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The Freedom of a Broken Law: Antinomianism and Abolition in American Literature

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ABSTRACT OF THE DISSERTATION

The Freedom of a Broken Law: Antinomianism and Abolition in American Literature

by

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"The Freedom of a Broken Law: Antinomianism and Abolition in American Literature," argues for antinomianism, a belief that God's free grace makes adherence to civil law inessential, as a new way of understanding Black and Indigenous resistance to law in American literature. I re-configure the concept of antinomianism as a new framework for understanding the relationship between law, religion, and the practice of freedom in American literature primarily from 1630 through the 1860s.

As scholars such as Saidiya Hartman and Colin Dayan have argued, African Americans and Indigenous Americans have, since as early as the 1630s, been subject to law's punishments but not entitled to its protections. My research traces a history of antinomianism that is framed by African American and Indigenous radical spiritual practices. I forge new connections between antinomianism and Black Studies and Indigenous Studies by articulating how antinomianism can be used to convey a capacious understanding of freedom that refuses to be delimited by law, and an understanding of sovereignty that refuses to be articulated through property. I juxtapose texts from the seventeenth and nineteenth centuries

to show the numerous ways enslaved, formerly enslaved, and Indigenous Americans imagined, articulated, and practiced freedom by contesting the very terms of civil law. Legal scholars have traced the ways in which the law subordinates Black and Indigenous Americans, in particular by denying them access to property ownership. In order to resist oppression, the people I write about did not directly oppose civil law, but rather circumvented it by adhering instead to the law of God.

My project is the first to use the legacies of the Antinomian Controversy to illuminate the way the Indigenous and the enslaved—groups subjugated by law—turned to the assurance of grace to provisionally resist oppression. I recover the term "antinomian" from its use in the Antinomian Controversy, a religious conflict that took place in the Massachusetts Bay Colony from 1636-1638. "Antinomian" was a pejorative term applied to the dissident Anne Hutchinson and her followers who believed that one's salvation could not be granted by adherence to civic authority. This undermined colonial authority by doing away with any spiritual incentive to follow civil law. I re-imagine this concept and delaminate it from seventeenth century white Puritanism in order to describe a rejection of law that is not premised on explicitly opposing legal codes or statutes. The antinomians adhered to a different moral and religious system—God's law—so in their eyes, colonial authority and civil law did not apply to them. Thus, rather than validate the law by staunchly opposing it, they invalidated the juridical power expressed by the law entirely.

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Introduction

By the end of 1766, the person we now know as Olaudah Equiano was, nominally, a free man. He was granted manumission papers signed by Robert King, who wrote to "manumit, emancipate, enfranchise, and set free" the "negro man-slave, named Gustavus Vasa." [1] In his *Interesting Narrative,* Equiano notes that he had considered the circumscribed nature of Black freedom even before he secured legal freedom of his own:

> Hitherto I had thought only slavery dreadful; but the state of a free negro appeared to me now equally so at least, and in some respects even worse, for they live in constant alarm for their liberty, which is but nominal*,* for they are universally insulted and plundered without the possibility of redress; for such is the equity of the West Indian laws, that no free negro's evidence will be admitted in their courts of justice (122).

The liberty of a free Black man, he writes, is "but nominal." Unrecognized by the West Indian laws and courts, this freedom exists only in name. In fact, he observes, the very laws that should guarantee this liberty justify "insult" and "plunder," and ensure that the free man can receive no legal redress. Upon having been granted his freedom and having received "a new appellation, to me the most desirable in the world, which was freeman" (138), Equiano himself encounters the limits of a freedom that is (merely) named. In 1776, while attempting to sail from the "Mosquito Coast" to Jamaica, he is kidnapped, tied up, and hung for several hours, "without any crime committed, and without judge or jury, merely because I was a freeman, and could not by the law get any redress from a white person in those parts of the world" (212). In Savannah, Georgia, he is threatened

[1] Olaudah Equiano, *The Interesting Narrative* (New York: Penguin, 2003), 137. Subsequent citations will be in-text.

with flogging and asks "why? and if there was no law for free men?" (159). In this instance, one of his antagonists concedes that because Equiano was a free man, "they could not justify stripping [him] by law." Nonetheless, it is not, precisely, the law that prevents Equiano's being beaten, but rather the whim of one aggressor, whom Equiano describes as "more humane" than the others. Even after Robert King grants "the said Gustavus Vasa, all right, title, dominion, sovereignty, and property, which, as Lord and master over the aforesaid Gustavus Vasa, I have had, or which I now have…" (137), relinquishing his property right in Equiano/Vasa and granting Equiano/Vasa that property right in himself, Equiano remains without legal recourse. King's naming of Equiano as free, his naming of him as "Gustavus Vasa," (the name he was given when he was enslaved) and his naming of him as a subject with property rights in himself, do not constitute Equiano's freedom. These successive namings, as performed by the letter of law, are but nominal. Freedom, for Equiano, is not something defined or granted by any legal apparatus. Equiano's real freedom lies elsewhere: it is situated before, within, and beyond the what the law can name.

Equiano locates his freedom not in the nominal bequests of civil law, but rather in the all-encompassing grace of God. As Fred Moten has argued, Equiano's "knowledge of freedom" is intimately tied to his knowledge of God.[2] Like the seventeenth-century Protestant dissenters who would come to be called "antinomian," Equiano believes that justification, God's removal of guilt and sin from the believer, cannot be achieved through the deeds one commits while living. "I then clearly perceived, that by the deed of

[2] Fred Moten, "Knowledge of Freedom" *The New Centennial Review* 4:2 (2002): 301.

the law no flesh living could be justified," he writes; "I wept, seeing what a great debtor I was to sovereign free grace" (190). Gustavus Vasa had been named, manumitted, and granted self-ownership within the system of law, but Olaudah Equiano had been "filled with the thoughts of freedom" (120), irrespective of his legal status, and without ever needing a property right in himself. Rather, he buys a "suit of superfine cloathes to dance in at my freedom" (134). Equiano practices freedom, even when he is legally enslaved, by way of his radical faith. Although Equiano may nominally buy into the system of slavery by purchasing himself, his freedom cannot be limited by the logic of slavery. Freedom isn't defined by a manumission paper. Rather, freedom is something to be danced at in "superfine blue clothes." Equiano's freedom refuses what, following Locke, is often called the "proprietary subject": he who becomes subject through his ownership of property, and whose subjectivity is then constituted by his ownership of himself. Because of his faith, because of God's grace, Equiano always has access to freedom, and is never wholly subject to logics of property.

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This project begins with Equiano's problem: from as early as the seventeenth century, Black and Indigenous people have been subject to law's punishments without being entitled to its protections. If being "granted" property in themselves—and thereby being included in legal personhood—leaves Black and Indigenous people vulnerable to legal oppression, how can those constitutively excluded from the law's protection practice a kind of freedom not delimited by law? In this dissertation, I argue that though Black and Native people's recognition by and incorporation into law is in fact a means of

subjugation, this subjugation does not exhaust possibilities for freedom. I follow Saidiya Hartman's argument that the "benevolent" granting of humanity incorporates the enslaved into law in such a way that they become subject to legal punishment but not of legal protection. She argues that in granting the enslaved humanity, agency, and free will, the law can then hold the enslaved accountable for criminal acts, even though in all other cases the enslaved is not person in the law, but rather property.[3] But the Black and Native people who populate this dissertation practiced freedom in ways that preceded and exceeded this legal incorporation-as-regulation. To describe the many ways Black and Indigenous people found ways out of what Hartman calls the "double-bind of freedom," I use a concept borrowed from seventeenth-century Puritans, the concept of *antinomianism*. In general terms, antinomianism means "against the law" (anti/nomos). It indicates a belief that because God grants grace freely, one need not adhere to earthly laws.

Antinomianism has long been associated with white, Protestant dissidence, but my project uses the concept to illuminate the way the Indigenous and the enslaved—groups who were either wholly excluded from or subjugated by law—turned to a lived, spiritual understanding of a collective world uncapturable by law to provisionally resist oppression. The most famous antinomians were white Protestants expressing dissatisfaction with their own white Protestant community, such as Anne Hutchinson in the 1630s Massachusetts Bay Colony, who encountered God by "immediate revelation"

[3] Saidiya Hartman, *Scenes of Subjection: Terror, Slavery, and Self-Making in 19th Century America* (Oxford: Oxford University Press, 1997).

and opposed the rigid theocratic governance of the early colony, and the Diggers and the Levellers in Civil-War-era England, who resisted their expropriation from emerging enclosure legislation.[4] But these are far from the only people who used the authority of the divine to contest and to live outside of the bounds of laws implemented to justify their subjugation. Since the earliest days of English conquest of Massachusetts and the beginnings of the Atlantic slave trade, Indigenous and Black people have found ways to live, at least somewhat freely, while still subject to the jurisdiction of fundamentally oppressive settler laws. In this dissertation, I re-imagine the concept of antinomianism and delaminate it from seventeenth-century white Puritanism in order to describe a rejection of law, which is not premised on explicitly opposing legal codes or statutes. The "anti" and antinomianism indicates not opposition to law, but rather that which the law cannot capture, incorporate, or reckon with. The antinomians adhered to a different moral and religious system—God's law—so in their eyes, colonial authority and civil law did not apply to them. Thus, instead of validating the law by staunchly opposing it, they invalidated the juridical power expressed by the law entirely. Rather than seek inclusion into a political institution premised upon their elimination, the people I write about refused what was refused to them. This refusal, however, did not take the shape of a sovereign gesture of resistance. Rather than resist subjection by gaining ownership over themselves, these antinomian figures allowed themselves to be given over—to God's

[4] See Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra* (Boston: Beacon Press, 2000) and Christopher Hill *The World Turned Upside Down: Radical Ideas During the English Revolution* (New York: Penguin, 1984).

grace, to the spirit, to "immediate revelation," or to the holiness found in collectivity and informal gatherings.

INTERVENTIONS

The title of this dissertation is borrowed from Nathaniel Hawthorne's *The Scarlet Letter* (1850). In response to Roger Chillingworth's indignant interrogation as to whether Hester's apparently demonic child Pearl has any "affections" or "any discoverable principle of being," Arthur Dimmesdale answers, "None, —save the freedom of a broken law."[5] Though this line was written by a white settler who was repugnantly agnostic about abolition, I draw on this hyper-canonical text in my title because I suggest, throughout this project, that characters and language may house insurgent potential that exceed their creators' intentions. These canonical texts, I argue, are internally ruptured and incoherent, and that rupture, I suggest is absolutely attributable to the ways in which what we understand now as the American literary canon has always been integrally shaped by its being written in the context of slavery and settler colonialism. In the case of *The Scarlet Letter*, as I will argue in Chapter Two, it is the anarchic child Pearl whose insurgent lawlessness is forged in the context of the abolitionist movement and haunted by white settler fears of Black rebelliousness.

Additionally, my title includes the term "American Literature," thereby seemingly situating the project within a particular canonical and historical disciplinary field formation: that of Early or Nineteenth Century American Literary Studies. However, this

[5] Nathaniel Hawthorne, *The Scarlet Letter* (New York: Penguin, 1970), 124.

project takes as its central assumption that "America," and "American literature" as we know it, are founded upon and perpetuated by slavery, settler colonialism, and the subjection of Black and Indigenous people. The violence that constitutes "America" is, more often than not, not only sanctioned by law, but brought into being by way of the law's regulation. For Black and Indigenous people, historically and in the present, legal recognition offers not protection from violence, but a justification for violence enacted by the state. And yet, I argue, the violence that shapes the canon of "American literature" cannot be wholly separated from the violence of the material force of law. This is for two primary reasons: first, the disciplinary formations of Early American literature, which are rooted in Puritan conquest but rarely name conquest as such; and second, the relationship between what we think of as "law" and what we think of as "literature," which I will argue have a mutually constitutive relationship, not one in which literature is epiphenomenal to or illustrative of law.

As I argue that American literary studies is fundamentally shaped by Black and Indigenous histories and experiences, I also argue that Black and Indigenous theories and practices of justice and freedom quite often preceded and exceeded conceptions of justice and freedom that we often attribute to a certain Western, deconstruction-inflected formation of critical theory. Although writers such as Walter Benjamin and Giorgio Agamben have tried to theorize how it might be possible to have justice in a world in which the enforcement and creation of law are fundamentally violent, Black and Native

people have long nullified the Western assumption that this justice is always "to come."[6] Black and Indigenous writers and thinkers not only have been experimenting with this problem for far longer, but have, if only in fugitive moments and in loopholes, already brought this kind of world into being. They inhabit an antinomian temporality that nullifies the messianism of Western theory. By necessity, Indigenous and Black people *have*, as Agamben proposes people might in the future, treated the law as a disused object; because the law will not account for them as anything other than criminal, they "use" the law only in ways other than how it was intended. Antinomianism, as practiced by Black and Indigenous people, offers a way for thinking freedom as immanent rather than messianic.

I imagine this project as a contribution to Black and Indigenous feminist theories that both enumerate the ways in which the law, broadly conceived, functions as an instrument of subjection and subjugation, and describe and imagine practices of

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[6] In "Critique of Violence," Benjamin argues the law is necessarily bound up with violence, which is either "law-creating" or "law-preserving." Benjamin attempts to imagine a delamination of law from violence by proposing the category of "divine violence," which is utterly incommensurable with law and which, in turn, is world destroying. In his reading of "Critique of Violence" in *State of Exception*, Agamben, following Kafka, proposes a "law that is studied but no longer practiced…a law that no longer has force or application." Agamben writes:

> One day humanity will play with law just as children play with disused objects, not in order to restore them to their canonical use but to free them from it for good. What is found after the law is not a more proper and original use value that precedes the law, but a new use that is born only after it. And use, which has been contaminated by law, must also be freed from its own value. This liberation is the task of study, or of play. And this studious play is the passage that allows us to arrive at that justice that one of Benjamin's posthumous fragments defines as a state of the world in which the world appears as a good that absolutely cannot be appropriated or made juridical (Benjamin 1992, 41).

Both Benjamin and Agamben frame this world in which law is deactivated in messianic terms: that world is always *to come*. See Agamben, *State of Exception*, Kevin Attell trans (Chicago: University of Chicago Press, 2005), 64 and Walter Benjamin, "Critique of Violence," *Illuminations* (New York: Schocken, 1978), 277-300.

resistance to this *nomos*. My writing is informed by Fred Moten's concepts of "fugitivity" and the "refusal of the refused," Audra Simpson's theorization of a politics of Native refusal, Glenn Coulthard's "resurgent politics of recognition," and Hartman's discussion of the enslaved's small acts of rebellion, such as "stealing time."[7] But whereas much of this scholarship describes liberation in terms of resistance and opposition, antinomianism offers a mode of thinking about insurgency in more positive terms, in which rebellion is not absolutely defined by what it opposes. The Black and Indigenous people in this dissertation have always had an understanding of freedom that is neither premised upon property nor granted by the law. In the dissertation, I make two claims about the way antinomianism describes Black and Indigenous freedom practices. The first claim, which is historical in nature, uses the concept of antinomianism to center settler colonial genocide and slavery in Early American Studies. The second and more conceptual claim uses antinomianism to describe the intangible, often un-figurable things that are "left under" the law.

