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ARTICLES

Black Arts and Good Law: Literary Arguments for Racial Justice in the Time of *Plessy*

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In this article, the author demonstrates how late 19th Century writers who advocated for racial equality used the concepts of symmetry and equality, as represented in the 14th amendment, to argue that racial justice was beautiful – philosophically as well as politically, and to argue for constitutional interpretations which advanced racial justice. This is read as a species of argumentative formalism, nonetheless bearing political goals. In identifying this practice, the author hopes to enrich conversations about the conflict between abstract legal principles, and the belief that law is a product of social and political realities, as it relates to race, by demonstrating that the abstraction of law was appealing and even useful in historic struggles for racial equality.

I. Introduction: Imperative Justice?

As the Southern states were unyoked from Republican hold, a furious backlash was unleashed against the social and political guarantees afforded to blacks by Reconstruction. De jure segregation, anti-miscegenation statutes, enticement statutes, and other race-based legislation operated alongside lynchings, burnings, and other forms of violence and torture which were committed against black people in order to firmly re-establish racial hierarchy post-emancipation.[1] Of course, those advocating for rights for African Americans believed the nation had an imperative duty based in simple justice to respond to this legal and extra-legal tide against their citizenship. And yet, the thirteenth, fourteenth, and fifteenth amendments, as revisions upon the text of the Constitution, which expanded its definitions of equality and citizenship, offered captivating bases for making arguments based primarily

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1. See Eric Foner, *Reconstruction: America's Unfinished Revolution 1863–1877* (New York: Harper's Perennial, 2002) and C. Vann Woodward *The Strange Career of Jim Crow* (New York: Oxford University Press, 1974), for descriptions of the state of the South in the post-Reconstruction era.

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upon the interpretation of their words. And advocates for racial justice in the post-Reconstruction era passionately appealed for a just interpretation of the three Civil War Amendments.

Their passionate interpretive arguments presupposed a rationalist, classical understanding of the rule of law. In this article I will demonstrate the presence of an argumentative formalism in civil rights discourse of the Redemption era, that employed notions of reason, equality, balance and fairness, ideals deeply entrenched in Anglo-American law, to advocate against racial hierarchy. In making this argument, my work is sympathetic to, and inspired by, Patricia Williams' critique of Critical Legal Studies' rejection of rights, for its failure to appropriately consider the significance of rights as they pertain to groups historically deprived of such.[2] Likewise, I argue, in our eager rejection of classical legal thought for its privileging of privilege, we may fail to attune ourselves to the ways in which people historically excluded by our society have used classical models in a manner that was at least compelling, and sometimes even successful, in their methods of social protest.[3] Although this piece does not go so far as to advocate for the form of argumentative formalism, it does argue that it is important for investigation.

Significantly, this argumentative formalism is subversive. Rather than question the idea that legitimacy resides in form or rules, it instead offers information to guide interpretation of how the political context fails to meet the rules. Hence, although full of philosophical argument, the literature examined herein is fundamentally political.

The interpretations of the Constitution one finds in these pleadings for racial justice are intended to lead to adjudicative or legislative imperative responses, because it was "right" or "just" with the valences of those words that connote both form and substance. In particular, men and women of letters crafted texts that suggested textual revisions at law, often with quite explicit reference to *Plessy v. Ferguson* 163 US 537 (1896), and the type of racially biased legislation the Supreme Court affirmed in that decision. Thus we find a rather organic and practical practice of law and literature. This practice was quite often one which was classically interpretivist, and depended upon rather conservative notions of law.

II. Art and the Politics of Law: Engaging with Robin West in the Redemption South

In *Narrative Authority and Law*,[4] legal scholar Robin West argues that the force of the interpretivist tradition in American legal thought has been reinvigorated by the flowering of law and humanities scholarship. She writes,

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2. Patricia Williams, "Alchemical Notes: reconstructing ideals from deconstructed rights" (1987) 22 *Harvard Civil Rights – Civil Liberties Law Review* 1.
3. This article does not thereby constitute a rejection of legal realism, but rather a careful and open-minded visitation of a political history embedded in the world of law and letters that is sensitive to the limitations of a given historical context.
4. Robin West, *Narrative Authority and Law* (Ann Arbor: University of Michigan Press, 1993).

> … the modern law as literature movement has prompted increasing numbers of legal scholars to embrace the claim that adjudication is interpretation, and more specifically, that constitutional adjudication is interpretation of the Constitution. That adjudication is interpretation – that an adjudicative act is an interpretive act – more than any other central commitment, unifies the otherwise diverse strands of the legal and constitutional theory of the late twentieth century.[5]

West critiques such developments, arguing instead that the competing vision, "that adjudication, including constitutional adjudication, is the creation of law backed by force, not the interpretation of a pre-existing legal text guided by reason" is a more accurate characterization of adjudication. The tradition such an understanding belongs to is the imperativist one, whose advocates understand that "Adjudication is an act of power, not of cognition. It is a branch of politics, not a branch of knowledge."[6] West's resonant argument challenges the very foundation of much of law and humanities scholarship because, we often assume, to understand politics requires data, not poetry.

Adjudication, as an exercise of social power, was of course at the crux of how race would operate in the law during the Redemption era. Though legislation peeling back the rights of African Americans was abundant, it was adjudication that would determine whether such legislation was consistent with constitutional provisions.[7] If West is accurate, and I assume that she is, why was the interpretive argument so prevalent in literature advocating for racial justice at this time when what was needed was an imperative response to widespread violence and inequality?

Certainly one answer might be that the late 19th–early 20th century authors seeking racial justice sought any argument they could find to get power on their side. And this is clearly a dimension of the answer. But it is also the case that they had to invest in the abstract conception of the rights elaborated in the Civil War Amendments in order to see to their codification in American law. Moreover, their philosophical investment in principles of equality was incredibly important for a nation in which the 3/5ths compromise had quite recently been in effect. If it is true, as critics have noted, that Frederick Douglass is the father of African American literature,[8] we can understand his decision to stand with the Constitution and against his fellow abolitionist William Lloyd Garrison and his followers, as a primordial moment in African American letters and in letters devoted to

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5. *Ibid.* 91.
6. *Ibid.* 91.
7. See cases that did just this with disastrous effect such as *Plessy v. Ferguson* 163 US 537 (1896) and The Civil Rights Cases 109 US 3 (1883).
8. See Dickson D. Bruce *The Origins of African American Literature 1680–1865* (Charlottdsville: University of Virginia Press, 2001) and for a particularly nuanced discussion of problematics created by such a designation see Hortense J. Spillers, "Mama's Baby, Papa's Maybe: An American Grammar Book." *Diacritics: A Review of Contemporary Criticism* 17 (1987), 65–81.

African American rights. The decision made therein was a decision in favor of interpretation – entailing a certain brand of formalism – and objective truth at once. It is not until the 1920s in African American letters at least, that the critic witnesses a large scale departure from that posture.

This article elucidates the strategic and emotional rendering of the interpretivist tradition by Redemption era Civil Rights activists, and yet argues that embedded in that interpretive argument is a very urgent imperative: one that finds usefulness – ethical as well as political – in the interpretive as well as the imperative work of judges and legislators (as well as citizens). In this literary and political practice, interpretation is allied with the sense of harmony, balance and order of the Constitution, and imperative with the need for just power to contrast against the power of racist violence and aggression in Redemption culture.

In assuming the truth of West's claim that adjudication is an instrument of power, how then, a reader might wonder, can this author appropriately apply the strategic formalism described herein;[9] particularly given the legal realist and critical legal studies critique of formalism for its failure to acknowledge the role of power. The answer to this question is found in the orientation of this project. It is concerned with how, for a given population, an accepted truth about racial equality is argued for within the context of a normative jurisprudential framework. These works of literature pre-date legal realism. At the same time, they must not be viewed as intellectually limited, but rather as provoking interrogation of the possibilities of form and process in a democratic space even amongst those who understand how law is shaped by power. This work is consistent with the deep constitutionalism that is found, for example, in African American letters from the 19th century.[10] It sees possibility within the confines of power and dominant epistemology.

