

LAW JOURNAL FOR SOCIAL JUSTICE

SANDRA DAY O'CONNOR COLLEGE OF LAW
ARIZONA STATE UNIVERSITY

Volume 7

Spring

2017

BLACK DEATH

*Shannon Prince**

INTRODUCTION

In her article “Writing the Living Law: American Indian Literature as Legal Narrative,” Amelia V. Katanski argues, “American Indian writers not only *respond* to the socio-legal context in which they write, but also their texts engage with and actively participate in the process of lawmaking, legal interpretation, and policymaking.”¹ As I will discuss here, the texts of African American writers do so as well. In this essay, I shall focus on how Toni Morrison’s novel, *Home*, addresses the “troubling tradition” of medical experimentation on African Americans,² situating my exploration within both Morrison’s corpus and African American literature at large as well as American legal and medical history.

Katanski observes the “univocal story of federal Indian law is not the only legal narrative at work in Indian country, and the counter narratives of resistant and remembering indigenous communities provide access to a wide range of customary legal practices and alternative definitions of sovereignty and justice.”³ African Americans are not analogous to American Indians in the sense they do not constitute a domestically dependent nation from which arises a body of law similar to federal Indian law. Nor, due to the brutal process of forced deracination that occurred during slavery, do African Americans have access to indigenous African

*JD Candidate, Yale Law School, Yale University; PhD Candidate, African and African American Studies, Harvard University; AM English, Graduate School of Arts and Sciences, Harvard University; AB Senior Fellowship, *magna cum laude*, Dartmouth College. The author thanks the memory of her grandmother, Mildred Joyce Guillory, for teaching her the power of stories.

¹ Amelia V. Katanski, *Writing the Living Law: American Indian Literature as Legal Narrative*, 33 AM. INDIAN L. REV. 53 (2009) (emphasis added).

² HARRIET WASHINGTON, *MEDICAL APARTHEID: THE DARK HISTORY OF MEDICAL EXPERIMENTATION ON BLACK AMERICANS FROM COLONIAL TIMES TO THE PRESENT* 19 (Doubleday, 2006).

³ Katanski, *supra* note 1, at 55.

customary legal practices. However, African American communities *do* have para-legal justice systems as well as “alternative definitions of sovereignty and justice,”⁴ and African American literature provides a window into these structures and lexicons.

Informed by literature, this note argues the negrophobia in America’s legal system is not vanishing but morphing – a phenomenon *Home* is just the latest in a series of Morrison works to remark upon. This note seeks to provide a literary tour through aspects of prejudice Morrison and other African American writers have observed while complementing black authors’ artistic depictions of the criminal justice system with legal scholarship.

I. ANATOMY

I shall begin this note by summarizing *Home* before describing how the novel reveals the ways law and medicine worked and continue to work together to dehumanize African Americans. Next, I will discuss how such dehumanization is voiced through the novel’s usage of African American Vernacular English. At that point, I will provide timelines of how the legal and medical systems oppress African Americans and explore how these histories have forced African Americans into a non-human environmental pose– a pose depicted not only in *Home* but across Morrison’s corpus and the larger African American canon. I shall also explore how other demographic factors such as class, gender, age, and military status affect the African American experience with oppression. Towards the note’s end, I shall take up Morrison’s depictions of bioethical doctors before concluding with a Critical Race Theory reading of Morrison’s body of work.

When *Home* begins, the protagonist, an African American Korean War veteran named Frank Money, has been confined to the psychiatric ward of a Midwestern hospital on account of one of his Post-Traumatic Stress Disorder-induced rages. Having received a mysterious message from a woman he has never met, saying his sister Cee is near death, Frank escapes the hospital and travels to the Jim Crow south to rescue her. Upon reaching her, he learns that, without her informed consent,⁵ Cee has become the subject of medical experimentation. Frank absconds with Cee and returns with her to their hometown, Lotus, Georgia, where the community

⁴ *Id.*

⁵ African Americans have a history of being made subject to medical experimentation without their consent.

matriarchs use techniques from their folk tradition to heal both her body and soul.⁶

II. INTERLOCK(E)ING LAW AND MEDICINE

For the African American characters in *Home*, the justice system holds no legitimacy. The protagonist Frank Money muses in the first pages of the novel that before beginning his journey to rescue his sister Cee – whom he has learned is in some sort of yet unspecified trouble – he must acquire a pair of shoes:

Walking anywhere in winter without shoes would guarantee his being arrested and back in the ward until he could be sentenced for vagrancy. Interesting law, vagrancy, meaning standing outside or walking without clear purpose anywhere.... Better than most, he knew that being out-side wasn't necessary for legal or illegal disruption. You could be inside, living in your own house for years, and still, men with or without badges but always with guns could force you, your family, your neighbors to pack up and move— with or without shoes.⁷

The quote depicts Money's view of law enforcement as racist, classist, and risible. For African Americans under this legal regime, criminality is ontological; it is extremely difficult to conform one's behavior to the unreasonable constraints of the law since blackness, rather than any particular deed, is the law's target. Nor is it possible for blacks to secure their protection under the law. Thus "legal disruption" can occur even if one is upon one's own property. I think here of African American Harvard University Professor Henry Louis Gates Jr., arrested for "breaking into" his own abode.⁸ Conversely, whiteness confers quasi-legal authority, the ability to legally -- or illegally yet efficaciously -- deprive African Americans of their property. Thus, law *permits* white criminality and *promotes* black criminality. Whites are allowed to steal via the de facto or de jure legal displacement of blacks, and blacks are, as a result, forced into the criminal position of vagrancy.

⁶ TONI MORRISON, *HOME* 9 (Alfred A. Knopf, 2012).

⁷ *Id.*

⁸ MORRISON, *supra* note 5, at 12; *see also* Abby Goodnough, *Harvard Professor Jailed; Officer is Accused of Bias*, N.Y. TIMES (July 20, 2009) <http://www.nytimes.com/2009/07/21/us/21gates.html>.