Antinomianism, I argue, builds upon the languages offered by Black and Indigenous studies for destabilizing the primacy of the proprietary liberal subject. It provides a way to conceptualize a non-proprietary notion of freedom as practiced particularly in relation to the law. Black and Indigenous people have historically been constitutively excluded from proprietary subjectivity and, as Colin Dayan has argued,

[7] Fred Moten, "Blackness and Nothingness (Mysticism in the Flesh)," *South Atlantic Quarterly* 112.4 (2013): 737–780; Moten, *In the Break* (Minneapolis: University of Minnesota Press, 2003); Audra Simpson, *Mohawk Interruptus* (Durham : Duke UP, 2014); Glen Sean Coulthard, *Red Skin White Masks* (Minneapolis: University of Minnesota Press, 2014), 24; Hartman, *Scenes of Subjection.*

from legal personhood.[8] In Early America, because the enslaved were legally property, they were forbidden from owning property and barred from most kinds of personhood. From the earliest colonial rhetorics, Native people were believed to be incapable of property ownership, and so colonists deemed themselves justified in claiming Native land by way of seizure and deception.[9] Antinomianism destabilizes the premises of a legal world founded upon ownership of property.[10]

The stakes, however, are slightly different in the contexts of Indigenous and Black studies and this distinction, in many ways, hinges around the status of sovereignty. This project operates under the assumption that for the most part, and originally, "sovereignty" has operated as a tool of white subjection, and that any meaningful pursuit of justice must cast sovereignty aside with proprietary subjectivity in favor of an embodied conception of justice that's not rooted in colonial concepts. I acknowledge and appreciate the ways in which sovereignty has served as a crucial term for describing, theorizing, and advocating for Native self-governance, autonomy, and right to land,[11] however, I understand the very concept of sovereignty as predicated upon colonial violence and deeply intertwined with

[8] Colin Dayan, *The Law is a White Dog* (Princeton: Princeton UP, 2011).
[9] See Maria Josefina Saldaña-Portillo, *Indian Given* (Durham: Duke University Press, 2016); Lisa Brooks, *Our Beloved Kin* (New Haven: Yale University Press, 2019); John Winthrop, "Reasons to be Considered for the Plantation in New England" (1628), *The Winthrop Society*, 2015.
[10] On the co-constitution of race and property, see Brenna Bhandar, *The Colonial Lives of Property* (Durham: Duke UP, 2018); Cheryl Harris, "Whiteness as Property," *Harvard Law Review* 106:8 (June 1993), 1707-1791; Sora Han, *Letters of the Law* (Stanford: Stanford University Press, 2015); Aileen Moreton-Robinson, *The White Possessive* (Minneapolis: University of Minnesota Press, 2015).
[11] See Joanne Barker, "For Whom Sovereignty Matters" in *Sovereignty Matters*, Joanne Barker ed. (Lincoln, NE: University of Nebraska Press, 2005), 1-31; Taiaiake Alfred "Sovereignty," *A Companion to American Indian History*. Edited by P.J. Deloria and N. Salisbury. Malden, MA: Blackwell, 2002, 460-474; Stephanie Noelani Teves, Andrea Smith, and Michelle Raheja eds., *Native Studies Keywords* (Tucson, AZ: University of Arizona Press, 2015); J. Kēhaulani Kauanui, *Paradoxes of Hawaiian Sovereignty* (Durham: Duke University Press, 2018.)

the propertizing of land and the enforcement of settler law. As legal scholar Anthony Anghie argues, in his sixteenth-century writings on the Native people of the so-called "New World," Spanish theologian and jurist Francisco de Vitoria outlines attempts to explain the legality of the relations between the Spanish and the Native people. In order to do this, Vitoria develops a new jurisprudence based not on divine law, which, in medieval Europe, was paramount, but rather on secular human law. Vitoria claims that the Native people are, in fact, human, and therefore possess reason, and so are subject to *jus gentium*, or universal natural law. But this ascription of humanity crucially then incorporates the Native people into European law, and so in fact comes to serve as a way for the Spanish to justify their invasion and seizure of Native lands. Because, according to this logic, the Native people have reason and *nomos*—control and possession over their lands—they are subject to the law of nations in which they are sovereigns of equal status to the Spanish, they must graciously host the Spanish visitors, and if they do not, they are subject to sanctions. But because the Native people are of course not aware of this expectation that they must graciously host their invaders, when they fight back against the Spanish, their resistance is criminalized.[12] In this way, the "benevolent" granting of humanity and reason to Native people in effect serves to violently and non-consensually incorporate Native people into a legal order premised upon sovereignty, and as such works as an elaborate justification for settler colonialism. Because, as Carl Schmitt argues, land-appropriation is the foundational act in the creation of law, or *nomos*, and

[12] Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge: Cambridge UP, 2007), 13-25.

because particularly in the colonial context, *nomos* is continuous with sovereignty, it becomes essential that a decolonial politics that is anti-nomian also be, at the very least, highly suspicious of the usefulness of the concept of sovereignty.[13]

The rejection of sovereignty and/as *nomos* is also central to this dissertation's engagement with Black studies. However, in the context of Black studies, sovereignty is more clearly tied to person than it is to land, and it has not been taken up quite so forcefully as a language for liberation as it has in Indigenous studies. Fred Moten has argued, following political theorist Jens Bartleson, that much of the violence of sovereignty is a result of the concept's rootedness in indivisibility and individuation.[14] Rather than seek freedom through sovereign individuation, which requires a proprietary concept of the self, radical Black freedom (as I argue, via Cedric Robinson in Chapter Four), requires an understanding of the world, of politics, and of sociality that has no room for either sovereignty or property. But the ways in which this concept of sovereignty is crucial to understanding *both* settler colonialism and anti-Black racism, to practicing *both* radical decolonization and abolition, is given not nearly enough scholarly attention. This dissertation begins to attempt to think through this problematic: how might we think *other* than sovereignty, and how might that allow us to think and to enact lines of solidarity between Indigenous and Black freedom practices.

ANTINOMIAN GENEALOGIES

[13] Carl Schmitt, *Nomos of the Earth* (New York: Telos Press, 2006), 25.
[14] Fred Moten, "Blackness and Sovereignty," Graduate Seminar at UC Riverside, April 2, 2014.

This dissertation tracks an unruly genealogy of antinomianism that locates the concept in Black and Indigenous spiritual practices that both precede and exceed the imposition of settler and enslaver *nomos*. The term "antinomianism" is most commonly used in reference to the Antinomian Controversy, a series of events that took place in the Massachusetts Bay Colony from 1636-1638. In 1636, the orthodox Puritan government accused religious dissident Anne Hutchinson of heresy. At least nominally, Hutchinson was first brought to trial and then eventually banished and excommunicated for her rejection of what she interpreted to be the orthodox Puritans' adherence to a "covenant of works" and for her own espousal of an alternative "covenant of grace." According to Calvinist predestinarian beliefs, one can never know for sure whether or not one is "elect"—chosen by God before birth to enter the kingdom of heaven upon death. But despite this necessary uncertainty, colonial inhabitants of the Massachusetts Bay came to believe that even if one could not alter one's spiritual destiny, one's earthly behavior functioned as a sign of their election status. Doing "good works"—following the law, behaving well—in other words, could not get you into heaven, but it could at least convince your neighbors that you were one of the elect.

Anne Hutchinson, however, rejected this model. First in women's Bible study groups in her own home, and later in mixed gender congregations, Hutchinson preached a doctrine of free grace: only you could know whether or not you were saved. Your earthly deeds had no bearing on and were not a sign of your spiritual status. One's relationship with God was strictly personal and needed not be mediated through church or civic authority. This proved to be a major threat to the colonial authorities who depended on

popular belief in a covenant of works to ensure adherence to civil law. The new colonial government, in existence for only eight years at the time of Hutchinson's banishment, was still struggling to justify its authority. If, as Puritans believed, the earthly world was merely an illusion, a temporary step on the way to a certain future with the almighty Lord, what motivation would a believer have to follow earthly law? The covenant of works solved this problem for the colonial governors: if one's earthly behavior (good works) could function as a sign of spiritual status, believers would be inclined to follow earthly civil law. But Hutchinson's so-called antinomianism posed a serious threat to this order: substituting a covenant of grace for a covenant of works undermined colonial authority by doing away with any spiritual incentive to follow civil law.[15]

Anne Hutchinson's antinomianism is just one example of the way the concept describes a spiritual manifestation of a refusal of law and proprietary subjectivity. One of the heresies for which Hutchinson is excommunicated is her belief in "the indwelling of the spirit." Because the spirit was within her, she did not need her salvation or her religious experience to be mediated by ministers. This is to say that she did not need to seek incorporation into a hierarchical religious community that already found her to be heretical, in part for her beliefs and in part for being a woman with enough authority to gather and lead small groups of worshippers in her own home. Black and Indigenous people have—within, alongside, and beyond the term "antinomianism"—practiced a

[15] The authoritative text on the Antinomian Controversy, which contains transcripts of both of Hutchinson's trials as well as numerous related documents is David Hall ed., *The Antinomian Controversy: 1636-1638 A Documentary History*, second edition (Durham: Duke University Press, 1990). My historical understanding of this event derives primarily from this volume, as well as from a number of primary and secondary sources cited in depth in Chapter One.

form of freedom not merely in opposition to law, but uncapturable by it. Equiano, for example, asserts that he was, "from [his] early years, a predestinarian" (119). As such, he believes that God has already determined his fate. But his predestinarianism, then, is in conflict with his enslavement: he is in bondage to God, not to secular law. God predetermines everything, yes, but also gives grace freely. Because he is bonded to God, Equiano's legal bondage—his enslavement—has less determining force than than the guarantee of God's grace—His unmerited favor. In his *Appeal to the Coloured Citizens of the World* (1829), Black abolitionist David Walker asks, "Have we any other Master but Jesus Christ alone?" Phillis Wheatley, too, nullifies the law through faith, most famously in her deeply ironic "On Being Brought from Africa to America," where she warns white Christians that she and other Black people will (or perhaps already have) "join[ed] th' angelic train": that they are, and have always been, spiritually untethered from the secular laws that enslave them.[16]

Antinomianism, however, looks and feels significantly different for Black writers, for Native writers, and for white writers. Enslaved people would have experienced Christianity both as a instrument of control ("Servants be obedient to your masters," etc.) in addition to as a means of solace and salvation. Native writers would have experienced Christianity as a weapon of colonialism, and some, like William Apess, would have also developed an independent relationship to their faith. Unlike Hutchinson, writers like Equiano, Wheatley, and Apess were, in their turn to Christianity, drawing on what was

[16] David Walker, *Appeal to the Coloured Citizens of the World* (University Park, PA: Pennsylvania State University Press), 2000; Phillis Wheatley, "On Being Brought from African to America," PoetryFoundation.org, 2020.

fundamentally the belief system and a tool of the oppressors. These writers approached Christianity with a range of strategies, but what I want to suggest, ultimately, is that though Christianity was often used to perpetuate subjugation, Black and Indigenous Christians show that this subjugation could never be exhaustive. Sometimes they used Christianity to point out the hypocrisy of the oppressors (Wheatley, Frederick Douglass), other times they may have used it to appeal to white readers (as Harriet Jacobs does), and at other times, their relationship to Christianity was wholly in excess of and in fact inassimilable to a white version of Christianity that had been deployed as a weapon. Black and Indigenous people developed their own various and complex relationships to God, to faith, to grace that could never wholly be captured by the legalistic, disciplinary version of Christianity deployed by settlers and enslavers.[17]

Nearly 250 years after Anne Hutchinson's trial, in a fictionalized Ohio, another dissident prophetess preaches about the indwelling of the spirit. In Toni Morrison's *Beloved* (1989), Baby Suggs, holy, who, "accepting no title of honor before her name, but allowing a small caress after it…became an unchurched preacher," preaches about the grace and holiness that resides in the flesh.[18] Having been freed from enslavement, Baby

[17] J. Kameron Carter theorizes a split similar to this as the distinction between what he calls "theology" and what he calls "the sacred." See J. Kameron Carter, "Black Malpractice," *Social Text 139* 37:2, June 2019, 67-107; J. Kameron Carter, *Race: A Theological Account* (Oxford: Oxford University Press, 2008). For more on Black theology, see James H. Cone, *God of the Oppressed* (Maryknoll, NY: Orbis Books, 1997); Gayraud S. Wilmore, *Black Religion and Black Radicalism* (Maryknoll, NY: Orbis Books, 1998); Dwight N. Hopkins, *Down, Up, and Over* (Minneapolis: Fortress Press, 2000); Dwight N. Hopkins and George C.L. Cummings eds., *Cut Loose your Stammering Tongue* (Louisville, KY: Westminster John Knox Press, 2003); Delores S. Williams, *Sisters in the Wilderness* (Maryknoll, NY: Orbis Books, 1996); Stephanie Y. Mitchem, *Introducing Womanist Theology* (Maryknoll, NY: Orbis Books, 2002); Katie G. Cannon and Anthony B. Pinn eds., *The Oxford Handbook of African American Theology* (Oxford: Oxford University Press, 2014).

[18] Toni Morrison, *Beloved* (New York: Alfred A. Knopf, 1987) 102.

Suggs gathers the Black community in an open clearing, which Morrison describes as "a wide-open place cut deep in the woods nobody knew for what at the end of a path known only to deer and whoever cleared the land in the first place. In the heat of every Saturday afternoon, she sat in the clearing while the people waited among the trees" (102). Not reliant on the authority of any official ministry, Baby Suggs brings her preaching to "AME's and Baptists, Holinesses and Sanctifieds, the Church of the Redeemer and the Redeemed" (102). As a Black woman preaching to other nineteenth-century Black men, women, and children who had no access to legal personhood or the protection of law, Baby Suggs reminds them that "the only grace they could have was the grace they could imagine. That if they could not see it, they would not have it" (103). Seeing, here, does not require visible evidence, but instead arises from imagining, from the indwelling of the spirit. If they can imagine grace, they can see it; if they can see it, it is in them. Grace, here, is generated from within. Grace, here, is located in the flesh. "[W]e flesh," Baby Suggs says, famously: "flesh that weeps, laughs; flesh that dances on bare feet in grass. Love it. Love it hard" (103). Baby Suggs's invocation to love the flesh is precisely a call to love, to render as holy, what Hortense Spillers, in her theory of the flesh, argues is constitutively excluded from Western forms of representation. Grace, in the flesh, in the spirit, is wholly irreconcilable with the kind of legalistic system that is inherently bound up with enslavement.

Baby Suggs's secret clearing also suggests a space of solidarity between formerly enslaved and Indigenous people. There's an acknowledgement of the land's use history, but it is a history that is marked by a forgetting. Nobody knows any more what the land

was cleared for, and nobody knows who cleared it, but it is evident that it was once cleared by someone for some purpose. Perhaps it was cleared by Native people, perhaps it was cleared by settlers, but for the formerly enslaved people of Baby Suggs's congregation, it serves as a holy place for worship and as a space for collective gathering. Histories of slavery and settler colonialism are ineradicable from this land, but, as I will describe in more detail in Chapter Three, this informal, grace-filled wilderness space of worship remains holy even in the face of colonial violence.

EARLY AMERICAN FIELD (DE)FORMATIONS

Although much has been written about the Antinomian Controversy, very little scholarship focuses on the event, or the ideology of antinomianism, in the context of American settler colonialism. I argue that this is not simply an omission or an oversight, but is rather constitutive of a narrative of American studies most famously instantiated by Perry Miller and Sacvan Bercovitch over forty years ago that, despite a tremendous volume of new scholarship and marked ideological changes in the field, has not yet been wholly unseated. As Ed White and Michael Drexler have argued, Early American Literary Studies has been unable to shake the historicist methods and New England-centrism of its older sibling, Early American History. Because of this, the field "often relegat[es] theoretical discussion to end notes" and "steer[s] clear of nonhistoricism theoretical programs."[19] This aversion to theory in the field results in a serious lack

[19] Ed White and Michael Drexler, "The Theory Gap," *Early American Literature* 45:2 (2010): 472.

meaningful discussion of the structures of power engendered and perpetuated by slavery and settler colonialism. Anecdotally, I noticed during the 2019 Society of Early Americanists Conference, that even scholarship that takes up Black and Indigenous literatures from the period tends to do so in an inclusive, additive mode rather than one attuned to the material circumstances of Black and Indigenous life or one that takes seriously the historicity of racial formations. Whereas Black and Indigenous scholars have long turned to the seventeenth century and earlier to examine histories of racialization and subjugation, this kind of analysis remains noticeably absent from so-called Early American Literary Studies.[20] My intention here is to begin to address that problem, by centering slavery, settler colonialism, and analytics of power and race in this project that is positioned, if deliberately marginally, in Early American Literary Studies.

