

## Perfecting Slavery

*Anthony Paul Farley\**

*The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth, and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage, and holds fast to the principles of constitutional liberty.<sup>1</sup>*

*[P]eople will be able to liberate themselves only after the legal superstructure itself has begun to wither away. And when we begin to overcome and to do without these [juridical] concepts in reality, rather than merely in declarations, that will be the surest sign that the narrow horizon of bourgeois law is finally opening up before us.<sup>2</sup>*

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

2. EVGENY BRONISLAVOVICH PASHUKANIS, *THE GENERAL THEORY OF LAW AND MARXISM* 188 (Transaction Publishers 2002) (1924).

## I. SPECTERS OF SLAVERY

Slavery is with us still. We are haunted by slavery. We are animated by slavery. White-over-black is slavery *and* segregation *and* neosegregation *and* every situation in which the distribution of material or spiritual goods follows the colorline. The movement from slavery to segregation to neosegregation to whatever form of white-over-black it is that may come with post-modernity or after is not toward freedom. The movement from slavery to segregation to neosegregation is the movement of slavery perfecting itself. White-over-black is neosegregation. White-over-black is segregation. White-over-black is slavery. All of it is white-over-black, only white-over-black, and that continually. The story of progress up from slavery is a lie, the longest lie. The story of progress up from slavery is told juridically in the form of the rule of law.

Slavery is the rule of law. And slavery is death.

The slave perfects itself as a slave when it bows down before its master of its own free will. That is the moment in which the slave accomplishes the impossible reconciliation of its freedom with its unfreedom by willing itself unfree.<sup>3</sup> When exactly does this perfection of slavery take place? The slave bows down before its master when it prays for legal relief, when it prays for equal rights, and while it cultivates the field of law hoping for an answer.

The slave's free choice, the slave's leap of faith, can only be taken under conditions of legal equality. Only after emancipation and legal equality, only after rights, can the slave perfect itself as a slave. Bourgeois legality is the condition wherein equals are said to enter the commons of reason<sup>4</sup> or the kingdom of ends<sup>5</sup> or the New England town meeting of the soul to discuss universalizable principles, to discuss equality and freedom. Much is made of these meetings, these struggles for law, these festivals of the universal. Commons, kingdom, town meeting, there are many mansions in the house of law, but the law does not forget its father, as Maria Grahn-Farley observes:

The law of slavery has not been forgotten by the law of segregation; the law of segregation has not been forgotten by the law of neo-segregation. The law guarding the gates of slavery, segregation, and

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3. Anthony Paul Farley, *The Black Body as Fetish Object*, 76 OR. L. REV. 457, 530 (1997) [hereinafter Farley, *The Black Body as Fetish Object*].

4. ANNETTE C. BAIER, *THE COMMONS OF REASON* 1-19 (1997).

5. For an extended discussion of Kant and legal theory, see generally Anthony Paul Farley, *The Dream of Interpretation*, 57 U. MIAMI L. REV. 685, 688-725 (2003) [hereinafter Farley, *The Dream of Interpretation*].

neosegregation has not forgotten its origin; it remembers its father and its grandfather before that. It knows what master it serves; it knows what color to count.<sup>6</sup>

To wake from slavery is to see that everything must go, every law room,<sup>7</sup> every great house, every plantation, all of it, everything.

Requests for equality and freedom will always fail. Why? Because the fact of *need* itself means that the request will fail. The request for equality and freedom, for rights, will fail whether the request is granted or denied. The request is produced through an injury.<sup>8</sup> The initial injury is the marking of bodies for less—less respect, less land, less freedom, less education, less. The mark must be made on the flesh because that is where we start from. Childhood is where we begin and, under conditions of hierarchy, that childhood is already marked. The mark organizes, orients, and differentiates our otherwise common flesh. The mark is race, the mark is gender, the mark is class, the mark *is*. The mark is all there is to the reality of those essences—race, gender, class, and so on—that are said to precede existence. The mark is a system.<sup>9</sup> Property and law follow the mark. And so it goes.

There is a pleasure in hierarchy. We begin with an education in our hierarchies. We begin with childhood and childhood begins with education. To be exact, education begins our childhood. We are called by race, by gender, by class, and so on. Our education cultivates our desire in the direction of our hierarchies. If we are successful, we acquire an orientation that enables us to locate ourselves and our bodies *vis-à-vis* all the other bodies that inhabit our institutional spaces. We follow the call and move in the generally expected way. White-over-black is an orientation, a pleasure, a desire that enables us to find our

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6. Maria Grahn-Farley, *The Master Norm*, 53 DEPAUL L. REV. 1215, 1227 (2004) [hereinafter Grahn-Farley, *The Master Norm*].

7. Maria Grahn-Farley, *The Law Room: Hyperrealist Jurisprudence & Postmodern Politics*, 36 NEW ENG. L. REV. 29, 34 (2001) (“[L]aw-room’ refers to the closed space of a particular legal paragraph.”) [hereinafter Grahn-Farley, *The Law Room*].

8. Maria Grahn-Farley, *A Theory of Child Rights*, 57 U. MIAMI L. REV. 867, 868 (2003) [hereinafter Grahn-Farley, *A Theory of Child Rights*] (“Rights are the emptiness that remains when a person is made to be less than human.”).

9. See Grahn-Farley, *The Law Room*, *supra* note 7, at 29 (discussing Colette Guillaumin’s “system of marks” and how it replaces the internal ambiguities with a totalizing theory that fixes one’s understanding of the world and the people in it along lines like sex and race”). Building on Grahn-Farley’s discussion of the “system of marks,” I argue that race is the way that the skin is made to mean hierarchy (white-over-black). Gender is the way that sex is made to mean hierarchy (man-over-woman). Class is the way that gestures and habits and locutions come to be associated with ownership and non-ownership (the owner/non-owner hierarchy is one in which both groups define freedom as the right of the former to extract surplus value from the latter and the right of the latter to maneuver, within the bounds of law, for only the exact same relation, owner/non-owner, that they are already in).

place, and therefore our way, in our institutional spaces. This is why no one ever need ask for equality and freedom. This is why the fact of need means that the request will fail.

The request for rights—for equality—will always fail because there are always ambiguities. To be marked for less, to be marked as less than zero, to be marked as a negative attractor, is to be in the situation of the slave. The slave is not called. The slave is not free. The slave is called to follow the calling that is not a calling. The slave is trained to be an object; the slave is trained, in other words, to not be. The slave is death. Death is the end of ambiguity. To be in the situation of the slave is to have all the ambiguities organized against you. But there are always ambiguities, one is always free. How, then, are the ambiguities organized? How is freedom ended? The slave must *choose* the end of ambiguity, the end of freedom, objecthood. The slave must freely choose death. This the slave can only do under conditions of freedom that present it with a choice. The perfect slave gives up the ghost and commends its everlasting spirit to its master. The slave's final and perfect prayer is a legal prayer for equal rights. The texts of law, like the manifest content of a dream, perhaps of wolves, may tell a certain story or an uncertain story. The certainty or uncertainty of the story is of absolutely no consequence. The story, the law, the wolves' table manners, do not matter. The story, the law, the story of law, the dream of wolves,<sup>10</sup> however, represents a disguised or latent wish that *does* matter. The wish is a matter of life or death.

We are strangers to ourselves. The dream of equality, of rights, is the disguised wish for hierarchy. The prayer for equal rights is the disguised desire for slavery. Slavery is death. The prayer for equal rights, then, is the disguise of the deathwish. The prayer for equal rights is the slave's perfect moment. The slave's perfect prayer, the prayer of the perfect slave, is always answered. The slave, however, knows not what it does when it prays for rights, for the slave is estranged from itself. Of its own inner strivings it knows not. The slave strives to be property but since property cannot own property the slave cannot own its inner strivings. The slave strives to produce the final commodity—law. In other words, the slave produces itself as a slave through law. The slave produces itself as a slave (as a commodity) through its own prayer for equal rights. And that prayer is all there is to law.

The slave bows down before the law and prays for equal rights. The

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10. See Anthony Paul Farley, *Behind the Wall of Sleep*, 15 LAW & LITERATURE 421, 426–27 (2003) (reviewing the myth of Romulus and Remus and the wolf said to have been their caretaker).

slave bows down *before* the law and then there is law. *There is no law before the slave bows down.* The slave's fidelity becomes the law and the law is perfected through the slave's struggle for the universal, through the slave's struggle for equality of right.

The slave prays for equality of right. Rights cannot be equal. Its perfect prayer is answered; the law's ambiguities open, like the gates of heaven, just above its head. And all of the white-over-black accumulated within the endless ambiguities of law rains down. White-over-black is slavery and slavery is death. Death is the end of forever. The end of forever is perfection and perfection, for us, seems divine, beyond the veil, beyond death; hence, the end of forever.