Uncannily and tragically, both Money, thinking in the Korean War era, and Morrison, publishing in 2012, speak prophetically to the irrationality the sight of black men walking “wrong” can arouse in legal officials and their proxies. Trayvon Martin, walking in a hooded sweater, would die in February 2012 at the hands of a gun-toting white Hispanic neighborhood watchman, Martin’s practical choice of clothing -- it was raining -- along with his melanin cited as proof of his criminality in public discourse.⁹

In the scene I discuss, Morrison provides a fictional depiction of a historical reality. As Douglas Blackmon notes in *Slavery by Another Name: The Re-enslavement of Black People in America from the Civil War to World War II*:

Vagrancy, the offense of a person not being able to prove at a given moment that he or she is employed, was a new and flimsy concoction dredged up from legal obscurity at the end of the nineteenth century by the state legislatures of Alabama and other southern states. It was capriciously enforced by local sheriffs and constables, adjudicated by mayors and notaries public, recorded haphazardly or not at all in court records, and, most tellingly in a time of massive unemployment among all southern men, was reserved almost exclusively for black men.¹⁰

Home throws the absurdity of the legal system into further relief as the reader discovers that while the law punishes black vagrancy it does even more than previously disclosed to help create it. An African American character, Lily, is denied the right to rent an apartment in the neighborhood she desires by an error-ridden rule that reads, “*No part of said property hereby conveyed shall ever be used or occupied by a Hebrew or by any person of the Ethiopian, Malay or Asiatic race excepting only employ-ees in domestic service.*”¹¹ This rule is, like the novel’s treatment of vagrancy, a fictional depiction of a historical (even beyond the era of *Home*) legal reality with a long precedent including sixteenth and seventeenth European laws that subjected vagrants to flogging and imprisonment in “houses of

⁹ WASHINGTON, *supra* note 2, at 118; *see also* LISA BLOOM, *SUSPICION NATION: THE INSIDE STORY OF THE TRAYVON MARTIN INJUSTICE AND WHY WE CONTINUE TO REPEAT IT* (Counterpoint, Feb. 25, 2014); Geraldo Rivera, *Trayvon Martin Would Be Alive but for His Hoodie*, FOX NEWS (Mar. 23, 2012) <http://www.foxnews.com/politics/2012/03/23/trayvon-martins-hoodie-and-george-zimmerman-share-blame.html>.

¹⁰ DOUGLAS BLACKMON, *SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK PEOPLE IN AMERICA FROM THE CIVIL WAS TO WORLD WAR II 1* (Doubleday, 2008).

¹¹ MORRISON, *supra* note 6, at 73 (emphasis added).

correction;” the Jacksonville, Florida ordinance anti-vagrancy ordinance struck down in *Papachristou v. City of Jacksonville*;, post-*Papachristou* laws against “aggressive begging, sidewalk-sitting; and urban camping;”¹² and, most relevant to our purposes here, Black Codes. Restrictive covenants barring non-whites from purchasing or occupying real estate were not struck down until 1948 when the Supreme Court ruled them illegal in *Shelley v. Kraemer*.¹³

But let us return to the novel’s beginning. Just a few pages after Money mentally plans his journey to Cee, the reader learns that not only is the legal system corrupt but the medical system is as well. When Reverend John Locke learns Frank has escaped from a local hospital, he comments that the hospital sells bodies to a medical school, explaining “doctors need to work on the dead poor so they can help the live rich.”¹⁴ Questioning Money further, Locke asks “how’d you end up in the hospital ‘stead of jail? That’s where most barefoot, half-dressed folks go.”¹⁵ Locke is fictionally commenting on what Harriet Washington, author of *Medical Apartheid: The Dark History of Medical Experimentation on Black Americans from Colonial Times to the Present*, notes was a historical and “long-standing preference for African American [deceased] bodies” for anatomical dissection and display.¹⁶ The criminal justice system and the medical system, having both been excoriated within a few pages of each other at the novel’s beginning, are here elided. The hospital is not where one goes to be treated but to be punished. Nor is it where one goes of one’s own accord but, like jail, where one ends up. In fact, when Money posits he was perhaps sent to the hospital because he was bleeding, Locke suggests, “They must have thought you was dangerous. If you was just sick they’d never let you in.”¹⁷ Not only are the criminal and medical systems oppressive – they are twinned, interchangeable and interwoven with each other. From this point on, the twinned abusiveness of the legal system and the medical system run like blood red threads throughout the book.

This twinning is prefigured in African American literature as early as 1900, for example in Paul Laurence Dunbar’s poem “The Haunted Oak” in which an innocent African American man is lynched by a minister, doctor,

¹² LEONARD O. FELDMAN, *CITIZENS WITHOUT SHELTER: HOMELESSNESS, DEMOCRACY, AND POLITICAL EXCLUSION* 31, 34, 36 (Ithaca: Cornell University Press, 2004).

¹³ *Shelley v. Kraemer*, 334 U.S. 1, 23 (1948).

¹⁴ MORRISON, *supra* note 6, at 12.

¹⁵ *Id.* at 13.

¹⁶ WASHINGTON, *supra* note 2, at 118.

¹⁷ *Id.* at 13.

and judge.¹⁸ Such twinning occurs in real life as well -- Washington reminds us that “[b]etween 1988 and April 1991, the New York City health commissioner ordered thirty-three tuberculosis patients to be held in hospitals against their will until they were no longer infectious. Seventy-nine percent were black.”¹⁹

Locke’s name is an allusion to philosopher-physician John Locke. The historical Locke’s work, like Morrison’s in *Home*, traversed the terrain of both law and medicine, and the presence of a character named for him right at the novel’s outset alerts the reader that the work will take up and unite these themes. As George Sabine notes, Locke progressively articulated the idea the government only has legitimacy through the consent of the governed, and, as Sabine summarizes, felt that “civil power can have no right except as this is derived from the individual right of each man to protect himself and his property.”²⁰ Pointedly, those are the very rights that, as Money observes just prior to meeting the character Locke, African Americans are denied. Here, one notes Frank and Cee’s last name “Money” is allusive, too. It calls attention to their family’s poverty, throwing into relief how lack of social-economic status and property ownership colludes with race in rendering one vulnerable to abuse and marginalized by civil society.

Yet despite the philosopher-physician’s championing of the right of men to protect themselves and their property, he also insisted “slaves... are by right of nature subjected to the absolute dominion and arbitrary power of their masters,” adding that slaves “cannot... be considered as any part of civil society.”²¹ Thus, the physician whose job it is to sustain life renders slaves ontologically dead.

III. GHOUlish GRAMMAR

The impetus for Frank’s journey to his sister is a letter he has received that reads “Come fast. She be dead if you tarry.”²² Given that in African American Vernacular English “She be dead” could either mean “She *is* dead” or “She *will be* dead,” the narrator clarifies the letter intends to state

¹⁸ PAUL LAURENCE DUNBAR, *The Haunted Oak*, in THE COMPLETE POEMS OF PAUL LAURENCE DUNBAR (Dodd Mead & Company, 1913).

¹⁹ WASHINGTON, *supra* note 2, at 326.

²⁰ GEORGE SABINE, A HISTORY OF POLITICAL THEORY 532 (Henry Holt and Company, 1937).

²¹ MARTIN COHEN, PHILOSOPHICAL TALES 105 (Blackwell Publishing, 2008).

²² MORRISON, *supra* note 6, at 8.

“she’s alive but sick, very sick.”²³ But, by giving the reader Money’s context-based interpretation of the tense of the clause, Morrison highlights the verb’s other rendering. Cee is in danger of biological death, but she is already socially dead. The grammar of mainstream English could not create a sentence that articulated, with one verb, someone’s ontological present death and conditional future biological death. African American grammar is needed to articulate the contradictions of blacks’ status.

