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Monstrous by Law: Gothic Technology in Four Slavery Texts

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Monstrous by Law explores two famous legal texts of antebellum American slavery—The Confessions of Nat Turner, regarding the 1831 slave rebellion; and the notorious trial of Margaret Garner, the fugitive slave who murdered her children to prevent them from being taken back into slavery. Using theories developed by Toni Morrison and Judith Halberstam, the essay examines how these two texts make use of a particular “Gothic technology,” by which the black defendants are portrayed as monstrous figures that help define and reinforce white identity by contrast. The essay then turns to Herman Melville’s novella Benito Cereno, which was inspired in part by the Nat Turner revolt, and Toni Morrison’s Beloved, which was inspired by Margaret Garner’s story, to trace how these two literary texts respond, critique, and attempt to dismantle such technology. The analysis underscores the important role of literature, particularly the literature of American law, in creating an anti-racist society.

INTRODUCTION

Slavery is an American nightmare: its terrible history figures prominently in the American Gothic imagination, as critics of Poe, Melville, and Faulkner have observed. Less studied is the role that law and jurisprudence played in this American Gothic of slavery. American law crucially supported the subjugation of blacks under a racist hierarchy, from the Dred Scott case to fugitive slave trials to Jim Crow laws, and it is natural that these deeply social operations should contribute to the literary imagination of slavery. This essay examines two major antebellum legal texts relating to slavery—specifically, to the Nat Turner slave rebellion and to the fugitive slave Margaret Garner’s notorious infanticide—against a recurring pattern in

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early American literature, in which black slaves are portrayed as monstrous in order to reinforce the central humanity of whites. The essay then turns to two major slavery texts in American literature, inspired in part by Nat Turner and Margaret Garner’s stories, and evaluates to what extent these texts reproduce, subvert, or attack this Gothic pattern.

Part I examines the Gothic technology of Monsters, figures of negative identity that draw on struggles in the body politic, and compares this framework to Toni Morrison’s theory of blackness in early American fiction. Part II evaluates two mid-19th century slavery texts—The Confessions of Nat Turner and the 1856 fugitive slave trial of Margaret Garner—as examples of Gothic technology at work in legal narratives. Part III applies the conclusions of Parts I and II to Herman Melville’s 1855 novella Benito Cereno, to demonstrate how Melville’s text critiques contemporary fugitive slave trials and predicts the rise of monstrous legal institutions that affirm and assert white supremacy. The essay concludes with Morrison’s novel Beloved and its rebuke and deconstruction of public racial narratives controlled by antebellum white supremacists. These critiques by Melville and Morrison in turn suggest a way forward for dismantling the Gothic technologies within our modern courts.

I. Gothic Blackness in American Fiction

Gothic fiction relies on fantastic figures of negative identity—Gothic Monsters—to digest social anxieties through a sensational contest of heroes and villains. Thus, while many definitions of the Gothic emphasize genre-wide tropes of terror, morbidity, or imperiled women, this discussion adopts Judith Halberstam’s emphasis on the Gothic Monster: “Monsters and the Gothic fiction that creates them are . . . narrative technologies that produce the perfect figure for

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2 E.g. LINDA BAYER-BERENBAUM, THE GOTHIC IMAGINATION: EXPANSION IN GOTHIC LITERATURE AND ART 13 (1982) (“Gothicism is the art of the deadly.”).
negative identity. Monsters have to be everything the human is not.”

The defining feature of the Gothic is the narrative’s construction of a reflexive foil for “normal” humanity.

Gothic technology fashions this negative identity from the contemporary social struggles, such as class, race, and gender. In her Dracula analysis, Halberstam traces how anti-Semitic constructions of the European Jew—including “Jewish” physiognomy, economic parasitism, and notions of Jews as a “feminized” race—influence Bram Stoker’s depiction of the sharp-nosed, Slavic, avaricious, Christianity-fearing and sexually ambiguous vampire. Stoker’s fantastic battle against Count Dracula draws upon late Victorian England’s anti-Semitic anxieties about racial purity, economic security, and sexuality. As Halberstam writes, Gothic “tracks the transformation of struggles within the body politic to local struggles within individual bodies,” most visibly the body of the monster. This technology is often more unconscious than propagandist, appearing predominantly as authorial unease, anxiety, and narrative tension.

Toni Morrison traces this very technology of negative identity in white American writers’ use of black (or nonwhite, “Africanist”) characters in fiction. The Gothic genre allowed early American writers to explore the anxieties of a young nation distancing itself from old, corrupt Europe: fear of powerlessness and ostracism among stronger nations; fear of uncivilized, hostile Nature; and even fear of freedom itself, with its unknown implications. In the captive slave population, these writers found bodies for “terror’s most significant, overweening ingredient:

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4 Id. at 86.
5 Id. at 78.
darkness, with all the connotative value it awakened.”

Black, enslaved bodies thus became “the perfect figure of negative identity:”

Africanism is the vehicle by which the American self knows itself as not enslaved, but free; not repulsive, but desirable; not helpless, but licensed and powerful; not history-less, but historical; not damned, but innocent; not a blind accident of evolution, but a progressive fulfillment of destiny.

In other words, by introducing black slaves who are enslaved, helpless, and without destiny, the author sets off his white protagonists—and, importantly, prompts these white protagonists to understand themselves—as free, powerful, and destined. The young American nation’s social anxieties construct this Africanist Other, just as the legions of late Victorian preoccupations constructed the vampire. Morrison proposes an investigation of how fictional Africanist characters enable white writers to articulate “historical, moral, metaphysical, and social fears, problems, and dichotomies,” and how these constructed Africanist figures “[are] used to limn out and enforce the invention and implications of whiteness.”

The following analysis takes up Morrison’s challenge with respect to American legal texts in the mid-19th Century, which employ the same Gothic technology described by Morrison and Halberstam through legal narrative. The next Part examines two antebellum legal texts, the Confessions of Nat Turner and the Margaret Garner fugitive slave trial, to trace how legal narratives can turn controversial black individuals into figures of negative identity—Gothic Monsters by law.

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7 Id. at 37.
8 Id. at 52. For example, in Twain’s Huckleberry Finn, the poor white Huck Finn understands himself to be free and socially powerful by regarding the enslaved, socially powerless Jim. MORRISON, supra note 6 at 55-57.
9 Id. at 37, 51, 52.
II. LAW AS A GOTHIC TECHNOLOGY

Legal adjudication is a potential Gothic technology in that it can construct figures of negative identity, Gothic Monsters, from the defendants at bar. This Part examines such a potential through two antebellum legal texts involving black, enslaved defendants: The Confessions of Nat Turner, and the Margaret Garner fugitive slave trial. Within these texts, several narrators manipulate the judicial system’s social authority to transform the black defendants into sensationalist Monsters, whose adjudication becomes a trial of social anxieties.10

I first explore judicial authority’s narrative role in resolving competing accounts into a unified story, and the way non-judicial narrators invoke legal signifiers to usurp such authority. I then show how these competing (white) narrators manipulate black personhood in forwarding their respective social agendas, and evaluate the effect such manipulation has in constructing black individuals as figures of negative identity.

A. Due Processing: Legal Texts as a Movement from Chaos to Order

Legal texts begin in social disruption: neighbors sue one another over property lines; a criminal breaks the law; a tortfeasor violates her social duty of care. These disruptions usually produce at least two competing narratives: in their simplest formulation, the plaintiff/prosecutor presents a narrative of guilt, and the defendant claims innocence. But narrative competition can grow far more complex. For example, a damages trial will involve a narrative contest over the extent plaintiff’s actual injury, the egregiousness of the defendant’s conduct, and a social values-based discourse on the appropriate compensation and penalty. The legal machinery’s ultimate

10 Compare Felix S. Cohen, Transcendental Nonsense and the Functional Approach, 35 COLUM. L. REV. 809, 812 (1935) (“The law is not a science but a practical activity, and myths may impress the imagination and memory where more exact discourse would leave minds cold.”).
project is to create an ordered, authoritative, and univocal account from these narrative contests. Adjudication attempts to civilize and resolve the violence of social disruption in an ordered, fair manner. In this sense, legal texts operate like Gothic texts, in that they both attempt to process social tensions in a safe container.

Adjudication resolves narrative competition by eliminating competing accounts, or at least privileging one narrative over all others as the official account. Thus, in a criminal trial, the court uses the jury to privilege one account of guilt or innocence as the truth: the verdict, from veredicto, “truth-statement.” The court then enforces the official narrative through the “effective domination” of the defendant, using a system of social control, from its bailiffs and clerks to police and prisons, to impose the favored narrative against dissenters.

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12 See Gerald Lebovits, Alifya V. Curtin, & Lisa Solomon, *Ethical Judicial Opinion Writing*, 21 Geo. J. Legal Ethics 237 (2008); Catherine Pierce Wells, *Tort Law as Corrective Justice: A Pragmatic Justification for Jury Adjudication*, 88 Mich. L. Rev. 2348, 2354-55 (1990) (describing the court’s role in a tort case, under a theory of corrective justice, as “to achieve justice between the parties by making a justifiable judgment that fairly allocates the loss”); id. at 2377-78 (describing the Aristotelian model of adjudication as “decided by a judge who upholds justice by engaging in a process of deliberation that is structured by law and tempered by equity”).

13 See Cover, *Nomos and Narrative*, supra note 11 at 40-41 (discussing the courts’ role in imposing hierarchy on and selecting between diverse legal narratives); Wells, *supra* note 12 at 2402-10 (exploring the challenges of viewpoint dependency and multiple witnesses in adjudicating factual disputes).


Narrative competition in the courtroom frequently revolves not just around factual disputes, but competing accounts of “what the law is.” In this sense, Professor Cover calls adjudication “jurispathic,” because it suppresses diverse legal positions, chooses between contradicting laws, and imposes a hierarchy upon these laws.\(^{16}\)

The *Dred Scott* case provides a helpful illustration of the judicial resolution of competing narratives. *Dred Scott v. Sandford* involved, at its most personal level, a conflict between a black slave’s claim to liberty and a white slaveowner’s claim to property, and at its most global level, a national contest between abolitionists and slaveowners over humanity and morality, comity and federalism, economy and politics.\(^{17}\) Chief Justice Taney’s opinion privileges certain narratives as authoritative—the slaveowner’s property claim, a historical narrative about the Founding Fathers’ racial views\(^ {18}\)—and discredits other narratives, particularly the abolitionists’ exhortations to social justice.\(^ {19}\) Taney eliminates the abolitionist narrative as legally irrelevant “public opinion,” and employs the Supreme Court’s authority to strike the Missouri Compromise and destroy an entire legal narrative of “free” territory.\(^ {20}\)


\(^ {16}\) Cover, *Nomos and Narrative*, supra note 11 at 40.

\(^ {17}\) *See, e.g.*, DON E. FEHRENBACKER, THE DRED SCOTT CASE: ITS SIGNIFICANCE IN AMERICAN LAW AND POLITICS (1978).

\(^ {18}\) *Cf.* Cover, *Nomos and Narrative*, supra note 11 at 18 (quoting MARK DEWOLFE HOWE, THE GARDEN AND THE WILDERNESS 3-5 (1965)) (“Among the stupendous powers of the Supreme Court . . . is the power, through an articulate search for principle, to interpret history.”). In his dissent to *United States v. Sioux Nation of Indians*, Chief Justice William Rehnquist similarly used a selective history of the Sioux—emphasizing their supposed savagery—to bolster his argument that the Sioux Nation should be denied relief. *Lebovits* et al., supra note 12 at 279.


