of latitude in directing the conduct of others predicated upon reciprocity and the ties of mutual affection or, conversely, upon withholding and calculated action. Whether for the instrumental ends of securing subordination or in order to seize opportunities to protect oneself and further one's aims under conditions that one does not control, it assumes that the

enslaved possess the power to withhold and/or exercise influence by giving or withholding. Do the provisional forms of action available to the enslaved necessarily entail utopian premises that assume a greater degree of power and possibility than usually exists? Are these misreadings necessary and purposeful? Can these impossible approximations of the desired and the longed for be refused, or are they simply in aspect of the arduous and imaginative labor required in advancing claims for freedom? If these tactics are unable to effect reversals of power and instead evidence the provisionality of resistance and the magnitude of domination, at the very least, they are guided by the yearning to refashion and transform the given.<sup>97</sup>

Contrary to the instrumental will that produces the docile body or the simulated will of the enslaved that underwrites the brutality and beneficence of the master-slave relation in cases like *State v. Mann*, the determined will that enables Linda to elude Flint is not a form of action or can-do-ness guaranteed by volition or self-possession but a rudimentary form of action harnessed by constraint. It is an exercise of will estranged from the assured and univocal expressive capacity of the intending subject. Rather, it is constrained and contradictory. Nonetheless, Jacobs's invocation of the determined will is an effort to enact and imagine the will in terms other than the reproduction of subordination or the incitement to punishment; it is an occasion for action and change.

In order to act, Linda must to a degree "assume the self," not only in order to "give herself" but also to experience something akin to freedom. This deliberate calculation enables the experience of a limited freedom; however, it requires that she make possession and offer herself to another. This act also intensifies the constraints of slavery and reinscribes her status as property, even if figuratively property of another order, at the very moment in which she tries to undo and transform her status. If she must enter this exchange in a bid for freedom, then it serves to reveal the indebtedness of freedom to notions of property, possession, and exchange.<sup>98</sup> This order of property, although markedly different from that of chattel slavery, essentially constructs the self as alienable and exchangeable, and notably sexuality is at the heart of this exchange. In "giving herself to another," Linda hoped to achieve her freedom and that of her children. Ultimately, what is revealed in the course of Linda's "deliberate calculation" is that the very effort to "liberate" the slave positions the self in a network of exchange underwritten by the extrications of constraint, property, and freedom.

At the conclusion of the narrative, Jacobs writes: "Reader, my story ends with freedom; not in the usual way, with marriage. I and my children are now free! We are as free from the power of slaveholders as are the white people of the north; and though that, according to my ideas, is not saying a great deal, it is a vast improvement in *my* condition." This implicit critique of the limits of formal freedom without independence, prefigured by the "loophole of retreat," anticipated the burdened individuality that awaited the emancipated masses whose only resource was newly acquired property in the self.

PART TWO

*The Subject of Freedom*





## *The Burdened Individuality of Freedom*

The limits of political emancipation appear at once in the fact that the state can liberate itself from constraint without man himself being really liberated; that a state may be a free state without man himself being a free man.

—Karl Marx, *On the Jewish Question* (1843)

The emancipation of the slaves is submitted to only in so far as chattel slavery in the old form could not be kept up. But although the freedman is no longer considered the property of the individual master, he is considered the slave of society.

—Carl Schurz, *Report on the Condition of the South* (1865)

Are we to esteem slavery for what it has wrought, or must we challenge our conception of freedom and the value we place upon it?

—Orlando Patterson, *Slavery and Social Death* (1982)

The entanglements of bondage and liberty shaped the liberal imagination of freedom, fueled the emergence and expansion of capitalism, and spawned proprietorial conceptions of the self. This vexed genealogy of freedom plagued the great event of Emancipation, or as it was described in messianic and populist terms, Jubilee. The complicity of slavery and freedom or, at the very least, the ways in which they assumed, presupposed, and mirrored one another—freedom finding its dignity and authority in this “prime symbol of corruption” and slavery transforming and extending itself in the limits and subjection of freedom—troubled, if not elided, any absolute and definitive marker between slavery and its aftermath.<sup>1</sup> The long-standing and intimate affiliation of liberty and bondage made it impossible to envision freedom independent of constraint or personhood and autonomy separate from the sanctity of property and proprietorial notions of the self. Moreover, since the dominion and domination of slavery were fundamentally defined by black subjection, race appositely framed questions of sovereignty, right, and power.<sup>2</sup>

The traversals of freedom and subordination, sovereignty and subjection, and autonomy and compulsion are significant markers of the dilemma or double bind of freedom. Marx, describing a dimension of this paradox, referred to it with dark humor as a double freedom—being free to exchange one’s labor and free of material resources. Within the liberal “Eden of the innate rights of man,” owning easily gave

way to being owned, sovereignty to fungibility, and abstract equality to subordination and exploitation.<sup>3</sup> If sovereignty served "to efface the domination intrinsic to power" and rights "enabled and facilitated relations of domination," as Michel Foucault argues, then what we are left to consider is the subjugation that rights instigate and the domination they efface.<sup>4</sup>

The task of the following chapters is to discern the ways in which emancipatory discourses of rights, liberty, and equality instigate, transmit, and effect forms of racial domination and liberal narratives of individuality idealize mechanisms of domination and discipline. It is not simply that rights are inseparable from the entitlements of whiteness or that blacks should be recognized as legitimate rights bearers; rather, the issue at hand is the way in which the stipulation of abstract equality produces white entitlement and black subjection in its promulgation of formal equality. The fragile "as if equal" of liberal discourse inadequately contends with the history of racial subjection and enslavement, since the texture of freedom is laden with the vestiges of slavery, and abstract equality is utterly enmeshed in the narrative of black subjection, given that slavery undergirded the rhetoric of the republic and equality defined so as to sanction subordination and segregation. Ultimately, I am trying to grapple with the changes wrought in the social fabric after the abolition of slavery and with the nonevent of emancipation insinuated by the perpetuation of the plantation system and the refiguration of subjection.

In exploring these issues and in keeping with the focus on everyday practices, I examine pedagogical handbooks designed to aid freed people in the transition from slavery to freedom, the itinerancy of the freed and other "exorbitant" practices, agricultural reports concerned with the productivity of free labor, political debate on the Reconstruction Amendments, and legal cases in order to consider the discrepant bestowal of emancipation. The narratives of slavery and freedom espoused in these disparate sources vied to produce authoritative accounts of liberty, equality, free labor, and citizenship. This generally entailed a deliberation on the origins of slavery, if not the birth of the republic, the place of slavery in the Constitution, the substance of citizenship, and the lineaments of black freedom.

By examining the metamorphosis of "chattel into man" and the strategies of individuation constitutive of the liberal individual and the rights-bearing subject, I hope to underscore the ways in which freedom and slavery presuppose one another, not only as modes of production and discipline or through contiguous forms of subjection but as founding narratives of the liberal subject revisited and revisioned in the context of Reconstruction and the sweeping changes wrought by the abolition of slavery. At issue are the contending articulations of freedom and the forms of subjection they beget. It is not my intention to argue that the differences between slavery and freedom were negligible; certainly such an assertion would be ridiculous. Rather, it is to examine the shifting and transformed relations of power that brought about the resubordination of the emancipated, the control and domination of the free black population, and the persistent production of blackness as abject, threatening, servile, dangerous, dependent, irrational, and infectious. In short, the advent of freedom marked the transition from the pained and minimally sensate

existence of the slave to the burdened individuality of the responsible and encumbered freedperson.

The nascent individualism of the freed designates a precarious autonomy since exploitation, domination, and subjection inhabit the vehicle of rights. The divisive and individuating power of discipline, operating in conjunction with the sequestering and segregating control of black bodies as a species body, permitted under the guise of social rights and facilitated by the regulatory power of the state, resulted in the paradoxical construction of the freed both as self-determining and enormously burdened individuals and as members of a population whose productivity, procreation, and sexual practices were fiercely regulated and policed in the interests of an expanding capitalist economy and the preservation of a racial order on which the white republic was founded. Lest "the white republic" seem like an inflated or unwarranted rhetorical flourish, we must remember that the transformation of the national government and the citizenship wrought by the Reconstruction Amendments were commonly lamented as representing the loss of the "white man's government."<sup>5</sup>

In light of the constraints that riddled conceptions of liberty, sovereignty, and equality, the contradictory experience of emancipation cannot be adequately conveyed by handsome phrases like "the rights of the man," "equal protection of the law," or "the sanctity of life, liberty, and property." Just as the peculiar and ambivalent articulation of the chattel status of the enslaved black and the assertion of his rights under the law, however limited, had created a notion of black personhood or subjectivity in which all the burdens and few of the entitlements of personhood came to characterize this humanity, so, too, the advent of freedom and the equality of rights conferred to blacks a status no less ambivalent. The advent of freedom held forth the possibility of a world antithetical to slavery and portents of transformations of power and status that were captured in carnivalesque descriptions like "bottom rail on top this time." At the same time, extant and emergent forms of domination intensified and exacerbated the responsibilities and the afflictions of the newly emancipated. I have opted to characterize the nascent individualism of emancipation as "burdened individuality" in order to underline the double bind of freedom: being freed from slavery and free of resources, emancipated and subordinated, self-possessed and indebted, equal and inferior, liberated and encumbered, sovereign and dominated, citizen and subject. (The transformation of black subjectivity effected by emancipation is described as nascent individualism not simply because blacks were considered less than human and a hybrid of property and person prior to emancipation but because the abolition of slavery conferred on them the inalienable rights of man and brought them into the fold of liberal individualism. Prior to this, legal precedents like *State v. Mann* and *Dred Scott v. Sanford* made the notions of blacks' rights and black citizenship untenable, if not impossible.)

The antagonistic production of abstract equality and black subjugation rested upon contending and incompatible predications of the freed—as sovereign, indivisible, and self-possessed and as fungible and individuated subjects whose capacities could be quantified, measured, exchanged, and alienated. The civil and political rights bestowed upon the freed dissimulated the encroaching and invasive forms of social control exercised over black bodies through the veneration of custom; the regulation,

production, and protection of racial and gender inequality in the guise of social rights; the repressive instrumentality of the law; and the forms of extraeconomic coercion that enabled the control of the black population and the effective harnessing of that population as a labor force. The ascribed responsibility of the liberal individual served to displace the nation's responsibility for providing and ensuring the rights and privileges conferred by the Reconstruction Amendments and shifted the burden of duty onto the freed. It was their duty to prove their worthiness for freedom rather than the nation's duty to guarantee, at minimum, the exercise of liberty and equality, if not opportunities for livelihood other than debt-peonage. Emancipation had been the catalyst for a transformed definition of citizenship and a strengthened national state. However, the national identity that emerged in its aftermath consolidated itself by casting out the emancipated from the revitalized body of the nation-state that their transient incorporation had created.<sup>6</sup> In the aftermath of the Civil War, national citizenship assumed greater importance as a result of the Fourteenth Amendment, which guaranteed civil rights at the national level against state violation and thus made the federal government ultimately responsible for ensuring the rights of citizens.<sup>7</sup> Yet the illusory universality of citizenship once again was consolidated by the mechanisms of racial subjection that it formally abjured.

This double bind was the determining condition of black freedom. The belated entry of the newly freed into the realm of freedom, equality, and property, as perhaps expected, revealed the boundaries of emancipation and duly complicated the meaning of freedom. Certainly manhood and whiteness were the undisclosed, but always assumed, norms of liberal equality, although the Civil Rights Act of 1866 made this explicit in defining equality as being equal to white men. The challenge of adequately conveying the dilemmas generated by this delayed entry exceeds the use of descriptions like "limited," "truncated," or "circumscribed" freedom; certainly these designations are accurate, but they are far from exhaustive. This first order of descriptives begs the question of how race, in general, and blackness, in particular, are produced through mechanisms of domination and subjection that have yoked, harnessed, and infiltrated the apparatus of rights. How are new forms of bonded labor engendered by the vocabulary of freedom? Is an emancipatory figuration of blackness possible? Or are we to hope that the entitlements of whiteness will be democratized? Is the entrenchment of black subordination best understood in the context of the relations of production and class conflict? Is race best considered an effect of the operation of power on bodies and populations exercised through relations of exploitation, domination, and subjection? Is blackness the product of this combined and uneven articulation of various modalities of power? If slave status was the primary determinant of racial identity in the antebellum period, with "free" being equivalent to "white" and slave status defining blackness, how does the production and valuation of race change in the context of freedom and equality?<sup>8</sup>

The task of describing the status of the emancipated involves attending to the articulation of various modes of power, without simply resorting to additive models of domination or interlocking oppressions that analytically maintain the distinctiveness and separateness of these modes and their effects, as if they were isolated elements that could be easily enumerated—race, class, gender, and sexuality—or as if they were the ingredients of a recipe for the social whereby the mere listing of

elements enables an adequate rendering. Certainly venturing to answer these questions is an enormously difficult task because of the chameleon capacities of racism, the various registers of domination, exploitation and subjection traversed by racism, the plasticity of race as an instrument of power, and the divergent and sundry complex of meanings condensed through the vehicle of race, as well as the risks entailed in generating a description of racism that does not reinforce the fixity of race or neglect the differences constitutive of race. As well, it is important to remember that there is not a monolithic or continuous production of race. Mindful of these concerns, chapter 5, "Fashioning Obligation: Indebted Servitude and the Fetters of Slavery," and chapter 6, "Instinct and Injury: Bodily Integrity, Natural Affinities, and the Constitution of Equality," do not attempt to theorize blackness as such but instead examine varied and contested articulations of blackness in regard to issues of responsibility, will, liberty, contract, and sentiment.

If race formerly determined who was "man" and who was chattel, whose property rights were protected or recognized and who was property, which consequently had the effect of making race itself a kind of property, with blackness as the mark of object status and whiteness licensing the proprietorship of self, then how did emancipation affect the status of race? The proximity of black *and* free necessarily incited fundamental changes in the national fabric. The question persists as to whether it is possible to unleash freedom from the history of property that secured it, for the security of property that undergirded the abstract equality of rights bearers was achieved, in large measure, through black bondage. As a consequence of emancipation, blacks were incorporated into the narrative of the rights of man and citizen; by virtue of the gift of freedom and wage labor, the formerly enslaved were granted entry into the hallowed halls of humanity, and, at the same time, the unyielding and implacable fabrication of blackness as subordination continued under the aegis of formal equality. This is not to deny the achievements made possible by the formal stipulation of equality but simply to highlight the fractures and limits of emancipation and the necessity of thinking about these limits in terms that do not simply traffic in the obviousness of common sense—the denial of basic rights, privileges, and entitlements to the formerly enslaved—and yet leave the framework of liberalism unexamined. In short, the matter to be considered is how the formerly enslaved navigated between a travestied emancipation and an illusory freedom.<sup>9</sup>

When we examine the history of racial formation in the United States, it is evident that liberty, property, and whiteness were inextricably enmeshed. Racism was central to the expansion of capitalist relations of production, the organization, division, and management of the laboring classes, and the regulation of the population through licensed forms of sexual association and conjugal unions and through the creation of an internal danger to the purity of the body public. Whiteness was a valuable and exclusive property essential to the integrity of the citizen-subject and the exemplary self-possession of the liberal individual. Although emancipation resulted in a decisive shift in the relation of race and status, black subordination continued under the aegis of contract. In this regard, the efforts of Southern states to codify blackness in constitutions written in the wake of abolition and install new measures in the law that would secure the subordination of freed black people demonstrate the prevailing disparities of emancipation. The discrepant production of

blackness, the articulation of race across diverse registers of subjection, and the protean capacities of racism illuminate the tenuousness of equality in a social order founded on chattel slavery. Certainly the freed came into "possession" of themselves and basic civil rights consequent to the abolition of slavery. However, despite the symbolic bestowal of humanity that accompanied the acquisition of rights, the legacy of freedom was an ambivalent one. If the nascent mantle of sovereign individuality conferred rights and entitlements, it also served to obscure the coercion of "free labor," the transmutation of bonded labor, the invasive forms of discipline that fashioned individuality, and the regulatory production of blackness.

Notwithstanding the dissociation of the seemingly inviolable imperial body of property resulting from the abolition of slavery and the uncoupling of the master-and-slave dyad, the breadth of freedom and the shape of the emergent order were the sites of intense struggle in everyday life. The absolute dominion of the master, predicated on the annexation of the captive body and its standing as the "sign and surrogate" of the master's body, yielded to an economy of bodies, yoked and harnessed, through the exercise of autonomy, self-interest, and consent. The use, regulation, and management of the body no longer necessitated its literal ownership since self-possession effectively yielded modern forms of bonded labor. However, as Marx observed with notable irony, the pageantry of liberty, equality, and consent enacted within this veritable Eden of rights underwent a radical transformation after the exchange was made, the bargain was struck, and the contract was signed. The transactional agent appeared less as the self-possessed and willful agent than as "someone who has brought his own hide to market and now has nothing to expect—but a tanning."<sup>10</sup> Although no longer the extension and instrument of the master's absolute right or dominion, the laboring black body remained a medium of others' power and representation.<sup>11</sup> If the control of blacks was formerly effected by absolute rights of property in the black body, dishonor, and the quotidian routine of violence, these techniques were supplanted by the liberty of contract that spawned debt-peonage, the bestowal of right that engendered indebtedness and obligation and licensed naked forms of domination and coercion, and the cultivation of a work ethic that promoted self-discipline and induced internal forms of policing. Spectacular displays of white terror and violence supplemented these techniques.<sup>12</sup>

At the same time, the glimpse of freedom enabled by the transformation from chattel to man fueled the resistance to domination, discipline, and subjugation, for the equality and personal liberty conferred by the dispensation of rights occasioned a sense of group entitlement intent on collective redress as these newly acquired rights also obfuscated and licensed forms of social domination, racial subjection, and exploitation. Despite the inability of the newly emancipated to actualize or enjoy the full equality or freedom stipulated by the law and the ways in which these newly acquired rights masked the modes of domination attendant to the transition from slavery to freedom, the possession of rights was nonetheless significant.

The failures of Reconstruction are perhaps best understood by examining the cross-hatchings of slavery and freedom as modes of domination, subjection, and accumulation.<sup>13</sup> Just as "the veiled slavery of wage labourers in Europe needed the unqualified slavery of the New World as its pedestal," so, too, did slavery provide the pedestal upon which the equality of rights appeared resplendent and veil the

relations of domination and exploitation harbored in the language of rights. If the violation of liberty and rights exacted by slavery's presence disfigured the revolutionary legacy of 1776—life, liberty, and the pursuit of happiness—then no less portentous was the legitimation and sanctioning of race as a natural ordering principle of the social during the transformation of national identity and citizenship. The legacy of slavery was evidenced by the intransigence of racism, specifically the persistent commitment to discriminatory racial classifications despite the prohibition of explicit declarations of inequality or violations of life, liberty, and property based on prior condition of servitude or race. On one hand, the constraints of race were formally negated by the stipulation of sovereign individuality and abstract equality, and on the other, racial discriminations and predilections were cherished and protected as beyond the scope of law. Even more unsettling was the instrumental role of equality in constructing a measure of man or descending scale of humanity that legitimated and naturalized subordination. The role of equality in the furtherance of whiteness as the norm of humanity and the scale and measure of man was not unlike the surprisingly adverse effects wrought by the judicial assessment of the Thirteenth Amendment, which resulted in progressively restricted notions of enslavement and its incidents that, in turn, severely narrowed the purview of freedom.

The advent of freedom was characterized by forms of constraint that, resembling those experienced under slavery, relied primarily on force, compulsion, and terror and others that fettered, restricted, and confined the subject precisely through the stipulation of will, reason, and consent. Moreover, the revolution of sentiment consequent to emancipation supplanted paternalist affections with racial antipathy and reciprocity with revulsion. This discrepant or discordant bestowal of emancipation can be gleaned in a variety of everyday sites and practices. To this end, I employ instructive handbooks for the freed, the Reconstruction Amendments, technical handbooks of plantation management, labor contracts, and everyday practices as templates for reading these contending articulations of freedom and the forms of subjection they engendered. As stated earlier, the term "burdened individuality" attempts to convey the antagonistic production of the liberal individual, rights bearer, and raced subject as equal yet inferior, independent yet servile, freed yet bound by duty, reckless yet responsible, blithe yet brokenhearted. "Burdened individuality" designates the double bind of emancipation—the onerous responsibilities of freedom with the enjoyment of few of its entitlements, the collusion of the disembodied equality of liberal individuality with the dominated, regulated, and disciplined embodiment of blackness, the entanglements of sovereignty and subjection, and the transformation of involuntary servitude effected under the aegis of free labor. This is not to suggest simply that blacks were unable to achieve the democratic individuality of white citizens but rather that the discourse on black freedom emphasized hardship, travails, and a burdened and encumbered existence. Therefore, burdened individuality is both a descriptive and a conceptual device utilized to explicate the particular modes and techniques of power of which the individual is the object and instrument. The power generative of this condition of burdened individuality encompassed repression, domination, techniques of discipline, strategies of self-improvement, and the regulatory interventions of the state.

The mantle of individuality effectively conscripted the freed as indebted and

dutiful worker and incited forms of coercion, discipline, and regulation that profoundly complicated the meaning of freedom. If it appears paradoxical that the nomination "free individual" illuminates the fractures of freedom and begets methods of bondage quite suited to a free labor economy, it is only because the mechanisms through which right, exchange, and equality bolster and advance domination, subjection, and exploitation have not been interrogated. Liberal discourses of freedom enable forms of subjection seemingly quite at odds with its declared principles, since they readily accommodate autonomy and domination, sovereignty and submission, and subordination and abstract equality. This can be attributed to the Lockean heritage of U.S. constitutionalism, which propounded an ideal of liberty founded in the sanctity of property, and the vision of liberty forwarded in the originary narrative of the Constitution, which wed slavery and freedom in the founding of the nation and the engendering of "we the people."<sup>14</sup> Nonetheless, the question remains as to how the effort to sever the disavowed and repressed coupling of liberty and bondage that inaugurated the republic effected new forms of domination.<sup>15</sup> How did emancipatory figurations of a rights-bearing individual aimed at abolishing the badges of slavery result in burdened individuality?

Restrictive and narrow conceptions of liberty derived from bourgeois constructions of the market, the atomizing and individualizing character of rights, and an equality grounded in sameness enabled and dissimulated the domination and exploitation of the postbellum order. Prized designations like "independence," "autonomy," and "free will" are the lures of liberalism, yet the tantalizing suggestion of the individual as potentate and sovereign is drastically undermined by the forms of repression and terror that accompanied the advent of freedom, the techniques of discipline that bind the individual through conscience, self-knowledge, responsibility, and duty, and the management of racialized bodies and populations effected through the racism of the state and civil society.<sup>16</sup> Liberalism, in general, and rights discourse, in particular, assure entitlements and privileges as they enable and efface elemental forms of domination primarily because of the atomistic portrayal of social relations, the inability to address collective interests and needs, and the sanctioning of subordination and the free reign of prejudice in the construction of the social or the private. Moreover, the universality or unencumbered individuality of liberalism relies on tacit exclusions and norms that preclude substantive equality; all do not equally partake of the resplendent, plenipotent, indivisible, and steely singularity that it proffers. Abstract universality presumes particular forms of embodiment and excludes or marginalizes others.<sup>17</sup> Rather, the excluded, marginalized, and devalued subjects that it engenders, variously contained, trapped, and imprisoned by nature's whimsical apportionments, in fact, enable the production of universality, for the denigrated and deprecated, those castigated and saddled by varied corporeal maledictions, are the fleshy substance that enable the universal to achieve its ethereal splendor.

Nevertheless, the abstract universality of the rights of man and citizen also potentially enable these rights to be enjoyed by all, at least theoretically. Thus universality can conceivably exceed its stipulated and constitutive constraints to the degree that these claims can be taken up and articulated by those subjects not traditionally entitled to the privileges of disembodied and unencumbered universality. The ab-



tractness and instability of rights make possible their resignification. Nonetheless, when those formerly excluded are belatedly conferred with rights and guarantees of equal protection, they have traditionally had difficulty exercising these rights, as long as they are seen as lesser, derivative, or subordinate embodiments of the norm. Plainly speaking, this is the gap between the formal stipulation of rights and the legitimate exercise of them.<sup>18</sup> In this regard, it is necessary to consider whether the effort of the dominated to "take up" the universal does not remedy one set of injuries only to inflict injuries of another order. It is worth examining whether universalism merely dissimulates the stigmatic injuries constitutive of blackness with abstract assertions of equality, sovereignty, and individuality. Indeed, if this is the case, can the dominated be liberated by universalist assertions?<sup>19</sup>

As citizens and rights bearers, were the newly emancipated merely enacting a role they could never legitimately or authentically occupy? Were they fated to be hapless aspirants, who in their effort to exercise newly conferred rights only revealed the distance between the norm and themselves? As Mrs. Freeman, a character from Helen E. Brown's *John Freeman and His Family*, a fictional account of emancipation, declared: "I want we should be just as near like white folks as ever we can catch it."<sup>20</sup> Certainly this remark highlights the chasm between the mimetic and the legitimate. It is not simply fortuitous that Mrs. Freeman expresses this sentiment, for she, even more than her husband, is ill-suited for the privileges and responsibilities attendant to citizenship. The discourse of citizenship presupposed a masculinist subject on which to drape the attendant rights and privileges of liberty and equality, thus explaining why the transition from slavery to freedom was usually and quite aptly narrated as the journey from chattel to man. Alas, the joke is on Mrs. Freeman, as expressed by the convoluted phrasing and orthographic nonsense that articulate her insuperable distance from the norm and intimate the unspoken exclusions of the universal rights of man and citizen.

Chattel becomes man through the ascension to the hallowed realm of the self-possessed. The individual thus fabricated is "free from dependence on the will of others, enters relations with others voluntarily with a view of his own interest, is the proprietor of his own person and capacities, and free to alienate his labor."<sup>21</sup> Although assertions of free will, singularity, autonomy, and consent necessarily obscure relations of power and domination, the genealogy of freedom, to the contrary, discloses the intimacy of liberty, domination, and subjection. This intimacy is discerned in the inequality enshrined in property rights, the conquest and captivity that established "we the people," and the identity of race as property, whether evidenced in the corporeal inscriptions of slavery and its badges or in the bounded bodily integrity of whiteness secured by the abjection of others.<sup>22</sup> The individual, denuded in the harsh light of scrutiny, reveals a subject tethered by various orders of constraint and obscured by the figure of the self-possessed, for lurking behind the disembodied and self-possessed individual is the fleshy substance of the embodied and the encumbered—that is, the castigated particularity of the universal.<sup>23</sup> In this light, the transubstantiation of the captive into volitional subject, chattel into proprietor, and the circumscribed body of blackness into the disembodied and abstract universal seems improbable, if not impossible.

In light of these remarks, the transition from slavery to freedom cannot adequately

be represented as the triumph of liberty over domination, free will over coercion, or consent over compulsion. The valued precepts of liberalism provide an insufficient guide to understanding the event of emancipation. The ease with which sovereignty and submission and self-possession and servility are yoked is quite noteworthy. In fact, it leads us to wonder whether the insistent, disavowed, and sequestered production of subordination, the inequality enshrined by the sanctity of property, and the castigating universality of liberalism are all that emancipation proffers. Is not the free will of the individual measured precisely through the exercise of constraint and autonomy determined by the capacity to participate in relations of exchange that only fetter and bind the subject? Does the esteemed will replace the barbaric whip or only act as its supplement? In light of these questions, the identity of the emancipated as rights bearer, free laborer, and calculable man must be considered in regard to processes of domination, exploitation, and subjection rather than in the benighted terms that desperately strive to establish slavery as the "prehistory" of man.

## *Fashioning Obligation*

### INDEBTED SERVITUDE AND THE FETTERS OF SLAVERY

With the enjoyment of a freedman's privileges, comes also a freedman's duties and responsibilities. These are weighty. You cannot get rid of them; they must be met; and unless you are prepared to meet them with a proper spirit, and patiently and cheerfully to fulfil these obligations, you are not worthy of being a freedman. You may tremble in view of these duties and responsibilities; but you need not fear. Put your trust in God, and bend your back joyfully and hopefully to the burden.

—Isaac W. Brinckerhoff, *Advice to Freedmen* (1864)

It is not enough to tell us that we will be respected according as we show ourselves worthy of it. When we have rights that others respect, self-respect, pride and industry will greatly increase. I do not think that to have these rights would exalt us above measure or rob the white man of his glory.

—*National Freedman* (April 1, 1865)

**E**manicipation announced the end of chattel slavery; however, it by no means marked the end of bondage. The free(d) individual was nothing if not burdened, responsible, and obligated. Responsibility entailed accounting for one's actions, dutiful suppliance, contractual obligation, and calculated reciprocity. Fundamentally, to be responsible was to be blameworthy. In this respect, the exercise of free will, quite literally, was inextricable from guilty infractions, criminal misdeeds, punishable transgressions, and an elaborate micropenality of everyday life. Responsibility made man an end in himself, and as such, the autonomous and intending agent was above all else culpable. As Friedrich Nietzsche observed: "The proud realization of the extraordinary privilege of responsibility, the awareness of this rare freedom and power over himself and his destiny, has penetrated him to the depths and become an instinct, his dominant instinct: what will he call his dominant instinct, assuming that he needs a word for it? No doubt about the answer: this sovereign man calls it his conscience."<sup>1</sup> In this regard, the burden of conscience attendant to the formation of the sovereign individual was decisive not only in the ways that it facilitated self-disciplining but also in its ability to engender resentment toward and justify the punishment of those who fell below "the threshold of responsibility" or

failed to achieve the requisite degree of self-control.<sup>2</sup> The onus of accountability that rested upon the shoulders of the self-responsible individual—the task of proving oneself worthy of freedom—combined with the undue hardships of emancipation engendered an anomalous condition betwixt and between slavery and freedom, for in this case the individual was not only tethered by the bonds of conscience and duty and obliged by the ascetic imperatives of restraint and self-reliance but also literally constrained within a mixed-labor system in which contract was the vehicle of servitude and accountability was inseparable from peonage. Moreover, the guilty volition enjoyed by the free agent bore an uncanny resemblance to the only form of agency legally exercised by the enslaved—that is, criminal liability.

Responsibility and restraint all too easily yielded to a condition of involuntary servitude, and culpability inevitably gave way to indebtedness. The emergence of what I term “indebted servitude” is the subject of this chapter. I use the term “indebted servitude” to amplify the constraints of conscience (discipline internalized and lauded as a virtue), the coercion and compulsion of the free labor system, and the “grafting of morality onto economics” in the making of the dutiful free laborer and similarly to illuminate the elasticity of debt in effecting peonage and other forms of involuntary servitude.<sup>3</sup> According to Nietzsche, the feelings of guilt, obligation, and responsibility originated in the relationship of creditor and debtor; moreover, debt as the measure of morality sanctions the imposition of punishment; debt serves to reinscribe both servitude and the pained constitution of blackness.<sup>4</sup> A telling example of this calculation of conscience or the entanglement of debt and duty can be found in Jared Bell Waterbury’s *Advice to a Young Christian*. Here the duty of self-examination is compared to bookkeeping: “Let the duty [of self-examination] be duly and thoroughly performed, and we rise to the standard of the skilful [*sic*] and prudent merchant, who duly records every item of business; who never closes his counting-house until his balance sheet is made up; and who, by a single reference, can tell the true state of his accounts, and form a correct estimate of his commercial standing.”<sup>5</sup> In the case of the freed, the cultivation of conscience operated in the whip’s stead as an overseer of the soul, although the use of compulsion was routinely employed against those seemingly remiss in their duties. As it turned out, the encumbrance of freedom made one not only blameworthy and vulnerable to hardship and affliction in the name of interest but also, surprisingly, no less susceptible to the correctives of coercion and constraint.

### Idle Concerns

Irony riddled the event of emancipation. How does one narrate a story of freedom when confronted with the discrepant legacy of emancipation and the decidedly circumscribed avenues available to the freed? What does autonomy mean in the context of coercion, hunger, and uncertainty? Is the unavoidable double bind of emancipation an illusory freedom and a travestied liberation? At the very least, one must contend with the enormity of emancipation as both a breach with slavery and reproduction or reorganization of the plantation system. What follows is an examination of eclipsed possibility and another lament of failed revolution.<sup>6</sup> The paradox

of emancipation involved the coupling of coercion and contract, liberty and necessity, equality and subjection. At the most basic level, this paradox was lived in planter opposition to a free labor system and the subjugation of free labor through contractual and extralegal means, the most notable examples of these efforts being compulsory labor schemes, often supported by the Freedmen's Bureau, the predominance of non-wage labor, vagrancy statutes that criminalized those not holding labor contracts, and the prevalence of white violence. To understate the case, the South proved unwilling to embrace a free labor system or to tolerate assertions of black liberty. Moreover, blacks were blamed for this opposition to free labor, presumably because they entertained fanciful and dangerous notions of freedom and refused to work, except under duress. As we shall see, these "fanciful notions" articulated an alternate imagination of freedom and resistance to the imposition of a new order of constraint.

However, the issue was not simply whether ex-slaves would work but rather whether they could be transformed into a rational, docile, and productive working class—that is, fully normalized in accordance with standards of productivity, sobriety, rationality, prudence, cleanliness, responsibility, and so on. Intemperate notions were to be eradicated, and a rational work ethic inculcated through education, religious instruction, and, when necessary, compulsion. Under slavery, the whip rather than incentive, coercion rather than consent, and fear rather than reasoned self-interest had motivated their labor; now it was considered imperative to cultivate rational, servile, and self-interested conduct in order to remake the formerly enslaved into free laborers.<sup>7</sup> However incongruous and inconceivable, nearly three centuries of black servitude could not relieve the nation's anxiety about the productivity of black labor or assuage the fear that the freed would be idle if not compelled to work.<sup>8</sup> Thus the advent of freedom was plagued with anxieties about black indolence that hinted at the need to manage free black workers by perhaps more compelling means.<sup>9</sup> From the vantage point of abolitionists, policy makers, Freedmen's Bureau officials, and Northern entrepreneurs, the formerly enslaved needed to be trained as free laborers since they had never worked under conditions of consent and contract and were ignorant of the principles of self-discipline and restraint. The goal of this training spearheaded by missionaries, teachers, and Freedmen's Bureau officials was to replace the love of leisure with the love of gain and supplant bawdy pleasures with dispassionate acquisitiveness.<sup>10</sup>

The discourse on idleness focused on the forms of conduct and behavior at odds with the requirement of a free labor system, given all its anomalies in the postbellum context. Named as offenses were a range of itinerant and intemperate practices considered subversive and dangerous to the social order. The discursive production of indolence registered the contested and disparate understandings of freedom held by plantation owners and the freed. The targeted dangers of this emergent discourse of dependency and idleness were the mobility of the freed, their refusal to enter contractual relations with former slaveholders, and their ability to subsist outside wage labor relations because of their limited wants. Not only is the elusiveness of emancipation indicated by the continued reliance on force and compulsion in managing black laborers, but, similarly, the moving about of the freed exposed the chasm between the grand narrative of emancipation and the circumscribed arena of

possibility. As a practice, moving about accumulated nothing and did not effect any reversals of power but indefatigably held onto the unrealizable—being free—by temporarily eluding the restraints of order. Like stealing way, it was more symbolically redolent than materially transformative. As Absalom Jenkins remembered, “Folks roved around for five or six years trying to do as well as they done in slavery. It was years before they got back to it.” If moving about existed on the border of the unrealized and the imagined, it nonetheless was at odds with the project of socializing black laborers for market relations.<sup>11</sup> In effect, by refusing to stay in their place, the emancipated insisted that freedom was a departure, literally and figuratively, from their former condition.<sup>12</sup>

In the effort to implant a rational work ethic, eradicate pedestrian practices of freedom, assuage fears about the free labor system, and ensure the triumph of market relations, missionaries, schoolteachers, entrepreneurs, and other self-proclaimed “friends of the Negro” took to the South. Through pedagogical manuals, freedmen’s schools, and religious instruction, teachers, missionaries, and plantation managers strived to inculcate an acquisitive and self-interested ethic that would motivate the formerly enslaved to be dutiful and productive laborers. The indecorous, proud, and seemingly reckless behavior through which the newly emancipated asserted their freedom was to be corrected with proper doses of humility, responsibility, and restraint. These virtues chiefly defined the appropriate conduct of free men. Practical manuals like Isaac Brinckerhoff’s *Advice to Freedmen*, Jared Bell Waterbury’s *Friendly Counsels for Freedmen*, Helen E. Brown’s *John Freeman and His Family*, a fictional work, and Clinton Bowen Fisk’s *Plain Counsels for Freedmen* thereby attempted to remedy the predicament of emancipation through the fashioning of an ascetic and acquisitive subject, prompted to consume by virtue of his wants and driven to exchange his labor because of his needs.<sup>13</sup> Issues of productivity and discipline were of direct concern to the authors of these texts, not only in their role as “old and dear friends of the Negro” or as sympathizers who “labored incessantly for their well-being” but also as plantation managers and Freedmen’s Bureau agents directly involved in the transition to a free labor economy. Isaac Brinckerhoff had served as a plantation superintendent in the Sea Islands. Clinton Bowen Fisk was an assistant commissioner for the Tennessee and Kentucky Freedmen’s Bureau and the eponym of Fisk University.

*Advice to Freedmen*, *Friendly Counsels for Freedmen*, *John Freeman and His Family*, and *Plain Counsels for Freedmen* were practical handbooks written for the emancipated in order to assist them in the transition from slavery to freedom. They were published by the American Tract Society, an evangelical organization established in 1825 “to diffuse a knowledge of our Lord Jesus Christ as the Redeemer of sinners, and to promote the interests of vital godliness and sound morality, by the circulation of Religious Tracts, calculated to receive the approbation of all evangelical Christians.”<sup>14</sup> The textbooks, designed to impart practical advice to adults as well as children, focused primarily on rules of conduct that would enable the freed to overcome the degradation of slavery and meet the challenges of freedom. These texts shared lessons on labor, conduct, consumption, hygiene, marriage, home decorating, chastity, and prayer. Most important in the panorama of virtues imparted by these texts was the willingness to endure hardships, which alone guaranteed

success, upward mobility, and the privileges of citizenship. Nonetheless, certain tensions arose in the passing on of these lessons; the effort to reconcile asceticism and acquisitiveness, self-interest and low or no wages, and autonomy and obeisance was not without notable difficulties attributable to the mixed economy of postbellum relations. In other words, the glaring disparities between liberal democratic ideology and the varied forms of compulsion utilized to force free workers to sign labor contracts exceeded the coercion immanent in capital labor relations and instead relied on older forms of extraeconomic coercion. In short, violence remained a significant device in cultivating labor discipline.<sup>15</sup> Undeniably, inequality was the basis of the forms of economic and social relations that developed in the aftermath of emancipation.<sup>16</sup> And it was this naked coercion that provided labor relations with their distinctive Southern character.<sup>17</sup>

Textbooks like *Advice to Freedmen*, *Friendly Counsels for Freedmen*, *Plain Counsels for Freedmen*, and *John Freeman and His Family* aimed to instill rational ideals of material acquisition and social restraint and correct "absolute" notions of freedom and the excesses and indulgences that resulted from entertaining such "farflung" conceptions. As their titles indicate, these handbooks were geared to practical ends, how-to advice, instructions for living, and rules of conduct being their primary concerns. The instrumental objectives of these books were explicitly declared in order that lessons of discipline, duty, and responsibility be simply and directly conveyed to their readers. The lessons contained in these primers were basically a series of imperatives—be industrious, economical, useful, productive, chaste, kind, respectful to former masters, good Christians, and dutiful citizens. The full privileges of citizenship awaited those who realized the importance of proper conduct and applied the principles of good management to all aspects of their lives, from personal hygiene to household expenditures. Not surprisingly, freedom was defined in contradictory terms in these textbooks. They encouraged both a republican free labor vision in which wage labor was the stepping-stone to small proprietorship and a liberal vision in which freedom was solely defined by the liberty of contract.

These disparate notions of freedom were complicated further by the servility freed laborers were encouraged to assume in negotiating the racial antipathy of the post-war period. The urging of servility begrudgingly acknowledged the less than ideal labor conditions of the South and the aversive racial sentiments to be negotiated and defused by the obeisance of the freed. Similarly apparent was the constrained agency conferred by the will of contract; although it was the cherished vehicle of self-ownership, it in fact documented the dispossession inseparable from becoming a propertied person. Bearing this in mind, let me suggest that the contours of this ascendant liberal discourse disclosed the constrained agency of freedom because volition and compulsion were regularly conflated and the legal exercise of willfulness was one's undoing. As it turned out, the liberty of contract and bondage were reconciled in the social economy of postbellum relations. Furthermore, the continuities of slavery and freedom were exposed by the centrality of prohibition and punishment, which were relied upon in the fashioning of liberal individualism. It appeared that only the cultivation of rationality and responsibility could eradicate the badges of slavery. In this respect the success of emancipation depended on the

remaking or self-making of the formerly enslaved as rational individuals and dutiful subordinates.

It is difficult to read these texts without lapsing into a predictive pessimism grounded in the certitude of hindsight. After all, we are painfully aware of what followed—debt-peonage, a reign of terror, nearly one hundred years of remaining separate and resolutely unequal, second-class citizenship, and an as yet unrealized equality. My reading of these texts emphasizes the disciplinary, punitive, and normalizing individuation conducted under the rubric of self-improvement. It is an interested reading that does not pretend to exhaust the meaning of these texts but instead considers the fashioning of individuality, the circulation of debt, the forms of subjugation that reigned in this proclaimed sphere of freedom, equality, and liberty, and, last, the impossibility of instituting a definitive break between slavery and freedom, compulsion and consent, and terror and discipline. In short, this reading focuses on the forms of subjection engendered by the narrative of emancipation and the constitution of the burdened individuality of freedom.

### The Debt of Emancipation

“My friend, you was [sic] once a slave. You are now a freedman.” *Advice to Freedmen* opens with this bestowal, as if by the force of its declaration it were granting freedom to the enslaved or as if freedom were a gift dispensed by a kind benefactor to the less fortunate or undeserving. Beneficent gestures launch the stories of black freedom narrated within these texts and also establish the obligation and indebtedness of the freed to their friends and benefactors. The burden of debt, duty, and gratitude foisted onto the newly emancipated in exchange or repayment for their freedom is established in the stories of origin that open these textbooks. In the section “How You Became Free” of *Advice to Freedmen*, the freed are informed that their freedom was purchased by treasure, millions of government dollars, and countless lives: “With treasure and precious blood your freedom has been purchased. Let these sufferings and sacrifices never be forgotten when you remember that you are not now a slave but a freedman” (7). Similarly, *Plain Counsels* advised the freed not to take lightly the gift of freedom but rather to “prize your freedom above gold, for it has cost rivers of blood” (9). The blood of warring brothers and mothers’ sons that stained the war-torn landscape of the United States granted the enslaved freedom, but the blood regularly spilt at the whipping post or drawn by the cat-o’-nine tails in the field, the 200,000 black soldiers who fought for the Union, or the hundreds of thousands of slaves who contributed to the defeat of the Confederacy by fleeing the plantation and flocking behind Union lines failed to be included in these accounts of slavery’s demise. Blood, the symbol of Christian redemption, national reunion, and immutable and ineradicable differences of race, was routinely juxtaposed with gold and other treasure expended on behalf of black freedom and that presumably indebted the freed to the nation. However, the language of blood not only figured the cherished expenditures of war but also described the difficulties of freedom. As Jared Bell Waterbury remarked in *Southern Planters and Freedmen*, “Social difficulties of long standing cannot be suddenly or violently overcome.



They are like wounds that must bleed a while before they will heal, and the process of cure, though slow and requiring much patience, is nevertheless certain.”<sup>18</sup> In this respect, the wounded body stood as figure of the nation and the injuries of war were to be redressed not only by the passage of time but also by the obliged exchange and the moral remittances of the emancipated.

Emancipation instituted indebtedness. Blame and duty and blood and dollars marked the birth of the free(d) subject. The very bestowal of freedom established the indebtedness of the freed through a calculus of blame and responsibility that mandated that the formerly enslaved both repay this investment of faith and prove their worthiness. The temporal attributes of indebtedness bind one to the past, since what is owed draws the past into the present, and suspend the subject between what has been and what is. In this regard, indebtedness confers durability, for the individual is answerable to and liable for past actions and must be abstinent in the present in the hopes of securing the future. Moreover, indebtedness was central to the creation of a memory of the past in which white benefactors, courageous soldiers, and virtuous mothers sacrificed themselves for the enslaved. This memory was to be seared into the minds of the freed. Debt was at the center of a moral economy of submission and servitude and was instrumental in the production of peonage. Above all, it operated to bind the subject by compounding the service owed, augmenting the deficit through interest accrued, and advancing credit that extended interminably the obligation of service. The emancipated were introduced to the circuits of exchange through the figurative deployment of debt, which obliged them to both enter coercive contractual relations and faithfully remunerate the treasure expended on their behalf. Furthermore, debt literally sanctioned bondage and propelled the freed toward indentured servitude by the selling off of future labor.<sup>19</sup> As Gerald Jaynes observes, “The southern sharecropper bore all the burdens of an entrepreneur but was dispossessed of freedom of choice in making managerial decisions. . . . No government which allows its laboring population to mortgage its labor by enforcing debt peonage can claim to have free labor.”<sup>20</sup> Yet debt was not simply a pretext but an articulation of the enduring claims on black laborers, the affective linchpin of reciprocity, mutuality, and inequality, the ideational hybrid of responsibility and servitude, and, most important, the agent of bondage. Thus the transition from slavery to freedom introduced the free agent to the circuits of exchange through this construction of already accrued debt, an abstinent present, and a mortgaged future. In short, to be free was to be a debtor—that is, obliged and duty-bound to others.<sup>21</sup> Thus the inaugural gestures that opened these texts announced the advent of freedom and at the same time attested to the impossibility of escaping slavery.

“How you became free” stories fabricated an account of the past and the transition from slavery to freedom that begat the indebted and servile freed individual. In this regard, these primers surpassed the immediate goals of a how-to book and produced a chronicle of recent events, a history as it were, that began the process of revision, repression, and reconciliation essential to the xenophobic and familial narrative of national identity that became dominant in the 1880s and 1890s.<sup>22</sup> However, as many former slaves asserted, they had not incurred any debt they had not repaid a thousandfold. In the counterdiscourses of freedom, remedy was sought for the injuries of slavery, not through the reconstruction of the Negro—in other words, the refashion-

ing of the emancipated as rational and docile individuals—but through reparations. Andy McAdams complained that the government gave former slaves nothing but a hard deal: “They was plenty of land that did not belong to anyone except the government. . . . We did not get nothing but hard work, and we were worse off under freedom than we were during slavery, as we did not have a thing—could not write or read.”<sup>23</sup> In similar terms, Anna Lee, a former slave, conveyed the weight of duty and the burden of transformation placed upon the freed. Noting that the efforts to transform the South in the aftermath of the war were focused immoderately on free blacks, she recounted, “The reconstruction of the negro was real hard on us.”<sup>24</sup> Simply put, these contending accounts of slavery and freedom quite differently represent the past and assess the burden of responsibility. In light of this, we need to consider whether the stories of emancipation narrated in the freedmen’s handbooks simply refigured enslavement through the fabulation of debt. Discernible in these stories of origin was the struggle over the meaning of emancipation and, by the same token, the possibilities of redress, since these possibilities, in fact, depended upon the terms of recollection.

Despite the invocation of the natural rights of man, the emphasis on the “gift” of freedom and the accompanying duties, to the contrary, implied not only that one had to labor in exchange for what were deemed natural and inalienable rights but also that the failure to do so might result in their revocation. In short, the liberty and equality conferred by emancipation instituted the debt and established the terms of its amortization. The tabulation of duty and responsibility resulted in a burdened individuality in which one enjoyed the obligations of freedom without its prerogatives. The import of this cannot be underestimated, for the literal and figurative accrual of debt recapitulated black servitude within the terms of an emancipatory narrative.

The fiction of debt was premised upon a selective and benign representation of slavery that emphasized paternalism, dependency, and will-lessness. Given this rendition of slavery, responsibility was deemed the best antidote for the ravages of the past; never mind that it effaced the enormity of the injuries of the past, entailed the erasure of history, and placed the onus of the past onto the shoulders of the individual. The journey from chattel to man entailed a movement from subjection to self-possession, dependency to responsibility, and coercion to contract. Without responsibility, autonomy, will, and self-possession would be meaningless.<sup>25</sup> If the slave was dependent, will-less, and bound by the dictates of the master, the freed individual was liberated from the past and capable of remaking him/herself through the sheer exercise of will. Responsibility was thus an inestimable component of the bestowal of freedom, and it also produced individual culpability and national innocence, temporal durability and historical amnesia.

As explicated in the language of liberal individualism, the ravages of chattel slavery and the degradations still clinging to the freed after centuries of subjection to the white race were obstacles to be overcome through self-discipline, the renunciation of dependency and intemperate habits, and personal restraint. By identifying slavery rather than race as responsible for this degraded condition, these texts did reflect a commitment, albeit circumscribed, to equality. Yet in this regard, they also revealed the limits of liberal discourse—that is, a commitment to equality made

ineffectual by an atomized vision of social relations and the apportioning of individual responsibility, if not blame, for what are clearly the consequences of dominative relations. Seemingly, blacks gained entry to the body of the nation-state as expiators of the past, as if slavery and its legacy were solely their cross to bear. This ahistorical and amnesic vision of chattel slavery instituted the burden of obligation placed upon the freed. It leads us to consider whether the gift of emancipation was the onus of individual responsibility or whether guilt was inseparable from the conferral of rights. Or whether the newly conferred rights that ideally safeguarded the individual merely obscured the social relations of slavery and the predicament of the emancipated. Were recrimination and punishment the rewards of self-possession? Did emancipation confer sovereignty and autonomy only to abandon the individual in a self-blaming and penalizing free society?<sup>26</sup> Regrettably, the bound and sovereign self of rights was an island unto himself, accountable for his own making and answerable to his failures; social relations thereby receded before the singular exercise of the will and the blameworthy and isolated individual.

The repression of slavery's unspeakable features and the shockingly amnesic portrait of the peculiar institution produced national innocence yet enhanced the degradation of the past for those still hindered by its vestiges because they became the locus of blame and the site of aberrance. While the enduring legacy of slavery was discernible in the disfigurements of freedom, its vestiges and degradations were addressed almost exclusively as problems of conduct and character. It is clear that the injuries of the past could not be remedied through simple acts of forgetting or selective acts of erasure, nor could they be conjured away by the simple declaration of abolition, nor could the onus of responsibility placed upon the newly emancipated institute a definitive break between slavery and freedom.

While these stories of origin cast the freed as an indebted and servile class, they nonetheless demanded that the freed also be responsible and willful actors. Yet if the emancipated were beholden to friends, benefactors, and even former masters in their new condition, how could rational self-interest rather than obsequiousness be cultivated? How could those marked by the "degradations of the past" overcome the history of slavery through their own individual efforts, especially given the remnants of slavery in the present? How could the designated bearers of slavery be liberated from that past? Were not the vestiges of the past persevering beyond the triumph or failure of their own efforts in the pervasiveness of white violence, emerging forms of involuntary servitude, and the intransigence of racism? In anticipation of such questions and cognizant of the hardships of freedom, the self-appointed counselors of the freed tirelessly repeated the directive that the attainment of freedom depended upon the efforts of the freed themselves. By following wise counsels and through their own exertions, they would, as *Advice to Freedmen* assured them, one day become "worthy and respected citizens of this great nation" (4).