Thus, *Home* presents a world of inversions and multiplicities where a clause such as “She be dead” may be true and false, present and conditional tense, at the same time. For the living dead of this world, the infrastructure of civil society is equally paradoxical. The legal system merely legitimizes injustice while the medical system is dedicated to white health and indifferent or even hostile to the wellness of blacks.²⁴ In fact, society requires black death both social and biological – effected by “incarceration” in both jails and hospitals to protect white public safety, displacement to sate white greed, and medical experimentation on the living black ontologically dead as well as on biologically dead black cadavers to develop science that may be used in the service of white longevity.

While the author alludes to Mary Shelley’s *Frankenstein* later in the text, the society depicted in *Home* is far more akin to Bram Stoker’s *Dracula*. This white supremacist society both literally preys on black flesh and metaphorically feeds off black humanity to sustain itself. African Canadian poet Claire Harris’ persona, in her poem *Drawing Down a Daughter*, thinks of the Caribbean and wonders whether “green is riotous / threatens numberless armies of thin / spears forever poking from fecund earth / as if three centuries of pain / grief and early dying / ensures an eternal rage in fertility.”²⁵ Just as Harris’ persona suggests black suffering is the compost responsible for environmental lushness, *Home* presents it as the grease that oils the gears of a racist culture.

²³ *Id.* at 34.

²⁴ A notorious example of this indifference is the Tuskegee Study of Untreated Syphilis in the Negro Male in which African American men, led to be informed they were being treated for syphilis, were actually having the course of their untreated syphilis monitored. This egregious human rights violation inspired the National Research Act and the Office for Human Research Protections.

²⁵ CLAIRE HARRIS, *DRAWING DOWN A DAUGHTER* 20 (Goose Lane Editions, 1st ed., 1992).

IV. THE STRANGE (LEGAL) CAREER OF JIM CROW

In his treatment of another of Morrison's books *Beloved*, Dennis Childs argues the penal system extends blacks' social death from slavery through the present day.²⁶ Thus, blacks' ontological state is always a function of law – first through the property regime, then the criminal justice regime -- just as their humanity is a function of biology. In *Home*, legal and medical systems work hand in hand towards the literal and epistemological deaths of blacks. One ought to expect to find entwined racist legal and medical histories in a nation whose founding was based unjust laws rooted in biology and pseudo-biology -- biology in the sense that the interchangeability of physiological blackness and enslave-ability initially and vulnerability to criminalization later depended on melanin and other phenotypical markers and pseudo-biology in the sense that race is a social construction often mistaken for a scientific one.

Legal history limns Childs assertion. Blackmon describes how slavery was replaced by “black codes” designed to perpetuate the racial caste system by criminalizing such behaviors as “changing employers without permission” and talking loudly with white women.²⁷ The criminalizing of black behavior – really of black being – reflected the fact that “[b]y 1900, the South's judicial system had been wholly reconfigured to make one of its primary purposes the coercion of African Americans to comply with the social customs and labor demands of whites.”²⁸ The legal system, as Blackmon notes, reconstructed the peculiar institution.

Paul Butler's tracing of how anti-drug law has been anti-minority law from the nineteenth system through the present day serves as a synecdoche for the bigotry of the criminal justice system at large. He describes how the criminalization of drugs arose out of the sinophobic belief “Chinese men were using opium to seduce white women.”²⁹ Cocaine was criminalized in the early twentieth century after “[a]legations spread that black cocaine ‘fiends’ were raping white women or going on murderous sprees while they were high on the drug.” Later, marijuana was prohibited based on the fear that it made Mexicans “crazy.”³⁰ Legislation continued to be used to enforce racial inequity in the post-Civil Rights era. For example, as Marc Mauer

²⁶ Dennis Childs, “*You Ain't Seen Nothin' Yet*”: *Beloved*, *the American Chain Gang*, and *the Middle Passage Remix*, 61 AM. Q. 271–294 (2009).

²⁷ BLACKMON, *supra* note 10, at 67.

²⁸ BLACKMON, *supra* note 10, at 7.

²⁹ PAUL BUTLER, LET'S GET FREE: A HIP-HOP THEORY OF JUSTICE 44 (The New Press, 2009).

³⁰ *Id.* at 45.

noted in *Race to Incarcerate*, a study on “changes in state prison populations between 1971 and 1991... concluded that by 1990... the size of a state’s black population was an even stronger predictor of the prison population than the rate of violent crime.”³¹

And Michelle Alexander explains how the current legal system comes nearly full circle to render African Americans ontologically dead:

Rather than rely on race, we use our criminal justice system to label people of colors ‘criminals’ and then engage in all the practices we supposedly left behind. Today it is perfectly legal to discriminate against African Americans. Once you’re labeled a felon, the old forms of discrimination—employment discrimination, housing discrimination, denial of the right to vote, denial of educational opportunity, denial of food stamps and other public benefits, and exclusion from jury service—are suddenly legal.³²

Today, the United States exists in a state of mass incarceration.³³ As Alexander notes, no other country in the world imprisons such a high proportion of its population. As one might expect, this system of mass incarceration has a large racial component: “The United States imprisons a larger percentage of its black population than South Africa did at the height of apartheid.”³⁴ As Fareed Zakaria observed in a *Time* article on April 12, 2012, the War on Drugs is the engine of American mass incarceration. But despite the fact African Americans do not commit drug crimes at higher rates than whites,³⁵ blacks constitute nearly one third of people arrested for breaking drug laws and almost forty percent of those imprisoned for drug crimes³⁶ while only making up 12.2% of the population.³⁷ As Human Rights Watch noted in one of its reports, “Because of their extraordinary rate of incarceration, one in every 20 black men over the age of 18 is in a

³¹ MARC MAUER, *RACE TO INCARCERATE* 52 (The New Press, Revised ed., 1992).

³² MICHELLE ALEXANDER, *THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS 2* (The New Press, 2010).

³³ *Mass Incarceration in the U.S.A.*, AMNESTY INT’L, <http://www.amnestyusa.org/our-work/issues/military-police-and-arms/police-and-human-rights/mass-incarceration-in-the-usa> (last viewed Apr. 18, 2017)

³⁴ ALEXANDER, *supra* note 32, at 6.

³⁵ *Id.* at 7.

³⁶ *The Drug War, Mass Incarceration and Race*, Drug Policy Alliance (June 2015), http://www.unodc.org/documents/ungass2016/Contributions/Civil/DrugPolicyAlliance/DPA_Fact_Sheet_Drug_War_Mass_Incarceration_and_Race_June2015.pdf.