If we take Bercovitch at his word that the American self has Puritan origins, we must understand then that the "American self" originates, as it were, in settler colonialism and the genocide of Native people. I take up the primary setting of Massachusetts and the Puritan tradition in part because they sit at the historical foundation of American (literary) studies. Through readings of both canonical and noncanonical texts, I show that the supposed linear narrative of American exceptionalism that begins with John Winthrop's city on a hill, progresses through the American revolution, through emancipation, and onwards to ever-increasing liberal individual freedom is in fact riven

[20] Sylvia Wynter's work, in particular, comes to mind. See especially "1492: A New World View," in *Race, Discourse, and the Origin of the Americas*, Vera Lawrence Hyatt and Rex Nettleford eds. (Washington: Smithsonian Institution Press, 1995), 5-57.

with racist violence.[21] This narrative of progress sabotages itself from within. Not only do slavery and genocide underlie every advancement of this white supposed-freedom, but non-white practices of freedom have been ongoing, wholly apart from both progress narratives and liberal individualism.

At stake in my intervention into Early American Literary Studies is not, precisely, a novel understanding of the Antinomian Controversy and Anne Hutchinson's role therein. Rather, my investment is in using the ideology of *antinomianism* to put settler colonialism and slavery at the very center of any conversations about the Massachusetts Bay Puritans, and thereby any conversations about this particular genealogy of American subjectivity and American literary studies. I understand antinomianism as describing not only the kind of dissent embodied by Anne Hutchinson and other dissatisfied white Puritans, but also as describing a broader pattern of rebelliousness against a settler colonial ideology that was coming to define subjectivity by way of ownership of property—in both land and in persons. I hope, too, that it offers something of a methodological alternative to the dominant mode of historicism in Early American Studies that can itself come to function a bit like a law. This method enables me to bring seemingly disparate historical periods, genres, and forms together, and to examine them along their many axes of rupture and crisis.

But antinomianism is really just a heuristic. By definition, it is something that can't quite be theorized, or even described. It's just something that we can point to and

[21] For an account of the ways in which the American Revolution did not in fact produce freedom, see Emma Stapely, "Insurgent Remains: Afterlives of the American Revolution 1770-1820," Dissertation: English, University of Pennsylvania, 2015.

say, “there it is.” It’s something that only ever exists in relation—in relation to law, in relation between persons, between persons and the other than human—and it’s something that throws signification into crisis. It can’t be captured by the prepositional situation of “within” or “outside of” or “beneath” or “at the edges of.” “Precede and exceed” is marginally better, and yet, still doesn’t quite represent this phenomenon that is constitutively undefinable, that undoes itself persistently from within. What I aim to avoid in this dissertation is producing antinomianism as yet another *nomos*. I don’t mean for it to be a regulatory force. Rather, ‘antinomianism’ is a floating term, a conceptual catch-all that nonetheless, and crucially, does not catch all.

CHAPTER OVERVIEWS

My first chapter begins in seventeenth century Puritan Massachusetts, arguing for both a historical and a conceptual relationship between the Antinomian Controversy, the Pequot War, and the Providence Island rebellion. This chapter situates the Controversy within the history of settler colonialism, specifically the history of how the Puritan settlers, led by John Winthrop, came to legally justify seizing lands that they knew to be inhabited. I do this by positioning not the Controversy, but rather the Pequot War and the events on Providence Island, as the central happenings for the “New World” Puritans in the 1630s. By reading journals and other writings by Puritan elites including John Winthrop, John Underhill, and Nathaniel Butler, I argue that the Puritans’ primary concern was their inability to assimilate Indigenous and Black people and lifeways into

their symbolic and emerging legal system. They then projected this anxiety onto the white dissident antinomians. As such, I argue that the Antinomian Controversy was at least in part a sublimation of white settler anxieties about their encounters with and relation to Black and Native People.

Like the first chapter, the second chapter is concerned primarily with examining white people's (mostly repressed) anxieties about Black and Indigenous freedom. This chapter explicitly links the two central terms of my project, antinomianism and abolition, by way of a reading of Nathaniel Hawthorne's *The Scarlet Letter*. Although readings of the connections between the novel and the Antinomian Controversy are many—Hester is often read as an analogue for Hutchinson—fewer interpretations of *The Scarlet Letter* take up the fact that the novel was written during the height of the abolitionist movement. I read the novel alongside writings on slavery and abolition by Hawthorne and a number of his contemporaries, and argue that the seventeenth-century setting of the novel and its mid-nineteenth century writing offer a combined historical context for reading the novel as explicitly taking up questions of slavery and abolition. In the chapter, I argue that *The Scarlet Letter* becomes a repository for Hawthorne's own ambivalent feelings about slavery and abolition. Though Hawthorne's own positions on slavery are ultimately abhorrent, he nonetheless offers a useful critique of the sentimentality of white abolitionists, for their intermixing of issues he deems personal (namely, slavery) and those meant to remain impersonal (the law). Antinomianism appears then, in the novel, as an anti-sentimental abolitionist politics: a kind that is associated with Black insurgency and which, in turn, Hawthorne finds petrifying. Only in this chapter, however, does the

term "abolition" make direct reference to the white abolitionist movements of the mid-nineteenth century with which the word is most often associated. Throughout, I understand abolition both more broadly and theologically. I follow Black Feminist theorists of abolition like Ruth Wilson Gilmore, Angela Davis, and Jasmine Syedullah who argue (for Gilmore, specifically in the context of prison abolition), that abolition requires a radical reconfiguration of existing structures of power.[22] It also requires a redefinition of what counts as freedom, such that freedom, as Syedullah argues, is delimited by neither opposition to oppression nor by self-ownership, agency, and proprietary subjectivity.

Throughout the dissertation, I also read abolition theologically, through Christ's claim that he "comes not to abolish the law and the prophets…but to fulfill" (Matthew 5:17). Black theologian James H. Cone reads in this moment the suggestion that "On the one hand, Jesus is the continuation of the Law and the prophets; but on the other, he is the inauguration of a completely new age, and his words and deeds are signs of its imminent coming."[23] I argue that the antinomians disagree with St. Paul when he asks in Romans "Do we then make void [katargoumen :καταργοῦμεν] the law through faith? God forbid: yea, we establish the law." (Romans 3:31). (The Greek for "make void" here is also elsewhere translated as either "nullify" or "abolish.") Faith, and more specifically grace, does, for them, abolish the law. This Biblical relationship between abolition, fulfillment,

[22] See Ruth Wilson Gilmore, *Golden Gulag* (Berkeley: University of California Press, 2007); Angela Y. Davis, *Are Prisons Obsolete* (New York: Seven Stories Press, 2003); Jasmine Syedullah, "'Is This Freedom?': A political theory of Harriet Jacobs' loopholes of emancipation," (Dissertation: Politics, UC Santa Cruz, 2014), 12.
[23] James H. Cone, *God of the Oppressed* 72.

and the law, becomes something of a refrain throughout the project. I turn to it and meditate upon it often, considering the ways that this elusive formulation offers a number of ways to think through what a radically abolitionist relationship to law might look like.

In the second half of the dissertation, I turn to writings by Black and Indigenous people that practice this antinomian freedom. In the third chapter, I argue that Pequot Methodist preacher William Apess uses an antinomian practice of nullification to link together Indigenous and Black struggles for decolonization and abolition in the 1830s. I argue that the formal and textual politics of *A Son of the Forest* (1829) and *Indian Nullification* (1835) challenge settler normalizations of private property in both land and in persons, which were used to dispossess and enslave Indigenous and Black persons. Apess's strategic deployments of settler law and settler religion are radical decolonial practices, which both reveal and undermine the injustices written into American law. This chapter makes a critical intervention into both Black Studies and Indigenous Studies, specifically regarding the nineteenth century, which often treat Black and Indigenous struggles as at best, unrelated, and at worst, in a hierarchy of suffering. In the chapter, I enter a conversation with Ikyo Day, Tiffany Lethabo King, and others, about ways to think Black and Indigenous freedom struggles as interlinked and mutually supportive.

Chapter Four reads Harriet Jacobs's *Incidents in the Life of a Slave Girl* (1861) alongside Layli Long Soldier's *Whereas* (2017) to argue that both texts challenge the ideology of property ownership that has long been central to Black and Indigenous subjugation. By reading these texts through Cedric Robinson's theorization of the Black Radical Tradition, which "never allowed for property," I argue that both texts bring into

being a world that precedes and exceeds the violence of legal regulation. Jacobs and Long Soldier both locate an alternative to law in the radical divinity of maternal care. Through Jacobs's and Long Soldier's discussions of holy maternal care, we can recognize the interrelation of Black and Indigenous freedom struggles in a way that's not solely defined by shared subjugation.

Chapter 1: Property's Quagmires: Land Law in Crisis in Puritan Massachusetts

I. A Fast-Fish belongs to the party fast to it.
II. A Loose-Fish is fair game for anybody who can soonest catch it…What was America in 1492 but a loose-fish, in which Columbus struck the Spanish standard by way of waifing it for his royal master and mistress? What was Poland to the Czar? What Greece to the Turk? What India to England? What at last will Mexico be to the United States? All Loose-Fish…

…And concerning all these, is not Possession the whole of the law?
-Herman Melville

From 1636-1638 the Puritan colony of Massachusetts Bay was rocked by what came to be known as the Antinomian Controversy. Religious dissident Anne Hutchinson was first brought to trial, and eventually banished for criticizing the colonial government's insistence that settlers must obey civil law in order to ensure spiritual salvation. Hutchinson and her followers espoused a doctrine of free grace, which undermined colonial legal authority. They believed that salvation could not be granted by adherence to civic authority. The colonial governors came to call Hutchinson and her followers "antinomians" because of their refusal of the validity of civil law. At the same time, the Massachusetts Bay settlers were engaged in a genocidal campaign against Indigenous people, which has come to be known as the Pequot war. Although much has been written about the way the Antinomian Controversy conflict was symptomatic of threats to the legal and spiritual authority of the colony, this chapter argues that the Controversy—and more specifically, the ideology of antinomianism, demand a historical and critical practice that places settler colonialism and slavery at the center of any study

of the Massachusetts Bay Puritans, and of Early America more generally. I put forth an antinomian critical practice that challenges the conventional historicism so often mobilized by Early American studies, in favor of a reading practice that unsettles the *nomos* of causality.[24] This reading practice instead considers the proliferation of relations—both figural and historical—that emerge through a variety of representational and aesthetic forms: juxtaposition, analogy, simultaneity, and failed signification. This kind of reading practice centers the experiences and insurgencies of Indigenous and Black people in Early America, and in turn offers a conceptual framework for thinking about the continuities of Black and Indigenous subjection in the territory now known as

[24] I refer here to scholarship on the Antinomian Controversy and the Massachusetts Bay Colony that does not take up the the important fact that the Controversy took place simultaneous to the Pequot War and the crisis around enslavement on Providence Island, and so eclipse the centrality of settler colonialism and enslavement to any political or theological situation in the colony in the 1630s. For example, In Michael Winship's 2001 study of what he terms the "free grace controversy," *Making Heretics* (Princeton: Princeton UP), the word Pequot appears nine times, only ever in reference to the war or the massacre; the word "Indian" four times, "native" twice (neither referring to Native peoples), and the word "Indigenous" does not appear at all. The index of Janice Knight's *Orthodoxies in Massachusetts* (Cambridge: Harvard UP, 1994), a book about the multiplicity of Early American Puritanism, has two entries for "Pequots," both in the first 20 pages, and none for "Native," "Native American," or "Indigenous." In the introduction to a panel at a Society of Early Americanists Conference, where I delivered an earlier version of this paper, Jonathan Beecher Field made the comparison that the emphasis scholars place on the importance of the Antinomian Controversy over the Pequot War, as the determining event of the 1630s, would be like future historians looking back at the early twenty-first century and studying primarily Burwell v. Hobby Lobby (2014) rather than the U.S. invasion of Iraq and Afghanistan.

This isn't to say that there is no scholarship that brings these events into conversation: Anne Kibbey's *The Interpretation of Material Shapes in Puritanism* (Cambridge: Cambridge University Press, 1986) provides a compelling reading of the way settler anxieties about Native people mapped onto their gendered anxieties manifested in the reaction to Anne Hutchinson. Cristobal Silva's *Miraculous Plagues* (New York: Oxford University Press, 2011) reads the Antinomian Controversy epidemiologicaly, discussing the ways settlers used the rhetoric of disease to make sense of their own justifications for their seizure of land from Indigenous people. Gesa Makenthun's *Metaphors of Dispossession* (Norman: University of Oklahoma Press, 1997) also studies the rhetorics of colonial justifications for land seizure and Indigenous dispossession. There is a wealth of scholarship from legal historians, such as Lauren Benton and Christopher Tomlinson about legal justifications for colonization, as well as a bibliography of studies of Indigenous people during the period, such as Lisa Brooks's brilliant *Our Beloved Kin* (New Haven: Yale University Press, 2019), Matt Cohen's *The Networked Wilderness* (Minneapolis: University of Minnesota Press, 2009) and Birgit Rander Rasmussen's *Queequeg's Coffin* (Durham, NC: Duke University Press, 2012). But for the most part, this work is kept separate from scholarship on the theological and political causes and implications of the Antinomian Controversy.

the U.S. This chapter makes use of this reading practice in order to require us to think of the U.S. as a nation not only made, but also consistently remade, upon the principles of settler colonialism and slavery.

This chapter, then, will make a claim that is at once historical and conceptual. I will argue that the Antinomian Controversy developed in response to colonial anxieties about the legality of English seizure of Indian land. The Antinomian Controversy so unsettled the Massachusetts Bay settlers because it indexed a crisis in the legal administration of stolen land, which I argue was co-constitutive of an emerging logic of racial difference between white settlers and Indigenous insurgents.[25] I read this primarily through a few texts: John Winthrop's pre-settlement writings along with his journal, in which discussions of the Pequot War, the Antinomian Controversy, the little-known Puritan colony of Providence Island, and of enslaved Africans appear in close proximity to each other; John Underhill's account of the Pequot War, *Newes from America*; and the journal and correspondences of Nathaniel Butler, governor of the Providence Island colony in the years just before it was seized by the Spanish in 1640, which discuss rebellions, escape attempts, and maroon communities of enslaved Africans on the

[25] My thinking about the co-constitution of property and racialization is deeply indebted to the work of Brenna Bhandar, in particular *The Colonial Lives of Property* (Durham: Duke UP, 2018). Bhandar argues that the emergence of whiteness as an abstract racial category is coterminous with the emergence of the abstract property form in the eighteenth century. She builds upon Cheryl Harris's argument that property has always been entangled with racial subordination, such that whiteness, as being something that non-white people lack, comes to have "income bearing value." But where Harris argues that this is a result of white supremacy, Bhandar suggests that this entanglement of property and racial subordination emerges from something inherent to the property form itself.[25] She writes "We cannot, in other words, understand the emergence of modern concepts of race without understanding their imbrication with modern ideologies of ownership and property logics, as is the case vice versa."[25] Bhandar dates this move toward the abstraction of race and abstraction of property to the late eighteenth century and Jeremy Bentham, but I suggest that the co-constitution of whiteness and the property form can be seen as early as the 1630s.

colony.[26] I read the connection between these events and these texts as not only historical, but as formal and hermeneutic: from the perspective of the English colonists, each of these events could not be figured, and so threatened Puritan legal and semiotic order. By considering antinomianism as a resistance to figuration—a resistance to the imposition of the *nomos* of both law and language—it becomes possible to understand its relationship to Indigenous and Black insurgency, which exceeds the conventional understanding of antinomianism as a mode of of white, proto-feminist rebellion.[27] Antinomianism offers a way to describe modes of insurgency available to persons who were both subjugated by and constitutively excluded from the protection of settler law.