There is a pleasure in this death. It is the pleasure of hierarchy. If there is hierarchy, white-over-black, for example, there is an experience of pleasure in it. Bodies are marked white-over-black. This is a pleasure and a desire. Property is marked white-over-black. This too is a pleasure and a desire. Law, following the system of marks and the system of property, is white-over-black, and a pleasure and a desire. There are always ambiguities. The ambiguities are vessels of our desires. Our pleasures and desires follow the colorline. In a colorlined order, all institutions are ordered by the colorline. A white-over-black orientation is required to navigate the institutions that order life. In other words, a white-over-black orientation is required to follow the colorline and one must follow the colorline or lose one's way. The ambiguities, then, are always white-over-black. White-over-black is the North Star. Every correct legal answer is white-over-black. There is a pleasure and a desire in moving to the correct answer. The pleasure and desire of moving to the "correct" answer is experienced as the sublime pleasure of the legal method, as the sovereignty of death. The commodity reaches its apogee in the black.<sup>11</sup> There is no black, save for white-over-black. White-over-black is slavery. Slavery is death. Death is the end of it all. Death is the complete end. Death, then, is perfection, the end of all things. The slave perfects itself as a slave when it prays for slavery. The slave, being perfect in that moment of prayer, is one with that before which it bows down in prayer. The slave prays to itself for itself to be transformed into itself and so its perfect prayer is always already granted.

The slave prays for equal rights. Rights cannot be equal. If the slave were not hated, *lessened*, then it would never experience itself as less-than. Without the experience of being less-than, the idea of equal-to

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11. See generally Anthony Paul Farley, *The Apogee of the Commodity*, 53 DEPAUL L. REV. 1229 (2004).

could not arise. To be a slave is to become what one becomes through the experience of less-than. The less-than experience may be expressed as white-over-black. White-over-black is an identity and an orientation. White-over-black is a form of training. Our institutions, under the colorline, are forms of white-over-black. Every institution is a form of training. Our institutions, under the colorline, are forms of training in white-over-black. The sum of our institutions is the sum of our training. The fact of white-over-black means that white-over-black has become the form of our institutions and the orientation required to move through them. White-over-black as fact means that ambiguities are resolved into white-over-black. The fact that the slave is hated means that hating the slave has become a habit and a pleasure and a desire and a system of training (a system of providing pleasure and cultivating desire).

There are always ambiguities. White-over-black means we always know how to resolve the ambiguities. White-over-black means that we resolve the ambiguities into white-over-black. The slave, then, who prays for rights, will receive an answer. The answer, like all answers, will be filled with ambiguities. The ambiguities, in turn, will be filled with white-over-black. The requested right will be granted or withheld in the form of white-over-black. White-over-black is slavery. The slave who prays for rights, for equality of right, prays, in the end, for slavery, for white-over-black, for death. The slave truly becomes a slave only in that moment of prayer when it *chooses* to become itself. The deep meaning of the slave's prayer before the law, then, is that it is always already granted.

The slave prays with knowing non-knowledge for white-over-black. The slave prays for slavery. The slave prays for death. Death is its perfection as a slave. Death is what it already is in that moment of perfect prayer. The slave, in its moment of perfection, is already completely separate from itself. The slave knows and does not know what it is doing. The slave has knowing non-knowledge of itself and its actions. The slave, then, is two and the two are strangers to each other: “[F]ather, forgive them; for they know not what they do.”<sup>12</sup> The slave, in its perfect moment, commends its everlasting spirit to its master: “[F]ather, into thy hands I commend my everlasting spirit.”<sup>13</sup> The slave, in that same perfect moment, simultaneously understands itself as forsaken by that master: “[M]y God, my God, why hast thou forsaken me?”<sup>14</sup> The slave gives up the ghost and the system of capital acquires

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12. *Luke* 23:34 (King James).

13. *Luke* 23:46 (King James).

14. *Matt.* 27:46 (King James); *Mark* 15:34 (King James).

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a spirit.

## II. MIND AND MATTER

Slavery is the division of labor. Under slavery, the human is divided into mind and matter.<sup>15</sup> Slavery is a murder and suicide.<sup>16</sup> The master kills himself when he becomes the master.<sup>17</sup> The slave is killed by slavery.<sup>18</sup> When the slave *chooses* slavery its death is perfect and eternal. The slave chooses slavery when the master's mastery becomes the sublime notion of rule of law:

Division of labour only becomes truly such from the moment when a division of material and mental labour appears. . . From this moment onwards consciousness can really flatter itself that it is something other than consciousness of existing practice, that it really represents something without representing something real; from now on consciousness is in a position to emancipate itself from the world and to proceed to the formation of 'pure' theory, theology, philosophy, ethics, etc.<sup>19</sup>

The rule of law is one of the ways that masters and slaves "flatter themselves" that their thoughts are made up of "something other than consciousness of existing practice." The rule of law is one of the ways that masters and slaves "flatter themselves" that their thoughts are pure. Schizophrenia is when one "flatters" oneself that one's thoughts are made up of "something other than consciousness of existing practices." The rule of law is the way that this schizophrenic flattery is forced from everyone's lips.

It seems that after "a division of mental and manual labour appears" that the slave is assigned the latter and the master is assigned the former. All is not as it seems. The slave actually does the *mental work* that keeps the structure from falling apart. The slave dreams of rights and of equal justice under law. The production of dreams is the slave's true and secret function. The slave produces all of the equations that stabilize the system of death-over-life through its prayers for equal rights. The slave's prayer resolves all present contradictions into white-over-black, for white-over-black is all that equal rights or law can ever

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15. On the mind/matter distinction in jurisprudence, see generally, Grahn-Farley, *A Theory of Child Rights*, *supra* note 8, at 874–80 (noting that matter is the reallocation of human, economic, and organizational resources).

16. See Grahn-Farley, *The Master Norm*, *supra* note 6, at 1224–25 ("To ask the question of what is human is both suicide and murder.").

17. *Id.* at 1224 ("The master committed suicide when he became the master").

18. *Id.* at 1225.

19. KARL MARX, *THE GERMAN IDEOLOGY* 51–52 (C.J. Arthur ed., 1974).

be or become.

The slave's prayers for equal rights produce a home for the future good will of its master.<sup>20</sup> This, then, is the production of commodities by means of commodities. The legal form is empty. The slave produces the legal form and that form, in turn, is filled with the actual relation for which the law is itself the instrument of disavowal or repression. The legal form is the instrument of repression *and* the vehicle of return. What is repressed is slavery and slavery is what returns and the slave has knowing non-knowledge of this as it labors to produce equality of right out of white-over-black. The slave is the one that produces slavery and segregation and neosegregation. The slave produces white-over-black and white-over-black and white-over-black and by its juridical strivings creates the Promised Land. There, in the Promised Land, "consciousness can really flatter itself that it is something other than consciousness of existing practice,"<sup>21</sup> and slaves are free to rattle their chains, like ghosts. The Promised Land is the undiscovered country.

### III. SCREEN MEMORIES

Sometimes things go awry. Sometimes a terrible thing happens. Sometimes that terrible thing is too terrible to remember and too terrible to forget. And so we remember and we forget and we remember and we forget and we remember and we forget and so it goes. We go on and on and on in a circuit of memory and forgetting, horizoned by the terrible thing itself, the very matter that we remember and forget. We are troubled by reminiscences.<sup>22</sup> The juridical horizon is a screen for our unbearable memory of slavery.

We remember progress. We remember progress juridically as slavery-to-segregation and segregation-to-neosegregation and neosegregation to something else and then on and on and on into a

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20. JEAN-PAUL SARTRE, *Revolutionary Violence, Appendix II*, in NOTEBOOKS FOR AN ETHICS 561, 565 (David Pellauer trans., 1992).

21. MARX, THE GERMAN IDEOLOGY, *supra* note 19, at 51.

22. What was said of the "hysteric" may be said of, the person living under the colorline. JOSEF BREUER & SIGMUND FREUD, *STUDIES ON HYSTERIA* 7 (James Strachey, ed. & trans., Basic Books 1957) ("Hysterics suffer mainly from reminiscences."). Slaves are troubled by reminiscences. The racialized subject, whose position, white-over-black, is the memory of slavery, exists within a structure, white-over-black, that is itself the concrete form taken by the "hysterical" repression of all memories of how white-over-black came to be. The white-over-black position is itself a form of forgetting and a form of memory-through-repetition. The repetition is the symptom that reveals the repressed memory. I borrow the term "white-over-black" from Winthrop D. Jordan. See generally WINTHROP D. JORDAN, *WHITE OVER BLACK: AMERICAN ATTITUDES TOWARD THE NEGRO, 1550-1812* (1977).

seemingly ever-expanding future freedom.<sup>23</sup> We remember progress but there can be no progress up from slavery. Slavery is death and death is the end. There is no exit. There is no progress. How, then, are our juridical memories of progress up from slavery possible? Of what odd substance are our juridical memories made and why? If the childhood of a nation is akin to the childhood of an individual then perhaps psychoanalysis points toward an answer:

[T]he majority of spontaneous childhood memories owe their escape from general infantile amnesia to the fact that they are associatively connected with childhood experiences, laden with most important and vivid affects, that have themselves succumbed to repression. The emphasis has been *displaced* along associative pathways from those important experiences to scenes belonging to “screen” (or “cover”) memories.<sup>24</sup>

I argue that memories of progress up from slavery are screen memories. We *remember* slavery-to-segregation-to-neosegregation as progress up from slavery but there is no progress. Slavery is screened by segregation and segregation is screened by neosegregation and so it goes on and on and on from slavery to slavery to slavery. The differences, juridically noted, between slavery and segregation and neosegregation are *screens* masking the traumatic fact of white-over-black.<sup>25</sup> Slavery is white-over-black. Segregation is white-over-black. Neosegregation is white-over-black. There is, then, white-over-black, white-over-black only, and that continually. Slavery is death. Death is the end. Memories of progress screen or cover over this death that we have already died. There is a death that is superintended by the dead who do not remember that they are dead. Slavery is that death.