³⁷ *Overview of Race and Hispanic Origin: 2010*, U.S. Census Bureau (Mar. 2011), <http://www.census.gov/prod/cen2010/briefs/c2010br-02.pdf>.

state or federal prison, compared to one in every 180 whites.”³⁸ Furthermore, nine percent of black adults of both sexes are either confined, on probation, or on parole – only two percent of white adults are.³⁹

Recent events in Ferguson, Missouri vividly illustrate the way bias in the legal system is ever contemporary. Volatile protests occurred in Ferguson after a white police officer killed a black unarmed teenager.⁴⁰ As scholars noted in the *Harvard Law Review*, many of the townspeople viewed the killing as the last indignity they could bear to endure at the hands of the legal system.⁴¹ Ferguson had excessively fined its residents for transgressions such as small traffic violations and offenses as trivial as signing up for the wrong trash collection service.⁴² Those who could not afford to pay – not a small number in a town with a median income of \$20,472 -- found themselves fined for that failure, too, and ultimately arrested, jailed, and billed for each night of their confinement. In this manner, the resources of the poor were appropriated to supply the second largest source of municipal funding.⁴³ But all Ferguson’s citizens were not preyed upon equally – as Matt Apuzzo reported in a March 1, 2015 *New York Times* article, the Department of Justice found African Americans were disproportionately targeted for fines and arrests.⁴⁴ In the twenty-first century, during the tenure of a black president, African Americans in Ferguson were punished for their penury just as their forefathers had been criminalized during the eighteenth century for vagrancy. Whether a contemporary Ferguson citizen is being jailed for picking the wrong trash collector⁴⁵ or her nineteenth century analog was being held captive for speaking loudly with a white woman,⁴⁶ harsh discipline of silly offenses allows blackness to be ever penalized.

Morrison’s corpus reflects the assertions and observations of legal scholars by presenting the racist criminal justice system as an enduring feature of American society beginning with *Beloved*, a story of slavery,

³⁸ *Incarceration and Race*, HUMAN RIGHTS WATCH, <https://www.hrw.org/reports/2000/usa/Rcedrg00-01.htm> (last viewed Apr. 18, 2017),

³⁹ *Id.*

⁴⁰ Cassandra Vinograd, *Shooting of Michael Brown Sparks Riots in Ferguson, Missouri*, NBC NEWS (Aug. 11, 2014, 1:42p.m.) <http://www.nbcnews.com/storyline/michael-brown-shooting/shooting-michael-brown-sparks-riots-ferguson-missouri-n177481>.

⁴¹ *Policing and Profit*, 128 HARV. L. REV. 1723, 1724 (2015).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ BLACKMON, *supra* note 10, at 67.

continuing on in *Home*, set in the Korean War era, and being perpetuated through *Love*, Morrison's 2003 novel set in the present day. *Love* depicts a juvenile hall administrator who sexually preys on the inmates and is protected by his colleagues.⁴⁷ Junior, the adolescent African American girl whom the administrator tried to victimize, is punished for defending herself.

V. HYPOCRITICAL HIPPOCRATES

While the legal system ensured the social inferiority of racial minorities in general and African Americans in particular, the medical system dehumanized African Americans as well. As Harriet A. Washington states in *Medical Apartheid*, "Dangerous, involuntary, and nontherapeutic experimentation upon African Americans has been practiced widely and documented extensively at least since the eighteenth century."⁴⁸ She curates for the reader a horrific timeline of "experimental abuse and exploitation of African Americans in early American medicine . . . up until the Tuskegee Syphilis Study, which began in 1932" to "the period from the early twentieth century to the present day in a roughly chronological manner" in which "children, soldiers, and hospital patients [were] used in research conducted by institutions ranging from the federal government to private corporations."⁴⁹

In terms of the "recent history of medical research with African Americans," Washington directs our attention to abuses being investigated "at more than sixty research centers" and "experimentation-related deaths at premier universities," to the plight of subjects who:

[W]ere given experimental vaccines known to have unacceptably high lethality, were enrolled in experiments without their consent or knowledge, were subjected to surreptitious surgical and medical procedures while unconscious, injected with toxic substances, deliberately monitored rather than treated for deadly ailments, excluded from lifesaving treatments, or secretly farmed for tissues that were used to perfect technologies such as infectious-disease tests.⁵⁰

Morrison draws the reader's attention to the socio- biological dimensions of life and death when the wife of the doctor to whom Cee

⁴⁷ TONI MORRISON, *LOVE* 116 (Knopf, 2003).

⁴⁸ WASHINGTON, *supra* note 2, at 7.

⁴⁹ *Id.* at 19.

⁵⁰ *Id.* at 5–6.

becomes both employee and victim states of her husband, “He’s no Dr. Frankenstein.”⁵¹ The character is not lying. Dr. Frankenstein creates life from death. Mrs. Scott’s husband Dr. Beau nearly creates biological death from sociological death. Mrs. Scott is attempting to comfort Cee, but her words are an inadvertent warning -- Dr. Beau is not going to endow Cee with ontological life. He will not socially resurrect her. And far from animating her flesh, he will almost annihilate it. The difference between Dr. Beau and Frankenstein is highlighted by the presence of a “Frank” in the story. Frank *is* a Dr. Frankenstein in the sense that he rescues Cee from death and facilitates the revitalization of her life force. The only parallel between Dr. Frankenstein and Dr. Beau is that neither sees the subject of his experiments as human. Dr. Beau conceives of Cee as what Frankenstein’s Creature literally is – a collection of parts.

But Mrs. Scott says something else of import in her first interaction with Cee. “His inventions help people.”⁵² Obviously, Dr. Beau’s attempts to improve the speculum by experimenting on Cee do not help her. But, in Dr. Beau’s mind, not only is Cee not ontologically alive – not philosophically different from the black cadavers the hospital sends to the medical school – but she’s also not, in a racist taxonomy, human. “People” – the ones Dr. Beau helps – are the ones Lockes refers to as the “live rich.”⁵³

V. GREEN LIKE ME

The very beginning of the novel provides additional context for Mrs. Scott’s statement. At the novel’s opening, Frank describes a childhood memory of him and his sister watching horses fight each other.⁵⁴ Again and again, Frank repeats that the horses rose and stood like men, i.e. on their back hooves alone.⁵⁵ In African American Frank’s capacious view, horses are akin to men. In contrast, the white Dr. Beau pushes Cee beyond the borders of the human species by treating her as a laboratory rat.

Yet upon their return from viewing the horses, Cee and Frank come upon another notable sight. They watch some men “pull a body from a wheelbarrow and throw it into a hole already waiting.” To their horror, “[o]ne foot stuck up over the edge and quivered, as though it could get out.” Frank and Cee watch the men “drive the jerking foot down to join the rest

⁵¹ MORRISON, *supra* note 6, at 60.

⁵² *Id.*

⁵³ *Id.* at 12.

⁵⁴ *Id.* at 3–4.

⁵⁵ *Id.* at 5.

of itself.” Frank notes, “When she saw that black foot... being whacked into the grave, her whole body began to shake.”⁵⁶

It is here, after encountering the paradox of personified horses, the reader first encounters living death in the novel – in the form of a black person being buried alive. Even as Frank realizes the individual is alive, he speaks of the person as if he or she were dead. He describes not a person but a “body,” then reminisces about a foot that is made to join “itself.” “Itself” is a word for a corpse – or an animal. Tellingly, once Frank and Cee can no longer see the foot shaking, Cee immediately begins to, foreshadowing how she will take up this victim’s role as a living corpse just as she took up his or her trembling.⁵⁷

Frank concludes the passage by remarking, “Since you’re set on telling my story, whatever you think and whatever you write down, know this. I really forgot about the burial. I only remembered the horses. They were so beautiful. So brutal. And they stood like men.”⁵⁸ Why is this so urgently necessary to remember? The detail is essential because Frank remembers the benign lesson while forgetting the horrific one – that while black and rust-colored animals may be embraced as something akin to human, black and rust-colored humans may be denied their humanity and their ontological and biological lives. It is this lesson he re-learns once Cee becomes Dr. Beau’s victim.