ALTOGETHER WITHOUT FORM

The clearest example of antinomianism's threat to Puritan order and its connection to Indigenous and Black rebellion appears in an entry from Winthrop's journal from September 1638. The entry describes the monstrous birth that Anne Hutchinson delivered shortly after she was ex-communicated and banished to Rhode Island for her dissidence and disruption. Winthrop struggles to find the language to describe the monstrous birth. I believe we can read this passage as being "about" Indigenous and Black rebellion both because its location in Winthrop's journal is historically contiguous to various important incidents in the Pequot War, as well as to the

[26] My archival research relating to Providence Island was made possible through generous support from the University of California Humanities Research Institute, and from the Center for Ideas and Society at UCR.
[27] Though I disagree with their ultimate claims that read antinomianism in terms of white feminism, rather than Indigenous and Black insurgency, Amy Schrager Lang's *Prophetic Woman* (Chicago: University of Chicago Press, 1987) and Susan Howe's *The Birth-Mark* (Hanover, NH: Wesleyan University Press, 1993) are nonetheless essential reading on the subject.

rebellion of enslaved people that took place on Providence Island on May 1st 1638, and also because the difficulty Winthrop has in finding figurative language to give an account of this monstrous birth is structurally related to his struggle to give an account of Black and Indigenous rebellions and to integrate those rebellions into the Puritan worldview. It has been argued that Hutchinson's monstrous birth served, for Winthrop, as confirmation of the sinfulness of her "antinomian" beliefs,[28] but I believe Winthrop's description indexes not only the threat of white female religious dissidence, but also of Black and Indigenous rebellion. He writes:

> I beheld, first unwashed, (and afterwards in warm water,) several lumps, every one of them greatly confused, and if you consider each of them according to the representation of the whole, they were altogether without form; but if they were considered in a respect of the parts of each lump of flesh, then there was a representation of innumerable distinct bodies in the form of a globe, not much unlike the swims of some fish, so confusedly knit together by so many several strings, (which I conceive were the beginnings of veins and nerves,) so that it was impossible either to number the small round pieces in every lump, much less to discern from whence every string did fetch its original, they were so snarled one within another. The small globes I likewise opened, and perceived the matter of them (setting aside the membrane in which it was involved,) to be partly wind and partly water.[29]

Winthrop perceives this matter that Hutchinson births as formless, undifferentiated, and uncontainable—the very features that he also associates with the Indian opposition during the Pequot War, and as I will show, that Nathaniel Butler associates with rebellious Africans on Providence Island.

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[28] See Amy Schrager Lang, *Prophetic Woman* (Chicago: University of Chicago Press, 1987).
[29] John Winthrop, *The Journal of John Winthrop, 1630-1649,* Richard S Dunn, James Savage, and Laetitia Yeandle eds, (Cambridge MA: Harvard UP, 1996), 265 (hereafter cited as "*WJ"*).

Winthrop reads Hutchinson's lumps as "several" and as "greatly confused." He twice uses the word "confused" to describe this collective being that cannot be differentiated into subjects with the capacity for ownership. "Confusion" was a word often used during the period to describe insurgencies and was associated with anarchy (a scan through EEBO titles from the period tells us as much). Confusion denotes disorderliness—as much a problem applicable to persons as to things. The lumps are multiple and entangled with one another in such a way that it's not clear to Winthrop where each segment ends, nor how to differentiate between part and whole. Hutchinson's lumps cannot be figured into a coherent social body. They are "innumerable," "knit together" (con-fused), "snarled one within another," and made of impossible, uncontainable, elemental material. Unlike the ideal social body Winthrop evokes in "A Model of Christian Charity," in which the colonists are "knit together…as one man," united by love as one body of Christ, here he sees "distinct bodies" that are "confusedly knit together" into a formless form that does not add up to an individual body. The noncontiguous, disproportionate, and fragmentary nature of the lumps contrasts with the form of Winthrop's ideal body politic. He describes his preferred relation of parts to wholes: "There is no body but consists of parts and that which knits these parts together, gives the body its perfection, because it makes each part so contiguous to others as thereby they do mutually participate with each other, both in strength and infirmity, in pleasure and pain."[30] Rather than the cohesive social form Winthrop hoped for in his *Arbella* speech, the antinomian gives fleshly and watery rise to a disruptive, fragmentary

[30] Winthrop, "A Model of Christian Charity" (1630), *The Winthrop Society*, 2015.

sociality. The lumps and veins and nerves relate to each other neither as the ligaments of one body nor as the law-abiding members of a community, but rather as insurgent tangles without origin.

Next, Winthrop describes the lumps as "altogether without form." However, the lumps do in fact have form, and that their form is closely aligned with the form of Pequot insurgents in Massachusetts swamps and the form of self-emancipated Africans in the Providence Island hills—each of which are difficult for the English to make sense of. This is in part because the form of the lumps—like that of the Pequots and the maroons—is collective, rather than individuated. Because of this, Winthrop registers it as formlessness. He attempts to read the lumps as individual, but he fails, finding them "impossible to number." He struggles to find the language to give an account of something that is not one infant (or person), but is rather multiple pieces of flesh, which are nonetheless not wholly separable from each other.

Similarly, Winthrop struggles to find the language to describe collective Indian insurgency. He has difficulty recognizing and making sense of a "confused" collective during a battle between the English and the Pequots that takes place in a swamp—the same battle that would result in fifteen captives being sent to Providence Island. Winthrop first describes the swamp itself as "most hideous…so thick with bushes and so quagmiry, as men could hardly crowd into it."[31] The Indians' ability to live alongside the swamp (Winthrop notes that nearby "they had twenty wigwams"), to navigate it, and to use it as refuge and site of defense threatens the English control over the land. In the

[31] *WJ* 226-27.

swamp, the Indians have the geographic advantage. They know how to defend themselves, "coming up behind the bushes very near our men, and shot many arrows into their hats, sleeves, and stocks." In Puritan typology, the swamp is the sign for the failure of signs—swamps indicate semiotic breakdown and confusion. But the Pequots use this space that is both materially and semiotically confusing to their advantage. The monstrous birth and the insurgent Pequots in the swamp both threaten figuration in that they are collectivities that cannot be individuated. Even when Winthrop tries to count both lumps and the insurgents he fails—the collectivity is innumerable. This kind of being that cannot be differentiated into individuated, self-possessed subjects threatens Winthrop's conceptual order.

These lumps and strings also bear comparison to Black insurgency in that they are fugitive. "Partly wind and partly water," they are comprised of elements that cannot be contained. On Providence Island, colonial officials responded to the maroon community and to the enslaved Africans and Indians who would run away similarly to how Winthrop responded to the Indian insurgencies in Massachusetts Bay. In each of these cases, the insurgencies registered to colonial officials as antinomian. In a diary entry from March 1639, then governor of Providence Island, Nathaniel Butler describes a missed encounter with maroons on the island: "Upon this daye we had a generall hunting after our rebel negroes; but they wer soe nimble as we could scarce get a sight of them; only one of their cabins was found upon the top of a high Hill; and burned."[32] His language about the difficulty of seeing the maroons aligns with Winthrop's writings about the Pequots in the

[32] 27 March 1639, Journal of Nathaniel Butler, Sloane 758, BL.

swamps, and with the elemental uncontainability of Hutchinson's birth. As swamps were spaces of semiotic and literal confusion for the Puritans and therefore sites of resistance for the Indians, the "top of a high hill" was a space of refuge for the escaped enslaved Africans (and potentially Indians), the geography of which concealed the maroons from Butler. The "rebel negroes" are also here undifferentiated from each other. They move, in Butler's sentence, as a collective, whose ability to remain undetected likely rested upon their ability to gather and disperse in ways that were unreadable to the English.

Indigenous, Black, and antinomian insurgency not only disrupted Puritan understandings of the law of language, but also of the law of land, which were based on property. Unlike the settlers, the Indigenous inhabitants of the Massachusetts colony related to land in ways that were not governed by law or property. The Native inhabitants occupied and made use of land but did not conceive of it as legally granted private property, which threatened the colonial legal order, which justified its seizure of land through both Biblical and secular conceptions of land conquest and ownership. These land relations are antinomian in that they threaten the legal order constituted by the allotment and distribution of land, what Carl Schmitt terms *nomos*. *Nomos*, for Schmitt, is not merely about law in its regulative capacity, but is rather the entire historical, spatial, and sacred orientation of a people. According to Schmitt, land appropriation is the fundamental act of law. It is the taking of land that brings law—*nomos*—into being.[33] I suggest that in terming spiritual dissenters *antinomian*, the Massachusetts Bay authorities were drawing not only on Hutchinson's refusal to adhere to colonial civil law, but also

[33] Carl Schmitt, *Nomos of the Earth* (New York: Telos Press, 2006), 67.

upon *nomos*'s association with the seizure of land. By considering the Antinomian Controversy and early New England Puritan settlement through the terms of land, law, property, and insurgency, it becomes possible to draw out the ways the colonists' legal anxieties were also racial anxieties.

The Puritan concern with property law centers the status not only of taking property from the Indians, in the form of land, but of taking property from Africans in the form of their personhood. Centering the laws of property and their relation to the concept of possession, and reading the Antinomian Controversy as not only about law and land, but as specifically about property law, ties the history of Native dispossession to the history of enslavement. By studying what was so threatening to the colonial legal order that was founded upon dispossession and enslavement, by examining the loopholes that dissenters occupied in the law and in language, it becomes possible to understand and articulate means of rebelliousness that were available to those who were dispossessed, enslaved, and otherwise subjugated by law.

The purpose of this analysis is not to recuperate the Puritans or to suggest that because of the crisis in law and figuration, their colonial violence is somehow less heinous. Nor is it to suggest that those colonists deemed "antinomian" were somehow less culpable for colonization because of their dissidence, or to imply that Hutchinson's white, proto-feminist form of dissent was in any way adequate to Indigenous and Black insurgency. Rather, by reading Puritan texts "with the grain," we can discern the ways in which Puritan anxieties about the ways in which women and racialized others embodied a form of lawlessness inspired a legal and sovereign crackdown to manage the apparent

threat. This makes it possible to track the ways the appearance and practice of lawlessness, the disruption of the legal logic of possession, and the de-lamination of law from land was deployed by Indigenous people as well as by white women as a non-oppositional mode of resistance to Puritan legal hegemony.

THE FAILURE OF ANALOGY

Much foundational work in American literary studies highlights the importance of typology to the Puritan worldview. Sacvan Bercovitch's *The Puritan Origins of the American Self* takes up the historical, providential dimension of the Type in order to conceptualize the Puritans' sense of their role in history and in the "New World." Bercovitch asserts that Puritan figuration combined the symbolic and the historical modes of the classical *figura*, knitting together the material and providential dimensions of figuration.[34] Although critics, such as Mitchell Breitweiser and Michelle Burnham have written about Puritan colonization of Massachusetts in terms of typological failure, my analysis differs from theirs in that I read this failure as a proliferation of semiotic difference that allows for a means of considering the effects of Indigenous insurgency had upon the colony and its developing legal order.

A primary effect of these disruptions of typology is a destabilization of Winthrop and his colleagues' self-conception as Israelites founding a new Promised Land, which is central to early foundations of American studies and its accompanying American

[34] Sacvan Bercovitch, *Puritan Origins of the American Self* (New Haven: Yale UP, 1975).

exceptionalism.[35] Rather than countering the argument that Puritan settlement is constitutive of American exceptionalism, I take that claim seriously to suggest that in fact American exceptionalism is founded upon a legal doctrine based in the justified seizure of land—in other words, upon settler colonialism.[36] As such, my reading re-figures the field's understandings of the Puritan origin of American literary history, and, as Bercovitch theorizes, "the American self," by anchoring both in a settler colonial tradition.

Ann Kibbey argues that scholars of Puritan figuration overemphasize the type at the expense of attention to other forms of figuration.[37] Michelle Burnham glosses typology:

> Typology ideally operates through a structure of equivalence, in which events in scripture reflect and foretell the outcome of events in the world just as figures and incidents in the Old Testament prefigures those in the New Testament. This process, which Erich Auerbach refers to as figural interpretation, requires the substitution of a biblical event or person with an earthly event or person, in such a way that the first signified not only itself but also the second, while the second involves or fulfills the first.[38]

I complicate this definition, suggesting that Puritan figuration worked through something other than a "structure of equivalence." Events in the world are not exclusively represented as equivalent to events in scripture: sometimes they are metonymic, sometimes they are metaphoric, sometimes they are allegorical, etc. Each mode of figuration has a different relation to time and to history, and in turn each of their

[35] Perry Miller, *Errand into the Wilderness* (Cambridge: Harvard UP, 1953), Bercovitch, *Puritan Origins of the American Self*.
[36] See Jodi Byrd, *The Transit of Empire* (Minneapolis: University of Minnesota Press, 2011).
[37] Ann Kibbey, *The Interpretations of Material Shapes in Puritanism* (Cambridge: Cambridge UP, 1986).
[38] Michelle Burnham, *Captivity and Sentiment* (Hanover: Dartmouth UP, 1997), 16.

breakdowns disrupts time, history, and law slightly differently. Winthrop's inability to describe Pequots fighting English troops in a swamp is different from his inability to figure the monstrous birth that Hutchinson delivers. Each failure, however, differently disrupts Puritan *nomos*. My analyses re-think the centrality of typology in Puritan figurative language and draw more sustained attention to the ways figurative language is altered by contact with Indigenous people. Figuration and its failures proliferate for the colonists, and this is nowhere more evident than when language is placed under the pressure of Indigeneity. It is this pressure upon figuration that I characterize as antinomian.

Though I de-center typology in my analysis of Puritan figurative failure, the structure of typology nonetheless bears significantly upon Puritan understandings of law. In typology, the second term is said to *fulfill* the first. For example, the Puritans' settlement in Massachusetts fulfills the Israelites settlement in the land of Canaan. In Biblical hermeneutics, this work of fulfillment conventionally occurs when a New Testament figure fulfills an Old Testament one. Most salient for my purposes, however, is Christ's fulfillment of the law. The Sermon on the Mount reads: "Do not think that I have come to abolish [destroy] the law and the prophets; I come not to abolish but to fulfill" (Matthew 5:17). The relationship between abolition and fulfillment is not wholly clear, here. Pauline Christianity does abolish Jewish law, replacing salvation based on adherence to law with salvation based on faith. Abolition and fulfillment, then, are not precisely opposed to one another. Antinomianism appears to register this paradox of simultaneous abolition and fulfillment: it is both the abolition of law and its fulfillment. It

is both the abolition of the type and its fulfillment—it vexes the historical progression of this mode of figuration.

Puritan linguistic and legal *nomos* were disrupted not only by Indigenous and Black presence in the colonies, but also by Hutchinsonian antinomianism. These disruptions of figuration came to threaten the Puritans' legal justification for colonization. The Antinomian Controversy became a symptom of the way in which Native people, in particular the Pequots, could not be assimilated into the Puritan legal and symbolic order: they were "resistant to analogies or categorization."[39] Native people, and eventually antinomians and maroons, vex the workings of legal analogy. Neither antinomians nor Pequots could be assimilated into Puritan legal categories, and so it was impossible to determine how to account for and respond to them juridically.