Part of this possibility might best be described as a prefiguring of Wimsatt and Beardsley,[11] in that, in arguing for a particular interpretation of the Reconstruction Amendments they are in some ways arguing for a textual primacy. They reject the possibility of a "varied" meaning of the term equality, as one finds advocated for in the opinions of the Slaughterhouse Cases and *Plessy v. Ferguson*, contingent, shifting and cultural, but rather argue that the meaning of equality is to be "found" through the "extrinsic" evidence presented in these works of fiction.[12] In this case literature should

9. Adjudication as power in legal realism.
10. See Imani Perry "Occupying the Universal, Embodying the Subject: African American Literary Jurisprudence," 17 Cardozo Studies in Law and Literature, Spring 2005, 97–143.
11. W.K. Wimsatt & M. Beardsley 1946, "The Intentional Fallacy," in: Wimsatt, 1967, *The Verbal Icon* (Lexington: U. of Kentucky Press).
12. See Walter Benn Michaels "Against Formalism: The Autonomous Text in Legal and Literary Interpretation," *Poetics Today*, Vol. 1, no. 1–2 (Autumn 1979), 23–34. Reprinted with revisions as "Against Formalism: Chickens and Rocks" in The *State of the Language*. Edited by Leonard Michaels and Christopher Ricks (Berkeley: The University of California Press), 1980, pp. 410–420. Specifically for Michaels' application of the parol evidence rule to an understanding of what is intended with literary formalism.

not be imagined so much as a vehicle for better "render[ing] moral ambiguity and situational complexity than the language of law"[13] but rather as an intentionally clarifying gesture vis-à-vis the Civil War Amendments.

III. Pudd'nhead's Possibilities

In the context of discussing *Pudd'nhead Wilson*, West argues that there are dangers with the interpretivist tradition, that within that theoretical model is the suggestion of a normative body of law, and that normative presumption invisibilizes the operation of power, either in adjudication or culture. She uses Mark Twain's novel, *Pudd'nhead Wilson*, to illustrate how imperative limitations, which she refers to as disciplining rules, manipulate, and even determine interpretation. Thus the novel makes an argument as to the limits of interpretation.[14]

The novel is written in the Redemption era, but the action takes place in the antebellum period. Twain uses the novel to make ironic commentaries upon race, and exploits the nostalgia for the Old South in order to engage contemporary readers. West describes how Twain presents disciplining rules that confine the outcome of the trial which provides the climax of the novel. These rules are characteristic features of antebellum southern culture which are re-interpreted in the post-bellum period. She writes,

> … the positive law of Dawson's Landing is supplemented with at least three social texts and is interpreted in accord with at least three disciplining rules of interpretation. The first supplemental text is the town's code of honor, which governs relations among the town's nobility. … Second … the community's positive law is supplemented by the racial code, which governs relations between slaves – or more accurately, niggers – and whites. The primary disciplining rule of the racial code (although nowhere explicitly stated) is that "niggers are guilty" and that slavery is their punishment … And third, the town's law is supplemented … by the familiar substantive parameters of legal liberalism and comes to be interpreted in light of the familiar liberal-legalistic disciplining rules of individual responsibility. Legal guilt or innocence attaches to an individual person by virtue of his commission of a legally proscribed act.[15]

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13. Lawrence Douglass, "Language Judgment and the Holocaust," *Law and History Review* Vol. 19, No 1, Spring 2001, 177.
14. For further treatments of how *Pudd'nhead Wilson* addresses moral and legal ambiguity look to: Evan Carton, "*Pudd'nhead Wilson* and the Fiction of Law and Custom," *American Realism: New Essays*, ed. Eric J. Sundquist (Baltimore: The Johns Hopkins University Press, 1982). Robinson, Forrest G., "The Sense of Disorder in *Pudd'nhead Wilson,*" *Mark Twain's Pudd'nhead Wilson: Race, Conflict, and Culture*, eds. Susan Gillman and Forrest Robinson (Durham, NC: Duke University Press, 1990), 22–45. Brook Thomas *Cross-examinations of Law and Literature* (New York: Cambridge University Press, 1987).
15. West at 112.

Pudd'nhead Wilson is a novel of race-switching. A quadroon slave, Roxy, switches her white-skinned son for his master in infancy, hoping to see her child saved from the ugliness of enslavement. The indulgences of aristocracy, or perhaps his African American blood, make the false master a degenerate. He steals and abuses. At the conclusion of the novel the lawyer for whom it is named, Pudd'nhead Wilson, uses fingerprinting technology to determine the true culprit of the crime, Tom, and also to reveal his African American heritage. Then "Tom" is sold down the river, into the viciousness of slavery in the deep south. As West argues, Pudd'nhead Wilson, the lawyer, comes out of social estrangement by making an interpretation within the three disciplining rules. Tom is responsible for his actions, and he is guilty, being a nigger. His breaches of the honor codes of the aristocracy then also make sense. He is not an aristocrat, really, but a "guilty nigger."

Twain's work is characteristic of the era in that the late 19th century was a time remarkable for the way literature was socially engaged. Certainly this was due in large part to the rise of Realism in American literature.[16] Realist literature reflected the sensibility of writers who had come of age in an era of enormous social transformation within the span of a few years. Secession, the emancipation of the enslaved, Radical Reconstruction, and then Redemption, all passed through the nation over the course of 20-odd years. Add to this, the gold rush and the Gilded Age. Writers of literature were compelled to respond, comment upon, and interpret this dramatic era.

There was also a sensibility in this period that literature was an art of appeal, hearkening back to the early Republic's fusion of legal and literary discourse.[17] Authors with which this article is concerned, authors of argumentative realism who advocated for African Americans sought to effect social change, or at the very least impact public opinion with their works. As Radical Republicans lost power, and blacks remained marginalized in the legal profession and politics, the role of literature took on especial significance for these communities. Letters, consistent with the earlier traditions, were their means of politics; in the form of essay, but also in the form of fiction. Moreover, their craft itself found a structure in politics. For these authors, they sought to unearth the disciplining rules which West appropriately described as masked in an interpretivist tradition. But the manner in which they chose to do so, was by challenging the interpretation of the rules by exposing and narrating a broader set of facts set forth for interpretation.

16. See Amy Kaplan's work: *The Social Construction of American Realism* (Chicago: University of Chicago Press, 1992) for a comprehensive analysis of the political forces behind the rise of American literary realism.
17. See Robert F. Ferguson, *Law and Letters in American Culture* (Cambridge: Harvard University Press, 1984); and Robert Stevens, *Law School: Legal Education in America from the 1850s to the 1980s* (Chapel Hill: The University of North Cordina Press, 1987).

IV. Charles Chestnutt's Artful and Interpretive Politicking

The impassioned art of Charles Chestnutt is a wonderful exemplum of such letters. Chestnutt, trained as an attorney, but famed for his imaginative literary work, embedded legal arguments about the status of African Americans in the emotional and physical lives of his characters. Chestnutt was, by far, the most famous and well-respected African American author of his generation.[18] He was friends with, and under the tutelage of, literary leaders such as: Albion Tourgee, George Washington Cable, and Mark Twain, and yet still critiqued them in his writing for their shortcomings in fully understanding the politics of race. Even as we might read his work as applying a kind of formalism to American law, one is quite challenged if one intends read his, and his contemporaries,' works in a formalist manner, because they are so clearly political. This analysis calls for, in certain ways, a new historicist reading of a formalist practice (which nevertheless does not allow for either part of the puzzle to fully abandon either history or aesthetics).[19] This article, then, falls under what Jane Baron calls the hermeneutic thread of law and literature scholarship,[20] reflecting a concern with interpretation, on two rather distinct levels.

In Chestnutt's 1901 novel *Marrow of Tradition*, he embeds a quite deliberate critique of *Pudd'nhead Wilson* that echoes West's contemporary observations about the cultural logic of Dawson's Landing. Chestnutt understood that Twain's use of the disciplining rule "Niggers are guilty" left an open question for the readers as to the veracity of this charge, despite the apparent ambiguity about racial determinism in *Pudd'nhead Wilson.* Twain's novel leaves us with open questions: Perhaps it was the indulgence Twain's Tom received that led to his degeneracy, but perhaps it was his African blood. Or perhaps the conclusion drawn would be that without enslavement, and with indulgence, African Americans were particularly prone to criminality.[21] Chestnutt was personally invested in the refutation of racist readings of the

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18. See Introduction of Richard Brodhead, ed. *The Journals of Charles W. Chestnutt* (Durham: Duke University Press, 1993).
19. An examination of H. Bruce Franklin's "Billy Buddy and Capital Punishment: A Tale of Three Centuries," *American Literature* ,Vol. 69, No. 2, 1997, 337–359 provides a model of a new historicist understanding of what the context was shaping a given text (Melville's *Billy Budd*) for the sake of clarifying raging debates over what the text says about capital punishment. There are no raging debates about the intentions of these texts and what they say about injustice, but this project likewise entails two distinct moves, one contextual, the other philosophical, in analyzing the works.
20. Jane B. Baron "Law, Literature and the Problem of Interdisciplinarity," 108 *Yale Law Journal* 1059, 1999.
21. See the introduction to the edition of *Pudd'nhead Wilson* edited by Malcolm Bradbury (New York: Penguin Books, 1969) for a discussion of the ambiguity in the novel, the origins of such ambiguity, also see Derek Parker Royal's "The Clinician as Enslaver: Pudd'nhead Wilson and the Rationalization of Identity," *Texas Studies in Literature and Language* – Vol. 44, N. 4, Winter 2002, pp. 414–431.

story in Pudd'nhead Wilson, because he understood the social power of fiction.[22] In *Marrow of Tradition*, Chestnutt "twins" or mimics Twain's slave turned master, Tom Driscoll, with his character, Tom Delamere. Tom Delamere is a pure-blooded degenerate Southern aristocrat. Like Twain's Tom he is a gambler, who murders an older relative to steal money to repay his debt and then attempts to cover his crime by pinning it on another party. Twain shows the misappropriation of crime through deception, and Chestnutt shows both the misappropriation of crime *and* racial characteristics through deception.