The idea that animals can usurp the tenuous humanity, particularly the manhood, of African Americans also appears in *Beloved*. After Paul D, a slave, is leashed like an animal, he happens to see the plantation’s proud and unrestrained rooster, the portentously named “Mister,” whom he feels is granted more humanity than himself.⁵⁹ Contemporary African American discourse also observes how animals seem to take the place of blacks as worthy of personhood and its attendant rights in the white imagination. For example, many African American commentators lamented how Walter Palmer’s killing of a protected lion, anthropomorphically named Cecil, in Zimbabwe aroused a greater public condemnation from whites than had a near constant spate extra-judicial slayings of unarmed black men and boys since 2012.

Morrison’s conflation of humanity and non-humanity in *Home* becomes more explicit later on. The horse fight/burial scene takes place under a

⁵⁶ *Id.* at 4.

⁵⁷ *Id.*

⁵⁸ *Id.* at 5.

⁵⁹ TONI MORRISON, *BELLOVED* 72 (Knopf, 1987).

“cantaloupe” moon.⁶⁰ The next time melons appear in the text, Sarah, Dr. Beau’s housekeeper, is considering their gender. She and Cee remark that female melons are the sweetest, and the chapter closes with a disturbing sentence: “Sarah slid a long, sharp knife from a drawer and, with intense anticipation of the pleasure to come, cut the girl in two.”⁶¹ Like the horses, the melon is the recipient of human language. It not only has gender but is referred to as a girl. But just as the horses seem to usurp the humanity of the murder victim in the book’s opening scene, the reader soon learns that while a melon can be a girl, a girl can be dehumanized into a melon sliced open for another’s pleasure.

The disturbing congruence between non-human and human forms of nature, particularly between plants and African Americans, appears in Morrison’s earlier work. In *Beloved*, the slave Sethe develops scars that resemble a chokecherry tree after a merciless beating.⁶² In fact, throughout black literature, plant life is used as a metaphor for the voicelessness and vulnerability of ontological black death. Thus Lucille Clifton insists in an unnamed poem “being property once myself / i have a feeling for it, / that’s why I can talk about environment.”⁶³ Like Money, Clifton humanizes and genders the non-human, asserting “What wants to be a tree / ought to be he can be it.” The protagonist of *The Color Purple*, like Cee, ontologically dead for reasons of gender in addition to race and class describes the way she endures domestic violence thusly: “It all I can do not to cry. I make myself wood. I say to myself, Celie, you a tree. That’s how come I know trees fear man.”⁶⁴

One particular tale merits a more in depth analysis. In Charles Chesnutt’s story “Po’ Sandy” the narrator, Julius, tells a patently fictional story to call attention to the fact that species is a category that is not merely a matter of biology, but can also be constructed by legal fictions. “Ef you’ll des say de word, I kin turn yer ter w’ateber yer wanten be, en yer kin stay right whar yer wanten, ez long ez yer mineter,” a conjure woman tells the slave Sandy.⁶⁵ She offers to change his lived reality of species from human to that of a rabbit, wolf, or “mawkin’bird” before ultimately making him

⁶⁰ MORRISON, *supra* note 6, at 4.

⁶¹ *Id.* at 66.

⁶² MORRISON, *supra* note 59, at 24.

⁶³ LUCILLE CLIFTON, *GOOD NEWS ABOUT THE EARTH 2* (Random House, 1st ed., 1972).

⁶⁴ ALICE WALKER, *THE COLOR PURPLE* 23 (1982). Harcourt Brace Jovanovich

⁶⁵ CHARLES W. CHESNUTT, *THE CONJURE STORIES: NORTON CRITICAL EDITIONS* 17 (Robert B. Stepto and Jennifer Rae Greeson, eds., 2012).

into a pine tree.⁶⁶ These fantastic possible literal transformations are a metaphor for the actual taxonomic power of transformation owners had over socially dead slaves -- slavery itself transformed African Americans from human to non-human by making them commodities. As Lawrence Buell remarks in *The Future of Environmental Criticism*, “Personhood is defined for better or worse by environmental entanglement. Whether individual or social, being doesn’t stop at the border of the skin.”⁶⁷ This is all the more true if one is a slave.

Tenie’s fictional transformation of Sandy into a form of nature parallels how European Americans had the legal ability to dehumanize African Americans and (mis)treat them as if they were no more than a resource like wood. Thus, when Ruffin describes how “[e]xperienced with the triumphs and troubles of life among those at the bottom of human hierarchies, African Americans have a keen knowledge of the ecological implications of social systems...” she could very well be discussing Cee, Sethe, Celie, and Julius.⁶⁸

The reader recognizes the flagrant unreality of Julius’ tale of metamorphosis. However, his story deals with a history equally unbelievable. When Annie, Julius’ audience, responds, “What a system it was under which such things were possible!” she voices her incredulity at an institution dependent upon legal fictions as outlandish as anything to be found in a fairy tale.⁶⁹

When Julius describes how Sandy, in pine tree form, is cut down and chopped up, he shows just how real legal fictions can be. Julius describes Tenie finding “de stump standin’ dere, wid de sap runnin’ out’n it, en de limbs layin’ scattered roun’,” and the reader is struck by how suited his diction is to describing an act of anti-human violence.⁷⁰ A “stump” can refer to a tree or the remains of an extremity after an amputation. The sap “runs” like blood. “Limbs” denote both tree branches and human arms and legs. Then, at the sawmill, Tenie is tied up and forced to watch Sandy being processed in the same way slaves were made to watch each other be tortured and killed in order to deter them from rebellious behavior. Even though slaves were not literally transformed into non-human property, they

⁶⁶ *Id.*

⁶⁷ LAWRENCE BUELL, *THE FUTURE OF ENVIRONMENTAL CRITICISM: ENVIRONMENTAL CRISIS AND LITERARY IMAGINATION* 23 (Wiley-Blackwell, 1st ed., 2005).

⁶⁸ KIMBERLY N. RUFFIN, *BLACK ON EARTH: AFRICAN AMERICAN ECOLITERARY TRADITIONS* 23 (University of Georgia Press, 2010).

⁶⁹ CHESNUTT, *supra* note 65, at 21.

⁷⁰ *Id.* at 19.

suffered physical violence as though they actually had been. Social death sometimes led to literal death as it did for Sandy and almost did for Cee.