One risks stating the obvious in observing that the circumstances of the freed—the utter absence of resources, the threat of starvation, the lack of education, and the want of land and property considered essential to independence—were treated as if private matters best left to their own bloody hands, bent backs, and broken hearts rather than as the culmination of three centuries of servitude. If a sea of blood and gold had enabled the violent remaking of the nation and eventually effected a

reunion of warring "families," purchased at the expense and exclusion of the emancipated, it delivered blacks to the shore of freedom and deposited the detritus of the war at their feet. Like the ghosts of the Confederate dead paraded by the Ku Klux Klan in their nighttime raids to intimidate blacks, reminding them that the war continued and that the price was yet to be exacted for those white men lost in the war, debt too frighteningly refigured the past. Debt ensured submission; it insinuated that servitude was not yet over and that the travails of freedom were the price to be paid for emancipation.

### The Encumbrance of Freedom

The discrepant bestowal of emancipation conferred sovereignty as it engendered subjection. The lessons of independence and servility contradictorily espoused in these texts epitomized the double bind of freedom—the tension between the universalist premises of liberalism, which included the freed within the scope of rights and entitlements definitive of liberty and citizenship, and the exclusionary strategies premised upon the inferiority of blacks. Therefore, these texts advocated mastery and control over one's condition and destiny—autonomy, self-possession, resolve, and discipline—and to the contrary confused self-making and submission. Overwhelmingly mastery was given expression through the laboring body. In *John Freeman and His Family*, laboring hands are the synecdoche for the self-possessed individual: "Look here, do you see these hands? They were made to work, I'm persuaded, for haven't they always worked hitherto? I've used 'em, and given all I made to Master Lenox; now I'll use 'em, and give all I make to *Master John*" (14). If the gains of self-possession are illuminated by the profits earned and enjoyed by John's laboring hands, notwithstanding, the image of laboring hands, and, moreover, hands meant to work, also underlines the primary role of blacks, whether slave or free, as manual laborers.

Self-mastery was invariably defined as willing submission to the dictates of former masters, the market, and the inquisitor within. If, as *Advice to Freedmen* declared, "your future, under God, must be wrought by yourselves," then clearly the future to be wrought was one of interminable toil, obligation, and humility, and accordingly, the emancipated were encouraged to remain on the plantation, be patient, and make do with the readily available, including low wages. This decided emphasis on submission, self-denial, and servile compliance was not considered at odds with autonomy or self-interest. Rather, mastery became defined by self-regulation, indebtedness and responsibility, careful regard for the predilections of former masters, and agility at sidestepping the "sore toes" of prejudice, anger, and resentment. The robust and mutable capacities of mastery are to be marveled at. If mastery was an antidote for the dependency of slavery—the lack of autonomy, willlessness, inability to direct one's labor or enjoy its rewards, and psychological disposition for servitude—it bore a striking resemblance to the prostration of slavery. Indeed, the propertied person remained vulnerable to the dispossession exacted by violation, domination, and exploitation.

The images of the laboring body represented in these texts made clear that the

freedman's duties coupled the requirements of servitude with the responsibilities of independence. In light of these remarks, let us reconsider the following passage from *Advice to Freedmen*: "With the enjoyment of a freedman's privileges, come also a freedman's duties. These are weighty. You can not get rid of them. They must be met. And unless you are prepared to meet them with a proper spirit, and patiently and cheerfully fulfill these obligations, you are not worthy of being a freedman. You may well tremble in view of these duties and responsibilities. But you need not fear. Put your trust in God, and *bend your back joyfully and hopefully to the burden.*" The joyful bending of the back refigured the "backbreaking" regimen of slave labor and genuflected before the blessings and privileges of freedom. The back bent joyfully to the burdens foisted upon it transformed the burdened individuality and encumbrances of freedom into an auspicious exercise of free will and self-making. This unsettling description divulges servility and submission as prerequisites to enjoying the privileges of freedom. Bending one's back joyfully to extant and anticipated burdens unites the sentimental ethic of submission with the rational and ascetic ideals of the marketplace. Freedom, although a release from slavery, undoubtedly imposed burdens of another order. The body no longer harnessed by chains or governed by the whip was instead tethered by the weight of conscience, duty, and obligation. In this scenario, the indebtedness instituted by the gift of freedom was unmistakable. It obliged a worthy return—a bent back, agile hands, and lowered expectations. The failure to meet this obligation, at the very least, risked the loss of honor, status, and manhood.<sup>27</sup> Only industry, diligence, and a willingness to work, even at low wages, proved one's worthiness for freedom.

The joyfully bent back of the laborer conjures up a repertoire of familiar images that traverse the divide between slavery and freedom. If this figure encodes freedom, then it does so by making it difficult, if not impossible, to distinguish the subjection of slavery from the satisfied self-interest of the free laborer. It is an image of freedom that leaves us unable to discern whether the laborer in the field is driven by the lash or by the inward drive of duty and obligation. The toiling figure, the bent back, and the beast of burden, summoned by this chain of association, elide the belabored distinction between will and will-lessness. In this regard, the anatomy of freedom laid out in these texts attends to the body as object and instrument, thus effacing the distinctions between slave and laborer, for as *John Freeman and His Family* tells us, the body "meant to work" hints at the racial division of labor in which "some must work with the hands, while others work with the head. . . . Everyone must be willing to do his part, just where he is needed most" (42).<sup>28</sup> Yet the bent back readily invokes supplicance, obeisance, prostration, and humility and bespeaks the utilization of the body as a laboring machine. Just as the lowered eyes, stooped shoulders, and shuffling feet were the gestural language of enslavement, the bent back similarly articulated the domination, violation, and exploitation of the post-bellum economy.

Duty imposed burdens of the soul, too. For the free laborer doubled over by the sheer weight of his responsibilities, hopeful and obedient, work was to be its own reward, since the exertions of manual labor were also demonstrations of faith.<sup>29</sup> The bent back was testament to one's trust in God. As John Freeman informed his brethren, "If you don't work, you can't pray; for don't the Lord Jehovah say if we

regard sin in our hearts, he won't hear us?" (35). Idleness was the "devil's playground." The broken heart replicated the subjugated and suppliant body and transformed rules of conduct into articles of faith. As Waterbury declared, "You must have 'the broken heart,' sorrow for sin—sorrow before God, because you have broken his laws" (17). Just as the broken heart was the recognition of one's guilt and sin before God, so, too, the bent back assumed the posture of repentance, as if the sins of slavery were to be repaid by the travails of the freed.

If freedom appeared only as a hardship because of the alliance of liberty, servility, and obligation, this was explained by recourse to the dependency of slavery, the want of ease and idleness, and the adversity coupled with independence. *Friendly Counsels for Freedmen* conceded the hardships of emancipation but promised that rewards would flow from perseverance: "Your condition is in some respects much better, and in others somewhat worse, than when you were slaves. Your master, if he was kind, took good care of you. Now that you are free, you have got to take care of yourselves. At first this may be a hardship; but by and by you will see that it is a good thing. In slavery you had little or no care, except to see that your task was done. Now that you are your own men, you have got to think and work both" (4). While the pedagogical manuals attributed the hardships of freedom to idleness, infantilism, and intemperance or contrasted the burden of independence with the ease of slavery, the emancipated identified the sources of adversity as their lack of resources, the government's unwillingness to provide reparations, the pervasiveness of white violence, and the failure of the law to protect black lives. The emancipated also shared a different perspective on who comprised the dependent class of slavery. They argued irrefutably that they were the producing class and that the riches of their owners and the nation came from their labor. Andy McAdams said that although he was uncertain about what freedom meant, he certainly expected something different than what he had experienced: "I think they ought to have given us old slaves some mules and land too, because everything our white people had we made for them."<sup>30</sup>

The emancipated complained about the hardships of freedom, but their grievances were an indictment of the absence of the material support that would have made substantial freedom ultimately realizable. Being emancipated without resources was no freedom at all. As Felix Haywood recalled, "We knowed freedom was on us, but we didn't know what was to come with it. We thought we was goin' to get rich like the white folks. We thought we was going to be richer than the white folks, 'cause we were stronger and knowed how to work, and the white didn't and they didn't have us to work for them anymore. But it didn't turn out that way. We soon found out that freedom could make folks proud but it didn't make them rich."<sup>31</sup> Dire necessity, rather than opportunity or gratitude for the gift of wage labor, resulted in their return to the plantation. As many pointed out, the ravages of hunger and rampant white violence were the embittered gifts of emancipation. "Dependency" and "responsibility" were pliable and contested terms that ambiguously named the predicament of freedom. On one hand, responsibility restored the self-respect that slavery had taken, and on the other, responsibility meant that blacks were more enslaved after emancipation than before. According to Parker Pool, the freed were better slaves than they had been when they were owned because although they still had nothing, they had to bear their own expenses.<sup>32</sup> Countering these protestations,

*Plain Counsels* enjoined the freed to remember: "You cannot be too glad that you are free; that your hands, your head, your heart are your own" (9). However, it was not a shortage of joy that afflicted the freed; rather, it was an awareness that although one's hands and heart and head were now one's own, without resources it was impossible to live, and the body that labored for another's profit was perhaps only seemingly one's own. Self-possession secured little, particularly when this nascent sense of autonomous embodiment was identified with hunger, degradation, and violent assaults on one's person and quickly eclipsed by the encumbered existence of emancipation.

One wonders how readers of these primers responded as they encountered representations of slavery as dependency rather than captivity and the depiction of the ravages of the institution as careless habits.<sup>33</sup> If literacy was the avenue to humanity, the lesson to be gleaned from these texts was that the price of entry entailed silencing the very factors that determined the condition of degradation and impoverishment. Not only was the violence of slavery expunged, but also the productivity of slave labor was denied. Yet how could the joy of emancipation be understood without recourse to the enormity of loss, the senseless and innumerable acts of violence, or the constancy of dishonor that typified slavery? Did it seem a paradox that the language of mastery was the vehicle of self-realization? Could possession and property ever seem inalienable? How could the ambivalence of freedom be voiced without being woefully misunderstood as a longing for the good old days of slavery? How could the awful feeling induced by being released like "stray cattle," never having had anything and having no place to go, be expressed without seeming like nostalgia for life on the plantation?<sup>34</sup>

While these texts were written by self-proclaimed friends of the Negro who had "marched with them through the Red Sea of strife, sympathized with them in all their sufferings, labored incessantly for their well-being, and rejoiced in their prosperity," the coercive and servile character of the freedom espoused in the texts must be considered in regard to an ascendant liberal discourse of liberty of contract and self-regulating markets and the elusiveness of freedom when slavery was no longer its antagonist. Abolitionist discourse, expurgated of the terrifying details that scandalized and titillated Northern audiences, was little more than a colloquy on the degraded character of the enslaved and the unproductivity of slave labor. This rhetoric deployed in the context of Reconstruction insinuated the need for compulsion when inclination failed and condoned the use of coercion, if and when it aided in the transition to free labor. Certainly this was reflected in the policy of the Freedmen's Bureau and in the advice dispensed by the authors of these handbooks, some of whom were the policy makers and managers of Reconstruction. The liberal proclivities of abolitionist discourse in the antebellum period had provided a powerful natural rights argument against the institution of slavery, but in the postbellum period it yielded ambivalent effects—elitist and racist arguments about the privileges of citizenship, an inordinate concern with discipline and the cultivation of manhood, and contractual notions of free labor.<sup>35</sup>

In this regard, it is important to note the role played by abolitionist and antislavery

reformers in the conceptualization and dissemination of repressive free labor ideals. In examining the relation between slavery and the discourse of labor management in early industrial England, David Brion Davis argues that Bentham's vision of the model prison was a parodic intensification of the ideals of plantation management.<sup>36</sup> If Bentham's Panopticon is the model of discipline, the exemplary exercise of a modern power that is mild-lenient-productive, then how does our understanding of the carceral society change if, in fact, the carceral is a caricature of the plantation and presumes continuities between the management of slave and free labor? If this totalizing vision of managing labor had one eye directed toward slavery and the other toward freedom, it then becomes necessary to consider the way discipline itself bears the trace of what Foucault would describe as premodern forms of power but which perhaps are more aptly described as "discipline with its clothes off." None of this is surprising when slavery is contextualized within a transatlantic capitalist system that traded information and strategies of labor management between the plantation and the factory.<sup>37</sup> Not only did the crisis of industrialization—problems of pauperism, underemployment, and labor management—occur in the context of an extensive debate about the fate of slavery, but also slavery informed the premises and principles of labor discipline. As Davis notes, the focus on the coercion and barbarism of slavery and the whip as the only incentive to work "lent sanction to less barbarous modes of social discipline. For reformers, the plantation offered the prospect of combining virtues of the old agrarian order with new ideals of uplift and engineered incentive" (466).

In a similar vein, Amy Stanley has argued that the forms of compulsion used against the unemployed, vagrants, beggars, and others in the postbellum North mirrored the transition from slavery to freedom. The contradictory aspects of liberty of contract and the reliance on coercion in stimulating free labor modeled in the aftermath of the Civil War were the lessons of emancipation employed against the poor. Furthermore, many of the architects of scientific charity (a bureaucratic campaign to assist the poor by transforming their behavior, whereby idleness and dependence on charity were identified as the enemy of the poor rather than poverty), vagrancy statutes, and compulsory contracts were leading abolitionists—Edward Pierce, Josephine Shaw Lowell, and Samuel Gridley Howe, to name a few.<sup>38</sup> Stanley writes: "The experience of war and emancipation not only honed efficient techniques of philanthropy but also schooled Yankees in schemes for forcing beggars to work. The endeavor of reconstructing the southern labor system and installing contract practices recast conceptions of dependency, obligation, and labor compulsion. Just as the ideal of free labor was transported south, so its coercive aspects—articulated in rules governing the freed people—were carried back north."<sup>39</sup> Like the freed, the poor too were literally forced to participate in the world of exchange.

The specter of slavery's barbarism, symbolized by the whip, legitimated milder but more intensive forms of discipline. The circulation of techniques of discipline across the Atlantic, between the plantation and the factory, and from the plantation to Northern cities trouble arguments based upon epochal shifts of power or definitive notions of premodern and modern forms of power. Certainly the techniques of free labor management employed during Reconstruction were informed by styles of management used under slavery, and often these techniques were abandoned only as



a result of labor resistance to continued work routines of slavery.<sup>40</sup> Furthermore, the compulsory contract that was the signature of free labor relations also traveled beyond the South. What concerns me here are the forms of discipline unleashed by the abandonment of the whip. Although the slave system had become "a discredited form of authority that seemed to require the personal imposition of constant pain," in contrast to the rational incentives of free labor, these new forms of discipline were also invasive and coercive.<sup>41</sup> These forms of constraint and discipline did not depend upon the spectacle of whipping or the lash but nonetheless produced compliant and productive bodies.

In this regard, a comparative examination of slavery and freedom reveals less about the barbarism of slavery than it does about the contradictions and antagonisms of freedom. By focusing on the ways in which antislavery and reform discourse paved the way for brutal forms of "modern" power, it becomes clear that slavery is less the antithesis of free labor than an intemperate consort, a moral foil, a barbarism overcome, and the pedestal on which the virtues of free labor are decried. Here, the point is not to efface the differences between slavery and freedom, however intangible, or deny the dishonor, degradation, and extreme violence of slavery but rather to underline the difficulty of installing an absolute distinction between slavery and freedom and to disclose the perverse entanglements of the "grand narrative of emancipation."<sup>42</sup> Slavery was both the wet nurse and the bastard offspring of liberty. It established free labor as a rational ideal and determined the scope of freedom and equality conferred by the Reconstruction Amendments and scrutinized in the *Civil Rights Cases* and *Plessy v. Ferguson*. Whether it was understood as the negation of fundamental liberties or as "mere chattelism," slavery fundamentally shaped the experience and interpretation of freedom; was freedom simply the absence of constraint or full and equal protection of the laws?<sup>43</sup> As liberal notions of freedom superseded republican ideals, freedom increasingly became defined in terms of the release from constraint and liberty of contract rather than positive entitlements.

Despite the heralding of consent, contract, and equality, freedom remained elusive. Again, this is not to equate the forms of extraeconomic coercion employed in the aftermath of emancipation with the regularity and impunity of violence experienced under slavery but rather to acknowledge the convergences, continuities, and imbrications of slavery and freedom and to reveal the violence and coercion that underlay the discourse of reason and reform. At the risk of repetitiveness, it must be emphasized that for black laborers, the liberty of contract primarily served to entrap them in a system of debt-bondage.<sup>44</sup> Perhaps it was enough of a difference to make it clear that you were no longer a slave, but it was far short of the autonomy yearned for.<sup>45</sup> As Anna Lee and countless others testified, "We done just about what we could after the war, as we were worse off then than we were in slavery time."<sup>46</sup> Only a willful misreading could interpret the disappointments of freedom constantly reiterated in slave testimony as a longing for slavery. To the contrary, what haunts such laments is the longing for an as yet unrealized freedom, the nonevent of emancipation, and the reversals of slavery and freedom.

If one dares to "abandon the absurd catalogue of official history" and the historical partitions to which the dominated are subject, as Edouard Glissant suggests, then

the violence and domination perpetuated in the name of slavery's reversal come to the fore.<sup>47</sup> Emancipation thus becomes double-edged and perhaps even obfuscating, since involuntary servitude and freedom were synonymous for a good many of the formerly enslaved. Although those faithful to narratives of historical progress greet such an assertion with disapprobation and disbelief, the intention is not to shock but to seriously consider remarks like those of former slaves Anna Lee and Absalom Jenkins. By focusing on the ambiguity and elusiveness of emancipation, I hope to glean this subterranean history of emancipation, one not fully recoverable and only glimpsed through the grid of dominant organizing narratives—the repressive pastoral of the WPA testimony, the grand narrative of emancipation, and liberal discourses of free will and self-possession.

### The Will and the Whip

Freedom did not abolish the lash. The regular use of coercion, the share system, debt-bondage, the convict-lease system, and the prevalence of white violence hardly signal the triumph of the will or “rational” methods of management over the barbarism of slavery. Rather, what occurred was the displacement of the whip by the cultivation of conscience, the repressive instrumentality of the law, coercive forms of labor management, and orchestrated and spontaneous violence aimed at restoring the relations of mastery and servitude and quelling assertions of liberty and equality. Maria Sutton Clements recalled that the habitual exercise of violence—in particular, Klan attacks on black homes—against freedpeople forced them to “mostly hide out in the woods.” If blacks assembled, they were accused of sedition—that is, talk about equality: “If dey hear you talkin they say you talkin bout equalization. They whoop up.”<sup>48</sup> Tom Holland said that people were afraid to go out and assert their freedom because “they’d ride up by a Negro and shoot him jus’ like a wild hog and never a word said or done ‘bout it.”<sup>49</sup>

In freedmen’s handbooks, the displacement of the whip can be discerned in the emphasis on self-discipline and policing. The whip was not to be abandoned; rather, it was to be internalized. The emphasis on correct training, proper spirit, and bent backs illuminated the invasive forms of discipline idealized as the self-fashioning of the moral and rational subject. The whip was routinely invoked, less to convey the actual violence of the institution than the will-lessness of those compelled to labor and without choice. In summoning the whip, the contrast was made between a legitimate order founded on the contract and the compulsion of slavery and between rational agents and those motivated by force or fear. *Plain Counsels for Freedmen* provides just such an example: “When you were a slave, it may have been your habit to do just as little as you could to avoid the lash. But now that you are free, you should be actuated by a more noble principle than fear” (45). The inflated assessment of the will, the exalting of liberty, and the idealization of choice masked the violence of exchange. The disparity between free will and the coercion that fundamentally defined the postbellum economic order might be laughable if its consequences were not so tragic. If the will ultimately distinguished liberty from bondage, with the attendant assumptions of the power to control and define one’s circum-

stances or actions, then the event of emancipation instituted a crisis regarding the meaning of freedom and the free individual. In the nineteenth century, the will theory of contract was dominant. According to Clare Dalton, "The idea that contractual obligation has its source in the individual will persisted into the latter part of the nineteenth century, consistent with the pervasive individualism of that time and the general incorporation into law of notions of liberal political theory."<sup>50</sup> Yet despite the lauding of the will, the feature of the contracts most emphasized was its binding force rather than its expression of individual will. Lest this seem like an exercise in the obvious, the point is not simply to expose what is disavowed by this construction of free will or to engage in the oft-repeated critique of possessive individualism but rather to explore the tension between the cultivation of liberal individualism, with its emphasis on will, mastery, autonomy, and volition, and the emphasis on submission, docility, fear, and trembling. The easy coexistence of the coerced free laborer and the volitional subject moving unrestrainedly along the path of self-interest and prosperity hints at the distance between the emancipatory ideal and the conditions of its actualization. The uncertainty elicited by the figure of the burdened and weary laborer toiling in the field—that is, the looming doubt as to whether he is slave or free—exposes the breach between the hallowed ideal of self-possession and the encumbrances of freedom.

In other words, was the only difference between freedom and slavery to be ascertained in the choice to labor dutifully, bend one's back joyfully, or act willingly as one's own inquisitor? If so, didn't this only disclose the elusiveness and intangibility of freedom? Particularly as the freed laborer enjoyed neither the illusions of free exchange nor volition because of the imposition of the contract labor system by the Freedmen's Bureau, the coercion and repression that shaped the market, the establishment of "wage" ceilings, and the effort to prevent the free movement of laborers through vagrancy, breach-of-contract, and antienticement laws and the prevalence of violence.<sup>51</sup> Moreover, the threat of starvation rather than voluntary action or inner compulsion resulted in the return to the plantation. In light of this, what was to be gained by the cultivation of the noble rather than the base? After all, was not the only choice to work or starve?

Obligation, duty, and responsibility rather than necessity clothed the exhortation to labor dutifully. Necessity was at odds with the proclaimed liberty of the volitional subject/liberal individual, since it was distinguished by encumbrance, compulsion, and the utter lack of options. Necessity uneasily contended with the willfulness, liberty, and autonomy that purportedly delineated freedom; it exemplified all that was presumably negated by the abolition of slavery—the primacy of compulsion, the weightedness of embodiment, and the sway of needs. Yet the pangs of hunger were no less compelling than the whipl. However, motives far nobler than the drive of need and the avoidance of discomfort were to motivate the free laborer. Given this, the rational faculty was emphasized over the bodily, and liberty was premised on an unencumbered will and the capacity to choose. Necessity presumed a lack of choice. It signaled the return of the repressed—the primacy of base motives and bodily needs.<sup>52</sup> Generally, these manuals clothed necessity primarily as rational choice in order to fashion a liberal individual driven by free will and to shore up the eroding partition between compulsion and consent. When we compare Waterbury's

discussion of the hardships of freedom in *Friendly Counsels for Freedmen with Southern Planters and Freedmen*, it is clear that in *Friendly Counsels*, which was directed toward the freed, necessity was minimized in favor of stories of duty and self-making and the acknowledged obstacles were easily overcome by directed effort. For example, Waterbury writes in *Friendly Counsels* that freedom "acts on the mind. It obliges you to make a livelihood—to look up work such as you can do, that you may support yourself and your families." By emphasizing the willingness to work and the mental disposition and outlook of freedom, these texts privileged the rational faculty rather than bodily need as the primary motivation or determinant of the choice to labor. Rational decision and moral and ethical obligations thus explain the decision to labor. Although *Friendly Counsels* more readily admits the material hardships of freedom than *Advice to Freedmen*, *Plain Counsels*, or *John Freeman and His Family*, it focuses exclusively on the character of the freed, inasmuch as the difficulty of circumstance was still to be overcome by the strength of character: "Free people have to work, and some of them have to work very hard even to get their bread. Some of the free colored people have by their own labor gained the means of a comfortable livelihood and made themselves respectable. You can do the same, if you will use the same diligence." The onus of necessity can be managed, if not overcome, by the exercise of the will.

In *Southern Planters and Freedmen*, a text written for planters, Waterbury frankly admitted that the burden of freedom fell upon the freed because emancipation shifted the burden from the proprietor to the laborer: "Considering the poverty and dependent condition of the negro, it is evident that he will be the first to suffer and will experience the most inconvenience until the arrangement [of free labor] is established" (8). The emphasis on moral cultivation so pronounced in *Friendly Counsels* plays a secondary role to necessity and the threat of starvation in this dialogue with planters. Furthermore, the planters are assured that the freed will work simply because they have no choice: "Whatever fanciful notions he may have entertained of freedom as conferring happiness, he will soon be obliged, through *stern necessity*, to look at his actual condition, which is that of work or starve" (27). In the context of emancipation, necessity rather than the whip compels the black laborer: "Necessity may at first compel a reluctant service, which afterwards may be rendered under the influence of higher motives" (29).

In any case, despite the fixation on the will, issues of agency and volition, albeit different, were no less vexed for the freed than for the enslaved. It is equally clear, however, that the emphasis on volition was strategic and intended to cultivate motivation and self-interest. Hence, the first step on the road to independence was sedulous and conscientious labor. In the section titled "Being Industrious" in *Advice to Freedmen*, Brinckerhoff explained that freedom did not mean that one was no longer required to work but that one chose to work. He imparted this lesson through an anecdote about Isaac, a freedman he met while a superintendent of several plantations on the Sea Islands. Isaac mistakenly thought that as a freedman, he need not work unless he so desired. But as Brinckerhoff explained, "One of the greatest privileges of a freeman is to *choose* for himself. Slaves must do as they are commanded, but freemen *choose* for themselves. 'And now, Isaac,' I said, 'you can make your *choice*. You may stay on this plantation with your family and work, and

thus earn your bread, or you must leave the plantation and find a home elsewhere. Which will you *do*?' He, like a freeman, made his *choice*, and like a wise man remained with his family and worked with them in the field'' (15-16). As the repeated use of the word "choose" indicates, self-directed and deliberate action was of the utmost importance since volition distinguished free labor from slavery. At the same time, the obligation to work cannot be eluded, for the privilege of choosing involves not the choice to work or not but rather the orientation and disposition toward this requirement. Isaac's capacity to choose is possible only because of the liberty he enjoys. Furthermore, this example is revealing because work is exclusively defined by laboring on a plantation in which Isaac was held as a slave versus expulsion to an unnamed elsewhere identified as the space of idleness. Free labor is identified solely as contracted labor on the plantation; the personal autonomy exercised in the decision to resist wage work and strike out for oneself never entered this conception of choice.

One should also note that the emphasis on volition has as its consequence the effacement of the work of slavery, since slave labor was coerced, unlike the willful and self-directed labor of the freed. Labor as a social activity becomes visible only in the context of freedom. And as a result of this, a plantation pastoral with nonproductive slave laborers dependent upon the kindness of their master and irregularly prompted by the whip was the scenario of slavery that appeared throughout these texts. Moreover, the whip was only discussed in contrast to rational ideals of discipline; thus it figured not the violence of slavery but the dependence of slave laborers. By effacing the actual work of slavery and belaboring the issue of idleness, these texts endorsed paternalist arguments about the incapacities of black laborers and the need for extensive control over laborers in order to ensure productivity.<sup>53</sup> In this regard, Northern and Southern visions of slavery were increasingly coinciding as were their respective visions of labor management. As Amy Stanley observes, the "victors and vanquished [the triumphant North and the defeated South], ostensibly still struggling to implement opposing visions of emancipation . . . adopt[ed] similar methods of labor compulsion."<sup>54</sup> The consequences of this were profound because the emergent discourse on idleness targeted irresponsible characters and unbecoming conduct as a social danger and thus justified labor coercion and the repressive measures of the state enacted in the name of the prosperity of the population.

The fixation on idlers and shirkers in these handbooks attests to the pervasiveness of this ideology. In the fictional work *John Freeman and His Family*, the love of leisure and dutiful labor are contrasted in a predictable exchange of platitudes between two freedmen discussing the challenges of freedom. The similarity of the exchange between George and Prince and the back-and-forth of Jim Crow and Zip Coon should not go unnoticed. George, a hardworking field laborer, accuses Prince of laziness: "S'pose you'd go back to slavery, if ye could. You a'n't worth the name of contraband; you're nothing but the old nigger still." Prince is appropriately named, for he possesses all the pretensions of the prototypical Zip Coon, a love of fancy goods, and a refusal to exert himself. The love of leisure, sumptuary excess, and addiction to pleasure mark Prince as "nigger."

Miss Horton, a good white teacher from the North, overhears their conversation

as she returns from one of her weekly visits to the freedwomen, to whom she imparts the lessons of domestic economy. Aghast, she asks the men: "Did I hear rightly? . . . Would either of you, young men, be willing to go back to slavery?" (37). Although Miss Horton is incredulous, horrified, and disappointed, the articulation of her disbelief that they would willingly go back to slavery reproduces the repressive problematic of consent and the simulated willfulness typical of the rhetorical gestures of proslavery discourse. In short, the happy slave consents to bondage. In Miss Horton's expression of horror one discerns the contrary sentiments of these texts—abolitionist discourse sedimented with racist and paternalist views of black character and restrictive notions of free labor, which shamelessly encourage black laborers to accept low wages and comply with unfair contracts. Basically the freed are advised to work at all costs, since "work at low wages is better than idleness" (6).

George responds eagerly to Miss Horton's disheartened inquiry, defending himself and other freedpeople, "Not this child, but that darkey," pointing accusingly at Prince. It is interesting that Miss Horton repeats her question, directing it at Prince: "But what would you wish to go back to slavery for?" Prince replies, "I never been used to work, miss, and fact is, I don't like it." His remarks, inflected with the romanticism and nostalgia of minstrelsy, attest to the good old days on the plantation. Under slavery, he had lived the leisurely life of a coachman, with minimal work and fancy clothes; under freedom, he would be taught to work. The lesson of freedom, hence, was first and foremost the obligation to labor dutifully.

The other primers endorsed these views. *Friendly Counsels* notably contrasted the challenges of freedom with the ease of slavery: "In slavery you had little or no care, except to see that your task was done." But it warned the freed not to "fall into the mistake of some, that freedom means idleness" (4-5). The lessons expounded in these schoolbooks encouraged the freed to work for their former owners, remain on the plantation, accept poor wages, and comply strictly with a contract, even a bad one. *Plain Counsels* stressed the sanctity of the contract and its prescriptions rather than the liberty conferred by its exercise. Regard for one's word, respect for the rights of others, and self-interest required strict compliance with its terms. Abiding by the terms of a hard contract was in one's interest because the good reputation acquired by remaining true to one's promises would lead to further employment. The obligation or duties of the other member of the contracting party were not mentioned in this discussion of the contract, nor were the violations that commonly led to the breaking of contracts. The most common reason for breach of contract was poor treatment by the employer, including physical violence and other forms of abuse. Other reasons included invasive measures that implemented forms of control practiced under slavery—pass laws, restrictions on leaving the plantation during the week, the prohibition of visitors, interference in the domestic lives of laborers, et cetera; planters' failure to live up to the terms of the contract regarding shares and wages; and routine altercations expressive of the racial antagonism and class conflict of the postbellum period. It is remarkable that neither self-interest, will, nor liberty is mentioned in *Plain Counsels'* explication of contract; instead it is simply explained as "something which binds two or more parties" (47). This is particularly

portentous given that its author was a commissioner for the Freedmen's Bureau. However, the control of the freed effected through the contract labor system of the Freedmen's Bureau, which negotiated year-long labor contracts between planters and freedmen, and the punitive measures instituted by the Black Codes and vagrancy laws, which made it a criminal offense to be without a contract, to break contracts, or to act improperly, were endorsed in these schoolbooks. The consequences of such measures negated bourgeois constructions of the free market and forcefully retained blacks on the plantation. In regard to the contract, the espousal of volition only secured the bondage of the freed.

### Unbecoming Conduct

The freedmen's handbooks, in their insistence on dutiful conduct as a prerequisite to enjoying the entitlements of freedom, disclosed the linkages between repression, discipline, and the regulation of the freed population. After all, these texts were conduct books aimed at cultivating a rational, dutiful, and acquisitive laboring class and submissive and orderly black citizens. The inordinate concern with idleness, dependency, profligacy, and conduct revealed the continuities between the uplift messages proffered in these schoolbooks, the repressive instrumentality of the state, and the mandates of plantation owners and Northern manufacturers. The cultivation of docile and dutiful laborers—whether through the molding of a moral and rational subject, securing the control of the laboring body, or policing the population—was their shared aim. For example, the Black Codes of Mississippi stated that if “the laborer shall quit the service of his employer before the expiration of his term of service without good cause, he shall forfeit his wages for that year up to the time of his quitting.” Any white person or civil officer was entitled to arrest a black laborer who quit the service of his employer without good cause. Antienticement laws made it a crime for a laborer to quit one plantation and sign a contract on another. (These laws kept wages low and severely limited the laborer's options for employment. Antienticement laws were common and continued to control the mobility and options of black agricultural labors until the 1940s.)

Vagrancy laws facilitated the convict- and bonded-labor system in that any person not in possession of a contract was declared a vagrant. This person was fined and, if unable to pay the fine, hired out to planters or put to work on public roads for a period as long as a year.<sup>55</sup> Although vagrancy laws that applied specifically to blacks were overturned, race-neutral vagrancy laws continued to have the same effect.<sup>56</sup> Vagrancy statutes provided a means of enforcing the contract system, for basically these laws subjected the unpropertied classes to arrest if they were without a labor contract. With the exception of Tennessee and Arkansas, all of the former Confederate states passed vagrancy laws in 1865 and 1866.<sup>57</sup> The effect of these measures, according to Maj. Gen. A. Terry, was “a condition of servitude worse than that from which they have been emancipated—a condition which will be slavery in all but its name.”<sup>58</sup> Louisiana's Black Code required all freed laborers to contract for a year within the first ten days of January. The contracts to be signed by the head of the

household embraced the labor of all members of that household, including minors. The breach of contract resulted in the loss of all wages earned to the "time of abandonment."

In this context, the liberty of contract can rightly be called a fiction, for it was employed to enforce black subordination and legitimize a range of coercive measures, from the contract system to the regulation of domestic affairs. It served rather efficaciously in the transition from slavery to involuntary servitude. What kind of freedom was granted by these compulsory exchanges of property in the self? The lessons of duty and self-discipline disseminated in the textbooks colluded with the practices of domination conducted under the sanction of law. The complicity between the fashioning of the individuality promulgated in the handbooks and the repressive individuation and regulation of the Black Codes is significant, since the codes regulated the freed as a population by installing racial classifications within state constitutions, by prohibiting interracial sexual liaisons and social association, and by dictating the terms of contract and the rules of appropriate conduct. The repressive forms of control launched by the Black Codes focused on individual behavior and the management of blacks as a threatening internal element.

Like the freedmen's schoolbooks, the Black Codes and contract system mandated forms of dutiful and proper conduct. Unmistakably, the proper spirit was one of submission. Georgia's Penal Code stated that "all persons wandering or strolling about in idleness, who are able to work, and who have no property to support them; all persons leading an idle, immoral, or profligate life, who have no property to support them" are to be considered vagrants and could be fined, imprisoned, sentenced to public work, or bound out to a private employer for a period of a year. Freedpeople without property or contract were subject to arrest. According to the Florida Black Code, any able-bodied person without visible means of support was leading an idle, immoral, or profligate course of life and thereby subject to arrest. However, the state's concerns about proper conduct were not limited to those without visible means of support; its intervention extended to labor contracts and relations. A laborer could be convicted in a criminal court for the willful disobedience of orders, impudence, or disrespect to his employers.<sup>59</sup> In Louisiana, the failure to comply with orders, leaving the plantation without permission, impudence, use of indecent language, and quarreling were acts of disobedience that subjected the offender to fines ranging from \$1 to \$2 a day.<sup>60</sup> Decidedly, this micropenalty of everyday life reinforced the virtue lauded in these manuals.

The significance of idleness and profligacy in the state's repressive governing of the freed population reveals how politically charged these accusations were and illuminates the forms of social struggle and contestation conducted under their cover. As well, the problem of idleness and the necessity of setting the freed to work underscores the convergence between policing the poor and policing the freed black population.<sup>61</sup> Consequently, a variety of everyday activities that enabled a measure of subsistence or autonomy were considered "troublesome" assertions of freedom and hence were criminalized. These activities ranged from moving about to hunting and fishing to styles of comportment. In addition to vagrancy laws, new laws requiring the fencing of animals, hunting and fishing laws, the privatization of public lands, et cetera, made subsistence living increasingly difficult and largely



illegal.<sup>62</sup> Punishment was increased for crimes that blacks were "likely" to commit, for example, stealing pigs. These offenses were harshly punished and responsible for at least half of the prisoners in the convict-lease system.<sup>63</sup> The confounding of the liberty of contract by a compulsory contract system, self-interest by the threat of criminal sanction, and self-fashioning by obligatory conduct delineates the crosscurrents of slavery and freedom that engendered involuntary servitude and the burdened individuality of freedom.

The contracts administered by the Freedmen's Bureau also dictated the terms of proper conduct. The magnitude of employers' interference in the lives and private affairs of workers is illuminated by the terms of contract. An example of the extent of employer invasion in the private lives of workers was a contract in which the laborer, in the attempt to protect his privacy, stipulated that he had just cause to leave his employer's service if the employer violated his conjugal rights.<sup>64</sup> In a study of labor contracts administered by the Freedmen's Bureau, Lewis Chartock found that the labor contracts arranged by the bureau were used primarily to regulate freedmen's behavior rather than to establish the tasks to be performed.<sup>65</sup> The key words used to describe the desired form of personal behavior were "quiet," "orderly," "respectable," "prudent," "well-behaved," and "sober." Contracts stipulated that workers be polite and respectful to their employers, orderly, prudent, and moderate in temperament and habit. Contracts also established the terms for personal and private governance. One contract stipulated that a husband was allowed to visit his wife as long as he remained orderly and respectful; others entitled employees to visit their spouses on Saturday night as long as they returned home by Monday morning.<sup>66</sup> Chartock concludes that "southern planters were able to use the contract system to define a social role for freedmen which was not far removed from the status they had occupied when they were slaves."<sup>67</sup> Ironically, the liberty of contract forged the link between slavery and freedom not only because it provided the fiction of free exchange that enabled debt-bondage but also because it prescribed terms of social interaction that reproduced master-slave relations and greatly regulated the personal and private lives of free laborers.

The liberty of contract, however illusory, could not be disassociated from the imposition of forms of involuntary servitude facilitated by Black Codes, vagrancy laws, the convict-labor system, the criminal surety system, breach-of-contract laws, and the share system. Moreover, even those wage laborers operating under the presumably ideal conditions of the "free market" were unable to enjoy the fruits of their labor. The liberty of contract dissimulated the inequality at the heart of this exchange. In the absence of a "free market," even as understood in the mystified terms of bourgeois economics, what did it mean to define freedom or free labor primarily in terms of the liberty of contract? Given the coercive measures regularly employed by capitalists to regain control of black laborers, the liberty of contract merely acted as the vehicle of involuntary servitude. Consent cloaked coercion, and relations of domination and exploitation were masked by the designation "free will." The contract enshrined involuntary servitude as freedom and reduced the free worker to a debtor, peon, and bonded laborer.

The fashioning of rational and moral individuals undertaken in the manuals was attuned to the dictates of the market and the racial order of the postbellum South.

The self-discipline and humility advocated in these pedagogical manuals must also be considered in the context of postbellum violence, where charges of inappropriate and improper conduct—in other words, behavior out of line with one's status—not only were penalized in the law but also sanctioned extralegal forms of white violence.<sup>68</sup> The ever-present threat of punishment, legal and otherwise, awaited acts of transgression or the failure to adequately comply with the rules. The majority of the violence committed against the freed in the aftermath of slavery was incited by charges of unbecoming conduct, which included one's dress, demeanor, movement through public space, tone of voice, and companions. "Unbecoming conduct" encompassed any and all possible affronts to racist mores and bared the "micro-penalties" of disciplinary individuation, which policed and punished everyday expressions of freedom.<sup>69</sup> Although the handbooks encouraged a mastery of the self fostered in the spirit of servitude, charges of unbecoming conduct radically undermined any notion of "mastery of the self," even that conducted in the spirit of self-disciplining, precisely because any assertion of selfhood risked affronting the ruling race and the dictates of racial decorum that structured the social.<sup>70</sup>

The striking similarities between antebellum regulations regarding black conduct and postbellum codes of conduct leave us hard-pressed to discern even those intangible or inchoate expressions of black freedom. Antebellum cases like *State v. Tackett* held that the "impudence and insolence of a slave" were to be considered extenuating circumstances in the homicide of a slave, though the same would not prove adequate in the homicide of a white person because the relation of white man and slave made such impudence the equivalent of a "grave indignity upon one's person." Likewise, *State v. Jowers*, a case that involved a white man indicted for battery against a free black man, reached similar conclusions in arguing that remedies for black insolence, whether slave or free, necessitated violence: "If a slave is insolent he may be whipped by his master, or by order of a justice of the peace; but a free negro has no master to correct him, a justice of the peace cannot have him punished for insolence, it is not an indictable offense, and unless a white man, to whom insolence is given, has a right to put a stop to it in an extra-judicial way, there is no remedy for it. This would be insufferable." The enormity of the offense resided in the fact that it was committed by a black person and thereby challenged the very foundation of the social order—black subordination and white dominance. In the context of freedom, the need to reimpose black subordination was no less pressing and was actualized not only through forms of legal repression and punishment but also through the inculcation of rules of conduct. As Carl Schurz remarked: "A negro is called insolent whenever his conduct varies in any manner from what a southern man was accustomed to when slavery existed."<sup>71</sup>

The lessons of conduct imparted in freedmen's primers refigured the deference and servility of the social relations of slavery. Elucidating the dimensions of property as a social relation principally entails attending to the restoration of slavery effected through the regulation of conduct, the fashioning of individuality, and the naturalization of race. Clearly, these lessons instilled patterns of behavior that minimized white discomfort with black freedom. The regulation of conduct lessened the dislocations of the war by restoring black subordination on the level of everyday life: "White people have old, strong prejudices, and you should avoid everything you

can which will inflame those prejudices. You know how easy it is to hurt a sore toe. Prejudices are like tender toes. Do not step on them when it is possible to avoid it." The insults that regularly confronted the freed were to be countenanced by turning the other cheek and meeting harsh words with kind ones, as if the obstacles to freedom could be easily avoided or the goodwill of white folks conferred with the aid of simple promptings like declared black unworthiness—"I am not as good as I plan to be." The cultivation of proper conduct exceeded admonishments about duty and defiance; indeed, what amounted to the self-immolation of the free individual was required for the reconciliation of former masters and slaves. Not only were the freed encouraged to be subservient, obedient, and humble and remain with their former owners until death, but also they were asked to refrain from asserting their liberty in every meaningful and imaginable way. The effort to sustain the control of black labor through the cultivation of dutiful conduct and other techniques of self-fashioning discloses the affinities of will and compulsion, reason and repression, and coercion and volition. One was obliged to endure these encroachments of freedom not because one was still a slave without choice, but, ironically, in order to exemplify the dutiful and rational behavior of a freeman, which remains puzzling only if we fail to understand the idealization of self-abasement as a virtue. Above all, the emphasis on proper conduct disavowed the excessive and indiscriminate violence of the postbellum period.

Not only did the lessons of *Plain Counsels* promote the nobility of work and excoriate idleness, but also they sought to reconcile former masters and slaves. Sections pointedly titled "About Your Old Master" and "About White Folks" enumerated the predilections and prejudices of white folks in order that insolence and other potentially troublesome assertions of equality be avoided. Thus the freed were instructed in rules of racial etiquette that would enable them to effectively navigate white resentment and racism and decorously adjust to their new status. Since the task of reconciliation fell primarily upon blacks, humility, patience, and generosity toward whites were encouraged. As "About Your Old Master" explained, the difficulties experienced by former slave owners as a result of the abolition of slavery—the loss of wealth, sons on the battlefield, and slave property, in addition to the "new state of things"—naturally induced anger and resentment. Moreover, it would take years before former slave owners "put off the airs and manners of a master, just as you find it hard to shake off the habits of slaves" (11). Not only were the vestiges of the past to be endured, but also the strictures of the present had to be embraced in good faith. This sympathetic explication of white resentment was allegedly for the benefit of the freed, which is not surprising, or at least is quite consistent with the general spirit of schooling them for a "new slavery," since the lessons of freedom invariably involved the adaptation of the freed to a new order of labor and social relations that transformed and refigured those of slavery. Instructing the freed in the "ways of white folks" was intended to improve the interactions between blacks and their former owners and other whites. If the former slaves remembered the losses suffered by their owners, the action and attitudes of whites would be more understandable and kind feelings more quickly reestablished. Thus blacks were admonished to "think kindly about your old master. . . . Do not fall out now, but join your interests if you can, and live and die

together." Although slavery had been abolished, the ties between former masters and slaves were expected to endure until death, thereby binding the free laborer to his employer in perpetuity. In the new state of things, the ties of affection and reciprocal will enabled this eternal proprietorship.

The extant familial affection between former masters and slaves eventually would overcome resentment if blacks discreetly navigated the sore spots of the emancipation. This rapprochement, auguring the terms of national reconciliation, was also actualized at their expense.<sup>72</sup> By means of this resurrection of the customs of slavery and exploitation of the sentimental rhetoric of reciprocity, in particular the compulsorily dutiful conduct of the enslaved, the past continued to endure in the "new state of things." By providing a rationale for white resentment, *Plain Counsels* minimized the injuries imposed by "severe feeling," particularly the abiding stigmatic injury of racism and the reign of terror launched by this antipathy. Unfortunately, good conduct could not mitigate the sway of coercion, resentment, and terror. Even those like Fisk who declared slavery a crime against humanity because of its abrogation of natural rights described the relations of slavery as good, pleasant, and comfortable. Similarly, Fisk insisted that the kind feelings that formerly existed between masters and slaves had not been terminated by the war, as if the absolute denial of fundamental rights had been achieved through mutual affection rather than inordinate violence and brutal domination. As I have pointed out, the aspects of slavery most readily criticized in these schoolbooks were black dependence and the lingering failures of character exhibited in dishonesty, profligacy, idleness, irrationality, and sumptuary excess.

*Plain Counsels* claimed that despite the old master's anger about the new state of things, he still retained "a kind of family affection, and in spite of his bad feelings, I have noticed, he desires to see you do well in life" (12). Not surprisingly, this preamble about familial affection culminated in the directive to stay put: "Do not think that, in order to be free, you must fall out with your old master, gather up your bundles and trudge off to a strange city. This is a great mistake." The plantation was the designated sphere in which blacks would overcome the "disheartening influence of belonging to a subjugated race" and achieve a modicum of equality. It was clear, given the recommendations about unassuming and modest conduct, that blacks did not move as equals in civil society, nor were they endowed with rights that others were bound to respect or permitted to entertain ideas of equality without risking accusations of "putting on airs." The tragic limits of emancipation were bared in the designation of the plantation as the imagined space of freedom and happiness; this restricted landscape was deemed a place presumably as good as anywhere else in the world to explore the nascent experience of liberation. The freed could be as "free and happy" in their old home "as anywhere else in the world" (12). Unfortunately, this was true to the degree that freedom was no less elusive or more realizable on one plantation than on another or in Georgia rather than Alabama.

However, in many regards, the sheer capacity to move, as demonstrated by the mass movement off the plantation, rather than the gains or loss experienced at one's destination, provided the only palpable evidence of freedom.<sup>73</sup> As Felix Haywood recalled, when former slaves received news of their freedom "everybody went wild. We all felt like heroes and nobody had made us that way but ourselves. Just like that

we was free. . . . Nobody took our homes away, but right off colored folks started on the move. They seemed to want to get closer to freedom, so they'd know what it was—like it was a place or city." This desire set thousands on the road in search of a distinct and tangible freedom. The ambulant expressions of freedom are consistently detailed in slave testimony. The search for a parent, child, or lover and the longing to return to the place of one's birth or simply instantiate being free through the exercise of this nascent mobility. Locomotion was definitive of personal liberty. Blackstone's *Commentaries* defines personal liberty in terms of the power of locomotion: "Personal liberty consists in the power of locomotion, of changing one's situation, or removing one's person to whatever place one's inclination may direct, without restraint, unless by due course of law."<sup>74</sup> As itinerancy, nomadism, migration, roving, or simply walking, moving about occurred below the threshold of formal equality and rights and articulated the limits of emancipation and the constrained terms of agency. It is clear that the freedom experienced was in the search and not the destination.

Admonitions to remain on the plantation, abstain from assertions of equality, turn the other cheek when faced with insult, and avoid the sore toes of prejudice attest to the emphasis placed on servility, which was deemed necessary in navigating the upheavals of Reconstruction. Although *Plain Counsels* opened with a lecture on freedom that forcefully proclaimed the natural rights of all men to life, liberty, and property and denounced the high crime of slavery in abrogating these rights, it encouraged obsequiousness and humility in interracial social interactions. Accordingly, regular confessions of unworthiness rather than distasteful expressions of equality would best serve blacks in their transition to freedom: "Some white men will put on airs, and look down on you. Now, instead of putting on airs, too, and saying, 'I am as good as you are,' it is better to say nothing, or if you do answer, to say, 'I am not as good as I ought to be, as I want to be, and as I hope to be.'" The coupling of radical pronouncements about the evils of slavery with conciliatory and conservative admonishments to avoid inciting social turbulence by "not putting on airs" and remaining in one's place, quite like the increasingly conservative judicial assessment of the Thirteenth Amendment and the measure of equality, fostered the incidents and vestiges of slavery while exalting its abolition.

The good conduct encouraged by such counsels eased the transition from slavery to freedom by imploring the freed to continue in old forms of subservience, which primarily entailed remaining on the plantation as faithful, hardworking, and obedient laborers but also included manners, styles of comportment in work relations, objects of consumption, leisure, and domestic relations.<sup>75</sup> In their emphasis on proper conduct, these schoolbooks resuscitated the social roles of slavery, not unlike the regulation of behavior in labor contracts or the criminalization of impudence in the Black Codes. The pedagogical injunctions to obedience and servility cast the freed in a role starkly similar to the one in which they had suffered under slavery. On one hand, these texts heralded the natural rights of all men; and on the other, they advised blacks to refrain from enjoying this newly conferred equality. Despite proclamations about the whip's demise, emergent forms of involuntary servitude, the coercive control of black labor, the repressive instrumentality of the law, and the social intercourse of everyday life revealed the entanglements of slavery and freedom.

## The Manhood of the Race

If pronouncements of equality were to be eschewed, lest one risked offending white folks, this was not to suggest that opportunities for self-improvement were hindered by these oft-repeated behests to resume the social demeanor of slavery. Notwithstanding the compromises of freedom endlessly being negotiated in the manuals, it was still believed that every man possessed the capacity to (re)make himself in accordance with his ideals.<sup>76</sup> The discourse on self-improvement asserted that neither race nor the badge of slavery need impede possibilities for success or advancement. While it is important to note that the emphasis on self-making represented an attempt to counter racist arguments about blacks' limited capacities and the prevalent notion that "the negro exists for the special object of raising cotton, rice and sugar for the whites, and that it is illegitimate for him to indulge, like other people, in the pursuit of happiness in his own way," it also placed the burden of self-advancement solely upon the individual.<sup>77</sup> Consequently, history receded before the individual anointed as the master of his fate. The only impediment to advancement was the self. Other obstacles to advancement, independence, and autonomy were conveniently neglected, and failure was attributed to deficiencies of character and habit. The individual abandoned to his own efforts savored assurances that the market provided a level playing field and the distribution of awards based upon one's efforts and merits. Every man was, according to *Plain Counsels*, "under God, just what he makes himself; it matters not whether he be white or colored. Frederick Douglass was born a slave and had no friend to help him. . . . Now you have yourself in charge, and I want you to make a man of yourself. Will you do it?" (18).<sup>78</sup>

If the emphasis on individual responsibility, reliance, and self-making inevitably attributed the wretched condition of blacks to their shortcomings, the remedy invariably suggested was "showing thyself a man," and the favored demonstration of this nascent manhood was dutiful labor. As John Freeman, the protagonist of Helen Brown's *John Freeman and His Family*, declares, "We are men now, and we're free men, too; and we've got to do just what free men do. You look round and you see every freeman, black or white, works for a living; works I say, not grubs and roots" (11). The equation of man and laborer conflates self-cultivation with the extensive capacities of the laboring body; that is, it establishes the isomorphism of making the self and making objects by likening distinct forms of production and, notably, by effacing the presence of women within the discourse of freedom, thereby restricting the act of making to masculinity. This emphasis on the creative capacity of making and self-making identified freedom as work. However, in lauding the body's extensive capacities and the individual's innate facility for self-making, various techniques of making and using were ranked, and "working for a living" and "grubbing and rooting" differentiated the constancy of application from mere subsistence and, ultimately, responsibility from idleness.