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23. Per Justice Sandra Day O’Connor, the future lasts twenty-five years. See *Grutter v. Bollinger*, 539 U.S. 306, 343 (2003) (“We expect that 25 years from now, the use of racial preference will no longer be necessary to further the judicial interest approved today.”). For an extended discussion of one aspect of Justice O’Connor’s colorlined jurisprudence, see generally Anthony Paul Farley, *Lacan & Voting Rights*, 13 *YALE J.L. & HUMAN.* 283, 288–90 (2001).

24. OTTO FENICHEL, *The Economic Function of Screen Memories (1927)*, in *THE COLLECTED PAPERS OF OTTO FENICHEL, FIRST SERIES* 113, 113 (Hanna Fenichel & David Rapaport eds., 1953). Otto Fenichel continued: “The latter remain in consciousness as the equivalents, so to say, of the former, and their emphasis has enabled the objective memory to sink away. It is as . . . if a partial discharge is vouchsafed it through the consciousness of the screen memory.” *Id.*

25. As Du Bois noted:

Here is the modern labor problem. Here is the kernel of the problem of Religion and Democracy, of Humanity. Words and futile gestures avail nothing. Out of the exploitation of the dark proletariat comes the surplus value filched from human beasts which, in cultured lands, the machine and harnessed Power veil and conceal. The emancipation of man is the emancipation of labor and the emancipation of labor is the freeing of that basic majority of workers who are yellow, brown and black.

W.E.B. DU BOIS, *BLACK RECONSTRUCTION IN AMERICA* 16 (1998).

## IV. MANY THOUSANDS GONE

Some of slavery's many thousands gone actually managed to return from the dead, from the death that is slavery, to bear witness. These witnesses produced the literature of escape. One such witness from the undiscovered country, Frederick Douglass, wrote:

I often found myself regretting my own existence, and wishing myself dead; and but for the hope of being free, I have no doubt but that I should have killed myself, or done something for which I should have been killed. While in this state of mind, I was eager to hear any one speak of slavery.<sup>26</sup>

Death is the end of slavery. Those who return from the end frighten the rest of us out of our rest. There is a fear that the dead will return and carry us away. Fear murders sleep. We look away from the dead. The look in their eyes is uncanny.

Slavery is the end of forever, it is the end of the human condition. The end of the human condition is death. This end is too much to bear—too much to remember *and* too much to forget—and so we forget and, in our forgetting, remember.

Slavery, our slavery, begins and ends with white-over-black. It sometimes seems that we have moved away from the tyranny, from the terror, from slavery's death to some New England town meeting that includes, or will quite soon include, the souls of all those hitherto enslaved black folk.<sup>27</sup> It sometimes seems to some of us that we are on the verge of some *great gettin' up mornin'* in which the dead will awaken, the *many thousands gone* will return, and all will be right as

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26. NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE, WRITTEN BY HIMSELF 56 (Signet 1968) [hereinafter DOUGLASS, Signet].

27. W.E.B. DU BOIS, THE SOULS OF BLACK FOLK 187-188 (Vintage Books 1989) (1903) [hereinafter DU BOIS, THE SOULS OF BLACK FOLK]. W.E.B. Du Bois concluded *The Souls of Black Folk* with this prayer:

If somewhere in this whirl and chaos of things there dwells Eternal Good, pitiful yet masterful, then anon in His good time America shall rend the Veil and the prisoned shall go free. Free, free as the sunshine trickling down the morning into these high windows of mine, free as yonder fresh voices welling up to me from the caverns of brick and mortar below – swelling with song, instinct with life, tremulous treble and darkening bass. My children, my little children are singing to the sunshine, and thus they sing:

*Let us cheer the weary traveller,*

*Cheer the weary traveller,*

*Let us cheer the weary traveller*

*Along the heavenly way.*

And the traveller girds himself, and sets his face toward the Morning, and goes his way.

*Id.* (musical bars omitted).

rain, right as rain and without the thunder. We are said to have moved from slavery to segregation to neosegregation. Free at last! Free at last! Free at last! Or so our masters tell us. But the fire bell is still ringing in the night, somewhere behind the wall of sleep, and all is not as it seems in the Promised Land of the Civil Rights Movement dream. Before the morning is night and memory and forgetting will not let us simply declare things to be alright.

Slavery is white-over-black. Segregation is white-over-black. Neosegregation is white-over-black. The movement, then, from slavery to segregation to neosegregation, from the so-called past to the so-called present, from *then* to *now*, is movement from white-over-black to white-over-black to white-over-black, and that is not movement. That is the motionlessness of death. The so-called Civil Rights Movement has taken us from white-over-black to white-over-black to white-over-black. White-over-black, whatever its juridical designation, is slavery. Slavery is death. The end, death, requires a beginning. White-over-black begins where it ends. White-over-black begins with death.

Education is where we begin. We begin after we are called.<sup>28</sup> We are called and that is when and how we all begin. There is a calling. We are called upon to be. We can only be by becoming. What we become depends upon the calling that we choose to follow. We become the calling that we make our own. Jonathan Kozol writes of education in the neosegregated, post-*Brown v. Board of Education* era as “death at an early age.”<sup>29</sup> White-over-black is death at an early age. Slaves are not called. Slavery is death. Education is where this death begins.

## V. ABOLITION

*Abolition.* The word calls to the slave but slaves are not called. Slaves cannot be called. Freedom is the only calling. Everything not called is a thing, an object, and if the object takes the form of the human then it is abject. Frederick Douglass wrote:

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28. Without a call, without another’s voice, without the voice of another, we are deserted and never even come to be. We are, then, within ourselves, desert. That is the territory we start from, the non-space of the desert. The desert is the same for all, for all is emptiness and emptiness is the same. We are called out of the desert by the other. We are called to be. Before the call we are not. Before the call we are naught but desert emptiness. After the call, which we follow out of the desert, we can only *be* by *becoming* since were we not, we were naught, before. What we become, then, we become by making of ourselves that which we make of ourselves. Freedom, being the thing we make of ourselves, is everything and to be for anyone it must be for everyone. *We have been naught, we shall be all.*

29. See generally JONATHAN KOZOL, DEATH AT AN EARLY AGE: THE DESTRUCTION OF THE HEARTS AND MINDS OF NEGRO CHILDREN IN THE BOSTON PUBLIC SCHOOLS (1967) (writing of education in the neosegregated, post-*Brown v. Board of Education* era as “death at an early age”).

If a slave ran away and succeeded in getting clear, or if a slave killed his master, set fire to a barn, or did any thing very wrong in the mind of a slaveholder, it was spoken of as the fruit of *abolition*. Hearing the word in this connection very often, I set about learning what it meant.<sup>30</sup>

There, in the above passage from Douglass's narrative of his life, we read of the call that became his calling, "abolition," but slaves cannot be called. Education is the call and abolition is the same call ("I set about learning what [abolition] meant"<sup>31</sup>). Education requires abolition. Abolition requires education. Freedom is the only education. One can only be called to freedom. Abolition called Douglass. Abolition became Douglass's calling.<sup>32</sup> The tree of knowledge produces the forbidden fruit of "abolition."<sup>33</sup> What happens to the slave who responds to the call, who enables herself to call and to be called? What, in other words, happens to the slave who learns to read and to write?

"[T]he most common widely known penalty for learning to read and write was amputation."<sup>34</sup> It is difficult to *remember* these *dismemberments* and so we screen them with juridical memories of progress up from a slavery that never ended. Education and freedom are the same call, the same calling.

## VI. EDUCATION

We who have slavery with us still are made up of memory and forgetting. Freedom is our calling. Slaves are not called. Education is required to pursue our calling. Education is dangerous to slavery, to the system of white-over-black. James Baldwin, speaking to Harlem teachers, noted:

The paradox of education is precisely this—that as one begins to

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30. NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE, WRITTEN BY HIMSELF 25 (Dover Publications, Inc. 1995) [hereinafter DOUGLASS, Dover].