The story explains that Tenie's original plan was to "devise a goopher that would 'turn herse'f and Sandy to foxes, er sump'n, so dey could run en go some'rs whar dy could be free' en lib lack w'ite folks."⁷¹ The fact that she intends herself and Tenie to "lib lack w'ite folks,"⁷² shows she will ultimately return them to human form.

Tenie does not think to herself that, after her and Sandy escape, they will live free as human beings have the right to do. She thinks they will be free as only European Americans have the legal right to do. Legal fictions have reduced the species of human to the white race. It is notable that Tenie never explicitly states that after she turns herself and Sandy into foxes, she will turn them again into humans. Perhaps that is because she realizes she and Sandy can never be human (in the sense of possessing a species status to which human rights attach) because, since the law has reduced the human species to the white race, once they return to the African American form, they still won't be human.

Chesnutt takes up this theme in another one of his stories as well. In "The Goophered Grapevine," Chesnutt describes the transformation undergone by Henry, a slave:

...ez soon ez de young leaves begun ter come out on de grapevimes de ha'r begun ter grow out on Henry's head... ez de young grapes begun ter come Henry's ha'r begun ter quirl all up in little balls, des like dis yer reg'lar grapy ha'r... When Henry come ter de plantation, he wuz gittin' a little ole an stiff in de j'int. But dat summer he got des ez spry en libely ez any young nigger on de plantation... But de mos' cur'ouses' thing happen' in de fall, when de sap begin ter go down in de grapevimes. Fus', when de grapes 'uz gethered, de knots begun ter straighten out'n Henry's h'ar; en w'en de leaves begin ter fall, Henry's ha'r begin ter drap out; en w'en de vimes 'uz b'ar, Henry's head wuz baller 'n it wuz in de spring, en he begin ter git ole en stiff in de j'int ag'in, en paid no mo' tention ter de gals dyoin' er de whole winter.⁷³

This is comedic, and it is wondrous, but it is also horrific. Race slavery makes Henry subject to the version of the punishment suffered by thieves in the seventh Bolgia of the eighth circle of Hell in Dante's *Inferno*. His loss

⁷¹ *Id.* at 18.

⁷² *Id.*

⁷³ CHESNUTT, *supra* note 65, at 10.

of physical integrity, symbolized by his taking on of plant-like qualities, is a literal manifestation of his degradation. Henry ceases to be subject to the unidirectional decline of human senescence, instead aging and being revitalized according to the life cycle of grapes. His biological reality transforms to accord with what was formerly a legal fiction: his status as a natural good. He is a grape just as Cee is a cantaloupe.

In *Home*, the memory of the horses haunts Frank the way horse and human comparisons haunt others of Morrison's characters. For example, in *The Bluest Eye*, Pauline Breedlove shares the painful memory of a white doctor commenting that she will give birth as painlessly as a horse. She remembers not only mentally arguing for her humanity, but also acknowledging that horses feel pain, too.⁷⁴ (The scene takes place in the years after the Great Depression, but in 2012 the *Journal of Health Disparities Research and Practice* published the results of a data analysis that indicated African American patients receive worse pain management than white patients).⁷⁵ Thus, *Home* is not the first instance in Morrison's corpus during which an African American character recognizes the personhood of a horse and a white doctor treats an African American as subhuman. Additionally, the name "Breedlove" incarnates the human/non-human dichotomy – the doctor sees Pauline as an animalistic breeder while love is a human emotion.

Dr. Beau, a eugenicist, has a literary ancestor in Morrison's work, the Darwinist plantation teacher in *Beloved*, who traumatizes Sethe by having his white charges make a list with "her human characteristics on the left; her animal ones on the right."⁷⁶ Continuing the human-livestock link that Frank and Pauline's obstetrician forge, the teacher allows his nephews to "milk" Sethe.⁷⁷ It is the memory of the teacher's dehumanization of her that drives Sethe to infanticide. For Sethe, only biological death could spare her baby from the social death that results from the confluence of racist, dehumanizing law and bioethics. As she explains it, "If I hadn't killed her she would have died...."⁷⁸ Just as only the vulnerability to both biological and ontological death allows for a full interpretation of the word "be" in "She be dead," only the recognition that social and biological life are uncoupled for African Americans allow readers to make sense of Sethe's explanation.

⁷⁴ TONI MORRISON, *THE BLUEST EYE* 125 (Holt, Rinehart and Winston, 1970).

⁷⁵ Miriam O. Ezenwa and Michael F. Fleming, *Racial Disparities in Pain Management in Primary Care*, 5:3 J. OF HEALTH DISPARITIES RESEARCH & PRAC. 12, 21 (2012).

⁷⁶ MORRISON, *supra* note 59, at 193.

⁷⁷ *Id.* at 70.

⁷⁸ *Id.* at 200.

Finally, it must be noted that in addition to the scenes taking place during slavery, *Beloved* also illustrates Washington's description of how the medical system's reprehensible treatment of African Americans had one of its origins the "popular public display and imaging of black bodies" a practice that had a "permeable membrane" with "medical display."⁷⁹ In the novel, the freed African American main characters visit a circus and view a "Wild African Savage" who "shook his bars and said wa wa"⁸⁰ a figure exhibited in a manner similar to Ota Benga, the Mbuti man displayed as an "African Savage" in the National Zoological Gardens.⁸¹

VI. DOUBLE JEOPARDY – RACE PLUS GENDER, CLASS, OR MORE

While "African American" may be elided with "vulnerable," innocence does not automatically attach to melanin in black literature. Frank, himself, dehumanizes another character in the book, at first in a way that seems benign. He describes a native girl whom he saw while serving in Korea searching for food among the American army's trash. He watches her "paw" the soldiers' garbage, comparing the sight of her to "a bird feeding her young or a hen scratching, scratching dirt for the worm she knew for sure was buried underneath."⁸² Frank describes the girl's hand as a "tiny starfish." Yet despite Frank's affection for the girl whom he compares to his sister and himself, he shoots her in a war crime whose details he represses for most of the book.

It is important that Frank's experiences with the Korean girl, which somewhat parallels Dr. Beau's experience with Cee, take place during the Korean War. In her essay "Heteropatriarchy and the Three Pillars of White Supremacy: Rethinking Women of Color Organizing" Andrea Smith says of non-whites:

Our survival strategies and resistance to white supremacy are set by the system of white supremacy itself. What keeps us trapped within our particular pillars of white supremacy is that we are seduced with the prospect of being able to participate in the other pillars. For example, all non- Native peoples are promised the ability to join the colonial project of settling indigenous lands. All non-Black peoples are

⁷⁹ WASHINGTON, *supra* note 2, at 79.

⁸⁰ MORRISON, *supra* note 59, at 48–49.

⁸¹ WASHINGTON, *supra* note 2, at 76.