The individual prepared to meet the challenges of freedom and ready to make a man of himself was deemed capable of throwing off the vestiges of slavery by his own efforts. The frequent references to white people who had started out with less than the emancipated and achieved great success endorsed this capacity for self-

making. Such comparisons were only plausible if a blind eye was turned to the instrumentality of race as a vehicle of subjugation and white opposition to a new social order. Fisk, the author of *Plain Counsels*, claimed that he was "acquainted with many white persons who commenced married life twenty-five years ago with as little as you have now, and who worked with their hands for less than is given to you . . . and are [now] in very easy circumstance" (58). White people were to be regarded as living proof of the rewards realized by hard labor rather than as examples of the privileges afforded by whiteness. Of course, race mattered little if rewards were actualized on the basis of hard labor and everyone enjoyed the fruits of his labor. However, as this certainly was not the case, the willed innocence of abstract equality depicted a democratic distribution of opportunities in the context of racist domination, pervasive violence, and extreme exploitation and anticipated outcomes that obfuscated the condition of the South. Moreover, as whiteness remained the standard-bearer of value, the possibility and opportunity proffered were inherently racialized.

In this vein, *John Freeman and His Family* represented the prospects of citizenship and manhood as inseparable from the assimilation of whiteness. If blacks modeled themselves after whites, they, too, might receive the rewards that the latter enjoyed. John Freeman, taking this promise seriously, becomes the definitive mimic man: "Every good custom of the white people, which came to his knowledge, inspired within him the ambition to go and do likewise; and while he was humble and respectful as a *subordinate*, he was eager to be and do all that would make him a *true man*. He certainly had the right idea of *manhood* and liberty" (45; emphasis added). However, John was destined to remain a mimic man because of the palpable distance between the ideal aspired to, true manhood, and his actual condition as a humble and respectful subordinate. The distance between the humble subordinate and the true man established by the distinct temporalities of John's actual condition ("he was a humble and respectful subordinate") and his as yet unrealized aspiration ("he was eager to be . . . a true man") insinuated that although he aspired to reach the measure of true manhood, he might be unable to realize it. In this regard, *John Freeman* intimated that the chasm between the universal tenets of equality and the conditions of their actualization might never be bridged. We are left to wonder if the promised equitable enjoyment of material rewards, like manhood itself, was a goal to be aspired to but perhaps unrealizable, or if the liberty proffered with one hand was withdrawn by the other.

Was it possible for John Freeman to be a humble subordinate and a true man? The articulations of race, gender, and citizenship require us to answer both yes and no. Certainly black men and women were citizens as rights-bearing individuals protected by the state. However, realizing these rights and entitlements was another issue. Not only were issues of political equality greatly contested and social equality opposed, but also even the enjoyment of basic civil rights, to a large degree, was unrealizable given the relations of power and property that travestied these rudimentary rights. As has been argued earlier, the implied citizen of the Constitution and subject of "we the people" was the white male. Citizenship presupposed the equality of abstract and disembodied persons, and this abstraction disguised the privileges of white men. The presumed whiteness and maleness of the citizen trans-

posed the particular into the universal, thus enabling white men to enjoy the privileges of abstraction and a noncorporeal universality.<sup>79</sup>

To the degree that blacks were challenged to assume the duties of freedom and prove their worthiness by showing themselves as men, the implicit masculinism of citizenship was reinforced. Yet the task of demonstrating the "manhood of the race" was not simply imposed from without but also taken up as the blazon of an emergent black citizenry.<sup>80</sup> The considerable weight attached to the manhood of the race in large measure determined the abolition of slavery, the conferral of citizenship, and the eventual granting of manhood suffrage.<sup>81</sup> The military service of black men in the Civil War was an important determinant in the passage of the Thirteenth Amendment and the Civil Rights Act of 1866. The participation of over 200,000 black men in military service made it necessary for the state to recognize blacks as citizens.<sup>82</sup> The importance attributed to soldiering exemplifies the masculinism of citizenship and, moreover, shows citizenship to be a kind of soldiering. This conception of the citizen-soldier, according to Nancy Fraser, imagines the citizen as "the defender of the polity and protector of those—women, children, and elderly—who allegedly cannot protect themselves." The citizen as soldier introduces a gendered division between those who protect and those who are protected and suggests that one achieved true manhood through the ritual theater of fratricide and established one's humanity by the capacity to kill and the willingness to die.<sup>83</sup> *Advice to Freedmen* espoused this sentiment in noting that the presence of black combatants confirmed that "colored men prize[d] liberty sufficiently to fight for it." As well, the soldier fulfilled the citizen's obligation to "stand by the government and aid in saving our country and its institutions" (49).

As men and citizens, blacks were implicitly involved in the mimetic enactment of identity and entitlements. Certainly John Freeman's fashioning of manhood was modeled accordingly: "A purpose to do right as far as he knew how animated him daily, and the eager desire to rise above the degraded sphere in which he had always existed, to live and think, learn and do like white folks, was never for a moment abated" (45). As Homi Bhabha argues, mimicry is a production of the subject as the same and other. The mimic man is a partial representation of the dominant subject; however, he is not reassured by this displacement but menaced. The familiar transported to the distant becomes estranging and grotesque.<sup>84</sup> However, the threat or menace that possibly attends this displacement and reproduction of the dominant was minimized by the reassuring distance that separated the true man and John Freeman. Despite the unabated desire "to do right," rise above his "degraded sphere," and "do like white folks" that animated John Freeman's every day, he remained trapped in this degraded sphere, his efforts at self-advancement mocked by the subtle insinuation of an insurmountable barricade in the passageway between the debased sphere in which he had always existed and the celestial sphere of right, equality, and whiteness. This insurmountable barrier was race. Thus the danger of mimicry was eclipsed by the comfort of minstrelsy. The requisite subordination of the freeman foreclosed the threat of "true manliness."

The anxiety and discomfort surrounding black manliness were registered in the ambivalent demand to "show thyself a man." The command to "show thyself a man" brings to mind the compulsory display of black value on the auction block.



Dread and desire inflected the directive, as the freeman was required to prove his manhood and remain a humble subordinate. This delicate balancing act demanded that he display and cloak true manliness with the facility of an exhibitionist—now you see it; now you don't. The obligation to display the self in this fashion was at odds with the declared intent of the directive. How did the subject splayed before the scrutinizing gaze enact masculinity? Would the flaunting of black manhood before white inquisitors, skeptics, and enemies establish the vitality and worthiness of the race? Could such exhibitions of the self establish anything other than the distance between the freeman and the true man?

The relation between Lieutenant Hall, a Union army officer assisting in the transition from slavery to freedom, and John Freeman underlines the distance between the authentic and the mimetic or between the true man and the freeman. The white lieutenant, fulfilling his missionary duties with the "benighted Africans" of the United States, is savior, father, and disciplinarian. Lieutenant Hall bestows John with the name Freeman: "A new name it was, distinct, clean of slavery, savoring of the life of liberty and equal rights upon which he was entering. He was determined that he would never disgrace it by idleness or want of integrity, or by any act unworthy of freedom; and he was earnestly desirous that those who bore it with him would esteem and cherish it as he did" (22). In this case, since the surname is assigned rather than adopted, the independence and dignity that it is intended to connote are undermined. Figuratively, it extends the lieutenant's patriarchal reach as he confers the patronymic. The surname, in this light, not only expresses John's new condition, and the ambivalence of that condition, but also designates Lieutenant Hall as white father.

Henry Banner, a former slave, ironically noted that a surname was the sole inheritance of freedom: "The slaves weren't expecting nothing. It got out somehow that they were going to give us forty acres and a mule. We all went to town. They asked me who I belonged to and I told them my master was Banner. One man said, 'Young man, I would go by my mama's name if I were you.' I told him my mother's name was Banner too. Then he opened a book and told me all the laws. He told me never to go by any name except Banner. That was all the mule they ever give me."<sup>85</sup> In Banner's account the surname does not confer true manhood but the paradox of emancipation and the dispossession that acquires the status of a legacy. The surname here denotes, to borrow Spillers's term, "the captor father's mocking presence" and the disinheritance that engenders the African American. It substitutes for a proper inheritance and an adequate form of redress, it being "all the mule" that Banner received.

However, in *John Freeman* the significance of the surname lies in its function as a patronymic that identifies Clarissa and her offspring as John's, thus marking the decisive shift in the reproductive economy of freedom. John's wife and children are placed under his control and dominion by virtue of the patronymic: "You must give your wife the same name, then, mind, and all your children. Then we shall know you all belong together. You'll be the Freeman family" (21). When Clarissa, John's wife, is first addressed as Mrs. Freeman, she marvels at her new acquisition: "She has never been called Mrs. Freeman before. That sounds a heap like white folks, she thought to herself, and now I must honor the name, as John says" (26). However,

this acquisition, valued for its simulation of whiteness rather than for the new order of conjugal and contractual relations that it announces, betokens both her freedom and her death as civil subject. According to the doctrine of coverture, the wife existed under the cover of her husband's status and identity; therefore, married women were subsumed under the civil personality of men,<sup>86</sup> although freedwomen existed within and without the privatized enclosure of domesticity, since Mrs. Freeman straddled the demands of laborer, caretaker, and legal dependent. However, it is important to note that these primers treated freedwomen the same as men in one respect—they were expected to work and support their families.<sup>87</sup>

Just as anxieties about national prosperity and social order required that the freed prove their worth, exhibit their capacities, and practice temperance, restraint, and humility, so, too, the responsibility of each citizen to bear his part of the common burden and increase the strength and wealth of the nation created a curious domesticity at the interface of the public and private and annexed and regulated by the state.<sup>88</sup> In this regard, the emphasis on domesticity is best understood in relation to issues of prosperity, order, and hygiene. Issues of prosperity and hygiene are central to the regulatory efforts of the state, the policing of the private, and the strategies of state racism, since cleanliness and domestic order are confluent with social stability, economic health, and the eradication of idleness. In this case, the family does not provide a barrier to the values of the marketplace; to the contrary, the domestic is valued because it is essential to managing laboring families, inculcating suitable ideas of settlement and stability, and nurturing responsible and rational individuals. The complementarity of home and work can be discerned in the general inattention to feminine virtues and the imperative that all members of the family work. If, as argued earlier, the gender of the female slave becomes intelligible through a calculus of injury, liability, and inheritance, gender must be reconsidered here within a different economy of kinship, reproduction, and inheritance and in relation to issues of working-class formation, the health of the social body, and national prosperity. At issue are the ambiguous role of Mrs. Freeman and the work of normalization conducted within the domestic sphere.

Much fine work has been written on women's agency within the private sphere, on domesticity as an allegory of political desire, and on marriage as the symbol of "liberation and entitlement to democracy and desire."<sup>89</sup> The line of argument undertaken here is not intended to underestimate the joy experienced in creating and maintaining families for those long denied this benefit, to minimize women's agency within the household, or to cast the family as a monolithic and uniformly oppressive institution but rather to consider the question of the family in regard to issues of racial and class formation and the governing of the social.<sup>90</sup> The advent of freedom placed black women and children within a locus of patriarchal control and protection that signified the gains of freedom. Yet the privatization of marital and familial relations assured neither women's protection from the violence of outsiders nor protection from their spouses.<sup>91</sup> Conflicts and tensions within the freed family sometimes resulted in the physical abuse of women. Moreover, the illusive security and comfort of the private require that we forget the kinds of violence that women are subjected to within the home. Classically, the private sphere designates men's liberty from the state and the encroachments of others, and ensures their custody of

women and children rather than women's safety. This is to argue neither that freedwomen were controlled by their husbands nor that they didn't enjoy a measure of autonomy in their personal lives but rather to highlight the masculinist constitution of the private and the forms of encumbrance that enabled men to secure their liberty. As well, it is important to note that the sanctity of the private did not shield black women or men from racist attacks in their homes.

Although it has been forcefully argued that domesticity and the consequent re-privatization of female sexuality within kinship versus captivity networks were marked advances over slavery and great leaps on the road of black progress, given the destruction of natal and conjugal relations under slavery, here I advance a different reading, one less intent on celebrating the fashioning of heterosexual domesticity than on illustrating the perviousness of the family to the incursions of capital and the state. While the ability to forge and maintain familial relations must not be minimized, neither should the family be naturalized as the measure of racial progress. To the contrary, the utility of the family as a mechanism of state racism greatly tempers claims of progress. In fact, what is articulated at the site of the family is a shared concern about matters of racial hygiene, morality, and prosperity. In other words, the articulation of black politics at the site of the family is often consistent with the regulatory efforts of the state. Therefore, the domestic articulation of a politics of racial uplift risks displacing the political, endorsing a repressive moral economy, and privileging the family as a site for the reproduction of racial values. Thus the shifting configuration of familial relations cannot be seen as inherently progressive or oppressive but rather as a changing institution, or, as Jacques Donzelot describes it, "an uncertain form whose intelligibility can only come from studying the system of relations it maintains with the sociopolitical level."<sup>92</sup>

## Domesticity and the Social

In these primers, issues of family and domesticity emerge obliquely and in relation to issues of labor, hygiene, and discipline. The utility of the family as a mechanism in the transition to a free labor system is evidenced by the importance attached to the home. Like the difference between grubbing and rooting and working for a living, domesticity was the sign of civilization, settlement, and rational desire, as contrasted with the itinerancy and subsistence of those eluding the contract system. Moreover, in these representations of domestic economy, the social comes into the view—that is, the hybrid space that repartitions lines of the public and private for the purposes of securing the public good—the health, safety, and morality of the people. Similarly, as was the case regarding labor discipline, the advice dispensed in these primers was not only concerned with the freed but also a component of a broader discourse on managing the working poor, eradicating pauperism, and domesticating asocial, dangerous, and itinerant classes. The same sort of advice dispensed in these freedmen's primers, particularly regarding the importance of domesticity and implanting the proper idea of home life, was elaborated in texts like *Public Relief and Private Charity* by Josephine Shaw Lowell and *A Handbook of Charity Organization* by Rev. S. Humphreys Gurteen.<sup>93</sup> These theoretical and prac-

tical treatises on eradicating pauperism and implementing effective forms of charity relief that didn't reproduce dependence share a common language with the freedmen's texts. Lastly, the concern about issues of proper association, hygiene, and prosperity extended beyond the immediate sphere of the family and issues of poverty and labor; the efforts to ensure national prosperity and the health of the social body would endorse the racial segregation of *Plessy v. Ferguson*.

The section "Household Life," added to the second edition of *Advice to Freedmen*, stresses association and hygiene rather than domestic possessions in its representation of a properly regulated domestic life: "Heretofore, although father, mother and children have resided in the same cabin, yet to a great extent you have not lived as families. We hope that before long there will be a change for the better in this respect. And how pleasant, when returning from the day's toil in the field, to sit down in a neat room where all is in good order, the furniture free from dust, the floor and hearth well swept, and the ceiling and wall nicely white-washed." It is living together that defines the hearth, although these arrangements are threatened by dirt and disorder, which not only present physical dangers in the form of illness and pestilence but also are signs of immorality. Hygiene—such as the cleanliness of persons, the need of fresh air, the importance of bed linen, not sleeping in one's day clothes—is as important as taking meals together in "beget[ting] system and regularity in the management of household affairs" and "cultivating those graces of manners and habits which distinguish cultivated and refined society" (33). Brinckerhoff induces the freed to strictly follow such guidelines not only for purposes of moral cultivation and refinement but also to battle the sickness that afflicts their children because of their lack of personal cleanliness.

The emphasis on hygiene expresses larger concerns about national well-being, since hygiene legitimated, if not invited, the policing of dwellings but also the setting of guidelines for marriage and other forms of social association, particularly those considered dangerous or destabilizing of social order. Regulating hygiene or ensuring public health was a fundamental aspect of the police power of the state.<sup>94</sup> As Giovanni Proccacci remarks, in the governing of poverty, hygiene provides a "grid for reading social relations, a system which serves at once to canalize them and to invent new paths of circulation that are more 'orderly' and more decipherable."<sup>95</sup> Managing immorality, indolence, criminality, and disease was the target of these lessons of hygiene, and they were fundamentally allied with Reconstruction, the return of national prosperity, and the establishment of a responsible and domesticated black laboring class. The coincidence of good housekeeping and national prosperity is keenly articulated in *John Freeman and His Family*, which utilizes the devices of sentimental literature, in particular, the kitchen as the microcosm of the nation and the ethic of submission. As Gillian Brown observes, in the domestic politics of sentimentalism, "uniformity and neatness in the kitchen matter profoundly, since these habits create a standard of harmony for America."<sup>96</sup> However, in this case domestic economy is not separated from or opposed to the market but continuous with it. Because of this, the household is not treated as the special province of women, except in *John Freeman. Advice to Freedmen, Friendly Counsels*, and *Plain Counsels* associate the well-managed and ordered home with the transition from slavery to freedom and the birth of the proprietorial self. The entan-

gments of the state and the family and the market and the household illuminate the nonautonomy of the private.

The visions of domesticity promoted within these texts emphasized duty, morality, and cleanliness, and, above all else, they represented the family as a laboring unit. Accordingly, the home is in service of the market, as its proper management stabilizes and induces good habits in the laboring classes. In other words, the discourse on domesticity is primarily geared to battling moral degradation, sloth, indolence and idleness. It is a discourse aimed at managing the laboring classes and the poor rather than creating a protected sphere outside market relations. Therefore, even the guardian of the hearth, Mrs. Freeman, participates in the world of the market as a laborer by taking in washing, once again eliding distinctions between the home and the world outside. As an important aside, it should be noted that all of these texts encouraged freedwomen to labor, despite the contrary desires of the freed exhibited in the mass exodus of women and children from the field.

Domestic disorder was held responsible for criminality and a range of other sins, from vanity and consumption of tobacco and liquor to stealing. In *John Freeman*, Miss Horton, a white Northern teacher, tries to eradicate the "old, lazy, filthy habits of the slave quarters" that were still clinging to the freed by imparting lessons on hygiene during her regular visits to their homes. Of course, the disorder that she observes within these dwelling indicates that the freed do not possess "the true idea of home" (31-32). For these reasons, Miss Horton is not only a teacher and friend of the race but also a home-visitor with a mission.

Miss Horton, upon her visit to the ladies, immediately scanned the room, detailed the problems, and identified the changes to be made. As her eyes surveyed the room, she was surprised "that a woman who was so tidy in her dress, as Clarissa certainly was, could live in a room so completely littered and filthy; and she made up her mind to give her new acquaintance a few useful hints." Clarissa is determined to follow these hints less because of the importance of neatness than because of her inclination to mimicry. Neatness is not simply a virtue but an expression of whiteness as well, at least as far as Clarissa can discern. In this regard, the virtue of domesticity was not only the ground of national well-being, moral cultivation, and family stability but also the very expression of whiteness. The linking of whiteness with purity, neatness, and health accedes to a politics of contagion that eventually serves to justify segregation and license the racist strategies of the state in securing the health of the social body. In this respect, Clarissa's desire to be "just as near like white folks as ever we can fetch" bespeaks the association of race and hygiene, or more specifically, purity and whiteness, that gives shape to the biopolitical imperatives of the nineteenth-century state.

Moreover, the lack of cleanliness is associated with moral depravity, animal habits, and criminality. The connection between hygiene and social danger is demonstrated by the case of Sam Prentiss. Sam was proud, wore fine clothes and bright buttons and other things he couldn't afford, smoked and chewed tobacco, and drank whiskey. To maintain these habits, he stole money from his employer, for which he was imprisoned. Clarissa, feeling sorry for his mother and the suffering and shame his imprisonment has caused her, pays her a visit. Now learned in the principles of home management, Clarissa literally replicates the former scene; she stands in Miss

Horton's stead, and Prudence plays the role of a more wretched version of Clarissa's former self. The omniscient narrator describes the dark, dirty, and miserable hut of Prudence, and as Clarissa enters the hut, she cast her eyes about and confirms this assessment. Prudence's lack of domestic skills and her dirty and disorganized home, cluttered with dirty dishes, are as responsible for Sam's criminality as his own bad habits. Prudence's own habits of consumption are continuous with his. She doesn't know how to use her rations properly and consumes them all at once (81-83). This excess of consumption is associated with dirt and disorder, the imbibing of intoxicants, and criminal behavior. However, as a result of Clarissa's instruction, Prudence comes to embody the virtue denoted by her name. Consequently, when Sam is released from jail, he returns to a cheery and pleasant home, which makes him feel better and induces him to try to do better: "Since his mother was taking pains to be smart, he would try to do better" (87).

The domestic sphere elaborated in these texts was a threshold between the public and private rather than a fortified private sphere. In these portraits, the fragility of the private, or more aptly, the lineaments of the social, was exemplified by the intrusion of strangers and "friends of the race" who policed the management of household affairs, regularly trespassing the border between the home and the world. Nineteenth-century social reformers considered the home visit essential to eradicating slothful habits and enhancing the moral dignity of the poor. Gurteen's *Handbook of Charity Organization* asserted that the chief need of the poor—we can easily substitute the freed—was "the moral support of true friendship—the possession of a real friend, whose education, experience and influence, whose general knowledge of life, or special knowledge of domestic economy are placed at the service of those who have neither the intelligence, the tact nor the opportunity to extract the maximum of good from their slender resources."<sup>97</sup> The home-visitor was the predecessor of the social worker; she dispensed household advice and assessed the character and development of the freed.<sup>98</sup> Miss Horton's visits conform to the genre of the philanthropic visit; the evaluation of progress, the inspection of order, an examination of proper domestic hygiene, and the dispensation of advice were the purposes of the visit.

The domestic was the ultimate scene of surveillance; a fence in need of white-washing, a dusty house, or a nonobedient child thus invited punitive judgments. The description of the good life, although purportedly about the pleasures afforded by a well-managed domestic sphere, actually authorized the normalizing gaze, which, by detailed observation of all areas of life, judged the suitedness of the formerly enslaved to freedom and their conformity to the rules of household management. As *Friendly Counsels* advised:

Make things as pleasant as you can in and around your house. What a difference there is! . . . Now, when a stranger approaches your house, let him notice a pretty garden-spot, with flowers and vegetables, all well kept. When he enters, let his eye be cheered by seeing how nice every thing looks, how well swept the floor is, how the tin things shine. Let him notice a few books, with marks of study or reading upon them. . . . As he glances around, it would be pleasing if he could see a little picture here and there hanging on the wall, or a flower-pot with a pretty pink or rose blooming in it, showing that you have a liking for such things. He would say, "Well, this looks like

freedom. I think you must be quite a happy family." It will be a very pretty picture to show some who maintain that it is useless to attempt to elevate or to improve the condition of the colored race. (27)

Under the inspecting eye and the scrutiny of the stranger's gaze, every item in the home was portentous with meaning and arrested in a moral drama in which disorder and inefficiency decided one's fate. Sanctions awaited those outside the purview of acceptable behavior, and in this regard, the gaze was quite literally arresting. Thus the inculcation of good habits was achieved by creating a sense of hypervisibility. The stark intervention of power in the form of the stranger, or "friend of the race," elided the boundary of public and private and the home and the market. The visitor figuratively embodied the police power of the state to inspect and oversee matters of family, sexuality, hygiene, and so on, deemed necessary in maintaining the health and security of society. The public good sustained the invasion of the private and, like the entry of the friend/inspector or stranger into the domicile of the freed, determined whether all objects and persons were in their proper place.

Although ideologically designated as the putative sphere of liberty, the private failed to safeguard against the intrusions of individuals or the state.<sup>99</sup> Rather, home was an extension of the workplace and subject to the impositions of charitable inspectors like Miss Horton and the regulations of the state. Those without a "proper home" could be arrested for vagrancy and hired out, have their children taken away, or risk imprisonment, if not death, for violating rules of racial hygiene regarding sexual and conjugal relations. The mutable boundaries of the private were also employed to restrict black mobility and freedom of association by designating much of public space as the private and exclusive realm of whites. In any case, the sanctuary of the private was violated regularly, quite unlike the portrait of domesticity heralded by the culture of sentiment and the exponents of domestic economy. Clearly, intimate matters were subordinate to the economic interests and social imperatives of the postbellum order. The privacy of the private was rather tenuous; the domesticity propounded in these texts revealed the utility of the household to the marketplace and the regulation of the private through techniques of discipline and normalization.<sup>100</sup>

### Proximate Dangers

The affiliations of hygiene, prosperity, and black subordination are clearly delineated in Jared Waterbury's text for embittered Southern planters. In short, Waterbury suggests that the health and well-being of the nation depended upon the ability to control and contain the dangers posed by the presence of emancipated blacks within the body politic. *Southern Planters and the Freedmen* divulges the instrumental ends of rational and moral cultivation: the production of servile and dutiful laborers and the regulation of a potentially threatening population within the body politic. The work of molding the freed into rational and moral subjects is explicated primarily in terms of social and bodily dangers, the threat of disorder, and the dangers posed by the physical proximity of sensual and childish men ruled by

passions. *Southern Planters* discloses the work of cultivation to be fundamentally that of discipline and regulation. Waterbury, employing the language of sentiment, first appeals to the reciprocity of the master-slave relation when delineating the obligations of planters to the freed: "The long years of toil by these patient and in most instances faithful slaves, now that they are free, impose an obligation on their former masters of sympathy and obligation." It is a paternal obligation that enjoins planters to aid in the moral uplift and education of the freed. However, if noble motives fail to inspire, Waterbury adopts a surefire strategy; he exploits base instincts and hints at the lurking dangers that await the commingling of an unschooled and passionate element with the civilized: "The planters have a direct interest in educating and elevating this large working class with whom they must hereafter, and for a long time, be in intimate contact. . . . To be surrounded by such hordes of men and women, so different from the whites in their antecedents; so marked and contrasted in their physical traits; possessing the strength of manhood and the passion of children; to be in constant contact with them as household and field servants and laborers, must make it evident to reasonable and reflective men that some culture is absolutely necessary to insure both safety and comfort" (39). The cultivation of a reasonable and moral labor force is required to maintain order, safety, and comfort. The threat lurking in the specter of powerful and childish men and in the habitual intercourse between two very different races borders on the indecent, and without the restraints imposed by reason and morality, such intimacy poses great dangers. The resurgence of the bodily here articulates fears about equality, proximity, and intimacy. In other words, how might this free laboring class be incorporated in the body politic as citizens while maintaining the integrity of whiteness? In order for the races to dwell comfortably side by side, the cultivation of the freed was essential, lest the dangers of such proximity rend the fabric of the social order: "It is for his interest and safety to place the negro in a career of improvement, so that the sensual shall not swallow up the intellectual life. His manhood must be developed by education, or he will remain in his darkness and depression; and who could endure to dwell amid congregated masses of men and women whose fiery impulses are restricted by no knowledge of their relations to society and to God?" (42).

Only the work of self-cultivation would enable the freed to properly exercise and enjoy the privileges of which they were as of yet unworthy: "Step by step he must gain that social and moral standing which will vindicate his claim to the privilege of citizenship, and exempt him from the privileges which hitherto have denied him its exercise" (31). The need to vindicate one's claim to the privileges of citizenship undoubtedly indicates a lingering suspicion about black worthiness and exposes the chasm between the stipulation of rights and the capacity to exercise them. Accordingly, the freed are required "to defend, maintain and insist on the recognition of" their inalienable and natural rights.<sup>101</sup>

The emphasis placed on the molding of a reasonable and moral subject, one restricted by recognition of God and social relations, also hinted at the shifting register of blackness from status-race—blackness ascribing slave status—to formal race—a "neutral" conception of race undergirded by notions of biological and cultural difference.<sup>102</sup> The abolition of slavery presumably announced the end of subjugation based on race or servitude, but the ascendancy of formal race—that is,



immutable, inherent, and naturalized racial differences—perpetuated the “stigma of inferiority based on race” or “stigmatic injury,” to employ the language of *Brown v. Board of Education*, in the guise of neutrality and objectivity.<sup>103</sup> While the freed would no longer “feel the disheartening influences of belonging to a subjugated race,” it was expected that they would “have to struggle under difficulties and embarrassments arising out of recent slavery, or connected with a social repugnance founded principally on physical traits” (31). The contention between equality in the body politic and the threatening physical presence of blackness was also at issue in the debates concerning the Fourteenth Amendment and the Civil Rights Acts of 1866 and 1875. Certainly the “repugnance of the physical” denotes the abjection of blackness and the ambivalent character of the object exemplified by the conflicted and uncertain incorporation of black citizens into the national body and by the containment or expulsion of blackness required to maintain the integrity of whiteness.<sup>104</sup> The “repugnance of the physical” reinscribed the degradations of slavery, although augmented by the dangers of freedom and the antipathy incited by perceived dangers—dangers evoked by the proximity of the races dwelling side by side and the fiery impulses and untamed passions of the untutored.

The perils associated with the proximity of black and white bodies betrayed the anxieties unleashed by the stipulated equality of citizens—in particular, the menacing masculinity of the freedman endowed with rights and privileges. It was this anxiety that invariably associated equality with miscegenation and the congregated masses with the hazard of social equality, which jeopardized the providential line drawn between the races. According to Waterbury, the peaceful coexistence of the races depended not only on the education of blacks but also on maintaining the providential line that separated the races and established the superiority of whites: “The two races are, it seems probable, to dwell side by side for years to come. Amalgamation is not desirable. A broad, distinctive, separating line has been fixed by an all-wise Providence” (41). The law, too, would eventually accede to an “all-wise Providence” and act to constrict liberty and apportion equality in conformity with the color line, such that the citizenship conferred upon blacks reproduced the enduring marks of inferiority. As Waterbury himself admitted, despite the efforts of self-improvement undertaken by the freed, “the African must still acknowledge the superiority of the Saxon race” (42).

## *Instinct and Injury*

### BODILY INTEGRITY, NATURAL AFFINITIES, AND THE CONSTITUTION OF EQUALITY

But when a deed is done for slavery, caste and oppression, and a blow is struck at human progress, whether so intended or not, the heart of humanity sickens in sorrow and writhes in pain.

—Frederick Douglass, *Life and Times of Frederick Douglass* (1892)

There are certain words which are so universally considered injurious to a person in his social or business relations if spoken of him that the courts have held that the speaker of such words is liable to an action for slander, and damages are recoverable even though the one of whom the words were spoken does not prove that he suffered any special damage from the words having been spoken of him. . . . From early times, it has been held to be slander, actionable *per se*, to say of a white man that he is a Negro or akin to a Negro.

—Gilbert Thomas Stephenson, *Race Distinctions in American Law* (1910)

In "The Freedman's Case in Equity," George Washington Cable, interrogating the entanglements of sentiment and subjection, specifically the aversive racial feelings that had acquired the status of God-given instinct in the aftermath of the war, noted that foremost among the sentiments responsible for the curtailment of the liberties of the freed was the idea that the African was "by nature and unalterably an alien." Also identified as prompting this qualification of liberties was the conviction that the African, by nature's decree, was a "perpetual menial" and an incorrigible malefactor. Summoned as evidence of this inmate servility was the sunny disposition of the slave, and darkly shadowing this amiability were the vice and depravity presumed to reside in each and every drop of black blood.<sup>1</sup> Having traced the source of the sentiments that fueled the "odious distinction" of race and the "public indignities" suffered by the freed to the institution of slavery, Cable observed that although the war destroyed the foundation of the ruling race and the serving race, it did so "without removing a single one of the sentiments in which they stood rooted."<sup>2</sup> To the contrary, the war solidified these sentiments. Thus "when the slave became a freedman, the sentiment of alienism became for the first

time complete.<sup>3</sup> Without the illusion of "patriarchal ties" or the "benevolent sentiments of dependence or protection," the African seemed only an outsider and thus a danger to the social order.

If, as Cable contended, the greatest social problem before the American people in the 1880s was, as it had been for a hundred years, "the presence among us of the negro," then the degree to which this problem lay precisely in the placement and proximity of blacks among, amid, and within the greater body of Americans and in the perception of a discernible "us" encroached upon by black intruders identified the "Negro problem" with the question of the social, thereby involving matters of intimacy, association, and need. The position occupied by "those of African tincture," as Cable was wont to describe blacks, was largely as an alien, inferior, and threatening element within the social body. In his words, "grafted into the citizenship of one of the most intelligent nations in the world [were] six millions of people from one of the most debased races on the globe." This description of black citizenship as a foreign appendage grafted onto the national body bespeaks the anxieties about amalgamation attendant to the enfranchisement of blacks. The body was pivotal in representing the transformation of the nation-state and citizenship instituted by the Civil War and Reconstruction and manifested the fears of defilement instigated by the civil equality of blacks. The transmogrification of "the white man's republic" symbolized by these alien appendages indicated the discomfort and hostilities that greeted such changes.

Cable, challenging the segregation of the races in public society upheld by the Supreme Court's decision in the *Civil Rights Cases* of 1883, insisted that the race line only served to perpetuate relations of mastery and subservience. The *Civil Rights Cases* centered on the enforcement of the Civil Rights Act of 1875. The first section provided all persons the full and equal enjoyment of the accommodations in inns, public conveyances, and places of public amusement regardless of race or previous condition of servitude, and the second section indicated the fines levied for the violation of the act. However, as John Hope Franklin writes, "The determination of blacks to enjoy their civil rights was at least matched by the spiritual and vigorous resistance offered by whites in all parts of the country." This resistance combined with indifferent federal reinforcement signaled its defeat before formally being struck down by the Court.<sup>4</sup> The *Civil Rights Cases* involved the denial of accommodation to blacks at inns in Kansas and Missouri, on the ladies' car of a train in Memphis, at a theater in San Francisco, and at the Grand Opera House in New York City. The Supreme Court found the first and second sections of the Civil Rights Act of 1875 unconstitutional. It held that racial discrimination did not constitute a badge of slavery and that the Fourteenth Amendment was only prohibitive upon the state; thus it did not extend equal protection to public railways, hotels, et cetera. In addition, it distinguished between the legal and the social, a distinction that laid the groundwork for segregation and racial subordination while upholding legal equality. According to Cable, the ignominious separation exacted by the race line branded whites and blacks as the ruling race and the serving race, respectively, and ushered in "the hush of peace" after the maelstrom of war and Reconstruction. In other words, the race line enabled the perpetuation of slavery in all but its official guises and thereby denied the basic principles of human equity.<sup>5</sup>

Opposed to the humiliating distinctions of race that were indifferent to external appearance and decency, Cable argued that the separation of the races presumably necessitated by the danger of the black presence in fact resulted in a far greater danger—the commingling of the upper ranks and the lower orders imposed by the color line. The color line brought the white upper classes into regular contact with uncouth whites and black menials in the public space of privilege reserved for the ruling race. Instead Cable advocated the “just assortment” of refined and uncouth elements indifferent to color, thereby displacing issues of race and class with those of decency and refinement. While maintaining the necessity of a line of distinction dividing the decent from the ill-bred, Cable championed the uplifting of the “lower masses,” or in less charitable terms, he advocated the policing and normalization of the abhorrent and degraded lower orders, primarily because of the danger they posed—“the fear that the stupid, the destitute, and the vicious [would] combine against them [the upper ranks] and rule by sheer weight of numbers.”<sup>6</sup> Yet the standards of virtue and decorum upheld in place of odious distinctions of race were no less influenced by the aversions of white propertied men. Decency encoded the antipathies harbored against blacks and the lower classes in the enlightened terms of bourgeois civility and fortified the alienism Cable condemned; yet the advantage of the language of decency was that it seemingly provided a standard or measure that could be aspired to by all and, in addition, enabled the “wise, upright, and wealthy” to embrace the common man in the fight against ignorance and vice without disturbing the lines of rank or distinction.<sup>7</sup>

Cable strenuously objected to the race line because it equalized all whites and permitted the presence of servile blacks among the white upper ranks. The presence of the lower orders, the tatterdemalions, uncouth whites, and menial blacks allowed to cross the threshold of privilege, incited Cable’s disapprobation as much as the humiliating treatment of refined blacks. Ultimately Cable desired a “just assortment” of the population rather than the abolition of rank and distinction. To this end, he argued that without the intrusion of offensive racial distinctions, just assortments would occur agreeably, naturally, and heedful of decency and refinement: “Nothing is easier to show than that these distinctions on the line of color are really made not from any necessity, but simply for their own sake—to preserve the old arbitrary supremacy of the master class over the menial without regard to the decency or indecency of appearance or manners in either the white individual or the colored. . . . Any colored man gains unquestioned admission into innumerable places the moment he appears as the menial attendant of some white person, where he could not cross the threshold in his own rights as a well-dressed and well-behaved master of himself” (23).

For my purposes, what is interesting here is the displacement of race as the central question of the social qua social and the recommendation of a more encompassing and, dare we say, nefariously “egalitarian” mode of social incarceration targeted at the lower classes. In other words, Cable hoped that the abolition of invidious racial distinctions would lead to a social order structured by preferences and affinity and, of course, class differentiations. It may be asked, what is to be gained from this? First, the muddled feat accomplished by Cable in this focus on the lower orders was, at the very least, an exposure of the unexhumed roots of slavery and, more impor-

tant, the disentanglement of the skeins of race and property. Two and a half centuries of chattel slavery had successfully conflated race and status; the faltered attempt to unloosen this snarl illumined the degree to which race operated to obscure the very presence of the Euro-American lower orders by promoting them to the other side of the color line. Second, by making visible the heterogeneity of those who enjoyed an illusory equality only by virtue of the color line, Cable made clear that the primary purpose of the race line was to preserve mastery, which made propertyless whites invisible by way of their inclusion in the master race and sustained the subjection of blacks. Third, the fleeting but conspicuous presence of the propertyless intimated a rather different configuration of need, security, and happiness than that which unfolded in the aftermath of Reconstruction. All of this greatly determined the contours and character of the social.

Public discriminations made solely on the basis of race were injudicious and dangerous because they "blunt[ed] the sensibilities of the ruling class" and "waive[d] all strict demand for painstaking in either manners or dress of either master or menial, and, for one result, [made] the average Southern railway more uncomfortable than the average of railway coaches elsewhere." Basically, the menace of segregation is that it enforces the very social equality that it was intended to prevent by making all whites equal to one another, regardless of whether they are decent or offensive, and, likewise, all blacks equal to one another in their inferior status. Cable skillfully used the fear of social equality, the rhetorical mainstay of both white supremacist and state sovereignty arguments, against itself and, in the course of this disputation, expressed his antipathy to social equality, defined here by the compulsory association of white ladies and gentlemen with the white lower classes and black menials (who served the upper classes) imposed by the color line. The "just assortment" of persons advocated by Cable undeniably rested upon the identification and sequestering of the degraded and threatening lower orders—the unschooled hordes that existed on either side of the race line and induced the discomfort of their betters by virtue of their shocking proximity. Not unlike the majority opinion in *Plessy v. Ferguson*, Cable argued that the imposition of social equality interfered with "society's natural self-distribution" and that just distinctions were essential to an enlightened society (35). As it turned out, what separated Cable from Justice Henry Billings Brown, who delivered the majority opinion in *Plessy*, was a different perspective on what constituted an artificial and arbitrary distinction as opposed to a natural one. To restate this in the form of a question, how were "just assortments" to be determined and were they any more reasonable or any less invidious than racial distinctions? Despite his opposition to segregation and condemnation of the aversion that led to the violation of the rights and liberties of the freed, racial feelings, social preferences, and natural affinities figured prominently in Cable's vision of a liberal democratic order. Ultimately, his contention with the Court's decision in the *Civil Rights Cases* involved the mapping of the private—specifically, determining where the boundary between public and private society should be drawn. For Cable, the equivocations of the public and private and the conflation of civil and social equality were attributable to the "social confusion" of slavery. The close contact of master and slave and the character of slavery as a civil and public institution had necessitated an annihilation of public right and private

choice in order to escape the "utter confusion of race and corruption" that typified the West Indies. Consequently, all blacks not visibly servants were considered "an assault upon the purity of private society."<sup>8</sup> In this, as in other ways that will be considered in a discussion of the Thirteenth Amendment and the Civil Rights Acts of 1866 and 1875, slavery's confusion as well as the purposive befuddling of slavery's boundaries determined the scope of rights and liberties enjoyed by the freed and the state's willingness and refusal to protect those rights and liberties.

Above all, what concerns me here is the congruence between Cable's construction of the social domain and the Court's—that is, the privileging of feeling and sentiment in the determination of social boundaries and the "just inequality of private society." However, let us not forget the consequences of setting the exact location of these boundaries or the benefits of a more "enlightened" elaboration of racial feeling and social preference as opposed to aversive "racial instinct," for the designations of the public and the private ultimately involved the sanctioning or prohibition of inequality. Along these lines, this chapter explores the ways in which the construction of the private and the privileging of sentiment and natural affinity facilitate subjugation as well as the violation of rights and liberties. For my purposes, what is noteworthy in Cable's essays is the effort to disentangle the Negro question and the social question, even if by way of a bourgeois ethos of cultivation, manners, and decency and the repressive embrace of the lower orders. The issue here is not whether "natural self-distribution" was any less insidious or injurious than racial distinctions but whether, as I contend, the very effort to pry apart the Negro question and the social question exposes their enduring entanglements. Owing to Cable's labor, the imbroglgio of affect, instinct, and aversion assumes an importance that cannot be dismissed as expedience. What better proof of this than his own inability to escape this entanglement, whether by the dismissal of racial instincts as twaddle, the substitution of natural self-distribution for racial distinctions, or the subtle shading of difference between his preferences and the Court's natural affinities? Indeed, the well-intentioned but nonetheless failed effort of this friend of the Negro and avowed foe of segregation makes apparent the paramount importance of the "biological," whether in the guise of racial instinct, natural affinities, or the disinclination to mix, in the (con)scripting of blackness. The "biological" stands in for needs and desires, judgments about the health, morality, and prosperity of the population, and the designated duties of the state—protection, withholding, and interference. No less paramount in this conscription of blackness is the work of affect in muting violence and concealing injury.

To put the matter differently, the "Negro question" eclipsed the question of the social in the United States. Racism retarded the development of social rights; perhaps the amazing indifference to blacks' physical and material needs resulted from the ascription of blacks as the ultimate bearers of the bodily and/or to the quieted needs of the white working class effected through an imagined racial integrity—that is, membership in a grand and incorruptible social body that enabled an escape from the immediacy of needs. Let me suggest that blacks have largely occluded and represented the social, and by dint of this the issue of social rights was neglected until the New Deal. Worse yet, when social rights were belatedly addressed, they were configured to maintain racial inequality and segregation.<sup>9</sup> When one is examin-

ing the social question from this historical vantage point, it is clear that the history of enslavement and racism shaped the emergence of the social in the United States. This is not to minimize the clash of capital and labor that stirred the regulatory efforts of the state in the attempt to alleviate crisis or the role of private organizations in relief of the poor and scientific charity.<sup>10</sup> However, it is equally apparent that the contours of the social were shaped by slavery and its vestiges and an indifference to black misery.

Hannah Arendt noted the "absence of the social question from the American scene" and correlated this neglect of the social question with an indifference to the abject and degrading misery present everywhere in the form of slavery and black labor. The hungry, the suffering, and the wretched did not mar the American scene only because the specter of black misery failed to arouse "the passion of compassion," as the misery of the populace had during the French Revolution. Compassion for the impoverished and the hungry ushered the question of social rights onto the stage of the French Revolution. However, in the United States black suffering did not provoke similar results. Arendt writes: "From this, we can only conclude that the institution of slavery carries an obscurity even blacker than the obscurity of poverty; the slave, not the poor man, was wholly overlooked."<sup>11</sup> Moreover, the obscurity of blackness had everything to do with the seeming absence of poverty on the American scene in ways unsuspected by Arendt.<sup>12</sup> Notwithstanding, Arendt celebrates this indifference to the voices of poverty and the disregard of the social as essential to the success of the American Revolution, since "the fearful specter of human misery" and the "haunting voices of abject poverty" never penetrated the ivory tower of the American Revolution.<sup>13</sup> She decried the social as the intrusion of bodily needs and biological life processes into the domain of politics.<sup>14</sup> It designated the triumph of necessity over reason. However, this obsession with the bodily and biological life processes also characterized the occluded emergence of the social question in the United States, but its concerns were blood, cohabitation, and comfort rather than the hunger and security of the clamorous lower orders.<sup>15</sup> Indeed, the managing of life was of paramount concern to the purity and health of the nation.

The obscurity of blackness observed by Arendt and the decency lauded by Cable are at the very nexus of the social as it was elaborated in the nineteenth century, for the connections forged between morality and opacity came to justify the normalizing efforts of the state. Opacity begat the vice and degradation that warranted the surveillance and regulatory intervention of the state.<sup>16</sup> It necessitated both the state's management of life and ostensible withdrawal. Regrettably, the "Negro question" as *the* social question arose primarily as it concerned the dangers posed by association and intimacy, since the fledgling efforts of the state to address the material needs of the freed were quickly abandoned. (In addition, the short-lived Freedmen's Bureau documents the double-edged nature of the government's intervention and relief, as relief was entwined with coercion and discipline. Reform efforts were undertaken primarily by private organizations, generally missionary societies and philanthropical organizations, and were singularly devoted to the creation of a rational and slavish black working class.) As it surfaced in the nineteenth century, the social fortified the barrier between the races and named it providential, for the aborted efforts of the federal government to provide economic security largely contributed to

the evolution of involuntary servitude; moreover, the division of federal and state power and the sovereignty of the state sanctioned white supremacist law by granting the states power to police—that is, to regulate social relations—and the “noninterference” of the federal government. The emergence of the social can be mapped in terms of the shift from the “power of police” all whites exercised over slaves to the supreme police power exercised by the state, and what occurred in its wake was the banishing of blacks from public society.<sup>17</sup> As the state defined its duty to protect the health and morality of the population, it entailed the isolation of blacks. The separate-but-equal doctrine effected the cordoning off of public space for the health and happiness of the greater body of Americans.

Moreover, this expulsion or displacement acted to consolidate national identity, just as the incorporation of blacks had earlier effected its transformation. Although blacks enjoyed short-lived participation and qualified membership in the body politic, they were also envisioned as internal dangers, if not enemies. The transformation of national identity and the redefinition of the United States as a nation-state had been catalyzed by the abolition of slavery and the enfranchisement of blacks. However, as this process unfolded, defining the relation of the states to the national government and that of the citizen to the national government assumed primacy rather than the condition of the freed, since national interest in the condition of the freed and the securing of their freedom and equality had waned.<sup>18</sup> Similarly, the fashioning of national identity and the construction of public memory that facilitated the reunion of North and South failed to include blacks.<sup>19</sup> The indifference to black misery that averted the question of the social during the American Revolution in fact marked its subsequent emergence, for as the social unfolded it reinforced the subordinate status of blacks. At the end of the nineteenth century, the health and prosperity of society presumably necessitated segregation and the reimposition of slavery in all but its official guises.

The enmeshments of slavery and freedom were discernible not only in the antipathy expressed toward blacks and in the contours of the social, but, to our surprise or dismay, also in the very efforts to eradicate slavery and its legacy. Here I have in mind the racial distinctions deemed tolerable within the framework of “equal before the law” and the seeming ease with which reasonable classifications yielded to injurious ones. By examining the crafting and interpretation of Reconstruction legislation, I contend that the surrender of distinction to discrimination can be gleaned in the particular localities of the reasonable and in designations of that which is in excess of the law. In this regard, the role of civil society in producing and sustaining racial subordination will also be considered. From this vantage point, the link between racial codification and antimiscegenation statutes cannot be explained away as racist dread or desire but instead points to the forms of discipline and regulations that inhabit the law. Thus the question to be considered is how the legislative enactment and judicial assessment of universal principles like liberty and equality facilitated the subjection of the recently freed.

By focusing on the congressional debate surrounding the Reconstruction Amendments, it is not my intent to recover “original intention” or to enter the debate on constitutional interpretation per se but rather to glimpse the tensions and contradictions that plagued the discourse of equality.<sup>20</sup> These debates delineate the discursive



contours of the postemancipation social order and reveal the upheavals and antagonisms definitive of this moment of transition. Thus it is not my goal to impose historicist limits on the interpretation of Reconstruction legislation but rather to examine the disputed and antagonistic terms of freedom. While I acknowledge the indeterminacy of the law, it is equally important to consider the dominance of particular interpretations and assessments of the law—that is, the partial fixation of meaning at decisive “nodal points.” In short, while the meaning and application of these amendments can only be partially fixed, the reading advanced here, by focusing on practices and domains putatively outside the reach and the concern of these amendments and the law in general, details the constitutive antagonisms of equality and the lineaments of state racism.<sup>21</sup> Above all, I do not contend that the debates establish *the* meaning, application, or interpretation of the amendments, and for the most part I try to resist the certitude of historicist conceit. By examining association, sentiment, and affinity, I hope to illuminate the limits of equality and the subterranean affiliations that bridge the divide between congressional legislation and judicial assessment. This is not to ignore the disparities between the Court’s assessment of Reconstruction legislation and the intent and imagined scope of these amendments by the Congress, for without question the goal of the Civil Rights Act of 1875 and the Fourteenth Amendment was to provide equal protection of the law. Nonetheless, neither the Congress nor the Court considered equal protection at odds with certain modes of discrimination. In question were the character and context of this discrimination.

What interests me is the constancy of black subjection and its perpetuation at sites labeled outside the reach of the law. Therefore, the historical interpretation advanced herein does not aim to establish a definitive reading of the Constitution or recover original intention. To the contrary, much of this admittedly heterodox examination concentrates on that which is officially outside the scope of the law or before which the law is presumably powerless. In so doing, this reading exploits the border of the law and its excess in unearthing the disparities of equal protection. Thus I am not interested in the “aberrance” of *Plessy v. Ferguson* or whether the Court was right in its assessment of the Thirteenth and Fourteenth Amendments but rather the withdrawal of law before sentiment, nature, and desire and the attendant construction of the private, because this withdrawal is at the same time a declaration of value. Of signal importance in *Plessy* are the strategies of disavowal that dissimulate the law’s production of and involvement in matters of the social and the primacy granted affect in determining the enjoyment of rights and the duties of the state.<sup>22</sup> To this end, let us turn to the congressional debates on the Reconstruction Amendments.<sup>23</sup>

### The Ambivalence of Freedom

The abolition of slavery incited a debate on the meaning of equality, the constituents of rights, and the sovereignty of the states and their institutions. The debate on the Thirteenth Amendment primarily concerned the consequences of slavery’s abolition and whether such action was constitutionally sanctioned. The

fears unleashed by black incorporation in the national state concerned the menacing proximity of the races, the impending demise of the white man's government by the inclusion of blacks in the body politic, and the relation of the federal government to the states. In addition, misgivings abounded that the changes wrought by the Thirteenth Amendment would violate the sanctity of "domestic institutions" other than slavery, if not the integrity of the white race, since equality and miscegenation were inextricably linked.<sup>24</sup> Above all, doubts about the constitutionality of the measures wrangled with the reach of the Thirteenth Amendment, the character of slavery, and the scope of its abolition, the determinations of slavery's constituent elements and the reach of abolition shaped the contours of freedom. In this way, the roots of freedom were located in slavery and the meaning of freedom was ascertained by its negation; consequently, contending narratives of slavery inaugurated the debate on freedom.