\(^ {20}\) *Id.* at 426, 452; *see also* Cohen, *supra* note 10 at 838, 840 (discussing how the adherence to legal formalisms provides a ready tool to discredit moral criticisms of judicial activity).
1. Legal Signifiers and *The Confessions of Nat Turner*

In a democratic society, the authority of adjudication rests in large part on its claim that, in selecting and enforcing official legal and factual narratives, the courts act fairly and rationally.\(^{21}\) The American, common-law legal system thus invokes a vast array of legal mechanisms and conventions to ensure its legitimacy: *stare decisis* and court hierarchies attempt to unify legal narratives across fora;\(^{22}\) witness oaths, hearsay rules, and cross-examination attempt to eliminate deceptive testimony;\(^{23}\) legal doctrine itself attempts to steer adjudication from arbitrariness to rationality.\(^{24}\) The rules of evidence regulate the chaotic polyvocality of trials—the myriad voices of parties, witnesses, experts, judges and juries—in the hope that, by

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\(^{21}\) Planned Parenthood v. Casey, 505 U.S. 833, 865 (1992) (“[A] decision without principled justification would be no judicial act at all.”); see also Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944) (listing thorough consideration, valid reasoning, and consistency as “those factors which give [courts] power to persuade, if lacking power to control”); Lebovits et al., *supra* note 12 at 237 (“In a democracy, judges have legitimacy only when their words deserve respect.”); id. at 234; Jessie Allen, *Just Words? The Effects of No-Citation Rules in Federal Courts of Appeals*, 29 VT. L. REV. 555, 570-71, 575-76 (2005) (“[C]ourts’ power and legitimacy is bound up with judges’ willingness and ability to present reasoned explanations for their ruling.”).

\(^{22}\) See, e.g., Deborah Hellman, *The Importance of Appearing Principled*, 37 ARIZ. L. REV. 1107 (1995) (defending the judiciary’s duty to “appear principled” through, among other things, *stare decisis*); *The Federalist No. 22*, at 148-49 (A. Hamilton) (E. Bourne ed. 1947) (discussing the need to avoid jurisprudential confusion by establishing “one court paramount to the rest . . . authorized to settle and declare in the last resort a uniform rule of civil justice”).

\(^{23}\) See generally Advisory Committee Note to Article VIII of the Federal Rules of Evidence; see also 2 JOHN H. WIGMORE, *A TREATISE ON THE SYSTEM OF EVIDENCE IN TRIALS AT COMMON LAW § 1367, at 1697 (1st ed. 1904) (hereinafter “WIGMORE ON EVIDENCE”) (calling cross-examination the greatest invention for assessing the truth of testimony); Helen Silving, *The Oath*, 68 YALE L.J. 1329 & 1527 (1959) (broadly discussing the long and varied history of oaths in legal systems); Dufraimont, *supra* note 14 at 207, 224 (exploring the justifications for various rules restricting proof);

restricting, privileging, and excluding certain evidentiary narratives, the resulting adjudication will be fairer and more rational.\textsuperscript{25}

These mechanisms are less guarantees of fairness and rationality than \textit{signifiers}. No one seriously believes that the witness oath incapacitates the witness from lying,\textsuperscript{26} but testimony under oath is nevertheless perceived as more credible than unsworn testimony. Similarly, a judicial opinion that invokes legal doctrine is more socially acceptable than one that appears to ignore doctrine.\textsuperscript{27} These conventions, while imperfect and manipulable, are so respected that their presence or absence alone can profoundly influence a judicial narrative’s legitimacy.\textsuperscript{28}

The Nat Turner \textit{Confessions} demonstrate how a non-judicial narrator may enjoy the authority and legitimacy of judicial narrative by strategically invoking these legal signifiers.\textsuperscript{29}

\textit{The Confessions of Nat Turner}, by Thomas R. Gray, is an account of an interview between Gray,

\begin{footnotes}
\item[25] See Dufraimont, \textit{supra} note 14 at 201-202, 205.
\item[26] Morgan, \textit{supra} note 11 at 182, 186 (1948); see also Michael Ariens, \textit{Evidence of Religion and the Religion of Evidence}, 40 BUFF. L. REV. 65, 79 (1992) (quoting 6 \textit{WIGMORE ON EVIDENCE} § 1816 (3rd ed. 1940)) (describing the evolution of the oath from “summoning divine vengeance on false swearing” to “a method . . . of putting [the witness] in a frame of mind calculated to speak the truth”).
\item[27] See Cohen, \textit{supra} note 10 at 820 (dismissing the credibility associated with \textit{stare decisis} as essentially a court’s superstition, like that of the Bellman in Lewis Carroll’s \textit{The Hunting of the Snark}, “that what it says three times must be true”).
\item[28] See Crawford v. Washington, 541 U.S. 36, 61 (2005) (The Constitution “commands, not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination.”); \textit{compare} Miller, \textit{supra} note 15 at 1187, 1226 (discussing the social role and power of ritual in legal proceedings); \textit{Vincent Crapanzano, Serving the Word: Literalism in America from the Pulpit to the Bench} 6-7 (2000) (same). For other signifiers, including “legalese,” Latinism, and fulsome citation to authority, see Lebovits et al., \textit{supra} note 12 at 252.
\item[29] See Andrew J. Cappel, \textit{Bringing Cultural Practice into Law: Ritual and Social Norms Jurisprudence}, 43 SANTA CLARA L. REV. 389, 437, 452-53 (2003) (discussing how the performance of rituals creates a sense of confidence among observers, or “hypertrust,” in the performer); Cohen, \textit{supra} note 10 at 820 (criticizing the manipulability of “the magic ‘solving words’ of traditional jurisprudence”); \textit{cf}. Cover, \textit{Nomos and Narrative, supra} note 11 at 43, 46 (recognizing the phenomenon of “unofficial interpretation” and distinguishing courts’ political power to dominate the interpretive role from the general power to create law through interpretation).
\end{footnotes}
a Virginia attorney, and Nat Turner, in which Turner purportedly gave his account of the infamous slave insurrection he led in Southampton County, Virginia in 1831.\(^{30}\) The “Nat Turner rebellion” was one of the most disruptive, mutually violent slave uprisings in American history,\(^{31}\) and sparked a fierce, public exchange of narratives from pro- and anti-slavery forces. Northern abolitionists cited the violence as proof of slavery’s moral and social disaster, and decried the brutality of the slaveowners’ counterattack.\(^{32}\) Southern slave-owners pointed to the black-on-white carnage to justify their repression of a violent, animal race.\(^{33}\)

According to Gray, the document he presents as the Confessions served in court as Turner’s actual confession, and was read aloud to him at his trial \([\text{CNT } 42]^{34}\). Gray thus offers the text as a legal one, and legal scenes and *scenes à faire* pervade the Confessions. Gray heard Turner’s account in the latter’s jail cell \([\text{CNT } 44]^{35}\); Gray examined and cross-examined Turner \([54]^{36}\); Gray includes an ostensible transcript of Turner’s verdict and sentencing in court \([56-57]^{37}\); and Gray ends the Confessions with a catalogue of the insurrection’s white victims and of the

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\(^{33}\) E.g. Report of August 30, 1831, *The Richmond Enquirer*, *in* *The Confessions of Nat Turner and Related Documents*, *supra* note 30 at 67; Report of September 26, 1831, *The Constitutional Whig*, *in* *The Confessions of Nat Turner and Related Documents*, *supra* note 30 at 78, 81 (“But I would caution all missionaries . . . not to plague themselves about our slaves but leave them exclusively to our own management.”).

\(^{34}\) However, the official record of the Turner trial contains no specific mention of the Gray confessions, and some commentators believe Gray invented the court reading to make his account seem authentic. Kenneth Greenberg, *The Confessions of Nat Turner: Text and Context*, *in* *The Confessions of Nat Turner and Related Documents*, *supra* note 30 at 1, 13.

\(^{35}\) Commentators have likewise questioned the authenticity of this scene. *Id.* at 13.
participating slaves, their owners, and their sentences [CNT 57]. Gray even supplies the certification and seals of the six magistrates who tried Turner [42].

By invoking these numerous legal signifiers, Gray essentially appropriates the judicial imprimatur, and with it, its claims to reliability and authority.36 Thus, Gray cites his cross-examination of Turner to assure his readers that Turner’s account is the honest truth, and includes the magistrates’ seals to persuade his audience that Turner swore to this very confession at trial.37 Invested with his quasi-judicial authority, Gray largely succeeds in promulgating the definitive account of the Turner rebellion.

Gray’s appropriation of judicial authority allows him to present his own account of the Nat Turner rebellion—that is, the perspective of a white Southern slaveowner—as the official version. Gray’s text is very likely an inauthentic rendition of Nat Turner’s purported confessions: Gray likely inserted “stock melodramatic phrases” that make Turner seem more bloodthirsty and add a Gothic flavor to the narrative.38 Commentators have questioned Gray’s account of the Turner trial as well, as it contradicts historical court records.39 But the fact that Gray likely fabricated much of his legal imprimatur only underscores the efficacy of legal signifiers in authenticating the inauthentic.

36 Compare Gray’s Confessions to Felix Cohen’s vision of the “realist advocate” using “ritual language” and “patter” to “induce favorable judicial attitudes.” Cohen, supra note 10 at 841.
37 See Greenberg, Text and Context, supra note 34 at 13.
38 Id. at 9.
39 Id. at 13. Notably, the historical court records of Nat Turner’s trial fail to mention Gray at all, in contrast to Gray’s own depiction of the courtroom scene.
2. Narrative Competition and the Garner Trial

Ultimately, the judiciary’s authority to promulgate official narratives is an aspirational trait.\(^{40}\) Even with the elaborate mechanisms of social control backing the judiciary, the body politic retains the power to undermine judicial authority, most concretely through legislative action,\(^{41}\) but also through less formal means such as public outcry, civil disobedience, or outright violence.\(^{42}\) Chief Justice Taney’s *Dred Scott* opinion is illustrative: Taney operates the most authoritative legal machinery in the nation—a U.S. Supreme Court holding—in an attempt to resolve the deep legal controversy over the constitutional rights of slaves; while he succeeds in binding the lower courts to an official constitutional narrative of slavery, he fails utterly to resolve the social dispute, and his opinion provokes further polarization and violence.\(^{43}\)

Moreover, the availability of legal signifiers empowers non-judicial narrators to capture some of the social authority of judicial narrative. The result of these two dynamics is that adjudication can often become a competition of judicial and non-judicial narrators hoping to control the official narrative.\(^{44}\) Especially in polarized controversies, a savvy lawyer will

\(^{40}\) See Cover, *Nomos and Narrative*, supra note 11 at 17 (“[T]he narratives that create and reveal the patterns of commitment, resistance and understanding . . . are radically uncontrolled. They are subject to no formal hierarchical ordering, no centralized, authoritative provenance, no necessary pattern of acquiescence.”).


\(^{42}\) See Cover, *Nomos and Narrative*, supra note 11 at 46-68 (discussing the problem of an insular community’s resistance to official, judicial interpretations of law).