31. *Id.*

32. Douglass taught his comrades in bondage:

These dear souls came not to Sabbath school because it was popular to do so, nor did I teach them because it was reputable to be thus engaged. Every moment they spent in that school, they were liable to be taken up, and given thirty-nine lashes. They came because they wished to learn. Their minds had been starved by their cruel masters. They had been shut up in mental darkness. . . . [I] devoted three evenings in the week, during the winter, to teaching the slaves at home. And I have the happiness to know, that several of those who came to Sabbath school learned how to read; and that one, at least, is now free through my agency.

*Id.* at 48-49.

33. DOUGLASS, Signet, *supra* note 26, at 56.

34. JANET DUTSMAN CORNELIUS, "WHEN I CAN READ MY TITLE CLEAR": LITERACY, SLAVERY, AND RELIGION IN THE ANTEBELLUM SOUTH 66 (1992).

become conscious one begins to examine the society in which he is being educated. The purpose of education, finally, is to create in a person the ability to look at the world for himself, to make his own decisions, to say to himself this is black or this is white, to decide for himself whether there is a God in heaven or not.<sup>35</sup>

Baldwin continued:

[I]f I were a teacher in this school, or any Negro school . . . dealing with Negro children, who were in my care only a few hours of every day and would then return to their homes and to the streets, children who have an apprehension of their future which with every hour grows grimmer and darker, I would try to teach them—I would try to make them know—that those streets, those houses, those dangers, those agonies by which they are surrounded are criminal. I would try to make each child know that these things are a result of a criminal conspiracy to destroy him. I would teach him that if he intends to be [an adult], he must at once decide that he is stronger than this conspiracy and that *he must never make his peace with it*. And that one of his weapons for refusing to make his peace with it and for destroying it depends on what he decides he is worth.<sup>36</sup>

C.L.R. James, writing on the revolution in Haiti, observed of the small, privileged class of slaves that while most slavishly imitated their masters, albeit in a lesser key, a few used their positions to become dangerous, to become the revolutionaries who would later burn down every plantation:

Permeated with the vices of their masters and mistresses, these upper servants gave themselves airs and despised the slaves in the fields. . . . But a few of these used their position to cultivate themselves, to gain a little education, to learn all they could. The leaders of a revolution are usually those who have been able to profit by the cultural advantages of the system they are attacking, and the San Domingo revolution was no exception to this rule.<sup>37</sup>

The leaders of the revolution in Haiti were slaves who, like Douglass, took and ate of the forbidden fruit of “abolition.”<sup>38</sup> The leaders of that revolution, in other words, were slaves who had educated themselves.<sup>39</sup> James Baldwin understood this and warned the post-*Brown* school children of Harlem and their teachers that the institutions within which

35. James Baldwin, *A Talk To Harlem Teachers*, in *HARLEM U.S.A.* 174, 175 (John Henrik Clarke ed., Seven Seas Publishers 1963).

36. *Id.* at 182 (emphasis added).

37. C.L.R. JAMES, *THE BLACK JACOBINS: TOUSSAINT L’OUVERTURE AND THE SAN DOMINGO REVOLUTION* 19 (Vintage Books, 2d ed. 1989).

38. See DOUGLASS, *Signet*, *supra* note 26, at 56 (teaching himself the meaning of “abolition”).

39. JAMES, *supra* note 37, at 19.

they lived were a “criminal conspiracy” with which tomorrow’s revolutionaries “must never make . . . peace.”<sup>40</sup> It is with education, then, that the study of memory and forgetting begins.

C.L.R. James’s description of the Haitian beginning is useful in understanding the beginning of white-over-black in the United States:

From the underworld of two continents they came, Frenchmen and Spaniards, Maltese, Italians, Portuguese and Americans. For whatever a man’s origin, record or character, here his white skin made him a person of quality and rejected or failures in their own country flocked to San Domingo, where consideration was achieved at so cheap a price, money flowed and opportunities of debauchery abounded.<sup>41</sup>

White-over-black is a calling (“From the underworld of two continents they came. . .”). Education is a calling. Education in white-over-black is necessary to live within the world and time belted by the colorline for in that world and time white-over-black is everyone’s calling. White-over-black is a business and a pleasure, it is the business of pleasure, and it is the pleasure of business. White-over-black is sublime and earthly and divine and other many-splendored things besides these.<sup>42</sup> White-over-black is the orientation needed to use the maps of all our territories:

Upon the different forms of property, upon the social conditions of existence as a foundation, there is built a superstructure of diversified and characteristic sentiments, illusions, habits of thought, and outlooks on life in general. The class as a whole creates and shapes them out of its material foundation, and out of the corresponding social relationships. The individual in whom they arise, through tradition and education, may fancy them to be the true determinates, the real origin of his activities.<sup>43</sup>

Everyone, then, in a white-over-black order of things, is called to that order. The order to which we are called (“our social conditions of existence”) is the structure of thought itself (of our “diversified and characteristic sentiments, illusions, habits of thought, and outlooks on life in general”). In a white-over-black order of things the order to which we are all called is white-over-black. That *calling to order* is

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40. Baldwin, *supra* note 35, at 174, 182.

41. JAMES, *supra* note 37, at 33.

42. Race might be thought of as an especially dense transfer point for relations of power, rather like Foucault’s description of sexuality. See MICHEL FOUCAULT, *THE HISTORY OF SEXUALITY*, VOL. 1: AN INTRODUCTION (Robert Hurley trans., Vintage Books 1990); see also Farley, *The Black Body as Fetish Object*, *supra* note 3, at 461 (describing whiteness as “a sadistic pleasure” and blackness as “a masochistic form of pleasure”).

43. KARL MARX, *THE EIGHTEENTH BRUMAIRE OF LOUIS BONAPARTE* 47 (International Publishers, 1998) (1869) [hereinafter MARX, *EIGHTEENTH BRUMAIRE*].

itself the material foundation of white-over-black. White-over-black occurs when those marked as white are made *mind* and those marked as black are made *matter* and it is also what we call thinking.<sup>44</sup>

To come to order requires training, an education in that order. White-over-black is the order of things at present. Our training begins early:<sup>45</sup>

Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, . . . even service in the armed forces. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education.<sup>46</sup>

And it never ends.<sup>47</sup>

## VII. BURN

What is to be done? Two hundred years ago, when the slaves in Haiti rose up, they, of necessity, burned everything:

They burned San Domingo flat so that at the end of the war it was a charred desert. Why do you burn everything? asked a French officer of a prisoner. We have a right to burn what we cultivate because a man has a right to dispose of his own labour, was the reply of this unknown anarchist.<sup>48</sup>

The slaves burned everything because everything was against them. Everything was against the slaves, the entire order that it was their lot to follow, the entire order in which they were positioned as worse than senseless things, every plantation, everything.<sup>49</sup> “Leave nothing white

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44. For a discussion of the mind/matter distinction in legal theory, see generally, Grahn-Farley, *A Theory of Child Rights*, *supra* note 8, at 874-80 (describing *matter* as the reallocation of human, economic, and organizational resources).

45. *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 n.11 (1954) (discussing early training in white-over-black).

46. *Id.* at 493.

47. Certain injuries are forever. *See id.* at 494 (discussing separation of races as generating “a feeling of inferiority as to [black] status in the community that may affect their hearts and minds in a way unlikely ever to be undone”).

48. JAMES, *supra* note 37, at 361.

49. C.L.R. James wrote:

The slaves destroyed tirelessly . . . [T]hey were seeking their salvation in the most obvious way, the destruction of what they knew was the cause of their sufferings; and if they destroyed much it was because they had suffered much. They knew that as long as these plantations stood their lot would be to labour on them until they dropped. The only thing was to destroy them.

behind you,” said Toussaint to those dedicated to the end of white-over-black.<sup>50</sup> “God gave Noah the rainbow sign. No more water, the fire next time.”<sup>51</sup>

The slaves burned everything, yes, but, unfortunately, they only burned everything in Haiti.<sup>52</sup> Theirs was the greatest and most successful revolution in the history of the world but the failure of their fire to cross the waters was the great tragedy of the Nineteenth century.<sup>53</sup> At the dawn of the Twentieth century, W.E.B. Du Bois wrote, “The colorline belts the world.”<sup>54</sup> Du Bois said that the problem of the Twentieth century was the problem of the colorline.<sup>55</sup> The problem, now, at the dawn of the Twenty-first century is the problem of the colorline. The colorline continues to belt the world. Indeed, the

*Id.* at 88.

50. *Id.* at 288.

51. United States slave spiritual, *quoted in* JAMES BALDWIN, *THE FIRE NEXT TIME* 1 (Dial Press 1963).

52. JAMES, *supra* note 37, at 374 (“[I]f the Haitians thought that imperialism was finished with them, they were mistaken.”).

53. V.I. Lenin, on the eve of World War I, observed:

Private property based on the labour of the small proprietor, free competition, democracy, all the catchwords with which the capitalists and their press deceive the workers and the peasants—are things of the distant past. Capitalism has grown into a world system of colonial oppression and of the financial strangulation of the overwhelming majority of the population of the world by a handful of ‘advanced’ countries. And this ‘booty’ is shared between two or three powerful world plunderers armed to the teeth . . . who are drawing the whole world into *their* war over the division of *their* booty.