The imbrications of slavery and freedom determined the character of the postbellum social order. Not only had slavery and freedom been mutually constitutive as modes of production, as Marx noted, with free labor standing on the pedestal of slavery, but this history, in turn, conditioned the forms of liberty and servitude that emerged in the aftermath of the Civil War. This observation is not intended to efface the discontinuities and transformations inaugurated by the abolition of slavery but to underline how this mutual dependence and collusion affected the character of the postbellum social formation. The entanglements of slavery and freedom trouble facile notions of progress that endeavor to erect absolute distinctions between bondage and liberty.<sup>25</sup> Although the Thirteenth Amendment abolished the institution of slavery, the vestiges of slavery still acted to constrict the scope of black freedom. It proved virtually impossible to break with the past because of the endurance of involuntary servitude and the reinscription of racial subjection. Rather, what becomes starkly apparent are the continuities of slavery and freedom as modes of domination, exploitation, and subjection.

At the very least, the Thirteenth Amendment endowed the national state with the power to eradicate the lingering "badges of slavery." Certainly this was imperative if emancipation was to be more than the extenuation of the institution of slavery in a new guise. Yet the fierce disagreements about the character of slavery and its legacy shed light on the ambivalent and belated incorporation of blacks into the body politic and the fact that this dilatory enfranchisement was attributable to military expediency. After the amendment's passage, the status and condition of the freed remained in question. For example, were equality and suffrage ensuant upon the abolition of slavery? Were blacks citizens? Did the abolition of slavery annul all distinctions of race?<sup>26</sup> Did the abolition of slavery entail more than nominal freedom, the freedom from constraint and the right to own one's person, or did it "secure to the oppressed slave his natural and God-given rights" and annul invidious distinctions of color?<sup>27</sup> Was slavery merely a *status*, condition, or private situation in which one man belonged to another and was subject to his absolute control, and thus could it be abolished without conferring on former slaves the civil or political rights that whites enjoyed?<sup>28</sup> Did the abolition of slavery entail an equality of rights and privileges? Were those formerly enslaved free if they did not possess an equality of civil rights and immunities?<sup>29</sup>

If the constituent elements of slavery were the lack of rights and liberty, coercion, chattel status, and nonexistence in the national community, at the very least, the eradication of slavery entailed the dispensation of fundamental rights, the liberty of contract, the mantle of sovereign individuality, and, eventually, political rights, as well as the cultivation of manhood, self-reliance, restraint, and responsibility in the newly emancipated, for these were the norms of liberal individuality. The right of each man to enjoy the rewards of his labor and the comfort of his family, according to Ebon Ingersoll, mandated the Thirteenth Amendment. It "secured to the oppressed slave his natural and God-given rights. I believe the black man has certain inalienable rights, which are sacred in the sight of heaven and those of any other race. . . . He has a right to till the soil, to earn his bread by the sweat of his brow, and to enjoy the rewards of his own labor. He has a right to the endearment and enjoyment of family ties; and no white man has any right to rob him of or infringe upon any of these blessings."<sup>30</sup>

Some, like Thaddeus Stevens and Charles Sumner, contended that the central feature of chattel slavery was the inferiority and subordination of blacks; thus the abolition of this legacy required, at the very least, a commitment to formal equality, if not the prohibition of all discrimination on account of race or color.<sup>31</sup> Although slavery and its incidents were to be abolished, race was considered a neutral category and reasonable classification. The inability to pass earlier drafts of the Civil Rights Bill of 1866 and the Fourteenth Amendment that contained explicit nondiscrimination provisions documents this abiding commitment to discrimination. Despite assertions that blacks were no longer a subjugated race because of the triumph of liberty, equality, and contract, the shifting register of race from a *status* ascription to a formal and purportedly neutral category ineluctably refigured blackness as an abject category.<sup>32</sup>

Ex post facto, the breadth of the Thirteenth Amendment was clarified, chiefly due to the escalating violations of black freedom and the reimposition of slavery via the Black Codes. As discussed earlier, these codes reduced blacks to a condition described by Freedmen's Bureau officials as worse than slavery. Although vagrancy laws, pass laws, unequal sentences for criminal offenses committed by blacks, et cetera, enacted by the Black Codes were eventually overturned, albeit only to reappear in a race-neutral guise, the codification of race undertaken in these state constitutions was not considered at odds with liberty or equality, nor were antimiscegenation statutes found to be a violation of civil rights. Ubiquitous assaults on freed blacks mandated legislation to secure personal liberty and required additional clarification of the fundamental civil rights conferred by the Thirteenth Amendment. Apparent here was that in the aftermath of emancipation the place of blacks within the body politic was still uncertain. Had the Thirteenth Amendment conferred rights of citizenship? Did abolition portend black equality? And if so, what were the components of this disputed equality?

Those who contended that the Thirteenth Amendment did not confer basic civil rights to the formerly enslaved argued that slavery was not a public relation between the slave and the state but a private relation between two persons—the master and the slave—and therefore its abolition required nothing more than the abrogation of this relation: "What is slavery? It is not a relation between the slave and the State; it

is not a public relation; it is a relation between two persons whereby the conduct of the one is placed under the will of the other. It is purely and entirely a domestic relation. . . . The constitutional amendment broke asunder this private relation between the master and his slave, and the slave then, so far as the right of the master was concerned, became free; but did the slave under the amendment acquire any other right than to be free from the control of his master? . . . No new rights [were] conferred on the freedman."<sup>33</sup> This line of argument rendered slavery a private matter, thereby obscuring the state's sanctioning and support of the institution and denying the racial order founded upon mastery and servitude. In addition, this restricted interpretation of slavery cast the freed as liminal agents, neither slaves nor citizens, by repudiating the need for national remedy in eradicating the vestiges of slavery and annulling the existence of dominant and subjugated races. As well, such arguments, in their refusal to acknowledge slavery as a public institution authorized by the Constitution and federal and state law, endeavored to erase the plight of the emancipated from the national agenda.

This unabashed denial of slavery as a public institution fabricated the nation's innocence by masking the public dimensions of slavery as an institution and focusing on the relations between individuals. Certainly *Prigg v. Pennsylvania*, the Fugitive Slave Law, the power of police exercised by any and every white person over slaves and free blacks, the interference of the state in disposals of slave property, laws forbidding interracial assembly, and the modeling of racial relations in the image of master-slave relations attest to the public character of the institution. The pernicious intent of this revisionism was to nullify the public identity of blacks as members of the body politic. In short, if the Thirteenth Amendment conferred no new rights and only abolished "mere chattelism," then blacks in effect were denied the privileges of citizenship. As might be expected, advocates of this position contended that the republic was a white man's government and that, as *Dred Scott* held, blacks were neither embraced nor included in the "person" of the Constitution. If the Thirteenth Amendment only liberated the slave from his master, then blacks occupied the doubtful position of being free but without the basic rights of citizenship.<sup>34</sup>

These arguments were countered by contending interpretations of slavery that foregrounded the negation of fundamental civil rights, the national disregard of the rights of the individual, and the protection of the institution by the armament of the Constitution, as well as federal and state law.<sup>35</sup> What better illustrated the degradation of the institution than the sexual practices it condoned? Thus Republicans decried miscegenation as a Democratic institution and envisioned one of the principal rewards of freedom as the preservation of family ties sundered by slavery. Radical Republicans insisted that the abolition of slavery encompassed all laws, relations, and customs that acted to deny blacks their rights. Therefore, the servitude abolished by the amendment included the state as well as the individual. As Lyman Trumbull argued, unless "we have merely taken from the master the power to control the slave and left him at the mercy of the State to be deprived of his civil rights, the trumpet of freedom that we have been blowing throughout the land has given an 'uncertain sound,' and the promised freedom is a delusion. . . . With the destruction of slavery necessarily follows the destruction of the incidents of slav-

ery."<sup>36</sup> Any statute that deprived black citizens of civil rights that were secured to others was a "badge of servitude," especially since blacks were being systematically reenslaved through vagrancy laws and the criminal surety system.<sup>37</sup> If slavery annulled fundamental rights, the corrective required the restoration of these rights. According to Trumbull, these rights included "the right to make and enforce contracts, to sue and be sued, and to give evidence, to inherit, purchase, sell, lease, hold and convey real and personal property, and to full and equal benefit to all laws and proceedings for the security of person and property."<sup>38</sup> However, if the formerly enslaved were entitled to the rights enjoyed by the white men, irrespective of distinctions of race or former condition of servitude, did this suggest that all discriminations of race were to be negated or only those involving basic civil rights?<sup>39</sup> As it turned out, black equality did not imply "equality in all things . . . simply before the laws, nothing else."<sup>40</sup> Yet the question begged by this matter-of-fact assertion was the reach of the law and, in particular, the acquiescence of the law to sentiment, affinity, and natural distinctions.<sup>41</sup>

### The Most Representative Person: Mature Manhood and the Constitutive of Equality

Everywhere mature manhood is the representative type of the human race.

—Senator Jacob Howard, *Congressional Globe*, 39th Cong., 1st sess.

The congressional debates on the Civil Rights Act of 1866 and the Fourteenth Amendment are of interest here because they divulge the tenuousness of equality—in particular, the union of exclusion and equality within the liberal order. The Civil Rights Act of 1866 was intended to clarify the freedmen's status and protect the forms of personal liberty regularly violated by the Black Codes and social custom. The Civil Rights Act of 1866 declared that all persons "shall have the same right in every State and Territory of the United States to make and enforce contracts, to sue, to be parties and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens." However, of particular importance in the congressional debate on equality in general, and the Civil Rights Act and Fourteenth Amendment in particular, is the extent to which the equality of rights to be extended to freedmen depended upon the transformation of former slaves into responsible and reasonable men. As would be expected, the norms at issue were masculinity, rationality, and restraint, and they determined one's ability to handle the duties and privileges of the citizen-subject and those entitled to participate in the body politic. Ostensibly at stake in the question of manhood were the criteria for citizenship, yet it was equally clear that espousals of responsible manhood and equality invariably aroused anxieties about the commingling of the races. In light of such concerns, responsible manhood accrued undue gravity.

Mature manhood, reason, and responsibility were variously invoked in promulgating legislation on behalf of the freed and also in the efforts to derail "special" legislation like the Civil Rights Bill and the Fourteenth Amendment. The invocation of manhood must be understood as both an invitation to freedmen to enter the brotherhood of man and an instantiation of the divide between freedmen and men, since white propertied men modeled masculinity. The cultivation of responsible manhood compelled the protection of basic civil rights that would enable the freed to become self-sustaining independent laborers, home owners, and providers for their family and, at the same time, underscored the distance between the freed and the white propertied men who were presumably their counterparts. The opponents of Reconstruction were intent upon exploiting this discrepancy. After all, the logic preceeded, if the Negro was a man like any other, why did blacks need special legislation to secure rights and privileges guaranteed by the Constitution? As Senator James McDougall challenged in the debate on the Freedmen's Bureau Bill, "If the negro, being made free, cannot take care of himself, how long shall we be his guardian, and take more care of him than we do the poor boys of our own race and people?"<sup>42</sup> Similarly, in his veto of the Freedmen's Bureau Bill, President Andrew Johnson argued that Congress "has never deemed itself authorized to expend the public money for the thousands not to say millions of the white race who are honestly toiling from day to day for their subsistence."<sup>43</sup> Moreover, he argued that such legislation implied that the freed were incapable of self-sustenance and was thereby "injurious to their character and their prospects." Thus efforts to remedy the extant legacy of slavery such as the Freedmen's Bureau Bill or the Civil Rights Act of 1875 could only appear as special legislation "favoring" blacks or efforts to impose unwanted association.

Responsibility essentially denoted the duty of self-making and the virtue of individual accountability. Invoked in this manner, it effaced the salient features of chattel slavery and the vestiges that prevented even the illusion of autonomy or independence.<sup>44</sup> To put it another way, for the democratic advocates of responsibility the legislative remedies proposed in assisting the freed in the transition to citizenship and securing of the rights and liberties of citizenship were believed unnecessary because of this conspicuous faith in the freed's capacity to overcome the obstacles before them. While this line of argument was cynical, hypocritical, and disingenuous, it nonetheless revealed the centrality of self-making as a central tenet of democratic individuality and evidenced the firm belief in the fairness of the marketplace in providing each man his due. Moreover, this emphasis on self-making in the conferral of formal equality illumined the tension between equality and redress within a liberal framework. It was easier to recognize and correct the exclusion and inferiority written into slave law through formal measures like the Thirteenth Amendment than it was to remedy the disparities and inequalities that were the consequence of this former condition. Basically, subjugation was to be corrected by the conferral of formal equality; this was sufficient to abolishing slavery and severing the present from the preceding centuries of enslavement. According to the tenets of liberalism, as a result of this dispensation the freed now possessed the same advantages and opportunities available to others since they enjoyed the natural liberty previously denied them. While the conferral of basic civil rights and equal

protection in the Civil Rights Act of 1866 and the Fourteenth Amendment overturned the precedent established in *Dred Scott v. Sanford*—that is, that blacks neither were citizens nor possessed any rights that whites were bound to respect—these newly acquired rights were much less effective in obliterating the everyday vestiges of slavery.<sup>45</sup>

By insisting that blacks avail themselves of the remedies already procurable within the law, equality, in the aspect, was defined by an identity of treatment rather than by legislative intervention designed to actualize this equality. Ironically, those who advocated identical treatment—which in this case meant offering no assistance to the emancipated in matters of relief—insisted upon equivalent treatment regarding delicate matters that might potentially unsettle the extant arrangements of the racial order. Moreover, the equation of equal treatment with like treatment, as in the comparison of the toiling white and black races, denied the inequities produced by centuries of enslavement and the privileges made available to all whites because of chattel slavery. In any event, the recognition of difference posed dangers no less great. The acknowledgment of difference in the law sanctioned and legitimated the denial of political rights, the truncation of civil rights, and eventually the separate-but-equal doctrine more readily than it provided remedy to the enduring legacy of slavery.

The “man” fabricated in documents like the Thirteenth Amendment, the Civil Rights Act of 1866, and the Fourteenth Amendment was liberated from the past by the abolition of slavery and by virtue of his own endowments, the capacity for self-making, and the exercise of free will. Thus arguments on behalf of Reconstruction measures also attached great weight to the fashioning of “true manhood” in realizing freedom and equality. Congressman Ignatius Donnelly, arguing on behalf of the Freedmen’s Bureau Bill, employed this language of manhood and self-making:

If degradation and oppression have, as it is alleged, unfitted him for freedom, surely continued degradation and oppression will not prepare him for it. If he is not to remain a brute you must give him that which will make him a man—opportunity. If he is, as it is claimed, an inferior being and unable to compete with the white man on terms of equality, surely you will not add to the injustice of nature by casting him beneath the feet of the white man. With what face can you reproach him with his degradation at the very moment you are striving to still further degrade him? If he is, as you say, not fit to vote, give him a chance; let him make himself an independent laborer like yourself; let him own his homestead; and let his intelligence, darkened by centuries of neglect, be illuminated by all the glorious lights of education. If after all of this he proves himself an unworthy savage and brutal wretch, condemn him, but not til then.<sup>46</sup>

It is clear that the generic “man” is not being used here; rather, the masculinity of the citizen-subject is being pronounced. The attention to manliness, self-making, maturation, and assimilation displayed Republican dedication to transforming brutes into men and actualizing the admirable ends of autonomy, political inclusion, self-sufficiency, and enlightenment. Upon the success or failure of this project depended the future of the Negro—true man or unworthy savage? The sexual reverberations of this project, though muted, are conveyed by fraught terms like “savage” and “brute,” and the lurking sexual rapaciousness exceeds their cover. As Jared Waterbury argued in *Southern Planters and Freedmen*, the failure to educate the freedmen

and thereby effect this transformation from brute to man endangered the very terms of social order, for unschooled and passionate men dwelling within and moving amid society hinted at unspeakable dangers, nonetheless dangers regularly exploited by those opposed to black equality, as had President Johnson in his veto of the Civil Rights Bill of 1866, in which he equated the "perfect equality of the white and black races" proposed in the bill with "the contract of marriage between the two races."

For Johnson, the attested need for legislation like the Freedmen's Bureau Bill and the Civil Rights Acts fueled arguments that the Negro was a child, not a man, because these provisions made him a ward of the state.<sup>47</sup> As Senator Edgar Cowan argued, "If they are put upon the same footing as white people, then they have the same remedies as white people; they have the same remedies that the honorable Senator has; and there is no new necessity for this jurisdiction, this new power that is to be invoked for their protection."<sup>48</sup> Those opposed to "special" legislation demanded that blacks stand on their own or forever prostrate themselves before the superiority of the Saxon race. This perhaps cynical insistence on an equality of treatment, indifferent to the history of servitude and abiding vestiges of slavery, denied the extant legacy of racial subordination while maintaining white dominance. However, as alluded to earlier, when equality is defined by sameness, blacks either prove themselves the same, and therefore not dependent on the intervention of the state to aid their condition, or bear the stigma of difference. Others argued that after having been reduced to the "lowest grade of being," how were the freed instantaneously capable of resuming the duties of citizenship? "For thirty years it has been steadily proclaimed that African slavery has reduced the enslaved to the very lowest grade of being. The enslavement of his body had, by consequence, almost obliterated his intellect. He could scarcely be called a man. That he might be rescued, he must be freed. He is freed. Presto, change! As soon as the chains fall he is no longer the brutalized being over whom, for thirty years, we have made the land to mourn; he is an American citizen, fully qualified and prepared to take upon himself the responsibilities of an elector, and qualified for all these important duties. Wonderful!"<sup>49</sup>

If equality was defined by similitude, then manhood was the question at issue in the debates. Friends and foes of the Negro alike assumed that the degradation of enslavement made blacks less than men; thus this emergent manhood was anticipated, doubted, and feared. The infantile condition of the race both necessitated legislation on their behalf and justified black subordination. Noteworthy is the discursive tenor of these statements—that is, the masculinist and paternalist lens through which the condition of the freed was refracted, with terms like "infantile race" and "mature manhood" framing issues of freedom, equality, and citizenship. Beyond the obvious masculinism of such language and the paternalist articulation of race by way of such formulations was the danger that inhered in the translation of degradation—the wretched material and social conditions of the freed transposed into an ontology of black difference, which reproduced, inadvertently or intentionally, the tautological reasoning of Judge Roger Taney in *Dred Scott* that established the innate inferiority of blacks by reference to the laws and social conditions that situated blacks as inferior. In part, this was a consequence of the liberal conception of the individual as an isolated entity divorced from social and material condi-



tions and the inability to grapple with difference without ontologizing it as abnormality, deviance, or inferiority. Similarly, a slippage between race and status can be detected in the uncertain identification of the source of black degradation—was nature responsible, or the wretched conditions of slavery, or both? Could degradation be cured or was it innate? And if nature was responsible for both this degradation and the antagonism between the races, then what did the abolition of slavery portend? And how was equality to be understood? Would blacks be incorporated into the body politic or cast out and condemned?

In fact, the only sure way to quell these doubts and prove black worthiness was, in effect, to license this question of equality and similitude by striving to meet and exceed the norm—that is, by the adequation of a normative masculinity, ultimately inseparable from the entitlements of whiteness. No wonder, then, that the “manhood of the race” was the prized figure of the discourse of racial uplift. However, this proved an impossible strategy, for although freedmen were able to gain entrance to the discourse of citizenship, unlike freedwomen, the nexus of race, sexuality, and capital operated to disqualify, discipline, and regulate this nascent manhood.<sup>50</sup> Similarly, the ineluctable production of taxonomies of purity and contagion, supremacy and degradation, decency and lasciviousness, and order and danger constituted an impassable and insurmountable barrier to “perfect equality.” Additionally, the construction of nature upon which these debates proceeded ultimately frustrated equality. While the discourse of civil and (eventually) political rights assumed that a modicum of normalization could be achieved—in other words, that the erstwhile brute could be inculcated with the virtues of mature manhood—the ineradicable and indelible markers of difference ensconced within the social marked the limits of equality and the retreat of the law in the face of instinct and affinity.

The universalist embrace of man was not as expansive as it purported to be, leaving aside for the moment the explicit exclusion of women from the purview of equal rights and protection that was naturalized since gender was considered a reasonable basis for discrimination, unlike race or former condition of servitude. The masculinist universalism of equality was belied by racism. As many theorists and critics of liberalism have duly noted, the identitarian formula upon which equality is predicated encloses difference within an arena marked as inferior, irresponsible, immoral, and perverse.<sup>51</sup> Thus the effort to fashion true manhood and the impossibility of attaining it evidence the universalist embrace and constitutive exclusions of liberalism and the gap between formal and substantive equality. The universalist reach of liberalism, according to Uday Mehta, despite its declarations of natural equality, conceals “the thicker set of social credentials that constitute the real bases of political inclusion.”<sup>52</sup> And as David Theo Goldberg notes, “Liberalism’s commitment to principles of universality is practically sustained only by the reinvented and rationalized exclusions of racial particularity.”<sup>53</sup> As it were, the demand to display one’s worth instantiated only the want of equal rights rather than their enjoyment and likewise revealed the menacing double bind of mimicry—almost the same, but not quite.<sup>54</sup>

In any event, the content of equality was uncertain.<sup>55</sup> As the debates on the Reconstruction Amendments confirm, equality was ensnared with proliferating classifications and categories, discernments of reasonable and unlawful discriminations,

and doubts concerning the classes of individuals within the reach of the amendments. A disagreement between Robert Hale and Thaddeus Stevens is illuminating in this regard. What is remarkable is the confused response of Stevens to Hale's interrogation of the coverage of the Fourteenth Amendment, in particular, his questioning of whether it provided "all persons equal protection," thereby overriding the discrimination that he rightly argued, was practiced in virtually every state of the Union. Stevens perplexingly argued that the amendment simply provided that "where any State makes a distinction in the same law between *different classes of individuals*, Congress shall have the power to correct such discriminations and inequality," and that inequality only pertained to the discriminations made between *individuals of the same class*. "When a distinction is made between two married people or two femmes sole, then it is unequal legislation; but where all of *the same class* are dealt with in the same way there is no pretense of inequality" (emphasis added).

Hale contended that "by parity of [this] reasoning it will be sufficient if you extend to the one negro the same rights you do to another, but not those you extend to a white man."<sup>56</sup> According to Stevens's inconsistent logic, the selective recognition of sameness guarantees the identity of rights and privileges, while difference determines rights in accordance with one's place in society. One is left to wonder what exactly equality does entail and, by the same token, what constitutes a violation of equal protection. Did blacks constitute a different class of individuals or were all men of one class? The vacillation between the disavowal and recognition of difference encapsulates the predicament of equality. Stevens's reasoning exemplifies the indefinite and nebulous character of equality and the uncertainty of its object—individuals or classes of individuals. Moreover, we are left to wonder what comprises a class of individuals. Are men of one class but married women and single women distinct classes? Are blacks and Chinese both equally included in the concept of persons?<sup>57</sup> Certainly these questions were at the heart of debate on who and what were included within the embrace of equality.<sup>58</sup> As Andrew Kull observes, "Men like Stevens thought it was so obvious which 'inequalities' they were aiming at they momentarily lost sight of the fact that the entire legal system is necessarily a fabric of inequalities and discriminations, of categories and classifications."<sup>59</sup>

The equality propounded in the Civil Rights Acts of 1866 and the Fourteenth Amendment relied upon classifications of like classes and like individuals in comparable situations. Therefore, equal protection permitted discernments between equivalent privileges and identical privileges and allowed for the differential treatment of individuals technically within the scope of the equal protection of the law.<sup>60</sup> In this regard, equality was ensnared with discriminatory evaluations of classes of persons, for to be treated differently was inevitably to be treated as an inferior or subordinate. Certainly this is indisputable when considering the status of blacks and women. The transparency of nature—natural difference and natural affinities—was everywhere assumed in the law, and the contentions over reasonable and invidious classifications nonetheless presupposed the anteriority of such categories; therefore, the matter to be decided was whether rights should be dispensed in recognition of these differences or "blind" to them. As these issues were settled in the wake of the Thirteenth and Fourteenth Amendments, reasonable classifications were "permitted, while

injurious ones were prohibited. Obviously, what constituted "reasonableness" or injury was the subject of contest. Finally, the selective recognition and dismissal of difference in the conferral of rights supposed the neutrality of the law and the exteriority of these differences, as if these differences didn't inhabit the text of law or the law was uninvolved in their production, the sterling example of this being the idea of the color-blind Constitution. Thus we need ask how it was possible for the racialized text of the Constitution to declare its neutrality and enact its blindness. The success of the Reconstruction legislation revolved upon this issue. However, as these issues were decided in practice, it meant turning a blind eye to distinctions of race and former conditions of servitude regarding certain rights while permitting these distinctions as reasonable regarding others. In question is the connection between racial distinctions and the identity of rights, their legitimate exercise, and the forms of inequality thereby inaugurated. At the same time, rights were in flux and, in turn, decided by this recognition of difference or fabrication of similitude.

In this regard, the rejection of an explicit antidiscrimination clause in the Civil Rights Act of 1866 and the Fourteenth Amendment in favor of the language of equal protection attests to the nebulous character of the equality conferred. The Civil Rights Act both permitted discrimination in certain arenas and narrowly defined the scope of civil rights.<sup>61</sup> An earlier draft on the Civil Rights Act contained the following declaration, which was eventually stricken by the Senate's judiciary committee: "There shall be no discrimination in civil rights or immunities among the inhabitants of any State or territory on account of race, color, or previous condition of servitude." This clause was stricken in order to assure the passage of the act and amid uncertainty as to whether the rights and entitlements extended by "the full and equal benefit of laws" reached beyond the scope of those rights explicitly mentioned in the act.<sup>62</sup> Worse yet, the very term "civil rights" was stricken because "some gentlemen were apprehensive that the words we propose to strike out might give warrant for a latitudinarian construction not intended" (*Globe* at 1366). The construction obviously not intended was that all forms of discrimination based upon race, color, or previous condition would be prohibited by the act.

The vision of equality advanced in documents like the Civil Rights Act of 1866 and the Fourteenth Amendment was malleable enough to permit certain classes of discrimination while prohibiting others. Discernments of identity and equivalence thus yielded a protean concept of equality. For example, the language of the Civil Rights Act of 1866 permitted the restriction of freedwomen's rights by granting the freed the same basic civil rights enjoyed by white citizens. The vision of equality forged in the law permitted the subordination of women while attempting to prevent discrimination based on race or a former condition of servitude. Thus equality was entangled in a network of classifications, categories, and measures that ultimately rested on a tautology: those who are equal shall be treated equally.<sup>63</sup>

The amorphous content of equal protection rhetoric in large measure resulted from the effort to prohibit certain classes of discrimination while permitting others. This latitude was warranted by the fact that virtually every state in the Union discriminated on the basis of race in respect to civil rights. Although Stevens, Trumbull, and Sumner argued on behalf of an explicit nondiscrimination clause in the Civil Rights

Act of 1866 and the Fourteenth Amendment, these proposals were defeated.<sup>64</sup> Certainly the compatibility of equal protection with extant forms of gender discrimination is indisputable; however, perhaps less obvious are the extant forms of racial discrimination permitted within its scope. Nor did equality before the law suppose the equality of men in their social and material conditions but simply that men deserved equal treatment as humans endowed with natural rights and liberties. As Judith Bauer writes, treatment as an equal “depended on the individual’s status as a human being. It was this right that prevented inferior treatment, not some notion that the freed slaves were equal to whites in ability and thus deserved equal status.”<sup>65</sup> Thus it is only fitting that radicals like Trumbull stated that equal protection of the laws did not presume the equality of the Negro, for the natural equality of men neither negated nor minimized the unequal capacities, abilities, or standing of social men.<sup>66</sup> As Wendy Brown writes, liberal equality “guarantees only that all individuals will be treated as if they were sovereign and isolated individuals . . . and that the state will regard us all as equally abstracted from the social powers constituting our existence, equally decontextualized from the unequal conditions of our lives.”<sup>67</sup>

The gap between abstract equality and extant social arrangements exposed the want of substantive equality or the folly of substantive equality, as Cowan contended. By exploiting the discrepancy between the stipulated equality of all men and actual social arrangements, the intoxicating rhetoric of natural equality and sovereign individuality was deflated. This celebratory disrobing of universal man not only bared the distinctive properties of the citizen-subject but also insinuated that the “plane of manhood” might be a private social club after all, the repercussions of which would be fully fleshed out in *Plessy*. In this spirit, Cowan asked if equality dictated that

all men in this country are to be six feet tall, and they shall all weigh two hundred pounds, and that they shall all have fair hair and red cheeks? Is that the meaning of equality? Is it that they shall all be equally rich and equally jovial, equally humorous and equally happy? What is meant by equality, as I understand it, in the language of the Declaration of Independence, is that each man shall have the right to pursue in his own way life, liberty, and happiness. That in the whole of it. . . . If all men were to be as learned as my honorable friend from Massachusetts [Sumner], who would black boots and curry the horses, who would do the menial offices of the world? . . . This world . . . is pretty well arranged. . . . The imaginary evils that people see in the distribution of honors and all that kind of thing are not so nearly oppressive as they are made out to be in the warm and glowing imaginations of those who see fit to champion their victims.<sup>68</sup>

It is only appropriate that the impossibility of equality was represented by way of an inventory of immutable physical features. Cowan’s cheery acknowledgment of a well-arranged world not only underlined the easy coexistence of equality with the unequal distribution of wealth and honor but also implicitly distinguished the normative embodiment of the citizen-subject from the inferior bootblack. Moreover, this vision of equality exalted the extant racial order of senators and bootblacks. Unmistakable in Cowan’s gleeful observations was that natural liberty, the right of each man to pursue his own way of life, liberty, and happiness without the interference of

others, in fact maintained the distribution of wealth, honor, and power and perpetuated black servility. While declarations of equality announced the end of slavery, the well-arranged world sustained itself.

## Blood and Sentiment

In 1865, the Constitution of the nation was in flux. The entry of 4 million blacks into the body politic transfigured the narrative of national identity. The pedestrian signs of this upheaval were apparent in the movement of the freed. The newly self-possessed roamed the countryside, took to the roads, and rushed to the cities; at the very least, this peregrination documented the collapse of the former order. Yet the changes wrought by this massive upheaval and revisioning of citizenship also instituted a collective crisis since black exclusion and subordination formerly had defined membership in the civic and political community and the scope of rights and entitlement. The integrity and self-certainty founded upon the division between master and slave races was now without foundation. As Theodore W. Allen remarks, "By making freedom a human right, negro emancipation has destroyed it as a racial privilege, and thereby threatened to dissolve on the instant the mortar holding together the system of bourgeois social control and the system of white labor privilege based on the prescription of African American chattel bond-servitude."<sup>69</sup> The vision of former masters and former slaves as equal members of the national community incited a wave of reaction registered in the opposition to the Thirteenth Amendment, the imposition of the Black Codes, and the pervasiveness of racist terror.<sup>70</sup> Emancipation, beheld through the longings for the older order and a determined resistance to the new, was regularly and insistently decried as the "miscegenation proclamation" and "Negro government." Anxieties about the newfound power and centrality of federal government in the aftermath of the Civil War and the subordinate position of the individual states in regard to the rights of citizens, the states having been made into handmaidens of the government and positioned as truculent underlings subject to various modes of correction and enforcement, were articulated as fears about sexual mixing, amalgamated bodies, and interracial families. In fact, the encroachments of the federal government were as feared as the intrusion of the Negro. To the opponents of Reconstruction it appeared that the augmentation of the national state in the context of the Civil War acted to conflate black interests and the supremacy of the national government, in part explaining the currency of terms like "miscegenation proclamation" as markers of the transformation of the antebellum social order.

On most occasions in the congressional debates when the issue of miscegenation arose—and it arose virtually every time a new amendment, bill, or act was on the floor, from the Thirteenth Amendment to the Civil Rights Act of 1866, the Fourteenth Amendment, and the Civil Rights Act of 1875—Democratic anxiety was met by Republican laughter. The Republicans derided these fears with jokes that revealed a classic abolitionist anxiety, dread, and fascination with black bodies.<sup>71</sup> The Republican vision of liberty, rather like that of Miss Ophelia or Harriet Beecher Stowe herself, endorsed a requisite distance between the races, if not the banishment

of blackness.<sup>72</sup> After explaining repeatedly that an equality of civil rights neither embraced interracial marriage nor discriminated between the races since the Negro was denied the right to marry a white person and a white person a Negro, Trumbull pointedly argued that laws against miscegenation were not needed where there was no disposition for amalgamation: "The Senator says the laws of Kentucky forbid a white man or woman marrying a negro, and that these laws of Kentucky are to exist forever; that severe penalties are imposed in the State of Kentucky against amalgamation, between the white and black races. Well, sir, I am sorry that in noble Kentucky there is such a disposition for amalgamation that nothing but penalties and punishments can prevent it."<sup>73</sup>

These remarks served, on one hand, to disavow the abolitionist fascination with miscegenated bodies and, on the other hand, to assert the Republican commitment to liberty and the color line. Certainly this divided commitment to equality and inferiority best explains the anomalous position of blacks within the body politic. Trumbull's remarks were of the same spirit as the favored and oft-repeated campaign joke of Lincoln: "I protest, now and forever, against that counterfeit logic which presumes that because I do not want a negro woman for a slave, I do necessarily want her for a wife."<sup>74</sup> This joke was regularly met by laughter and cheers on the campaign trail. Of course, the joke turned upon the absurd notion of the Negro woman as wife, so that it on one level denounced amalgamation while hinting at other forms of possession. Given that the weight of prohibition fell upon black men and white women, Lincoln's joke left open the backdoor of other arrangements.

The Republican commitment to the equal privileges of citizenship and black inferiority was evidenced throughout the debates. As one representative quipped, "If I believed that there was a man in this country with so little sense as to believe that he would become the equal of the negro, notwithstanding the protection he can obtain from Congress, then I would be willing to vote for a resolution to give him two medals, one to be worn before and the other behind, with the inscription upon them, 'I am afraid of the negro, and here is my sign, stuck out prominently, that I am not to be considered the equal of the negro.'"<sup>75</sup> As supporters of these amendments regularly reminded their opponents, equality did not mean "equality in all things—simply before the laws, nothing else."<sup>76</sup> If the Reconstruction Amendments delivered the slave to the "plane of manhood" and brought him within "the pale of the Constitution," they certainly did not imply that distinctions of race were annulled or that all were equal on the plane of manhood.

Yet if, as the opponents of emancipation and black equality contended, abolition predestined the amalgamation of the races, then only the return of the freed to their proper role as subordinates would preclude such an occurrence. Equality was blamed for the increased likelihood of miscegenation. It was "impossible that two distinct races should exist harmoniously in the same country, on the same footing of equality by the law. The result must be a disgusting and deteriorating admixture of the races."<sup>77</sup> President Johnson, too, exploited this racial reasoning in his veto of the Civil Rights Act of 1866. Although the equal protection of the laws advanced in the Civil Rights Act of 1866 and the Fourteenth Amendment neither encompassed nor sanctioned interracial marriage, this did not prevent him from raising the banner of miscegenation in his opposition to the extension of civil rights to the freed: "If

Congress can abrogate all State laws of discrimination between the two races in the matter of real estate, of suits, and of contracts generally, Congress may not also repeal the State laws as to contract of marriage between the two races?"<sup>78</sup> The phantom of Negro equality, as some were wont to call it, portended black men with white wives because the civil rights to be conferred were fundamentally understood as the rights and prerogatives of white men and by extension this included the right to marry white women. As one representative argued during the discussion of the Fourteenth Amendment: "If this amendment be passed Congress can pass under it a law compelling South Carolina to grant to negroes every right accorded to white people there; and as white men there have the right to marry white women, negroes, under this amendment would be entitled to the same right; and thus miscegenation and mixture of the races could be authorized in any State, as all citizens under this amendment are entitled to the same privileges and immunities, and the same protection in life, liberty, and property."<sup>79</sup>

Whether fears of miscegenation expressed the imagined relation of white Southerners to the freed is open to debate; what matters for my purposes is the political currency of miscegenation rhetoric during Reconstruction and its aftermath, the survival of antimiscegenation statutes in state codes and constitutions, and the relation between the codification of race and the management of life. As the pivotal figure of counterinsurgent popular sentiment, miscegenation gave expression to the outrage that the bottom rail seemed to be on top, anger at the assault on white ownership of property in black persons, fear that whiteness as it had once existed was endangered or doomed, and indignation at the prominence of the national government and subordinate status of the states in relation to questions of citizenship and equality. The specter of the miscegenous body acquired this great visibility, according to Eva Saks, because it was a site for working out political issues of federalism and race.<sup>80</sup> In short, the body "allegorized the battlefield of federalism" (66). The amalgamated body materialized the dreaded loss of racial/bodily integrity associated with the abolition of slavery and the violation of state sovereignty by federal jurisdiction. In addition, lingering doubts as to whether the equality of civil rights included the marriage contract placed miscegenation at the center of the discussion of equal protection.

Antimiscegenation statutes emerged during the colonial period; however, by the nineteenth century thirty-eight states had antimiscegenation statutes.<sup>81</sup> In the aftermath of emancipation, miscegenation acquired a political currency that was perhaps unprecedented. During Reconstruction, states passed stricter antimiscegenation statutes. Although the currency of miscegenation can be credited in part to Democratic scare tactics deployed to undermine black freedom, as had been the case in the miscegenation controversy of 1864, this hardly exhausts the subject.<sup>82</sup> Chiefly miscegenation discloses the obsessions of the state with pure blood, procreation, and legitimate union and the emergent antipathy and anxiety attendant to the new terms of interracial association now that slavery no longer provided the guidelines or rules for such interactions. This fixation on imagined sexual trespasses revealed the degree to which the integrity and security of whiteness depended upon black subjugation. The commingling of the races as putative equals within the body politic threatened the integrity of both races—the mongrelization of the white race and/or

the engulfment of freed blacks by the white race due to Saxon superiority.<sup>83</sup> Thus the proximity and intimacy of black and white bodies deemed proper or appropriate under the social relations of slavery became menacing in the aftermath of emancipation. Under slavery, such intimacy extended the power and dominion of the master since black captive bodies were the literal and figurative appendages of the master's body and "the sign and surrogate" of his power. Thus this proximity did not imperil the racial order, for this intercourse was in the service of black subordination and white enjoyment.

On one hand, miscegenation figuratively articulated the dislocations of power, property, and identity caused by the abolition of slavery and Reconstruction and the anxieties and apprehensions incited by this tumult; and, on the other, anti-miscegenation statutes were a concrete expression of racism as state policy.<sup>84</sup> The materiality of racism as a technique of power, and not simply racism as "ideology," is what I am trying to underline in this discussion of miscegenation. In this case, what is remarkable is the extended web of state and civil institutions acting concertedly to maintain the purity of family and nation. After all, miscegenation was an aberrant and unlawful behavior targeted by the normalizing practices and regulatory efforts of the state. As it constituted a threat to the health and morality of the population, the resources of the state were dedicated to its prevention and punishment. This entailed the codification of race, the securing of property, sexual and gender prescriptions, and the regulation of individuals and populations. Therefore, the production of a miscegenation crisis facilitated the classification and control of blacks as a subjugated population. The threat of contagion and defilement associated with blackness necessitated these statutes, which aimed to protect and police whiteness.<sup>85</sup> The first step in this effort was the codification of race—who was black and who was not, and who was white and who was not—which involved a metaphysics of blood that transformed race into a sanguineous substance detectable not only by discernible traces but also by genealogy. Above all, miscegenation belied the purported neutrality of racial codification and exhibited the aversion and antipathy that demanded the policing of such distinctions. The work of classification, surveillance, and regulation that was part and parcel of this monitoring of legitimate and sound unions focuses our attention upon the state's role in producing racial subjects and managing populations while ostensibly working to eradicate forms of discrimination based upon race and servitude. The effect of antimiscegenation laws was to prescribe the terms of conduct and contact between the races.

Apparent in the taxonomies of race that found their way into the law of freedom were the contradictions that shaped the emergent vision of black equality. As it turned out, the "equal protection of the law," albeit intended to correct the violation of black liberty enacted in the Black Codes, social customs, and other forms of practice, did not consider these classificatory schemas—in particular the legal classifications of white, negro, mestizo, and person of color—a violation of liberty or equality. Certainly this legislative production of blackness was essential to the repressive and regulatory measures of the state, yet it was not found to be a violation of fundamental civil rights. Nonetheless, these taxonomies were instrumental in effecting new forms of servitude. Let me state clearly that this is not an argument on behalf of color blindness. The reckless innocence or naïveté of the color-blind



position cannot redress the injuries of race by wishing race away in the desire for an imagined neutrality. Moreover, the invidious effects of racism also operate in race-neutral guises, which we see in the successful implementation of repressive laws that disproportionately imprisoned, sentenced, and fined the freed and mushroomed into the convict-lease system. Furthermore, the color-blind position naturalizes race by assuming its anteriority to discourse. In light of this, the aim of this examination is to consider both the state's production and regulation of racial subjects and the conflation of equality and amalgamation that thwarted guarantees of an equality of rights and protection.

As has been argued, the conception of race engendered by slavery and abolished by the Thirteenth Amendment made "black" virtually synonymous with "slave" and "white" with "free" and created a master race and a subject race. In Cable's words, slavery "made our master caste a solid mass, and fixed a common mastery and subservency between the ruling and serving race. Every one of us [whites] grew up in the idea that he had by birth and race, certain broad powers of police over any and every person of color."<sup>86</sup> Now that race no longer defined status, classificatory schemes were required to maintain these lines of division. The effort to maintain the color line or, properly speaking, black subordination involved securing the division between the races and controlling the freed population. Central to this effort was the codification of race, which focused primarily on defining and containing blackness.

Not surprisingly, the classification of Negroes or persons of color was usually discussed in the context of the law's designation of lawful, illegitimate, and prohibited units, thus establishing the connection between sexuality and sanguinity. As Mississippi's Act to Confer Civil Rights on Freedmen stated: "It shall not be lawful for any freedman, free negro or mulatto to intermarry with any white person; nor for any white person to intermarry with any freedman, free negro or mulatto; and any person who shall so intermarry shall be deemed guilty of a felony, and on conviction thereof, shall be confined in the State penitentiary for life; and those shall be deemed freedmen, free negroes and mulattoes who are of pure negro blood, and those descended from a negro to the third generation, inclusive though one ancestor of each generation may have been a white person."<sup>87</sup> In addition, the act recognized the relations of those cohabiting as legal unions and recognized the right of the freed to marry while prohibiting interracial unions. North Carolina declared that "negroes and their issue, even where one ancestor in each succeeding generation to the fourth inclusive, is white, shall be deemed persons of color."

Post-Civil War state statutes included provisions for legalizing black marriage, meting punishment for illicit cohabitation, and prohibiting marriages between white persons and persons of color. In most states, persons having one-eighth Negro or African blood were designated persons of color; however, in South Carolina seven-eighths Caucasian blood deemed one a white person. Although Alabama's code of 1866 claimed to make no distinction on account of color, marriages between whites and blacks were prohibited. In addition, section 4189 of Alabama's code of 1876 levied harsher punishment against interracial fornication. Florida's 1866 Act concerning Marriage Licenses recognized interracial marriages that had been previously contracted but provided "that if any white female resident shall hereafter attempt to intermarry, shall live in a state of adultery or fornication with any negro, mulatto, or

other person of color, she shall be deemed to be guilty of a misdemeanor, and upon conviction shall be fined a sum not exceeding one thousand dollars, or be confined in the public jail not exceeding three months, or both, at the discretion of the jury; and shall, moreover, be disqualified to testify against any white person." According to the Florida law, to cohabit with a Negro was to become a Negro and, ultimately, to lose the privilege of testifying against other whites.

This order of codification and prohibition was not considered discriminatory or a violation of equal protection under the law because it was believed to be in the service of providential law, nature's boundaries, and immutable facts of human existence. Marriage was more than a civil contract; it was a sacred domestic institution controlled by the state's sovereign power. It was within the exercise of the state's police power, and thus the state controlled the institution of marriage.<sup>88</sup> According to *State v. Gibson* (1871), marriage was a "public institution established by God himself . . . and is essential to the peace, happiness, and well-being of society. . . . The right of all the states to regulate and control, to guard, protect and preserve this God-given, civilizing and Christianizing institution is of inestimable importance, and cannot be surrendered, nor can the States suffer or permit any interference therewith."<sup>89</sup> (This case was cited as a precedent in *Plessy* in order to confirm the police power of the state and the constitutionality of prohibiting certain forms of social intercourse between the races.) Similarly, *Green v. State*, which upheld the constitutionality of Alabama's code against interracial fornication, held: "Marriage is not a mere contract, but a social and domestic institution upon which are founded all society and order, to be regulated and controlled by the sovereign power for the good of the State."<sup>90</sup> Moreover, *Green v. State*, in asserting the importance of marriage to the well-being of society, described the "home of a people" as the "true officinae gentium—nurseries of States" (194). In this regard, *Green v. State* illuminates the slippage between the public and the private and the state's incursions into the domestic area sanctioned as the legitimate exercise of police power.

Antimiscegenation statutes were not considered a violation of the Fourteenth Amendment because these laws were presumably equally applicable to whites and blacks. It was argued repeatedly that these laws served the "peace and happiness" of the black race as well as the white: "And surely there can not be any tyranny or injustice in requiring both alike to form this union with those of their own race only, whom God hath joined by indelible peculiarities, which declare that he has made the races distinct." Clearly, racial distinctions easily gave way to discrimination, albeit disavowed by the law or ordained by God. In *Pace v. Alabama* the Supreme Court upheld section 4189 of the Alabama code, which provided harsher punishment for interracial fornication because it presumably treated black and white transgressors equally.<sup>91</sup> The linking of racial codification, legitimate union, and state power acted to segregate the freed from the rest of the population and to reproduce domination and hierarchy. Life, sexuality, reproduction, blood, and alliance were in the hands of the state. Antimiscegenation cases expose the linkage of race, hygiene, and degeneracy since the logic that prohibited interracial marriages also prohibited those with hereditary diseases from marrying; in both cases, the restrictions of liberty had in view "the physical well-being of future generations." Such matters were within

the police power of the state because the "health of unborn generations [was] a matter of profound concern to the community which may justly assume the guardianship of their interests."<sup>92</sup> The prohibition of interracial marriage, mixed associations, and the commingling of the races was a prized element of a broader effort intent upon preserving racial order—that is, hierarchies of mastery and subjection—and maintaining the health and prosperity of the population. In *Jones v. Commonwealth*, the nefarious linkages between codification and regulation in effect criminalized being a Negro by identifying blackness as the agent of violation: "To be a negro is not a crime; to marry a white woman is not a crime; but to be a negro, and being a negro to marry a white woman is a felony; therefore it is essential to the crime that the accused shall be a negro—unless he is a negro he is guilty of no offense." An earlier indictment had been reversed in part because the whiteness of Jones's wife had not been established by the commonwealth.<sup>93</sup> The slippage between being black and a felon is quite remarkable in this punitive ontology of race. By now it is clear that classification and condition cannot be separated, even in the aftermath of the Thirteenth Amendment. Classification, discrimination, and delimited rights and entitlements were inextricably linked.

Fundamentally, miscegenation statutes entailed protecting the exclusiveness of whiteness as property. As Stephenson in *Racial Distinctions in American Law* tellingly observes: "Miscegenation has never been a bridge upon which one might cross from the Negro race to the Caucasian, though it has been a thoroughfare from the Caucasian to the Negro."<sup>94</sup> The absoluteness of this assertion belies its confidence; to the contrary, it betrays the anxiety of the antimiscegenation mandate and the trepidation that perhaps the thoroughfare permitted black crossings, too. The irony of such reasoning is that while it claims to protect nature's boundaries with the force of positive law, it exposes the laws of nature as rather enfeebled. Despite assertions of omnipotence and divine sanctioning, the laws of nature require state protection and intervention in order to prevent unnatural and expressly repugnant practices from proliferating. Unmistakably, it is the fear of blacks infiltrating the perhaps permeable border between the races that fosters these statutes; in fact, they are instituted to police these awaited infractions. Above all, these statutes were intended to maintain and preserve whiteness as an exclusive property. As we shall see in *Plessy*, these taxonomies produce racial value, such that the reputation of whiteness itself becomes a form of property.

The magnitude of miscegenation must also be considered in terms of the revolution in property relations enacted by the Thirteenth Amendment. As a result of the war, Eva Saks notes, Confederate money was worthless; land values dropped; slave property was liberated; there was the threat of land redistribution; and last and most important, "the value of white skin dropped when black skin ceased to signify slave status. However, this racial devaluation would be reversed if white blood could internalize the prewar status of whites over blacks" (47). While miscegenation had increased property under slavery, now it threatened to democratize or expropriate the exclusive property of whiteness, as had emancipation itself by making freedom a right enjoyed by all rather than a racial privilege.<sup>95</sup> While the concept of property-in-whiteness is of primary import when examining antimiscegenation statutes, the gender prescriptions of the state's racial mandate that placed white women under

intense scrutiny and discipline must also be examined. As the Florida code illustrates, one could, in fact, lose white privilege as a result of associating with blacks.<sup>96</sup> This was also evidenced by the fact that interracial marriage, rather than concubinage, which was the usual form of sexual relations between white men and black women, received stricter punishment; moreover, efforts were made to decriminalize concubinage.<sup>97</sup> (All of the aforementioned cases involved black men married to white women.) The discourse of amalgamation disclosed the masculinism of the citizen-subject and, in particular, the rights of property that men exercised over women. If miscegenation jurisprudence was instrumental in stabilizing white property, then women and children—properly speaking, legitimate heirs—were its particular objects of concern. Incontrovertibly, civil rights entailed property in women and children. Thus the challenge was to retain the masculinist prerogatives of the citizen-subject while prohibiting an unqualified extension of these conjugal rights of property across racial lines. Governing the transmission of property-in-whiteness tempered the masculine prerogatives enjoyed by black men. Plainly put, masculine mastery entailed the possession of women as the sign of that mastery, and extrapolating from the racialized premises of this logic, the possession of white women was made the ultimate figure of manliness. In this regard, the apprehension about amalgamation exposed the forms of encumbrance constitutive of liberty.<sup>98</sup> Patriarchal uncertainties about legitimate heirs and the rightful transmission of property were exacerbated by the belated arrival of blacks to the plane of manhood. The scandal of black men with white wives verifies the pivotal role of marriage in the reproduction and transmission of property and in the preservation of health of the social body. The emphasis on the marriage contract tellingly exposes the degree to which men's liberty and equality were premised upon the power exercised over women in the private sphere. Consequently, the contractual subjugation and possession of women are inseparable from the elaboration of civil rights.