In modern terms, legal analogy is deployed when a case has no precedent that can be used to determine the ruling. Instead, judges turn to cases that address distinct but analogous situations—for example, in an 1868 case to determine liability for reservoir water that seeped into a coal mine, the court reasoned based on analogy by comparing the escaping water to "the escape of a dangerous entity brought onto land" namely wild animals.[40] But in a more general, and less technical sense, because common law is based on precedents, it requires analogy in order to function. When analogy is disrupted, or when entities cannot be understood by means of analogy, law can't operate properly.

[39] Lauren Benton, *A Search for Sovereignty* (Cambridge: Cambridge UP, 2009), 28.
[40] Bernard Jackson, "Analogy in Legal Science," in *Legal Knowledge and Analogy,* Patrick Nerhot, ed (Dordrecht: Kluwer Academic Publishers, 1991), 148.

This disruption of analogy is evident in the settlers' struggle to define the way in which New England was legally and politically situated in relation to England. It was difficult for the settlers to establish clear sovereignty because it was difficult for them to establish where, and what, exactly, New England was. "North America's jurisdictional status as a territory," writes Lisa Ford, "depended on the force of analogy."[41] In order to conceive of the colonies' relation to England, colonists needed determine whether they were "like 'crown lands' within England or like one of the external 'dominion,' each of which had its own long-mooted jurisdictional relationship with the King and Parliament."[42] The difficulty of determining precisely the nature of this relation led the region to become home to what Christopher Tomlins terms a "legal polyphony." There was no single legal system in the early colonies, nor was the development of settler law linear. Rather, Tomlins argues that early colonial legal systems were multiple, various, improvisatory, and bore a strong relation to geography and culture.[43] The Massachusetts Bay Orthodox Puritans' attempts to enforce a singular *nomos* would have always already been in tension with the material realities with which they were contending, not least the presence of Native people.

When not only precedent, but precedent's backup, analogy, fails, law is thrown into crisis. The Pequot War and the Antinomian Controversy were both moments at

[41] Lisa Ford, *Settler Sovereignty* (Cambridge: Harvard UP 2010), 17
[42] Ford 17-18.
[43] Christopher Tomlins, "Legal Cartography of Colonization, the Legal Polyphony of Settlement: English Intrusions on the American Mainland in the Seventeenth Century, The Symposium: Colonialism, Culture, and the Law, 26 Law & Soc. Inquiry 315 (2001). The multiplicity of legal regimes during the Colonial period is central to the claim of Benton *A Search for Sovereignty*. See also Bruce Mann and Christopher Tomlins, eds, *The Many Legalities of Early America*.

which the Puritan legal system came under threat. The antinomians, in their invalidation of the premises of civil law, point to the way in which Native people—specifically the Pequots—and the enslaved could not be assimilated into legal analogy. What I'm calling, following Lauren Benton a "resistance to analogy" in legal terms might also be described as a "resistance to typology" in the Puritans' own hermeneutic terms. Native people, antinomians, and enslaved and self-emancipated Africans each registered the failure of typology. Because typology was the way the Puritans rendered history, this non-assimilability of Indians and Africans into the typological structure suggested the instability not only of the Puritan legal system, but also of Puritan providential project, on which was founded their conception of history.

THE SWAMP OF LAW

The Antinomian Controversy provoked a semiotic crisis for the Puritans.[44] During Hutchinson's second trial, she appears to renege on a claim she made in her initial trial, that grace was inherent in believers. When pressed by accusers on this apparent change of opinion, she responds, "My Judgment is not altered though my expression alters."[45] Burnham glosses the meaning of this assertion in saying that "for Hutchinson words are representations or 'Expressions,' that cannot be equated with 'Judgments,' with the things they represent."[46] The ministers are convinced of her heresy not so much for her

[44] For more on the semiotic dimension of the Antinomian Controversy see Patricia Caldwell, "The Antinomian Language Controversy," *The Harvard Theological Review* 69:3/4 (1976), 345-367.
[45] David Hall, *The Antinomian Controversy 1636-1638,* (Durham: Duke UP 1968), 378.
[46] Michelle Burnham, "Anne Hutchinson and the Economics of Antinomian Selfhood," *Criticism* 39:3 (1997), 348.

beliefs, but "because she has torn signs loose from that which they signify."[47] This severing of sign from signifier destabilizes the Puritan typological system—the very system that asserts that New England is, in fact, a new Promised Land, and that the Indians are, in fact, contemporary Canaanites whose dispossession God has authorized. The very premise of Hutchinson's critique of the orthodoxy's implementation of what she deems a covenant of works in fact rests upon the separation between signifier and signified.

Winthrop also describes the threat of Hutchinson's separation of signifier and signified as the threat of separation between word and spirit. He says in her trial that she "hath very much abused the country" because "the ground work of her revelations is the immediate revelation of the spirit and not by the ministry of the word." "This," he continues, "hath been the ground of all these tumults and troubles." The implications of Hutchinson's revelations upon the orderly world Winthrop believes himself to have built are tremendous. He wants vehemently to maintain that "it is impossible but that the word and spirit should speak the same thing."[48] Antinomianism's primary threat, then, is the disruption of the *nomos* of the word. For the antinomians, word and spirit might not "speak the same thing." This opens up multiple possibilities for spiritual insurgency. If the word is not equivalent to the spirit, to things, and perhaps not even equivalent to the word itself, speech can no longer be believed to be continuous with religious practice.

[47] Burnham, "Economics," 348.
[48] Hall, *The Antinomian Controversy*, 341. For more on this moment of the trial see Burnham "Anne Hutchinson and The Economics of Antinomian Selfhood," 347.

And the word of law can no longer be assumed to be continuous with the speech of the spirit.

Indigenous people, in particular Indigenous insurgents also incited semiotic crisis. When Indians appear in Winthrop's journal, they often appear under the sign of confusion. In September of 1632, Winthrop receives information that "the Indians had some plote against the Englishe."[49] In response, Winthrop sends Captain John Underhill (who would later be one of the leaders of and write the best-known document about the Pequot War) with a battalion of soldiers to guard Boston from potential attack. Underhill, testing his soldiers' competence, "caused an Allarme to be given upon the quarters" which led many of the soldiers and settlers to "[believe] the Indians had been upon us."[50] The presence of even a feigned Indian attack sows great confusion among the soldiers and reveals "the weaknesse of our people, who like men amased knewe not how to behave themselves, so as the officers could not draw them into any order."[51] Winthrop notes that many settlers had been made aware of this warning in advance, "yet through feare had forgotten." The alarm of Indian attack produces astonishment and disorder among the settlers; it stuns them out of reason. The possible attack so destabilizes the community that they fall into chaos. Civic plans for defense evaporate in the face of even the suggestion of Indian-ness. What this suggests is that it's not even just the Indians themselves that are so threatening to the English, rather, it is the thought of them—their semiotic force—that causes stupor and disorder. At this moment, the disorder is not, in

[49] *WJ* 80.
[50] *WJ* 80-81.
[51] *WJ* 80-81.

fact, caused by Native people, but rather caused by a failure of signification—a practice "alarm" is mistaken for a real one.

Imagery of swamps registers this confusion figurally. Puritans during the period often used swamps as a sign for a failure of signification.[52] Swamps also were, quite literally, places where Native people would often go in an attempt to evade English assault.[53] They were places that vexed English sensory perception; in the swamps, it might have been possible to not be found. In Winthrop's journal, Native people also often appear narratively in proximity to swamps. A few entries after Winthrop makes reference to a meeting "to consider of mr Williams Lettre," questioning the legality of the settlement, Winthrop records the occurrence of a "Court" at which "all Swampes above 100 acres were made common &c."[54] This describes a legal mechanism by which swamps are officially designated in a legal regime of property. In order to designate the swamps as common land, the court must have assumed that prior to their decision, these swamps were either private land or, more likely, not yet incorporated into legal designation. By deeming the swamps common land, the court attempts to assert indirect control over them: although the swamps are not themselves private property, in differentiating them explicitly from private property, the swamps are then incorporated into a regime in which the English court gets to determine what land is common and what land is not. But even so, in the minds of the English, the swamps remain non-proprietary

[52] Breitwieser writes: "Mather is not the first Puritan writer to use the swamp as a sign for the confusion of signs: the trope is nearly irresistible in Indian war narratives, because the project of draining swamps was just begun in seventeenth-century Massachusetts, and because the Indians, knowing that the English were reluctant to purue them there, often went to swamps to regroup" (84).
[53] Breitwieser 84.
[54] *WJ* 110-111.

land. What this legal decision acknowledges is the limited control that the English possess over land that they have seized but do not, and perhaps cannot know. Common land, after all, is associated with Indian patterns of land possession, and the Indians' use of land in common, rather than ownership of private property, is part of what the English use to differentiate themselves from the Indians.[55] Deeming the large swamps "common land" also exonerates any individual English person as well as the colonial government for taking responsibility for any actions that might take place in a swamp.[56]

It is not surprising, then, that one of the deadliest battles between Puritan forces and Indians during the Pequot War took place in a swamp. Although the English prove victorious, leaving the battle with "not one of ours wounded" but "slain and taken, in all about seven hundred [Indians]," it is in the swamp that the Indigenous people initially seek refuge and put up a considerable resistance to English attack: "they kept us two hours, till night was come on, and then the men told us they would fight it out; and they did all the night."[57] Winthrop describes the swamp as "most hideous…so thick with bushes and so quagmiry, as men could hardly crowd into it."[58] Although the English come upon this swamp-sanctuary because they are "guided by a Divine Providence," the description of the swamp as "quagmiry" and later "very dark" suggests that Puritan semiotic systems are not functioning properly in this moment. Signification itself has

[55] For a reading of the way Choctaw collective land ownership was threatening to the nineteenth century American government, see Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8:4 (2006), 387-409.
[56] On the relationship between antinomianism and the enclosure of the commons in England during this period, see Peter Linebaugh and Marcus Rediker, *The Many-Headed Hyrda* (New York: Beacon Press, 2013).
[57] *WJ* 227.
[58] *WJ* 226-27.

been obscured; it's gone dark. The Indians' ability to live alongside the swamp (Winthrop notes that nearby "they had twenty wigwams"), to navigate it, and to use it as refuge and site of defense not only for male soldiers but for "about two hundred" women and children, threatens the English control over the land. In the swamp, the Indians have the geographic advantage. They know how to defend themselves, "coming up behind the bushes very near our men, and shot many arrows into their hats, sleeves, and stocks." This altercation takes place at the locus of the confusion of signs. Winthrop can only justify the Native military advantage and the fact that they are capable of making homes in a place that the English can perceive only as "quagmiry" by claiming this space as a space of chaos. In this instance, the Puritans find themselves victorious over this chaos—the male leader of the Native people survives, along with his wife and children, and so "yielded" to the English, conceding defeat. But this is not the end of the Puritan orthodoxy's encounter with the quagmire, which will prove to further destabilize their legal authority over the coming months and years.[59]

The "quagmiry" battle, which came to be known as the Fairfield Swamp Fight and took place on July 13, 1637, was not the only instance of Native people registering to Puritans as formal and literal confusion. Just a few months earlier, the Puritans launched an attack on a Pequot fort in what came to be known as the Mystic Massacre. Captain John Underhill documented the massacre in his "Newes from America" and in a famous accompanying illustration which, I argue, works desperately, but nonetheless fails to

[59] On the way swampland, specifically in Florida, vexed English ideologies of colonization and property, see Michele Currie Navakas, *Liquid Landscape* (Philadelphia: University of Pennsylvania Press, 2018).

make order out of the quagmire-y status of the Indians. The violence of the massacre was so profound that it shocked many of the young English soldiers. Similar to the "amazement" caused by the fake alarm discussed above, the massacre doubles up on the disorder that the Pequots incite. Underhill writes: "Great and dolefull was the bloudy sight to the view of young souldiers that never had beene in Warre, to see so many soules lie gasping on the ground so thicke in some places, that you could hardly passe along."[60] The ostensible subjects of this passage are the novice English soldiers who are overwhelmed by the sight of such a bloody massacre, and the object of their sight are the dead or dying Indians who "lie gasping on the ground…" But reading this in the context of Underhill's earlier false alarm, which leads even the soldiers to become "amased" and confused, the syntax of the passage is such that one could read the "soules" on the ground as those very same soldiers, who have become so stupefied by the "bloudy sight" that they have collapsed. The massacre has caused syntax, too, to collapse into itself. In the face of Indian opposition, subject and object cannot be grammatically held apart. At this moment, Underhill attempts to differentiate between Indian and English, as well as between living and dead, but the ontological distinction between what is alive and what is not continuously collapses. The Indians gasping are suspended somewhere between aliveness and death, somewhere between being themselves and being the very soldiers who are in the process of killing them. Time hovers in the moment of the dying breath,

[60] John Underhill, *Newes from America* (1638), Paul Royster ed., *Electronic Texts in American Studies*, Paper 37, 35.

the gasp moving breath between the Indians and the soldiers, materially saturating disorder with its fog.

This experience of confusion between who was Pequot and who was not during the Mystic Massacre was not limited to Underhill. In Winthrop's account of the event in his journals, he writes: "Divers of the Indian friends were hurt by the <English> Pequods, <because they had not some mark to distinguish them from the Pequods, as some of them had>."[61] The syntax of the sentence duplicates the confusion that it references. During the massacre, the English soldiers apparently could not differentiate between the Pequots and the Indians who were allied with the English, because those differences are not marked by signs. The English fail to recognize different groups of Indians as internally differentiated, even when that differentiation is the difference between ally and enemy. "Indianness" is an abstractly racialized quagmire, for the English. This absence of internal differentiation, we will see later, is also a feature of Winthrop's readings of antinomianism. But in this sentence, not only does Winthrop's internal differentiation between Indians fail, he also stutters in his differentiation between English and Pequots. It appears to be inconclusive whether it was the English or the Pequots themselves who wounded the English allies—"<English>" and "Pequods" are adjacent in the sentence, suggesting by way of proximity that perhaps the firm distinction between "English" and "Pequot" cannot be held up so firmly, particularly in the face of the failure of signs.

[61] *WJ* 220. The note from the journal's editors accompanying this sentence reads in part "It is not clear why JW altered this sentence to make it appear that the Pequots, rather than the English, had injured the 'Indian Friends.'" (220n96).

The illustration that accompanies *Newes from America* further connects the Pequot War and antinomianism by way of semiotic crisis. In the illustration, Underhill attempts to clearly specify who is Indian and who is English; who is allied and who is not, but as we have seen this distinction cannot be held up quite so clearly in the language surrounding the event. The image depicts a series of concentric circles surrounding the burning Pequot wigwams and surrounded by an orderly array of hills and trees. The outermost circle depicts a ring of identically rendered Narragansetts and other allied Indians, armed with bows and arrows. Inside this ring is a circle of identical English soldiers, who surround a ring of pointy Pequot fortifications. Within the fortress, in areas denoted as "The Indians' Houses" and "Their Streets," we see both English and Narragansett soldiers attacking unarmed Pequots, between rows of burning houses. The existence of these Indian houses and streets already serves to challenge the English claim that the Indians did not occupy permanent settlements. The legal justification for conquest is yet again revealed to be internally incoherent.