Like the other Tom his deception is eventually revealed. However, the divergence between the stories of the two Toms reveals Chestnutt's racial concerns. Whereas Twain's Tom masquerades as his Aunt, Chestnutt's Tom plays his uncle's black manservant Sandy. At first, Tom merely blacks up as a form of entertainment, he is a great imitator of African Americans. However, when he decides to steal from his Aunt, a crime which leads to her murder, he uses that ability as a means of framing Sandy. On his way to the robbery and murder, he, donned in Sandy's outfit, allows himself to be seen by a Mr. Ellis who at first fingers Sandy – being an eye witness – but later becomes Chestnutt's answer to, or twin for, Pudd'nhead Wilson, discovering the truth through deduction. (This imposture is arguably symbolic of the legal impostures applied to the 14th amendment in the post-Reconstruction era.)

Ellis, however, is not as quick as Pudd'nhead, who when faced with the evidence of his case is able to piece it together immediately. But the memory of the cakewalk does return to Ellis after Sandy's arrest, an uncanny haunting of the truth. Chestnutt suggests that the relatively long time it takes for him to recognize it is a result of the ideological work of the color line in creating racial images. Ellis wrongly believes that such an exaggerated masquerade could be real in his gross misappropriation of racial characteristics:

> He would not have believed that a white man could possess two so widely varying phases of character; but as to African Americanes, they were as yet a crude and undeveloped race, and it was not safe to make predictions concerning them. No one could tell at what moment the thin veneer of civilization might peel off and reveal the underlying savage.[23]

The "savage," however, is actually a white man, projecting savagery upon the black. Chestnutt's masquerade, as opposed to Twain's, pushes for an imperative action in conflict with the interpretive rules of white supremacy. While Twain's Tom, really a black man, is sold down the river, Chestnutt's Tom, really a white degenerate aristocrat, gets off of his murder charges through the falsification of his murdered aunt's autopsy.

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22. Fiction had particular power as it related to race in late 19th century American culture, as was evinced by the social impact of *Uncle Tom's Cabin* a generation prior.
23. Charles Chestnutt, *The Marrow of Tradition*, 1901 (Ann Arbor: University of Michigan Press, 1969) 119.

The horror that the character, Ellis, who reveals the masquerade, experiences is the horror that the enlightenment -descended white man must encounter with the realization that the state of nature, the base qualities that are associated with blacks who were thought to be locked into a permanent state of nature, may be found in white men as well. In fact, in Chestnutt's literary world, and in his apparent evaluation of the world at large, those qualities were in far more currency in the white South than in the black. Chestnutt subverts the state of nature/enlightened man divide that was the subtext of the color line. Thus, he brings the black characters into the realm of classical legal thought through its philosophical foundations. The chapter in which these events unfold is entitled "The Vagaries of the Higher Law," a title doubled and masquerading like the novel's characters. On the one hand, the law as practiced clearly offers no promise of justice for blacks. But through a rare incidence of "divine" intervention in the novel, a "higher" law, Sandy is saved.

However, Chestnutt, savvy with respect to the history of the South, being from North Carolina, also uses some less egalitarian and philosophically sound argumentation. He weaves in a polemic against the declension of the Southern aristocracy. In a subversion of Old South nostalgia that was characteristic of Chestnutt,[24] he argues that the decline of the aristocracy could only be prevented by a noblesse oblige towards the formerly enslaved. One, however, that preserved rights and dignity for those at the bottom rungs of society. Rather than appeal to their former role as enslavers, it is an appeal to their gentility. To refute the claim, "niggers are guilty" Chestnutt engages in an extended discourse of the duties the white elite have to moral African Americans who are victims not perpetrators.

Southern honor was a social code that dictated behavior with a deep moral and aesthetic sensibility. The code of Southern honor was brutal, as well as elegant, hierarchical, and based in gender and racial domination. That Chestnutt would appeal to Southern honor, given the racism it was infused with, gives credence to the idea that he, along with other argumentative realist authors who were seeking racial justice, was not a cool theorist but desperately grasping at straws in order to halt the systematic violence of the post-reconstruction South. But I think there is something more. The paternalism in Southern honor, which would require civility in the daily course of racial domination, was not simply a class structure, but a masculinist one.[25] The sense of emasculation experienced by the white

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24. For an extended discussion of the subversion of nostalgia in Chestnutt's *Conjure Tales* see Imani Perry's *Dusky Justice: Race in U.S. Law and Literature 1878–1914*, Doctoral Dissertation for Program in the History of American Civilization, Harvard Graduate School of Arts and Sciences, 2000.
25. See Bertram Wyatt Brown, *Southern Honor: Ethics and Behavior in the Old South* (New York: Oxford University Press, 1982). Brown identifies Southern honor as including the belief in the inferiority of blacks, as well as being rooted in class privilege. However, he also indicates that Southern honor was characterized by a sense of the union as constituting a marriage of equal partners, and in that way, perhaps Chestnutt was appealing to the idea of Southern white elites fully partnering under the Constitution by taking care of their African American citizens.

South during reconstruction heralded a reign of terror after Reconstruction. Chestnutt's appeal to Southern honor is an effort to remind Southern elites of traditional notions of "masculine" authority, in which brute force is not acceptable either on a regular basis or outside certain organized codes of conduct, alongside an appeal to the rule of law. He implores that they reassert masculinity, and order, by halting the chaos of the Redemption-era South.

The rule of law, Chestnutt goes on to argue elsewhere in the novel, returning to his philosophical posture, requires equality before the law. Hence, the appeal to Southern honor is an appeal to order, but on the terms of the new order. Chestnutt had to be aware that an audience sympathetic to his claims would not likely be comprised of very many Southern whites. But given the cultural significance of the Hayes-Tilden Compromise, it might be that Chestnutt hoped to achieve a hybrid reunion of values – one that included protecting the rights of African Americans unlike that of 1876.

V. Racial Twinning: A Symmetrical (In)Justice

The next level of Chestnutt's argument, however, is one that advocates for the Civil War Amendments, through a complex interpretive argument – one that is found in many other books of this sensibility and era. The argument comes in the form of a literary engagement with the fate of Homer Plessy that I have termed "racial twinning."

Plessy's mandate of separate but equal demonstrated that equality could become merely a rhetorical rather than literal rule.[26] Thus, activists searching to establish full citizenship rights for African Americans faced the dual task of demonstrating that equality was not in place, but also making the case for equality to be treated as an imperative. As a text to be employed for such argumentation, the fourteenth amendment was elegant. The language, "equal protection," the first word one of balance, and the second suggesting a police or governmental power, fundamentally expressed their objectives.

Soon after the nation began its hasty retreat from Reconstruction, we find the emergence of a literary trope in argumentative realist fiction which I term "racial twinning" which was an engagement with equal protection that was both aesthetic and political. Earlier, I discussed how Chestnutt twinned his Tom with Twain's, but twinning occurred more often intratextually than intertextually. The trope, which appears in numerous novels, operates as an argument for a righteous constitutional interpretation of equality. In this trope, two characters on opposite sides of the color line, but otherwise "equal," in character, beauty, and nobility, find vastly differing fates due to their racial designation. Racial twinning, in a very apparent

26. law and lit on Plessy.

fashion, was a critique of the color-line, and an assertion that racial caste was flourishing despite constitutional protections.