V.I. LENIN, *Imperialism, the Highest Stage of Capitalism, A Popular Outline* (1917), in *THE LENIN ANTHOLOGY* 207 (Robert Turner, ed., 1975). Lenin also observed:

Britain, France and Germany have invested capital abroad to the value of no less than 70,000 million rubles. The business of securing ‘legitimate’ profits from this tidy sum—these exceed 3,000 million rubles annually—is carried out by the national committees of the millionaires, known as governments, which are equipped with armies and navies and which provide the sons and brothers of the millionaires with jobs in the colonies and semi-colonies as viceroys, consuls, ambassadors, officials of all kinds, clergymen, and other leeches. This is how the plunder of about a thousand million of the earth’s population by a handful of Great Powers is organised in the epoch of the highest development of capitalism. No other organisation is possible under capitalism. Renounce colonies, ‘spheres of influence,’ and the export of capital? To think that it is possible means coming down to the level of some snivelling parson who every Sunday preaches to the rich on the lofty principles of Christianity and advises them to give the poor, well, if not millions, at least several hundred rubles yearly.

V.I. LENIN, *On the Slogan for a United States of Europe* (1915), in *THE LENIN ANTHOLOGY*, *supra*, at 201-02.

54. W.E.B. Du Bois, *The Colorline Belts the World*, in *W.E.B. DU BOIS: A READER* 42 (David Levering Lewis ed., 1995).

55. DU BOIS, *THE SOULS OF BLACK FOLK*, *supra* note 27, at 10.

slave power that is the United States now threatens an entire world with the death that it has become and so the slaves of yesterday, today, and tomorrow, those with nothing but their chains to lose, must, if they would be free, if they would escape slavery, win the entire world.

#### VIII. TRAINING

We begin as children. We are called and we become our response to the call. Slaves are not called. What becomes of them? What becomes of the broken-hearted? The slaves are divided souls, they are broken-hearted, the slaves are split asunder by what they are called upon to become. The slaves are called upon to become objects but objecthood is not a calling. The slave, then, during its loneliest loneliness, is divided from itself. This is schizophrenia. The slaves are not called, or, rather, the slaves are called to not be. The slaves are called unfree and thus the living can never be and so the slaves burst apart and die. The slaves begin as death, not as children, and death is not a beginning but an end. There is no progress and no exit from the undiscovered country of the slave, or so it seems.

We are trained to think through a progress narrative, a grand narrative, the grandest narrative, that takes us up from slavery. There is no up from slavery. The progress from slavery to the end of history is the progress from white-over-black to white-over-black to white-over-black.

The progress of slavery runs in the opposite direction of the past-present-future timeline. The slave only becomes the perfect slave at the end of the timeline, only under conditions of total juridical freedom. It is only under conditions of freedom, of bourgeois legality, that the slave can perfect itself as a slave by *freely choosing* to bow down before its master. The slave perfects itself as a slave by offering a prayer for equal rights. The system of marks is a plantation. The system of property is a plantation. The system of law is a plantation. These plantations, all part of the same system, *hierarchy*, produce white-over-black, white-over-black only, and that continually. The slave perfects itself as a slave through its prayers for equal rights. The plantation system will not commit suicide and the slave, as stated above, has knowing non-knowledge of this fact. The slave finds its way back from the undiscovered country only by burning down every plantation. When the slave prays for equal rights it makes the free choice to be dead, and it makes the free choice to not be.

Education is the call. We are called to be and then we become something. We become that which we make of ourselves. We follow

the call, we pursue a calling. Freedom is the only calling—it alone contains all possible directions, all of the choices that may later blossom into the fullness of our lives. We can only be free. Slavery is death. How do slaves die?

Slaves are not born, they are made. The slave must be trained to be that which the living cannot be. The only thing that the living are not free to be is dead. The slave must be trained to follow the call that is not a call. The slave must be trained to pursue the calling that is not a calling. The slave must be trained to objecthood. The slave must become death. Slavery is white-over-black. White-over-black is death. White-over-black, death, then, is what the slave must become to pursue its calling that is not a calling.

#### IX. WE WISH YOU MANY HAPPY RETURNS

We can be trained in many things. White-over-black requires training. It is with education that we begin. Judge Waring of the United States District Court for the Eastern District of South Carolina, Charleston Division, penned an instructive dissenting opinion in which he referred to expert witness testimony regarding training *and* white-over-black and training *in* white-over-black:

These witnesses testified as to their study and researches and their actual tests with children of varying ages and showed that the humiliation and disgrace of being set aside and segregated as unfit to associate with others of a different color had an evil and ineradicable effect upon the mental processes of our young which would remain with them and deform their view of life until and throughout their maturity . . . And from their testimony as well as from common experience and knowledge and from our own reasoning, we must unavoidably come to the conclusion that racial prejudice is something that is acquired and that acquiring is in early childhood.<sup>56</sup>

The case, *Briggs v. Elliot*, was one of four cases consolidated and decided by the United States Supreme Court under the heading *Brown v. Board of Education*.<sup>57</sup> Judge Waring, over half a century ago, asked and answered a question that vexes us still:

When do we get our first ideas of religion, nationality and other basic ideologies? The vast number of individuals follow religious and political groups because of their childhood training. . . . Let the little child's mind be poisoned by prejudice of this kind and it is practically impossible to ever remove these impressions however many years he may have of teaching by philosophers, religious leaders or patriotic

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56. *Briggs v. Elliott*, 98 F. Supp. 529, 547 (E.D.S.C. 1951) (Waring, J., dissenting).

57. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

citizens.<sup>58</sup>

We can be trained in many things, even death, or so it seems. We can be trained because we have a capacity for pleasure, because we have a faculty of desire, because we can imagine our pleasures and orient ourselves by our desires in ways that close the gaps, resolve the conflicts, and clarify the ambiguities of life. The slave can be trained in its calling that is not a calling. The slave becomes a slave when it chooses to pursue its calling that is not a calling. The slave's calling is perverse. The pleasures of mastery and slavery are masochistic and sadistic. Judge Waring wrote of this sadomasochism:

We see the results of all this warped thinking in the poor underprivileged and frightened attitude of so many of the Negroes in the southern states; and in the sadistic insistence of the 'white supremacists' in declaring that their will must be imposed irrespective of rights of other citizens.<sup>59</sup>

The slave is trained to enjoy being taken for an object. The master is trained to enjoy its object. The master's will is the slave's desire. The slave desires the master's will. The master desires the slave's desire. This training in sadomasochism, per Judge Waring, begins in the individual's childhood just as it began in the nation's childhood:

[T]here was a struggle and the better thinking leaders in our Constitutional Convention endeavored to prohibit slavery but unfortunately compromised the issue on the insistent demands of those who engaged in the slave trade and the purchase and use of slaves. And so as time went on the slavery was perpetuated and eventually became a part of the life and culture of certain States of this Union although the rest of world looked on with shame and abhorrence.<sup>60</sup>

As with the individual, the nation lives its childhood as its future. Judge Waring was exiled for his dissent and only returned to his native South Carolina to be buried.<sup>61</sup> Training in white-over-black becomes a life and a way of life, witness the nineteen Senators and the seventy-seven Representatives who signed a declaration of constitutional principles that came to be known as "The Southern Manifesto" in support of segregation in public facilities and especially in public education:

In the case of *Plessy v. Ferguson* in 1896 the Supreme Court expressly declared that under the [Fourteenth] Amendment no person was

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58. *Briggs*, 98 F. Supp. at 547 (Waring, J., dissenting).

59. *Id.* at 542 (Waring, J., dissenting).

60. *Id.* at 541 (Waring, J., dissenting).

61. TINSLEY YARBROUGH, *A PASSION FOR JUSTICE: J. WATIES WARING AND CIVIL RIGHTS* (Oxford Univ. Press 2001)

denied any rights if the States provided separate but equal public facilities. This decision has been followed in many other cases. . . . This interpretation, restated time and again, became a part of the life of the people of many of the States and confirmed their habits, customs, traditions, and way of life.<sup>62</sup>

The Southern Manifesto noted that:

When the Fourteenth amendment was adopted, in 1868, there were 37 States of the Union. Every one of the 26 States that had any substantial racial differences among its people either approved the operation of segregated schools already in existence or subsequently established such schools by action of the same law-making body which considered the [Fourteenth] amendment.<sup>63</sup>

Justice Brown, writing for the majority in *Plessy v. Ferguson*, cited to the Antebellum decision from the Supreme Judicial Court of Massachusetts, *Roberts v. City of Boston*, in deciding that separate but equal was the law of the land and violated no part of the 13<sup>th</sup> or 14<sup>th</sup> Amendments to the Constitution of the United States of America.<sup>64</sup>

Justice Harlan, dissenting, argued:

The white race deems itself to be the dominant race in this country. And so it is, in prestige, in achievements, in education, in wealth and in power. So, I doubt not, it will continue to be for all time, if it remains true to its great heritage and holds fast to the principles of constitutional liberty.<sup>65</sup>

Justices Brown and Harlan agreed about white supremacy. For Justice Brown, segregation had neither to do with slavery nor the lowly place occupied by blacks. For Justice Harlan, segregation had everything to do with slavery but nothing to do with the lowly place occupied by blacks. For Justices Brown and Harlan, white-over-black was the order of things. For Justices Brown and Harlan, the end of segregation would not affect that order of things. Justice Brown's argument that segregation had nothing to do with slavery or the lowly position of the supposedly post-Emancipation blacks is often presented as fantasy. Justice Harlan's dissent, although equally wedded to white-over-black, later blossomed into *Brown v. Board of Education*. Justice Harlan understood that as the law became pure it would become a better vehicle for white-over-black, recall Justice Harlan's words, "The white race deems itself to be the dominant race in this country. And so . . . it will continue to be for all time, if it remains true to its great heritage and

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62. 102 CONG. REC. 4460 (1956).