The tenacity of miscegenation as an incitement to reaction exceeded the upheavals of Reconstruction and its aftermath. It must be remembered that it was not until 1967 that the Supreme Court found antimiscegenation laws unconstitutional.<sup>99</sup> However, the maintenance of white supremacy was effected not only through the linkage of sanguinity and sexuality but also, as will be discussed below, through the prevention of all forms of association that formally presumed the equality of races. By prescribing the terms of civil conduct and contact between the races, the relations of mastery and subjection were resurrected. The protection of basic civil rights continued to be perceived as an assault on whiteness, an encroachment upon domesticity, and a violation of the natural boundaries between the races. If association inevitably yielded to amalgamation or increased antipathy between the races, then what place was there for blacks within the national body? If equal access to public facilities, inns, theaters, railroad cars, bus depots, schools, churches, and cemeteries was an unwanted imposition of social equality rather than the mere guarantee of civil rights, then what did the equal protection of the law entail? If equality was premised upon limited forms of association in the public arena and shared membership in the social body and this association purportedly begot amalgamation, then disenfranchisement and the purification of the social body went hand in hand.<sup>100</sup> Here the body politic acquires an unprecedented literainess, for it was the body, in its obdurate materiality, that was at the nexus of social and civil rights. The issues of health, pros-

perity, natural affinity, and racial antipathy revisited in the context of *Plessy* resulted in a decisive erosion of equal protection, and nothing less than the meaning of freedom itself was at stake.

Despite the assurances of individual freedom and equality conveyed by phrases like "neither slavery nor involuntary servitude shall exist within the U.S." or "no state shall abridge the privileges and immunities of citizens," racial classifications engendered subjection, albeit disguised by nature, sentiment, or prosperity. The actual conditions of things as honed by centuries of chattel slavery exposed the chasm separating the ideals of equality from their consummation. As *Roberts v. City of Boston*, a pre-Civil War school desegregation case cited as a precedent in *Plessy*, held: equal before the law

as a broad general principle, such as ought to appear in a declaration of rights, is perfectly sound; it is not only expressed in terms, but pervades and animates the whole spirit of our constitution of free government. But, when this great principle comes to be applied to the actual and various conditions of persons in society, it will not warrant the assertion, that men and women are legally clothed with the same civil and political powers, and that children and adults are legally to have the same functions and subject to the same treatment; but only that the rights of all, as they are settled and regulated by law, are equally entitled to the paternal consideration and protection of the law, for their maintenance and security. What those rights are, to which individuals, in the infinite variety of circumstances by which they are surrounded in society, are entitled, must depend on laws adapted to their respective relations and conditions.<sup>101</sup>

If the actual condition of things did not warrant that men and women and blacks and whites enjoy equality before the law, then what did equal protection confer? Indeed, as we shall see in *Plessy*, equivalent rights fixed these "respective conditions" by brazenly sanctioning injurious distinctions of race.<sup>102</sup>

This vexed conception of equality augured the Court's assessment in *Plessy*. Let me make it clear that the point here is not that *Plessy* was inevitable but rather that although the Constitution had abolished the status-race of slavery, black subordination was sustained by naturalizing the major incident of slavery—the burden of race. After all, the cogency of blackness as a legal classification was inseparable from the relations of violation and captivity putatively annulled by the Thirteenth Amendment. The law's recognition of purportedly natural categories like race, blood, and affinity denied the constitutive role of the law in the production of these categories. In fact, it was the declared neutrality of race as a legal category that effectively perpetuated this violence for another century. The racial taxonomies inhabiting the law, whether in the guise of property, criminality, or contagion, maintained white dominance and thus belied declarations of formal equality.<sup>103</sup> As the attorneys for Homer A. Plessy insisted, classification per se was offensive and "an injury to any citizen of the United States as such."<sup>104</sup>

## The Place of Race

Although anticipated by *Roberts v. City of Boston*, the ease with which invidious and regulatory racial classifications were embraced by equal protection discourse is noteworthy in the postemancipation context. If the citation of *Roberts*

d other pre-Civil War cases in the majority opinion of *Plessy v. Ferguson* attests the longevity of antebellum attitudes toward blacks and neglects the changes instituted by emancipation, it similarly confirms the impermanence or fragility of the law as compared with the durability of sentiment and the peculiar fashion in which the law established its autonomy—that is, the authorizing and ambivalent gesture in which the law affirmed and seceded to sentiment. For *Plessy*, in acquiescing to the way of sentiment, echoed *Roberts*: “Prejudice, if it exists, is not created by the law and cannot be changed by the law.” Yet if the law cannot change prejudice, is its role to affirm it? Following this logic to its end, it appeared that “simple chattelism” was only to be supplanted by legal subjection to the dominant race. For the progeny of the *Civil Rights Cases* and *Plessy* was a dwarfed and stigmatized black citizenry. The slippery logic that spawned this defiled offspring contended that racial discrimination was not a badge of slavery; in short, the enduring condition of subjection had nothing to do with slavery. It was claimed that these racial taxonomies were neutral and noninjurious and thus they bore no relation to the degradation of slavery. The reasonableness of racial classifications reached its grotesque apogee in *Plessy v. Ferguson*, and the spatial segregation sanctioned in this case must be situated within the negrophobic obsession with health and security that fused antimiscegenation statutes. Sentiment, instinct, and affinity were called upon to justify the compatibility of perfect equality and racial distinctions. However, in the postemancipation context, antipathy, rather than mutuality and reciprocity as had been the case in slave law, determined the terms of relations allowed and prohibited by law. Ironically, the separate-but-equal doctrine could only be nullified by the development of mutuality and reciprocity. As well, the definition of rights and the separation of public and private domains enabled equivalent rights to substitute for equal protection. However, the social looms above all else in facilitating the kinship of equality and exclusion. The social is an amorphous and mutable domain that overlaps the divisions of family, civil society, and the state; it is a crisis category that designates the slippage of the public and the private and the “intrusion” of the bodily—health, hunger, and reproduction—into the public space of politics. Moreover, the law’s constitutive recognition of the social—in particular, the dominion of physical differences, corporeal impulses, and racial feelings—authorized the violation of rights inaugurated by the separate-but-equal doctrine. At the outer reaches of the law, “just and perfect inequality held forth in the social.”

The relations of mastery and subordination formally annulled by the Thirteenth Amendment were resuscitated successfully through presumably neutral ascriptions of race. The “perpetual and impassable barrier” of the race that Taney insisted upon in *Dred Scott*, revisited in the postemancipation context, instituted modern relations of subservience and subjugation. However, unlike *Dred Scott*, which held that blacks were “beings of an inferior order, and altogether unfit to associate with the white race either in social or political relations,” *Plessy* did not insist that blacks be excluded from the body politic but upheld the idea of proper associations between the races instead of an enforced equality that imposed unwanted proximity and endorsed the spatial arrangements of the separate-but-equal doctrine and the partition erected between public and private domains. This decidedly postemancipation resolution entailed both the casting out and the incorporation of blacks.<sup>105</sup> On one

hand, *Plessy* recognized limited rights enjoyed by blacks and abjured the language of inferiority and subjugation, and yet, on the other, it sustained relations of mastery and servitude by declaring them equal. Moreover, the affirmation of the separate-but-equal doctrine was declared in service of avoiding and minimizing the repulsion and antagonism between the races that was fostered by compulsory association. This homeopathic approach prevented the escalation of racial antipathy through the stigmatization of blackness. In the following reading of *Plessy v. Ferguson*, it is not my intention to establish the inevitability of the separate-but-equal doctrine, nor to gloss over the discontinuities between Reconstruction and its aftermath, but rather to interrogate the continuities between antebellum and postbellum figurations of blackness as a degraded and abject category and the sentimental solutions of the "Negro problem."<sup>106</sup>

### *Plessy v. Ferguson*

On June 7, 1892, Homer A. Plessy boarded an intrastate passenger train in Louisiana and took a seat in a coach designated for white passengers. When questioned by the conductor as to his race, Plessy responded that he was colored. The conductor demanded that he move to the coach assigned to the colored race or be removed from the train and imprisoned.<sup>107</sup> Plessy refused to comply with the conductor's order and was expelled from the train and arrested. At issue in *Plessy v. Ferguson* was the Louisiana statute that required railway companies to provide separate but equal accommodations for white and colored passengers. The statute also provided that "no person shall be permitted to occupy seats in coaches other than the ones assigned to them, on account of the race they belong." Plessy challenged the constitutionality of the act because it was in violation of the Thirteenth and Fourteenth Amendments. In addition, Plessy contended that racial distinctions were social placeholders that reproduced the legal subjection of blacks. As reflected in the Louisiana statute, this place-keeping measure reduced blacks to the condition of a subject race and reinforced the stigmatic construction of blackness.

In the words of the brief filed for Plessy by Albion Tourgee, "This act is intended to keep the negro in his place. . . . Instead of being intended to promote the general comfort and moral well-being, this act is plainly and evidently intended to promote the happiness of one class by asserting its supremacy and the inferiority of another class."<sup>108</sup> Although the majority denied that this assignment of place "stamp[ed] the colored race with the badge of inferiority," to the contrary, blacks were remanded to their proper place and forced to remain there. This insidious ascription of place under the guise of equality resurrected the subjugation of slavery. As Tourgee argued, the definitive characteristic of American slavery was the slave's bondage to the entire white race as well as his owner. It was this subjection to the dominant race individually and collectively that had been abolished by the Thirteenth Amendment. It was meant to "undo all that slavery had done in establishing race discrimination and collective as well as personal control of the enslaved race."<sup>109</sup>

Nevertheless, the Court insisted that such an interpretation was fallacious and not

supported "by reason of anything found in the act, but solely because the colored race chooses to put their construction upon it" (551). Likewise, the Court dismissed the argument that racial discrimination constituted a badge of slavery by reiterating the majority opinion in the Civil Rights Cases: "The Thirteenth Amendment has respect, not to distinctions of race, class, or color, but to slavery," and "it would be bringing the badges of slavery argument into the ground to make it apply to every act of discrimination."<sup>110</sup> The Court narrowly argued that "slavery implies involuntary servitude—a state of bondage; the ownership of mankind as chattel, or at least the control of labor and services of one man for the benefit of another, and the absence of legal right to the disposal of his own person, property and services" (542). By defining slavery primarily as chattelism, plain and simple, the subjection of blacks fundamental to slavery and the antebellum social order, as well as the public nature of the institution, was denied, thereby enabling the Court to conclude that legal distinctions between the white and colored race had "no tendency to destroy the legal equality of the two races, or reestablish a state of involuntary servitude" (543). In this regard, *Plessy's* interpretation of slavery sanctioned segregation precisely by minimizing the scope of slavery, denying its extant legacy, and intensifying its badges and incidents.

In addition, the majority contended that the badges-of-slavery argument was fallacious because it assumed that social equality could be imposed by the enforced commingling of the races. The choice of the term "social equality" transposed the contested issue of civil equality into one of unfit association and thereby settled the matter. As evidenced in everyday practice, the social rights of the white race depended upon segregation.<sup>111</sup> Health, happiness, and comfort could only be secured by preventing "offensive contact" with Negroes. At the same time, the Court insisted upon the fairness of the statute because it provided for the equivalent treatment of the races, as though the symmetry of the statute itself prevented injurious and degrading effects. In this regard, the Court speculated that if the situation were reversed and the colored race were dominant in the state legislature and enacted a law in precisely similar terms, the white race would not acquiesce to this assumption of inferiority. One can only surmise that this imagined reversal was intended to establish the neutrality of racial distinctions and the reversibility of racist reason, hereby denying the stigmatic construction of blackness effected through this punitive and injurious neutrality.

The codification of race in the law secured the subjugation of blacks, regulated social interaction, and prescribed the terms of interracial conduct and association, despite protestations to the contrary. As the consequence of this codification of race, blackness became the primary badge of slavery because of the burdens, disabilities, and assumptions of servitude abidingly associated with this racial scripting of the body, and inversely, whiteness became "the most valuable sort of property" and the "master-key that unlock[ed] the golden door of opportunity."<sup>112</sup> To be sure, the Louisiana statute did impose the badges of slavery; it interfered with the personal liberty and full enjoyment of the entitlements of freedom and regulated the civil rights common to all citizens on the basis of race, and it thereby placed blacks in a condition of legal inferiority (563). The badges-of-slavery argument advanced by the attorneys for *Plessy* and in the dissenting opinion of Judge John Marshall Harlan



deconstructed the purported neutrality of racial distinctions and, above all, held that racial classifications produced "caste-distinctions" or a superior and inferior race among citizens.

Indeed, the Louisiana statute placed blacks in a condition of inferiority. However, it accomplished this not merely by the designation of a physical location, a seat in a particular railroad car. In directing individuals to separate cars, the conductor, in effect, assigned racial identity, a peril that did not go unmentioned by the Court and which was at the heart of Plessy's challenge. On what basis and with what authority could a conductor assign race? Was not such assignment and assortment based on race a perpetuation of the essential features of slavery? Moreover, what did it mean to assign race when race exceeded the realm of the visually verifiable? Tourgee's brief emphasized the instability of race and that the codification of race was purely in service of white dominance. In considering why Homer Plessy should not be allowed to enjoy the reputation of whiteness, Tourgee asked: "By what rule then shall any tribunal be guided in determining racial character? It may be said that all those should be classed as colored in whom appears a visible admixture of colored blood. By what law? With what justice? Why not count everyone as white in whom is visible any trace of white blood? There is but one reason to wit, the domination of the white race." Blood functioned as the metaphysical title to racial property.<sup>113</sup> Yet as there was no actual way to measure blood, the tangled lines of genealogy and association—more accurately, the prohibition of association—thus determined racial identity. If inheritance determined identity (and what could be more appropriate than inheritance in naming the law's production of racial subjects given the transmutation of blood into property?), then it opened the golden door of opportunity for those able to enjoy the reputation of whiteness and disenfranchised those unable to legally claim title to whiteness.

Although it has been argued that the plaintiff's line of reason was intent on little more than granting those visibly of mixed race the full benefits of whiteness, I disagree, for the argument was much more ambitious in its reach. In arguing that the reputation of being white was property, that whiteness possessed actual pecuniary value, and that the current rules for its distribution were simply in service of maintaining black inferiority, Tourgee overreached the simple demand for a more flexible and encompassing category of whiteness along the lines of that in the Caribbean and Latin America and instead demonstrated the degree to which race, class, and caste continued to be shaped by slavery. Furthermore, the exclusivity of whiteness was identified as the essential ingredient in reproducing black degradation. The uncertainty of reading race, the arbitrariness of its assignment, the withholding of whiteness and its privileges, and the defiling consequences of this fixing of race were issues raised by Plessy's challenge.

The preservation of racial integrity and the attendant enforcement of racial legibility required the constant examination of bodies for visible and sanguineous inscriptions of blackness. However, as in the case of Plessy himself, these racial signs were sometimes not detected or misread since "the mixture of colored blood was not discernible in him" (538). If blackness was no longer visually discernible, then how was racial integrity to be preserved? While the Court ignored Plessy's claim to whiteness, it did concede that whiteness was a property that commanded distinct

entitlements. Under slavery, whiteness had been inseparable from property relations, the division of labor, and legal rights and entitlements. Along similar lines, the majority opinion in *Plessy* strove to secure racial meanings through a realignment of race, property, and rights, specifically by limiting who may be considered white, affirming that the reputation of whiteness was a property, and protecting its exclusivity through the sanctions of law. Thus the Court affirmed the value of whiteness while admitting the uncertainty that attended the reading and fixing of race.

Those who attempted to defy conscription into this system of racial assignment risked a more permanent placement since would-be trespassers faced fines, expulsion, and/or incarceration. Although the language of the statute addressed the assignment of black and white passengers, it was the passageway to the "other race," to whiteness, that was being patrolled. The third section of the statute indicated this: "Nothing in this act shall be construed as to apply to nurses attending children of the other race." The subject of the statute was implicitly the colored race, as opposed to the "other race." Hence, entering the "other" coach in defiance of one's assigned place meant assuming an identity that one did not legitimately possess, the charge made against *Plessy*, or having one's property rights in whiteness violated, as *Plessy* claimed. Having been accused of forcing himself into the company of a "race to which he did not belong," despite his seven-eighths Caucasian blood, *Plessy* countered that he had been deprived of his property in whiteness—that is, the reputation of belonging to the white race. Thus, he contended, "he was entitled to every right, privilege and immunity secured to citizens of the U.S. of the white race" (541). Ultimately, the Louisiana statute decided who was entitled to enjoy the entitlements of whiteness and, by extension, the universal rights of citizens.

Although the Court agreed with *Plessy's* assertion that the reputation of belonging to the white race was property, it waffled on the issue of race. It conceded the risk involved in determining the race of passengers and the variant constructions of white and colored persons under particular state laws; however, ultimately it endorsed the necessity of this peril. Moreover, the Court failed to adjudicate on the matter of *Plessy's* claim to whiteness, thus settling the matter of race by assuming that he was a colored man. Despite the varied efforts of the plaintiff to trouble the matter of race, the variant definitions of race across state statutes, and the difficulty of visually discerning or verifying race in given instances, the Court continued to consider race substantial, secure, and ultimately knowable. *Plessy* had contested the givenness of race through an enactment of the varied registers of racial ascription. His visibly white flesh enabled his entry into the white car. However, when asked by the conductor about his race, he admitted that he was colored and, moreover, that he was unwilling to move to the Negro car. Thereby he was expelled from the train and arrested. He filed a petition for writ of error in which he refused to aver his race or color in the plea. Meanwhile he claimed the right to enjoy the reputation of being white and thus be entitled to the privileges and immunities secured to citizens of the white race; by doing so, he disclosed the implied whiteness of the abstract citizen. By asserting that whiteness was a property that had been denied him by virtue of the conductor's action and the Louisiana statute, *Plessy* demonstrated the degree to which the deprivation of the civil rights and the truncated personal liberty of blacks

were constitutive of white privilege. Although the proprietary rights to whiteness raised by *Plessy* were briefly addressed by the Court, ultimately race remained a fixed and stable attribute despite the reluctant acknowledgment of occasional indeterminacy.<sup>114</sup> Rather, race was made the foundation upon which the disputed terms—"equality," "privileges of citizenship," and "liberty"—were decided. As Barbara Fields remarks, race was "the ideological medium through which people posed and apprehended basic questions of power and dominance, sovereignty and citizenship, justice and right."<sup>115</sup>

Since race was considered foundational and immutable, and thus not subject to dispute, the Court argued: "A statute which implies merely a legal distinction between the white and colored races—a distinction which is founded in the color of the two races, and which must always exist so long as white men are distinguished from the other race by color—has no tendency to destroy the legal equality of the two races, or reestablish a state of involuntary servitude." However, the conundrum in *Plessy* was precisely that the plaintiff's color did not distinguish him from the white race. In any case, the role of the state in the creation of a subjected race was dissimulated by this "mere" recognition of extant differences. As the Court stated, the "absolute equality of the two races before the law" established by the Fourteenth Amendment was not intended to abolish distinctions of race or to "enforce social, as distinguished from political, equality, or a commingling of the two races upon terms unsatisfactory to either" (543). Again, the introduction of the issue of social equality fostered the enjoyment, happiness, and comfort of members of the dominant race at the expense of the rights and liberties allegedly guaranteed to all citizens. If equal access to public facilities imposed social equality, a compulsory association considered offensive by those forced into contact with the inferior race, then, as Tourgee pointed out, why were black nurses not carriers of contagion: "If color breeds contagion in a railway coach, why exempt nurses from the operation of the Act?"<sup>116</sup> Why did their presence not pose the same danger to moral order and public health? The provision regarding black nurses made clear that the commingling of the races was allowed when it replicated the stratified association of slavery and preserved the hierarchy of dominant and superior races articulated by the statute's assortment of bodies. As underlings, nurses did not upset the configurations of mastery and servitude or the spatial articulation of superiority and abjection established by this legal codification of race. Yet even this exception was only made in the case of children, perhaps because of the necessary proximity of the wet nurse and the physical intimacy required for this availing of the body. In short, the only forms of intimacy and association sanctioned were those in service of white comfort and mastery. As Cable observed in "The Negro Question," fundamentally, the race line sustained relations of mastery and subordination: "The entire essence of the offense, any and everywhere where the race line is insisted on, is the apparition of the colored man or woman as his or her own master; that mastery is all that this tyranny is intended to preserve, and that the moment the relation of master and slave is visibly established between race and race there is the hush of peace."<sup>117</sup>

The "reasonableness" of race as a legal classification was animated by anxieties about equality, bodily integrity, and degrading contact. As I have mentioned earlier, in some respects these anxieties were particular to the postemancipation context.

Interracial association posed special dangers when blacks were no longer chattel property and endowed with the ephemera of civil equality. Isolation and exclusion became the strategies employed to quell the fears incited by equality and preserve mastery. The legal barrier erected between racially marked bodies by *Plessy v. Ferguson*, under the guise of social rights, endorsed this compulsory separation of individuals and populations on the grounds that the Louisiana statute was reasonable and promoted the public good. The reasonableness of the statute was determined in reference to "established usages, customs and traditions of the people, and with a view to the promotion of their comfort, and the preservation of the public peace and good order" (550). This antiquated veneration of custom and tradition resuscitated the past in a nostalgic articulation of slavery and its incidents; indeed, it revived the spirit of *Dred Scott*. However, the decidedly postemancipation compromise of *Plessy* emphasized voluntary consent and appreciation rather than degradation or repulsion. It nonetheless effected the banishment and exclusion of black citizenry on the basis of unfit associations. According to Harlan, the majority opinion resurrected *Dred Scott* by creating "a dominant race—a superior class of citizens, which assumes to regulate the enjoyment of civil rights, common to all citizens, upon the basis of race."<sup>118</sup> In an interesting inversion of slave law, here the lack of mutual consent and appreciation necessitated the separate-but-equal doctrine. The centuries of reciprocity and mutual goodwill that legally sanctioned the violence of *State v. Mann* while morally reproving it had evaporated in two short decades of freedom. Thus the state was prodded to intervene into the intercourse of its citizens in order to mollify this antipathy. Both its willingness and inability to intervene coincided with the interest and desires of the "dominant race."

Since the Louisiana statute was properly within the police power of the state, in essence, the public good inaugurated legal subjection. As decided in *Plessy*, the general prosperity and health of the public compelled the separation of the races. From this vantage point, the state was enforcing segregation less than maintaining the happiness and health of its citizenry by subordinating the law to sentiment and protecting the ideals of custom and comfort. The legitimate exercise of the state's police power superseded the matter of individual civil rights and licensed this violation of individual rights on behalf of a greater good. The exercise of police power by the state of Louisiana was considered reasonable since it was "enacted in good faith for the promotion of the public good, and not for the annoyance or oppression of a particular class" (550). Police power, as defined in *Black's Law Dictionary*, entailed "the power of the state to place restraints on the personal freedom and property rights of persons for the protection of public safety, health, and morals or the promotion of the public convenience and general prosperity."<sup>119</sup> In short, police power legitimated the restriction and regulation of liberty and property in the name of the public welfare and the health and prosperity of the population. As formulated in the *Slaughter-House Cases*, this power extended "to the protection of lives, limbs, health, comfort and quiet of all persons, and the protection of all property within the State; . . . and persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the State."<sup>120</sup> One senator even went so far as to suggest that the proper exercise of police power by the state dictated "legislating in relation to the prejudices of a

people . . . not to legislate against their prejudices."<sup>121</sup> As Pasquale Pasquino notes, the exercise of police power constitutes the population as its object. The science of police constitutes and fashions the social body. The limitlessness or amorphousness of this power, which is one of its defining characteristics, is evidenced in the "plethora of petty details and minor concerns." Key in thinking about the enactment of withholding by the state is Pasquino's observation that police powers are "sort of spontaneous creations of law or rather of a demand for order which outreaches the law" (111). In this regard, it is interesting to note the Court's divergent assessments of the legitimate uses of police power regarding matters of class and race. In the arena of labor relations, measures to protect the working class were regarded as invidious forms of social regulation that violated the liberty of contract. Yet the violation of liberty by racist state statutes was held to be reasonable and legitimate. What I am trying to detail here is the inventiveness of the law, the ambiguity that shrouds what is within and without the reach of the law, and the excess of the law and that which is in excess of the law.

According to the Louisiana statute and majority opinion in *Plessy*, the safety, health, morals, and comfort of the public were predicated upon the banishment and exclusion of blacks from the public domain. If the public good was inseparable from the self-certainty of whiteness, then segregation was the prophylactic against this feared bodily intrusion and dissolution. Harlan rightly warned that this fear would lead to further violations of civil rights: "May it not now be reasonably expected that astute men of the dominant race, who affect to be disturbed at the possibility that the integrity of the white race may be corrupted, or that its supremacy will be imperilled, by contact on public highways with black people, will endeavor to procure statutes requiring white and black jurors to be separated in the jury box by a partition" (562, emphasis mine). In short, the integrity of the white race delineated the public good. The identification of the health and comfort of the populace with white supremacy, as Harlan forewarned, did result in further violations of rights and only intensified the repulsion and aversive sentiment said to be contained by such measures. Moreover, if one of the central aims of police power was establishing public happiness, then the links between white comfort and black suffering were reestablished in the context of emancipation. The police power of the state, as invoked in *Plessy*, basically created "biologized internal enemies," and, similarly, the concern for the public good authorized the state's imposition of burdens and constraints. Of course, protecting "society" from defiling contact, contagion, and dissolution justified all.<sup>122</sup> In this regard, police power was little more than the benevolent articulation of state racism in the name of the public good. The identification of the state with its subjects was thus inseparable from the process of creating internal enemies against which the comfort and prosperity of the populace could be defended. The affiliation of happiness and subjugation and prosperity and exclusion gave shape to a social body identifiable by isolated and stigmatized internal aliens and the illusory integrity of the dominant race.<sup>123</sup> Basically, the wholeness of the social body was made possible by the banishment and abjection of blacks, the isolation of dangerous elements from the rest of the population, and the containment of contagion.

The invocation of the police power of the state eclipsed issues of equal protection and individual rights. Safety and sentiment overshadowed equality and liberty in the

discussion of the public good. The concern with health, association, and happiness displaced the issue of civil rights with that of social rights. The separation of civil, political, and social rights in nineteenth-century culture legitimated the inequality, subjugation, and second-class citizenship established in *Plessy*. This definition of rights generally acted to contain, constrict, and qualify liberty and equality. Economic rights were limited to the liberty of contract; rights beyond this were frowned upon and considered sinister efforts at class legislation.<sup>124</sup> For example, although citizens enjoyed privileges and immunities, inclusive of basic civil rights and constitutional rights, citizenship did not imply or confer an equality of political rights. Women were citizens but could neither vote nor sit on juries. Married women had restricted property rights and could not establish contracts without the permission of their husbands. For our purposes, what is distinctive about social rights is that they were exempt from all claims of equality, since they concerned matters designated as private and/or intimate. As Mark Tushnet observes, "government had nothing to do with guaranteeing social rights except to enforce those rights guaranteed by the common law."<sup>125</sup> Yet the state was involved with questions of social rights to the extent that they were enmeshed with the power of the police. As discussed earlier, interracial marriages were prohibited on the grounds that marriage was a social right, not a civil right; thus the Civil Rights Act of 1866 and the Fourteenth Amendment did not protect this right of contract. The entanglements of social rights with the power of police unveiled the disavowed role of the state within the domain of the social. The "interests of the future generations of the republic to come" were in the hands of the state.

The isolation of social rights sanctioned the relations of power that effected subjugation, subordination, and exclusion by declaring them natural, commensurate with equality, and outside the scope of the law. However, these distinctions were unstable and contested, as illustrated by *Plessy*. What concerns me here are the pernicious effects ensuant to this distinction of rights in regard to the equal protection of the law and the intensification and extension of racism. Although civil rights were considered the rights one enjoyed in a state of nature—the right to personal freedom, to labor and enjoy the fruits of one's labor, to hold property, to enter into contracts, to marry and protect one's household, to own one's person, and to move about—the social, as defined by the majority in the *Civil Rights Cases* and *Plessy*, undermined civil rights and personal liberties. For example, being denied access to public facilities, institutions, or accommodations or being denied the enjoyment of basic rights was to be countenanced because these relations unbelievably fell into the purview of the strictly private, and an unbound power of discretion guarded the "just inequality" of private society.<sup>126</sup> In this way, the Civil Rights Act of 1875 and other efforts to enforce equality were derailed by designations of the private, an encroaching and mutable sphere impervious to the rule of law. The Civil Rights Act of 1875 was found unconstitutional because it "imposed" rules for individual conduct: "It steps into the domain of local jurisprudence, and lays down rules for the conduct of individuals in society toward each other, and imposes sanctions for the enforcement of those rules."<sup>127</sup> Of course, segregation prescribed the civil conduct of individuals; however, it posed no dangers to the local order. Inherent in this conception of social rights was an understanding of individual and social relations as bifurcated

by public and private domains and ruled by custom, prejudice, desire, and nature rather than by lofty principles like equality. Consequently, the boundaries of the private were fiercely contested. As Harlan insisted in opposition to the majority, the issue at hand in *Plessy* and the *Civil Rights Cases* was the civil rights, not the social rights, of citizens. Since inns, railroads and other conveyances, and places of amusement exercised a "public function and wield power and authority under the state," they were within the scope of the Fourteenth Amendment.<sup>128</sup>

The nineteenth-century social is best described as an asylum of inequality, for the practices and relations allowed to flourish in this domain were liberated from the most nominal commitment to equality. Properly speaking, the social was beyond the reach of the state and exempt from state intervention. However, closer inspection reveals less an autonomous zone than an arena of collusive, contradictory, and clandestine practices between the state and its purported other, the private. The state of Louisiana's role in the creation of subordinated and stigmatized subjects was disguised by the power attributed to sentiment; at the national level, the separate-but-equal doctrine was legitimated and segregation endorsed by way of state sovereignty, natural affinity, and the sanctity of individual desire. Thus, the federal government sanctioned the white supremacist laws of the states by recourse to the separation of powers, state sovereignty, and declared noninterference. The incapacity of federal law and the remove of the state regulated the very domain they identified as beyond their reach. The focus on sentiment and affinity disavowed the state's role in the private and the governance of the social exercised through police power. Therefore, although it appeared that the state refused to intervene into the private by declaring it a law-free and voluntary sphere, the state was already there and actively governing the conduct of individuals.<sup>129</sup> This disavowed regulation of the private engendered the subordination of blacks while claiming the noninvolvement of the state. Yet aversive sentiment rather than state policy was held responsible for this separation and isolation of blacks from the rest of the population. The innocence of the law (it did not create prejudice and thus could not change it) and the state (it merely protected the public safety, health, and morals and promoted the general prosperity) was maintained by denying the public character of racism and attributing it to individual prerogatives.

Although an elastic construction of the private granted relations of exploitation and domination immunity from the state's interference, in fact, the state produced and sanctioned these relations by naturalizing them and declaring them outside the agenda of the state and, by the same token, obscuring its reach and power. In other words, the construction of the private sustained and reproduced subjugation through this division of social existence. Quite unlike the sphere of liberty it was presumed to be, the private, in fact, was a sphere in which inequality, subordination, and exploitation reigned. Rather than accept the bifurcated construction of social existence drawn by liberalism, in which the private signifies individual autonomy and the public the infringement of this putative autonomy, it is important to keep in mind that these terms are contingent and partisan constructions of social life rather than disinterested explanatory terms. Instead, the public and the private need to be

considered provisional designations within an ensemble of shifting, interconnected, and overlapping social relations and institutions, which cannot be distilled into discrete and independent components without the risk of reductionism or obfuscation; neither free will nor inconvenience adequately depicts the social organization of space, bodies, and power.

*Plessy* discloses the extent to which the construction of the private and the social as a "law-free and voluntary sphere of society" facilitates the unavowed regulatory politics of the state and invigorates domination through the freedom of association.<sup>130</sup> By far, the set of interests protected by the shield of the private were ruling interests, although masked by the public good, equivalent rights, racial instincts, and the voluntary consent of individuals. As Neil Gotanda argues, the expansion of the private released providers of public service and amusement from the common-law duty of providing for the public if it required them to serve blacks. In this regard, the incorporation of the public by the private was inextricably linked to absented and banished blacks. The Court created a protected sphere that secured white enjoyment from black encroachments by invoking and confounding the distinctions between the private and the public. For precisely this reason, the social cannot be reduced to the private; to the contrary, it elides and blurs the distinction between public and private. Its noncoincidence with the family, civil society, and the state delineates the particularity of this domain.<sup>131</sup>

By transporting the matter of civil rights into a question of social rights, the decision elevated sentiment and custom above constitutional principle, endorsed racial instincts, and validated the inferiority of blacks since even the Constitution was powerless to put them on the same plane as whites. In this fashion, the racial discriminations that Harlan assessed as "steps towards reducing blacks to a subject race" were declared compatible with equal protection.<sup>132</sup> To quote the majority opinion: "If two races are to meet upon the terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merit, and the voluntary consent of individuals." The terms of mutuality espoused here characterize the idealized arrangements of private society. Yet the elaboration of this mutuality precludes interracial association and denies the prescription of conduct lauded as freedom of association. Similarly, it presumes that preferences and affinities are unchanging. To impose equality or enforce "commingling" allegedly jeopardized the public peace and good order, if not the equilibrium of nature itself. As a consequence, aversive natural affinities were endowed with the status of law. As avouched by the Court, the law was powerless before racial instincts and physical differences. To the contrary, the management of bodies and populations advanced under the cover of nature or "natural affinities," despite feigned declarations of the state's weakness in the face of instinct. As it turned out, the invocation of nature merely cloaked the state's own obsession with blood, sound procreation, racial integrity, and social intercourse. Similarly, it elevated white need and enjoyment to the status of public good.

The social, according to Nancy Fraser, is "the site where successfully politicized runaway needs get translated into claims for government provision."<sup>133</sup> Yet the needs provided for in the state's exercise of its police power and sustained by *Plessy* are those incited by anxieties of contamination and dissolution and given shape by



desires for purity and fears of amalgamation. What occurs in the context of the social is precisely the politicization of bodily processes and corporeal impulses in the service of white supremacy and black subjection. Again, it is notable that the particular entry of these private needs into public view invigorates racism as it occludes other kinds of needs from coming into view—in particular, demands for economic security and others types of sustenance, such as food, shelter, and education, essential to preserving life. The contours of the social were shaped by racism and the consequences of this negrophobic representation of the prosperity of the populace thwarted an emancipatory articulation of needs and impeded the development of a transformative politics focused on liberating the orders of need domesticated, ignored, or denied by repressive taxonomies of the private, the domestic, and the market.<sup>134</sup>

It is interesting to observe the manner in which arbitrary and sound distinctions undergo an inversion as they cross the divide between the public and the private, for racist antipathy and aversion were considered providential and just in private society. The traversals of reasonable and injurious distinctions document the extent to which the social is a crisis category that strives to “fix” the inevitable slippage of the public and the private and domesticate, isolate, and normalize those envisioned as infectious, aberrant, dangerous, and dependent. In effect, the social names a crisis and strives to alleviate it through categorical (re)solutions, usually by readjusting the boundaries of the public and the private that determine the state’s duties and responsibilities and deciding whether the distinctions, classifications, and taxonomies at issue are reasonable, neutral, or injurious. The nature of association and the state’s jurisdiction are irreparably enmeshed. In a similar fashion, the classifying of behaviors—in this case, the “kind” of contact in question—whether it was appropriate, protected, or befouling, fell within the purview of the social.

While Harlan summarily dismissed the issue of the social by declaring it extraneous to the matter under consideration, he did address the issue of sentiment, specifically race hatred: “What can more certainly arouse race hate, what [can] more certainly create and perpetuate a feeling of distrust between the races, than state enactments, which, in fact, proceed on the ground that colored citizens are so inferior and degraded that they cannot be allowed to sit in public coaches occupied by white citizens?”<sup>135</sup> Cable, also fearing the sentiments aroused by these insidious distinctions, warned that oppressive distinctions fomented befouling mixtures and that, therefore, civil equality was the greatest safeguard of private society and natural affinity.<sup>136</sup> It was the entanglement of state and society that underlay Cable’s annoyance about the shared etymology of social and society. In “The Negro Question,” he notes the unfortunate resemblance between the two and the difficulty of discussing society without the social entering the picture (144). Conscious of this slippage, he argues that the social, which inevitably stands in as an abbreviation for the nefarious issue of social equality, should not be confused with society at large. It is this confusion that has led to the separation and banishment of blacks within the public sphere or public society. In expressing his frustration about the high cost of this ambiguity, it is clear that Cable longs for a free space, a space of desire and affinity ruled only by nature and free from all interventions and impositions, whether the enforcements of caste or equality, and tacitly acknowledges the impossibility of

ts actualization. The intrusions of the state signify the violation of natural laws by arbitrary power. We need to ask why the issue of society was so unsettling. The discomfort generally aroused by the issue of social equality was the specter of miscegenation. However, this does not seem to be the case with Cable, since he is so confirmed in his belief about natural inclinations and disinclinations that he fears only that the color line will encourage the aberrant in its violation of natural affinities.

The presence of the state is so unsettling because it imperils the category of the natural, not only with the obvious interference of arbitrary power but also because the state may be, in fact, what secures and nurtures the natural rather than its other. After all, did not the elided boundary of that within and without the state only expose the randomness of what were thought to be providential arrangements whose order was, in fact, without foundation? Certainly this would threaten beloved sentimental possessions—the certitude of desire, the impassable barrier between the races, maybe even the existence of natural affinities. Although unwelcome, would one be forced to confront the fact that these preferences were only sustainable by virtue of violence or its threats? In so many words, Cable's consternation is directed at a kind of Gramscian behemoth that augments its power through the accretions of family, church, and civil institutions.<sup>137</sup>

Was the state separate from private society? Or, more to the heart of the matter, what autonomy did the private enjoy? This is precisely the question begged and belabored by the issue of social rights. Agreeably, private society was "personal, selective, associative, [it] ignore[d] civil equality without violating it, and [was] form[ed] entirely upon mutual private preferences and affinities," and for Cable, these preferences and affinities discouraged the mixing of "dissimilar races."<sup>138</sup> Interestingly enough, what separated Cable from advocates of racial segregation was the certainty, at least as publicly proclaimed, that preference and affinity would alone prevent degrading mixture; thus there was no need for civil distinctions or regulations. (Again the issue of disavowal raises its thorny head. What engendered this unlikely confidence that natural affinity alone prevented "foul mixture"? Or was Cable simply involved in the rhetorical enactment of rebuke?)

Quite striking in *Plessy* was the leeway granted the affinities and desires of the white citizen in the state's (local and national) constitutive anointment of segregation and the self-immolation part and parcel of the recognition of affinity, nature, and desire. Put differently, the state's enactment of withholding and noninterference not only licensed the inequalities sustained in the sphere of the social but, indeed, also produced them. In short, the remove or noninterference of the state in matters of social rights dissimulated the regulatory role of the state in the production and reproduction of racism, or natural affinities, to adopt the language of *Plessy*. The greedy reach of the social encompassed the state and civil society, since the rights of citizens and the personal liberty of the individual were intruded upon by the Louisiana statute; it especially embraced the domestic, where one could enjoy "just inequality" without guilt or needless worry about imposing a badge of slavery by refusing to invite a Negro into one's parlor; however, the free rein of inequality had as its cost the restriction of liberty since one could not choose a partner from the other race even if one so desired. Ultimately, liberty was defined at the expense of

those encumbered and excluded. Apparent here are the chameleonlike capacities of the social that are rather miraculous; this is only fitting given the providential authority vested in the social.

The social was a murky, unstable, and mutable arena of the state's disavowed activities; and it, in turn, defined the duties and concerns of the state, although primarily by negation. Within this shadowy realm, the state managed bodies and policed needs and desires. As elaborated in the *Civil Rights Cases* and *Plessy*, the social designated a particular crisis and/or transformation of the public and the private that resulted in the privatization or domestic incorporation of the public realm.<sup>139</sup> Generally, questions of social rights involve the duties or nonduties of the state.<sup>140</sup> While officially designated as an autonomous realm beyond or immune to the intervention of the state, in fact, the social was the site of intense state regulation. Perhaps this is best explained as the law's excess—that is, as a domain secreted by the state and that secretes the state. Production and concealment operate here in tandem. Most important, the social organized relations and practices in a fashion that ensconced inequalities and delegitimated and valorized particular interests, desires, acts, and longings. It was a transactional zone that defined the scope and limitation of state intervention in matters deemed private, intimate, and domestic.<sup>141</sup>

Social rights not only protected the realm of private relations from state interference and licensed a range of dominative and exploitative relations but also annexed and colonized the public sphere. (If we bear this in mind, challenges to the inequities sanctioned in this domain and the demand for remedies cannot simply seek solution in state intervention, since the state, as it were, is already there and plays a constitutive role in the production of these inequities. Instead remedy depends upon the deconstruction of the private, exposing its overdetermination by the state and making legible its ascription of the state's duties.)<sup>142</sup> As well, an estrangement or disfigurement of nature and instinct must occur in order to target the normalizing strategies obscured by "natural affinities." In the case of *Plessy*, first it had to be established that these relations defied broader constitutional principles and could not coexist within the frame of rights and privileges conferred by such principles and that they were in violation of basic civil rights.<sup>143</sup> The separate-but-equal doctrine sanctioned an equivalent notion of rights that accorded symmetrical or commensurate treatment rather than universal equality. The matter *Plessy* challenged was precisely this separate-but-equal treatment, but not by exposing the falsity of this presumed equivalence but by insisting that racial classifications undermined universal principles of freedom and equality.<sup>144</sup> Against the state's claim of neutrality and equivalence, *Plessy*'s attorneys insisted that these classifications were unconstitutional and that injury inflicted by such taxonomies cast the Negro in a legal condition reminiscent of slavery.<sup>145</sup> Particularly at issue in the state's treatment of its citizens was the vexed status of social rights.

In effect, what was being disclosed was the violence that was part and parcel of the state's protection of the public good and the racist aversion through which the state identified with its subjects; that is, prosperity and aversion became twin principles of governance. In more affirmative terms and with keener eyes toward the productive character of racism, the state's work can be understood as securing racial integrity rather than simply ensconcing aversion in the law. The burden of this

integrity was to be borne by the castigated and encumbered bodies of black citizens, even that they shouldered the brunt of the privileges esteemed as social rights. Just as the bent back of the freedmen's primers figured freedom in the image of slavery, so, too, was the fate of the afflicted black body figured in *Plessy*. If the fundamental task conducted under the cover of the state's police power was the protection of the health of the populace, then, as this duty took shape in the emergent era of Jim Crow, ensuring the public health required the state to attend to bodily matters, particularly the policing of blackness and the tracking down of all its ascertainable races, as well as regulating legitimate forms of intimacy, association, and reproduction and, if and when necessary, imposing onerous but warrantable hardships.

The intent of the Louisiana statute and the effect of *Plessy* were to preclude encounters between scandalously proximate bodies. The obsession with legible bodies, sound association, and physical proximity indicates the degree to which the social involved the governing and management of life. As *Plessy* evinced, sitting next to a black person on a train, sleeping in a hotel bed formerly used by a black patron, or dining with a black party seated at a nearby table not only diminished white enjoyment but also incited fears of engulfment and contamination. Clearly the integrity of bodily boundaries and racial self-certainty was at the heart of this anxiety, and the curative for this fear and loathing was the exclusion and subordination of blacks. So it appears that the subjection of blacks was the basis of both individuation and collective security. This anxiety about impending dissolution and engulfment found expression in an organization of space that arranged, separated, and isolated bodies to forestall this feared and anticipated intrusion. *Plessy* instantiated this fear and confirmed the need for precautionary measures. Bound by the fetters of sentiment, held captive by the vestiges of the past, and cast into a legal condition of subjection—these features limn the circumstances of an anomalous, misbegotten, and burdened subject no longer enslaved, but not yet free.

# Notes

## INTRODUCTION

1. Frederick Douglass, *Narrative of the Life of Frederick Douglass, An American Slave, Written by Himself* (Boston, 1845; reprint, New York: New American Library, 1968), 25–26.
2. J. Laplanche and J.-B. Pontalis, *The Language of Psychoanalysis*, trans. Donald Nicholson-Smith (New York: W.W. Norton, 1973), 332.
3. Elaine Scarry, *The Body in Pain* (New York: Oxford University Press, 1985); Dori Laub, "An Event without a Witness: Truth, Testimony, and Survival," in *Testimony: Crisis of Witnessing in Literature, Psychoanalysis, and History*, ed. Shoshana Felman and Dori Laub (New York: Routledge, 1992).
4. George Rawick, ed., *The American Slave: A Composite Autobiography*, vol. 7, pt. 2 (Westport, Conn.: Greenwood Press, 1973), 117.
5. *Ibid.*, vol. 11, pt. 7, p. 211.
6. Sylvia Wynter, "On Disenchanting Discourse: 'Minority' Literary Criticism and Beyond," in *The Nature and Context of Minority Discourse*, ed. Abdul R. JanMohamed and David Lloyd (New York: Oxford University Press, 1990), 447.
7. Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (New York: Vintage, 1993), 37.
8. *Ibid.*, 17.
9. James Scott, *Domination and the Arts of Resistance* (New Haven, Conn.: Yale University Press, 1991), 45.
10. John Forrester, *The Seductions of Psychoanalysis: Freud, Lacan, Derrida* (Cambridge, Mass.: Cambridge University Press, 1990), 86. For an extended discussion of mastery and deformation, see Houston Baker, *Modernism and the Harlem Renaissance* (Chicago: University of Chicago Press, 1987).
11. Valerie Smith, *Self-Discovery and Authority in Afro-American Literature* (Cambridge: Harvard University Press, 1987), 28–32.
12. Gayatri Spivak, "Subaltern Studies: Deconstructing Historiography," in *Selected*

*Subaltern Studies*, ed. Ranajit Guha and Gayatri Chakravorty Spivak (New York: Oxford University Press, 1988), 11–12.

13. Lata Mani, "Cultural Theory, Colonial Texts: Reading Eyewitness Accounts of Widow Burning," in *Cultural Studies*, ed. Lawrence Grossberg, Cary Nelson, and Paula Treichler (New York: Routledge, 1992), 392–408.

14. Michel Foucault, *The Archaeology of Knowledge*, trans. A. M. Sheridan (New York: Pantheon, 1972), 130–131.

15. Gyanendra Pandey, "In Defense of the Fragment: Writing about Hindu-Muslim Riots in India Today," *Representations* 37 (Winter 1992): 27–55; Gayatri Spivak, "The Rani of Jhirmur: An Essay in Reading in the Archive," *History and Theory* 24.3 (1987): 247–272; Renato Rosaldo, "From the Door of His Tent: The Fieldworker and the Inquisitor," in *Writing Culture: The Poetics and Politics of Ethnography*, ed. James Clifford and George E. Marcus (Berkeley: University of California Press, 1986).

16. Ranajit Guha, "The Prose of Counter-Insurgency," in Guha and Spivak, *Selected Subaltern Studies*, 77.

17. John Blassingame, ed., *Slave Testimony: Two Centuries of Letters, Speeches, and Autobiographies* (Baton Rouge: Louisiana State University Press, 1977), xvi–lxv; C. Van Woodward, "History from Slave Sources," in *The Slave's Narrative*, ed. Charles T. Davis and Henry Louis Gates, Jr. (New York: Oxford University Press, 1985), 48–58.

18. According to Paul Escott, the race of the WPA interviewers determined what was said or revealed as well as variances in the representation of those statements. Paul Escott, *Slavery Remembered: A Record of Twentieth Century Slave Narratives* (Chapel Hill: University of North Carolina Press, 1979).

19. Edouard Glissant, *Caribbean Discourse: Selected Essays*, trans. J. Michael Dash (Charlottesville: University of Virginia Press, 1989), 89.

20. Antonio Gramsci, *The Prison Notebooks*, ed. and trans. Quintin Hoare and Geoffrey Nowell Smith (New York: International Publishers, 1971), 419–425; David Forgacs and Geoffrey Nowell Smith, eds., *Selections from Cultural Writings*, trans. William Boelhower (Cambridge, Mass.: Harvard University Press, 1895), 189.

21. Paul Gilroy, *The Black Atlantic: Modernity and Double Consciousness* (Cambridge, Mass.: Harvard University Press, 1993), 37; Seyla Bonhabib, *Critique, Norm, and Utopia: A Study of the Foundations of Critical Theory* (New York: Columbia University Press, 1986), 13, 41.

22. Walter Benjamin, "Theses on the Philosophy of History," in *Illuminations*, trans. Harry Zohn (New York: Schocken, 1969), 255.

## CHAPTER ONE

1. John Rankin, *Letters on American Slavery* (1837; reprint, Westport, Conn.: Negro Universities Press, 1970), 45–47. In *An Appeal in Favor of That Class of Americans Called Africans*, Lydia Maria Child in her condemnation of the internal trade describes a similar scene: "In the summer of 1822, a cofile of slaves, driven through Kentucky, was met by Rev. James H. Dickey, just before it entered Paris. He describes it thus: 'About forty black men were chained together; each of them was handcuffed, and they were arranged rank and file. A chain, perhaps forty feet long, was stretched between the two ranks, to which short chains were joined, connected with the handcuffs. Behind them were about thirty women, tied hand to hand. Every countenance wore a solemn sadness; and the dismal silence of despair was only broken by the sound of two violins. Yes—as if to add insult to injury, the foremost couple were furnished with a violin apiece; the second couple were ornamented with cockades; while near the center our national standard was carried by hands literally in chains.'" *An Appeal in*

*Favor of That Class of Americans Called Africans*, ed. Carolyn Karcher (Amherst: University of Massachusetts Press, 1996), 32. The descriptions of the coffle found in abolitionist texts, like this example from Child, were frequently secondhand accounts rather than firsthand reports of encounters with the coffle. This citational practice was a response to the crisis of slave testimony and a means of assembling “a thousand witnesses” against slavery in every text and documenting the woe and misery of slavery.

2. Rankin, *Letters on American Slavery*, 45.

3. Philip Fisher, *Hard Facts: Setting and Form in the American Novel* (New York: Oxford University Press, 1985), 100.

4. Peter A. Angeles, *Dictionary of Philosophy* (New York: Barnes and Noble Books, 1981); *Webster's New Twentieth Century Dictionary*, 2d ed., unabridged ([Cleveland]: Collins World, 1976).

5. Johnathan Boyarin writes that “the hegemony of empathy as an ethic of the obliteration of otherness . . . occurs where humanism demands the acknowledgement of the Other’s suffering humanity . . . [and] where the paradoxical linkage of shared humanity and cultural otherness cannot be expressed.” *Storm from Paradise: The Politics of Jewish Memory* (Minneapolis: University of Minnesota Press, 1994), 86. See also Karl Morrison, *I Am You: The Hermeneutics of Empathy in Western Literature, Theology, and Art* (Princeton: Princeton University Press, 1988).

6. In “The Politics of Translation,” Gayatri Spivak outlines a politics of translation that is useful in thinking about ethical relations and the terms of one’s identification with others. She remarks that as ethical agents “it is not possible for us to imagine otherness or alterity maximally. We have to turn the other into something like the self in order to be ethical.” Instead of ethical similitude, she suggests an erotics of surrender that is cognizant of the impossibility of translation. *Outside in the Teaching Machine* (New York: Routledge, 1993).

7. Zygmunt Bauman, *Modernity and the Holocaust* (Ithaca: Cornell University Press, 1991), 192.

8. Karen Sanchez-Eppler, *Touching Liberty: Abolition, Feminism, and the Politics of the Body* (Berkeley: University of California Press, 1993).

9. Thomas Jefferson, *Notes on Virginia* (1787; reprint, New York: W. W. Norton, 1982), 138.

10. The most gruesome of the tragic scenes described by Rankin involves the dismemberment and incineration of a slave boy.

11. See Stephen R. Munzer, *A Theory of Property* (Cambridge, Mass.: Cambridge University Press, 1990), 61, 63. In a discussion of incorporation and projection theories of property, Munzer notes that the incorporation theory holds that external things become property by being brought into the body. The projection theory maintains that they become property by embodying the person in external things.