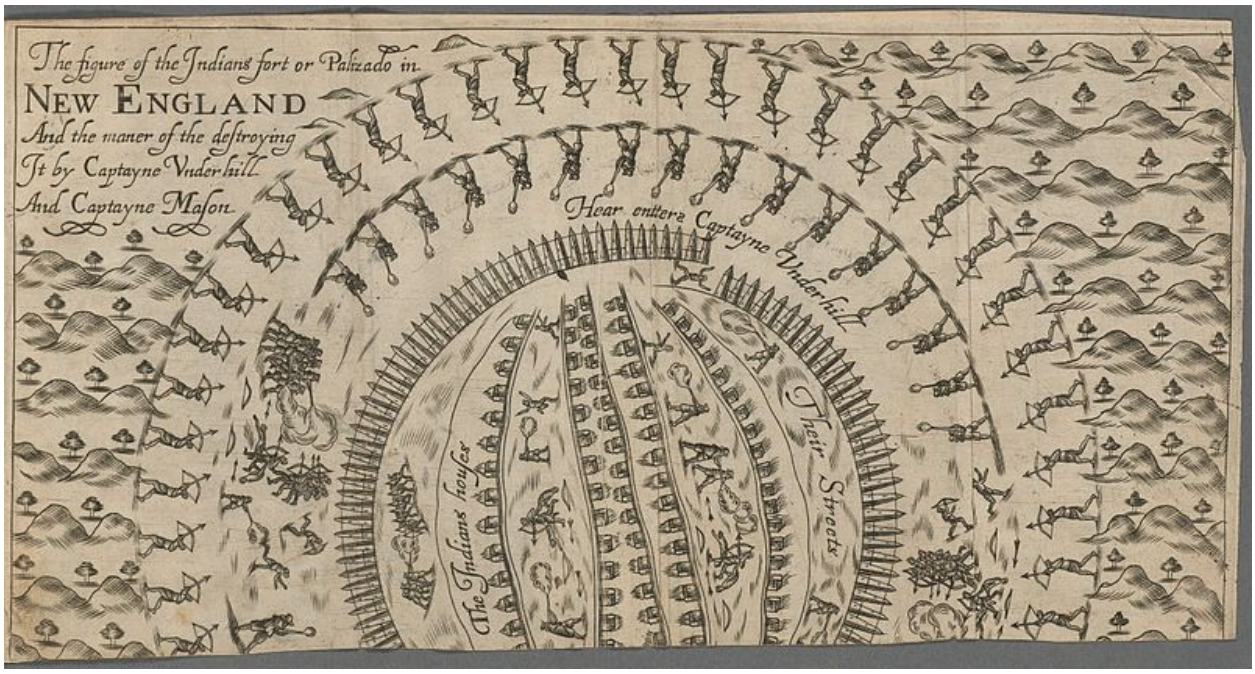

Fig 1: Illustration from John Underhill, *Newes From America* 1638. STC 24518, Houghton Library, Harvard University.

Kibbey has argued that the violence against Pequots is in fact metonymic for violence against antinomian women: the English massacre the Pequots in an act of symbolic violence against antinomian women. Though, for the most part, I agree with this reading, I read the relation between the Pequot War and the Antinomian Controversy as not only metonymic. Whereas a metonymic link would suggest that antinomianism and Indian-ness are linked figuratively, I'm suggesting that they are linked through their common incitement of legal, as well as semiotic crisis. Both events bring into being a kind of ruination of the figure, or figuration in ruins. In the wake of the Mystic Massacre, the Pequot fort is in ruins: the houses have quite literally been burned, reduced to ash. But Underhill insists upon representing this visually as an ordered diagram. But whereas visual figuration enables Underhill to hold this ruination momentarily at bay, to freeze

time at the edge of disorder, linguistic representation cracks and ruptures under the weight of English (legal and figural) violence and Pequot resistance.

REASONS TO BE CONSIDERED

One of the effects of the Pequots' disruption of Puritan figuration is that this unraveling of representation also unraveled Puritan legal justification for the conquest and seizure of Indian land. The legal justifications deployed by the Massachusetts Bay settlers for the seizure of land they well knew was occupied were various, however, none of these justifications were fully adequate for the Puritans to explain to themselves their right to Indian land. When the settlers reached the "New World" and realized their dependence upon its inhabitants, they struggled to establish exactly what it might mean to own and tend to land, and who was entitled to do so. For the English settlers, law and territory were constitutively linked. Property law was at the center of seventeenth century English law. The way a polity legally administered property ownership and inheritance was a marker of whether or not that place could be counted as "English."[62] When the English landed in Massachusetts Bay, the first thing they did was establish property. They built fences and houses, and cultivated gardens, following the Biblical command to "subdue and replenish" the land.[63] By establishing private property, they believed they were establishing their right to the land, and by using tools and fertilizer upon these gardens they marked both their entitlement to that land that they tended and their

[62] Mary S Bilder, *The Transatlantic Constitution* (Cambridge: Harvard UP, 2004), 33.
[63] See Patricia Seed, *Ceremonies of Possession* (Houston: Rice UP, 1995); Genesis 1:28.

humanity. The Indians, they thought, did not use tools, did not fertilize, and so were not fully human, and in turn not capable of land ownership in the English sense. Because of this, the settlers' reasoning goes, it was legal for the English to carry out God's promise by settling and cultivating the land which the Indians had "so long usurped upon."[64]

The legality of Puritan settlement in New England was never undisputed. Before the Puritans even set sail for New England, John Winthrop produced a document justifying the settlement of the incipient colony. Winthrop was well aware of the "objections" raised against the English establishment of a colony in "that land, which has been so long possessed by others."[65] Trained as a lawyer, Winthrop was prepared with a series of reasoned responses that justified the colonial endeavor to any potential detractors. The "Natives of New England," he explains, have only "natural right," not "civil right" to the land, because "they enclose no land, neither have they any settled habitation." In other words, it was legal for the English to take and enclose Native land because the Indians merely *used* the land, they did not *own* it.[66] In the eyes of the English, because Native people did not appear to have permanent settlements, and because they deployed neither fertilizer nor ploughs the land was not *possessed* by them, and therefore not controlled by civil law.[67] Winthrop emphasizes the Native people's *use* of land as

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[64] *Winthrop Papers Volume III* (Boston: The Massachusetts Historical Society, 1943), 148-49.
[65] Winthrop, "Reasons to be Considered for the Plantation in New England" (1628), *The Winthrop Society*, 2015.
[66] Much has been written about the association between cultivation of land and the status of one's humanity. Several decades after Winthrop wrote this treatise, John Locke asserted that it was the cultivation of land that made humans human, and so those who did not cultivate land in a recognizable way could not be considered fully human.
[67] See Seed, *Ceremonies*. This distinction between use, also called "usufruct" and ownership is key to the theorizations of the distinctions between English and Native relations to land. Patrick Wolfe writes: "Through all the diversity among the theorists of discovery, a constant is the clear distinction between dominion, which inhered in European sovereigns alone, and natives' right of occupancy, also expressed in

distinct from possession, thereby making the land legally available for Puritan settlement. He writes: "So if we leave them sufficient for their own use, we may lawfully take the rest, there being more than enough for them and for us."[68]

Winthrop's apparently secular justification for this land seizure is reinforced by a scriptural analogy. Winthrop compares the land he plans to settle to the "out parts of the country [Abraham] dwelt upon…and took the fruit of his pleasure."[69] When Abraham wandered in the lands of the Canaanites, claims Winthrop, he needed not pay for food, water, or land, because those lands, like those of the New England Indians, were not cultivated. But when Abraham went to the enclosed and cultivated "field of Mackpelah" which, according to Winthrop, Ephron the Hittite owned by civil right, Abraham "could not bury a dead corpse without leave."[70] In this early document, Winthrop typologically reads the Indigenous people as Canaanites and himself and his fellow settlers as Abraham. The displacement of Native people is the typological fulfillment of the Israelites' claim to the Promised Land. The scriptural semiotics appear here to justify settlement. This understanding, however, requires a faith in the parallelism of divine and civil law. Although Winthrop will continue to posit a figural linkage between Native people and the Canaanites, and will continue to attempt to use the law of scripture to

terms of possession or usufruct, which entitled natives to pragmatic us (understood as hunting and gathering rather than agriculture) of a territory that Europeans had discovered." See Wolfe, "Settler Colonialism and the Elimination of the Native," 391.

[68] Winthrop "Reasons." For a discussion of other English and Spanish justifications for colonization, see Gesa Mackenthun, *Metaphors of Dispossession* (Norman, OK: University of Oklahoma Press, 1997). For another reading of Winthrop's characterization of Native people's relation to land in "Reasons," see Cristobal Silva, *Miraculous Plagues*.

[69] Winthrop "Reasons."

[70] Winthrop "Reasons."

justify land claims, both the functionality of the typological analogy and the faith in legal parallelism are short lived. When Winthrop comes into actual contact with Native people, the adequacy of this figuration is thrown into question.

The Abrahamic covenant, in which God grants Abraham and his descendants "all the land which thou seest…forever" (Gen 13:15), forms a significant basis for the Puritan claim to land. The language of this covenant bears a striking similarity to the secular legal language of the Massachusetts Bay Colony's charter (1629), an early indication of the way in which the Puritans both believed and described the congruity between religious and civil law. Winthrop invokes this divine covenant: "The whole earth is the Lord's garden, and He hath given it to mankind with a general commission (Gen. 1:28) to increase and multiply and replenish the earth and subdue it, which was again renewed to Noah."[71] As in English civil law, the granting of property is central to the foundation of the Biblical covenant. Land is as foundational to Biblical law as it is to civil law. The Abrahamic covenant grants land to the Israelites across nearly infinite space and for nearly infinite time: "And the Lord said unto Abram…Lift up now thine eyes, and look from the place where thou art northward, and southward, and eastward, and westward:/For all the land which thou seest, to thee will I give it, and to thy seed for ever./And I will make thy seed as the dust of the earth: so that if a man can number the dust of the earth, then shall thy seed also be numbered" (Gen 13:14-16). The Puritans saw themselves not only as planters, but also as the planted; they considered themselves not

[71] Winthrop, "Reasons to be Considered"

only Abraham's seed, but the dust of earth.[72] The promise carries with it the legality perpetual of conquest. God grants this land to Abraham and his people regardless of who else is living, has lived, or will in the future live there. Similarly, the charter grants not only all the land the settlers can see, but also all the land and its accompanying exploitable resources that they can imagine, within a range of space delineated by abstract measurement. The charter begins by describing the earlier Plymouth colony, which was granted:

> for the planting, ruling, ordering, and governing of Newe England in America, and to their Successors and Assignes for ever all that Parte of America, lyeing and being in Bredth, from Forty Degrees of Northerly Latitude from the Equinoctiall Lyne, to forty eight Degrees Of the saide Northerly Latitude inclusively, and in Length, of and within all the Breadth aforesaid, throughout the Maine Landes from Sea to Sea…[73]

The sole limitation on this seemingly boundless grant of territory ("throughout the Maine Landes from Sea to Sea"), is that the English cannot take over land "possessed or inhabited, by any other Christian Prince or State."[74] This grant of property is wholly abstract and speculative: the English need not use the land in order to own it, like Abraham, they need merely to apprehend it for it to be theirs. The charter also grants power for both jurisdiction and sovereignty, for "planting, ruling, ordering, and governing." The English were granted both *imperium* and *dominium*: they both had the power to enforce the laws (ordering, governing), and ownership and sovereignty over land (planting, ruling). The charter was written under the legal assumption that the

[72] Seed, *Ceremonies of Possession*.

[73] Massachusetts Bay Colony Charter, Accessed via *The Avalon Project*, Yale University Law School, avalon.yale.edu.

[74] Massachusetts Bay Colony Charter

Indians could only have *dominium* "if they occupied fixed habitations, just as the English settlers did," which at this time the English believed they did not.[75] Finally, because the Puritans believed they were founding a New Canaan, they would have spiritual, as well as civil authority over the land. The Puritans are granted the land by way of a double covenant: the Abrahamic covenant, or the Biblical justification; and the Royal covenant, or the civil justification.[76]

Though Winthrop's first "Answer" to the objections to colonization would suggest that he was quite cognizant of the presence of Native New Englanders on the land he was setting out to appropriate, his third "Answer" points to a different, and seemingly incommensurate rationale for settlement. He closes his response to the first "Objection" with: "God hath consumed the natives with a great plague in those parts, so as there be few inhabitants left."[77] It is God's will that the Native people have been killed by disease, leaving their land free for Puritan seizure and settlement. Here anticipating what would later become known as the doctrine of *terra nullius*, Winthrop posits the apparent emptiness of the land as justification for its seizure.[78] The coexistence of two different legal justifications, one of which assumes the presence of Native inhabitants and the other of which assumes their disappearance, points to an inconsistency in legal logic

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[75] James Muldoon, "Discover Charter Conquest or Purchase" in *The Many Legalities of Early America*, Christopher L. Tomlins and Bruce H. Mann eds. (Chapel Hill, NC: UNC Press, 2001), 46.
[76] For more on *imperium* and *dominium* see also Muldoon, Pagden, "Law, Colonization, Legitimation, and the European Background" in *The Cambridge History of Law in America Vol 1*, Michael Grossberg and Christopher Tomlins, eds. (Cambridge: Cambridge UP, 2008), 1-31.
[77] Winthrop "Reasons."
[78] Anthony Pagden notes that though the doctrine of *terra nullius* comes from Roman Law, it didn't re-appear in English until the nineteenth century. For a clear and detailed account of the various possible justifications the English deployed for the seizure of land see Pagden "Law, Colonization, Legitimation, and the European Background."

that would, upon Winthrop and his compatriots' arrival in Massachusetts deepen into a full-blown legal crisis. Actual contact with Native New Englanders and actual observation of their modes of land usage, cultural, legal, and religious practice threw the Puritans' civil-legal, if not their religious-legal justifications for colonization, into crisis.

SETTLER SOVEREIGNTY

It was crucial for the Massachusetts Bay governors to establish sovereignty in order to ensure the obedience of their polity. The colony established itself based on a settler colonial logic.[79] From the beginning, it thought of itself as a colony based in place. Although the Puritans ideally intended to eventually return to England to "purify" the church, the goal of the colony was not to exploit the land for resources and turn a profit, as was the intention of other ostensibly administrative colonies. Rather, the ideology of Massachusetts Bay was distinctly *settler* colonial. The colonial government's legitimacy was located in its sovereignty over the land. Describing both South African and North American colonization, Lorenzo Veracini describes a "settler political entity" as one that "understands itself as endowed with an inherent law-making capacity emanating from the very possibility of moving collectively across space."[80] Settler colonial polities, Veracini argues "claim both a special sovereign charge and a regenerative capacity."[81] Settler coloniality depends upon the establishment of sovereignty by way of the interpenetration

[79] For defining characteristics of settler colonialism, see Lorenzo Veracini, *Settler Colonialism* (London: Palgrave MacMillan, 2010).
[80] Veracini 64.
[81] Veracini 3.

of law and land. To establish settler sovereignty, it is also critical that the settler polity establish self-governance on the "new" land, distinct from the power of the metropole.

Winthrop's much-studied speech, "A Model of Christian Charity," is concerned with establishing the terms of this sovereignty. Couched in the language of the need for mutual love and dependence, this speech is in fact about defining the terms of the covenant created not only between God and the settlers, but between the colonial governors and their subjects, and those governors and the land. Because these Puritans believed the status of their salvation was pre-determined and not, technically, dependent upon their behavior on earth, an incentive was necessary to ensure that the colonists adhered to the laws of civil government so as to maintain order and to ensure the success of the new colony. Winthrop presents this need for law-abidance in the language of mutual interdependence: the "community" must be "as members of the same body," joined together by love. This body, though a single unit, maintains internal differentiation. Some members of the body may at times be suffering, some may be rich, and some may be poor. But like "the most perfect of all bodies: Christ and his Church," the parts of this body are "united" and "contiguous" so as to "become the most perfect and best proportioned body in the world."[82] The parts of this body, namely, the members of the community, are joined together in a synchronous whole.