\(^{43}\) See R. Burt, *The Constitution in Conflict* 193 (1992) (noting that the Court in *Dred Scott* had attempted to resolve increasingly “desperate and provocative” claims over slavery by issuing “blustering commands that only provoked heightened disobedience”).

\(^{44}\) Compare Martha Hodes, *Book Review, Mary Frances Berry, The Pig Farmer’s Daughter and Other Tales of American Justice: Episodes of Racism and Sexism in the Courts from 1865 to the Present, 19 L. & Hist. Rev. 696* (2001) (“To be sure, there were (and are) reigning narratives. But there were (and are) also intersections of old and new stories and uneven acceptance of stories or parts of stories. Narratives compete with one another, coexist and contradict each
manipulate legal signifiers to argue not only to the court, but to the court of public opinion as well. The Margaret Garner trial presents a perfect example.

Margaret Garner was a Kentucky slave who, in January 1856, escaped with her family into Ohio.\textsuperscript{45} Upon being discovered by her former master, Archibald Gaines, and his band of fugitive slave hunters, she murdered her infant daughter with a carving knife and unsuccessfully attempted to kill her sons with a shovel.\textsuperscript{46} Garner’s story became a showpiece for abolitionists, who found highly marketable pathos in the story of a mother who would kill her children rather than see them returned to slavery.\textsuperscript{47} Her fugitive slave trial, in which abolitionist lawyers attempted to block Gaines’ suit to retrieve the Garners, became the longest and most expensive fugitive slave trial in history.\textsuperscript{48} Given the extraordinary level of national attention, the extensive press coverage (which often reproduced the courtroom speeches), and the exceptionally large courtroom audience, it is appropriate to speak of the Garner trial as a text itself, a shifting but bounded collection of diverse narratives, read intensively by the public at large.

The Garners’ lawyer was John Joliffe, a Quaker abolitionist who exploited the case’s unique legal and factual posture to present several novel defenses against re-enslavement. First, Joliffe presented the argument (one which \textit{Dred Scott} later rejected) that because Gaines had previously brought the Garners to Ohio for errands, they were free under Ohio law.\textsuperscript{49} Second, Joliffe argued that, because Margaret had violated Ohio criminal law, the comity doctrine protected Ohio’s right to try, convict, and imprison Margaret \textit{in Ohio}—and not to return

\textsuperscript{45} \textsc{Steven Weisenburger}, \textit{Modern Medea: A Family Story of Slavery and Child-Murder from the Old South} 61 (1998).
\textsuperscript{46} \textit{Id.} at 74.
\textsuperscript{47} \textit{Id.} at 246.
\textsuperscript{48} \textit{Id.} at 192.
\textsuperscript{49} \textit{Id.} at 103, 115.
Margaret to slavery in Kentucky.\textsuperscript{50} Finally, Joliffe claimed that the Fugitive Slave Act violated his First Amendment right to practice a religion that condemned slavery and any complicity with such an institution.\textsuperscript{51} But most significantly, Joliffe leveraged the case’s striking facts and emotional power to present a case against slavery altogether. He and other abolitionists, including the formidable Lucy Stone, turned the Garner trial into a moral debate on slavery, the very last thing Archibald Gaines or the federal magistrate, Commissioner Pendery, wanted.\textsuperscript{52}

Joliffe and Stone, rather than Commissioner Pendery, proved the savviest in manipulating legal signifiers to present their narrative. Although Margaret’s murder was technically irrelevant to the case,\textsuperscript{53} Joliffe succeeded in introducing testimony about the infanticide as “evidence” of the Fugitive Slave Act’s pernicious effects.\textsuperscript{54} Joliffe’s oral pleadings were moving abolitionist sermons dressed up in legal terminology, directed at his national audience more than the magistrate.\textsuperscript{55} But Stone presented perhaps the most striking example of manipulating legal signifiers: when she accused Gaines of raping Margaret, she did so by addressing the court audience from the bench, in Pendery’s chair, minutes after the magistrate had recessed, as if delivering a ruling.\textsuperscript{56}

\textsuperscript{50} Id. at 104, 112.
\textsuperscript{51} Id. at 101, 148.
\textsuperscript{52} E.g. id. at 124-25, 147, 171-75, 190-91.
\textsuperscript{53} Strictly speaking, the only relevant factual issues of in the Garners’ legal case were whether the Garners were the slaves who fled Gaines, and, potentially, whether Gaines had ever brought Margaret and her husband to Ohio.
\textsuperscript{54} Id. at 124-25; \textit{compare} Cohen, supra note 10 at 841 (“[S]ince the rules of evidence often stand in the way, [the realist advocate] will perforce bring his materials to judicial attention by sleight-of-hand . . . even through a political speech or a lecture on economics in the summation of his case or argument.”).
\textsuperscript{55} W\textsc{eisenb}u\textsc{u}r\textsc{g}e\textsc{r}, \textit{supra} note 45 at 147-49; \textit{see}, \textit{e.g.}, id. at 149 (Joliffe calls slavery a “roaring, seething, hissing Hell”).
\textsuperscript{56} Id. at 171.
Joliffe and Stone’s success in invoking legal signifiers served a key role in destabilizing the trial’s actual result. Commissioners Pendery’s holding, returning the Garners to Gaines, merely provoked further jurisdictional maneuvering between Ohio, Kentucky, and federal authorities, and utterly failed to quiet the Garner trial’s social disruption. While Joliffe never succeeded in preventing Margaret’s return to slavery, he did ensure that her official story—if any account could be called “official”—was not about fugitive property, but of an oppressed woman driven to unnatural murder by the evils of slavery. Margaret, in Joliffe’s hands, became “the Modern Medea.” It is this strange transformation from slave to symbol that the next section explores.

B. Creating a Monster: Narrative Constructions of Black Monstrosity

Both Nat Turner and Margaret Garner, in the hands of their quasi-judicial narrators, became more than mere historical defendants: they became Gothic Monsters, figures of negative identity for whites to identify against. White slave-owners knew themselves to be gentle human beings because they were not savage like Nat Turner. White abolitionists knew that slavery’s wickedness had not corrupted them because they were not tragic like Margaret Garner. The following two sections trace how Thomas Gray and John Joliffe, as Nat and Margaret’s narrators, approached their respective fora with an array of narrative agendas, and presented a highly manipulated account of their subjects to further those agendas, in a heated contest over

57 Compare Cover, Nomos and Narrative, supra note 11 at 19 (noting that, whatever story the official judicial narrator privileges, “alternative stories still provide normative bases for the growth of distinct constitutional worlds”).
58 WEISENBURGER, supra note 45 at 192 et seq.
59 Id. at 246 et seq.
60 Id. at 285-86.
meaning and culpability. This manipulation of black personhood is the process, the stroke of the pen as it were, that turns these two slaves into symbols.

1. Narrative Agendas

Judicial narrators write with an agenda.\(^{61}\) Especially in highly polarized controversies, the content and contours of official legal narratives shape themselves according to the narrator’s goals.\(^{62}\) Even if that goal is simply to deliver a chosen ruling, the judicial author constructs her opinion so that it will explain and justify the result.\(^{63}\) For example, in his \textit{Dred Scott} opinion, Chief Justice Taney presents a long and dubious historical account of the Founding Fathers’ opinion of slaves, the Constitution’s drafting, and amateur ethnology to arrive at the result he has decided upon, that slaves are not ‘persons’ under the Constitution.\(^{64}\) Even this result is simply a step towards his ultimate goal, to resolve the national controversy over slavery in favor of slave-owners.

One can parse out at least three distinct agendas, operating at three distinct levels, for a given judicial narrator. First, there is the case-specific: a legal text must justify the holding, or, for a non-judicial narrator, the desired result. Second, there is the political: the case’s result

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\(^{62}\) Cover, \textit{Nomos and Narrative}, \textit{supra} note 11 at 39 (tracing how the radical constitutionists self-consciously employed interpretive methodologies most favorable to their agenda); Cohen, \textit{supra} note 10 at 845 (“We know, in a general way, that dominant economic forces play a part in judicial decision, that judges usually reflect the attitudes of their own income class on social questions . . .”).

\(^{63}\) Volokh, \textit{supra} note 41 at 781; Lebovits et al., \textit{supra} note 12 at 285; Shapiro, \textit{supra} note 61 at 737-38.

\(^{64}\) 60 U.S. (19 How.) at 407-408.
“means something” to the greater public, especially in high-profile controversies like Nat and Margaret’s. The Dred Scott case was not just about what happened to Dred Scott, but profoundly affected federalism, constitutional rights, and the Missouri Compromise as well. Third, there is the personal agenda: what does the case and its result mean to the narrator herself? While often the most difficult to tease out, these motives are often the most relevant to why we create Monsters to begin with.

Thomas Gray’s narrative agendas are rather straightforward. His case-specific agenda is to justify Nat’s guilty verdict and hanging; there is no mistaking the Confessions as a plea for clemency. His political agenda is two-fold: first, he wishes to show that slavery is a necessary or even beneficial exercise of control over a violent race, and second, and more specifically, he wishes to discourage religion among the slaves. His personal agenda is to defend his neighbors

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65 Cf. Cohen, supra note 10 at 814-17 (discussing how courts and legal scholars dressed up essentially political, distributive concerns in the legal fictions of intellectual property).  
66 Compare Cover, Nomos and Narrative, supra note 11 at 38 (discussing Frederick Douglass’s “greatest need . . . for a vision of law that both validated his freedom and integrated norms with a future redemptive possibility for his people”); Cohen, supra note 10 at 845 (“[W]e know that Judge So-and-so, a former attorney in a non-union shop, has very definite ideas about labor injunctions, that another judge, who has had an unfortunate sex life, is parsimonious in the fixing of alimony . . .”).  
67 The following summary of Thomas Gray and John Joliffe’s likely narrative agendas draws from primary sources, including journals and editorials; historians’ analyses of Gray and Joliffe as individuals; and educated guesses based on likely like-minded contemporaries’ thoughts and sentiments.  
68 Greenberg, Text and Context, supra note 34 at 8-9.  
69 Id. at 10. Southern writers repeatedly blamed the Southampton violence on the permission of religion among slaves. See, e.g., id. at 22; John Hamden Pleasants, Article of August 29, 1831, The Constitutional Whig, in The Confessions of Nat Turner and Related Documents, supra note 30 at 63, 66; Article of August 30, 1831, The Richmond Enquirer, supra note 33 at 67 (“The case of Nat Turner warns us. No black man ought to be permitted to turn a Preacher through the country.”).
and himself, as white slave-masters, against abolitionist charges of brutality, showing instead
that white slaveowners are restrained, peace-loving, and innocent families.\footnote{70}

John Joliffe’s case-specific agenda is, of course, to prevent Margaret Garner’s return to
Kentucky, even if that means securing her in an Ohio prison.\footnote{71} His political agenda revolves
around his abolitionism: he hopes to use the Garner trial to convince the nation of slavery’s evil
consequences, in particular the evils of the Fugitive Slave Act.\footnote{72} The Fugitive Slave Act is
particularly offensive in that it forces free states and their abolitionist citizens to aid and abet the
crime of Southern slavery. Joliffe’s personal agenda centers on this fear of complicity, and in
many ways his defense of Margaret can be seen as a means to frustrate the federally-mandated
complicity the Fugitive Slave Act imposes on him.\footnote{73}