63. *Id.*

64. *Plessy v. Ferguson*, 163 U.S. 537, 544 (1895).

65. *Id.* at 560 (Harlan, J., dissenting).

holds fast to the principles of constitutional liberty.”<sup>66</sup>

*Brown v. Board of Education I*<sup>67</sup> and *II*<sup>68</sup> are both white-over-black decisions. They were so when decided and so they remain today. *Brown I* took up the white man’s burden by dropping half of the argument. Segregation damaged black and white children by cultivating feelings of superiority in the latter and inferiority in the former.<sup>69</sup> Such damage rendered both unfit for life in a democratic order. *Brown I*, however, mentioned nothing of the damage to white children. Per *Brown I*, the black children were the ones damaged and that damage was to be repaired by the healing presence of white children. Thus, *Brown I* could be viewed through the lens of the wider colonialist project. Recall the colonialist poet Rudyard Kipling, “take up the White Man’s burden, send forth the best ye breed, go bind your sons in exile to serve your captive’s need, to wait in heavy harness on fluttered folk and wild, your new-caught sullen peoples, half devil and half child.”<sup>70</sup> *Brown I* fit with the grand narrative of white-over-black at a time when that narrative was being threatened by Third World revolutions against colonialism.<sup>71</sup> *Brown II* provided a map for non-compliance:

Full implementation of these constitutional principles may require solution of varied local school problems. School authorities will have the primary responsibility for elucidating, assessing, and solving these

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66. *Id.* (Harlan, J., dissenting).

67. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954).

68. *Brown v. Bd. of Educ.*, 349 U.S. 294 (1955).

69. See *Brown v. Bd. of Educ.*, 347 U.S. 483, 494 (1954) (referring to the detrimental effect of segregation on black school children and “the benefits they would receive in a racially integrated school system” (internal citations omitted)); *Briggs*, 98 F. Supp. at 542 (Waring, J., dissenting).

70. RUDYARD KIPLING, *The White Man’s Burden*, in RUDYARD KIPLING: COMPLETE VERSE 321, 321-23 (1989).

71. *Brown I* fit with the grand narrative of white-over-black at a time when that narrative was being threatened in three ways. First, the narrative was threatened by the fact that the blacks themselves were rising up all over the globe against their colonial masters. 1954, for example, was the year that French colonialism was defeated in Vietnam and the year that the Algerian liberation movement began in earnest. Second, the narrative was threatened by the possibility that the dream of non-violent change through law would end if *Plessy* were seen as controlling. The end of the dream implied the waking of the dreamers and whatever form of servile insurrection would follow. Third, the narrative was threatened by the communist counternarrative of the U.S.S.R; a counternarrative that appealed to many of those fighting against European colonialism. The courtroom and legislative victories of the Civil Rights Movement were due in large part to the felt need within the power elite of the U.S.A. to present a desegregated face to potential client states in the newly-emerging Third World. For extended discussions of this third point, see, e.g., DERRICK BELL, *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPES FOR RACIAL REFORM* (2004); CAROL ANDERSON, *EYES OFF THE PRIZE: THE UNITED NATIONS AND THE AFRICAN AMERICAN STRUGGLE FOR HUMAN RIGHTS* (2003); MARY DUDZIAK, *COLD WAR CIVIL RIGHTS: RACE AND THE IMAGE OF AMERICAN DEMOCRACY* (2000).

problems; courts will have to consider whether the action of school authorities constitutes good faith implementation of the governing constitutional principles. Because of their proximity to local conditions and the possible need for further hearings, the courts which originally heard these cases can best perform this judicial appraisal. Accordingly, we believe it appropriate to remand the cases to those courts.<sup>72</sup>

With majestic instancy, *Brown I* and *Brown II* returned the plaintiffs to where they started from and turned the clock back, not to 1868, but to *Plessy v. Ferguson* in 1896,<sup>73</sup> and to *Roberts v. City of Boston* in 1849<sup>74</sup> and to *Dred Scott* in 1856<sup>75</sup> and before. The perpetual return to slavery, to white-over-black, is uncanny, that is, both familiar and strange:

Men make their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly encountered, given and transmitted from the past. The tradition of all the dead generations weights like a nightmare on the brain of the living. And just when they seem engaged in revolutionizing themselves and things, in creating something that has never yet existed, precisely in such periods of revolutionary crisis they anxiously conjure up the spirits of the past to their service and borrow from them names, battle cries and costumes in order to present the new scene of world history in this time-honored disguise and this borrowed language.<sup>76</sup>

#### X. KNOCKING ON HEAVEN'S DOOR

*Truly their heavens are open and this is their shining hour. . . all learning from the same beautiful primer, and all improving with diligence.*<sup>77</sup>

*Momma put my guns in the ground. I don't need them anymore. That long black cloud is coming down. Feel like I'm knocking on Heaven's door.*<sup>78</sup>

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72. *Brown v. Board*, 349 U.S. 294, 300 (1955).

73. *Plessy v. Ferguson*, 163 U.S. 537 (1896).

74. *Roberts v. City of Boston*, 59 Mass. (5 Cush.) 198 (1849).

75. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1856).

76. MARX, EIGHTEENTH BRUMAIRE, *supra* note 43, at 15.

77. A Washington, D.C. educator, in 1864, describing the 'Freedmen's' schools, *quoted in*, JANET DUITSMAN CORNELIUS, WHEN I CAN READ MY TITLE CLEAR: LITERACY, SLAVERY, AND RELIGION IN THE ANTEBELLUM SOUTH 142 (1992).

78. BOB DYLAN, *Knocking on Heaven's Door*, ON PAT GARRET AND BILLY THE KID (Columbia Records 1973).

In 1995, *Missouri v. Jenkins* ended the saga.<sup>79</sup> With *Missouri v. Jenkins* we find “the tradition of all the dead generations weighs like a nightmare on the brains of the living.”<sup>80</sup> *Missouri v. Jenkins* returns us to white-over-black, a place we never left; it is a perfect map of the undiscovered country. As Dylan puts it, “[t]hat long black cloud is coming down.”<sup>81</sup>

The slave argues for equal rights. The slave gives his product to the law. The slave fashions a prayer for relief from white-over-black and gives it to the law. Robert Morris was the second black lawyer in the United States. He was admitted to the practice of law in Suffolk County, Massachusetts in 1847. The following year he was enlisted by Benjamin Roberts and five-year old Sarah Roberts in her effort to attain an education free of the colorline.<sup>82</sup> The Boston School Committee separated school children into black and white and assigned each to separate schools. Morris argued that separation destroys equality and lost at trial. Morris then enlisted white abolitionist Charles Sumner to argue the case on appeal to the Supreme Judicial Court of Massachusetts. The two filed their appeal together. Sumner used Morris’s argument and lost. The slave’s product, equal rights, was filled with white-over-black and then returned as “separate but equal.”<sup>83</sup>

Separate or together, equal or unequal, all of it is white-over-black in a system that is white-over-black. *The empty vessels of law are filled with the lived relations that we attempt to disavow.* The empty vessels of law are filled with white-over-black. The label on the vessel may say whatever it says but its sum and substance will be white-over-black as surely as the Triangle Trade that gave the whites of New England the leisure for all their town meetings followed the molasses-to-rum-to-slaves formula. In *Plessy*, the majority and the dissent agreed about white-over-black. Justice Harlan, dissenting, argued that the white race would forever remain “the dominant race in this country . . . if it . . . holds fast to principles of constitutional liberty.” Harlan’s dissent became *Brown I* and *II*. Fifty years after *Brown*, we see that the white

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79. See *Missouri v. Jenkins*, 515 U.S. 70, 111 (1995) (finding that the lower court exceeded authority when it ordered specific goals for bringing nondistrict students into a district, finding that court-ordered faculty and staff salary increases to assist in desegregation, and holding that whether district students are at or below national norms – “suburban comparability” – is not the correct measure to determine whether a previously segregated district has achieved desegregation).