This community in which "every man might have need of each other, and from hence they might be all knit more nearly together in the bonds of brotherly affection," constitutively excludes participation by Indigenous New Englanders—people who, the

[82] Winthrop, "A Model of Christian Charity" (1630), *The Winthrop Society*, 2015.

settlers believed, were governed only by natural law, not civil or the law of grace. Winthrop brings up this distinction in order to "teacheth to put a difference between Christians and others." Natural law, he writes, "would give no rules for dealing with enemies, for all are to be considered as friends in the state of innocence." The Indians, then, cannot possibly rebel against English colonization, because their law does not allow for the conceptualization of enemies. The English, however, follow the Gospel which "commands love to an enemy." What differentiates the English from Indians, in Winthrop's account, is the way they conceptualize the relations between groups: the Indians love all equally because they do not differentiate internally between friends and enemies, but the English love all despite that internal differentiation.

The English are "regulated" by a "double law," which also sets them apart from the Indians, who are regulated by only the singular law of nature. Not quite ten years later, antinomianism will come to threaten this premise of the "double law" and, as a result, threaten the settlers' justification for their right to own the land. According to Winthrop, the English are governed by both "the law of nature" and "the law of grace (that is, the moral law or the law of the Gospel..)" In contrast to the settlers, who have civil right, because they inhabit fixed dwellings, as well as divine right, because the land was given to them by God, the Indians, "have no other but a natural right to those countries." It is crucial that the Indians have only the singular natural right, and "no other." The mutually interdependent relationship amongst the settlers is premised upon belonging to a coherent legal system, which cannot tolerate challenges to its doubleness. Antinomians, however, split the "law of grace, (that is, moral law or the law of the

Gospel)" into multiple parts, confusing the premise of the "double law" that differentiates the English legal right to land from the Indian one, and so allows for the seizure of that land. By refusing to dignify moral law, and only adhering to the law of grace, Hutchinson and her antinomian followers not only sever the civil from the religious, by experiencing God through an immediate revelation, which bypasses the authority of the religious officials, who were also the governors, but upset the very foundation Puritan sovereignty in the New World—the sovereignty of double law. This threatens not only the governance of other English settlers, but the English establishment of sovereignty over Indigenous people and their land. One pillar of the "double law" has splintered—the parts of Winthrop's parenthetical phrase, moral law and law of the Gospel, joined by an "or," are no longer in such a clear relation to each other. Hutchinson dissolves both the parentheses and the conjunction. As a result, the parts of the legal body can no longer clearly and contiguously comprise a perfect whole.

My reading of antinomianism as posing a challenge to the legal justification for Puritan seizure of Indian land is not merely based on a symptomatic reading of Winthrop's legal anxieties. Religious dissidents quite literally challenged the Puritan justification for the seizure of land. However, the grounds for this challenge was not, as I'm arguing is the case for antinomianism, to reject the very premise of law, but rather to attempt to incorporate Natives into an English regime of property law. Nonetheless, Winthrop's response to such challenges display the precarity of his natural-law based justification for colonization. Roger Williams, who was not precisely antinomian but did have prominent disagreements with Massachusetts religious orthodoxy and, like

Hutchinson, was banished to Rhode Island, explicitly questioned the legitimacy of the Puritans' title to land. Williams asserted that reason for his banishment was his assertion that: "That we have not our Land by Pattent from the King, but that the Natives are the true owners of it, and that we ought to repent of such a receiving it by Pattent."[83] Williams challenged Winthrop's conception that Native people had only natural and not civil right to their land by suggesting that the colonists should have purchased the land on which they settled, or at least secured some form of legal right to it. Winthrop is aghast at Williams's challenges and writes a detailed refutation, anticipating the way the war against the Pequots would emerge as a response to the threat the antinomians posed to the English constitution of law that was based on land.

PROVIDENCE ISLAND

The Pequot War and the Antinomian Controversy were not the only conflicts threatening Puritan governance in the "New World" in the late 1630s. The Puritan colony of Providence Island, located about one hundred miles off of the coast of contemporary Nicaragua, which had been founded in 1630 and backed by many of the same English investors who backed the Massachusetts Bay project, was experiencing a crisis of its own. The colony was struggling to remain profitable and to protect itself from invasion by the Spanish. Additionally, the white settlers were feeling threatened by the growing number of enslaved Africans on the island, some of whom had run away, often jointly with English servants and captive Indians, and formed maroon communities in hills of the

[83] Roger Williams "Mr Cottons letter lately printed, examined, and answered," (London, 1644).

island's interior. By 1638, enslaved Africans outnumbered English settlers on the island, and on May 1st of that year, they staged a rebellion—the first slave rebellion in an English colony.[84] Antinomianism also came to be a way the orthodoxy articulated their frustrations with Black insurgency's resistance to figuration.

Winthrop, fierce opponent of Hutchinson and the antinomians, was in correspondence with officials on Providence Island. In fact, following the Fairfield Swamp battle in late July of 1637, seventeen Pequot captives—fifteen "boys" and two women—were sent to Bermuda, presumably to be enslaved, but William Peirce, who had been transporting them, made a mistake in navigation and instead "carried them to Providence Isle."[85] Providence Island is, for Winthrop, the typological fulfillment of the confusion associated with Native people, but the material realties of the island continually come to disrupt the equivalences upon which typology is based. The captives who are sent there are captured during the swamp battle, and it is a result of Peirce's "missing" Bermuda—a failure of understanding the correct pattern of land in water—that the captives end on Providence Island. The cryptic geographies of the swamps function as a microcosm for the cryptic geographies of the Atlantic and its many islands, which they are attempting to control. The ocean vexes figuration, this time in the form of confused travel, or perhaps failed mapping.

On the Providence Island side, these Pequot captives were also received with a degree of semiotic confusion and associated with insurgency, as well as with blackness.

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[84] For comprehensive accounts of events on Providence Island, see Karen Ordahl Kupperman, *Providence Island* (Cambridge: Cambridge UP, 1993) and Alison Games, "The Sanctuarye of our Rebel Negroes" *Slavery & Abolition* vol. 19 no. 3 (1998): 1-21.
[85] *WJ* 277.

According to historian Karen Ordahl Kupperman, "The Pequots sold into slavery on Providence Island appeared in the company records only once as 'the Cannibal Negroes brought from New England.'"[86] The letter in which they were mentioned was sent from the Providence Island Company to the colonial governors, warning the governors to be aware of the possibility of the captives fomenting rebellion, a stereotype of New England Indians at the time.[87] Alison Games argues that the Providence Island Company investors would have called the Pequot captives "Negroes" because though the investors would likely not have seen Indigenous New Englanders, they would have been seen Africans enslaved in England. These Pequot captives were, to the English, "unequivocally, slaves," suggesting a conflation between denotation of racial difference and of enslavement.[88] In terming the Pequots "Cannibal Negroes," we see the English attempting to put a fixed named on something they do not have a language for, that is, Native New Englanders. It is an attempted deployment of analogy. Although no concrete evidence exists that these captives took part in the May 1st insurgency, their reputation for rebelliousness and their status as enslaved persons, and their racial designation as "Negroes" suggest that it is entirely possible that these Pequot captives, in alignment and solidarity with enslaved Africans, would have rebelled as well. The enslaved Indigenous people and Africans might have strategically taken advantage of the English slippage in differentiating between the two constituencies and allied with each other to better evade English detection.

[86] Karen Ordahl Kupperman, *Providence Island* (Cambridge: Cambridge UP, 1993), 178.
[87] Margaret Ellen Newell, *Brethren by Nature* (Ithaca, NY: Cornell UP, 2015), 49.
[88] Games "Sanctuarye" 7.

At this time, English colonists would likely have been anxious not only about the legality of land seizure, but also about the legality of slavery and the possibility of slave insurrection. In 1637, there were no explicit, written-down laws about slavery in Massachusetts Bay. John Cotton had been commissioned to draft a code of laws, but these laws weren't actually put into effect until 1641, when the Massachusetts Body of Liberties stated that "There shall never be any bond slaverie, villinage or Captivitie amongst us unles it be lawfull Captives taken in just warres, and such strangers as willingly selle themselves or are sold to us."[89] In 1637, however, it was not written into law who was allowed to be enslaved, for what period of time, or whether the children of the enslaved would inherit that status. Nonetheless, Massachusetts Bay colonists, including John Winthrop himself, were consistently enslaving Pequot captives, and Providence Island planters were consistently capturing and enslaving Africans, as well as Indians.[90] The status of African slavery was also ambiguous on Providence Island. Although upon the colony's founding most of the labor was performed by English servants, company investors were in favor of switching the labor force to African slavery, on account of its being more profitable, writing "Negroes, being procured at cheap rates, more easily kept, and perpetually servants."[91] But at the same time, English planters feared being outnumbered by Africans. In 1637, English planters abandoned the neighboring Association Island because of "the great number of Negroes."[92] Fearing a similar event on Providence, the Company forbade any further admission of Africans

[89] Massachusetts Body of Liberties statute 91, 1641.
[90] Newell, Kupperman, Games.
[91] Games 10.
[92] Letter to Gov and Council of Providence, 29 March 1637, CO 124/l, f. 106 verso-f.107 qtd in Games 12.

onto the island, until it could be ensured that they would not outnumber the English, "knowing how dangerous they may be if you should be assaulted with an enimy or in case they would grow mutinous."[93] As a result of this prohibition, the Providence Island settlers resorted to capturing Africans from Spanish ships, rather than purchasing them themselves.

The rebelliousness of Providence Island maroons and runaways, of Pequots and other Native people in Massachusetts, of enslaved Africans in Massachusetts, and of Hutchinson and the antinomians all de-stabilize a conception of law and of personhood that is based on possession. As such, each of these site of rebelliousness was threatening to the burgeoning English colonial administration, and offered a way of thinking about law, land, and personhood that was not dependent upon ownership or sovereignty and so offered a performance of freedom under conditions of English colonization and enslavement.

Returning to the passage from Butler's journal cited at the beginning of the chapter, in which he encounters the burned cabin of some maroon, Butler registers these maroons as antinomian in their relation (or non-relation) to property. The syntax, "only one of their cabins was found upon the top of a high Hill; and burned" is unclear as to whether the maroons burned their own cabin to avoid detection or if the English burned the cabin themselves. If they did burn their own cabin, the English might read this as destructive, but for the maroons, this apparent destruction would be in the service of protection and preservation. If Butler himself burned the cabin, we could read this as a

[93] Letter to Gov and Council of Providence, 29 March 1637, CO 124/l, f. 106 verso-f.107 qtd in Games 13.

kind of metonymic act of destruction, or an emphasis upon how he would have considered the burning of the maroons' cabin as a destruction of property, which would then destroy their livelihood. But that act would not take into account that the survival of this community is not reliant on ownership of property. What the maroons ("rebel negroes") and the insurgent Indians had in common is the way in which they used space to vex English perception, without recourse to any conception of property. This insurgent relation to space is wholly non-proprietary. And if, as Melville states in the epigraph "possession is the whole of the law," this non-possessive occupation of land disregards a conception of civil law founded upon or defined by property ownership.

On March 30th, 1639 Nathaniel Butler writes in his journal about a plot of land he's recently granted to some newly arrived planters. He writes: "I granted a Plantation to some men, allowing them twelve acres a Head at a place named the [Palmitoe Vally]; and I made choice of this place because it was the Sanctuarye of our rebel negroes; yt soe by clearinge of itt I might force them from their free-hold."[94] There are a number of terms operating in this brief entry that are useful to my argument: first, "rebel negroes," then "free-hold," and finally sanctuary."

Butler's description of the land the maroons were occupying as a "free-hold" places the land under the rubric of legalized property ownership. Although Butler most likely was using this term ironically, mocking the maroons who lived there, by calling the land a "free-hold" he also implies that this land is in fact alienable. Freehold is a kind of fee simple ownership of immobile property that grants the owner absolute right to

[94] 30 March 1639, Journal of Nathaniel Butler, Sloane 758 B.L.

administer and to sell the land, in contrast to fee tail land ownership, in which the heritance of the land is restricted to particular individuals or groups. By calling this land a freehold, Butler implies that the maroons could have in fact sold him the land, or at least transferred it legally from their ownership to his. This is similar to a kind of logic deployed by colonists on the mainland with regard to transfer of land from Indian to English ownership. Maria Josefina Saldaña-Portillo explains that the English entered into legal contracts over land with the Indians. That the Indians could enter into these legal contracts and sell their land within an English framework of property allowed the English to ascribe humanity to the Indians, thereby making the transfer of land legal and between equals, rather than outside of the law, or justified only by conquest. These contracts, however, were often deliberately fraudulent. The contract, she writes, "became a concept metaphor for 'just practice,' obfuscating its unjust ends. Moreover, the performance of the contract itself was a mechanism for imputing humanity to the Indians in their capacity first to own property and then to freely alienate it."[95] But what was so threatening to Butler about the maroons was the way in which they related to land through use, rather than through ownership. Recalling his description of the cabin on top of the hill which was burned, we can imagine that Butler considered that the maroons were not making "productive" use of the land they were inhabiting—they were burning their dwellings instead of planting, like Winthrop's description of the Indians as "usurpers" on God's land. So Butler's beliefs about the maroons' relations to land use, like Winthrop's beliefs about the Indians', was internally contradictory. They both held stake in believing that

[95] Maria Josefina Saldaña-Portillo, *Indian Given* (Durham: Duke UP, 2016), 58.

these constituencies both did and did not relate to land through law and ownership. The maroons' non-proprietary occupation of land dramatizes the English settlers' own lack of legal right to the land, their own complicated and contradictory *nomos*.

It's significant that Butler describes this plot of land that he's designated as a plantation for some new white settlers as the "sanctuary" of the "rebellious" enslaved Africans. The meaning of the term "sanctuary" exceeds Butler's ironic intentions. At this moment, "sanctuary" would have referred both to a "place set apart for the worship of god" (Christian or heathen) as well as "A church or other sacred place in which, by the law of the mediæval church, a fugitive from justice, or a debtor, was entitled to immunity from arrest. Hence, in wider sense, applied to any place in which by law or established custom a similar immunity is secured to fugitives."[96] A sanctuary, then, was a legal term for a place where fugitives could seek refuge. At least until 1625, English common law dictated that if "a fugitive charged with any offence but sacrilege and treason might escape punishment by taking refuge in a sanctuary, and within forty days confessing his crime and taking an oath which subjected him to perpetual banishment."[97] This civil law bears a resemblance to the biblical designation of the Cities of Refuge, in which a person who had killed another "unawares and unwillingly" could avoid punishment and revenge "until he stand before the congregation for judgment, and until the death of the high priest that shall be in those days" (Joshua 20:2-6). A sanctuary, like a City of Refuge, is a legally designated place in which the law is not enforced. It is a space that makes possible

[96] *OED* "sanctuary."
[97] *OED* "sanctuary."

temporary invalidation of the law from within the law, a space where grace takes precedence over civil law. In a sanctuary, one can access God's forgiveness, regardless of one's civil legal status. It seems that Butler, in a sense, knows this. He knows that the maroons' community—their use of land, their location of refuge—is enacted at the very limits of the law.

In his journals, Butler distinguishes between the Africans he employed (who he calls "my negroes") and others who had run off and found sanctuary in the woods ("rebel negroes"). But I want to suggest that this distinction that Butler attempts to uphold -- between the Africans who were "rebellious" and those over whom he could assert propriety—doesn't quite obtain. We might assume, based on both Butler's writings and on what Fred Moten calls the "knowledge of freedom"—the idea that the enslaved would have *known* freedom even if they had not yet experienced it—that *all* of these Africans, most of whom had been first captured by Spanish, and then captured by the English from Spanish ships, were rebellious. They all knew freedom. Even the people who Butler thought were "loyal" to him were, in all likelihood, not. Butler's confidence that the proprietary "my" indicated these particular Africans were not among the "rebellious" was most likely a fantasy borne out of the knowledge and anxiety that even "his" enslaved people were constantly plotting escape.