12. Rankin, *Letters*, 57. Slave narrators were literally and figuratively forced to display themselves in order to tell their stories. See Houston Baker, *Workings of the Spirit* (Chicago: University of Chicago Press, 1991); Robert B. Stepto, *From behind the Veil: A Study of Afro American Narrative* (Urbana: University of Illinois Press, 1979); William L. Andrews, *To Tell a Free Story* (Urbana: University of Illinois Press, 1986); and Valerie Smith, *Self-Discovery and Authority in Afro-American Narrative* (Cambridge, Mass.: Harvard University Press, 1987).

13. Elaine Scarry, *The Body in Pain* (New York: Oxford University Press, 1985).

14. It has been argued that this intimacy of work and song is typically African. See Leroi Jones, *Blues People: Negro Music in White America* (New York: William Morrow, 1963); Sterling Stuckey, *Slave Culture: Nationalist Theory and the Foundations of Black America* (New York: Oxford University Press, 1987); Lawrence Levine, *Black Culture and Black Consciousness: Afro-American Folk Thought from Slavery to Freedom* (New York: Oxford

University Press, 1977); and John Miller Chernoff, *African Rhythm, African Sensibility* (Chicago: University of Chicago Press, 1979).

15. Enjoyment, as defined in the *Oxford English Dictionary*, encompasses taking delight or pleasure in; having sexual intercourse; as well as having the use or benefit of something. The various dimensions of having the use of or possessing, from holding the title to property or sexual intercourse, is what I want to explore here.

16. This argument will be fully explicated and substantiated by case law discussed in chapter 3.

17. George M. Stroud, *A Sketch of the Laws Relating to American Slavery in the Several States of the United States of America* (1827; reprint, New York: Negro Universities Press, 1968), 65.

18. *Ibid.*, 98.

19. William Goodell, *The American Slave Code* (1853; reprint, New York: Johnson Reprint Corporation, 1968), 308.

20. I submit that even laws designed to protect the lives of slaves were framed in terms of the loss of property and, moreover, could not be reinforced since neither slaves nor free blacks could act as witnesses against whites.

21. Slavoj Žižek, *Tarrying with the Negative* (Durham: Duke University Press, 1993), 206.

22. See Karl Marx, "The Commodity," in *Capital*, vol. I, trans. Ben Fowkes (New York: Vintage, 1977), 125-177.

23. The melodrama's structure is basically Manichaean, with the struggle between good and evil forming its dramatic core. Virtue, the heroine, and the threat of catastrophe provide its essential ingredients. The dramatic language it utilizes is emblematic, relying on a gestural and sometimes inarticulate language, which Peter Brooks describes as aesthetics of muteness, to provide a moral clarity that supersedes the word. The yearning for moral visibility culminates in the tableau. In some respects, minstrelsy is quite the opposite of melodrama, although it frequently utilized sentimental devices. However, generally minstrelsy luxuriates in dissemblance and in playing upon the unreliability of appearances, and by the same token, it violates moral and social boundaries. Formally, minstrelsy was a hodgepodge of songs, dances, interacts, short skits, stump speeches, comic dialogues, and a narrative afterpiece; it was generally composed of short farces, Shakespearean burlesques, or theatrical lampoons. See David Grimsted, *Melodrama Unveiled* (Berkeley: University of California Press, 1968), 171-203; Peter Brooks, *The Melodramatic Imagination* (New Haven, Conn.: Yale University Press, 1985), 27-62; Bruce A. McConachie, *Melodramatic Formations* (Des Moines: University of Iowa Press, 1992), 163-197; Carl Wittke, *Tambo and Bones: A History of the American Minstrel Stage* (Durham: Duke University Press, 1930), 135-209; Hans Nathan, *Dan Emmett and the Rise of Early Negro Minstrelsy* (Norman: University of Oklahoma Press, 1962), 50-69, 123-134, 227-242; and Robert C. Toll, *Blacking Up: The Minstrel Show in Nineteenth Century America* (New York: Oxford University Press, 1974), 25-65.

This discussion of melodrama is confined to the texts that explore issues of race, gender, and slavery: William Wells Brown, *The Escape; or, A Leap for Freedom*, in *Black Theatre U.S.A.*, ed. James V. Hatch and Ted Shine (New York: Free Press, 1974); Dion Boucicault, *The Octoroon*, in *18th and 19th Century British Drama*, ed. Katharine Rogers (New York: New American Library, 1979); and George Aiken and Harriet Beecher Stowe, *Uncle Tom's Cabin*, in *American Melodrama*, ed. Daniel C. Gould (New York: Performing Arts Journal, 1983).

24. Although Karen Sanchez-Eppler in the insightful essay "Bodily Bonds: The Intersecting Rhetorics of Feminism and Abolition" rightly argues that the mulatto body undermines the surety of racial legibility, I contend that Zoe's body becomes legible as a black one by virtue of the violence that threatens it. *Representations* 24 (Fall 1988): 41. Hazel Carby notes



the liminal status of the mulatto figure as a vehicle for exploring the relationship between the races. *Reconstructing Womanhood: The Emergence of the Afro-American Woman Novelist* (New York: Oxford University Press, 1987), 89-91.

25. In the dualistic world of melodrama, identification was absolute or not at all, for good and evil could not be reconciled. Unwavering convictions and absolute distinctions permitted the spectator an undivided state of being, which Robert Heilman defines as "the monopathic—the singleness of feeling that gives one a sense of wholeness." *Tragedy and Melodrama* (Seattle: University of Washington Press, 1968), 84. Similarly, Peter Brooks describes the "wholesome pleasures" of melodrama as the "joy of full emotional indulgence." *The Melodramatic Imagination*, 56-80.

26. Within the worldview of sentimentalism, the subordinated exercised their power through such acts of self-inmolation and submission. See Jane Tompkins, *Sensational Designs: The Cultural Work of American Fiction, 1790-1860* (New York: Oxford University Press, 1985), 128. Ann Douglass contends, to the contrary, that sentimentalism merely naturalizes the social order by asserting the power of the most subordinate. *The Feminization of American Culture* (New York: Avon, 1977), 11-13.

27. Grimsted, *Melodrama Unveiled*, 206.

28. E. A. Andrews, *Slavery and the Domestic Slave Trade* (1836; reprint, Detroit: Negro History Press, n.d.).

29. According to Brooks, the motive of the tableau is to "give the spectator the opportunity to see meanings represented, emotions and moral states rendered in clear visible signs." The reliance on gesture, muteness, and the inarticulate cry marks the inadequacy of the conventional code "to convey a full freight of emotional meaning." *The Melodramatic Imagination*, 62.

30. Grimsted, *Melodrama Unveiled*, 191.

31. J. C. Furnas, *Goodbye to Uncle Tom* (New York: William Sloane Associates, 1956), 257-284; Toll, *Blacking Up*, 90-96; William L. Van De Burg, *Slavery and Race in American Popular Culture* (Madison: University of Wisconsin Press, 1984), 47-49; Stephen Hirsch, "Uncle Tomitudes: The Popular Reaction to *Uncle Tom's Cabin*," in *Studies in the American Renaissance*, ed. Joel Myerson (Boston: Twayne, 1978), 303-330; Eric Lott, *Love and Theft*, 211-233.

32. Sam Lucas was the first black actor to play Tom in nonminstrel versions of *Uncle Tom's Cabin*. Ironically, Lucas was not famous for this role but for his minstrel performance of Uncle Tom's death.

33. The promiscuous circulation of these forms is especially clear in Brown's work. *My Southern Home* was chock-full of darky fare. Furnas has noted that Tom's rendition of "Old Folks at Home" had recently been made popular by the Christy Minstrels and that "Uncle Tom's Religion" resembled a minstrel air, though it was also melodramatic, with heavy bass tremolo effects to evoke whipping. Hirsch, "Uncle Tomitudes," 315.

34. "Old Folks at Home," in Stephen Foster, *Minstrel Show Songs*, ed. H. Wiley Hitchcock (New York: Da Capo Press, 1980).

35. Generally critics have described the development of minstrelsy in terms of the triumph of the common man. The attack on pretentiousness, the pastoral romance, and issues of identity and nationhood were also significant themes. See Toll, *Blacking Up*, 3-21, 160-194; and Eric Lott, *Love and Theft* (New York: Oxford University Press, 1992), 63-88.

36. Farce "invites laughter by the violation of social taboos" but "nevertheless avoids giving offence . . . by adhering to a balanced structure in which the characters and values under attack are ultimately restored to their conventional positions." Jessica Milner Davis, *Farce* (London: Methuen, 1978), 85. See also Eric Bentley, *The Life of Drama* (New York: Atheneum, 1964).

37. As Houston Baker observes, the minstrel mask "is a space of habituation not only for

pressed spirits of sexuality, ludic play, id satisfaction, castration anxiety, and a mirror stage of development, but also for that deep-seated denial of the indisputable humanity of inhabitants of and descendants from the continent of Africa. See *Modernism and the Harlem Renaissance* (Chicago: University of Chicago Press, 1987), 17.

38. David Roediger, *Wages of Whiteness* (London: Verso, 1991), 127.

39. "Two Declarations of Independence: The Contaminated Origins of American National Culture," in Michael Rogin, *Blackface, White Noise: Jewish Immigrants in the Hollywood Melting Pot* (Berkeley: University of California Press, 1996), 34.

40. See Edmund Morgan, *American Slavery, American Freedom* (New York: W. W. Norton, 1975); and Theodore Allen, *Invention of the White Race* (New York: Routledge, 1994).

41. Antislavery themes in minstrelsy were rare. "Ambivalence" best describes the representations of slavery that didn't glorify the plantation. By the 1850s any traces of antislavery sentiment had disappeared. For a discussion of antislavery themes in minstrelsy, see William Stowe and David Grimsted, "White-Black Humor," *Journal of Ethnic Studies* 3 (Summer 1975): 78-96; and Toll, *Blacking Up*, 81-88, 112-114.

42. Foster, *Minstrel Show Songs*.

43. *New York Clipper*, April 6, 1872, cited in Nathan, *Dan Emmett*, 288.

44. George Fredrickson, *The Arrogance of Race* (Middletown: Wesleyan University Press, 1988), 215.

45. Sam Dennison, *Scandalize My Name: Black Imagery in American Popular Music* (New York: Garland, 1982), 102.

46. Hans Nathan, *Dan Emmett and the Rise of Early Negro Minstrelsy* (Norman: University of Oklahoma Press, 1962). The authorship of "Dixie" is contested. Thirty-seven white composers claimed authorship as well as a black family, the Snowdens. The mother of Ben and Lou Snowden, Ellen Cooper Snowden, has been identified as the author. See Howard L. Sacks and Judith Rose Sacks, *Way Up in Dixie: A Black Family's Claim to the Confederate Anthem* (Washington, D.C.: Smithsonian, 1993). The Sackses contend that "Dixie" can be read as protest by way of parody based on Ellen Snowden's authorship. In any case, the controversy over authorship doesn't affect the political uses of "Dixie."

47. "Gayly de Niggas Dance," reprinted in *The Negro Forget-Me-Not-Songster* (Philadelphia, 1855), cited in *ibid.*, 94.

48. "Dandy Jim from Caroline" (New York: Firth and Hall, 1843) and "Pompey Squash," in *The Negro Forget-Me-Not-Songster*, both cited in *ibid.*, 138-140.

49. *Oh, Hush! or, the Virginny Cupids, The Quack Doctor, and Meriky; or, The Old Time Religion*, in *This Grottesque Essence: Plays from the Minstrel Stage*, ed. Gary D. Engle (Baton Rouge: Louisiana State University Press, 1978).

50. See *Oh, Hush! or, the Virginny Cupids, The Quack Doctor, Old Zip Coon, and Meriky; or, the Old Time Religion*, in *ibid.* See also T. Allston Brown, *History of the American Stage* (1870; reprint, New York: Benjamin Blom, 1969).

51. "Jim Along Josey," reprinted in Nathan, *Dan Emmett*, 437.

52. *Ibid.*, 399.

53. In his brilliant and masterful study, *Love and Theft*, Eric Lott forwards a reading of minstrelsy that focuses on the ambivalence of the minstrel texts and the transgressive identifications operative in donning blackface and cross-dressing. While much is to be admired in Lott's deft and comprehensive examination, I take issue with his claims about cross-racial solidarity and the subversive effects of minstrelsy.

54. Boucicault, *The Octoroon*, 427.

55. George Tucker, *Letters from Virginia*, trans. F. Lucas (Baltimore: J. Rubinson, 1816), 29-34.

56. American Anti-Slavery Society, *American Slavery As It Is: Testimony of a Thousand Witnesses* (1839; reprint, New York: Arno, 1968); Jesse Torrey, *American Slave Trade* (1822; reprint, Westport, Conn.: Negro Universities Press, 1971); Theodore D. Weld, *Slavery and the Internal Slave Trade in the United States* (1841; reprint, New York: Arno, 1969).

57. George W. Featherstonhaugh, *Excursion through the Slave States*, vol. 1 (London, 1844), 119-124.

58. Tyrone Power, *Impressions of America during the Years 1833, 34 and 35*, vol. 2 (Philadelphia, 1836), 80-83, cited in *A Documentary History of Slavery in North America*, ed. Willie Lee Rose (New York: Oxford University Press, 1976), 154.

59. Letter to Mary Speed, September 27, 1841, in Abraham Lincoln, *Abraham Lincoln: Speeches and Writings, 1832-1858* (New York: Library of America, 1989), 74-75.

60. Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (New York: Vintage, 1993), 39.

61. Paul Gilroy, *The Black Atlantic* (Cambridge, Mass.: Harvard University Press, 1993), 37.

62. Edouard Glissant, *Caribbean Discourse: Selected Essays*, trans. J. Michael Dash (Charlottesville: University of Virginia Press, 1989), 2, 4, 161.

63. Gilles Deleuze discusses the operation of disavowal as "the point of departure of an operation that consists in neither negating nor even destroying, but rather in radically contesting the validity of that which is; it suspends belief in and neutralizes the given in such a way that a new horizon opens up beyond the given and in place of it." *Masochism: Coldness and Cruelty* (New York: Zone, 1991), 28-29.

64. Sellie Martin's narrative in John Blassingame, ed., *Slave Testimony* (Baton Rouge: Louisiana State University Press, 1977), 704.

65. William Wells Brown, *Narrative of William Wells Brown, a Fugitive Slave*, in *Puttin' On Ole Massa*, ed. Gilbert Osofsky (Baton Rouge: Louisiana State University Press, 1968), 194.

66. Blassingame, *Slave Testimony*, 691.

67. Torture, according to Elaine Scarry, "converts the vision of suffering into the wholly illusory but . . . wholly convincing display of agency." *The Body in Pain*, 27.

68. *Ibid.*, 47.

69. Cato Carter, in George P. Rawick, ed., *The American Slave: A Composite Autobiography*, 41 vols. (Westport, Conn.: Greenwood, 1973), suppl. 2, vol. 3, pt. 2, p. 646.

70. Catherine Slim, in *ibid.*, vol. 16, pt. 4, p. 74.

71. Mary Gaffney, in *ibid.*, suppl. 2, vol. 5, pt. 4, p. 1445.

72. James Martin, in *ibid.*, suppl. 2, vol. 5, pt. 3, p. 63.

73. Polly Shine, in *ibid.*, suppl. 2, vol. 9, pt. 8, pp. 3514-3515.

74. Blassingame, *Slave Testimony*, 138.

75. *New Orleans Daily Picayune*, March 26, 1853, cited in Richard Tansey, "Bernard Kendig and the New Orleans Slave Trade," *Louisiana History* 23.2 (Spring 1982): 160.

76. Blassingame, *Slave Testimony*, 503.

77. Bave Byrd, in Rawick, *The American Slave*, suppl. 2, vol. 3, pt. 2, pp. 564-565.

78. Ethel Dougherty, in *ibid.*, suppl. 1, vol. 5, pt. 1, p. 63.

79. Edward Lycurgas, in *ibid.*, suppl. 1, vol. 17, pt. 1, p. 206.

80. Blassingame, *Slave Testimony*, 347.

81. Millie Simpkins, in Rawick, *The American Slave*, suppl. 1, vol. 16, pt. 6, p. 66.

82. Winger Vanhook, in *ibid.*, suppl. 2, vol. 10, pt. 9, p. 395.

83. Mattie Gilmore, in *ibid.*, suppl. 2, vol. 5, pt. 4, p. 1492. See also Emma Taylor, in *ibid.*, suppl. 2, vol. 9, pt. 8, p. 3762.

84. Scarry, *The Body in Pain*, 152.

85. *Slave Life in Georgia: A Narrative of the Life, Sufferings, and Escape of John Brown*, ed. L. A. Chamerovzow (London: W. M. Watts, 1855), 112-118.

86. Charles L. Perdue, Jr., Thomas E. Barden, and Robert K. Phillips, eds., *Weevils in the Wheat: Interviews with Ex-Slaves* (Bloomington: Indiana University Press, 1980), 325.

87. Chamerovzow, *Slave Life in Georgia*, 117.

88. Mrs. Fannie Berry, in Perdue, Barden, and Phillips, *Weevils in the Wheat*, 49.

89. *Ibid.*, 166.

90. Michael Tadman remarks that "the real evils of the trade lay, not with physical experiences, but with the deeply racist white assumptions on which the traffic was built, and with the emotional sufferings of slaves callously separated from parents, offsprings, siblings, and other members of their community." Between 1830 and 1850, over a quarter of a million slaves were moved due to sales and planter migration. According to Tadman, teenagers and young adults constituted the staple of trade. For slaves in the upper South, the chance of being sold in the first forty years of their life was as high as 30 percent, and forcible separations of slaves for sale destroyed about one in three of all first marriages. *Speculators and Slaves: Masters, Traders, and Slaves in the Old South* (Madison: University of Wisconsin Press, 1989), 82, 113, 133-178. See also Herbert Gutman, *The Black Family in Slavery and Freedom* (New York: Vintage, 1976).

91. Pierre Bourdieu, *Outline of a Theory of Practice*, trans. Richard Nice (London: Cambridge University Press, 1977), 191.

92. Peter Sloterdijk, "Pain and Justice," in *Thinker on Stage: Nietzsche's Materialism*, trans. Jamie Daniel Owens (Minneapolis: University of Minnesota Press, 1989), 77. Sloterdijk skillfully argues that the construction of the socially endurable engenders the spectacle of error.

93. Solomon Northrup, *Twelve Years a Slave*, in Osofsky, *Puttin' On Ole Massa*, 323-324.

94. Being forced to dance before the master was a common occurrence, according to the testimony of the enslaved.

95. Jacob Stroyer, *My Life in the South*, in *Four Slave Narratives: A Compendium*, ed. William Loren Katz (New York: Arno and New York Times, 1968), 45.

96. *Ibid.*, 45.

97. Discipline, as Foucault has defined it, "is a technique of power which operates primarily on the body." It creates a docile body that can be "subjected, used, transformed and improved." Michel Foucault, *Discipline and Punish*, trans. Alan Sheridan (New York: Vintage, 1979), 136.

98. Frederick Douglass, *Life and Times of Frederick Douglass* (New York: Collier, 1962), 147.

99. J. Hamilton Couper, Theo B. Bartow, and George Adams, "Premium Essay on the Treatment of Slaves," *Soil of the South* 3 (March 1853): 458-459, cited in *Advice among the Masters: The Ideal in Slave Management in the Old South*, ed. James O. Breeden (Westport, Conn.: Greenwood, 1980).

100. Tattler, "Management of Negroes," *Southern Cultivator* 8 (November 1850): 162-164. See also Breeden, *Advice among the Masters*, 65.

101. Guiou Griffiths Johnson, *A Social History of the Sea Islands with Special Reference to St. Helena Island* (Chapel Hill: University of North Carolina Press, 1930), 143.

102. According to George Fredrickson, romantic racialism "projected an image of the Negro that could be construed as flattering or laudatory in the context of some currently accepted ideals of human behavior and sensibility. . . . The romantic racialist view endorsed the 'child' stereotype of the most sentimental school of proslavery paternalists." The notable traits of the African from this vantage point were lightheartedness, a natural talent for

music, and a willingness to serve. *The Black Image in the White Mind* (Middletown: Wesleyan University Press, 1971), 103-105.

103. "The Peculiarities and Diseases of Negroes," *American Cotton Planter and Soil of the South* (1860), in Breeden, *Advice among the Masters*, 280.

104. Mississippi Planter, "Management of Negroes upon Southern Estates," *De Bow's Review* 10 (June 1851), cited in Paul F. Paskoff and Daniel J. Wilson, eds., *The Cause of the South: Selections from De Bow's Review, 1846-1867* (Baton Rouge: Louisiana State University Press, 1982), 24.

105. Small Farmer, "Management of Negroes," *De Bow's Review* 11 (October 1851), in *ibid.*

106. Adeline Jackson, in Rawick, *The American Slave*, South Carolina Narratives, vol. 3, pt. 3, p. 3.

107. Gary Stewart, in *ibid.*, Texas Narratives, vol. 5, pt. 4, p. 62.

108. Henry Bland, in *ibid.*, Georgia Narratives, vol. 12, pt. 1, p. 90.

109. Norman R. Yetman, *Life under the "Peculiar Institution": Selections from the Slave Narrative Collection* (New York: Holt, Rinehart and Winston, 1970) 78.

110. Ed Shirley, in Rawick, *The American Slave*, Kentucky Narratives, vol. 16, pt. 2, p. 23.

111. Ann Thomas, in *ibid.*, Florida Narratives, vol. 17, pt. 1, p. 330.

112. Marinda Jane Singleton, in Perdue, Barden, and Phillips, *Weevils in the Wheat*, 267.

113. N. Herbornont, "On the Moral Discipline and Treatment of Slaves," *Southern Agriculturalist* 9 (February 1836), in Breeden, *Advice among the Masters*, 277-278.

114. Eda Harper, in Rawick, *The American Slave*, Arkansas Narratives, vol. 9, pt. 3, p. 164.

115. Drew Gilpin Faust, *The Creation of Confederate Nationalism: Ideology and Identity in the Civil War South* (Baton Rouge: Louisiana State University Press, 1988), 69.

116. Douglass, *Life and Times*, 148.

117. The reaction to "innocent amusements" by the enslaved community is examined at length in chapter 2.

118. Henry Bibb, *Narrative of the Life and Adventures of Henry Bibb, an American Slave, Written by Himself*, in Osofsky, *Puttin' On Ole Massa*, 68.

119. Theodore Parker, "A Sermon on Slavery," in *Works*, vol. 4 (London, 1863, 1870), cited in Fredrickson, *The Black Image in the White Mind*, 119-120.

120. Douglass, *Life and Times*, 147.

121. *Ibid.*

122. Frederick Douglass, *Narrative of the Life of Frederick Douglass, an American Slave, Written by Himself* (1845; reprint, New York: New American Library, 1968), 31.

123. Douglass's position on slave culture was an ambivalent one. He considered it both an expression of discontent, woe, and resistance and an example of the degraded condition of the slave. Waldo E. Martin argues that Douglass, like many of his contemporaries, assumed the superiority of Euro-American culture and "accept[ed] the idea of Afro-American cultural inferiority while disassociating it from his commitment to human equality." *The Mind of Frederick Douglass* (Chapel Hill: University of North Carolina Press, 1984), 243.

## CHAPTER TWO

1. John McAdams, in George P. Rawick, ed., *The American Slave: a Composite Autobiography* (Westport, Conn.: Greenwood, 1973), 41 vols., Texas Narratives, suppl. 2, vol. 7, pt. 6, p. 2461; Lu Lee, in *ibid.*, suppl. 2, vol. 6, pt. 5, p. 2297; Mary Glover, in *ibid.*, suppl. 2, p. 1518.

2. McAdams, in *ibid.*, suppl. 2, vol. 7, pt. 6, p. 2467.
3. Frederick Douglass, *Life and Times of Frederick Douglass* (New York: Collier, 1962), 147.
4. Toby Jones, in Rawick, *The American Slave, Texas Narratives*, vol. 4, pt. 2, p. 249.
5. The hyperbolic enactment of power central to domination links performance and everyday practice.
6. Michel de Certeau, *The Practice of Everyday Life* (Berkeley: University of California Press, 1984), 21.
7. Raymond A. Bauer and Alice H. Bauer, "Day to Day Resistance to Slavery," in *American Slavery: The Question of Resistance*, ed. John H. Bracey, August Meier, and Elliot Rudwick (Belmont, Calif.: Wadsworth, 1971), 37-60.
8. Elaine Scarry, *The Body in Pain* (New York: Oxford University Press, 1985), 33.
9. Ulrich Phillips, *American Negro Slavery* (New York: Vintage Books, 1972); Eugene Genovese, *Roll, Jordan Roll: The World the Slaves Made* (New York: Vintage, 1972); Mark Tushnet, *The American Law of Slavery, 1810-1860* (Princeton: Princeton University Press, 1981); Robert William Fogel and Stanley L. Engerman, *Time on the Cross: The Economics of American Negro Slavery* (New York: W. W. Norton, 1974).
10. Raymond Williams, *The Country and the City* (New York: Oxford University Press, 1973).
11. See Clarence Walker, "Massa's New Clothes," in *Deromanticizing Black History: Critical Essays and Reappraisals* (Knoxville: University of Tennessee Press, 1991). In "Aunt Jemima and Dialectics," James Anderson notes the reproduction of the plantation school perspective in accounts that utilize the testimony of the enslaved. *Journal of Negro History*, 99-114. James Oakes, *The Ruling Race: A History of American Slaveholders* (New York: Vintage, 1983).
12. As Renato Rosaldo writes, "The pastoral as a mode of ethnographic and historical inquiry suppresses and disguises the relation between power and knowledge." "From the Door of His Tent: The Fieldworker and the Inquisitor," in *Writing Culture: The Poetics and Politics of Ethnography*, ed. James Clifford and George Marcus (Berkeley: University of California Press, 1986), 97.
13. See Williams, *The Country and the City*, 36-38; and Genovese, *Roll, Jordan Roll*, 3.
14. The pastoral is a comic romance generically about the reconciliation of opposing forces. Hayden White has argued that the mode in which a story is told reveals it to be a story of a particular kind. In White's schema of historical styles, when history is emplotted in the comic mode, its mode of explanation tends to be organicist and its ideological implications conservative. The focus on reconciliation, integrative and synthetic processes, and a conservative vision of good society, in this case the humanity of slavery, is certainly appropriate to our understanding of the pastoral. The features of the pastoral are replicated in the very terms of the historical imagination. So what is explained comes to mirror the very terms of explanation. See Hayden White, *Metahistory: The Historical Imagination in Nineteenth Century Europe* (Baltimore: Johns Hopkins University Press, 1973), and *Tropics of Discourse: Essays in Cultural Criticism* (Baltimore: Johns Hopkins University Press, 1978). Roger D. Abrahams's work on the corn shucking as slave performance describes slavery as an "American pastoral" and the members of the plantation as "engaged in a vigorous common enterprise in which nature was placed at the service of the owners and tillers of the land. . . . Hands and masters played a role in a set piece which turned the system of power relationships of the plantation into a comedy and pastoral romance." *Singing the Master: The Emergence of African American Culture in the Plantation South* (New York: Pantheon, 1992), 24.
15. For representations of slave culture in this mode, see Abrahams, *Singing the Master*,

and Charles Joyner, *Down by the Riverside: A South Carolina Slave Community* (Urbana: University of Illinois Press, 1984), 127.

16. Nancy Fraser, *Unruly Practices: Power, Discourse, and Gender in Contemporary Social Theory* (Minneapolis: University of Minnesota Press, 1989), 17-33.

17. In "The Ethic of Care for the Self as a Practice of Freedom," Foucault describes power as the capacity of individuals to conduct or determine the behavior of others. James Bernauer and David Rasmussen, eds., *The Final Foucault* (Cambridge: MIT Press, 1994), 12, 18.

18. I am referring to the very exclusive meaning of man set forth in the Constitution and in eighteenth- and nineteenth-century political discourse.

19. See Judith Butler, *Bodies That Matter* (New York: Routledge, 1993), 223-242.

20. I use the terms "performance" and "performativity" interchangeably. Butler differentiates between these terms and argues that it would be a mistake to reduce performativity to performance. She defines performance as "bounded acts" characterized by hyperbole, mimicry, and denaturalizing enactments such as drag. In contrast, performativity "consists in a reiteration of norms which precede, constrain, and exceed the performer and in that sense cannot be taken as a fabrication of the performer's 'will' or 'choice'; further, what is 'performed' works to conceal, if not to disavow, what remains opaque, conscious, unperformable." *Ibid.*, 234. Rather than reducing performativity to performance, I deploy both terms in an expanded sense that considers enactments of power, denaturalizing displays, and discursive re-elaboration as a set of interrelated strategies and practices.

21. *Ibid.*, 14. See also Judith Butler, *Gender Trouble: Feminism and the Subversion of Identity* (London: Routledge, 1990), 128-131.

22. Michael Omi and Howard Winant, in accordance with their definition of race as an "unstable and 'decentered' complex of social meanings constantly being transformed by political struggle," argue that "the meaning of race is defined and contested throughout society, in both collective action and personal practice. In the process, racial categories themselves are formed, transformed, destroyed and reformed." *Racial Formation in the United States* (New York: Routledge and Kegan Paul, 1986), 61-73.

23. Frantz Fanon, *Black Skin, White Masks*, trans. Charles Lam Markham (New York: Grove, 1967), 109-140; Butler, *Gender Trouble*, 24.

24. Paul Gilroy, "Sounds Authentic: Black Music, Ethnicity, and the Challenge of a Changing Same," *Black Music Research Journal* 11 (1991): 17. Performance "produces the imaginary effect of an internal racial core or essence by acting on the body through specific mechanisms of identification and recognition." Gilroy's definition of performance is very similar to Judith Butler's: "Acts, gestures and desire produce the effect of an internal core or substance, but produce this on the surface of the body, through the play of signifying absences that suggest, but never reveal, the organizing principle of identity as a cause. Such acts, gestures, enactments, generally construed, are performative in the sense that the essence or identity that they otherwise purport to express are [*sic*] fabrications manufactured and sustained through corporeal signs and other discursive means." *Gender Trouble*, 136.

25. Raymond Williams defines community as follows: "Community can be the warmly persuasive word to describe an existing set of relationships, or the warmly persuasive word to describe an alternative set of relationships. What is most important, perhaps, is that unlike all other terms of social organization (state, nation, society, etc.) it seems never to be used unfavourably, and never to be given any positive opposing or distinguishing term." *Keywords: A Vocabulary of Culture and Society* (New York: Oxford University Press, 1976), 76.

26. Fisk University, *The Unwritten History of Slavery: Autobiographical Accounts of Negro Ex-Slaves* (Nashville: Fisk University Press, 1945).

27. Herbert Aptheker, *American Negro Slave Revolts* (1943; reprint, New York: Interna-

ional Publishers, 1987); Gerald Mullin, *Flight and Rebellion: Slave Resistance in Eighteenth Century Virginia* (New York: Oxford University Press, 1972); Eugene Genovese, *From Rebellion to Revolution: Afro-American Slave Revolts in the Making of the New World* (Baton Rouge: Louisiana State University Press, 1979).

28. See Peter Kolchin, *American Slavery, 1619-1877* (New York: Hill and Wang, 1993), 61-168; and Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Antebellum South* 1956; reprint, New York: Vintage, 1956), 109-140.

29. John McAdams, in Rawick, *The American Slave, Texas Narratives*, suppl. 2, vol. 7, pt. 6, p. 2467.

30. Albert Raboteau defines conjuring as a "system of magic, divination, and herbalism" derived from African and European systems. *Slave Religion: The "Invisible" Institution in the Antebellum South* (Oxford: Oxford University Press, 1978), 80-86, 275-288. See also John Roberts, *From Trickster to Badman: The Black Folk Hero in Slavery and Freedom* (Philadelphia: University of Pennsylvania Press, 1986), 66-67.

31. John W. Blassingame, *The Slave Community: Plantation Life in the Antebellum South* (Oxford: Oxford University Press, 1979), 315-317. Blassingame notes that "masters frequently noticed the sense of community in the quarters; they reported that slaves usually shared their few goods, rarely stole from each other, and the strong helped the weak. . . . Group solidarity in the quarters enabled the slaves to unite in the struggle against the master." *Ibid.*, 315-317.

32. Drucilla Cornell, "The Postmodern Critique of Community," in *The Philosophy of the Limit* (New York: Routledge, 1992); Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), 226-256.

33. This subhead is borrowed from de Certeau's discussion of tactic: "A tactic is a calculated action determined by the absence of a proper locus. No delimitation of an exteriority, then, provides it with the condition necessary for autonomy. The space of the tactic is the space of the other." Michel de Certeau, *The Practice of Everyday Life* (Berkeley: University of California Press, 1984), 38.

34. James Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven, Conn.: Yale University Press, 1985); Paul Gilroy, *The Black Atlantic* (Cambridge, Mass.: Harvard University Press, 1993), 37.

35. David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823* (Ithaca: Cornell University Press, 1975), 260.

36. Morgan argues that racism made possible "the devotion to the equality that English republicans had declared to be the soul of liberty." The lumping of Native Americans, blacks, and mulattoes into the pariah class enabled whites to be united as a "master class." Edmund Morgan, *American Slavery, American Freedom* (New York: W. W. Norton, 1975), 381, 386.

37. Resistance, as Lila Abu-Lughod suggests, should be read as a diagnostics of power. To paraphrase her argument, resistance is neither an end in itself nor merely a celebration of human freedom or exercises of will but "an index to a particular figuration and transformation of power." The resistances of slave performance are "never in a position of exteriority in relation to power." "The Romance of Resistance: Tracing Transformations of Power through Bedouin Women," *American Ethnologist* 17.1 (1990): 53.

38. Raymond Williams, *Marxism and Literature* (Oxford: Oxford University Press, 1977), 131.

39. Toby Jones, in Rawick, *The American Slave, Texas Narratives*, vol. 4, pt. 2, p. 249.

40. Mingo White, in Rawick, *The American Slave, Alabama Narratives*, vol. 6, pt. 1, p. 413.

41. Fisk University, *The Unwritten History of Slavery*, 173.

42. John McAdams, in Rawick, *The American Slave, Texas Narratives*, suppl. 2, vol. 7, pt. 6, p. 7.



43. Susan Snow, in *ibid.* Mississippi Narratives, p. 138.
44. Neither liberal nor Marxist notions of the political subject are suited to the particular situation of the enslaved. The Marxist model is concerned with a different model of oppression-exploitation and the free worker and does not offer an analysis of racial oppression. Ironically, "Marxist" interpretations of slavery have been quite conservative in their analysis of slavery and have focused on paternalism rather than domination, total relations rather than racial subordination, and paternalism rather than terror.
45. Jean Comaroff, *Body of Power, Spirit of Resistance: The Culture and History of a South African People* (Chicago: University of Chicago Press, 1985), 261.
46. Karl Marx, "On the Jewish Question," in *The Marx-Engels Reader*, ed. Robert C. Tucker (New York: W. W. Norton, 1978), 34.
47. Anne Showstack Sasson writes that the word "political" only acquires its full sense in relation to the potential of a class to found a new integral state. Even when considering the possibilities of other political entities not defined by class, what is key is a notion of strategic action and systemic analysis. *Gramsci's Politics* (Minneapolis: University of Minnesota Press, 1987), 185.
48. Elizabeth Sparks, in Charles L. Perdue, Jr., Thomas E. Barden, and Robert K. Philips, eds., *Weevils in the Wheat: Interviews with Ex-Slaves* (Bloomington: Indiana University Press, 1980), 276.
49. Hortense Spillers, "Mama's Baby, Papa's Maybe: An American Grammar Book," *Diacritics* 17 (Summer 1987): 67.
50. Richard Schechner describes transportation performances as performances in which the performers are "taken somewhere," but at the end, often assisted by others, they are 'cooled down' and reenter ordinary life just about where they went in." *Between Theatre and Anthropology* (Philadelphia: University of Pennsylvania Press, 1985), 125-126.
51. Gustavo Gutierrez, *A Theology of Liberation: History, Politics and Salvation*, trans. Caridad Inda and John Eagleson (Maryknoll, N.Y.: Orbis, 1973), 154, cited in David B. Morris, *The Culture of Pain* (Berkeley: University of California Press, 1991): 147.
52. William Lee, in Perdue, Barden, and Philips, *Weevils in the Wheat*, 196.
53. West Turner, in *ibid.*, 290.
54. Norman R. Yetman, *Life under the "Peculiar Institution": Selections from the Slave Narrative Collection* (New York: Holt, Rinehart, and Winston, 1970), 263. See Raboteau, *Slave Religion*, 212-288; Sterling Stuckey, *Slave Culture: Nationalist Theory and the Foundations of Black America* (New York: Oxford University Press, 1987), 1-100; and George Rawick, *From Sundown to Sunup: The Making of the Black Community* (Westport, Conn.: Greenwood, 1973), 30-52.
55. On Christian status as a racial category, see Winthrop Jordan, *White over Black: American Attitudes towards the Negro, 1550-1812* (New York: W. W. Norton, 1968).
56. William Adams, in Rawick, *The American Slave*, Texas Narratives, vol. 4, pt. 1, p. 10.
57. Eliza Washington, in *ibid.*, vol. 11, pt. 7, p. 53.
58. *Ibid.*, vol. 12, pt. 2, pp. 322-323.
59. Sallie Johnson, in *ibid.*, suppl. 2, vol. 6, pt. 5, p. 2048.
60. Spillers, "Mama's Baby," 74.
61. Rawick, *The American Slave*, suppl. 1, vol. 7, pt. 2, p. 784.
62. *Ibid.*, suppl. 2, vol. 6, pt. 5, p. 2161.
63. Yetman, *Life under the "Peculiar Institution"*, 229. Silas Jackson offered a similar account. See *ibid.*, 177.
64. Jane Pyatt, in Perdue, Barden, and Philips, *Weevils in the Wheat*, 235.
65. Garland Monroe, in *ibid.*, 215.
66. West Turner, in *ibid.*, 290. This tactic is mentioned frequently in tales of resisting the

lan. See Gladys Marie Frye, *Nightriders in Black Folk History* (Knoxville: University of Tennessee Press, 1977).

67. James Davis, in Rawick, *The American Slave, Arkansas Narratives*, vol. 8, pt. 1, 111.

68. De Certeau, *The Practice of Everyday Life*, xiv. *La perruque* is the classic example of the disruption and compliance with the system: "La perruque is the worker's own work disguised as work for his employer. . . . He cunningly takes pleasure in finding a way to create gratuitous products whose sole purpose is to signify his own capabilities through his work and to confirm his solidarity with other workers or his family through spending his time in this way." Ibid., 25-26. James Deane, in Rawick, *The American Slave, Maryland Narratives*, vol. 16, pt. 3, p. 8.

69. *Webster's New Twentieth Century Dictionary*, unabridged ([Cleveland]: Collins World, 1976).

70. For a discussion of will-lessness, see Patricia Williams, "On Being the Object of Property," *The Alchemy of Race and Rights* (Cambridge, Mass.: Harvard University Press, 1991), 218-220.

71. Schechner, *Between Theater and Anthropology*, 36-38.

72. Henri Lefebvre, *The Production of Space*, trans. Donald Nicholson-Smith (Cambridge: Basil Blackwell, 1991), 141.

73. Jurgen Habermas, *The Structural Transformation of the Public Sphere*, trans. Thomas Burger (Cambridge, Mass.: MIT Press, 1991), 75-76.

74. As de Certeau states, space is "composed of intersections of mobile elements. It is in a sense actuated by the ensemble of movements deployed within it. Space occurs as the effect produced by the operations that orient it, situate it, temporalize it." *The Practice of Everyday Life*, 101, 117.

75. According to Nancy Fraser, the politics of need entail three distinct but related moments: "The first is the struggle to establish or deny the political status of a given need, the struggle to validate the need as a matter of legitimate political concern or to enclave it as a nonpolitical matter. The second is the struggle over the interpretation of the need, the struggle for the power to define it and, so, to determine what would satisfy it. The third moment is the struggle over the satisfaction of the need, the struggle to secure or withhold provision." The dominated generally lack the power to politicize need; therefore, needs are an important aspect in the self-constitution of new collective agents and political subjects. *Unruly Practices*, 164-173.

76. Williams, *The Alchemy of Race and Rights*, 152.

77. Ravish: to seize and carry away by force and violence and to carry away emotion; to fill with great joy and delight; to transport; to enrapture. *Webster's New Twentieth Century Dictionary*.

78. Juba illuminates other facets of social struggle, specifically the contestation over cultural forms. Instrumental amusements, the commodified spectacle of blackness, and resistant pleasures converge in juba. It highlights the various circuits of the black performative and the contestation and transvaluation that are part and parcel of the commodification and circulation of cultural forms. Juba was a signature piece in minstrelsy, an important example of "the nigger's good time" in proslavery ideology, and a symbolic articulation of social struggle.

79. John F. Szwed and Morton Marks, like Melville J. Herskovits, argue that it is important to consider dance as part of a dance-music ensemble because "the steps and the music are inextricably intertwined." Music and dance have an integral relation, and the identity a dance acquires, as well as its use, depends upon music. Dance embodies the music, and the meanings of the songs themselves change as they are performed. "The Afro-American

Transformation of European Set Dances and Dance Suites," *Dance Research Journal* 20.1 (Summer 1988): 29; Melville J. Herskovits, *The Myth of the Negro Past* (Boston: Beacon, 1958), 265.

80. Stearns writes that patting juba referred to "any kind of clapping with any dance to encourage another dancer"; it became "a special routine of slapping hands, knees, thighs, and body in a rhythmic display." Marshall Stearns and Jean Stearns, *Jazz Dance: The Story of American Vernacular Dance* (New York: Schmirer, 1968), 29.

81. Northrup's characterization is unmistakably condescending and satiric. Since he was a trained violinist and former freeman, inflections of contempt and superiority color his description. Nonsensical musical expression without distinct ideas is certainly a formula for primitivism. Generally, his description of the enslaved utilizes key features of racist representations (for example, "the ivory teeth, contrasting with their black complexions, exhibit two long white streaks the whole extent of the table"). He does stress the significance of pleasure and in doing so emphasizes the harshness of slavery. He contrasts the three days of the Christmas celebration with the "three hundred and sixty-two . . . days of weariness, and fear, and suffering, and unremitting labor." Solomon Northrup, *Twelve Years a Slave*, in *Puttin' on Ole Massa* (Baton Rouge: Louisiana State University Press, 1968), 163-169. Northrup described patting as a music peculiar to slaves: "The patting is performed by striking the hands on the knees, then striking the right shoulder with one hand, the left with the other—all the while keeping time with the feet, and singing."

82. William B. Smith, "The Persimmon Tree and the Bear Dance," *Farmer's Register* 6 (1838): 58-61.

83. Although Douglass emphasizes the critique of slavery embodied in the juba song, as he had stressed the tone of protest in the spirituals, and evaluated the song as "not a bad summary of the palpable injustice and fraud of slavery," he remained uncomfortable with the pleasures afforded the enslaved, for he was convinced that the pleasures enjoyed within the limits of slavery were simply means of "keeping down the spirit of insurrection." Douglass was unable to envision the pleasures afforded by dances, time off, and slave holidays as little more than "part and parcel of the gross wrongs and inhumanity of slavery" designed to better "secure the ends of injustice and oppression." *Life and Times*, 146-147.

84. *Ibid.*, 146. Douglass's representation of a juba song varied significantly from more common versions:

Juba dis and Juba dat;  
 Juba kill a yaller cat.  
 Juba up and juba down;  
 Juba runnin' all aroun'.  
 Juba jump, Juba sing,  
 Juba cut that pigeon wing.  
  
 Juba kick off this old shoe,  
 Juba dance that Jubilo.  
 Juba whirl them feet about,  
 Juba blow the candle out.  
 Juba swing, undo the latch,  
 Juba do that long dog scratch.

85. Beverly J. Robinson, "Africanisms and the Study of Folklore," in *Africanisms in American Culture*, ed. Joseph E. Holloway (Bloomington: Indiana University Press, 1990), 215.

86. *Ibid.*, 216.

87. The intensity of discipline and surveillance of the captive body, to quote Foucault, engenders at the same time an intensification of each individual's desire, for, in and over his body." Yet "power, after investing itself in the body, finds itself exposed to a counter-attack in the same body." *Power/Knowledge: Selected Interviews and Other Writings, 1972-1977*, trans. Colin Gordon, L. Marshall, J. Mepham, and K. Soper, ed. Colin Gordon (New York: Pantheon, 1980), 56.

88. Henri Lefebvre, *The Production of Space*, trans. Donald Nicholson-Smith (Cambridge: Basil Blackwell, 1991), 41-42. Here I am playing with Lefebvre's idea that representational space has its source "in the history of the people as well as in the history of each individual belonging to that people."

89. The brilliant work of scholars like Melville J. Herskovits, Zora Neale Hurston, Mechal Sobel, Sterling Stuckey, John F. Szwed, and Robert Farris Thompson has illuminated the relation between African and African-American culture. Certainly my work is indebted to this line of scholarship and is not at odds with this work but simply adopts a different vantage point.

90. According to Benjamin, the difference between voluntary and involuntary memory turns upon the status of information. Voluntary memory is the repository of information about the past that retains no trace of it. In contrast, *memoire involontaire* conveys no information about the past but is a repository of its traces. "On Some Motifs in Baudelaire," 160. As Freud noted, memory traces "have nothing to do with the fact of becoming conscious: indeed they are often most powerful and enduring when the process which left them behind was one which never entered consciousness." *Beyond the Pleasure Principle*, 19. I have borrowed the phrase "memory of difference" from VeVe Clark's "Katherine Dunham and the Memory of Difference," in *History and Memory in African American Culture*, ed. Robert O'Meally (New York: Oxford University Press, 1995). However, my use of the phrase differs significantly from Clark's, which is based on Susan Foster's concept of choreography. I use it to encompass both voluntary and involuntary memory and to acknowledge the structuring presence and absence of the past. Unlike Clark's phrase, this "memory of difference" does not depend upon the cognition of the difference between a former practice and a current one. It is simply a way of insisting on the differential and discontinuous status of memory.

91. Rawick, *The American Slave*, vol. 12, pt. 2, pp. 26-27. The use of the pot is frequently mentioned throughout the slave narrative collection. See Mary Hudson, in *ibid.*, vol. 16, pt. 6, pp. 31, 34, 45.

92. Anderson and Minerva Edwards, in Rawick, *The American Slave*, Texas Narratives, vol. 4, pt. 2, p. 6.

93. Fisk University, *The Unwritten History of Slavery*, 98.

94. Patsy Hyde, in Rawick, *The American Slave*, vol. 16, pt. 6, p. 34.

95. Mechal Sobel, *Trabelin' On: The Slave Journey to an Afro-Baptist Faith* (Princeton: Princeton University Press, 1988), 171.

96. Raboteau, *Slave Religion*, 216.

97. *Ibid.*, 360 n.7.

98. Robert Farris Thompson, *Flash of the Spirit* (New York: Random House, 1984), 142.

99. Drucilla Cornell defines natality as "the possibility of re-generative iterations that actually do innovate in the sense of effecting change in self-definition." Natality "emphasizes how the self is continuously 'birthed' again through time and its encounters with others." *Transformations: Recollective Imagination and Sexual Difference* (New York: Routledge, 1993), 42.

100. Paulin Hountondji, cited in V. Y., *The Invention of Africa: Gnosis, Philosophy, and the Order of Knowledge* (Bloomington: Indiana University Press, 1988), 37; Paulin Hountondji, *African Philosophy*, trans. Henri Evans with Jonathan Reê (Bloomington: Indiana

University Press, 1976), 177; Tsenay Serequeberhan, *The Hermeneutics of African Philosophy: Horizon and Discourse* (New York: Routledge, 1994), 31-53 (Serequeberhan deconstructs Africanity or "essentialist particularism"); Kwame Anthony Appiah, *In My Father's House: Africa in the Philosophy of Culture* (New York: Oxford University Press, 1992); Denise-Constant Martin, "Out of Africa! Should We Be Done with Africanism?," in *The Surreptitious Speech: Presence Africaine and the Politics of Otherness, 1947-1987*, ed. V. Y. Mudimbe (Chicago: University of Chicago Press, 1992).

101. Serequeberhan, *Hermeneutics*, 46.

102. Although traditionally, the evaluation of these practices has been conducted under the rubric of "Africa," I have tried to suspend and displace the question of Africa on the following grounds: the practice of conquest, captivity, dislocation, and "seasoning" (transculturation) makes the recovery of origins impossible; the very identification of "African" practices is mired in a reductive and racist Africanist discourse that reproduces Africa as "ahistorical" and temporally othered; investing the eyewitness accounts of these practices with the authority of historical evidence reproduces the dominion of the white gaze and lends credence to uninformed and often racist accounts; and in these accounts Africa comes to stand for the limited knowledges of whites and their failure to make a meaningful or informed assessment of these practices. As well, the very repertoire invoked to designate Africa includes a generic range of features like flat-footed dance, call and response, pelvic motion, et cetera. This is the equivalent of describing the ballet in terms of jutted chins, pointed toes, and stiff torsos. What insight does such a range of descriptions lend in terms of understanding these practices?

103. The phrase "submission to consanguinity" is borrowed from Rew Chow, *Writing Diaspora: Tactics of Intervention in Contemporary Cultural Studies* (Bloomington: Indiana University Press, 1993), 24.

104. Edouard Glissant, *Caribbean Discourse: Selected Essays*, trans. J. Michael Dash (Charlottesville: University of Virginia Press, 1989), 62.

105. Glissant discusses this noncontinuist genealogy or subterranean history in terms of "sub-marine roots: that is floating free, not fixed in one position in some primordial spot, but extending in all directions in our world through its network of branches." *Ibid.*, 62-67.

106. See Pierre Nora, "Between Memory and History: Les Lieux de M moire," trans. Marc Roudebush, *Representations* 26 (Spring 1989): 7-25. Nora's distinction between memory and history depends upon an evolutionary and anthropological notion of historical progress and development. It relies on distinctions between tradition and modernity. Memory exists in a proto-peasant environment and is a prehistory or a primitive order of chronicling the past. It is an ethnohistory of sorts. For an interesting rereading of Nora, see Clark, "Katherine Dunham and the Memory of Difference."

107. The notion of "subterranean history" is informed by Foucault's notion of repressed and subjugated knowledges and Glissant's notion of the submarine roots of the African diaspora.

108. According to Cornell, "The recollection of oneself is always an act which imagines through the remembrance of its own claims of selfhood what can never be fully recollected, but only forever reimagined and re-told." *Transformations*, 42.

109. James Snead, "Repetition as a Figure in Black Culture," in *Out There: Marginalization and Contemporary Cultures*, ed. Russell Ferguson, Martha Gever, Trinh T. Minh-ha, and Cornel West (New York: The New Museum of Contemporary Art, 1990), 221. Another aspect of repetition, though not considered as redress, is the circulation and commodification of juba on the minstrel stage. It is ironically appropriate that juba was memorialized by a black performer, William "Juba" Lane, on the minstrel stage, thus absolutely confusing imitation and authenticity and highlighting the perverse lines of descent that characterize diasporic

forms/transculturation. Lane was famous for his renditions of "authentic Negro dancing" and clogging. He was credited with being responsible for the minstrel show dances' integrity is a "Negro art form." What better illustration of the complicity of the authentic and the counterfeit? Certainly the essentialist particularisms of the real Negro are wedded to unspoken normativity of whiteness, in this case marked by the classifying gaze that measures both degrees of blackness and authenticity. On the minstrel stage, the authenticity of juba is evaluated in terms of the ability to simulate the Negro. This play of authenticity and imitation transgresses racial boundaries only in order to reinscribe them.