But racial twinning did more. Racial twinning provided a jurisprudential theory dependent upon the symbols, metaphors and evaluative tools of classical legal thought. Within the context of racial twinning appeals are made to reason, beauty, balance, and a figurative *stare decisis* (in the sense of treating like cases in like fashion). Equal protection is consistently invoked in these texts as an equation, or a scale, which is, in scene after scene, demonstrated to be imbalanced. Thus the reader is, hopefully, compelled to believe a correct balance must be struck. The scales of justice are set before the jury – reader readership – and they are requested to weigh the evidence as to whether the case for the African American has been adequately made. As a deliberative body, the readership is invited to interpret and encouraged to take up the cause for imperative protections of black Americans.

Moreover, the authors authorize themselves, as Republicans and some as African Americans, as "inside law"[27] along with their black characters, and in that way alone argue for a particular interpretation of the Amendments against the "customs and usages" proclaimed in *Plessy*. As well, racial twinning forces us as contemporary readers to understand that the benefit of reading these texts is not simply for the argumentative work of storytelling[28] as law and literature scholars are often wont to do (particularly with regards to stories about race), that guides a particular conclusion, but even more so for their hermeneutics (a posture Robin West invites with her reading of Pudd'nhead).

In Chestnutt's *Marrow of Tradition*, the first episode of imbalance is found during a train ride. As Adam Miller, an African American physician, returns from New York where he was purchasing medical supplies for the African American hospital in his hometown, Wellington, he encounters a white doctor who was formerly his instructor, a Dr. Burns. They sit together, and socialize on the train. Dr. Burns is going to Wellington as well, to perform an operation on a small child, and Dr. Burns expects to travel with his friend Dr. Miller for the entirety of the trip. Once they reach Virginia, however, Adam Miller is told by the conductor that he must remove himself to the African American car. Dr. Burns is outraged, and desires to go into the African American car with Miller. His request is refused, the conductor saying "the beauty of the system lies in its strict impartiality – it applies to both races alike."[29]

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27. This history adds an interesting dimension to Jane B. Baron's argument against the treatment of law as a necessarily bounded entity in law and literature scholarship, and her advocacy of a critical reflection upon the terms of interdisciplinarity.
28. Considerations of storytelling are, of course, a fundamentally important branch of both law and literature research as well as critical race theory, see, for example, Paul Gewirtz, "Narrative and Rhetoric in the Law," in *Law's Stories: Narrative and Rhetoric in the Law* 2, 5 (Peter Brooks & Paul Gewirtz, eds., 1996), as well as work by Derrick Bell and Gerald Lopez. However, these texts become even richer for examination when they are considered in light of their jurisprudential philosophies.
29. Charles Chestnutt, *The Marrow of Tradition*, 1901 (Ann Arbor: University of Michigan Press, 1969), 55.

This rhetorical balance, when tested, fails. There is no equality in these separate spaces, they lack the beauty of symmetry. The African American car is filthy, loud, and smoky, unlike the first class car from which Dr. Miller departed. Chestnutt challenges the Court's decision in *Plessy* with this episode. Writing for the Court in *Plessy*, Justice Brown criticizes Homer Plessy's argument with the following analysis, "If the two races are to meet upon terms of social equality, it must be the result of natural affinities, a mutual appreciation of each other's merits and a voluntary consent of individuals."[30] However, here in Dr. Burns and Miller's interaction we have just such a case of mutual appreciation and natural affinities. They respect each other as doctors and men, and moreover they are friends, but their perceived social equality is destroyed by the separate cars. Social inequality has been legislated. They, as friends, doctors, upstanding citizens, are de-coupled and imbalanced.

The symbolic inferiority of the African American car is reflected through the actions of another character, George McBane. A self-proclaimed white supremacist, McBane disrespectfully stands in the African American car to smoke his cigar. Miller complains, and McBane leaves, but only once he finishes his cigar. And so Miller experiences his second of a host of insults on the train. Another is found in his African American companions in the car. The predominance of the racial divide over class distinctions, and the status barrier it created for the educated African-American, is found in Adam Miller's rather unpleasant elitism towards the other African American passengers, who insult his sense of propriety. A lively, less-refined crowd of blacks prompt him to think:

> Surely if a classification of passengers on trains was at all desirable it might be made upon some more logical and considerate basis than a mere arbitrary, tactless and, by the very nature of things, brutal drawing of a color line. It was a veritable bed of Procrustes, this standard which the whites had set for the African Americanes. Those who grew above it must have their heads cut off, figuratively speaking, – must be forced back to the level assigned to their race; those who fell beneath the standard set had their necks stretched, literally enough, as the ghastly records in their daily papers gave conclusive evidence.[31]

The lynching metaphor reminds the reader that the racial hierarchy imposed legally by segregation statutes was fortified extra-legally in the practice of racial violence. It also speaks to the penalty of race for the achieved African American. The cut-off head is symbolically a dissociation of the head from the body, or the vast intellect from the imprisoned meaning of one's racial body, amongst accomplished African Americans during a

30. *Plessy v. Ferguson* 163 U.S. 537.
31. Charles Chestnutt, *The Marrow of Tradition*, 1901 (Ann Arbor: University of Michigan Press, 1969), 61.

time when their accomplishments meant little in the face of the racial caste system. Miller's classism is unpleasant, but employed by Chestnutt to make an argument about the structure of inequality. The work of Jim Crow was to produce the psychic effects of racial inferiority through physical barriers, even unto death. Racial hierarchy was a tradition, and Jim Crow was just a new version of that tradition. As historian C. Vann Woodward writes:

> The public symbols and constant reminders of his inferior position were the segregation statutes or 'Jim Crow' laws. They constituted the most elaborate and formal expression of sovereign white opinion upon the subject … Whether by law or by custom, that ostracism extended to virtually all forms of public transportation, to sports and recreations to hospitals, orphanages, prisons, asylums, and ultimately to funeral homes, morgues and cemeteries.[32]

Woodward further argues that Jim Crow laws developed particularly as a means of officially locating blacks in an inferior position, after Emancipation and Reconstruction took away the legal presumption of black inferiority. They were laws to counteract full black citizenship, to create citizen exiles. Hence: "The new Southern system was regarded as the 'final settlement,' the 'return to sanity,' the 'permanent system'"[33]; with black inferiority being the only sane order of things. However, Chestnutt wished to show that the abundant evidence was that there was no beauty or impartiality in de jure segregation. It was a horizontal rather than vertical division, which thereby subsumed even African American elites, placing them below all whites. And for the entirety of African American America, it was an ugly denial of rights.

The most dramatic racial twinning present in the novel is that between Adam Miller's wife Janet and her fully-white half sister. Physically Janet is white, though racially African American, and she and her sister are virtually identical. The father of the women was Samuel Merkell. The mothers were two. One was his white wife, Elizabeth, who gave birth to a daughter, Olivia, and died soon after. The other was Julia, an African American servant. During Reconstruction Julia and Samuel secretly married, and she gave birth to Janet. After Merkell's death, his white wife's sister, Polly, casts Julia out of the home, and hides all evidence of her marriage to Mr. Merkell and Janet's inheritance. And so Janet grows up nameless and unacknowledged. When the action of the novel is taking place, she is an adult, married to Miller, and Olivia is married to Major Carteret, a prominent white gentleman. Olivia learns of her sister's legitimacy midway through the novel, but neglects to reveal the information until the novel's end, when she believes her son's life depends upon the truth.

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32. C. Vann Woodward, *The Strange Career of Jim Crow* (New York: Oxford University Press, 1974), 6.
33. *Ibid.* 7.

Both Janet and her sister are married to prominent men, live in large houses, and have sons. There is structural equivalency, but a disaffiliation for Janet, who longs to be recognized by her sister, because of the stain of race. The mirror image between the two is warped by the psychology of race. The aversion Olivia feels for Janet is an encounter with the Uncanny, or "unheimlich." It is the return of some long-forgotten truth in an unfamiliar form. Janet's visage, like a mirror, alerts Olivia to the ambiguity of the racial divide upon which her existence depends.