\footnote{70} Thomas Gray was a slaveowner himself, and likely knew most of the whites killed in the
uprising. Greenberg, \textit{Text and Context}, \textit{supra} note 34 at 8. This, coupled with abolitionists’
scrutiny of violent white reactions to the uprising, give Gray an interest in assigning Turner
responsibility. \textit{See} Garrison, \textit{supra} note 32 at 70 (“In his fury against the revolters, who will
remember their [own] wrongs?”). Moreover, Greenberg states that Gray’s account “would never
have been circulated had it overtly suggested that the rebellion had roots in the nature of slavery
rather than in the madness of a single slave,” suggesting a sort of cognitive dissonance among
slaveowners that would demand Nat’s agency be emphasized. Greenberg, \textit{Text and Context},
\textit{supra} note 34 at 10.  
\footnote{71} \textcite{WEISENBURGER, supra} note 45 at 104, 117, 119. Joliffe’s abolitionist colleague, the Ohio
prosecutor Joseph Cox, wrote, “I felt it my duty to shield [Margaret] as much as possible from a
fate which she dreaded much more than the punishment of the law.” \textit{Id.} at 117.  
\footnote{72} An officer in the American Anti-Slavery Society, Joliffe drafted a resolution against the
Fugitive Slave Act calling for “every one who claims to be a friend of the slave to lay his \textit{all}
on the altar,” and “throw himself into the thickest of the fight . . . till slavery shall be—not
circumscribed in its limits—not defeated in its demands with regard to the Fugitive Slave Law . . .
\textit{but actually and wholly abolished from the land.”} \textit{Id.} at 93-94. In Joliffe’s case, his “\textit{all}” was
anti-slavery lawyering: Joliffe argued “practically every fugitive case tried before federal judges
and commissioners in southern Ohio,” and was likely the best in Ohio at it; but of seventeen
cases, he won only one. \textit{Id.} at 98, 100. In the face of these odds, Joliffe returned to these cases
because he knew “these battles had an immense effect on public opinion.” \textit{Id.} at 100, 104.  
\footnote{73} Joliffe viewed slavery as a “sin,” the theft of other’s labor, and equally viewed “hunting
[slaves] down in support of thieves” as evil. \textit{Id.} at 101. In his didactic novel \textit{Belle Scott},
Joliffe’s male characters picture slave’s blood as a “contagion” infecting their dreams, but are
slow to act, unpregnant in their cause, and berated by stronger-willed women. \textit{Id.} at 108. This
2. Accounts of Black Personhood

The competing narratives within these two slavery texts are fundamentally stories about black individuals, even as these narratives target larger social conflicts. Though these white authors have narrative agendas concerning subjects much larger than the black defendants—civil war, federalism and comity, religion and rights—these agendas ultimately guide their judicial or quasi-judicial narrators in proposing, constructing, and manipulating accounts of black personhood. Importantly, ‘personhood’ here refers to a broad range of individual characteristics, from personal deeds and physical traits to more intangible qualities such as personality, agency, and power.

In its simplest iteration, the thought that narrative agendas should drive an account of personhood is entirely familiar. In every criminal case, a prosecutor’s agenda to convict the defendant shapes her account of the defendant’s actions, motivations, and culpability. These image, set against Joliffe’s exhortations to commit one’s every fiber towards abolition, suggests a deeply conscientious advocate spurred to extraordinary dedication by the aversion to, or even the dread of complicity.

A similar concern appears in Henry David Thoreau’s 1854 speech Slavery in Massachusetts, where he declares, “Only they are guiltless who commit the crime of contempt” of the fugitive slave courts. Thoreau, Slavery in Massachusetts, in THOREAU: POLITICAL WRITINGS 123, 133 (ed. Nancy L. Rosenblum 1996). Thoreau laments the loss of a private, moral life, a life made impossible by the complicity of his government. He finds hope only in the image of the water-lily, an “emblem of purity,” because, he explains, “Nature has been partner to no Missouri Compromise. I scent no compromise in the fragrance of the water-lily. . . . In it, the sweet, and pure, and innocent are wholly sundered from the obscene and baleful.” Id. at 136.

Cf. MARY FRANCES BERRY, THE PIG FARMER’S DAUGHTER AND OTHER TALES OF AMERICAN JUSTICE: EPISODES OF RACISM AND SEXISM IN THE COURTS FROM 1865 TO THE PRESENT 20 (1999). While Prof. Berry primarily analyzes how accounts of black personhood influence the law and judicial decision-making, this section explores how the legal forum acts as a crucible for such accounts.

Cf. Eleanor Swift, Narrative Theory, FRE 803(3), and Criminal Defendants’ Post-Crime State of Mind Hearsay, 38 SETON HALL L. REV. 975, 985 (2008) (describing prosecutors’ motivation to provide the jury with a context- and detail-rich story to fulfill juror expectations of what a “complete” proof should be).
accounts can range from facile recitals to lofty moral dramas touching on core values. As Justice David Souter writes,

[T]he evidentiary account of what a defendant has thought and done can accomplish what no set of abstract statements ever could, not just to prove a fact but to establish its human significance...76

Thus, Thomas Gray presents an account of Nat Turner as a bloodthirsty fanatic, not merely to establish his (undisputed) legal guilt, but to “tell a story of guiltiness,”77 to convince an undecided nation that Turner’s actions deserve punishment.

This dynamic becomes more remarkable when we move from the case-specific to the political, and find that accounts of black personhood remain just as central to the narrator’s political agenda. For example, during the Garner trial, Joliffe called a series of eyewitnesses to establish that Archibald Gaines had brought the Garners with him into Ohio on business. Occasionally, a witness faltered in recognizing Gaines or the Garners, eliciting hasty retreats from Joliffe. But whenever a witness corroborated Joliffe’s story, and correctly pointed to Gaines or Margaret in the courtroom, the audience erupted in cheers.78 This wild, unruly court audience was clearly invested in Margaret Garner and her trial’s result, but predominantly to the extent that her trial was politically significant.79 The cheers were cheers for abolitionism, though they reacted to no more than an account of Margaret’s past visits to Ohio.

A pattern emerges in which Gray, Joliffe, and other judicial and quasi-judicial narrators advance their political agendas by presenting accounts of Nat, Margaret, and other blacks’ personhood. Lucy Stone, in her dramatic speech from the bench, accused Archibald Gaines of raping Margaret by pointing to her children’s skin color, charging, “the faded faces of the negro

77 Id. at 188.
78 WEISENBURGER, supra note 45 at 137-38.
79 Id. at 110-11, 119.
children tell too plainly to what degradation the female slaves submit.”

The Garners’ physical qualities and their movements become placeholders for the success of larger narratives: if enough people agree that the Garner children look suspiciously light-skinned, Stone’s slave rape narrative becomes authoritative; likewise, if the court fails to find that the Garners entered Ohio before their escape, Gaines’ ownership narrative succeeds.

Similar competition occurs over the Garners’ legal personhood. The success of Joliffe’s most original tactic—placing the fugitive slave proceeding in conflict with Ohio criminal proceedings—depended on how one characterized Margaret’s legal status: if she was misplaced property, she was in the federal marshal’s custody, and must return to Kentucky; but if she was an accused murderer awaiting trial, she was in the state sheriff’s custody, and must stay in Ohio. Margaret’s legal identity—as well as her physical location in state or federal facilities—became a placeholder for the broader debate over the slave’s identity as property or person, as well as the comity war between Ohio and Kentucky. Like a chess piece, Margaret’s position indicated the respective advantages of competing political narratives.

Finally, these narrators’ political agendas frequently center on accounts of black agency. Thus, in the Confessions, Gray offers a narrative of the Southampton rebellion in which a violent, religiously zealous black slave, and not the white slaveowners, bears responsibility for the violence. Gray extensively details Turner’s actions in the revolt—his strategies, movements, and killings [CNT 49-52]—thereby emphasizing Nat’s agency. Gray provides a list of black defendants (i.e., active participants in the violence) and white victims (passive participants) [57-

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80 Id. at 173.
81 Id. at 104, 180-81.
82 See id. at 104, 133-34.
58], and omits from his narrative the violent white-on-black retaliations.\textsuperscript{83} Gray portrays Nat as bloodthirsty, and thus responsible for the carnage, by attributing to him (likely invented\textsuperscript{84}) phrases straight from a penny dreadful:

\[\begin{align*}
&\text{“I returned to commence the work of death,”} \\
&\text{“I . . . viewed the mangled bodies as they lay, in silent satisfaction,”} \\
&\text{“we found no more victims to gratify our thirst for blood.”}
\end{align*}\]

\textit{[CNT 50, 51, 52].} In addition, Gray depicts a courtroom scene in which the sentencing judge assigns Turner moral responsibility not only for the white deaths (\textquotedblleft your hands were often imbrued in the blood of the innocent\textquotedblright{} \textsuperscript{[56]}), but also for the ruin of the \textquotedblleft poor misguided wretches\textquotedblright{} he spurred to rebellion:

\begin{quote}
\text{The blood of all cries aloud, and calls upon you as the author of their misfortune. Yes! You forced them unprepared, from Time to Eternity.}
\end{quote}

\textit{[56-57].}

By emphasizing Turner\textquoteright s agency, Gray places the blame for the Southampton violence squarely on Turner, and, in general, on the savagery of a violent race, which the institution of slavery rightfully checks and tames. Moreover, by emphasizing Nat\textapos;s agency even over the slaves, as well as his religious role as a charismatic preacher, Gray advances a narrative in which religion among the slave population corrupts normally subservient blacks into violence.\textsuperscript{85}

\textsuperscript{83} See Greenberg, \textit{Text and Context}, \textit{supra} note 34 at 19.
\textsuperscript{84} See \textit{supra} note 38 and accompanying text.
\textsuperscript{85} See \textit{supra} note 69. As Greenberg writes, \textquoteleft{}Gray probably thought the Confessions showed the causal connection between the maniacal religious fanaticism of one man and the brutality of the rebellion.\textquoteright{} \textit{Supra} note 34 at 10; see also \textit{CNT} 41 (Gray describes Turner\textapos;s confession as \textquoteleft{}an awful, and it is hoped, a useful lesson, as to the operations of a mind like his, endeavoring to grapple with things beyond its reach\textquoteright{}); \textit{id.} at 57 (the sentencing judge considers Turner\textapos;s \textquoteleft{}only justification is, that you were led away by fanaticism\textquoteright{}).
A similar narrative competition over black agency appears in the Garner trial with respect to the vigorously contested meaning of Margaret’s infanticide. Four (perhaps five) competing accounts of Margaret’s agency emerge. (1) Margaret is an awesome, tragic heroine who, alternatively, (a) rescues her daughter from the misery of slavery, or, (b) Medea-like, resists her rapist-master by destroying his progeny-property; (2) Margaret is a vile murderess wholly guilty of infanticide; (3) Margaret is a “frantic mother” driven to a very regrettable action by the soul-destroying evils of slavery; (4) Margaret is something of a dupe, who kills her child at the suggestion of opportunistic abolitionists hoping to squirrel Margaret away in Ohio. It is unclear whether any of these accounts approximate the actual truth of Margaret’s motives. What is clear is that the competing narrators in the Garner trial advanced these accounts (and odd combinations thereof) in order to advance their larger narrative agendas. Joliffe offered the third, “frantic mother” account of Margaret’s infanticide as “evidence . . . to show the illegitimate effects of [the Fugitive Slave Law],” while Gaines’ lawyers advanced the second, “vile

\[\text{WEISENBURGER, supra note 45 at 78.}\]
\[\text{See id. at 8, 77-78, 134.}\]
\[\text{See id. at 167.}\]
\[\text{See id. at 124.}\]
\[\text{See id. at 151.}\]

According to the Cincinnati Commercial, Margaret’s words at the scene of the crime were: “[B]efore my children shall be taken back to Kentucky[,] I will kill every one of them!” WEISENBURGER, supra note 45 at 74. These words could support any of the above readings. Although she confessed “that her determination was to have killed all the children and then to destroy herself rather than return to slavery,” id. at 89, for all one knows, Margaret could have suffered a psychotic episode during a traumatic capture, and rationalized it afterwards.