110. Glissant, *Caribbean Discourse*, 80; Patricia Williams, "On Being the Object of Property," 217.

111. Michel Foucault, "Nietzsche, Genealogy, History," in *Language, Counter-Memory and Practice*, trans. Donald F. Bouchard and Sherry Simon (Ithaca: Cornell University Press, 1977), 147.

112. Marshall and Jean Stearns have described juba as follows: "It is danced by the surrounding circle of men before and after each performance of the two men in the center. Both the words and the step are in call and response form, and the words must ring out as rhythmically as a drummer's solo. The two men in the center start the performance with the Juba step while the surrounding men clap, and then switch to whatever new step is named in the call, just before the response 'Juba! Jubal!' sounds and the entire circle starts moving again. The result is completely choreographed, continuous group dance, combining the call-and-response pattern, dancing in a circle (generally counter-clockwise), the shuffle, improvisation, and the rhythms of calling and clapping." *Jazz Dance*, 29.

Katherine Dunham described juba as a plantation folk dance that combined elements of the English square dance and the French quadrille. Dunham has argued that the process of enslavement and acculturation resulted in the transvaluation of African forms—their meaning and value changed even when notable similarities remained: "The disintegration of African religious ideology under the impact of European influences led to the incorporation of the forms of its dance into secular dance." Many African dances reemerged in the guise of secular forms and also incorporated European American popular forms. The transformation and emergence of African-American dance forms chronicle the history of conquest, enslavement, colonization, and acculturation. The definitive transitions of African forms in the Americas are as follows: "1. the use of African ritual patterns for the expression of Christian ideology; 2. the degeneration of religious ritual patterns, by virtue of the disintegration of the ideology which sustains them, into secular use; and 3. the combination of secular African patterns with the secular patterns of whatever European nation happened to dominate the territory." The reaggregation and transformation of these patterns make the location of origins difficult and in some cases virtually impossible. Dunham argues that because of modification, the African traditions that exist in the United States "have a sound functional relationship towards a culture which is contemporary, rather than towards one which is on the decline; and therefore such traditions as have been retained are assured of survival as long as the large, strong cultural body of which they are a part survives." She traces the transformation of juba from the majumba, a plantation folk dance, to the Big Apple, a popular dance of the 1930s in New York City. "The Negro Dance," in *The Negro Caravan*, ed. Sterling A. Brown, Arthur P. Davis, and Ulysses Lee (Salem, N.H.: Ayer, 1991), 998. Many critics have argued that juba had typical African patterns: the "get down" motion of feet firmly planted on the ground, squats, stomps, the polymetric combination of foot stamping, clapping, and patting juba, the vital aliveness of body parts, the use of parts of the body as independent instruments of percussive force, driving offbeat rhythmic effects, flat-footed dancing, and call and response. See Robert Farris Thompson, *African Art in Motion* (Berkeley: University of California Press, 1974). Songs are danced with the body, rhythmic elements are stressed, and call and response

and repetition structure the dance and direct collective performance. Within this frame of "Africaness," juba shares much in common with African dance. What do such designations yield? Would one attempt to distill a European worldview from similarly redacted elements? I have not pursued a line of argument that focuses on issues of Africanity or Africaness because of the often crude reduction/codification of things African, rhythm, lower body motion, arms akimbo, et cetera. More important, the conditions and terms of this knowledge of Africa and the contours of an Africanist discourse were unavoidably part of a colonizing effort and the knowledge based on missionary reports, travelers, descriptions, et cetera. Not only is the knowledge in service of racism, but more important, what it reveals are the contours of Europe in Africa and Europe's self-consolidation through the production of Africa.

113. Such facile classifications that rely on essentialist racial assumptions abandon cultural analysis in favor of explaining culture as an expression of racial identity. It is possible to understand these attempts to fix clear lines of descent or points of origin as denial of the miscegenation of popular culture in the United States. As Brenda Dixon states, "Although Black dance remains undefined, Black dancers are defined and delimited by the White consensus that Black dance and Black dancers are synonymous." Second, she argues that the fact that black dance has become a general means of expression in the public domain makes classification even more difficult. American culture had been so shaped by African culture that it is merely an analytic convenience or an illusion to act as if the dominant culture were external to the dominated culture, or vice versa. Any evaluation of black dance must take into account African and New World black cultures and European forms. "Black Dance and Dancers and the White Public: A Prolegomenon to Problems of Definition," *Black American Literature Forum* 24.1 (Spring 1990): 119-20.

114. Robinson traces the etymology of juba to the Bantu *juba*, *diuba*, or *guiba*, which mean "to pat, to beat or count time, the sun, the hour," "Africanisms," 225.

115. Repetition also characterizes the musical and poetic form of this song and dance ensemble, call and response patterns, and reiteration of short phrases. Repetition is also a functional element that is an "aid to dancing without fatigue." John Storm Roberts, *Black Music of Two Worlds* (Tivoli, N.Y.: Original Music, 1972), 184.

116. Toni Morrison, *Beloved* (New York: Plume, 1988), 35-36.

117. A conservative estimate of the number of Africans transported to the Americas is around 15 million. However, this number fails to account for the mortality rate during the Middle Passage, which averaged between 15 and 20 percent, or the numerous deaths that resulted from capture and embarkment. Furthermore, when we consider the role of warfare as the central means of acquiring captives, that death toll increases considerably. Thus the losses of the slave trade greatly exceed even the conservative estimate of 12 million Africans. See Philip Curtin, *The Atlantic Slave Trade: A Census* (Madison: University of Wisconsin Press, 1969); Joseph E. Inikori and Stanley L. Engerman, eds., *The Atlantic Slave Trade: Effects on Economies, Societies, and Peoples in Africa, the Americas, and Europe* (Durham: Duke University Press, 1992); Joseph E. Inikori, "The Slave Trade and the Atlantic Economies," in UNESCO, *The African Slave Trade from the Fifteenth to the Nineteenth Century* (Paris: UNESCO, 1979); Patrick Manning, *Slavery and African Life: Occidental, Oriental and African Slave Trades* (New York: Cambridge University Press, 1991); and Walter Rodney, *How Europe Underdeveloped Africa* (Washington, D.C.: Howard University Press, 1982).

118. Victor Turner, *Dramas, Fields, and Metaphors: Symbolic Action in Human Society* (Ithaca: Cornell University Press, 1974), 41.

119. *Ibid.*

120. *Ibid.*

121. Anna Lee, in Rawick, *The American Slave*, suppl. 2, vol. 6, pt. 5, p. 2281.

122. Jameson writes that "pleasure is finally the consent of life in the body, the conciliation—momentary as it may be—with the necessity of physical existence in a physical world." This is in accordance with Jameson's criteria that in order for pleasure to be political, "it must always in one way or another also be able to stand as a figure for the transformation of social relations as a whole." This argument depends upon a notion of social stability with which I do not agree. As well, it does not take into account the instrumental use of pleasure precisely to prohibit such transformations. "Pleasure: A Political Issue," in *Theologies of Theory*, vol. 2 (Minneapolis: University of Minnesota Press, 1989), 74.

123. Rawick, *The American Slave*, vol. 12, pt. 1, p. 23.

124. Charles Anderson, in Rawick, *The American Slave*, Ohio Narratives, vol. 16, pt. 4, 13.

125. Victor Turner, *The Ritual Process: Structure and Anti-Structure* (Ithaca: Cornell University Press, 1969), 95.

126. The breakdown was also the name of a popular plantation dance that has been variously described as an affine of juba and other challenge dances and as characterized by harp popping motions that provided the basis for later dances. See Lynne Fauley Emery, *Black Dance from 1619 to Today*, 2d ed., rev. (Princeton: Dance Horizons, 1988); and Katrina Hazzard-Gordon, *Jookin': The Rise of Social Dance Formations in African American Culture* (Philadelphia: Temple University Press, 1990).

### CHAPTER THREE

1. *Cato (a Slave) v. State*, 9 Fla. 166, 182 (1860); Francis Wharton, *A Treatise on the Criminal Law of the United States* (Philadelphia, 1857), 1123-1161; John Prentiss Bishop, *Commentaries on the Law of Statutory Crimes*, 478-496.

2. *State of Missouri v. Celia, a Slave*, File 4496, Callaway County Court, October Term, 1855, Callaway County Courthouse, Fulton, Missouri. All quotes from the case are from the case record; however, Melton McClaurin's *Celia, a Slave* (New York: Avon, 1991) brought the case to my attention.

3. Slave law encompasses both the slave statutes of the South and precedents established in case law. I do not intend to suggest that this is a unified body of material or that there are not differences, inconsistencies, and contradictions across jurisdictions. However, I am concerned with the exemplary and characteristic features of slave law as they affect the construction of black subjectivity, sexual violence, and other categories of injury.

4. In accordance with the common-law definition of rape, the raped woman must, in effect, prove she was raped by giving evidence of "reasonable resistance."

5. Thomas Jefferson, *Notes on the State of Virginia* (1787; reprint, New York: W. W. Norton 1982), 162.

6. The role of seduction in rape cases has previously been examined along the lines of "no means yes" in Susan Estrich, "Rape," *Yale Law Journal* 95.6 (1986): 1087-1184, and Catherine A. MacKinnon, "Feminism, Marxism, Method and the State: Towards Feminist Jurisprudence," *Signs: Journal of Women in Culture and Society* 8.4 (Summer 1983): 635-658. My emphasis is different here. It is not simply a matter of a woman's "no" not being taken seriously or of unveiling the crime when "it looks like sex." What is at issue here is the denial and restricted recognition of will or submission because of the legal construction of black subjectivity and the utter negation of the crime. As well, by exploring rape and sexual domination in the frame of seduction, I risk being accused of conflating the two or effacing the violence of rape through such framing. I share the reasonable discomfort with the juxtaposition of rape and seduction because it shifts the focus from violence to women's culpability or complicity. However, this is exactly what is at stake in this exploration—the ways in which



the captive is made responsible for her undoing and the black body is made the originary locus of its violation. My employment of the term "discourse of seduction" should not be confused with the crime of seduction in common law. As a crime, seduction involves "leading an unmarried woman from the 'path of virtue' by means of temptation, deception, flattery, and false promises of marriage."

7. John Forrester, *The Seductions of Psychoanalysis* (Cambridge: Cambridge University Press, 1990), 86.

8. This presumption of consent is also crucially related to the pathologizing of the black body as a site of sexual excess, torpidity, and sloth. See Winthrop Jordan, *White over Black: American Attitudes toward the Negro, 1550-1812* (New York: W. W. Norton, 1968).

9. I am working with legal definitions of rape to demonstrate that the sexual violation of enslaved women was not encompassed by the law. Not only were they not protected by the common law or slave statute, but also the extremity of socially tolerable violence throws into crisis notions of force and will. Thus the violence and domination they are commonly subjected to fall outside the legal constituents of rape as a consequence of the sheer extremity of violence that is normative in their case. See Sue Bessmer, *The Laws of Rape* (New York: Praeger Special Studies, 1976); Susan M. Edwards, *Female Sexuality and the Law* (Oxford: Oxford University Press, 1981); Zillah Eisenstein, *The Female Body and the Law* (Berkeley: University of California Press, 1988), 42-116; Susan Estrich, *Real Rape* (Cambridge, Mass.: Harvard University Press, 1987); Frances Ferguson, "Rape and the Rise of the Novel," *Representations* 20 (Fall 1987): 88-112; and Carol Smart, *Feminism and the Power of Law* (London: Routledge, 1989), 26-49.

10. On the antebellum Supreme Court of Louisiana, see Judith Schafer, "Sexual Cruelty to Slaves," *Chicago-Kent Law Review* 68.3 (1993): 1313-1342, and *Slavery, the Civil Law, and the Supreme Court of Louisiana* (Baton Rouge: Louisiana State University Press, 1996). One case that she has unearthed, *Humphreys v. Utz*, involved an owner's suit against an overseer for the death of a slave who was brutally beaten and suffered cruelties that included having his penis nailed to a bedstead.

11. Crime is not employed here in accordance with traditional legal usage but as a way of challenging and interrogating the logic of property, the use of chattel persons, and the contradictions of slave law. For a discussion of state crime, see Gregg Barak, ed., *Crimes by the Capitalist State: An Introduction to State Criminality* (New York: State University of New York Press, 1991); Alexander George, ed., *Western State Terrorism* (New York: Routledge, 1991); and Robert Cover, "Violence and the Word," *Yale Law Journal* 95.8 (July 1986): 1601-1630.

12. Mark Tushnet notes that "opinions in slave cases strongly supported the slave-law/black-law equation, for the rhetorical opposition of slaves and white men, not slaves and free persons, proved nearly impossible to sustain." *The American Law of Slavery* (Princeton: Princeton University Press, 1981), 140.

13. *State v. Tackett*, 1 Hawks 218 (December 1820).

14. There were criminal sanctions against homicide and violent assaults on slaves. However, extreme and torturous violence was legitimated if exercised in order to secure submission. See *Ex parte Boylston*, 33 S.C.L. 20, 2 Strob. 41 (1845); *State v. Mann*, 2 Devereaux 263 (1829); and *Oliver v. State*, 39 Mississippi 526 (1860). As well, the procedural discrimination that prohibited blacks from testifying against whites made these statutes ineffective, if not meaningless. Cases in which owners were prosecuted for murder and battery involved violence that was so extreme that the "enormities" were "too disgusting to be particularly designated." See *State v. Hoover*, 20 N.C. 396, 4 Dev. & Bat. 504 (1839). On the "legitimate uses" of slave property as regards sexual abuse and domination, see William Goodell, *The American Slave Code* (1853; reprint, New York: Johnson, 1968), 86; and Andrew Fede,

*People without Rights: An Interpretation of the Fundamental Laws of Slavery* (New York: Jarland, 1992).

15. I use the term “sexuality” cautiously in light of Hortense Spillers’s admonition that it is “dubiously appropriate” as a term of “implied relationship and desire in the context of enslavement.” See “Mama’s Baby, Papa’s Maybe: An American Grammar Book,” *Diacritics* 17 (Summer 1987): 64–81.

16. Michel Foucault, “The Deployment of Sexuality,” in *The History of Sexuality*, trans. Mark Hurley (New York: Vintage, 1980), 75–132.

17. Edmund Morgan, *American Slavery, American Freedom* (New York: W. W. Norton, 1979). As Margaret Burnham notes, “In contradistinction to the common law, the slaveholding states all adopted the civil rule, *partus sequitur ventrem*—the issue and descendants of the slaves follow the status of the mother.” “An Impossible Marriage: Slave Law and Family Law,” *Law and Inequality* 5 (1987): 215. See also Karen Getman, “Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Racial Caste System,” *Harvard Women’s Law Journal* 7 (1984): 115–152.

18. *Alfred v. State*, 37 Miss. 296 (October 1859).

19. *Ibid.* The case was appealed on the grounds of juror selection, the competence of a biased juror, Albert’s confession, adultery as a defense for the murder, and the exclusion of Charlotte’s confession. The higher court upheld the ruling of the lower court.

20. The mechanisms of sexual control can be understood as a kind of sovereign biopolitics—an absolute power with the right to take life and control and manage the forms of life. The modality of power that was operative on the enslaved combined features of modern and premodern power. It was a combination of the “menace to life” that characterizes sovereign power as well as the management of life in the case of the enslaved population. See Foucault, “Right of Death and Power over Life,” in *The History of Sexuality*, 133–159.

21. In *State v. Samuel*, 19 N.C. (2 Dev. & Bat.) 177 (1836), Samuel was convicted of murdering his wife’s lover. On appeal of this conviction, his attorney argued that Samuel’s wife’s testimony against him should have been barred by the marital privilege. The court held that since “the privilege is grounded on the legal requirement of marital permanence, it ought not to be held to apply where no contract exists to require such permanence. . . . Hence a marriage *de facto* will not, but only a marriage *de jure* will, exclude one of the parties from giving evidence for or against the other.”

22. This is consistent with the law’s language of protection. (White) wives and daughters are protected by way of the legal fiction of the master/servant relationship and the vessels of the father’s/husband’s rights and property. As well, Carby notes that in abolitionist discourse and in slave narratives “the victim [of sexual violence] appeared not just in her own right as a figure of oppression but was linked to a threat to, or denial of, the manhood of the male slave.” Hazel V. Carby, *Reconstructing Womanhood: The Emergence of the Afro-American Woman Novelist* (Oxford: Oxford University Press, 1987), 35.

23. *Keith v. State*, 45 Tenn. (5 Cold.) 35 (1867).

24. Spillers, “Mama’s Baby, Papa’s Maybe,” 67.

25. The rape of black women is registered in case law almost exclusively in contexts in which they or their husbands or lovers were being prosecuted for crimes that would otherwise be recognized as self-defense.

26. I use the terms “female” and “woman” interchangeably. However, “female” does not refer to the presumed bedrock of gender—sex—but to the dominant construction of black womanhood in which sex and sexuality were foregrounded. The use of “female” is an attempt to underline the ideology of the natural and the bestial that defined her status and her use within the sexual economy of slavery.

27. At the time of Celia's trial, she had two children who were probably Newsome's and was pregnant with a third child, which was stillborn. McLaurin, *Celia*, 121.

28. A. Leon Higginbotham "Race, Sex, Education, and Missouri Jurisprudence: Shelley v. Kramer in a Historical Perspective," *Washington University Law Quarterly* 67 (1989): 694.

29. I argued that sexual violence is crucial to the construction and experience of gender for black women, unlike Elizabeth Fox-Genovese, who argues that sexual violation of slave women demonstrated that they were somehow without gender or endowed with a lesser gender, since their sexual violation defied the "appropriate gender conventions" of the dominant class. Fox-Genovese fails to consider that gender is not a preexistent unity but is overdetermined by other social practices and discourse. *Within the Plantation Household: Black and White Women of the Old South* (Chapel Hill: University of North Carolina Press, 1988), 193: "Violations of the [gender] norm painfully reminded slaves that they did not enjoy the full status of their gender, that they could not count on the 'protection'—however constraining and sometimes hypocritical—that surrounded white women."

30. See Jordan, *White over Black*; and Jefferson, *Notes on the State of Virginia*.

31. In *Commonwealth v. Turner*, 26 Va. 560, 5 Rand. 678 (1827), the court upheld the master's right to extreme forms of punishment. The only dissenting justice argued that a slave was entitled to protection as a person "except so far as the application of it conflicted with the enjoyment of the slave as a thing." William Goodell noted: "Another use of slave property is indicated in the advertisements of beautiful young mulatto girls for sale; and by the fact that these commonly command higher prices than the ablest male labourers, or any other description of slaves. . . . Forced concubinage of slave women with their masters and overseers, constitutes another class of facts, equally undeniable. . . . Such facts in their interminable varieties corroborate the preceding, and illustrate the almost innumerable uses of slave property." Goodell, *The American Slave Code*, 86.

32. Although I am focusing on female bodies, we must not lose sight of the fact that men were also the objects of sexual violence and (ab)use. I am not arguing that female gender is essentially defined by violation, but rather I am interrogating rape within the heterosexual closures that have traditionally defined the act, the role of violence in the reproductive economy of the plantation household, and the constitution of black subjectivity, particularly the construction of female gender, in the context of the law's calculation of personhood in accordance with degrees of injury.

33. As Slavoj Žižek writes, social fantasy "is a necessary counterpart to the concept of antagonism, a scenario filling out the voids of the social structure, masking its constitutive antagonism by the fullness of enjoyment." See "Beyond Discourse Analysis," in Ernesto Laclau, *New Reflections on the Revolution in Our Time* (London: Verso, 1990), 254.

34. Mary Boykin Chesnut, *A Diary from Dixie*, ed. Ben Ames Williams (1905; reprint, Boston: Houghton Mifflin, 1949), 21.

35. Fanny Kemble, *Journal of a Residence on a Georgian Plantation in 1838–1839*, ed. John A. Scott (Athens: University of Georgia Press, 1984), 270. Kemble, noting the inappropriateness of this response, described it as foolish and, in part, a weary reaction to the "ineffable state of utter degradation."

36. Kemble, *Journal*, 270.

37. Pierre Bourdieu, *Outline of a Theory of Practice*, trans. R. Nice (Cambridge: Cambridge University Press, 1977).

38. Slavoj Žižek, *The Sublime Object of Ideology* (London: Verso, 1989), 126. In the North, whiteness and freedom were also defined in contradistinction to black enslavement.

39. Jean Baudrillard, *Seduction*, trans. Brian Singer (New York: St. Martin's Press, 1990), 83.

40. *Ibid.*

41. George Fitzhugh, *Cannibals All! or, Slaves without Masters* (1857; reprint, Cambridge, Mass.: Belknap Press of Harvard University Press, 1971), 204-205.

42. *Ibid.*, 205.

43. *Ibid.*, 204.

44. Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988), 6-67.

45. Hegemony encompasses coercion and consent, as opposed to direct and simple forms of domination, which rely solely on force and coercion. See Antonio Gramsci, *The Prison Notebooks*, ed. and trans. Quintin Hoare and Geoffrey Nowell Smith (New York: International Publishers, 1971).

46. I argue that the theory of power and the ethic of submission at work in law are aspects of nineteenth-century sentimental culture. For an extensive discussion of submission as an ethic of nineteenth-century culture, see Ann Douglas, *The Feminization of American Culture* (New York: Avon, 1977); and Jane Tompkins, *Sensational Designs: The Cultural Work of American Fiction, 1790-1860* (New York: Oxford University Press, 1985).

47. *State v. Mann*, 2 Devereaux 263 (December 1829).

48. *Ibid.*, 267.

49. *Ibid.*, 266.

50. Tompkins, *Sensational Designs*, 128.

51. *Commonwealth v. Turner*, 26 Va. at 561, 5 Rand. at 680.

52. The contradiction between property and person is also generated by "two distinct economic forms . . . the form of property and the labour process," since the slave was both a "form of property (with a value in circulation)" and a "direct producer (as the producer of value in some definite activity of labouring)." Barry Hindness and Paul Q. Hirst, *Pre-Capitalist Modes of Production* (London: Routledge and Kegan Paul, 1975), 129.

53. However, manumission became more difficult during this period, and codes regulating slave gatherings became more severe.

54. In his study of slave law, Mark Tushnet argues that the "dual invocation of humanity and interest," which Judge Thomas Ruffin considered essential to mollifying the harsh injunction of slavery, was responsible for the failure of slave law to develop a stable body of law. Tushnet notes that the dual invocation reproduced the contradictions of slave society: the contradiction between capitalism and slavery and the contradiction between the slave as person and the slave as property. Unfortunately, Tushnet mistakenly characterizes slave relations as total because they engage "the master and slave in exchanges which must take account of the entire range of belief, feeling and interest embodied by the other" instead of the partial views of market relations. First, whether slave relations and market relations are contradictory is the subject of extended controversy. Certainly slavery existed rather successfully as a nondominant mode of production within a capitalist social formation until the crisis of the 1850s. Second, Tushnet fails to question the idea of personhood or the confines of the slave subject constituted in law. The suggestion that slave law was humane because it recognized certain features of slave personhood is a dangerous overstatement. Mark Tushnet, *The American Law of Slavery, 1800-1860* (Princeton: Princeton University Press, 1981), 57. Patricia Williams, in a rebuttal of Tushnet, characterizes slave law as provisional because it defined blacks as without will and employed "partializing standards of humanity" that "imposed general inadequacy." "If 'pure will' or total control equals the perfect white person, then impure will and total lack of control equal the perfect black person. Therefore, to define slave law as comprehending a total view of personality implicitly accepts that food, shelter, and clothing (again assuming the very best of circumstances) is the whole requirement of humanity." It also assumes either that psychic care was provided by slave owners (as if an

owned psyche could ever be reconciled with mental health) or that psyche is not a significant part of a whole human. The legal conception of a slave person does not take into account the range of feelings, belief, and interest but singularly pursues "a vision of blacks as simple-minded, strong-bodied economic 'actants.'" *The Alchemy of Race and Rights* (Cambridge, Mass.: Harvard University Press, 1991), 219-220.

55. Mark Tushnet argues that the dual invocation of slave law demonstrates the law's concern for the slave as a "total person" and the role of sentiment in slave law: "The fundamental social relation of slave society is total, engaging the full personalities of the slaveowner and the slave." *The American Law of Slavery*, 33.

56. For an examination of the relation between nation, body, and culture, see Elaine Scarry, *The Body in Pain* (New York: Oxford University Press, 1985), 108-109.

57. The mortified flesh refers both to the "zero degree of social conceptualization" and to the condition of social death. Spillers writes: "Before the 'body' there is the 'flesh,' that zero degree of social conceptualization that does not escape concealment under the brush of discourse. . . . Though the European hegemonies stole bodies . . . out of West African communities in concert with the African 'middleman,' we regard this human and social irreparability as high crimes against the flesh, as the person of African females and African males registered the wounding." "Mama's Baby, Papa's Maybe," 67. Although I do not distinguish between the body and the flesh as liberated and captive subject positions, I contend that the negation of the subject that results from such restricted recognition reinscribes the condition of social death. See Orlando Patterson, *Slavery and Social Death* (Cambridge, Mass.: Harvard University Press, 1982).

58. Thomas Cobb, *Inquiry into the Law of Negro Slavery* (Philadelphia, 1858), 84.

59. See Andrew Fede, *People without Rights* (New York: Garland, 1992); and A Leon Higginbotham, Jr., *In the Matter of Color: Race and the American Legal Process—The Colonial Period* (New York: Oxford University Press, 1978).

60. Cobb, *Inquiry*, 90.

61. *Ibid.*, 83.

62. *Ibid.*, 100.

63. *George (a Slave) v. State*, 37 Miss. 317 (October 1859).

64. It is debated whether these protections have anything at all to do with questions of humanity or whether they are of the same order as protections extended to domestic animals.

65. Morgan, *American Slavery*, 316-337.

66. Louisiana was the only state that forbade the separation of a mother and a child under ten years old. However, it was not a common-law state but under the jurisdiction of a civil code.

67. See Mary Frances Berry, "Judging Morality: Sexual Behavior and Legal Consequences in the Late Nineteenth Century South," in *Black Southerners and the Law, 1865-1900*, ed. Donald G. Nieman (New York: Garland, 1994). According to Berry, seduction became criminalized in the 1840s, and these statutes spread across the United States in the post-Civil War period.

68. *Commonwealth v. Jerry Mann*, 2 Va. Ca. 210 (June 1820).

69. *Grandison (A Slave) v. State*, 2 Humphreys 451 (December 1841).

70. Elsa Barkley Brown, "'What Has Happened Here?': The Politics of Difference in Women's History and Politics," in *We Specialize in the Impossible: A Reader in Black Women's History*, ed. Darlene Clark Hine, Wilma King, and Linda Reed (Brooklyn, N.Y.: Carlson Publishing, 1995), 39.

71. Gayatri Spivak, "Feminism and Deconstruction," in *Outside in the Teaching Machine* (New York: Routledge, 1993), 139.

72. This line of argument is influenced by Judith Butler's "Contingent Foundations," in

*eminists Theorize the Political*, ed. Judith Butler and Joan Scott (New York: Routledge, 1992), 16. Butler writes: "To deconstruct the subject of feminism is not, then, to censure its sage, but, on the contrary, to release the term into a future of multiple significations, to nancipate it from the maternal or racialist ontologies to which it has been restricted, and to ive it play as a site where unanticipated meanings might come to bear." Also see Evelyn rooks Higginbotham, "African American Women's History and the Metalanguage of ace," in Hine, King and Reed, *We Specialize in the Impossible*. Higginbotham examines the ver determination of technologies of race as well as those of gender and sexuality.

73. *Andrews v. Page*, 3 Heiskell 653 (February 1871).

74. This encompasses the construction of rape as a capital offense when committed by lack men and the castration of black men as a preventive measure against such "sexual nmodesty," as well as the magnification of injury through the omission of rape as an offense ffecting the enslaved female's existence.

75. MacKinnon, "Feminism," 650.

76. Harriet A. Jacobs, *Incidents in the Life of a Slave Girl, Written by Herself*, ed. Jean agan Yellin (1861; reprint, Cambridge, Mass.: Harvard University Press, 1987).

77. Pateman, *The Sexual Contract*, 116-188.

78. Jacobs, *Incidents*, 55.

79. For a very insightful discussion of these issues, see Frances Ferguson, "Rape and the ise of the Novel," *Representations* 20 (Fall 1987): 88-112.

80. See Jacobs, *Incidents*, 33, 58, 59, 77, 121, 138, 158, 160, 187, 198.

81. As Marie Maclean observes, the act of narration involves "a delicate interplay of ower in which the narratee submits to the control of a narrator, while the narrator must cheme to overcome the power of the narratee." *Narrative as Performance: The Bau- telairean Experiment* (London: Routledge, 1988), 17.

82. The seductiveness of narrative, according to Ross Chambers, is "the means whereby uch a text succeeds in acquiring a readership and inserting itself into the new interpretive ontexts that will actualize its meaningfulness." The impact of a narrative is determined by 'the power of seduction. . . . The claim to seductive power is a claim of perlocutionary orce. Seduction produces "authority where there is no power, [and] is a means of converting (historical) weakness into (discursive) strength." Ross Chambers, *Story and Situation: Nar- rative Seduction and the Power of Fiction*, vol. 12 of *Theory and History of Literature* (Minneapolis: University of Minnesota Press, 1984).

83. Jacobs, *Incidents*, 54.

84. *Ibid.*, 53.

85. Chambers, *Story and Situation*.

86. As Chambers argues, this strategy is narrative in that it "conform[s] to the [projected] desires of the other in order to bring about its own desire to narrate." In this regard, the duplicity of seduction is "constitutive of the narrative situation as such." *Ibid.*, 218.

87. "Seduction as a narrative tactic takes the form of recruiting the desires of the other in the interest of maintaining narrative authority, so it is a duplicitous act to the extent that it introduces the concept of 'point' a cleavage, conflict of motives, since the story that conforms to the hearer's desires has also the function of satisfying other desires in the storyteller." *Ibid.*, 215.

88. Jacobs, *Incidents*, 32.

89. *Ibid.*, 51.

90. Elizabeth Keckley, *Behind the Scenes or Thirty Years a Slave and Four Years in the White House* (1868; reprint, New York: Oxford University Press, 1988), 39.

91. Jacobs, *Incidents*, 28.

92. *Ibid.*

93. See Michel Foucault, "What Is an Author?," in *Language, Counter-Memory and Practice*, trans. Donald F. Bouchard and Sherry Simon (Ithaca: Cornell University Press, 1977), 127; and Lynn A. Higgins and Brenda R. Silver, eds., *Rape and Representation* (New York: Columbia University Press, 1991), 3.

94. Karen Sanchez-Eppler, "Bodily Bonds: The Intersecting Rhetorics of Feminism and Abolitionism," *Representations* 24 (Fall 1988): 36.

95. See Sandra Bartky, *Femininity and Domination: Studies in the Phenomenology of Oppression* (New York: Routledge, 1990); and Frantz Fanon, *Black Skin, White Masks*, trans. Charles Lam Markham (New York: Grove, 1967).

96. As stated earlier, the law of rape required the demonstration of "utmost resistance" in order to establish nonconsent. The need to demonstrate utmost physical resistance requires that the woman's nonconsent be proven in order to determine whether a crime has occurred. Nonconsent is ultimately what gives meaning to consent.

97. Foucault describes the state of domination as that in which "an individual or social group manages to block a field of relations of power, to render them impassive and invariable and to prevent all reversibility of movement—by means of instruments which can be economic as well as political or military." "The Ethic of Care for the Self as a Practice of Freedom," in *The Final Foucault*, ed. James Bernauer and David Rasmussen (Cambridge, Mass.: MIT Press, 1994), 3.

98. In the liberal genealogy of freedom, the individual possesses property in himself and is essentially "the proprietor of his own person and capacities." See C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (New York: Oxford University Press, 1962), 263.

#### CHAPTER FOUR

1. David Brion Davis, *The Problem of Slavery in Western Culture* (New York: Oxford University Press, 1966), and *The Problem of Slavery in the Age of Revolution, 1770–1823* (Ithaca: Cornell University Press, 1975); Orlando Patterson, *Freedom in the Making of Western Culture* (New York: Basic, 1991); Robert Miles, *Capitalism and Unfree Labour: Anomaly or Necessity* (London: Tavistock, 1987); Eric Williams, *Capitalism and Slavery* (London: Andre Deutsch, 1964); Cedric Robinson, *Black Marxism: The Making of the Black Radical Tradition* (London: Zed, 1983); Thomas C. Holt, *The Problem of Freedom: Race, Labor and Politics in Jamaica and Britain, 1832–1938* (Baltimore: Johns Hopkins University Press, 1992); Gerald David Jaynes, *Branches without Roots: Genesis of the Black Working Class in the American South, 1862–1882* (New York: Oxford University Press, 1986).

2. Mark Tushnet notes that in the law, "lines drawn on the basis of race and those drawn on the basis of condition were almost identical, [and] slave law could have been recharacterized as black law . . . for the rhetorical opposition of slaves and white men, not slaves and free persons, proved nearly impossible to resist." *The American Law of Slavery, 1800–1860* (Princeton: Princeton University Press, 1981), 140.

3. Karl Marx ironically describes the sphere of circulation or commodity exchange as an "Eden of the innate rights of man. It is the exclusive realm of Freedom, Equality, Property and Bentham." Freedom measured by the consent of exchange or the liberty of contract reveals the chasm between substantial and formal freedom and the freed as "someone who has brought his own hide to market and now has nothing else to expect but—a tanning." Simply put, the emancipated are free to dispose of their labor and are unfettered by other possessions. *Capital*, vol. 1, trans. Ben Fowkes (New York: Vintage, 1977), 272–280.

4. According to Foucault, "right should be veiwed . . . not in terms of a legitimacy to be established, but in terms of the subjugation that it instigates." "Two Lectures," in *Power!*

nowledge: *Selected Knowledge and Other Writings, 1972–1977*, trans. Colin Gordon, L. Marshall, J. Mepham, and K. Soper, ed. Colin Gordon (New York: Pantheon, 1980), 95–96.

5. As well, the import of the *Dred Scott* decision cannot be minimized. The decision held that blacks possessed no rights that whites were bound to respect and that blacks were never intended to be included as citizens by the “we the people” of the Constitution. Furthermore, the Naturalization Act of 1790 had restricted citizenship to whites.

6. See W. E. B. Du Bois, *Black Reconstruction in America* (New York: Atheneum, 1935), 70–710; Barbara Fields, “Ideology and Race in American History,” in *Region, Race and Reconstruction: Essays in Honor of C. Van Woodward*, ed. J. Morgan Kousser and James Opherson (New York, 1982); and Michael Kammen, *Mystic Chords of Memory: The Transformation of Tradition in American Culture* (New York: Vintage, 1993), 101–131.

7. Herman Belz, *Emancipation and Equal Rights* (New York: W. W. Norton, 1978), 108–10; Jacobus Ten Brock, *The Antislavery Origins of the Fourteenth Amendment* (Berkeley: University of California Press, 1951).

8. Legal liberalism, as well as critical race theory, has examined issues of race, racism, and equality by focusing on the exclusion and marginalization of those subjects and bodies marked as different and/or inferior. The disadvantage of this approach is that the proposed remedies and correctives to the problem—inclusion, protection, and greater access of opportunity—do not ultimately challenge the economy of racial production or its truth claims and interrogate the exclusions constitutive of the norm but instead seek to gain equality, liberation, and redress within its confines.

9. I am indebted to Irene Wei for this question.

10. Marx, *Capital*, vol. 1, 280.

11. Ann Norton, examining the role of property in American liberalism, argues that property became “the body’s sign and surrogate, the first medium of representation. Property stands for the body. . . . Property thus served to protect men’s freedom and expand their opinion, to protect their bodies and enhance their pleasure. As property became a legal and cultural surrogate for the self, it also became the medium for the self-made man: a means for the materialization of individual power, taste and authority.” “Engendering Another American Identity,” in *Rhetorical Republic: Governing Representations in American Politics*, ed. Frederic M. Dolan and Thomas L. Dumm (Amherst: University of Massachusetts, 1993).

12. For accounts of the kinds of violence to which the freed were subjected, see Carl Schurz, *Report on the Condition of the South* (1865; reprint, New York: Arno, 1969); and U.S. Congress, *Report of the Joint Committee on Reconstruction* (Washington, D.C.: Government Printing Office, 1866).

13. I have opted to use the term “accumulation” because slavery is not a relation of exploitation in the classic Marxian sense.

14. For a critique of the inequality sanctioned by property rights, see Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism* (Chicago: University of Chicago Press, 1990), and “Bounded Selves,” *Law and the Order of Culture*, ed. Robert Post (Berkeley: University of California Press, 1991).

15. I describe this coupling as disavowed since the word “slavery” was nowhere mentioned in the Constitution.

16. See Michel Foucault, “The Subject and Power,” in *Michael Foucault: Beyond Structuralism and Hermeneutics*, ed. Hubert L. Dreyfus and Paul Rabinow (Chicago: University of Chicago Press, 1982); and Paul Smith, *Discerning the Subject* (Minneapolis: University of Minnesota Press, 1988), xxiv–xxxv. For a critique of notions of autonomy, free will, and independence, see Seyla Benhabib, Judith Butler, Drucilla Cornell, and Nancy Fraser, eds., *Feminist Contentions* (New York: Routledge, 1995).

17. Etienne Balibar, “Racism as Universalism,” in *Masses, Classes, Ideas*, trans. James



Swenson (New York: Routledge, 1994), 191–204; David Theo Goldberg, *Racist Culture: Philosophy and the Politics of Meaning* (Cambridge: Blackwell, 1993); Raymond Williams, *Keywords: A Vocabulary of Culture and Society* (New York: Oxford University Press, 1976).

18. I am indebted to the participants of the 1995 seminar “Feminism and Discourses of Power” at the University of California Humanities Research Institute, Irvine, for this line of thought.

19. See *Brown v. Board of Education* on stigmatic injury. “For in the very same gesture with which [rights] draw a circle around the individual, in the very same act with which they grant sovereign selfhood, they turn back upon the individual all responsibility for her failures, her condition, her poverty, her madness—they privatize her situation and mystify the powers that construct, position and buffet her.” *States of Injury* (Princeton: Princeton University Press, 1995), 128.

20. Helen E. Brown, *John Freeman and His Family* (Boston: American Tract Society, 1864), 30.

21. C. B. Macpherson, *The Political Theory of Possessive Individualism: Hobbes to Locke* (New York: Oxford University Press, 1962), 263–264. In this vision, “human society consists of a series of market relations.”

22. On liberty as a racial value, see Goldberg, *Racist Culture*, 36–40.

23. Discernible in the very fabric of subjectivity are the limitations of freedom. Tracing the affiliation of freedom and constraint in regard to subjectivity, Etienne Balibar asks: “Why is it that the very name which allows modern philosophy to think and designate the *originary freedom* of the human being—the name subject—is precisely the name which *historically* meant suppression of freedom, or at least an intrinsic limitation of freedom, i.e., *subjection*?” “Subjection and Subjectivation,” in *Supposing the Subject*, ed. Joan Copjec (London: Verso, 1994), 9. See also Williams, *Keywords*.

## CHAPTER FIVE

1. See Bonnie Honig, “Nietzsche and the Recovery of Responsibility,” in *Political Theory and the Displacement of Politics* (Ithaca: Cornell University Press, 1993), 42–75; William Connelly, “Liberalism and Difference,” in *Identity/Difference: Democratic Negotiations of Political Paradox* (Ithaca: Cornell University Press, 1991), 64–94; and Friedrich Nietzsche, *On the Genealogy of Morals*, ed. Keith Ansell-Pearson, trans. Carol Dietz (Cambridge: Cambridge University Press, 1994), 40.

2. Connelly, “Liberalism and Difference,” 80.

3. This phrase is Jacques Douzelot’s. See Giovanni Procacci, “Social Economy and the Government of Poverty,” in *The Foucault Effect*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 157.

4. Nietzsche, *Genealogy of Morals*, 44–50.

5. Jared Bell Waterbury, *Advice to a Young Christian* (New York: American Tract Society, 1843), 84. Throughout the text, Waterbury compares the Christian to the merchant.

6. W. E. B. Du Bois described the triumph of reaction in this period as a counter-revolution. *Black Reconstruction in America* (New York: Atheneum, 1935).

7. Eric Foner, *Reconstruction: America’s Unfinished Revolution, 1863–1877* (New York: Harper and Row, 1988); Willie Lee Rose, *Rehearsal for Reconstruction: The Port Royal Experiment* (Indianapolis: University of Indiana Press, 1964); Leon Litwack, *Been in the Storm So Long* (New York: Vintage, 1979).

8. The wartime genesis of free labor in the Sea Islands and Tennessee was the subject of great scrutiny; cotton brokers, Northern manufacturers, and industrialists visited the South in the hope of arriving at a definitive answer to this question. In 1861, Charles Atkinson, the

secretary of the Educational Commission, a group devoted to the "industrial, social, intellectual, moral and religious elevation of persons released from slavery in the course of the War of the Union," wrote a pamphlet called *Cheap Cotton by Free Labor*, in which he argued that emancipation would increase the supply of cotton manufacturers, not decrease it. During this period, Atkinson was the treasurer and agent for six cotton-manufacturing firms in Boston. See Rose, *Rehearsal for Reconstruction*, 35-37.

9. Gerald David Jaynes, *Branches without Roots: Genesis of the Black Working Class in the American South, 1862-1882* (New York: Oxford University Press, 1986); Foncr, *Reconstruction*; Jonathan M. Wiener, *The Social Origins of the New South Alabama, 1860-1885* (Baton Rouge: Louisiana State University Press, 1978, 35-73; Du Bois, *Black Reconstruction*.

10. See Albert O. Hirschman, *The Passions and the Interests: Political Arguments for Capitalism before Its Triumph* (Princeton: Princeton University Press, 1977), 3-66.

11. See Thomas C. Holt, *The Problem of Freedom: Race, Labor and Politics in Jamaica and Britain, 1832-1938* (Baltimore: Johns Hopkins University Press, 1992).

12. On the significance of flight, movement, and migration in African American culture, see Farah Jasmine Griffin's *Who Set You Flowin'?: The African American Migration Narrative* (New York: Oxford University Press, 1995).

13. Reverend Isaac W. Brinckerhoff, *Advice to Freedmen* (New York, 1864); Jared Bell Waterbury, *Friendly Counsels for Freedmen* (New York, 1864); Helen E. Brown, *John Freeman and His Family* (Boston, 1864); Clinton B. Fisk, *Plain Counsels for Freedmen* (Boston, 1866). Lydia Maria Child also wrote a textbook for freed people, *The Freedmen's Book* (1865; reprint, New York: Arno, 1968). It was first published by Ticknor and Fields and is generally considered too incendiary for use in many Southern schools because she encouraged the freed to leave work situations where they were not respected and directly addressed the wages of slavery.

14. Robert C. Morris, *Reading, Writing, and Reconstruction: The Education of Freedmen in the South, 1861-1870* (Chicago: University of Chicago Press, 1976), 188. The American Tract Society also published a series of spellers and readers, the United States series, which was widely used in freedmen's schools throughout the South.

15. Jaynes, *Branches without Roots*, 131.

16. Holt, *The Problem of Freedom*, 304.

17. Wiener, *The Social Origins of the New South*, 70.

18. Jared Bell Waterbury, *Southern Planters and the Freedmen* (New York: American Tract Society, [1865-1866]), 37.

19. Jaynes, *Branches without Roots*, 312.

20. *Ibid.*, 313-314.

21. For a brilliant discussion of the fiction of debt and its production of slavery and death among the Putmayo of Colombia, see Michael Taussig, "The Economy of Terror," in *Hamanism, Colonialism and the Wild Man* (Chicago: University of Chicago Press, 1987), 60-73.

22. See Michael Kammen, *Mystic Chords of Memory: The Transformation of Tradition in American Culture* (New York: W. W. Norton, 1978); and Walter Benn Michaels, "Anti-imperial Americanism," in *Culture of United States Imperialism*, ed. Amy Kaplan and Donald E. Pease (Durham: Duke University Press, 1993), 392-406.

23. Andy McAdams, in George Rawick, ed., *The American Slave: A Composite Autobiography*, 41 vols. (Westport, Conn.: Greenwood, 1973), suppl. 2, vol. 7, pt. 6, p. 2455.

24. *Ibid.*, Suppl. 2, vol. 3, pt. 2, p. 877.

25. As Alessandro Pizzorno writes, "The individual, in the liberal view, is assumed to be a durable unit of action, holding the same criteria of judgement, the same preferences—or at

least, some general metapreferences—over time. Similarly, the individual bears the consequence of his past actions, for which he can be punished or rewarded. This makes him a responsible subject of rights and duties." "Foucault and the Liberal View of the Individual," in *Michel Foucault, Philosopher*, ed. Timothy J. Armstrong (New York: Routledge, 1992).

26. Wendy Brown, *States of Injury* (Princeton: Princeton University Press, 1995), 126.

27. See Marcel Mauss, *The Gift: Forms and Functions of Exchange in Archaic Societies* (New York: W. W. Norton, 1967), 41. The discussion of the gift of freedom is a classic example of Mauss's argument about the form and function of exchange.

28. For a discussion of labor and embodiment in nineteenth-century culture, see Elaine Scarry, *The Body in Pain* (New York: Oxford University Press, 1985), 243–277; Gillian Brown, *Domestic Individualism: Imagining Self in Nineteenth-Century America* (Berkeley: University of California Press, 1990), 63–95; and Ann McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (New York: Routledge, 1995), 99–100, 108.

29. Max Weber discusses the relation of the ascetic ideal of faithful labor and capitalism. He remarks that the passionate preaching of hard labor was both a defense against temptation and an exhibition of duty in a calling. *The Protestant Ethic and the Spirit of Capitalism* (1958; reprint, Unwin, 1976), 165–183.

30. McAdams, in Rawick, *The American Slave*, suppl. vol. 7, pt. 6, p. 2455.

31. Felix Haywood, in *ibid.*, vol. 4, pt. 2, p. 134.

32. See Parker Pool, in *ibid.*, vol. 15, pt. 2, pp. 190–191; and Patsy Michener, in *ibid.*, vol. 15, pt. 2, pp. 121–123.

33. Joel Richardson argues that blacks resented the intrusions of white missionaries into their lives and comments about forms of enjoyment. The use of these primers rather than Lydia Maria Child's, which encouraged freedpeople to leave jobs where they were not well paid, indicates the instrumental use of these texts. *Christian Reconstruction: The American Missionary Association and Southern Blacks, 1861–1890* (Athens: University of Georgia Press, 1986), 237–255.

34. Silas Smith, in Rawick, *The American Slave*, vol. 3, pt. 4, p. 119.

35. Robert Cover, *Justice Accused: Anti-Slavery and the Judicial Process* (New Haven, Conn.: Yale University Press, 1975), 8–41; David Montgomery, *Citizen and Worker* (New York: Cambridge University Press, 1993), 52–114; William Forbath, "Free Labor Ideology in the Gilded Age," *Wisconsin Law Review* (1985), 767–801.

36. David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770–1823* (Ithaca: Cornell University Press, 1975), 456.

37. Peter Linebaugh, "All the Atlantic Mountains Shook," *Labour/Le Travailleur* 10.10: 87–121; Peter Linebaugh and Marcus Rediker, "The Many Headed Hydra: Sailors, Slaves, and the Atlantic Working Class in the Eighteenth Century," *Journal of Historical Sociology*, 3.3 (September 1990): 225–252.

38. Michael B. Katz, *In the Shadow of the Poor House: A Social History of Welfare in America* (New York: Basic Books, 1986), 38–84.

39. Amy Stanley, "Beggars Can't Be Choosers: Compulsion and Contract in Postbellum America," *Journal of American History* 78.4 (March 1992): 1288. See also "Conjugal Bonds and Wage Labor: Rights of Contract in the Age of Emancipation," *Journal of American History* 75 (September 1988): 471–500.

40. Jaynes, *Branches without Roots*; Foner, *Reconstruction*; Roger L. Ransom and Richard Sutch, *One Kind of Freedom* (New York: Cambridge University Press, 1977).

41. Davis also asserts that "slaveholders and industrialists shared a growing interest not only in surveillance and control but in modifying the character and habits of their workers." *Slavery in the Age of Revolution*, 458, 464.

42. The term is Jean-François Lyotard's. See *The Postmodern Condition*, trans. Geoff

ennington and Brian Massumi (Minneapolis: University of Minnesota Press, 1979), xi, 31-2, 35-36, 49, 60.

43. William Forbath discusses the repercussions of this vision for labor politics in the Gilded Age in "The Ambiguities of Free Labor: Labor and Law in the Gilded Age," 782-86.

44. Jaynes, *Branches without Roots*, 300-316. Wiener also discusses sharecropping as a form of bonded labor, *The Social Origins of the New South*, 69-71.

45. Rawick, *The American Slave*, Oklahoma Narratives, vol. 7, p. 2288.

46. Anna Lee, in *ibid.*, suppl 2, vol. 5, pt. 4, p. 2288.

47. Édouard Glissant, *Caribbean Discourse: Selected Essays*, trans. J. Michael Dash (Charlottesville: University of Virginia Press, 1989), 88-93.

48. Rawick, *The American Slave*, vol. 8, pt. 2, p. 18.

49. Tom Holland, in *ibid.*, vol. 4, pt. 2, p. 147.

50. As Morton Horwitz and Clare Dalton point out, in the nineteenth century the will theory of contract was dominant. In the beginning of the twentieth century, the emphasis shifted to the "proper measure of contractual obligation" as formally expressed. "An Essay on the Deconstruction of Contract Doctrine," in *Interpreting Law and Literature: A Hermeneutics Reader*, ed. Sanford Levinson and Steven Mailloux (Evanston: Northwestern University Press, 1988), 292-293. According to Horwitz, "Under the will theory, the basis for enforcing a contract was a 'meeting of minds' or convergence of the wills of the contracting parties." *Transformation of American Law, 1870-1960* (New York: Oxford University Press, 1992), vol. 2, p. 35. The will theory expressed the ideology of the market economy. See *Transformation of American Law, 1780-1860*, vol. 1 (New York: Oxford University Press, 1977), 180-210.

51. See William Cohen, "Negro Involuntary Servitude in the South, 1865-1940: A Preliminary Analysis," in *Black Southerners and the Law, 1865-1900*, ed. Donald G. Nieman (New York: Garland, 1994), 35-64; Litwack, *Been in the Storm So Long*, 336-386; and Jaynes, *Branches without Roots*.

52. Brown, *States of Injury*, 156.

53. Wiener, *The Social Origins of the New South*, 68-69; F. W. Loring and C. F. Atkinson, *Cotton Culture and the South, Considered with Reference to Emigration* (Boston: A. Williams, 1869).

54. Stanley, "Beggars Can't Be Choosers," Holt, *The Problem of Freedom*, 286.

55. Section 4, 435 of the Georgia Penal Code, March 12, 1866; Edward McPherson, *The Political History of the United States of America during the Period of Reconstruction* (Washington, D.C.: Solomon and Chapman, 1875), 33.

56. According to Cohen, race-neutral vagrancy laws and enticement statutes were "intended to maintain white control of the labor system, and local enforcement authorities implemented them with this in mind." "Negro Involuntary Servitude in the South," 34. See also Edward Ayers, *Vengeance and Justice: Crime and Punishment in the Nineteenth Century American South* (New York: Oxford University Press, 1984), 141-222; George Washington Cable, "The Convict Lease System in the South," in *The Silent South* (New York: Charles Scribner's Sons, 1907), 113-180; Montgomery, *Citizen and Worker*, 83-87; Theodore Bratner Wilson, *The Black Codes of the South* (Tuscaloosa: University of Alabama Press, 1965); and J. Thorsten Sellin, *Slavery and the Penal System* (New York: Elsevier, 1976), 133-176.