One of the most exemplary scenes of this dynamic occurs as Janet passes in her carriage beneath the upstairs window of the Carteret residence, where Olivia, the Mammy (Jane) and a cousin, Clara, who holds Dodie, Olivia's baby, stand. Janet glances up at her and "Mrs. Carteret, chancing to lower her eyes for an instant caught the other woman's look directed toward her, and her child. With a glance of cold aversion she turned away from the window."[34] A split second later Dodie has jumped from the arms of the cousin, and is hanging by the hem of his gown. Mammy Jane's able hands rescue him and Janet's presence is blamed for the risk. When the crisis is over:

> Olivia felt a violent wave of antipathy sweep over her toward this baseborn sister who had thus thrust herself beneath her eyes. If she had not cast her brazen glance toward the window, she herself would not have turned away and lost sight of her child.[35]

This sentence is clear in its meaning but the use of pronouns is ambiguous. The "she" and "her" in the first phrase refer to Janet and in the second to Olivia. Even as antipathy and distinction are asserted on Olivia's part the author's choice of words in her head alert us to their indistinguishability, their twinness to which Olivia is so averse. Between the shes and hers however, the subject of the sister is confused. Even as this antipathetic defamiliarized difference is created, it is inspired by just such indistinguishability. Following this incident Olivia, in hysterics, retreats to her bed for days.

This hysteria, a manifestation of psychological imbalance, narratively operates to illustrate Olivia's inability to appropriately reason with respect to her sister. Moreover, it adds a shadow of ugliness to her otherwise fair face. Thus Janet remains as the more beautiful side of the equation, or mirror, a fact that is significant because the role of beauty in making claims to racial justice, and such role's dependence upon classical legal theory, was substantial. In novels written by African Americans from the late nineteenth through the early twentieth century there are dozens of beautiful female heroines, generally with white or light skin, of the highest moral

34. Charles Chestnutt, *The Marrow of Tradition*, 1901 (Ann Arbor: University of Michigan Press, 1969), 106.
35. *Ibid.* 107.

standards and grace.[36] The literary device of this sort of character is far more sophisticated than how she is often read, simply as someone with whom a white female readership might identify because she is white-skinned. The appeal of her beauty is an appeal to justice, what Claudia Tate termed "a metonym for proper social order."[37] Elaine Scarry's critical work, *On Beauty and Being Just*, is instructive here. Scarry's argument in the book is two-fold. First she defends aesthetics against the political critiques it has faced, and second she argues that beauty can "press us toward a greater concern for justice."

Chestnutt, and sympathetic contemporaries, attempted to use their characters to set forth an argument that an error had been made with respect to African Americans. They were not grotesque. They were, in fact, possessed of beauty, the sin of racism only highlighting their grace. The import of beautiful female archetypes perhaps justified their woodenness, because the manner in which aesthetics had been used since the seventeenth century, as a basis upon which racial differentiation was made meaningful, especially through the aestheticization of religion, was an enormous burden upon the backs of these authors.[38] Beauty was both critical, and difficult, to establish.

Scarry describes how the impulse at replication is part of the operation of beauty that finds resonance in law. Fundamental to beauty is the idea of endless replication of the beauty of the original. She writes, "the poem and the law may then prompt descriptions of themselves as literary and legal commentaries that seek to make the beauty of the prior thing more evident, to make, in other words, the poem or law's clear discernibility, even more clearly discernible."[39]

The replication of Olivia's physical beauty, and the structure of her family, as seen in Janet, more lucid even, is at once an affirmation of the idealized Anglo-American social contract, and an argumentation that Janet and other African Americans should be invited into it. The art of fiction is a replication of the structure of law – equality – that furnishes both a realist depiction of its failures, and a more beautiful rendering of its ideals through the figure of a black woman.

The fairness (read beauty, read justice, read physical whiteness) of Janet, is a repetition through various lenses of the case for equality and balance for all members of her group. The balance and beauty of Janet's body and those of like characters is merely a reflection of the interior person, just as symmetry of form is a metaphor and structural requirement for substantive

36. See Claudia Tate, *Domestic Allegories of Political Desire; The Black Heroine's Texts at the Turn of the Century* (New York: Oxford University Press, 1996) for her landmark discussion of the symbolism of black domesticity as it relates to these images specifically in the literature of African American women.
37. *Ibid*. at 5.
38. See Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Conquest* (New York: Oxford U. Press, 1996).
39. Elaine Scarry, *On Beauty and Being Just* (Princeton: Princeton University Press, 1999), 3.

justice in the history of Anglo-American thought. Moreover, the beauty of these characters is contrasted against the ugliness of violent social practice, riot, rape, physical violence, all understood as part of the action of re-institutionalizing racial hierarchy in the Redemption era.

The ugliness of those practices is reinforced by the destruction of law and legal instruments, themselves theoretically possessed of sanctity and beauty. Olivia finds her father's will, in which he bestows a modest inheritance upon Janet. She destroys the document so that it may never be executed. Then later, she finds her father's marriage license, guaranteeing Janet's legitimacy. She goes to her husband, for the second time, and presents a hypothetical for him to evaluate. The first time she presented the case of a will from a white man to his African American offspring, which her husband stated would be invalid as it was without consideration. She presents this second "hypothetical," with a legitimate marriage. His response is:

> The woman would have taken one third of the real estate for life, and could have lived in the homestead until she died. She would also have had half the other property, – the money and goods and furniture, everything except the land, – and the African American child would have shared with you the balance of the estate. That, I believe, is according to the law of descent and distribution."[40]

Olivia is horrified, less by her own actions, than by the consequences of her destruction of the will. The will only gave Janet a small tract of some cash. Now, if anyone ever found the license, Janet might one day be able to inherit half of his estate. And Olivia would lose both her father's land and her good name. The stain upon her father's reputation that this inheritance might create, and even upon her, for if Janet were legitimate it might appear to some that she herself was an African American, was too great. Olivia would rather die. In justification of her unethical actions but also as a rational extension of her *herrenvolk* ethical order, Olivia reasons that property is more meaningful for whites. A wealthy African American, in Olivia's mind, would just be isolated further, but property would be important for her white, elite son, and thus the land legally belonging to Janet should remain with Olivia. So Olivia, always the hysteric, hides the information desperately and makes herself ill.

Here then, racial caste is also a breach against legal formalism. The destruction of sealed instruments is rationalized by the psychology of racial caste, thus racial caste is revealed by Chestnutt as "illegal." The role of the hypothetical is also to juxtapose the theoretical exercise, which reveals what should happen according to principles of law, against the human behaviors which impede it. Again law is validated, while racialist human interpretation is questioned. Clearly the underlying assumption is not

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40. Charles Chestnutt, *The Marrow of Tradition*, 1901 (Ann Arbor: University of Michigan Press, 1969), 265.

simply one of how to read Reconstruction amendments, but that law is to be "found" in certain moral truths about natural rights and human dignity, as well as an advocacy for unfettered procedure.

So Chestnutt uses two kinds of formalism, one based in blood, the other in thought, to re-interpret the literal and philosophical space of the nation to include African American. In Chestnutt's novel, the power of the old-line Southern aristocracy has been dismantled in the post-war era, and the newly rich whites are fueling racial violence and exploitation. There is no gentility and grace in such characters, descended, literarily, from overseers and tenant farmers. Janet, with noble blood, bears her bloodlines with grace, yet she loses her child at the hands of the nouveau riche. Where, the novel asks, are the genteel elites who will restore order against racial violence? Where are the whites who are noble like Chestnutt's long-suffering black elites?

The ideal of nobility is sealed in Janet at the novel's end. In the midst of a bloody race riot in which many African Americans are killed, including Janet and Dr. Miller's son, Olivia comes to Dr. Miller, the only physician available in town, to ask his assistance with her son who is having a respiratory problem and in danger of losing his life. Despite the role Olivia's husband plays in the race riot that led to their son's death, and the cruelty with which Olivia treated Janet, Janet sends her husband to save little Dodie's life. She acts with neither anger nor vengeance. Now that her sister needs her, she reveals the inheritance and legitimacy that Janet was denied. Janet, by then, considers it nothing more than a mess of pottage. It's affirmation is unnecessary.