Notably, Margaret spent more than a month in a small jail cell with her children, and appeared in court with her other daughter in her arms; we might well ask under what account—heroic, evil, frantic or susceptible—does a child-murderer retain access to her children? Even allowing for a gap in the cultures of 1856 and 2009, some piece of the logic is missing.

\[\text{WEISENBURGER, supra note 45 at 124.}\]
murderess” narrative to impeach her testimony about her children’s travels in Ohio, a delicate comity issue.

3. Nat and Margaret as Figures of Negative Identity

The narrative competition of white authors, in manipulating black defendants’ personhood for their larger political agendas, marks these black defendants, and inscribes upon them the broad social conflicts behind their trials. As black defendants become the place-markers of competing narratives’ relative success, they bear the weight of the manipulation in their constructed personhood. Nat Turner, after Gray’s *Confessions*, is more than a man or murderer: he is a bizarre, apocalyptic fanatic whose deranged zealotry led him to massacre innocent white families. Margaret Garner, more than a fugitive slave or child-killer, is Medea. The construction of Nat and Margaret as Gothic Monsters centers on their white narrators’ personal, social agendas, as their monstrosity reinforces their narrators’ superior white identity.

In casting their black defendants as Gothic Monsters, these texts resolve the moral ambiguities of whiteness in favor of the narrators. This appears most readily in the slave-owner narratives: by constructing Nat as guilty, Gray, the white, pro-slavery plantation owner, insists on his own innocence. The more powerful, strange, and bloody Gray makes Nat, the more he reinforces the normative understanding that Virginia slavery is typically non-violent, stable, and subservient. Similarly, the more Gaines’ lawyers cast Margaret as monstrous, the more they

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93 *Id.* at 167.
94 *Cf.* Cover, *Violence and the Word, supra* note 15 at 1609-10 (“Every prisoner displays [the] mark” of judicial violence.); Allen, *supra* note 21 at 607-608 (discussing the “hard words” of the Trobriand Islanders, which “carry the ability to penetrate the personal space of others . . . to shape their reality . . . [to] influence individuals and social situations in ways that ordinary words cannot”).
95 *See* Greenberg, *Text and Context, supra* note 34 at 10 (“Gray . . . [likely] intended the *Confessions* to bolster a position already articulated by other white Southerners—the belief that Nat Turner was insane. The *Confessions* would never have been circulated had it overtly
understand themselves as peace-loving. Thus, one of the Gaines lawyers, in his oral pleadings, depicts federal intervention against state slavery as Columbia killing her children: by emphasizing the monstrousness of Margaret’s deed, he establishes Kentucky slaveowners as peaceful and pro-Union.\footnote{Eisenbarger, supra note 45 at 140-42.}

The abolitionist narrative similarly resolves white Northern tensions over complicity in favor of the abolitionist narrator. Joliffe’s personal agenda is to reject or negate the complicity that the Fugitive Slave Act has thrust upon him. Thus, he paints Margaret as, alternatively, a tragic, fallen heroine, or a frantic mother: in either case, slavery’s evils have corrupted or even displaced Margaret’s maternal instinct.\footnote{Consider again Lucy Stone’s narrative, in which the degradation slavery commits on the female slaves marks the very faces of the mixed-race children. Eisenbarger, supra note 45 at 173.} By knowing Margaret as corrupted, “marked” by slavery, the abolitionists understand themselves to be uncorrupted and unmarked in their resistance. In his closing argument, Joliffe described Margaret’s “incomprehensible resolve” in killing her daughter as exceeding even Lady Macbeth’s dreadful tenacity, even Shakespeare’s imagination.\footnote{Id. at 149.} By emphasizing Margaret’s resolve as beyond (white) comprehension, Joliffe differentiates her from white heroes like Shakespeare: the Bard is not marked; his mind retains its imaginative innocence. The abolitionist narrators thus propose a narrative in which slavery’s presence has not compromised their goodness.

Judicial and quasi-judicial narrators on either side of the slavery question participate in a Gothic technology, fitted specifically to legal adjudication, that constructs blacks as monstrous to reify white humanity. The next two Parts examine two major texts in the literature of American
slavery, both of which involve ambiguous black “monsters” and at best questionable displays of white humanity. The role of law and legal texts in this dynamic is surprisingly vivid, and for Herman Melville, perhaps even central.

### III. Monstrous Law: Herman Melville’s Benito Cereno

Herman Melville’s Gothic novella *Benito Cereno*, first published in 1855, has long puzzled and frustrated critics with its ambivalent riddles. The novella follows an American sealer captain, Amasa Delano, as he boards a distressed Spanish slave ship, the *San Dominick*, and discovers a stricken crew of Spanish sailors and African slaves. The timid, nervy Spanish captain, Don Benito Cereno, with the help of his obsequious, ever-present black servant, Babo, explains that various calms, storms, and other disasters that have killed most of the crew. A series of strange clues—momentary flares of interracial violence, Don Benito’s sullen mood swings, vague paradoxes from the crew—trouble Delano’s trusting, affably racist nature. When Delano prepares to return to his ship, Don Benito leaps on to his whaleboat, prompting sudden violence from Babo and the other slaves. Delano realizes the slaves in fact control the *San Dominick*, and his crew retakes the slave ship. Surprisingly, the narrative then shifts to a transcribed court deposition of Don Benito, recounting in broken testimony the slave uprising on the *San Dominick*. The Spanish court in Lima convicts and executes Babo and the insurrection’s other leaders.

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The abrupt, unexpected appearance of a dry court deposition, precisely at the novella’s most climactic moment, has caused particular confusion and derision from critics who view *Benito Cereno* as Melville’s moody failure. As G.W. Curtis told Melville’s editors, “It is a great pity he did not work it up as a connected tale instead of putting in the dreary documents at the end.”¹⁰¹ One critic, Newton Arvin, chalks the deposition up to mere laziness:

> [T]he scene of the actual mutiny on the *San Dominick*, which might have been transformed into an episode of great and frightful power, Melville was too tired to rewrite at all, and except for a few trifling details, he leaves it all as he found it, in the drearily prosaic prose of a judicial deposition.¹⁰²

Arvin here refers to Melville’s most obvious source for *Benito Cereno*, the *Narrative of Voyages and Travels* of the real-life Amasa Delano, whose encounter with the slave ship Tryal matches the broad plot of *Benito Cereno* quite closely. The real Delano, like Melville, included a wealth of judicial documents to corroborate his narrative,¹⁰³ but, crucially, Melville rewrote more than “a few trifling details.”

This section seeks to explain the “dreary” court deposition’s presence in a Gothic novella not as a mistake, but as a subversive and insightful critique of law as a Gothic technology—specifically, law as a means to reassert an oppressive racial hierarchy amidst violent racial uncertainty. In this sense, Don Benito’s deposition evokes *The Confessions of Nat Turner*, in that it involves judicial authority intervening to “correct” racial chaos. However, Melville’s use of the deposition ultimately demonstrates how easily manipulated this judicial machinery is.

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¹⁰³ *Amasa Delano, Narrative of Voyages and Travels (1817), Chapter XVIII, in Melville’s Benito Cereno* 95, 105-122 (William Richardson ed. 1987).
The following analysis traces exactly how Melville employs the Benito Cereno deposition to expose and critique the use of judicial narrative as a Gothic technology. First, by offering the deposition as the resolution of a mystery, Melville draws on the social authority of judicial narratives. At the same time, Melville undercuts this authority, subtly urging the reader to question the official narrative. Finally, in showing how judicial machinery transforms black persons into Gothic Monsters, thereby supporting slavery, Melville critiques contemporary judicial institutions as monstrous themselves.

A. Don Benito’s Deposition as an Authoritative Legal Text

Don Benito’s deposition is a superficially authoritative judicial narrative, invoking legal texts’ social role as official narratives. The novella’s structure positions the court document as the solution to the *San Dominick*’s escalating mystery, reinforcing the judicial text’s expected role as an arbiter of disputed facts. Moreover, Melville surrounds the depositions with legal signifiers, much in the way that Thomas Gray did with the *Confessions of Nat Turner*.

The reader of *Benito Cereno* finishes the first part (Captain Delano’s narrative) with an incomplete and unstable account of the slave mutiny. Throughout this first Delano narrative, a building momentum of curious incidents, moody atmosphere, and Delano’s own doubts alerts the reader to a hidden mystery.104 Once Don Benito leaps on to Delano’s boat, the ensuing violence dismantles Delano’s—and, to an extent, the reader’s—understanding of the *San Dominick*’s story [*BC* 51, ¶ 370]; although the next few scenes reveal the slaves’ deception, the reader finishes Delano’s narrative without any clear idea of what, in fact, happened. The novella’s air of

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104 See, e.g., Herman Melville, *Benito Cereno* (1856) in MELVILLE’S *BENITO CERENO*, supra note 103 at 3, 22-23, ¶¶ 154-58. Hereinafter, references to *Benito Cereno* will appear as “BC ___” in the text.
mystery and suspense further presses the reader to seek clarity: as one contemporary reviewer noted, “The tale entitled ‘Benito Cereno,’ is most painfully interesting, and in reading it we became nervously anxious for the solution of the mystery it involves.” Sterling Brown similarly calls the novella “a masterpiece of mystery, suspense, and terror.”

Melville then presents the deposition transcript as an overtly successful attempt to establish an authoritative account of the San Dominick’s story. The legal text’s stated goal is to “shed light on the preceding narrative” and “reveal . . . the true history of the San Dominick’s voyage” \[BC 55, ¶ 392\]. This role represents an important change from the original Amasa Delano’s account, which begins with a log summary of the Tryal incident and leaves no real mystery for the following prose narrative or attached legal documents to solve. In contrast to Melville, the original Delano likely included his catalogue of official documents to defend his wounded honor, as the real Don Benito had represented him as a pirate to the authorities. Melville cuts out the opening log summary, and goes out of his way to build up the story’s suspense. The effect of these choices is that the deposition appears perfectly suited—and indeed, the reader’s only resource—to resolve the reader’s factual questions and “nervously anxious” demand for clarity.

The deposition also includes several legal signifiers, such as a notary’s grandiloquent certification \[BC 55, ¶¶ 395-96\], a witness oath \[¶ 398\], precise, forensic details of the voyage

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107 DELANO, supra note 103 at 95, 95-97.
108 The original Delano attached not only Don Benito’s deposition, but his own deposition and his midshipman’s, as well as a correspondence with the Spanish ambassador awarding him a golden medal. Id. at 105-122.
109 Id. at 103-04.
and cargo [55-56, ¶¶ 398, 400], and a recitation of documentary evidence [56, ¶ 399], among others. The text invokes the legal authority of the Spanish royal tribunal in Lima to certify a particular account as true [55, ¶ 394], and establishes a hierarchy among distinct narrators’ testimony.\footnote{For example, the deposition selectively incorporates testimony from the black slaves [BC 63, ¶ 409] and confirms Don Benito’s earlier statement, made under Babo’s duress, that Aranda permitted his slaves to move about unfettered. Compare BC 13, ¶ 46 with 56, ¶ 402.}

Like Gray, Melville reinforces the deposition’s social authority by evoking the trappings of judicial adjudication.