57. Only the laws of Georgia, Texas, and Virginia survived Reconstruction intact; however, race-neutral statutes achieved the same results. Cohen, "Negro Involuntary Servitude in the South," 47.

58. Order to repeal Virginia Vagrancy Act, in McPherson, *The Political History of the United States during the Period of Reconstruction*, 42.

59. Florida Black Codes, in *ibid.*, 39.

60. This was a considerable amount given that the range of wages was between \$5.00 and \$25.00 a month. First-class male field hands made no more than \$5.00-\$10.00 a month in Virginia, North Carolina, and Tennessee; \$8.00-\$12.00 a month in South Carolina and Georgia; \$10.00-\$18.00 a month in Mississippi, Alabama, Florida, and Louisiana; and \$15.00-\$25.00 a month in Arkansas and Texas. Litwack, *Been in the Storm So Long*, 411. This does not take into account the cost of lodging, clothing, food, medical expenses, and so on, or the great fluctuation in wages between plantations. According to the Freedmen's Bureau, wages as low as \$2.00 a month were offered in Georgia. The bureau generally tried to keep wages between \$8.00 and \$10.00 a month in the years 1865 and 1866. See Ransom and Sutch, *One Kind of Freedom*, 60. According to Loring and Atkinson, wages generally varied from \$5.00 to \$15.00 a month. *Cotton Culture*, 26-27.

61. Mitchell Dean, *The Constitution of Poverty* (London: Routledge, 1991), 35-67.

62. Steve Hahn, "Hunting, Fishing and Foraging: Common Rights and Class Relations in the Postbellum South," in Nieman, *Black Southerners and the Law, 1865-1900*. E. P. Thompson discusses the use of similar measures in effecting control of the English working class in "Custom Law and Common Right," in *Customs in Common: Studies in Traditional Popular Culture* (New York: New Press, 1993), 97-184.

63. Ayers, *Vengeance and Justice*, 203.

64. Gilbert Thomas Stephenson, *Race Distinctions in American Law* (New York: D. Appleton, 1910), 52.

65. Lewis Chartock, "A History and Analysis of Labor Contracts Administered by the Bureau of Refugees, Freedmen, and Abandoned Lands in Edgefield, Abbeville and Anderson Counties in South Carolina, 1865-1868," Graduate School of Social Work and Social Research, Bryn Mawr College, 188.

66. Contract of Joseph Abbey with Andrew and Kitty, Edgefield, 1867, in *ibid.*, 143.

67. *Ibid.*, 191.

68. I use the term "extralegal" rather than "illegal" because this violence usually went unpunished and was considered a customary right.

69. Litwack, *Been in the Storm So Long*, 278.

70. It is also important to keep in mind that the convict-labor system was spawned by a combined set of interests inclusive of Northern industrialists: "The convict lease system became a sort of mutual aid society for the new breed of capitalist and politicians of the white Democratic regimes of the New South, and often the same man played the roles of both entrepreneur and office holder." The convict-labor system was crucial to forging the new industrial economy of the South. Ayers, *Vengeance and Justice*, 195, 222.

71. See Carl Schurz, *Report on the Condition of the South* (1865; reprint, New York: Arno, 1969); U.S. Congress, *Report of the Joint Committee on Reconstruction* (Washington, D.C.: Government Printing Office, 1860); Sumner, *Outrages against Freedmen*; and U.S. Congress, *Testimony Taken by the Joint Select Committee to Inquire into the Condition of the Late Insurrectionary States* (Washington, D.C.: Government Printing Office, 1872).

72. It is commonly accepted that the election of Rutherford B. Hayes in 1876 was a compromise between the North and the South that granted the Republicans the presidency at the price of Reconstruction. Foner, *Reconstruction*, 575-585.

73. Most of those who left the plantation eventually returned because of the lack of jobs and opportunities elsewhere. Jacqueline Jones, *Labor of Love: Black Women, Work, and the Family from Slavery to the Present* (New York: Basic, 1985), 73-78; Litwack, *Been in the Storm so Long*, 292-335.

74. Blackstone's Commentaries, cited in H. N. Hirsch, *A Theory of Liberty: The Constitution and Minorities* (New York: Routledge, 1992).
75. This was also the case with Lydia Maria Child's freedmen's primer, despite its radical antislavery message which prevented *The Freedmen's Book* from being used in freedmen's schools for fear that it encouraged enmity between the races.
76. However, self-making is defined almost exclusively as self-regulation.
77. Schurz, *Report on the Condition of the South*, 21.
78. Certainly the invocation of Douglass, the penultimate representative of the black self-made man, was quite suited to Fisk's purposes. However, for a critique of Douglass's employment of this rhetoric and the masculinism of such rhetoric, see Hazel Carby, *Reconstructing Womanhood: The Emergence of the Afro-American Woman Novelist* (Oxford: Oxford University Press, 1987); and Valerie Smith, *Self-Discovery and Authority in Afro-American Narrative* (Cambridge, Mass.: Harvard University Press, 1987), 33-34.
79. According to Wendy Brown, "The subject is ideally emancipated through its anointing as an abstract person, a formally free and equal human being, and is practically resubordinated through this idealist disavowal of the material constituents of personhood, which constrain and contain our freedom." *States of Injury*, 106.
80. It was not until the turn of the century that this formula would be challenged by Anna Julia Cooper. She argued that the cultivation of womanhood was essential to racial uplift: Only the black woman can say 'when and where I enter, in the quiet, undisputed dignity of my womanhood without violence and without suing or special patronage, then and there the whole Negro race enters with me.' *A Voice from the South* (New York: Oxford University Press, 1988), 31.
81. Mary Frances Berry, *Military Expediency and the Thirteenth Amendment* (Washington, D.C.: Howard University, 1975); Herman Belz, "The Civil War Origins of Negro Suffrage," *Southern Studies* (Summer 1978): 115-129.
82. Berry, *Military Expediency*, 5.
83. Nancy Fraser, *Unruly Practices* (Minneapolis: University of Minnesota Press, 1989), 127-128.
84. Homi Bhabha, *The Location of Culture* (New York: Routledge, 1994), 85-92.
85. Henry Banner, in Rawick, *The American Slave*, vol. 8, pt. 1, p. 105.
86. By the end of the nineteenth century, most common-law coverture restrictions had disappeared. Most of these changes benefited middle-class women since they concerned inheriting property, establishing separate estates, et cetera. However, married women continued to have limited control of their wages. Joan Hoff, *Law, Gender and Injustice* (New York: New York University Press, 1991), 87-88, 127-135. According to Jacqueline Jones, black husbands controlled labor agreements, and black women received compensation based upon their gender. Men were held responsible for their wives' breach of contract; black fathers received the wages of the children hired out and expressed the grievances of their families. *Labor of Love*, 62-63.
87. As Jacqueline Jones notes, at this time 97 percent of white women of the class of agricultural laborers were full-time homemakers, while over 25 percent of black women worked. These figures underestimate the actual percentage of freedwomen who worked because of the erasure of women's work within the family; this neglect is particularly exacerbated in the case of the sharecropping household, which depended on the labor of all of its members. *Labor of Love*, 66.
88. Brinckerhoff, *Advice to Freedmen*, 46; Fisk, *Plain Counsels*, 40.
89. Denise Riley, "'The Social,' 'Woman,' and Sociological Feminism," in *Am I That Name?: Feminism and the Category of 'Women' in History* (Minneapolis: University of Minnesota Press, 1988) 44-66; Claudia Tate, *Domestic Allegories of Political Desire* (New

York: Oxford University Press, 1992), Ann DuCille, *The Coupling Convention* (New York: Oxford University Press, 1993).

90. On the importance of the black family as a site of sustenance and resistance and the importance of domesticity in a black middle-class protest politics, see Herbert Gutman, *The Black Family in Slavery and Freedom, 1750-1925* (New York: Pantheon, 1976); and Jones, *Labor of Love*, 58-68.

91. *Orders Issued by the Freedmen's Bureau, 1865-66*, 39th Cong. 1st sess. House Executive Document 70.

92. Jacques Donzelot, *Policing the Family* (New York: Pantheon, 1979), xxv; Jeffrey Minson, *Genealogies of Morals* (New York: St. Martin's Press, 1985).

93. Michael B. Katz, *In the Shadow of the Poorhouse* (New York: Basic, 1986), 66-84.

94. On the control of dangerous classes, see Christopher G. Tiedman, *A Treatise on the Limitations of Police Power in the United States Considered from Both a Civil and Criminal Standpoint* (St. Louis, 1886), 102-136.

95. Procacci, "Social Economy," 165.

96. Brown, *Domestic Individualism*, 20.

97. Rev. S. Humphreys Gurteen, *Handbook of Charity Organization*, 174-186, cited in Katz, *In the Shadow*, 76.

98. *Ibid.*; Procacci, "Social Economy," 165. See also Joseph de Gerando, *The Visitor of the Poor: Designed to Aid in the Formation of Provident Societies* (London: Simpkin and Marshall, 1833).

99. Clare Dalton, "An Essay in the Deconstruction of Contract Doctrine," in Levinson and Mailloux, *Interpreting Law and Literature*, 291-294.

100. The fostering of domesticity also aided in the internalization of market values by encouraging increased and expanded consumption, thereby stimulating the desire for cash wages. See the letters of Edward Philbrick, an engineer and railroad supervisor who managed a plantation on the Sea Islands and participated in the rehearsal for Reconstruction, in Elizabeth W. Pearson, ed., *Letters from Port Royal Written at the Time of the Civil War* (Boston, 1906), 219-221, 245, 276-277.

101. *The American Heritage Dictionary* defines "vindicate" as follows: "to defend, maintain, or insist on the recognition of (one's rights, for example)."

102. Neil Gotanda uses the term "status-race" to refer to the inferior status of blacks as a legal standard. *The Color-Blind Constitution*, 37-40.

103. Gotanda, *The Color-Blind Constitution*, 38.

104. Julie Kristeva, *The Powers of Horror*, trans. Leon S. Roudiez (New York: Columbia University Press, 1982), 9; Butler, *Bodies That Matter*, 223-242.

## CHAPTER SIX

1. George Washington Cable, "The Freedman's Case in Equity," in *The Silent South* (New York: Charles Scribner's Sons, 1907), 6-10.

2. *Ibid.*, 11.

3. *Ibid.*, 14.

4. John Hope Franklin, "The Enforcement of the Civil Rights Act of 1875," in *Race and History* (Baton Rouge: Louisiana State University Press, 1989), 119, 131.

5. Cable, "Freedmen's Case," 5.

6. George Washington Cable, "The Negro Question," in *The Negro Question: A Selection of Writings on Civil Rights in the South* (Garden City: Doubleday Anchor, 1958), 142.

7. *Ibid.*, 143.

8. *Ibid.*, 145.

9. Jill Quadagno argues that racism, in fact, has primarily determined the failure to address issues of social rights in the United States. See *The Color of Welfare: How Racism Undermined the War on Poverty* (New York: Oxford Press, 1994).

10. However, a major aspect of these relief efforts was inculcating the poor with the idea that they had no rights to economic security. See Michael B. Katz, *In the Shadow of the Warehouse: A Social History of Welfare in America* (New York: Basic, 1986), 58–109.

11. Hannah Arendt, "The Social Question," in *On Revolution* (London: Penguin, 1963). My definition of the social differs from Arendt's in major respects. Moreover, she means the introduction of the social into the sphere of the political because she considers the social pre-political and instinctual, and condemns the introduction of the bodily into the space of reason and contemplation. For Arendt, the social denotes the violent intrusion of the bodily into the political domain. The social engulfs the political with concerns that properly belong in the sphere of the household. *Ibid.*, 91. In *The Human Condition*, she defines the social realm as follows: "The social realm, where the life process has established its own public domain, is let loose an unnatural growth, so to speak, of the natural; and it is against this growth, not merely against society but against a constantly growing social realm, that the private and intimate, on one hand, and the political (in the narrower sense of the word), on the other, have proved incapable of defending themselves." *The Human Condition* (Chicago: University of Chicago Press, 1958), 47.

12. Theodore Allen remarks that the promotion of poor and propertyless Euro-Americans to the white race disguised and denied the existence of poverty through the privileges awarded on the basis of race. *The Invention of the White Race* (New York: Verso, 1994). David Pediger notes that the critique of capitalism and wage labor was forestalled by the racist politics of the white working class. *The Wages of Whiteness* (London: Verso, 1991), 87.

13. Arendt, "The Social Question," 95. Arendt's conception of the social initially led her to condemn desegregation as the effort of parvenus to gain recognition. She reduced the desegregation movement to an issue of social preference. See Seyla Benhabib, "Models of Public Space: Hannah Arendt, the Liberal Tradition, and Jürgen Habermas," in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, Mass.: MIT Press, 1993), 79. Arendt does point to the failure to build lasting republican institutions in the United States because of an obsessive concern with material comforts. The dream of the revolution was replaced by the dream of a promised land where milk and honey flow," although Arendt implies that the massive European immigration of the twentieth century contributed to this shift. The "ideals born out of poverty" supplanted "those principles which had inspired the foundation of freedom." "The Pursuit of Happiness," in *On Revolution*, 138–139.

14. Arendt's celebration of the American Revolution and critique of the French Revolution must be considered in the context of a larger attack on society, which she accuses of conflating the public and private realms. The French Revolution opened the political domain to the poor, who were driven by necessity and biological processes. According to Arendt, these were matters of the household, not the public sphere. See Jean L. Cohen and Andrew Arato, "The Formative Critique: Hannah Arendt," in *Civil Society and Political Theory* (Cambridge, Mass.: MIT Press, 1994), 177–200. Nancy Fraser offers an insightful critique of Arendt's conception of the social in *Unruly Practices: Power, Discourse and Gender in Contemporary Social Theory* (Minneapolis: University of Minnesota Press, 1989), 169–170, 185 n. 16. Fraser remarks that Arendt can only conceive of need as "wholly natural" and "forever doomed to be things of brute compulsion. Thus, she supposes that needs can have no genuinely political dimension and that their emergence from the private sphere into the social spells the death of authentic politics." *Ibid.*, 160 n. 32.

15. Here I am not trying to contrast a revolutionary ideal of the social with a repressive one, for efforts to provide minimum levels of security to the working class involved repressive



forms of state intervention, regulation, and discipline. Frances Fox Piven and Richard A. Cloward, *Regulating the Poor: The Functions of Public Welfare*, rev. ed. (New York: Vintage, 1993).

16. Mary Poovey, in a discussion of the making of the social body in nineteenth-century England, writes that because "morality was conceptualized within a problematic of visibility, however, and because the poor were considered to be different from, as well as part of, the national whole, surveillance and the ocular penetration of poor neighborhoods were generally considered to be as critical to the inculcation of virtue as was the cultivation of taste." *Making a Social Body: British Cultural Formation* (Chicago: University of Chicago Press, 1995), 35.

17. Cable, "Freedman's Case," 11. In *Slaughter-House*, the Supreme Court held that the police power of the state was "by its very nature, incapable of any exact definition or limitation." It is not simply fortuitous that the expansive definition of the police power of the state and the restricted reading of the Fourteenth Amendment as conferring no new rights went hand in hand. This again attests to the entanglements of race and the social. H. N. Hirsch, *A Theory of Liberty: The Constitution and Minorities* (New York: Routledge, 1992), 79-85.

18. Barbara J. Fields, "Ideology and Race in American History," in *Region, Race and Reconstruction: Essays in Honor of C. Van Woodward*, ed. J. Morgan Kousser and James McPherson (New York, 1982), 163-165.

19. Michael Kammen, *Mystic Chords of Memory: The Transformation of Tradition in American Culture* (New York: Vintage, 1993), 101-131.

20. My discussion of the amendments treats them as historical documents. I am less concerned with original intent and foundational meaning than with the Reconstruction vision of equality. I am not assuming the positivity of the law or the stability or fixity of meaning of the amendments or attempting to foreclose the possibilities of resignification in practice but rather attempting to interrogate the animating vision of equality that culminated in these amendments. See John Hart Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge, Mass.: Harvard University Press, 1980), 1-42; Stanley Fish, "The Law Wishes to Have a Formal Existence," in *The Fate of Law*, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor: University of Michigan Press, 1993), 159-208; and Stanley Fish, "Fish v. Fiss," Sanford Levinson, "Law and Literature," and Philip Bobitt "Constitutional Fate," in *Interpreting Law and Literature: A Hermeneutic Reader*, ed. Sanford Levinson and Steven Mailloux (Evanston, Ill.: Northwestern University Press, 1988).

21. In particular, I have in mind the dominance of capitalism and racist discourse. On articulation, see Lawrence Grossberg, "Articulation and Culture," in *We Gotta Get Out of This Place* (New York: Routledge, 1992), 52-62; Stuart Hall, "On Postmodernism and Articulation," *Journal of Communication Studies* 10 (1986): 45-60; and Chantal Mouffe and Ernesto Laclau, *Hegemony and Socialist Strategy* (London: Verso, 1985), 105-114.

22. I use the term "state" in the singular here, although I do not assume the unity of the state and its various apparatuses or that it possesses a unifying or monolithic intention, nor do I mean to elide the distinction between the states and the national state. In opting for the convenience of the singular "state," I do not wish to obscure this or the contestations between various aspects of the state, clearly illustrated by the antagonisms between the executive, judicial, and legislative branches of the national state and between the national state and the Southern states, but to underline the systemic character of the state, the coordination and collusion of the apparatuses of the state, and the ways in which the separation of state and federal power sanctioned black subordination.

23. Obviously one avenue of exploration is the grounding of liberty in property, thereby linking it with inequality. Jennifer Nedelsky, *Private Property and the Limits of American Constitutionalism* (Chicago: University of Chicago Press, 1990); C. B. Macpherson, *The*

*Political Theory of Possessive Individualism: Hobbes to Locke* (New York: Oxford University Press, 1962), 263–277.

24. For purposes of clarity about the scope of these rights, it is important to remember that civil, political, and social rights were considered separate and distinct, so that the conferral of civil rights did not extend political rights (right to vote, hold office, and serve on juries). Voting was considered a privilege rather than a right of citizenship, until the passage of the Fifteenth Amendment), and social rights (“the sphere of personal relations and associations, either private or public,” which the law did not enter) were, for most, beyond the scope of the imaginable. Herman Belz, *A New Birth of Freedom: The Republican Party and Freedmen’s Rights, 1861 to 1866* (Westport, Conn.: Greenwood, 1976), 109. In the debate on the passage of the Thirteenth Amendment, many considered the abolition of slavery a violation of the state’s domestic institution as well as a violation of property and privacy no different from marital or familial relations—the husband’s right of property in his wife or a father’s in his children.

25. Robert Miles, *Capitalism and Unfree Labor: Anomaly or Necessity?* (London: Tavistock, 1987).

26. Let me make it clear that the discriminations of race at issue implicitly identified blacks as inferiors and subordinates and effectively secured their subjugation. Unlike arguments forwarded by color-blind constitutionalists that all recognition of race is equally pernicious, this line of argument does not accept the neutrality of race as an immutable substance anterior to discourse but instead concerns itself with the inscription and valuation of raced bodies and race as an indexical marker of the history of enslavement and subjugation. Color-blindness in its refusal to “see” race fails to overcome this invidious history and merely evades the injurious and stigmatic construction of race through this willed innocence. Moreover, color-blindness begs the question of racial classification in yielding to the givenness, the neutrality, and the immutability of race. When race is conceptualized as interminable, consistent, and invariable, the subjugation historically licensed by racial classification fails to be interrogated or remedied. Race is an effect of an ensemble of social and historical relations that have determined property relations, life chances, and an economy of value, from the accruing of profit and designations of the good, the true, and the beautiful, to calculations of human worth, through the creation of subjugated, dishonored, and castigated groups. Therefore, the refusal to see race neither diminishes that originary violence nor guarantees equality but merely enables this violence to be conducted in the guise of neutrality. A radical and expansive reading of the “badges of slavery” necessarily attends to the history of captivity, enslavement, subjugation, dispossession, exploitation, violation, and abjection productive of black difference. This history of enslavement was registered in the body’s racialized inscription, whether the purportedly discernible markings on the body’s surface or the blood coursing through indeterminate bodies, and utilized as an index of subjective value. Nonetheless, race was codified and enshrined in the law. Thus, despite its formal abrogation, slavery infused the nascent vision of equality and determined its character. The ineluctable production of racial difference undermined the assumption that blacks were released from the history of captivity by the negatory power of the Thirteenth Amendment and free agents unencumbered by the past.

27. All citations of the *Congressional Globe* are from *The Reconstruction Amendment Debates* (Richmond: Virginia Commission on Constitutional Government, 1976). The numbers in parentheses refer to the *Reconstruction Amendment Debates, Congressional Globe*, 38th Cong., 1st sess., 2990; and 39th Cong., 1st sess., 42 (97).

28. *Congressional Globe*, 39th Cong., 1st sess., 113 (99).

29. *Congressional Globe*, 38th Cong., 2nd sess., 43; 39th Cong., 1st sess., 111 (99).

30. *Congressional Globe*, 38th Cong., 1st sess., 2990. The language of self-making was

also deployed against civil rights measures for the freed. For example, Johnson's veto of the Freedmen's Bureau Bill exploited the rhetoric of self-sufficiency: "It is no more than justice then to believe that as they have received their freedom with moderation and forbearance, so they will distinguish themselves by their modesty and thrift, and soon show the world that in a condition of freedom they are self-sustaining, capable of selecting their own enjoyment and their own places of abode, of insisting for themselves, on a proper remuneration, and of establishing and maintaining their own asylums and schools." *Congressional Globe*, 39th Cong., 1st sess., 917 (148).

31. Stevens's effort to craft an amendment with an explicit antidiscrimination feature was overwhelmingly defeated. See Benjamin B. Kendrick, *Journal of the Joint Committee of Fifteen on Reconstruction* (1914): 51–52; and *Congressional Globe*, 39th Cong., 1st sess., 537. The first version of the Civil Rights Bill sustained this position. *Congressional Globe*, 39th Cong., 1st sess., 211 (104).

32. According to Carole Pateman, status "refers more generally to ascription; human beings are born in certain social positions by virtue of their ascribed characteristics, such as sex, color, age and so on. . . . Contract refers to a laissez faire economic order, an order of 'freedom of contract,' in which substantive individual characteristics and the specific subject of an agreement are irrelevant." *The Sexual Contract* (Stanford: Stanford University Press, 1988), 10. The end of status presumes that every man possesses the capacity for self-making, and thereby his condition is not limited or determined by his race. Neil Gotanda makes an analogous distinction in his discussion of the deployment of race in color-blind constitutionalism. He states that status-race "is the traditional notion of race as an indicator of social status, as elaborated by Taney in *Dred Scott*." Formal race sees racial categories as "neutral, apolitical distinctions reflecting merely 'skin color' or country of ancestral origin. Formal race is unrelated to ability, disadvantage, or moral culpability. . . . Unconnectedness (to social attributes or relations) is the defining characteristic of formal race." "A Critique of 'Our Constitution Is Color-Blind,'" *Stanford Law Review* 44.1 (November 1991): 4, 36–40. Taney provides the clearest definition of the meaning of status-race in *Dred Scott v. Sanford*: "They had for more than a century been regarded as beings of an inferior order, and altogether unfit to associate with the white race, either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit." *Dred Scott v. Sanford*, 60 U.S. (19 Howard) 407 (1857).

33. *Congressional Globe*, 39th Cong., 1st sess., 318 (107). See also *ibid.*, 363, 476.

34. *Congressional Globe*, 39th Cong., 1st sess., 499 (126).

35. *Congressional Globe*, 38th Cong., 1st sess., 2984.

36. *Congressional Globe*, 39th Cong., 1st sess., 322 (108).

37. *Congressional Globe*, 39th Cong., 1st sess., 474 (121).

38. These were the rights detailed in the Civil Rights Act. *Congressional Globe*, 39th Cong., 1st sess., 476.

39. *Congressional Globe*, 39th Cong., 1st sess., 304 (127).

40. *Congressional Globe*, 38th Cong., 2d sess., 125.

41. As Walter Benn Michaels observes, "The absence of any difference grounded in law became powerful testimony to the irreducibility of a difference reflected in the law; legal equality became the sign of racial separation." "The Souls of White Folks," in *Literature and the Body: Essays on Populations and Persons*, ed. Elaine Scarry (Baltimore: Johns Hopkins University Press, 1988), 189.

42. *Congressional Globe*, 39th Cong., 1st sess., 393, (114).

43. Edward McPherson, *The Political History of the United States of America during the Period of Reconstruction* (Washington, D.C.: Solomon and Chapman, 1875), 70.

44. For a discussion of the articles of the Constitution that sanctioned and accommodated very, see William Wiecek, *The Sources of Antislavery Constitutionalism: 1760-1848* (Ithaca: Cornell University Press, 1977) 42; Derrick Bell, *And We Are Not Saved* (New York: Basic, 1987), 26-50; *Prigg v. Pennsylvania*, 41 U.S. 539 (1842); and *Dred Scott v. Sandford*, U.S. (19 Howard), 393 (1857).
45. Senator John Davis argued: "My position is that this is a white man's government. It is made so at the beginning. The charters that were granted by the different sovereigns of the continent to the various colonies were granted to white men and included nobody but white men. They did not include Indians. They did not include negroes. . . . I say that the negro is not a citizen. He may be made a citizen by power, but it will be in disregard, I think, of principle. I deny this is a government of amalgamation." Representative John Dawson argued similarly: "It is impossible that two distinct races should exist harmoniously in the same country, on the same footing of equality by the law. The result must be a deteriorating and disgusting mixture of the races. . . . We have, then, to insist upon it that this Government is made for the white race. It is our mission to maintain it. Negro suffrage and equality are incompatible with that mission." *Congressional Globe*, 39th Cong., 1st sess., 528, 542; 39th Cong. 1st. sess., 110 (98); 39th Cong., 1st sess., 504 (127).
46. *Congressional Globe*, 39th Cong., 1st sess., 589 (135).
47. *Congressional Globe*, 39th Cong., 1st sess., 64 (133).
48. *Congressional Globe*, 39th Cong., 1st sess., 340 (109).
49. John Hogan, in *Congressional Globe*, 39th Cong., 1st sess., 64 (133).
50. As Robyn Wiegman observes, although the black male "entered enfranchisement through the symbolic possibilities that accrued to the masculine . . . that this entrance was marked by extreme and incontrovertible violence . . . demonstrates how unsettling was the possibility of the male as male." *American Anatomies: Theorizing Race and Gender* (Durham: Duke University Press, 1995), 68. Claudia Tate forcefully argues that women adapted the domestic as a way to allegorize their political desire and intervene indirectly in the public sphere. *Domestic Allegories of Political Desire* (New York: Oxford University Press, 1992).
51. William Connelly, "Liberalism and Difference," in *Identity/Difference: Democratic Negotiations of Political Paradox* (Ithaca: Cornell University Press, 1991), 81. According to Young, the ideal of a universal humanity turns a blind eye to difference in ways that advantage those marked as different, enables the privileged to ignore their own specificity, and denigrates those who deviate from the norm. *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990), 164-165.
52. Uday Mehta, "Liberal Strategies of Exclusion," *Politics and Society* 18.4 (December 1990):429-430.
53. David Theo Goldberg, *Racist Culture: Philosophy and the Politics of Meaning* (Cambridge: Blackwell, 1993), 39. Naoki Sakai notes that "what we normally call universalism is a particularism thinking itself as universalism, and it is worthwhile doubting whether universalism could ever exist otherwise." "Modernity and Its Critique: The Problem of Universalism and Particularism," in *Postmodernism and Japan*, ed. Masao Miyoshi and H. D. Harootunian (Durham: Duke University Press, 1989), 98.
54. Homi Bhabha, *The Location of Culture* (New York: Routledge, 1994), 86.
55. See Andrew Kull, *The Color-Blind Constitution* (Cambridge, Mass.: Harvard University Press, 1992), 86-87.
56. *Congressional Globe*, 39th Cong., 1st sess., 1064 (154).
57. *Congressional Globe*, 39th Cong., 1st sess., 2767 (221), on manhood as the equivalent of personhood.
58. As a consequence of U.S. naturalization policy and *Dred Scott*, citizenship virtually became synonymous with whiteness. For a discussion of the racist exclusions constitutive of

citizenship, see James Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: University of North Carolina, 1978); Benjamin B. Ringer, *We the People and Others: Duality and America's Treatment of Racial Minorities* (New York: Routledge, 1983); and Joan Hoff, *Law, Gender and Injustice: A Legal History of Women* (New York: New York University Press, 1991).

59. Kull, *The Color-Blind Constitution*, 81.

60. *People ex. rel. King v. Gallagher*, 438, 431 (1883), cited in *ibid.*, 108. Although feminist critics have noted the need for equivalent rights and the recognition of difference in redressing gender discrimination, in the nineteenth century equivalent rights invariably meant truncated and circumscribed rights. See Drucilla Cornell, *Transformations* (New York: Routledge, 1993), 112-155.

61. The argument over the legality of the Civil Rights Act of 1866 concerned the right of Congress to intervene within the states' jurisdiction over civil rights. It was argued that a constitutional amendment was required in order to do so. This was the origin of the Fourteenth Amendment. According to Hernan Belz, a sweeping transformation of citizenship occurred as a result of its passage: "Congress established the existence of national citizenship beyond any question and made state citizenship derivative from it. In its national aspect American citizenship was a title to fundamental civil rights under the constitution, such as the right to own property, which the Civil Rights Act identified. From this national right flowed the right as a state citizen to enjoy equality in respect of a state's criminal and civil code." *Emancipation and Equal Rights: Politics and Constitutionalism in the Civil War Era* (New York: W. W. Norton, 1978), 120.

62. Kull, *The Color-Blind Constitution*, 78-79.

63. *Ibid.*, 81.

64. This line of argument is not intended to suggest that antidiscrimination laws and "suspect" race classifications alone are adequate to eradicate racism. In fact, as critical legal theorists and critical race theorists have argued, the assumptions of antidiscrimination law, in fact, maintain the cogency of race as a naturalized and uninterrogated category and meritorious arguments about the distribution of resources. Alan Freeman argues that anti-discrimination law has "served more to rationalize the continued presence of racial discrimination . . . than it has to solve the problem." "Legitimizing Racial Discrimination through Anti-Discrimination Law: A Critical Review of Supreme Court Doctrine," *Minnesota Law Review* 62 (1978): 1349-1369. See also "Racism, Rights and the Quest for Equality of Opportunity: A Critical Legal Essay," *Harvard Civil Rights-Civil Liberties Law Review* 23.2 (Summer 1988): 295-392. Similarly, Robert St. Martin Westley argues that anti-discrimination reproduces normative conceptions of racial difference that fail to treat race as a social category. For a different perspective, see Kimberle Crenshaw, "Race, Reform and Retrenchment: Transformation and Legitimation in Antidiscrimination Law," *Harvard Law Review* 101.7 (May 1988): 1331-1387, which offers a different reading of antidiscrimination law, noting the transformative possibilities of liberalism.

65. Judith Baur, *Equality under the Constitution: Reclaiming the Fourteenth Amendment* (Ithaca: Cornell University Press, 1983), 102.

66. As Michael J. Sandel notes, "The system of natural liberty defines as just whatever distribution results from an efficient market economy in which a formal [legal] equality of opportunity prevails. *Liberalism and the Limits of Justice* (New York: Cambridge University Press, 1982), 66-103.

67. Brown, *States of Injury*, 110.

68. *Congressional Globe*, 39th Cong., 1st sess., 342 (110).

69. Theodore W. Allen, *The Invention of the White Race*, vol. 1 (London: Verso, 1994), 143.

0. Carl Schurz, *Report on the Condition of the South* (1865; reprint, New York: Arno, 19); U.S. Congress, *Report of the Joint Committee on Reconstruction* (Washington, D.C.: Government Printing Office, 1866).
1. Trumbull applies this logic to interracial marriage in *Congressional Globe*, 39th Cong. sess., 322 (108). Cowan utilized the same logic regarding integrated schools in *Congressional Globe*, 39th Cong., 1st sess., 500 (127).
2. As St. Clare indicts Miss Ophelia: "You loathe them as you would a snake or a toad, you are indignant at their wrongs. You would not have anything to do with them yourselves. You would send them to Africa, out of your sight and smell, and then send a missionary or two to do up all the self-denial of elevating them compendiously." Harriet Beecher Stowe, *Uncle Tom's Cabin* (1852; reprint, New York: New American Library, 1961), 195. See also Karen Sanchez-Eppler, *Touching Liberty: Abolition, Feminism, and the Politics of the Body* (Berkeley: University of California Press, 1993), 41–49.
3. *Congressional Globe*, 39th Cong. 1st sess. 420 (117), 600 (137).
4. Abraham Lincoln, *Abraham Lincoln: Speeches and Writings, 1832–1858* (New York: Library of America, 1989). See speech on *Dred Scott* at Springfield, Illinois, *ibid.*, 398; speech at Chicago, Illinois, July 10, 1858, *ibid.*, 454; fourth Lincoln-Douglas debate, Charleston, Illinois, September 18, 1858, *ibid.*, 636.
5. *Congressional Globe*, 38th Cong., 2d sess., 237 (84).
6. Thuddeus Stevens, in *Congressional Globe*, 38th Cong., 2d sess., 125.
7. *Congressional Globe*, 39th Cong., 1st sess., 542 (133).
8. *Congressional Globe*, 39th Cong., 1st sess., 1680 (194); McPherson, *Political History*, 75.
9. *Congressional Globe*, 39th Cong., 1st sess., 134 (151).
0. Eva Saks, "Representing Miscegenation Laws," *Raritan* 8.2 (1988): 42.
1. The term "miscegenation" was coined in 1863 in a seventy-two-page booklet titled *Miscegenation: The Theory of the Blending of the Races, Applied to the American White Man and the Negro*, by David Goodman Croly and George Wakeman. The word came from the Latin *miscere*, "to mix," and *genus*, "race." The authors created two other words to describe race mixing—"melaeukation" and "melamigleukation"—which never acquired the currency of "miscegenation." See Forest G. Wood, *Black Scare: The Racist Response to Emancipation* (Berkeley: University of California Press, 1968), 53–79; Harvey Applemann, "Miscegenation Statutes: A Constitutional and Social Problem," *Georgia Law Journal* 49 (1964), cited in Derrick Bell, *Race, Racism and American Law* (Boston: Little, Brown), 67.
2. In 1873, a pamphlet written by two New York Democrats in order to discredit abolitionists and Republicans praised the virtues and inevitability of miscegenation. It caused much hysteria before it was exposed as a hoax. See Wood, *Black Scare*, 53–79.
3. *Congressional Globe*, 38th Cong., 1st sess., 1490.
4. When considering the issue of state racism, we need to also examine the penal system, or laws that maintained involuntary servitude well into the 1930s and, after *Plessy*, the proliferation of Jim Crow laws.
5. According to Hubert L. Dreyfuss and Paul Rabinow, "An essential component of normalizing techniques is that they are themselves an integral part of the systemic creation, classification, and control of anomalies in the social body. Their *raison d'être* comes from their claim to have isolated such anomalies and their promises to normalize them. *Michel Foucault: Beyond Structuralism and Hermeneutics* (Chicago: University of Chicago Press, 1982), 195.
6. Cable, "Freedman's Case," 11.
7. McPherson, *Political History*, 31.

88. Gilbert Thomas Stephenson, *Race Distinctions in American Law* (New York: D. Appleton, 1910), 97.

89. *State v. Gibson*, 36 Indiana 403 (1871).

90. *Green v. State*, 58 Ala. 190 (1877).

91. *Pace v. Alabama*, 106 U.S. 583–585 (1882). State statutes prohibiting interracial marriage were not declared unconstitutional until 1967. See *Loving v. Virginia*, 388 U.S. 1 (1967).

92. Ernst Freund, *The Police Power: Public Policy and Constitutional Rights* (Chicago: Callaghan, 1909), 116. In *The History of Sexuality*, Foucault uses the term “bio-power” “to designate what brought life and its mechanisms into the realm of explicit calculations.” Michel Foucault, *The History of Sexuality*, trans. Mark Hurley (New York: Vintage, 1980), 143. My argument differs from Foucault in significant ways, particularly concerning the issue of juridical regression and the shift from sanguinity to sexuality. When we think about state racism in the nineteenth century, it is critical to consider the repressive instrumentality of the law and the obsession with blood in the production of racial subjects and management of life. Colin Gordon observes that biopolitics is concerned with “subjects as members of a population, in which issues of individual sexual and reproductive conduct interconnect with issues of national policy and power. Introduction to *The Foucault Effect*, ed. Graham Burchell, Colin Gordon, and Peter Miller (Chicago: University of Chicago Press, 1991), 5. For a brilliant discussion of biopower and modern racism, see Anna Laura Stoller, *Race and the Education of Desire: Foucault’s History of Sexuality and the Colonial Order of Things* (Durham: Duke University Press, 1995).

93. *Jones v. Commonwealth*. Virginia Reports 79, Hansbrough 4, 218 (1884).

94. Stephenson, *Race Distinctions in American Law*, 17.

95. Derrick Bell, “Property Rights in Whiteness—Their Legal Legacy, Their Economic Costs,” *Villanova Law Review* 767 (1988); Cheryl I. Harris, “Whiteness as Property,” *Harvard Law Review* 106.8 (June 1993): 1709–1791.

96. Karen Getman, “Sexual Control in the Slaveholding South: The Implementation and Maintenance of a Racial Caste System,” *Harvard Women’s Law Journal* 7 (1984): 134–142; Lawrence Friedman, *Crime and Punishment in American History* (New York: Basic, 1993), 216–217. This was also true in antebellum law, for if a white woman associated with blacks it indicated that she was of “low character” and therefore not a reliable witness.

97. Herbert Gutman, *The Black Family in Slavery and Freedom, 1750–1925* (New York: Pantheon, 1976).

98. As Brown writes, “The liberal formulation of liberty is thus not merely opposed to but premised upon encumbrance; it is achieved by displacing the embodied, encumbered, and limited nature of existence onto women, a displacement that occurs discursively and practically through a set of assigned activities, responsibilities, and emotional attributes. Insofar as this formulation of liberty requires the existence of encumbered beings, the social activity of those without liberty, it can never be fully universalized.” *States of Injury*, 56.

99. It was also feared that the Civil Rights Act and Fourteenth Amendment would make women as equal and free as men and wives as free and equal as their husbands before the law. However, this was not the case. *Congressional Globe*, 38th Cong., 1st sess., 1488.

100. The proponents of the Civil Rights Act of 1875 tried to refute this logic by separating equality from the question of society: “Nobody pretends that Equality in the highway, whether on pavement or sidewalk, is a society. And, permit me to say the Equality in all institutions created or regulated by law, is as little a question of society.” *Congressional Globe*, 42d Cong., 2d sess., 382 (579). Opponents like Representative John Davis argued that the bill would arouse the very prejudices that it was intended to eradicate and would “render tenfold more intense that feeling of antipathy which, in the not distant future, must end in the

- flict of races, fatal to one and brutalizing to the other in the spirit of hate it will engender." *Congressional Globe*, 43d Cong., 1st sess., 481 (713).
01. *Roberts v. City of Boston*, 59 Mass. (5 Cush.), 206 (1850).
02. In contemporary politics, equivalent rights have been proposed as a means of redress-gender and racial discrimination. However, it remains to be seen if race and gender can be added into the law without being injurious, or if difference is ultimately what is in need of recognition rather than the injuries and exclusion constitutive of that difference. Is not the best means of negating and correcting discrimination and domination systemic transformation and redress rather than monumentalizing the effects and detritus of social and historical process?
03. Certainly this is not a novel observation. The inequalities that inhabit the discourse of rights and formal equality have been subject to critical scrutiny by everyone from Marx to Patricia Williams. Feminist critics and critical race theorists have described the tacit exclusions and partialities lauded as the universal in terms of the masculinism of the law and/or as its normativity. Here I employ the term "white norm" to designate the centrality of whiteness as the measure of humanity in the law; however, inequality can also be produced when whiteness is relegated to the position of just another race. The embodiment of whiteness and its relativization as just "another race," rather than marking an emancipatory shift or an opening, effectively reproduce domination if this purported decentering of whiteness leaves power relations intact. By focusing on the disciplinary practices that inhabit the law, I hope to be able to address the ranking of particularities produced through the homogenizing measure of equality. I am indebted to Robert St. Martin Westley, "White Normativity and the Racial Rhetoric of Equal Protection," unpublished manuscript, for these ideas.
104. Brief for Homer A. Plessy by S. F. Phillips and F. D. McKinney, File Copies of Briefs 95 (October Term, 1895), in Otto H. Olsen, *The Thin Disguise: Plessy v. Ferguson, a Documentary Presentation* (New York: Humanities Press, 1967), 107.
105. *Dred Scott*, 701. This casting out and incorporation of the defiled and denigrated subjects defines abjection.
106. From 1873 to 1883, the radical scope of Reconstruction legislation was successfully dismantled by the Court. See Sidney Buchanan, "The Quest for Freedom: A Legal History of the Thirteenth Amendment," 357. See *United States v. Cruikshank*, 92 U.S. 542 (1876), though segregation was not codified until the 1880s, de facto segregation was the order of the day.
107. Olsen, *The Thin Disguise*, 14; Eric Sundquist, "Mark Twain and Homer Plessy," in *Wake the Nations: Race in the Making of American Literature* (Cambridge: Belknap Press, 1993), 225-270.
108. Olsen, *The Thin Disguise*, 90.
109. *Ibid.*, 101.
110. Civil Rights Cases, 109 U.S. 22-25 (1883). The "necessary incidents" of slavery at the majority recognized were "compulsory service, disability to hold property, to make contracts, to have a standing in court, to be a witness against a white person. . . . Such like orders and incapacities, were the inseparable incidents of the institution."
111. Wood, *Black Scare*, 130-155.
112. Tourgee's brief for Homer A. Plessy, in Olsen, *The Thin Disguise*, 83.
113. Saks, "Representing Miscegenation Laws," 41.
114. It was defamation to call a white person a Negro. Stephenson, *Race Distinctions in American Law*, 26-34.
115. Fields, "Ideology and Race in American History," 162. Although I agree with much of the analysis offered in this essay, I take objection to the distinction Fields makes between materiality and ideology. In noting the difference between class and race, Fields argues that class refers to a material circumstance: the inequality of human beings from the standpoint



of social power," while race is a purely ideological notion. The mistake Fields makes is in trying to dislodge the biological paradigm by minimizing the materiality of discourse or ideology, which not only embodies or reflects social relations but also produces subjects and determines a range of concrete material circumstances.

116. Olsen, *The Thin Disguise*, 89.

117. Cable, "The Negro Question," 132.

118. As an aside, it is important to note that segregation was, in fact, widespread during the Reconstruction period. Thus *Plessy* upheld what was fairly commonplace in practice. See Howard N. Rabinowitz, "From Segregation to Exclusion: Southern Race Relations, 1865-1890," *Journal of American History* 63 (Sept. 1976): 325-350; Harold D. Woodman, "Sequel to Slavery: The New History Views the Postbellum South," *Journal of Southern History* 43 (1977): 525-555. For a different interpretation, see C. Van Woodward, *The Origins of the New South* (Baton Rouge: Louisiana State University Press, 1971).

119. *Black Law Dictionary*, 1156; Christopher G. Tiedman, *A Treatise on the Limitations of Police Power in the United States* (1886; reprint New York: Da Capo Press, 1971), 1-16; Alfred Russell, *The Police Power of the State* (Chicago: Callaghan, 1900), 23-36; Ruth Locke Roettinger, *The Supreme Court and State Police Power* (Washington, D.C., Public Affairs Press, 1957), 10-22; Howard Gillman, *The Constitution Besieged: The Rise and Demise of Lochner Era Police Powers Jurisprudence* (Durham: Duke University Press, 1993).

120. *Slaughter-House Cases*, 83 U.S. (16 Wall) 62 (1873).

121. *Congressional Globe*, 39th Cong., 1st sess., 505 (128). This definition of police power was employed to defeat an earlier version of the Civil Rights Act of 1866, which contained an explicit antidiscrimination clause.

122. Stoler, *Race and the Education of Desire*, 59.

123. Poovey writes that the image of the social body was used in two distinct ways: "It referred either to the poor in isolation from the rest of the population or to British (or English) society as an organic whole . . . [and] it allowed social analysts to treat one segment of the population as a special problem at the same time that they could gesture toward the mutual interests that (theoretically) united all parts of the social whole." *Making a Social Body*, 8-9. For an insightful discussion of the police and the creation of an aggregate body or population, see Pasquale Pasquino, "Theatrum Politicum: The Genealogy of Capital-Police and the State of Prosperity," in Burchell, Gordon, and Miller, *The Foucault Effect*, 114.

124. Efforts to provide a minimum standard of existence were largely left to private organizations. As well, by the Gilded Age, Republican free labor ideology had been supplanted by the liberal ideal of liberty of contract.

125. Mark Tushnet distinguishes these categories along the following lines: "Civil rights attached to people simply because they were people; they were rights one had in a state of nature, such as the right to personal freedom of action, the right to life, and the right to pursue a life plan. . . . Political rights, in contrast, arose from a person's location in an organized political system. . . . Social rights were exercised in the rest of the social order and most importantly, in the market. For Reconstruction legal thought, government had nothing to do with guaranteeing social rights except to enforce those rights guaranteed by the common law." "Civil Rights and Social Rights: The Future of the Reconstruction Amendments," *Loyola of Los Angeles Review* 25 (June 1992): 1208.

126. According to Benhabib, "'Privacy' means first and foremost noninterference by the political state in the freedom of commodity relations, and in particular nonintervention in the free market of labor power." "Models of Public Space," 91; Nancy Fraser, "Rethinking the Public Sphere: A Contribution to the Critique of Actually Existing Democracy," 109-142. in Calhoun, *Habermas and the Public Sphere*.

7. *Civil Rights Cases*, 14.
8. *Civil Rights Cases*, 36; Belz, *Emancipation and Equal Rights and A New Birth of dom*. According to Belz, “Social rights referred to the sphere of strictly personal relationships, either in the household or outside it, in which personal taste or prejudice could imately hold sway and into which the law did not enter. . . . Schools, voluntary associations, transportation facilities, and places of business and entertainment are perhaps the conspicuous examples of arenas that nowadays are, but were not then (in the nineteenth century), comprehended under the rule of civil rights equality.”
9. Neil Gotanda notes that the public-private distinction and the freedom of association ways of maintaining segregation.
10. However, in the United States, unlike the situation in France, the concern about all rights is not directed by reformist impulses to attend to the material concerns of colors, women, and the poor; instead it is an avenue of subordination and repression. Mainly it has been argued that even in France social rights result from the domestication and incorporation of resistance and are inseparable from the issue of governability. In the twentieth-century United States, the social concerns were the liberties of the dominant class—the control and regulation of those variously encumbered by an array of corporeal conditions—that is, blacks, women, and workers.
11. Fraser, *Unruly Practices*, 170.
12. Unlike the emergence of the social that typified the nineteenth-century European bureaucratic state, in the United States the welfare state did not emerge until the New Deal, though the 1890s were the beginning of the Age of Reform, in which issues of the needs and of the poor, dependent, and infirm became the subject of public concern and intervention, solely through private charitable organizations. Actually, the opposite is at work in the official definition of the social in *Plessy*. Issues of public and political concern are privatized and relegated to the law-free sphere of desire. An erosion occurs in these interests by dismissing public matters as private. This expanse of the private has a range of reactionary andressive effects. The social in this regard enables the privatization of public concerns rather than the encroachment of the private in an arena of public concern. Arendt, *Human Conditions*, 32.
13. Fraser, *Unruly Practices*, 170.
14. Fraser argues that runaway needs are “markers of major social-structural shifts in the boundaries separating what are classified as ‘political,’ ‘economic,’ and ‘domestic’ or ‘personal’ spheres of life.” *Ibid.*, 171. The entanglements of race and class in regard to the social can be seen in the Court’s assessment of legitimate and illegitimate police power. Exercises of police power that enforced segregation and laissez-faire were upheld, while those interventions designed to protect workers were overturned as class legislation. See Hirsch, *A Theory of Liberty*, 82–85. For a different reading of the Court’s assessment of police power, see Ward Gillman, *The Constitution Besieged: The Rise and Demise of Lochner Era Police Power Jurisprudence* (Durham: Duke University Press, 1993).
15. *Plessy*, 560.
16. Cable, “The Negro Question,” 144–145. As Ronald Takaki notes, “Essentially Cable was calling for laissez-faire in race relations. Free from government interference and regulation, the ‘instinctive antagonism’ between the two races would prevail and the ‘Caucasian race’ would preserve its ‘high purity’ without the aid of ‘onerous civil distinctions.’” *Iron Cages: Race and Culture in 19th Century America* (Seattle: University of Washington Press, 1979), 209.
17. As Pasquino remarks, once we leave behind the theatricum politicum of the state defining society, the state becomes the “entire body of civil society.” This new vantage point entails “resituating the analysis of the relations of power wholly within the interior of the

social body." The state then becomes one instrument among others in "the modality of government." "Theatrum Politicum," 116–117.

138. Cable, "The Negro Question," 144.

139. This is different from the emergence of the European social, which corresponds more with the Age of Reform. In the nineteenth-century United States, the social is articulated primarily through repression and the fortification of the private rather than the expansion of the state as it takes on householding duties.

140. Borchell, Gordon, and Miller, *The Foucault Effect*, 29.

141. This is not an endorsement of the state's regulation of the private or a call for more law but rather an attempt to underline the disavowed regulation conducted by way of declarations of noninterference. Nancy Fraser writes: "The private functions ideologically to delimit the boundaries in ways that disadvantage subordinate groups." "Rethinking the Public Sphere," 131.

142. For an exemplary demonstration of this critical disinterment, see Kendall Thomas, "Beyond the Privacy Principle," in *After Identity* (New York: Routledge, 1995), 277–293.

143. This construction of the private continues to plague feminist and antiracist politics. Patricia Williams, *The Alchemy of Race and Rights* (Cambridge, Mass.: Harvard University Press, 1991), 15–41. Nadine Taub and Elizabeth Schneider write: "Tort law, which is generally concerned with injuries inflicted on individuals, has traditionally been held inapplicable to injuries inflicted by one family member on another. Under the doctrines of interspousal and parent-child immunity, courts have consistently denied recoveries for injuries that would be compensable but for the fact that they occurred in the private realm." Obviously, marital rape is another instance of this order of violation. "Women's Subordination and the Role of Law," in *The Politics of Law: A Progressive Critique*, ed. David Kairys (New York: Pantheon, 1982), 155.

144. Olsen, *The Thin Disguise*, 93.

145. *Ibid.*, 107.



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provocative and original exploration of racial subjugation during slavery and its  
t, Saidiya Hartman illuminates the forms of terror.  3 1735 045 344 870  
*Scenes of Subjection* examines the forms of domination. Similar, the encroachments of power that take place through notions of humanity, enjoyment, protection, rights, and consent. By looking at slave narratives, plantation diaries, theater, slave performance, freedmen's primers, and legal cases, Hartman investigates a variety of "scenes" ranging from the auction block and minstrel show to the staging of self-possessed and rights-bearing individual of freedom. While attentive to the performance of power—the terrible spectacles of slaveholders' dominion and the innocent entertainments designed to abase and pacify the enslaved—and the entanglements of pleasure and power in these displays of mastery, Hartman also examines the possibilities for resistance, and transformation embodied in black performance and everyday practice. This important study contends that despite the legal abolition of slavery, emergent notions of individuality and responsibility revealed the tragic continuities between slavery and freedom. Well persuasively argued, *Scenes of Subjection* will engage readers in a broad range of fields, literary, and cultural studies.

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