80. MARX, *supra* note 43, at 15.

81. DYLAN, *supra* note 79.

<sup>82</sup> J. CLAY SMITH, JR., *EMANCIPATION: THE MAKING OF THE BLACK LAWYER 1844-1944* 96-100 (1993).

83. *Plessy v. Ferguson*, 163 U.S. 537 (1895).

race is “the dominant race in this country . . . in prestige, in achievements, in education, in wealth and in power.” Fifty years after *Brown*, there is no reason to doubt the truth of Justice Harlan’s statement that “the great principles of constitutional liberty” would allow the “the white race to . . . continue to be the dominant race in this country . . . for all time.”<sup>84</sup>

Equality of right, the thought-product of the slave, like any commodity, gives us an uncanny reflection of the lived relations that we disavow. Equality of right could not be *thought* except from the position of the slave, the one who suffers. The slave would not suffer if it were not the slave. The slave attempts to escape through fantasies of right and equality and dreams a system of equal rights into being. The slave does the dreamwork needed to make life look like death and death look like life. The slave dreams of all the equations that are needed to balance the system’s every crisis. The slave builds the law rooms of the many mansions of the house of law. The slave, in other words, is itself the author of Justice Harlan’s “great principles of constitutional liberty.”<sup>85</sup> The slave forges its own chains through its juridical strivings.

The slave builds the home for the future good will of the master.<sup>86</sup> That is what its dream of equality of right amounts to, a home for the future good will of the master. If the master of the future might be good then the crisis of servile insurrection can be deferred again and again and again. But the master cannot be anything other than the master, just as the slave cannot be anything but the slave. There is a colorline or there is not. Without the dreamwork of the slave, the many crises of the system of white-over-black blossom in revolution. The flames are wooed from their buds and continue to unfold until the entire plantation system is gone. The servile insurrection continues until it brings down the system of marks, the system of property, and the system of law. Slaves are trained to *not* think this way. Slaves are trained to be objects. Slavery is death.

In *Missouri v. Jenkins*, the Supreme Court rejected the idea that “suburban comparability” and “desegregative attractiveness” had anything to do with constitutionally permissible cures for the problem of school segregation.<sup>87</sup> If one assumes that all women and men are

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84. *Id.* at 560 (Harlan, J., dissenting). The statute held constitutional in the majority opinion required “equal but separate” accommodations.

85. *Id.* (Harlan, J., dissenting).

86. JEAN-PAUL SARTRE, *Revolutionary Violence, Appendix II*, in NOTEBOOKS FOR AN ETHICS 561, 565 (David Pellauer trans., Univ. Chi. Press 1992).

87. *Missouri v. Jenkins*, 515 U.S. 70, 91, 100 (1995).

created equal then the problems of today's hyper-segregated inner-city academies of illiteracy become easy to solve. This is how the District Court was proceeding when the Supreme Court took us back to the beginning. If those formerly eligible for slavery perform less well on standardized examinations than do those formerly ineligible for slavery then one might simply channel funds from the entire state into the affected schools and the afflicted students, at ever-increasing levels, until such time as their test scores reach "suburban comparability." If those formerly eligible for slavery find themselves hypersegregated after post-*Brown* white flight then an easy solution—one that avoids the *Milliken* ban on crossing the urban frontier to include "innocent" suburban districts in urban integration plans<sup>88</sup>—is to simply channel funds from the entire state into the affected schools until such time as those formerly ineligible for slavery find the schools, and the black students of those schools, so attractive that they move back into the areas from which they formerly ran away and do so in numbers that change the demographic of the white-fled area so that it matches the statewide black and white ratio. Such a plan can never go too far. The exact measure of how much effort and money went into producing white loathing of blacks is the measure of how much would need to be spent to *attract* whites to those same blacks that they formerly loathed. The exact measure of how much effort and money went into producing black illiteracy *vis-à-vis* white is the measure of how much would need to be spent to produce black literacy, as measured by standardized tests, that matched or would be *comparable* to whatever is achieved by the whites who ran away from them after *Brown*. The only way to find out how much was done to create white-over-black in education is to spend until white-over-black is undone in education. The District Court found the solution and the Supreme Court, following the principle of white-over-black, wrote the end of the saga. "*The long black cloud is coming down.*"<sup>89</sup> The long black cloud called "equality."

#### XI. THE LONELIEST LONELINESS OR THE MODERN PROMETHEUS

*There is something at work in my soul which I do not understand.*<sup>90</sup>

A slavemaster wrote: "We hold these truths to be self-evident. That all men are created equal and are endowed by their Creator with certain unalienable rights"<sup>91</sup> and the writing is celebrated as the birth of a

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88. *Milliken v. Bradley*, 418 U.S. 717 (1974).

89. DYLAN, *supra* note 79.

90. MARY SHELLEY, *FRANKENSTEIN* 18 (Wordsworth Classic 1999) (1831).

91. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

nation, as Democracy in America, as the Day of Independence.<sup>92</sup> The slavemaster who wrote those words and the other slavemasters and fellow-travelers who pledged their lives, their liberty and their sacred honor to support them were engaged in a novel experiment. Their signatures on the *Declaration of Independence*, the unanimous declaration of the Congress of the thirteen United States of July 4, 1776, founded the “great heritage and principles of constitutional liberty” about which Justice Harlan would write over a century later and over a century ago in his famous dissenting discussion of the meaning of equality.<sup>93</sup>

“All men are created equal.”<sup>94</sup> Equality, as has been discussed, is the right that the slave regards as unalienable. Equality of right, however, can pass to the slave only in the form of white-over-black. White-over-black, not at all coincidentally, is the form that the grant *or* denial of equal rights must take. Equal of right and its denial *both* take the form of white-over-black. Equality of right is the foundation of the home built by the slave for the future good will of its master. And there is nothing in this world or out of it that is good in itself save a good will.<sup>95</sup>

A slavemaster wrote: “We hold these truths to be self-evident. That all men are endowed by their Creator with certain unalienable rights.”<sup>96</sup> What is it to be a slavemaster but to create death-out-of-life, to create an object that thinks and by so doing to “mock the stupendous mechanism of the creator of the world.”<sup>97</sup> The slavemaster is the Creator of the

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92. Speaking on the 4th of July, in Rochester, New York, Frederick Douglass, an escaped slave, asked:

What, to the American slave, is your Fourth of July? I answer: a day that reveals him, more than all other days in the year, the great injustice and cruelty to which he is the constant victim. To him your consideration is a sham; your boasted liberty, an unholy license; your national greatness, swelling vanity; your sounds of rejoicing are empty and heartless; your denunciation of tyrants, brass-fronted impudence; your shouts of liberty and equality, hollow mockery; your prayers and hymns, your sermons and thanksgivings, with all of your religious parade and solemnity, are, to him, mere bombast, fraud, deception, impiety and hypocrisy—a thin veil to cover up crimes which would disgrace a nation of savages.

Frederick Douglass, *What, to the American Slave, is your Fourth of July?* in H. Aptheker, A DOCUMENTARY HISTORY OF THE NEGRO PEOPLE IN THE UNITED STATES 331, 334 (1967). Of course, there are slaves who celebrate the 4th of July. These are the slaves in whose hearts and minds slavery has been perfected and who have become the perfect citizens of the undiscovered country.

93. *Plessy v. Ferguson*, 163 U.S. 537, 560 (1896) (Harlan, J., dissenting).

94. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

95. For an extended discussion of Kant and legal theory, *see generally* Farley, *The Dream of Interpretation*, *supra* note 5.

96. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

97. MARY SHELLEY, *Introduction to the 1831 edition*, in FRANKENSTEIN 1, 4 (Wordsworth

slave, the object-that-lives. The “unalienable rights” endowed the slave by its Creator are white-over-black. The unalienable rights that comprise the slave’s endowment can only be white-over-black because white-over-black is the sum and substance of what it is to be a slave. White-over-black is what the Creator used to make the slave a slave. White-over-black is the slave’s only endowment and that endowment, being the very being of the slave, is unalienable.

The *Declaration of Independence* contains three important terms. First, there is a Creator. The slavemaster is the slave’s Creator. The Creator’s name is legion or, more simply, “We,” as in, “We, the People.” Second, there is a logic that is self-evident. That logic is the possession of the Creator. Third, there is an endowment or set of properties called rights. The slave’s endowment is unalienable. The slave’s endowment of rights are white-over-black and unalienable. The endowment, being unalienable, is, then, an eternal essence or form. There is, to summarize these three terms, a Creator who counts among his holdings a self-evident set of eternal truths called rights. The slaves are themselves the evidence of the eternal truth of their master’s mastery.