The phenomenon of black characters with aristocratic ancestry is complicated both historically and literarily. While it is clear that African Americans were not invited into membership in aristocratic families in either the antebellum or post-bellum eras, it is also the case that those black people who were biologically related to the aristocracy received some economic and social benefits not afforded to other African Americans. They disproportionately constituted the black elite. And the filial bonds were not always fully ruptured, hence strangely contorting the idea of family. This is provocatively illustrated in the case *Ferrall v. Ferrall* (153 N.C. 174). In this case, a wife, abused by her husband, files for divorce. Her husband, trying to avoid alimony, attempts to claim their marriage void because she is an African American. On appeal, the court is forced to interpret the definition of African American under the North Carolina anti-miscegenation statute, which provides, "that marriage between a white person and a person of African American descent to the third generation, inclusive, shall be void." The court holds that under this definition the African American ancestor of the third generation must be of "pure African American blood" in order to render a marriage void. The court determines her ancestor was not pure, and therefore the marriage was valid and she is entitled to alimony. Judge Clark, in his concurrence, expresses sympathy with Mrs. Ferrall for her husband's attempts to cast her out of the white race. He writes,

> The plaintiff by earnest solicitation persuaded the defendant to become his wife in the days of her youth and beauty. She has borne

> his children. Now that youth has fled and household drudgery and childbearing have taken the sparkle from her eyes, and deprived her form of its symmetry, he seeks to get rid of her, not only without fault alleged against her, but in a method that will not only deprive her of any support while he lives by alimony, or by dower after his death, but which would consign her to the association of the African American race, which he so affects to despise. The law may not permit him thus to bastardize his own children … but he would brand them for all time by the judgment of the court as African Americanes – a fate which their white skin will make doubly humiliating to them."[41]

The sensitivity thus illustrated for the filial bonds, despite the stain of African American-ness, is illuminating for its betrayal of a more nuanced operation of the "one drop rule" than is generally acknowledged. Judge Clark goes on to argue that a man of honor would have hidden his wife's African American ancestry, and welcomed her designation as white. He concludes by making reference to counsel for the plaintiff's reference to the text of *Pudd'nhead Wilson.*

> … [C]ounsel … depicted the infamy of social degradation from the slightest infusion of African American blood. He quoted from a great writer not of law, but of fiction, the instance of a degenerate son who sold his mulatto mother 'down the river' as a slave. But his crime was punished and surely was not greater than that of this husband and father, who for the sake of a divorce would make African Americanes of his wife and children, hitherto white, and whom the jury still find to be so. He deems it perdition for himself to associate with those possessing the slightest suspicion of African American blood, but strains every effort to consign the wife of his bosom and the innocent children of his loins to poverty and to the infamy that he depicts."[42]

At jury trial and also before a judge it was possible to appeal to sympathy and the duties of family against the crude operation of race in select circumstances. This point is dramatic both because the language of "one drop rule" has overdetermined our understandings of how race has operated historically, and because the case allows us to understand the argumentative intent of posing family and blood as a strike against caste in certain texts. Chestnutt was appealing to the opinions of various publics, ones who believed in reason, ones who believed deeply in filial bonds, and even ones who believed in the salience of blood lines.

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41. *Ferrall v. Ferrall* 153 N.C. 174 (1910) 62.
42. *Ibid.* at 63.

VI. Disaffiliation in Cable's *The Grandissimes*

In George Washington Cable's novel *The Grandissimes* (1880) he demonstrates the vagaries of family across the color lines using racial twinning, and a symbolic interpretation of the Civil War Amendments. The novel's action takes place in 1803, as Louisiana is joining the Union, yet is a thinly veiled critique of the southern hostility to the terms of reunion following the Civil War. George Washington Cable, an outspoken critic of the color line, sets up literary figures to demonstrate the unconstitutional racism of the increasingly segregated South. The novel, published sixteen years before *Plessy* was decided, tells the story of two brothers, the white Honoré Grandissime, and Honoré Grandissime f.m.c. (free man of color), both sons of a prominent white New Orleans businessman, Numa. The elder is Esau to his brother's Jacob, the product of his father's relationship with a quadroon woman. Educated in France, while there the two brothers have a deep filial relationship, but once they return to the United States those bonds are broken. Numa willed most of his wealth to the elder, African American son, and left the younger with a competency and the legitimacy accorded by membership in the white race. He hoped that his white son would have the courage to fight against caste that he did not have. This hope was a brief reality in France where he acknowledged his older brother's true birthright. There, when Honoré f.m.c. told his brother, "You are the lawful son of Numa Grandissime, I had not right to be born" . . . white Honoré responded, "By the laws of men, it may be; but by the law of God's justice, you are the lawful son, and it is I who should not have been born."[43] This reunion dies, however, outside of the physical space of the Republic. Cable writes the following of the white Honoré: "But returned to Louisiana, accepting with the amiable, old-fashioned philosophy of conservatism, the sins of the community, he has forgotten the unchampioned rights of his passive half-brother."[44]

A critical encounter with a Northern advocate for African American rights, "robbed him of his pleasant mental drowsiness, and the oft-encountered apparition of the dark sharer of his name had become a slow stepping, silent, embodiment of reproach."[45] The harmony of their friendship and brotherhood is destroyed by Louisiana, but the intervention of a critic reflects the imbalance created by race. The elder Honoré is wealthy yet socially alienated, censured, and humiliated due to his African ancestry. The imbalance is textually rendered by the addendum to the elder Honoré's name. The letters, f.m.c., standing for free man of color, operate as a weight which denies him social membership. The novel shows us that such

43. George Washington Cable, *The Grandissimes: A Story of Creole Life*, 1879 (Athens: The University of Georgia Press, 1988), 279.
44. *Ibid.*
45. *Ibid.*

a weight destroys the balance of his life and psyche, as well as the harmony of familial bonds and just society.

Honoré f.m.c. is twinned by his white brother, yet also has a female corrolary in an enslaved quadroon, Palmyre La Philosophe. Like Honoré, she is an African American member to an elite white family. Palmyre is a de Grapion. While on loan (she, unlike Honoré, begins life enslaved) to the Grandissimes, she is forcibly married to a newly captured slave, Bras Coupé. Bras Coupé is a king, and he is remembered in the text as a sort of prisoner of war, who successfully curses the land of his captors until he is murdered. Palmyre does not love her husband. She loves the white Honoré, but she does admire Bras Coupé and spends the action of the novel seeking to avenge his death. Throughout the present time of the novel, she is free, with a slave of her own.[46] Her familial bonds have allowed her a half-caste status. Hence, we have three categories of elites, the Congo, the mixed race or African American Creole, and the white Creole. The African experiences the worst fate. Again, we find an argument that there is a structure of stratification in the black community, and *gens de coleur*, just as there is amongst whites. The story of nobility and elitism across racial categories is an effort to make the case for equality through calling attention to structural repetitions. That is to say, the text announces that like social order should be treated in like fashion, Cable suggests to us a race-based philosophical sort of *stare decisis.* But instead, to his dismay and in ugly depiction, the *gens de coleur* and Africans all are degraded and excluded. The name of the brothers is symbolic of the honor of these people, which is found wanting.

Honoré f.m.c. possesses name, and wealth, but not the color to give them meaning. The badge, f.m.c., is a property of sorts, nullifying membership and with it the more valuable property of being a true Grandissime. This has particular meaning within the legal-historical context of Louisiana. Critic, Barbara Ladd writes, "Civil law considers the fundamental social unit to be the family and traditionally controlled the way property is passed down from one generation to another by restructuring the capacity of the testator, i.e. the paterfamilias, to disinherit the descendants."[47]

Louisiana, as a property of France and Spain, operated under the civil law tradition. And so, even though Honoré f.m.c. has inherited wealth, when the family unit excludes him due to African ancestry, he is in fact disinherited from his "unit" under civil law. His inheritance circumvents the control of the family, but there is a larger social inheritance, a species of property, from which he is excluded. The unit to which he belongs is not family, but rather caste. This becomes dramatically apparent when his brother, desperate as the family hits financial crisis, joins in a business venture

46. Palmyre exists in a strange location being at once property and propertied in a sense. Her slave is in a sense the slave of a slave.
47. Barbara Ladd, *Nationalism and the Color Line in George W. Cable, Mark Twain, and William Faulkner* (Baton Rouge: Louisiana State University, 1996), 47.

with Honoré f.m.c. This contract is a breach of honor in the minds of the Grandissimes, for whom honor is racialized, and they are horrified.

As in the case of Chestnutt's Olivia, the white sibling comes with too little too late, though the African American sibling provides the needed assistance. Honoré f.m.c. is already broken. Paralyzed by his loneliness, and rejected by Palmyre, who he loves, he commits suicide. The depression of Honoré, and the rage of Palmyre (she attempts murder through *Vodun*) are psychological imbalances. The poor health of the mind, as wreaked by the color line, is another critique of the imbalance of the color line, and one which makes direct reference to the way the color line destroys reason, the centerpiece of classical legal thought.