However, like Gray’s \textit{Confessions}, Don Benito’s deposition is not a strictly judicial narrative, and Melville knows it. Indeed, just as Melville builds up the deposition’s importance and authority, he simultaneously cuts it down as an unreliable narrative, even an abuse of the judiciary’s social authority.

\textbf{B. Don Benito’s Deposition as Empty Judicial Authority}

Several clues in the text indicate that Don Benito’s deposition is not as authoritative or trustworthy as the nervously anxious reader might hope. Melville altered the original depositions attached to the historical Delano’s narrative in key, suggestive ways, which undermine the deposition’s probative value and comment on the claimed social authority of judicial narratives—especially in matters concerning slavery.

First, there are the textual clues that undermine the deposition’s credibility. Melville details at length Don Benito’s disturbed mental state [BC 55, ¶ 394],\footnote{In addition, when pressed by the Lima court to testify against Babo, Don Benito first refused, then fainted [BC 68, ¶ 431].} physical debility,\footnote{When Don Benito arrived in Lima, he was “so reduced” he had “to be carried ashore in arms” [BC 54, ¶ 391].} and
selective reserve [67, ¶ 430]. Indeed, the Lima tribunal “inclined to the opinion that the deponent, not undisturbed in his mind by recent events, raved of some things which could never happened” [55, ¶ 394]. The tribunal credits Don Benito’s testimony only upon corroboration from other survivors—corroboration that Melville does not supply [id.]. While the original Amasa Delano includes fourteen other depositions, official documents, and correspondence, Melville offers “one of the official Spanish documents,” “from among many others” [¶¶ 392, 394]. This omission is suggestive, considering that without these very documents, the Lima court would have rejected Don Benito’s testimony [BC 55, ¶ 394]. Similarly, because Don Benito refuses and fails to testify against Babo, Babo’s “legal identity” rests “alone” on the absent testimony of other sailors [68, ¶ 431]. The deposition’s repeated refrain, “this is believed because the negroes have said it” [63, ¶ 409 (three instances); 64, ¶¶ 409, 411], also indicates the document is filled with hearsay. Even more striking are the myriad omissions in Don Benito’s testimony, denoted by ellipses, which jarringly interrupt his narrative in suggestive moments. No such ellipses break the original depositions, but the Benito Cereno deposition is riddled with them. Don Benito’s deposition also appears in the text after “partial translation” [55, ¶ 394].

These textual holes become all the more significant when one considers Captain Delano’s influence over Don Benito and his personal narrative agenda. Delano encourages his sailors capturing the San Dominick by promising “no small part” of the ship’s cargo, worth “more than a

113 But if the Spaniard’s melancholy sometimes ended in muteness upon topics like the above, there were others upon which he never spoke at all; on which, indeed, all his old reserves were piled.”

114 See also Brook Thomas, The Legal Fictions of Herman Melville and Lemuel Shaw, in CRITICAL ESSAYS, supra note 99 at 116, 120.

115 See, e.g., BC 60, ¶ 405 (nine ellipses after Babo proposes to Don Benito “to say and do all that the deponent declares to have said and done to the American captain”); id. at 64, ¶ 411 (three ellipses after “This the negroes have since said . . .”); id. (three ellipses before and after “that these statements are made to show the court that from the beginning to the end of the revolt, it was impossible for the deponent and his men to act otherwise than they did . . .”).
In the heat of battle, the raiding party take care not to kill the valuable slaves if possible, but two potential rivals to the bounty—members of the slave ship’s Spanish crew—are killed off, apparently by mistake, and their belongings placed at issue in the Lima proceeding [BC 64-65, ¶ 411]. Delano has a strong interest in justifying these deaths, and his behavior towards the San Dominick overall, to the Lima court. In the original Delano Narrative, Don Benito had accused Delano of piracy, and while Melville does not overtly include this charge in his text, he preserves the accusation more subtly: Melville’s new name for Delano’s sealer is the Bachelor’s Delight [15, ¶ 64], the name of the pirate John Cook’s ship, and Delano’s chief mate was “a privateer’s man” [53, ¶ 380].

Melville suggests Don Benito’s deference to Delano through the Spaniard’s repeated praise of “the generous Captain Amasa Delano,” as well as the sudden, large breaks in the deposition where Don Benito recounts Delano’s stay on the San Dominick and the ship’s recapture [BC 61, ¶ 406; 62, ¶ 408]. Melville also suggests Don Benito as physically and morally dependent on Delano through and after the journey to Lima [66-67, ¶¶ 415-29]. Moreover, Melville removes from his novella the real-life Don Benito’s rebellious ingratitude towards the real-life Delano, leaving the fictional Don Benito as feeble and weak-willed under Delano as he was under Babo.

116 See also Carolyn L. Karcher, Riddle of the Sphinx: Melville’s Benito Cereno and the Amistad Case, in CRITICAL ESSAYS, supra note 99 at 196, 205 (comparing Delano’s dubious motives to the American captain who captured the infamous Amistad, and the public’s unfavorable assessment of his actions).

117 KRIS E. LANE, PILLAGING THE EMPIRE: PIRACY IN THE AMERICAS 1500-1715 143 (1998). The real Bachelor’s Delight was originally a Danish slave ship, and Cook stocked it with sixty female African slaves—hence the name. Id. Melville’s choice of names suggests a particularly sinister shading to Delano’s interest in the San Dominick.

118 BC 60, ¶ 405; 61, ¶ 407; 62, ¶ 407 (two instances); 62, ¶ 408; 63, ¶ 409; see also 64, ¶ 411 (referring to the “generosity and piety of Amasa Delano”); 65, ¶ 411 (“the noble Captain Amasa Delano”). The phrase appears in the original Don Benito’s deposition twice. DELANO, supra note 103 at 110.
With these changes, Melville effectively invites the reader to ask whether Don Benito’s deposition is entirely credible, or whether Delano’s influence and Don Benito’s own frailties have compromised its reliability as a truthful account.\textsuperscript{119}

Melville also raises the Lima court’s own fallibility: “So far may even the best man err,” observes Don Benito in the novella’s coda, “in judging the conduct of one with the recesses of whose condition he is not acquainted” [BC 67, ¶ 421]. These same words could critique the very project of adjudication.\textsuperscript{120} Commentators have also noted Melville’s recurring references to the Spanish Inquisition and its sponsors, King Charles V and the Dominican monastic order.\textsuperscript{121} The Inquisition is a classic Gothic image of an arbitrary, oppressive adjudicative body.\textsuperscript{122} Indeed, as a Spanish tribunal, the Lima court follows an ‘inquisitorial’ model: perhaps a subtle semantic hint to readers that Lima’s justice may not accord with American ideals.

Finally, Melville structures his novella with a peculiar symmetry that challenges the reader’s deference to judicial signifiers. Delano’s narrative opens with a mystery: the strange maneuvers of an unknown ship. Upon boarding the slave ship, Delano immediately seeks out the Spanish captain as the authoritative, institutional source for a truthful account of the ship’s voyage [BC 10-11, ¶ 33]. Although a building sequence of clues and unexplained incidents shake

\textsuperscript{119} Karcher posits that Melville encourages his readers to read “between the lines,” much as contemporary abolitionists sought “the slaves’ ‘side of the story’ between the lines of fugitive slave advertisements, law codes, court cases, legislative records, and other documents of the master class.” Supra note 116 at 199.
\textsuperscript{120} See Thomas, supra note 114 at 120-21 (“[T]he final decision on what evidence is accepted as authoritative is made by a tribunal none of whose members witnessed any of the events under litigation. Rather than bringing us closer to the actual events, the legal point of view in one sense removes us even further from them.”).
\textsuperscript{121} See generally H. Bruce Franklin, “Apparent Symbol of Despotic Command”: Melville’s “Benito Cereno,” in CRITICAL ESSAYS, supra note 99 at 50; see also BC 5, ¶ 8 (depicting the San Dominick’s crew as “Black Friars pacing the cloisters”).
Delano’s confidence, he believes Don Benito’s account until a violent climax reveals that, in fact, the authoritative, institutional source has been manipulated by savvier actors enacting a pageant of power and servitude. Much like Delano, the reader begins the novella’s second part with a mystery: the unexplained history of the *San Dominick*. Like Delano, the reader turns to the authoritative, institutional source for a truthful account: a judicial proceeding, exquisitely certified, and the undisputed eyewitness. Like Delano, the reader confides in Don Benito’s deposition despite a mounting sequence of gaps, peculiarities, and suggestion. If Delano’s lesson is to distrust empty symbols of command, surely we as readers may question the substance of the deposition’s judicial authority.

Melville therefore sets up a push-pull effect, whereby readers at once look to the deposition as an authoritative, truthful account of the events aboard the *San Dominick*, yet are subtly confronted with enough hints to discredit the deposition’s authority and reliability. Given the politically charged nature of these alleged events—a slave revolt and its suppression—this push-pull effect presents more than an armchair mystery or “dreary” ambiguity: it becomes a larger criticism of judicial authority’s role in the project of American slavery.

C. Monstrous Law

If Melville’s furthest goal were to challenge a foolhardy social reliance on judicial authority, then *Benito Cereno* might have been a parody. It is not a parody: it is a Gothic tale, a horror story. The horror of Don Benito’s deposition lies in the use of threadbare judicial

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124 See *BC* 67-68, ¶ 430 (“And that silver-mounted sword, apparent symbol of despotic command, was not, indeed, a sword, but the ghost of one. The scabbard, artificially stiffened, was empty.”).
authority to assert racial hierarchy by casting blacks as Gothic Monsters. This unchecked intervention of law to thwart black resistance mirrors a shift, contemporary with Melville’s writing of *Benito Cereno*, in the fugitive-slave jurisprudence of Melville’s home state, Massachusetts. By presenting a corrupted legal text, undeserving of its authority but fatally effective, Melville’s critiques this new, slavery-supporting judicial apparatus as monstrous itself.