What must the slavemaster who authored the *Declaration of Independence* have experienced when confronted with the specter of his successful creation of a new species, *slave*? Mary Shelley’s successful man of science lamented his success at creating an animate thing:

In a fit of enthusiastic madness I created a rational creature, and was bound toward him, to assure, as far as was in my power, his happiness and well-being. This was my duty; but there was another still paramount to that. My duties towards the beings of my own species had greater claims to my attention, because they included a greater proportion of happiness or misery.<sup>98</sup>

Did Thomas Jefferson, his fellow slavemasters and their fellow-travelers lament *their* work as a similar fit of “enthusiastic madness?” The slavemasters, the creators of the new species, *slave*, certainly shared with Shelley’s protagonist the conviction their duties to their “own species had greater claims.”<sup>99</sup> That feeling of certainty can be seen in the fact of white-over-black, the fact of slavery. Shelley, the author of *Frankenstein*, and in that sense an authority on those who pass the limits of life and death, observing her own creative process as it related to her novel, remarked:

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Classic 1999) (1831).

98. MARY SHELLEY, *FRANKENSTEIN* 165 (Wordsworth Classic 1999) (1831).

99. *Id.*

I saw—with shut eyes, but acute mental vision—I saw the pale student of the unhallowed arts kneeling beside the thing he had put together. I saw the hideous phantasm of a man stretched out, and then, on the working of some powerful engine, show signs of life, and stir with an uneasy, half-vital motion. Frightful must it be; for supremely frightful would be the effect of any human endeavor to mock the stupendous mechanism of the creator of the world. His success would terrify the artist; he would rush away from his odious handiwork, horror-stricken. He would hope that, left to itself, the slight spark of life which he had communicated would fade; that this thing, which had received such imperfect animation, would subside into dead matter; and he might sleep in the belief that the silence of the grave would quench for ever the transient existence of the hideous corpse which he had looked upon as the cradle of life. He sleeps; but he is awakened; he opens his eyes; behold the horrid thing stands at his bedside, opening his curtains, and looking upon him with yellow, watery, but speculative eyes. I opened mine with terror.<sup>100</sup>

Like Shelley's famous creation, Swiss scientist Victor Frankenstein, the slavemasters, "pale student[s] of the unhallowed arts," did indeed "endeavor to mock the stupendous mechanism of the creator of the world." They found their success "supremely frightful" and did indeed "rush away from [their] odious handiwork, horror stricken" at the "hideous corpse[s]" they created out of formerly living beings. This, then, is the fear of the dead:

The fear of the dead, who return to take away with them the living, has found an explanation from the point of view of individual and social psychology in the unconscious death wishes which the survivor harbored against the dead person while he lived, because of which he now fears that person's vengeance.<sup>101</sup>

## XII. CHILDHOOD'S END

*There'll be love and laughter and peace ever after. Tomorrow when the world is free.*<sup>102</sup>

We are called and our childhood begins. We begin as children. We begin to make choices and those choices are what we become. Our calling must be preceded by our education in that calling.<sup>103</sup> We are

100. *Id.* at 4 (Introduction to the 1831 edition).

101. OTTO FENICHEL, *Fear of the Dead* (1922), in THE COLLECTED PAPERS OF OTTO FENICHEL, FIRST SERIES 5, 5 (Hanna Fenichel and David Rapaport eds., Norton 1953).

102. NAT BURTON & WALTON KENT, *The White Cliffs of Dover, sung by Vera Lynn* (1941).

103. We all know the song:

*When I was just a little child,  
I asked my teacher, 'What will I be?'*  
*Will I be pretty, Will I be Rich?*

educated or trained and that training regimen, our specific education, may become our calling, depending upon what we choose to make of ourselves and our situations. Freedom, then, is the only calling. The slave has no choices. The will of the slave is not its own. The slave is owned and so cannot own its choices. The slave, being property, cannot own. Property cannot own property.

We are called out of objecthood. Education is a calling into freedom, a calling out of objecthood. The slave is not called. The slave is not free. The slave is an object. The slave, however, may come to understand itself as an object and that makes it the most peculiar object in the world or out of it. The slave is the most peculiar object in that it senses its own abjection, it understands the abjection it senses as its own abjection, and, furthermore, it senses that abjection as the only thing that it may rightly be said to own. The slave owns only its abjection. Can freedom be made from such a call? Anything is possible. And abjection is a calling. Abjection calls the slave into objecthood. The slave perfects itself as a slave when it follows the call to objecthood. The call to objecthood, abjection, implies, for the cunning slave, another direction.<sup>104</sup> The slave has no maps for these other territories.

Slavery is death. For the master, education in the slave is a horror.<sup>105</sup>

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*And here's what she said to me,  
Que sera, sera.  
Whatever will be, will be.  
The future's not ours to see.  
Que sera, sera.*

RAY EVANS & JAY LIVINGSTON, *Que Sera Sera* (soundtrack to the film *THE MAN WHO KNEW TOO MUCH* (1956)).

104. The slave who would be free may find in its master's directions the possibility of other directions:

What he most dreaded, that I most desired. What he most loved, that I most hated. That which to him was a great evil, to be carefully shunned, was to me a great good, to be diligently sought; and the argument which he so warmly urged, against my learning to read, only served to inspire me with a desire and a determination to learn.

DOUGLASS, *Dover*, *supra* note 30 at 20.

105. Frederick Douglass records:

Very soon after I went to live with Mr. and Mrs. Auld, she very kindly commenced to teach me the A, B, C. After I had learned this, she assisted me in learning to spell words of three and four letters. Just at this point of my progress, Mr. Auld found out what was going on, and at once forbade Mrs. Auld to instruct me further, telling her, among other things, that it was unlawful, as well as unsafe, to teach a slave to read. To use his own words, further, he said, 'If you give a nigger an inch, he will take an ell. A nigger should know nothing but to obey his master – to do as he is told. Learning would *spoil* the best nigger in the world. Now,' said he, 'if you teach that nigger (speaking of myself) how to read, there would be no keeping him. It would forever unfit him to be a slave. He would at once become unmanageable, and of no value to his master. . .'

For the master, the educated slave is uncanny.<sup>106</sup> Education brings the slave, who is death, back from death, back from the undiscovered country, back to life. This is uncanny for the master because the master has knowing non-knowledge that to return from death, the slave must end slavery.<sup>107</sup> The master experiences this knowing non-knowledge as uncanny. We fear death and the slave is the body of the death that we fear:

The fear of the dead, who return to take away with them the living, has found an explanation from the point of view of individual and social psychology in the unconscious death wishes which the survivor harbored against the dead person while he lived, because of which he now fears that person's vengeance.<sup>108</sup>

The master should be afraid. The slaves that return from the undiscovered country do indeed plan to "take away with them the living"<sup>109</sup> and so the fear of death, and of the return of the dead, has a foundation. White-over-black—death—is the foundation.

Education undermines the foundation of white-over-black and so

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*Id.* Douglass went on to note:

These words sank deep into my heart, stirred up sentiments within that lay slumbering, and called into existence an entirely new train of thought. It was a new and special revelation, explaining dark and mysterious things, with which my youthful understanding had struggled, but struggled in vain. I now understood what had been to me a most perplexing difficulty – to wit, the white man's power to enslave the black man. *It was a grand achievement, and I prized it highly. From that moment, I understood the pathway from slavery to freedom.*

*Id.* (emphasis added).

106. Douglass observed his own appearance, and uncanny reappearance, in the eyes of the slavemaster who came to regret having taught him the A, B, C:

Nothing seemed to make her more angry than to see me with a newspaper. She seemed to think that here lay the danger. I have had her rush at me with a face made all up of fury, and snatch from me a newspaper, in a manner that fully revealed her apprehension. She was an apt woman; and a little experience soon demonstrated, to her satisfaction, that education and slavery were incompatible with each other.

*Id.* at 22.

107. Again, Douglass' words are helpful:

The reading of these [abolitionist] documents enabled me to utter my thoughts, and to meet the arguments brought forward to sustain slavery; but while they relieved me of one difficulty, they brought on another even more painful than the one the one of which I was relieved. The more I read, the more I was to abhor and detest my enslavers. . . Freedom now appeared, to disappear no more forever. It was heard in every sound, and seen in every thing. It was ever present to torment me with a sense of my wretched condition. I saw nothing without seeing it. I heard nothing without hearing it. It looked from every star, it smiled in every calm, breathed in every wind, and moved in every storm

*Id.* at 24.

108. FENICHEL, *supra* note 101, at 5.

109. *Id.*

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education of the slave is the foundation of the fear of the dead. Education is the way that the slave begins its return from the undiscovered country. Revolution is the way that the returned slaves complete their return and, through that completion, manage to “take away with them the living.”<sup>110</sup>

What will be cast into the fire next time? Heed the words of C.L.R. James’s unknown anarchist, “[w]e have a right to burn what we cultivate,” and an answer appears. The slaves are the ones who cultivate the philosophy of right.<sup>111</sup> It is the slaves calling to create the rule of law. And that is what they will burn to free themselves from the Promised Land. It only takes a single spark.

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110. *Id.*

111. C.L.R. JAMES, *THE BLACK JACOBINS: TOUSSAINT L’OUVERTURE AND THE SAN DOMINGO REVOLUTION* 361 (Vintage Books, 2d ed. 1989).