This is literarily depicted as well through the ironic designation "La Philosophe" for Palmyre. Though it was a common term used to describe voodoo practitioners, in the novel it reminds the reader of the damage the condition of life behind the color line actually does to philosophical capabilities as Palmyre descends into madness.[48]

VII. Ugly Insanity in Sutton Griggs *The 'Hindered Hand'*

Nowhere is the destructive work of racially motivated psychiatric imbalance treated more dramatically as an example of the interpretive necessities of equal protection, than in the work of Sutton Griggs. Minister and activist, Griggs wrote a number of novels, the most famous of which was *The Hindered Hand* (1900). If Chestnutt cleans up Twain's ambiguity about disciplining rules of Southern culture, Griggs establishes with greater clarity than George Washington Cable that the madness of the black female character is produced by social and judicial failures, rather than racial ones. In this novel the "racial twins" are Tiara and Eunice. Tiara and Eunice's parents are two white-looking African Americans, Mr. and Arabelle Seabright. Their mother devises a plan for the family to pass, all but the brown-skinned Tiara. Her goal in passing is to insert the family into positions of power such that they might influence the movement of the nation, making it a safe and democratic, rather than dangerous and disenfranchised, place for African Americans to live. Her son, theologically trained, begins a ministry in the new town of Almaville. Her older daughter is set up to marry a noble judge, H.G. Volrees, who is about to enter the Senate.

The brown-skinned Tiara is left alone, the youngest child, with no family connections, and no name. At first Eunice, longing to be with her sister,

48. Although Cable's assessment of his black characters is far less ambiguous than Twain's, to the extent that Palmyre is a hot tempered mulatto voodoo queen is potentially subject to a truncated and racist interpretation in which she would be assumed to be without philosophical capabilities, despite the fact that Cable very deliberately portrays his black characters as intellectually deliberative and reasoning until they are confronted with debilitating abuses.

runs away from Volrees at the beginning of their honeymoon. She has written him a note, explaining to him that he must send postcards she has already scripted from the different points on their honeymoon trip to Europe and then, in whatever manner his imagination preferred, he must announce that she has died abroad. Instead, Volrees decides to look for her. This decision precipitates the climax of the novel.

The Johnson-Volrees bigamy trial is underway several chapters later. Having learned that his bride is newly married and living on a plantation in Mississippi from the African American porter who aided Eunice, Volrees brings suit. Tiara's testimony at trial provides the drama because, consistent with her oath, she reveals the whole truth of her family.

As the trial begins, Eunice enters the courtroom with a six-year-old child who, bearing the Volrees birthmark, scandalizes the court.

> There sat beside Eunice her child, having all of Mr. Volrees' features. There were his dark Chestnutt hair, his large dark brown eyes, his nose, his lips, his poise, and a dark brown stain beneath his left ear which had been a recurrence in the Volrees family for generations. The public was mystified as it was commonly understood that the marital relations had extended no farther than the marriage ceremony. The presence of this child looked therefore to be an impeachment of the integrity of Mr. Volrees and of Eunice.[49]

The dark brown stain beneath the child's left ear, it turns out, has a double meaning. He is the descendent of Volrees, but he also reveals his African American ancestry on the geography of his body with that small stain. He is the child of Volrees' illegitimate black son, Earl Bluefield, who is living under the pseudonym Johnson. Eunice is not only a bigamist, but she has committed a serious taboo act, married father and son both, perhaps possible only in the strange disaggregations of the color line.

Tiara comes to the stand and tells the story of her ambitious mother, and her sister's two marriages. Tiara tells the court that after Eunice went to live with her, running away from Volrees, she met Earl. Ensal, Tiara's beau, had brought Earl to Tiara's home on the outskirts of town to nurse a gun wound. Eunice and Earl then fell in love, and they married and moved to live as white in Mississippi. Earl's sense of racial injustice, born in part from the insult that the nobility of his Anglo Saxon blood has been denied because it is tainted with that of the African American, leads him first to a plan of taking up arms against the white citizens of Almaville and next to passing into whiteness.

Eunice's "undying" sisterly devotion quickly expires at the trial. The court is supposed to decide whether or not she is a bigamist. She is a bigamist if she is considered a white woman, and Earl a white man,

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49. Sutton Griggs, *The Hindered Hand,* 1905 (Miami: Mnemosyne Publishing Inc., 1969), 232.

because then both marriages are legitimate. However, she is not a bigamist if she is considered an African American, because her marriage to Volrees would be null and void. She longs to be considered a bigamist. Even prison and shame are better than being resigned to the status of African American. Eunice sees a property value in whiteness that exceeds the censure that a bigamist suffers.

Eunice's case parallels the decision in *Plessy*'s dependence upon the racial classification of the party for determination of the verdict. As Judge Higginbotham writes:

> How Louisiana defined who was black determined whether Plessy could be prosecuted. If he were legally white, not only was he immune from the prosecution but he might have also had a right to collect damages from the railroad for having been treated as a black man.[50]

In this case, Tiara provides the dispositive evidence. Tiara becomes, for Eunice, the abject. As Anne McClintock writes in *Imperial Leather: Race, Gender, and Sexuality in the Colonial Conquest*:

> The abject is everything that the subject seeks to expunge in order to become social; it is also a symptom of the failure of this ambition. As a compromise between "condemnation and yearning" abjection marks the borders of the self; at the same time, it threatens the self with perpetual danger.[51]

Eunice, expunging Tiara in order to maintain her social identity as a white woman, invokes caste – perjuring herself – in response to Tiara's testimony. She says: "The woman who talked to you a few moments ago is a African American. Don't honor her word above mine, the word of a white woman. I invoke your law of caste. Look at me! Look at my boy! In what respect do we differ from you?"[52]

Horrified at her re-encounter with blackness, Eunice experiences the psychic effects of confrontation with the abject. She has a hysterical fit. And she experiences the uncanny, ultimately going mad.

When Tiara, in an act of resistance against the madness of the racial order, says to Eunice that they should leave this country Griggs pens the following as Eunice's response: "'Ha Ha' laughed Eunice with almost maniacal intensity, as she waved her hand in disdain at Tiara, who now slowly left the witness stand."[53]

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50. A. Leon Higginbotham, *Shades of Freedom: Racial Politics and the Presumptions of the American Legal Process* (New York: Oxford U. Press, 1996), 115.
51. Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Conquest* (New York: Oxford U. Press, 1996), 71.
52. Sutton Griggs, *The Hindered Hand*, 1905 (Miami: Mnemosyne Publishing Inc., 1969) 242.
53. *Ibid.* 241.

Race has de-familiarized Eunice from Tiara. Tiara experiences the final rejection after the court finds Eunice not guilty of bigamy, "When Tiara somewhat timidly caught hold of her dress as if to detain her, Eunice spat in her face, and tore herself loose."[54]

Eunice barrels rapidly and ungraciously from the status of lady to African American. She moves from rejecting the abject Tiara, to becoming the abject herself. Her case has spread throughout the popular media and she is quickly recognized as the white Negress. Like Cinderella, her carriage disappears, her clothes are thrown from her hotel room into the street, and she is dropped from a street car by the conductor, once he recognizes her face. The experience of being the "other" woman of the South who suffers these sorts of indignities was too much for Eunice. She thinks: "What leprosy, what loathsome disease has befallen me that everybody now spurns me. One cruel little word – African American – has converted fawning into frowning, and a paradise into hell."[55] Dramatically then, the novel once again is a depiction that there is no equality in separate, that as Woodward described, the color line is a caste line. But the loss of reason is the more dramatic imbalance. The long-forgotten status of an African American comes back to haunt her and takes over her life. Forced to confront the abject such that her self is shattered, there are no boundaries maintained for her identity as a white woman, Eunice retreats from the "rational" world. When Eunice's husband states his fear that she might be considering suicide, and infanticide, she responds with insane laughter: "'Ha Ha!' laughed Eunice in the uncanny tones of madness 'You guess well!'"[56] And so he sends her off to a northern sanitarium.

Earl Bluefield soon receives a disheartening diagnosis of his wife from her physician:

> Mr. Bluefield, to be absolutely frank with you, I am compelled to say that, in my opinion, your wife's case is an incurable one. The one specific cause of her mental breakdown is the Southern situation which has borne tremendously upon her. That whole region of the country is affected by a sort of sociological hysteria and we physicians are expecting more and more pathological manifestations as a result of the strain upon the people.[57]

As Southerners attempted to cast out the abject African Americans from their citizenry, and at times even from the status of humanity, the strain of the false boundaries of the color line would weigh, according to the physician, on the minds of Southerners to create a hysterical state. Griggs explains the hysterical behaviors of lynching, rape, torture, and degradation through the mental

54. *Ibid.* 245.
55. *Ibid.* 250.
56. *Ibid.* 254.
57. *Ibid.* 255.

breakdown of this character who exemplifies the bifurcation created by the color line. These are ugly, irrational acts to which there is an imperative duty of response. At once we have a commentary upon the imperative demands of adjudication or police power, and as well the failure of reason – speaking to failed interpretive capacities that result from the operation of race. Eunice lacks reason because of the trauma of race, and so does the entire region.