1. The Lima Proceedings as a Gothic Technology

The Benito Cereno deposition, even more than Delano’s casually racist narrative, casts the black slaves as Gothic Monsters in order to exonerate white violence and reify white humanity. It is the deposition which establishes Babo as the ruthless, murderous ringleader, “[who] ordered every murder, and was the helm and keel of the revolt” [*BC* 63, ¶ 409]; it is the deposition that lists the slaves’ “atrocities” and “murders;” it is the deposition that depicts the slave women urging torture and singing melancholy songs of war [63-64, ¶ 409]. The deposition elaborates each slave’s crime in morbid detail and assigns hierarchies of blame (“that the Ashantee Lecbe was one of the worst of them . . . that Yan was as bad as Lecbe . . .” [*id.*]), much in the same manner that Gray listed off black atrocities in the *Confessions* to underscore Nat Turner’s agency. As in the *Confessions*, Don Benito’s deposition depicts the black slaves as bloodthirsty, brutal agents, in contrast to the forgiving references to white violence, which it depicts as a series of unavoidable accidents [64-65, ¶ 411]. Don Benito offers the deposition “to show the court that from the beginning to the end of the revolt, it was impossible for the deponent and his men to act otherwise than they did” [64, ¶ 411]. As in the *Confessions*, the deposition Gothicizes black agency to establish white violence as just or excusable. The slave rebels become figures of negative identity to reinforce the essential goodness and humanity of the white sailors.
Moreover, the deposition’s operation as a Gothic technology proves fatally effective in subordinating the slaves. While there are “subsequent depositions of the surviving sailors,” it appears the captured slaves do not testify [55, ¶ 394].125 Rather, Don Benito’s deposition speaks for them, relating what “the negroes have said.”126 The novella’s coda illustrates with little flourish the naked power the Lima court enjoys over the slaves: Babo is “dragged to the gibbet at the tail of a mule,” hanged, his body burned, and his head stuck on a pike [68, ¶ 432].127 All this, Melville reminds us, is based on a raving, feeble slave-owner’s testimony “which, had [it] lacked confirmation, [the court] would have deemed it but duty to reject” [55, ¶ 394].

It may well be that the deposition’s relation of events is strictly accurate, and that the black slaves have committed murder, torture, and other capital crimes meriting the Lima court’s sentence. The deposition is reproachable not because it lodges false accusations, but because it demonizes the blacks’ violence in a way that dehumanizes them, and excuses white violence. By undermining the deposition’s quasi-judicial authority, and detailing the text’s terrible power over the slaves, Melville critiques the judicial institutions supporting slavery and the society that vests in them the authority to do so. As the next sections show, this is not an academic critique of a theoretical injustice, but rather a pointed reaction to the developing sea change in Massachusetts courts’ treatment of fugitive slaves.

2. Benito Cereno’s Legal Context

To the average reader in Melville’s audience—an educated, mostly anti-slavery, Massachusetts or other New England citizen—the Benito Cereno deposition might have come as

125 Babo certainly does not testify before the court. BC 68, ¶ 431.
126 See supra pp. 30-31.
127 Compare Cover, Violence and the Word, supra note 15 at 1601 (“Legal interpretive acts signal and occasion the imposition of violence upon others. A judge articulates her understanding of a text, and as a result, somebody loses his freedom, his property, his children, even his life.”).
a surprising or anxious reminder of the shift in fugitive slave jurisprudence occurring in 1850s New England. The novella’s Lima proceedings are essentially a fugitive slave trial, which, in Melville’s context, were a recurring point of contention between abolitionist and pro-slavery forces in Northern courts.

Critics have pointed to two key moments in slavery jurisprudence as possible influences on *Benito Cereno*: the notorious *Amistad* case, and the Fugitive Slave Law of 1850. The *Amistad* case involved a slave revolt aboard a Spanish slave ship in 1839; as in *Benito Cereno*, the slaves killed the white crew and attempted to sail to Africa, later surrendering to an American captain. The case received extraordinary public attention, and Melville likely read press accounts at a formative age. Unlike the San Dominick slaves, however, the *Amistad* defendants enjoyed financial and public support from abolitionists, were represented by several attorneys (including former President John Quincy Adams), testified with the aid of a translator, and ultimately won their freedom. Public sentiment in New England tended to favor the charismatic insurrection leader, Joseph Cinquez, and to condemn the Spanish crew and American captain as inhuman pirates. Those of Melville’s readers who remembered the *Amistad* revolt may have been surprised by, even suspicious of, the deposition’s demonic portrayal of the slave rebels, as well as its insistence on Delano’s charity and Don Benito’s innocence. Indeed, if the *Amistad*’s legal history is any influence on *Benito Cereno*, it is by contrast.

Such a contrast would well reflect the dramatic difference between fugitive slave jurisprudence in Massachusetts pre- and post- 1850. Before the Fugitive Slave Act of 1850, no

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129 Karcher, *supra* note 116 at 200-01.
130 *Id.* at 200, 206.
131 *Id.* at 203-04.
132 *Id.* at 202, 204-205.
Boston court had ever returned a fugitive slave. The new, more robust 1850 Act was designed in part to stamp out these loopholes, and strong-arm New England courts into cooperation. To the dismay and outcry of abolitionists, Chief Justice Shaw upheld the Fugitive Slave Act’s constitutionality in the 1851 *Sims* case, surrendering his moral objections in the name of the rule of law and the Union’s preservation. From then on, Massachusetts was suddenly and consistently complicit in enforcing the South’s peculiar institution.

The Lima proceedings in *Benito Cereno* may well have reminded its readers of the post-1850 fugitive slave trials. Under the 1850 Act, an alleged fugitive slave had no right to trial by jury and could not testify. One sworn affidavït would suffice to establish his identity. Like the fugitive slave trials, the Lima proceedings sentence the slave rebels without a jury and without their testimony; moreover, only one affidavït—Don Benito’s deposition—appears in the text. Melville critic Brook Thomas compares Delano’s financial interest in the *San Dominick*’s human cargo to Northern mercantile interests supporting Southern slavery and, by extension, the Fugitive Slave Act. Additionally, writes Thomas, Delano and Chief Justice Shaw ultimately

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133 Thomas, *supra* note 114 at 118.
134 *Id.*
135 *Id.*
136 *Id.* at 118-119.
137 *Id.* at 122; *see also* Thoreau, *supra* note 73 at 133.
139 Thomas, *supra* note 114 at 122.
resemble each other in that “these two good, fair-minded men from Massachusetts reenslave blacks who had achieved freedom.”

Melville’s subversive treatment of Don Benito’s deposition is not simply a precociously modern narrative game, but a crucial comment on contemporary injustices. By evoking the Amistad case and the new fugitive slave trials, Benito Cereno reminds the reader how drastically the contemporary Massachusetts courts have turned around: from the guarantors of slave rebels’ dearly won freedom, to the enforcers of arbitrary, sham fugitive slave trials. As if to drive his point further home, Melville does not portray these fugitive slave trials as merely wrong: more, they are Monstrous.

3. Slavery Law as a Gothic Monster

The new moral shock of Northern complicity with Southern slavery appears allegorically in Benito Cereno in Captain Delano’s complicity with the monstrous institution of slavery. Moreover, the judicial apparatuses that support slavery are Gothic Monsters as well, institutions of negative identity for right-thinking judiciaries to identify against.

Melville roots the institution of slavery in classic Gothic tropes of Old World tyranny and decadence, portraying the Spanish slave ship and its masters as at once autocratic and wasting. Delano sees in Don Benito a cringing, emaciated, and ineffective leader [e.g. BC 8, ¶ 25], while Babo’s pageantry depicts the captain as tyrannical and punctilious in his own luxury [18, ¶¶ 101, 103 112-13; 35, ¶ 237]. The San Dominick evokes several Gothic images of slavery, especially its “corroded mainchains . . . [o]f an ancient style, massy and rusty in link, shackle, and bolt” [29, ¶ 190]. The slave ship is perhaps the most overtly Gothic figure in the novella, with its

140 Id. at 123.
imagery of ruined castles and decaying Venetian opulence [5, ¶ 12], its monastic gloom [¶ 8], and its “dark festoons of sea grass slimily [sweeping] to and fro over the name with every hearselike roll of the hull” [6, ¶ 13]. Don Alexandro Aranda, the slave owner, becomes a ghastly skeleton on the prow [52, ¶¶ 372-73]. Melville thus depicts the slave ship, the slaver, and the institution of slavery itself as a Gothic Monster, a nightmare of decay, violence, and death.

The San Dominick slaves understand this monstrosity better than the whites, and the pageant they perform is a both a cutting parody and reflection of the power institutions supporting slavery. Their imitation of slavery is to place Atufal, a prince of Senegal, in chains to answer stoically to the arbitrary whims of a proud master [BC 18, ¶¶ 101, 103, 112-13]—they understand all to well the symbolism of keys and locks [¶ 114]. Babo dresses Don Benito in a ragged grandeur and has him insist on vanity and luxury even as his crew and servants work in crisis around him [7, ¶ 21; 35, ¶ 237]. These, Babo knows, are the power dynamics of slavery, and his pageant is a parody that Gothicizes its target.

In addition, the slaves reflect back the tyranny their masters previously asserted over them. The four slave boys lash out violently at one cabin boy’s poor choice of words [15, ¶ 62], a doubling of white masters’ violent responses to perceived slave insolence. The master’s power to regulate black speech becomes the black slaves’ powers to silence whites and speak for them. The ghoulish Aranda figurehead doubles Babo’s own demise, both of them grisly warnings against disobedience, as are the repeated words associated with both death’s-heads: follow your leader [BC 52, ¶ 372; 68, ¶ 432]. This mirroring further reinforces the Gothic character of slavery.

The monstrosity of slavery extends as well to the legal institutions supporting slavery. The more one examines the Lima proceedings, especially in light of the Amistad case’s contrasting example and the 1850s fugitive slave trials, the more disturbing they become, as the defendants are enslaved and brutally executed on the basis of a weak-willed invalid’s raving, self-interested testimony. The legal institution’s monstrosity lies in its naked power, unchecked by process or protections, to reassert the racial hierarchy over dissident blacks.\textsuperscript{143} In operating as a Gothic technology that constructs black defendants as figures of negative identity, slavery law becomes monstrous itself. Its example is a figure of negative identity for justice, a Gothic Monster to limn out true judicial humanity.

This same double-monstrosity would appear, decades after emancipation, in the Black Codes and Jim Crow laws, supported by the quasi-judicial authority of the Ku Klux Klan. These institutions leveraged legal and quasi-legal authority to intervene in a crumbling racial order and reassert white supremacy.\textsuperscript{144} by casting blacks as Gothic Monsters justifying white violence and repression.\textsuperscript{145} In performing this role, such institutions became monstrous themselves, perverting judicial processes and dressing savage violence in the trappings of adjudication.\textsuperscript{146} Finally, as the Civil Rights movement overturned these institutions, Jim Crow and the KKK became, in the public conscience, institutional figures of negative identity, Monsters to compare true justice

\textsuperscript{143} See Thomas, \textit{supra} note 114 at 121.
\textsuperscript{145} See, e.g., FONER, \textit{supra} note 144 at 217-19; WOODWARD, \textit{supra} note 144 at 85-86.
\textsuperscript{146} Consider, for example, the “trial” given to the former slave Gus by Klansmen in D.W. Griffith’s \textit{The Birth of a Nation}. \textit{See also} Michael J. Klarman, \textit{The Racial Origins of Criminal Procedure}, 99 MICH. L. REV. 48, 50-58 (2000) (tracing how Jim Crow trials clothed “egregiously unfair” trials in empty procedural formalities).
Melville’s unease with the Lima proceedings thus reflects a cycle of Gothic law that applies as prophetically to Jim Crow as to contemporary fugitive slave trials.

NOT A STORY TO PASS ON: MORRISON’S BELOVED

One hundred and thirty years after the Garner trial, and only a few decades after the end of Jim Crow, Toni Morrison reimagined Margaret Garner as Sethe, a former slave in Ohio reliving her escape from a Kentucky farm in her “rememory” and haunted by the ghost of the daughter she murdered. But the eerie Beloved is “more” than Sethe’s daughter returned, and Beloved is far, far more than a retelling of Margaret Garner’s story. Although Beloved says next to nothing about the Garner trial—Morrison purposefully avoided researching Margaret Garner’s history—the novel comments substantially on the value of official narratives, especially those controlled by white narrators, and especially with respect to the character of “schoolteacher.” In tracing how schoolteacher’s pseudo-science turns his racism into an official ‘truth,’ Morrison in effect describes a Gothic technology, and demonstrates the fatal potential of official narratives.