⁸² MORRISON, *supra* note 6, at 94–95.

promised that if they comply, they will not be at the bottom of the racial hierarchy. And Black, Native, Latino, and Asian peoples are promised that they will economically and politically advance if they join U.S. wars to spread ‘democracy.’⁸³

Thus, a militarized Frank renders another non-white character first animalistic, then biologically dead. And Frank’s entrée into the army was for the very reasons Smith advanced – to escape Lotus, Georgia, a place of “mindless work in fields you didn’t own, couldn’t own, and wouldn’t own if you had any other choice.... Thank the Lord for the army.”⁸⁴

In Frank’s reflection upon why he joined the army, Lotus is described not only as a place of “mindless work” but also a place where “any kid who had a mind would lose it.”⁸⁵ It is a town where “there was no future, just long stretches of killing time. There was no goal other than breathing, nothing to win...” Furthermore, “[n]obody in Lotus knew anything or wanted to learn anything.”⁸⁶ Thus, the name of the town is a mythological pharmacological allusion to the lotus-eaters of the *Odyssey* who were addicted to the lotus flower and lived in narcotized indifference.

African American literature has long observed the ways individuals oppressed along one axis but privileged along another may act as oppressors in certain contexts. For example, in *The Color Purple*, Celie is essentially marketed to her future husband Albert as though she were a piece of livestock. Pa states he “can let you [Celie’s prospective husband] have Celie,” using a salesman’s language. He details her gynecological and reproductive qualities as though she were an animal: “She ain’t fresh tho, but I spect you know that. She spoiled. Twice... And God done fixed her. You can do everything just like you want to and she ain’t gonna make you feed it or clothe it.” Even the verb Albert uses to describe Celie’s infertility “fixed” is the word used for describing a spayed or neutered animal. He also frames her as a beast of burden: “But she ain’t no stranger to hard work.” Finally, he forces Celie to display herself to Albert’s appraising gaze as though she were an animal or a slave (a biologically human, legal animal) being auctioned.⁸⁷ Though Celie does not use figurative language to

⁸³ Andrea Smith, *Heteropatriarchy and the Three Pillars of White Supremacy: Rethinking Women of Color Organizing*, in *COLOR OF VIOLENCE: THE INCITE! ANTHOLOGY* 69 (Jill Petry ed., Cambridge: South End Press, 2006).

⁸⁴ MORRISON, *supra* note 6, at 84.

⁸⁵ *Id.*

⁸⁶ *Id.* at 83.

⁸⁷ WALKER, *supra* note 64, at 7–8.

compare her treatment to that of animals, Pa's diction and actions make his zoomorphism of her clear.

Yet just as the corrupt legal and medical systems converge in the abusive experiences of African American characters, so, too, do law and medicine come together in the section of the book in which Cee is healed by a group of black female folk practitioners: "The women handled sickness as though it were an affront, an illegal..." These healers also make clear their feelings about the white dominated medical system: "Once they knew she had been working for a doctor, the eye rolling and tooth sucking was enough to make clear their scorn. And nothing... made them change their minds about the medical industry."⁸⁸ Their comments to Cee hold her accountable for her role in her ontological and nearly biological deaths: "Men know a slop jar when they see one," "You ain't a mule to be pulling some evil doctor's wagon," "You a privy or a woman?" "Who told you you was trash?" "Slop jar," "mule," "privy," and "trash," signify the forms blacks take on when taxonomically excluded from the human species.

"Mule" is an allusion to Zora Neale Hurston's *Their Eyes Were Watching God*. Nanny warns her granddaughter Janie, "Honey, de white man is de ruler of everything as fur as Ah been able tuh find out. Maybe it's some place way off in de ocean where de black man is in power, but we don't know nothin' but what we see. So de white man throw down de load and tell de nigger man tuh pick it up. He pick it up because he have to, but he don't tote it. He hand it to his womenfolks. De nigger is de mule uh de world so fur as Ah can see."⁸⁹

Nanny's sociological conclusions prefigure what legal scholar Kimberlé Williams Crenshaw refers to as "intersectionality" which is a rubric for understanding the experiences of those at the nexus of more than one form of oppression – in this case, race and gender. Cee, as a black woman, is more vulnerable to a certain type of abuse – like the melon, the novel suggests females are the most delectable to cut open – especially for doctors who are "so interested in wombs."⁹⁰ Smith also takes an intersectional perspective, looking at the matrix of negrophobia, orientalism, imperialism, as well as heteronormativity and sexism. The surname Money, as aforementioned, limns the way class, in addition to race, oppresses. Age is an additional challenge. As Miss Ethel, Cee's primary healer, declares, "You young and a woman and there's serious limitation in both, but you a

⁸⁸ MORRISON, *supra* note 6, at 121.

⁸⁹ ZORA NEALE HURSTON, *THEIR EYES WERE WATCHING GOD* 29 (New York: Negro Universities Press, 1937).

⁹⁰ MORRISON, *supra* note 6, at 113.

person too. Don't let... no devil doctor decide who you are. That's slavery."⁹¹

Miss Ethel's definition of slavery hearkens back to one of Sethe's most traumatic experiences in captivity – having the young white men on the plantation, under the supervision of their Darwinist teacher, assigned to list her human and animal characteristics – not being able to stop them from deciding who she was. Miss Ethel's definition reminds the reader that ontological death rooted in the legal regime of slavery has the power to transcend legal abolition as a figurative form of slavery. Additionally, Miss Ethel echoes a personal belief of Morrison's: "What I think the political correctness debate is really about is the power to be able to define. The definers want the power to name. And the defined are now taking that power away from them."⁹² Finally, Miss Ethel reminds us of one of the most tragic acts of defining in legal history, the *Dred Scott* decision.

VII. THE GOOD DOCTOR

Like *Home*, Morrison's works *A Mercy*, *Beloved*, and *The Bluest Eye* suggest the only medical practitioners African Americans can trust are those who are themselves marginalized by the legal and medical system. For example, in *A Mercy* there is an unnamed African character known only as "the blacksmith" who heals a mixed race girl in 17th-century New York. In *Beloved*, there is Amy Denver, a white fugitive indentured servant, who cares for Sethe. While Amy prefigures Pauline's obstetrician gynecologist by asking Sethe, "What you gonna do, just lay there and foal?"⁹³ She also massages Sethe's legs and feet when Sethe is unable to walk, an act the narrator refers to as "magic." Amy is an inverse Dr. Beau. She correctly identifies her labors as revitalizing, warning Sethe, "It's gonna hurt, now.... Anything dead coming back to life hurts."⁹⁴ And, finally, in *The Bluest Eye* there is M'Dear, an African American woman deemed by the narrator a "competent midwife and decisive diagnostician" and considered "infallible" by her community.⁹⁵

Her practice is described in a way meant to limn her sensitivity and expertise: "The backs of her long fingers she placed on the patient's cheek, then placed her palm on the forehead. She ran her fingers through the sick

⁹¹ *Id.* at 126.

⁹² Claudia Dreifus, *Chloe Wofford Talks about Toni Morrison*, in TONI MORRISON: CONVERSATIONS 101, 101 (Carolyn C. Denard ed., 2008).

⁹³ *E.g.*, MORRISON, *supra* note 59.

⁹⁴ *Id.* at 35.