The taxonomy of hysteria in the late nineteenth century consisted of a variety of uncontrollable gestures and reactions, as well as a susceptibility to a hypnotic state.[58] It was also characterized by a maniacal uncontrollability of the body. The doctor has told Earl that if he finds a way to give Eunice hope she might snap out of her hysteria. When he returns, after massive political strategizing, and tells her there might be some hope that the society will change, her hysteria only increases at the prospect of waiting any longer: "Jumping up she whirled round and round until from sheer exhaustion she fell into her weeping husband's arms."[59]

This clinical and literal imbalance destroys will, and its work in the book is to refute the reasonableness of segregation that is argued by the opinion in *Plessy*. Caste destroys the very "reason" that the Court argues supports separate but equal as an interpretation of equal protection. For Eunice, trapped by caste, the body takes over control of the mind. Reason is thoroughly defeated. Eunice's experience with de jure segregation, and all that it means, illustrates that the decision in *Plessy* was part of an unreasonable state of society.

Plessy had argued before the court that the Louisiana segregation statute *did* violate his civil rights and further that train segregation could lead to the total segregation of society, for what after all was the difference between the segregation of train cars, and the segregation of streets, the segregation of the color of houses according to race, the segregation of friends riding in private carriage according to race, other things which would undeniably signal an intrusion upon the rights of citizens? In response to this contention the court explained that those other sorts of potential segregationist rules were distinguishable from a separate cars rule because they were unreasonable whereas the statute that was up for consideration was reasonable. Further, the court stated that segregation statutes must undergo a reasonableness test. The "reasonable man" standard in law was widely accepted in the 19th century as a framework for normative interpretation of legal dilemmas through an imagined "representative" citizen. The reasonable subject in *Plessy*, was, it became clear in Justice Brown's opinion, the white citizenry rather than the black. Brown wrote:

> In determining the question of reasonableness it [the court] is at liberty to act with reference to the established usages and customs and

58. Gillian Brown, *Domestic Individualism: Imagining Self in Nineteenth-Century America* (Berkeley: U of California Press, 1990).
59. Charles Chestnutt, *The Marrow of Tradition*, 1901 (Ann Arbor: University of Michigan Press, 1969), 296.
60. *Plessy v. Ferguson* 163 U.S. 537 (1896) 550.

> traditions of the people and with a view to the promotion of their comfort and the preservation of the public peace and good order.[60]

The court argued that it might protect customs and traditions. However, this was clearly flawed logic given that segregation was neither a custom nor tradition in the South, where pre-Emancipation the physical proximity of blacks and their owners was irrefutable, and actually the physical intimacy between master and slave was implied by the family metaphor of plantation life used by slavery apologists. The only custom it protected was racism.

As Judge A. Leon Higginbotham Jr. writes in *Shades of Freedom* (1996) about the Court's reasonableness test:

> In ruling that "usages, customs and traditions" were acceptable criteria for determining whether a law was reasonable, the Court did nothing more than to incorporate into constitutional law all of the slavery jurisprudence that had supposedly been washed away with the recent constitutional Amendments.[61]

The court claimed and once that there was no implication of inferiority in segregation statutes and that the inferiority of the African American could not be resolved by law. Absurd inconsistency arises as the abstract and, in that realm, innocuous concept of segregation as purely separate but equal, is justified with the invocation of the customs and traditions of a historically white supremacist region.

Ultimately, the psychic breakdown Eunice embodies for the nation is a result of the incongruence with the Constitution for which *Plessy*, the statute it upheld, and other racialist legislation and adjudication stood. On the one hand there is the balance and symmetry provided by the Civil War amendments, elaborations of the Constitution. The rational analysis of these amendments, their interpretation as it were, is blunted by the disciplining rule of white supremacy inherited by slavery. But more than that, there is a profound conflict between the two. This conflict not only produces injustice, but incoherence, textually represented by insanity.

VIII. Conclusion

The hideous embodiment of a nation's ideological incoherence is offered up in these three novels, and later on throughout African American letters, from Richard Wright to Toni Morrison. The binaries we have known, slave–free, black–white, reason–emotion, self–other, are in a spastic paralysis from which these appeals seek to free us. The righteous *telos* is sustained through hope, a hope that language, letters, beauty even, have power.

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61. A. Leon Higginbotham *Shades of Freedom: Racial Politics and the Presumptions of the American Legal Process* (New York: Oxford U. Press, 1996), 114.

For Chestnutt, Cable, and Griggs, the articulation of hope is not in the action of their novels, but in their interpretive *and* imperative force. All three wrote fiction as well as essays advocating for rights for African Americans. Chestnutt frequently sent his novels to elected officials and men of influence. Cable, a respected author, published in leading journals and posed his writing in contrast to that of figures such as Thomas Nelson Page, author of *The Leopard's Spots*, which was the novel upon which the anti-Reconstruction film *Birth of a Nation* was based. To him, these novels were part of a cultural, and legal, battle. Griggs ministered to his congregation with the ideas one finds in his fiction.

The interpretive mandates presented by these works are appealing to two tiers of disciplining rules for their force. They invoke the fourteenth amendment, but they do so not simply as an element of the Constitution, but as a species of found law with deeper roots in Anglo American jurisprudence. The use of ideals of reason, balance (as in the scales of justice) and *stare decisis*, places the imperative to protect equally, and to protect equality, within the context of deeper and older jurisprudential norms. To make things right, the citizenry must demand balance. Given the historical context, this is an imperative claim as well. The departure of the Radical Republicans from the South was a devastating blow to Reconstruction and the aspirations of African Americans. With them went any force for the protection of rights. The energy expended to resuscitate that force is found in literary and litigation activism. Homer Plessy guided an interpretation of him, his status, well dressed, white skinned, "propertied" in order to make an imperative claim, but he failed. Standing at the very edge of the color line, he attempted to break it down by settling into his argument with a foot on each side. On one side he said, "I am a black man whose rights have been violated by an unjust statute," and on the other, "I am a white man whose rights have been violated by an incorrect instance of racial assignment." This is an argumentative device that equalized his two races, by putting them into one general body, both wronged. He literally made himself two men, twin men, one black one white, in the same body. Plessy was and is the embodied metaphor of DuBois's double consciousness, as are all the characters employed in the trope of racial twinning.

It is impossible to think of these discussions of racial divisions in twins, or in one body, without a resonance to Lincoln's House Divided speech. The normative assumption underlying the ideal of righteous interpretation is an ideal of a unified citizenry. And underneath the discourses about equations and balance and reason, is the faith that these are but measures for the creation of a unified and fairly treated citizenship. By all evaluations the balancing tests declare such unity not to be so, and so rebalancing is an imperative.

The practical ethics of their work also required the use of some traditional Southern disciplining rules. Throughout this literature there is a real cognizance of class distinctions amongst white southerners and an appeal to the white aristocracy to halt the violence and destruction experienced by black Americans during Redemption. That appeal didn't necessarily reflect a belief that there was some greater sensitivity endemic to higher class status,

but rather an appeal to the purported disciplining rule that the ruling class must act with gentility, order, and grace. There is a sense of desperation, then, attached to this set of rules. These appeals then sometimes read as a sort of pandering, but one that is painfully justified by any examination of the terror of the Redemption era. The terms of beauty, whether it be in abstract structures, cultural aesthetics, or classist norms, were used to make the most compelling case possible for racial justice.

But the question remains, is this at all instructive? If we are cynical, we can read such practices as correct but insincere – because they couch politics within the framework of philosophy. But, according to Ronald Dworkin there are no arguments that do not presuppose a conclusion. The fact that the author's greatest emotion was the desire for justice and that the powers that be do it, doesn't make the philosophical argument meaningless. Even if we say that it is nothing more than a rhetorical tool, that itself has great meaning. The art of argument is a kind of political engagement that marries aesthetics with values and process. They were, in the process of seeking justice, creating beautiful analogies, to lead the nation towards a more righteous practice. Despite the sort of social scientific realism to which we now subscribe, we shouldn't neglect to understand the salience of the art of argument. Chestnutt and his colleagues certainly didn't.