See Woodward, supra note 144 at 191; Klarman, supra note 146 at 67-70 (describing widespread public revulsion towards Jim Crow justice). In a fascinating study, Professor Godsil suggests that the Jim Crow-era courts’ motivations may have been much more complicated by formalism and a struggling race-neutrality than acknowledged by most scholars, who routinely condemn the Jim Crow courts as unequivocally white supremacist. Rachel D. Godsil, Race Nuisance: The Politics of Law in the Jim Crow Era, 105 Mich. L. Rev. 505, 530-552 (2006). This suggests that Jim Crow justice really does operate as a figure of negative identity: a model of justice that everyone must condemn as monstrous, even if the truth may be more mixed.


Keith E. Sealing, Blood Will Tell: Scientific Racism and the Legal Prohibitions against Miscegenation, 5 Mich. J. Race L. 559, 593 (2000) (“[S]cientific racism was not just the stuff of scientists and the academy, but rather was widely disseminated to the general public.”).
Schoolteacher, the coldly racist slave-master whose pursuit of Sethe provokes her to kill her children is, in many respects, the closest to a “legal” or “judicial” character the novel has. He exerts total, brutal power over Sethe and the other slaves;\(^{151}\) he interrogates and then punishes the slave Sixo for stealing [\(B\) 224-5]; and he later judges Sixo to be “unsuitable” property and executes him [266]. He appears associated with police and legal authority [50, 174], and his intrusion into Sethe’s Ohio home is a concrete exercise of the Fugitive Slave Act [174, 201].\(^{152}\) Schoolteacher also operates the Gothic technology studied above. He uses the trappings of rational science to construct Sethe as a savage animal [\(B\) 228], justifying the racist hierarchy he asserts.\(^{153}\) He beats Sixo “to show him that definitions belong to the definers—not the defined” [225]. That is, he uses violence to enforce his racist narrative of blacks (his “definition” of Sixo) over Sixo’s resistance. Morrison demonstrates all slave-masters’ socio-legal power to define their chattel,\(^{154}\) just as Gray, Chief Justice Taney, and others used judicial narratives to do the same.

In critiquing schoolteacher’s racist pseudo-science, Morrison implicates a broader quality shared by white justice, namely, their shared reverence for signifiers. Schoolteacher’s “experiments” crudely imitate the scientific method, with their “measuring string,” observations, notebooks of ordered data tables, surveys, “spectacles and a coach box full of paper” [226-8, 233]. These are scientific signifiers, just as cross-examination is a legal signifier, and their logic

\(^{151}\) \(B\) 11 (“[S]choolteacher arrived to put things in order. But what he did broke three more Sweet Home men and punched the glittering iron out of Sethe’s eyes.”); \textit{id.} at 84 (schoolteacher punishes Paul D by putting a bit in his mouth).

\(^{152}\) \textit{BLOOM’S GUIDES, supra} note 149, at 32.

\(^{153}\) \textit{Cf.} Sealing, \textit{supra} note 150 at 592-97 (describing how courts upheld the anti-miscegenation statutes based on racist pseudo-science).

\(^{154}\) \(B\) 260 (“Garner [the relatively benevolent slave-owner on the Sweet Home plantation] called and announced them [his slaves] men—but only on Sweet Home, and only by his leave. . . . Did a whiteman saying it make it so? Suppose Garner woke up one morning and changed his mind?”).
is the same: that an attention to *process*, the performance of these signifiers, lends credibility to the substance. The slaves reject this logic: quackery is quackery, and they reject schoolteacher’s “foolish questions” while fearing their deadly import [B 226]. This critique suggests a parallel critique of white antebellum justice, of the notion that one sworn affidavit and a federal commissioner can legitimize the kidnapping and enslavement of human beings.

Schoolteacher, the educated, coldly rational figure of law and power, is also one of the most monstrous in the novel. Baby Suggs sees him as a “dark and coming thing” [163], and he is at times described in apocalyptic terms [174]. More fundamentally, his brutality makes his rational demeanor and his racist constructions of blacks all the more monstrous. In a key passage, Morrison illustrates how constructing blacks as monstrous makes these white ‘authors’ monstrous themselves:

White people believed that whatever the manners, under every dark skin was a jungle. Swift unnavigable waters, swinging screaming baboons, sleeping snakes, red gums ready for their sweet white blood. . . . The more colored people spent their strength trying to convince them how gentle they were . . . the more tangled the jungle grew inside. But it wasn’t the jungle blacks brought with them . . . It was the jungle white folks planted in them. And it grew. . . . In, through, and after life, it spread, until it invaded the whites who had made it. . . . Made them bloody, silly, worse than even they wanted to be, so scared were they of the jungle they had made. The screaming baboon lived under their own white skin; the red gums were their own. [234].

Like the slave rebels on board the *San Dominick*, the veteran slaves of *Beloved* understand the monstrosities of slavery, of the civilized, educated white institutions that support it, and of the Gothic technologies that justify it.\(^\text{157}\)


\(^{156}\) See also Krumholz, *supra* note 155 at 84-85.

\(^{157}\) The central characters in this freed black community—Baby Suggs, Stamp Paid, Ella, but also Sethe and Paul D—know “[t]hat anybody white could take your whole self for anything that
Even the sympathetic whites do not escape this “jungle.” Mr. Bodwin, the white abolitionist who supports and provides for Sethe’s family, is a product of racism and white supremacy, who simply “hated slavery worse than [he] hated slaves.” Bodwin is an intriguing variation on the original John Joliffe,\(^{158}\) and like Joliffe, he is fascinated by monstrous blackness [255, 312]. Sympathetic (even heroic) as they are, Bodwin and Joliffe continue to operate within Gothic technologies of public narratives that dehumanize and objectify blacks.\(^{159}\)

Indeed, the novel seems to express ambivalence towards the entire project of public or official narratives. In *Beloved*, narratives are largely private experiences, but also real, immediate, and dangerous. Even as memories shape and reshape,\(^{160}\) Morrison shows no real anxiety over the individual’s perception, sincerity, or other “testimonial dangers.” Public narratives, meanwhile, appear as petty [161-63, 185], shifting [300], and mischievous.\(^{161}\) In *Beloved*, any newspaper article about a black woman is an immediate cause for alarm [183]. Fact-finding and official narratives are too much like schoolteacher’s measuring string: “Cogitation . . . cloud[s] things and prevent[s] action,” declares one former slave [301].\(^{162}\)

came to mind. Not just work, kill, or maim you, but dirty you . . . Dirty you so bad you forgot who you were and couldn’t think it up.” \(^{B} 295; \) see also id. at 211-13.

\(^{158}\) Like Joliffe, Bodwin is a religious abolitionist and agitator who represents Sethe in court and saves her from the gallows. Like Joliffe, Bodwin and his colleagues “managed to turn infanticide and the cry of savagery around, and build a further case for abolishing slavery.” \(^{B} 307.\)

\(^{159}\) See \(^{B} 14\) (describing the “good-willed whitewoman, preacher, speaker or newspaperman . . . their sympathetic voices called liar by the revulsion in their eyes”); id. at 300 (Bodwin owns a money dish styled as a grotesque black caricature). Bodwin, moreover, is ultimately fungible with schoolteacher, as Sethe confuses the two white men and attacks Bodwin with an ice-pick. Id. at 312.

\(^{160}\) Compare \(^{B} 56-7\) with id. at 214 (Sethe revises her memory of three shadows holding hands coming back from the carnival).

\(^{161}\) See \(^{B} 181\) et seq. (a newspaper article about Sethe’s infanticide leads to the rupture of her relationship with Paul D).

\(^{162}\) See also 212 (ironically noting the brutalities of white supremacist violence “[d]etailed in documents and petitions full of whereas and presented to any legal body who’d read it”).
Thus, while memories are vital for the traumatized characters of *Beloved*, official memory is less valuable. As explained earlier, official narratives require the repression and devaluation of alternative narratives, and Morrison refuses to do this. Morrison is determined to give voice to the voiceless women and men of the plantation, the slave ship, and the dead. For four chapters, she lets the three central characters speak in free-flowing, unordered streams, even as they contradict and collide with each other [B 236-255]. “This is not a story to pass on,” she writes in the concluding chapter [324], excluding these conflicting narratives from the project of promulgating official narratives.163 *Beloved* will continue a glossalia of the abject, a chorus of unsilenced voices in tension and harmony.164

CONCLUSION

This essay began with a broad question—law as a Gothic technology and its influence on American literature—in a very narrow context, namely, legal texts from the 1830s-1850s relating to slavery. The scope of inquiry grew even narrower as we focused on just four key texts. But these four texts reveal important attributes of law, race, and literature. The Nat Turner and Margaret Garner trials demonstrate legal narratives’ potential to enforce racist hierarchies, by constructing blacks as figures of negative identity. The next step is to explore how far this potential reaches: whether modern courts similarly demonize black participants.165 If so, given

163 But Morrison simultaneously includes her narratives in this project, because she does “pass on” the story via the novel. BLOOM’S GUIDES, supra note 149 at 47 (citing J. Brooks Bourson, “Whites Might Dirty Her All Right, but Not Her Best Things,” *The Dirtied and Traumatized Self of Slavery in Beloved, in Quiet as It’s Kept: Shame, Trauma, and Race in the Novels of Toni Morrison* 131, 161 (2000)).

164 See especially B 213 (describing the “roaring” of brutalized blacks’ voices haunting Ohio); id. at 236-255 (the four chapters of almost pure interior monologue by Sethe, Denver, and Beloved).

the serious social consequences of such constructs, what can and should be done? The two literary texts begin to address this last question. Melville and Morrison furnish two starkly different critiques of Gothic, “monstrous” law, within different contexts and with different agendas. While in many ways too cryptic for modern eyes, Melville offers a compelling fable of the contemporary fugitive slave trials in Massachusetts; Morrison, meanwhile, focuses beyond law and trials, and chips away at the idea that unified, official narratives are a necessary good in the first place. Scholars of literature’s social role should ask which forms of critique offer the best hope for an anti-racist judicial system and a larger, anti-racist society.166

and the criminal justice system is essentially racist); Elissa Krauss & Martha Schulman, The Myth of Black Juror Nullification: Racism Dressed Up in Jurisprudential Clothing, 7 CORNELL J. L. & PUB. POL. 57, 58 (1997) (positing that the outcry over supposed jury nullification by black jurors is actually a racist attack on black participation in the jury system); Eileen Poe-Yamagata et al., Nat’l Council on Crime and Delinquency, AND JUSTICE FOR SOME (2000) (racial disparities in charging and sentencing); James R. Bell, Unjust in the Much: Racial Disproportionality in the Juvenile Justice System, 58 NAT’L LAW. GUILD PRAC. 2 (2001); see generally IAN F. HANEY-LÓPEZ, RACISM ON TRIAL: THE CHICANO FIGHT FOR JUSTICE (2003) (tracing racist power structures in criminal justice as applied to a multitude of non-white racial groups).

166 See BERRY, supra note 74 at 243 (1999): “[C]hanging the law requires changing the stories.”