⁹⁵ *E.g.*, MORRISON, *supra* note 74, at 109.

woman's hair, lightly scratching the scalp, and then looking at what the fingernails revealed. She lifted Aunt Jimmy's hand and looked closely at it—fingernails, back skin, the flesh of the palm she pressed with three fingertips. Later she put her ear on Aunt Jimmy's chest and stomach to listen."⁹⁶

M'Dear takes on a quasi-mythological status: "Few could remember when M'Dear was not around. In any illness that could not be handled by ordinary means—known cures, intuition, or endurance—the word was always, 'Fetch M'Dear.'" Her appearance is even larger than life: "M'Dear loomed taller than the preacher who accompanied her. She must have been over six feet tall. Four big white knots of hair gave power and authority to her soft black face. Standing straight as a poker, she seemed to need her hickory stick not for support but for communication."⁹⁷

I linger on M'Dear because she is in many ways the ultimate ideal Morrison healer, lovingly and extensively depicted, and a prototype of those who heal Cee -- female, black, old, skilled despite lacking formal education in medicine, and, perhaps most importantly, embedded in and vetted by an African American community. Her very "name," "M'Dear," is not a name at all but an African American term of endearment for grandmothers and other elderly women -- a contraction of "My Dear." M'Dear stands in stark contrast to Dr. Beau -- a white man with a medical degree living in a segregated white community.

At the novel's end, Cee and Frank properly bury the man whom they saw murdered when they were children, transferring the manhood Frank originally conferred on the horses they saw during the murder onto the victim himself by crafting a marker that reads "Here Stands a Man."⁹⁸ Though biologically dead, the siblings grant him an ontological afterlife. Sethe's reason for killing her infant daughter suggests ontological life is only available to the biologically dead -- "If I hadn't killed her she would have died..." In Morrison books, characters don't necessarily "live happily ever after." At times, the most they can hope for is to live happily in the ever after.

VIII. CRITICAL RACE (LITERARY) THEORY

Morrison's corpus and much of the past century of African American literature see racism as an enduring feature of American history, particularly

⁹⁶ *Id.* at 108.

⁹⁷ *Id.*

⁹⁸ *E.g.*, MORRISON, *supra* note 6, at 144–145.

legal history, from 1776 through the present day. Thus, these entities affirm the assertions of Critical Race Theory. For example, “racial realism” is a component of Critical Race Theory that insists “racial progress is sporadic and that people of color are doomed to experience only infrequent peaks followed by regressions.”⁹⁹

Rather than fading away over time, Morrison’s body of work frames racism as simply morphing. Malcolm X said, “Racism is like a Cadillac, they bring out a new model every year.” Less colorfully, Yale Law School legal scholar Reva Siegel referred to as “preservation through transformation.”¹⁰⁰ And various models of bioethical racism appear in almost every Morrison book. In scenes from *Beloved* taking place during slavery, African Americans are used as exhibits in racist Darwinist lessons. In a scene that takes place during the Reconstruction Era, a black person is exhibited as a savage in the circus. Later, during the post-Depression Era, an African American woman is compared to a horse as she prepares to begin labor in *The Bluest Eye*. In another Morrison novel *Song of Solomon*, a black community refers to a street officially named “Doctor Street” as “Not Doctor Street” and “call[ed] the charity hospital at its northern end No Mercy Hospital since it was 1931... before the first colored expectant mother was allowed to give birth inside its wards and not on its steps. The reason for the hospital’s generosity to that particular woman was not the fact that she was the only child of this Negro doctor, for during his entire professional life he had never been granted hospital privileges and only two of his patients were ever admitted to Mercy, both white.”¹⁰¹ Finally, in the post- Korean War era of *Home*, African Americans are incarcerated in hospitals and experimented upon without their informed consent.

Similarly, African Americans’ progression towards freedom, effected by the Emancipation Proclamation, the 13th Amendment, and Freedmen’s Bureau and Reconstruction Era legislation ends the regimes of slavery and indentured servitude illustrated in *Margaret Garner* (an opera for which Morrison wrote the libretto), *A Mercy* and *Beloved* are abolished only to be replaced by the Black Codes Money is mindful of in *Home*. The Equal Protection Clause is enacted and then undermined by the housing discrimination Lily faces. And Junior, in the present day, is as much a victim of the criminal justice system in *Love* as Paul D is, trapped on a chain gang, in *Beloved*.

⁹⁹ RICHARD DELGADO AND JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION 171 (NYU Press, 2nd ed., 2012).

¹⁰⁰ E.g., ALEXANDER, *supra* note 32, at 21.

¹⁰¹ TONI MORRISON, *SONG OF SOLOMON* 4–5 (New York: Vintage International, 2004).

Furthermore, as Adalberto Aguirre, Jr. explains, “The most distinguishing feature of CRT writings is the use of stories or first-person accounts.... Critical race theories use storytelling as a methodological tool for giving *voice* to marginalized persons and their communities.”¹⁰² It is clear Morrison, like the other African American writers cited here, Dunbar, Chesnutt, Hurston, and Walker, employ stories in this manner. Even though these authors are not legal scholars, as Katanski writes, they do “engage with and actively participate in the process of lawmaking, legal interpretation, and policymaking.”

CONCLUSION

Morrison’s novels conclude, often somewhat hopefully, yet protagonists of one work learn a valuable lesson or survive or save someone else from the depredations of an unjust legal or medical system only for the protagonists of another opus, taking place in a later era, to fall victim to the current incarnations of legal and bioethical oppression. Thus, Morrison’s works function not as an illustration of Martin Luther King Jr.’s arc of the moral universe bending towards justice but the spiral of American history continuously looping back to injustice. Furthermore, by richly illuminating African American lives, Morrison’s works, particularly *Home*, unmask that which masquerades as justice and medicine at the level of both narrative and grammar. But her work does not stand alone. It is merely part of a two centuries old African American testimony on American legal and medical history known as the African American canon. These works serve to put the legal system itself on trial. They are a creative dissent to legal structures that have continuously failed blacks. And by focusing on the lived reality of African Americans, Morrison and her peers prevent single issue analyses of legal or bioethical issues – she reminds readers African Americans’ experiences with law and medicine are complicated by matters beyond race such as gender, age, class, military status, and even species. Finally, when Morrison crafts depictions of good healers, she shows that in addition to the literature of non-white communities exposing readers to a “wide range of customary legal practices and alternative definitions of sovereignty and justice” they also open a window into the world folk healing and model exemplary healers.

Home, Morrison’s body of work, and the African American literary canon also expose the interconnectedness of the legal and medical systems.

¹⁰² Adalberto Aguirre, Jr. *Academic Storytelling: A Critical Race Theory Story of Affirmative Action*, 43:2 SOCIOLOGICAL PERSPECTIVES 321 (2000).

The medical system relies on the bio-logic of the legal system to render black bodies vulnerable while the legal system needs a medical system lacking in bioethics to lead pseudo-scientific credence to its discriminatory laws. These concentric works and bodies of work serve as both remedy and cure for legal and bioethical injustice.