When Butler writes about "his" Africans, it is mostly to describe them going into the woods to collect timber with which to build carriages to hold cannons to defend the island. (In fact much of Butler's day to day life is occupied with preparations for and inspections of the building of these carriages, suggesting that infrastructure for defense

was a paramount concern). He writes for example, "I went early this moreingee to the Baye of the Harbor to vewe some parcells of Timber brought downe thether out of the woods by my negroes for the makinge of more new carriages for our Ordinance:" and two weeks later, "I was att home all this daye and employed all my men negroes, in fetchinge downe of Timber out of the woodes for the makeing of more new Carriages."[98] But I want to suggest that in these trips to the woods, these people who Butler wanted to assume were loyal in fact likely came into contact with the so-called "rebel" people who had already escaped and were living in the woods. They may have exchanged information and resources with those who were living in the "sanctuary." They may have collaborated in order to plot their own escape. This quiet act of rebellion could take place under the radar of Butler's consciousness. In the sanctuary of the woods, the proprietary "my" loses meaning, loses enforcement. In the sanctuary of the woods, everyone can be a rebel.

I read these expeditions into the woods for the "fetching down of timber" by way of J. Kameron Carter and Sarah Jane Cervenak's conception of the "Black outdoors," which describes spaces for a spiritual, exuberant, and decolonial living of Black life. The Black outdoors is an alternative to the proprietary. An alternative to settler ways that divide and enclose. It gestures to "other modalities of life that coalesce as holding but not having."[99] Even though the enslaved were sent to the woods to gather timber to turn into accoutrements for weapons, to turn woods into wood into instruments for defense, we

[98] 30 April and 30 May, 1639, Journal of Nathaniel Butler, Sloane 758 B.L.
[99] J. Kameron Carter and Sarah Jane Cervenak, "The Black Outdoors," *Humanities Futures: Franklin Humanities Institute*, 2017.

might imagine that in the woods, the enslaved found refuge—sanctuary—from the logics that turned both their persons and these woods into property. The woods offer a space in which proprietary logics are suspended. The wood, then, was not yet timber.

We know these people were rebellious because Butler often notes their attempts to run away, frequently "in" or "with" "one of our boats." He writes that "All this daye I stirred not abroade from my house, but dispatched a great deale of Bussinesse att home...in the examinations of thoes fellows that had plotted a runne-inge awaye in one of our Botes; who confessinge the fact wer committed to prison some of them; and the rest apprehended."[100] He also writes about escapes made by servants and enslaved people of the Reverend Hope Sherrard, saying "two negroes of his came awaye in a Bote."[101] Butler only writes, here, of those runaways who were caught. But I read a fugitivity in these people that cannot be captured: neither literally by Butler nor figuratively by his account. They escape being pinned down, being settled or propertized, even in Butler's writing. Theirs is a fugitive being never wholly capturable by law. That they're running away with boats suggests a fugitivity that extends beyond marronage. They were planning to leave the bounds of the island. Fleeing to nearby islands, or perhaps to the mainland—what settlers then called the Mosquito Coast.

Africans also appear in the literal margins of the Providence Island Company's letters and documents. A letter from the Providence Island Company to the Governor and Council, from April 1638 (just a few weeks before the rebellion) takes up the subjects of

[100] 16 May 1639, Journal of Nathaniel Butler, Sloane 758, B.L.
[101] 13 October 1639, Journal of Nathaniel Butler, Sloane 758, B.L.

the Africans "that stand out"—which is to say, the maroons—and how the settlers might "bring them in." The marginal notes read "The comp[any] Nigros to supply the rest" and "2 nigros to Cap South" as well as "Mr Bell to come away with his negros which are to be examined."[102] Black life exceeds the conventional bounds of the text. Black life asserts itself in these margins, insisting upon a presence not exclusively delimited by white ownership. Black life here "stands out"—out of the text of the letter, out of the control of the settlers, out of the bounds of the law, and resists being brought back in.

Settlers were anxious about the seeming ungovernability of Black life. Notes from a 1636 Providence Island Company committee meeting describe these maroons, saying "they are out for want of Government."[103] This statement opens onto a variety of interpretations. Perhaps the colonists meant that if only the settlers had adequately governed the Africans, they would not have been "out." Or perhaps it means that if only the settlers had adequate government themselves—that is to say, if they were not having their own political crisis—the Africans would not have had opportunity to escape. But we might also read this as a description of the political organization of those maroons who "stand out"—that "standing out" entails a "want," which is to say an absence, of government. This final option is perhaps the most threatening: this idea that the maroons are wholly ungoverned, and that in fact they do not *want* government, either by themselves or by the settlers, but rather are quite satisfied to dwell in what appears to the settlers as anarchy—as lawlessness.

[102] Letter from Providence Island Company to Governor and Council 23 April 1638, CO 124/1, f.114r.
[103] Committee Meeting March 1636, CO 124/2, f.133r.

The Providence Island colonists were anxious about both those Africans who "stood out" and those who were enslaved. Notes from this same 1636 committee meeting read: "That the Number of Negroes in the Islands was much [greater?] of what he first receaved Informacion. That they are not in subjection and it may cost some lives much Tyme and difficulties to bring them in. That the maintayning of them will be a great charge which he cannot leave without a [conse-ient] allow-ance."[104] The threat of Black rebellion loomed large on Providence Island, even before the documented rebellion in 1638. The settlers were anxious that the Africans would outnumber the English, that they would become too many to "maintain." But though the settlers' figuration of the Africans as numerous, unmanageable, and ungoverned, was a source of fear for them, I want to suggest that those same qualities can be read as descriptors of Black rebellious agency, that was uncapturable by enslavement. This numerous excess, this marginality, this ungovernable lawlessness was a resource and a refuge. The subjugation of these people could never be absolute.

Butler and the other white settlers were so completely paranoid about threats and attacks upon the island, that they often imagined rebellions when there were none. This paranoia caused distortions in the Puritan practices of signification. Butler writes: "The night wee hadd an alarme that carried me out of my Bedd to Brooke Fort But itt proved a false one upon the mistake of a lighte seene out at sea which proved only a star."[105] The letters and journals of Puritan colonial governors are filled with accounts of such false

[104] Committee Meeting March 1636, CO 124/2, f.133r.
[105] 28 April 1639, Journal of Nathaniel Butler, Sloane 758 B.L.

alarms. But in this particular one, a star is mistaken for the light of an enemy ship. Colonization produces neurotic paranoia that reads as a perversion of Puritan typology. Whereas in traditional typology, earthly things serve as signs from God, in the mind of the paranoiac colonizer, heavenly things are interpreted to be earthly threats. The order of signification is distorted by the fragility and anxiety of white settler consciousness.

Marronage poses a threat to white settler justifications for their seizure of Native land and of African people, because it disrupts the legitimacy of property law writ large. By falsely ascribing a belief in property ownership to the maroons—the "freehold"—Butler attempted, but was ultimately unable to fully incorporate them into settler logics of property. But marronage cannot be adequately legislated by existing regimes of property law. Marronage is premised upon non-proprietary-ness. It's based upon flight, upon motion, upon collectivity. So in conclusion, what I want to suggest, is that these "marginal" people—these self-emancipated Africans living in this "marginal" Puritan colony, in fact posed a profound threat not only to the Providence Island settlement, but to conception of property ownership that was coming to be co-constitutive with whiteness.

Anti-nomianism poses a direct threat to the *nomos*—the law of land that is rooted in the land's conquest and seizure—of settler colonial sovereignty, which is site specific and rooted in law's interpenetration with land and space. And so I then read Native insurgency, which refuses the dignify the interpenetration of law and land through the logic of conquest, as a form of antinomianism. This is not to say that Indigenous insurgency is indebted to a white, English political formation. Rather, antinomianism is a

portable term both to diagnose the white colonial anxieties of the moment, and to articulate the kinds of insurgency that so vexed the colonial conceptual grasp.

Chapter 2: "The Freedom of a Broken Law": Antinomianism, Abolition, and Black Rebellion in *The Scarlet Letter*

In an 1862 piece of reportage on the early years of the Civil War for *The Atlantic* magazine, Nathaniel Hawthorne alludes to chattel slavery's integral role in the origins of Puritan America. Entitled "Chiefly About War Matters," and published under the pseudonym "A Peaceable Man," the piece describes the provenance of slavery as the *Mayflower*'s "monstrous birth":

> There is an historical circumstance, known to few, that connects the children of the Puritans with these Africans of Virginia, in a very singular way. They are our brethren, as being lineal descendents from the Mayflower, the fated womb of which in her first voyage, sent forth a brood of Pilgrims upon Plymouth Rock, and, in a subsequent one, spawned slaves upon the Southern soil,—a monstrous birth, but with which we have an instinctive sense of kindred, and so are stirred by an irresistible impulse to attempt their rescue, even at the cost of blood and ruin. The character of our sacred ship, I fear, may suffer a little by this revelation; but we must let her white progeny offset her dark one,—and two such portents never sprang from an identical source before.[106]

By Hawthorne's account, enslaved persons of African descent and white Massachusetts settlers are entangled at America's oceanic root; they are borne of the same oceanic womb. He articulates that slavery is at the center of the nation and its mythology: the "children of the Puritans," he claims are "brethren" of the "Africans of Virginia." Hawthorne was not correct about his history—it was in fact a different ship called the *Mayflower* that transported enslaved persons.[107] But despite this factual error, and although Hawthorne held anti-abolitionist and pro-slavery views, his writing evinces a

[106] Nathaniel Hawthorne, "Chiefly About War Matters," *The Atlantic*, July, 1862, accessed April 2, 2017 https://www.theatlantic.com/magazine/archive/1862/07/chiefly-about-war-matters/306159/.
[107] Wendy Warren, *New England Bound* (New York: W.W. Norton, 2016), 252.

recognition of slavery's inextricability from America's founding and its mythological genesis with the arrival of the Pilgrims at Plymouth.

This passage makes apparent ideas about sentiment, law, and antinomianism, which will preoccupy Hawthorne in *The Scarlet Letter*. In this chapter, I argue that *The Scarlet Letter* is a critique of sentimental white abolitionist politics through which Hawthorne grapples with the mutual imbrication of law and sentiment. In the novel, he articulates an alternative anti-slavery politics that his deep-seated white supremacy leads him to fear: an antinomian politics of Black rebellion. Literary critics, however, tend not to take this connection between the Puritans and the enslaved into account when writing about *The Scarlet Letter* and Hawthorne's other writing. Lauren Berlant does claim that the *Mayflower* passage implies that "slavery makes America intelligible," however, her book-length analysis of Hawthorne's work in relation to American nationhood "brackets" Hawthorne's own positions on slavery. She writes: "At issue is not whether Hawthorne is simply proslavery: his complex relation to abolition can be bracketed for the moment."[108]

This "bracketing" is symptomatic of Hawthorne criticism generally. Critics repeatedly disavow Hawthorne's blatant racism and fail to read *The Scarlet Letter* as a novel that is as much about slavery as it is about the Puritans.[109] Nina Baym, Michael Colacurcio, and Amy Schrager Lang each carefully track the novel's 1640s historical,

[108] Lauren Berlant, *The Anatomy of National Fantasy*, (Chicago: University of Chicago Press, 1991), 209, 205.
[109] For a compelling critique of Berlant's neglect to fully take up the racial dimensions in Hawthorne's work, see Eric Cheyfitz, "The Irresistibleness of Great Literature: Reconstructing Hawthorne's Politics," *American Literary History* 6:3 (1994): 529-558.

antinomian context, but none draw the connection between the Puritans and slavery.[110] Jean Fagin Yellin and Jonathan Arac address the 1840s context and the politics of slavery in *The Scarlet Letter*, but fail to connect this directly to the novel's Puritan setting.[111] Eric Cheyfitz argues that for Berlant, Sacvan Bercovitch, and F.O. Matthiessen to preserve their unacknowledged affective attachment to Hawthorne's canonicity, they "find it necessary as a central part of their argument to explain, that is complicate, Hawthorne's simply reprehensible stand on the slavery issue."[112] Critics' consistent holding apart of Hawthorne's Puritan investments and his anti-abolitionist politics mimics Hawthorne's own political impasse. He insists on holding law and sentiment apart and, as Jonathan Arac argues, on remaining agnostic on the legality of slavery out of allegiance to the integrity of the Union.[113] But Hawthorne's own language continually thwarts these efforts to preserve discrete spheres for law and sentiment. In his struggle to find a form adequate to hold law and sentiment apart, he alights on Pearl, who undoes them both.

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[110] Nina Baym, "Passion and Authority in *The Scarlet Letter,*" *The New England Quarterly* 43:2 (June 1970): 209-230, Michael J. Colacurcio, "Footsteps of Anne Hutchinson: The Context of *The Scarlet Letter,*" *ELH* 39:3 (September 1972): 459-494, and Amy Schrager Lang, "An American Jezebel: Hawthorne and *The Scarlet Letter,*" in *Prophetic Woman* (Berkeley: University of California Press, 1987), 161-192.

[111] Jean Fagin Yellin, "Hawthorne and the Slavery Question" in *A Historical Guide to Nathaniel Hawthorne* ed. Larry J. Reynolds (Oxford: Oxford UP, 2001), 135-164; Jonathan Arac, "The Politics of The Scarlet Letter" in Ideology and Classic American Literature ed. Sacvan Bercovitch and Myra Jehlen (Cambridge: Cambridge UP, 1986), 247-266. On Hawthorne and the politics of slavery see also Sacvan Bercovitch, *The Office of the Scarlet Letter* (Baltimore: The Johns Hopkins University Press, 1991); Jennifer Fleishner, "Hawthorne and the Politics of Slavery" *Studies in the Novel* 23: 1 (1991): 96-106; Teresa A. Goddu, "Letters Turned to Gold: Hawthorne, Authorship, and Slavery," *Studies in America Fiction* 29:1 (Spring 2001): 47-76; Deborah L. Madsen, "'A is for Abolition': Hawthorne's Bond-Servant and the Shadow of Slavery," *Journal of American Studies* 25:2 (August 1991): 255-259; Justine S. Murison, "Feeling out of Place: Affective History, Nathaniel Hawthorne, and the Civil War," *ESQ: A Journal of the American Renaissance* 59:4 (2013): 519-551; Eric Sundquist, "Slavery, Revolution, and the American Renaissance," in *The American Renaissance Reconsidered* ed. Walter Benn Michaels and Donald E. Pease (Baltimore: The Johns Hopkins University Press, 1989), 1-33.

[112] Cheyfitz 539-540.

[113] Arac 259.

Though Hawthorne, in one instance, describes people of African descent as "picturesquely natural in manners" and "not altogether human,"[114] because he avowed the entanglement of slavery and Puritanism, he was able to deploy a concept borrowed from the Puritans—antinomianism, a religious ideology centered around non-obedience to civil law—to challenge white abolitionists' methods, which conflate law and sentiment. Hawthorne's logic anticipates Saidiya Hartman's argument that white anti-slavery activists' sentimental political strategies serve not to engender freedom but rather to spectacularize Black pain. White identification with Black suffering, she argues, "naturalize[s] this condition of pained embodiment" and "increases the difficulty of beholding Black suffering since the endeavor to bring pain close exploits the spectacle of the body in pain and confirms the spectral character of suffering and the inability to witness the captive's pain."[115] In Hawthorne's view, abolitionists were sentimentally motivated by their "instinctive sense of kindred" with the enslaved—they advocated for emancipation by appealing to public sentiment around the injustices of slavery in the hopes that those changes in sentiment would lead to changes in law. His derision of abolitionists' sentimental politics taking the form of "an irresistible impulse…to rescue" resonates with Hartman's argument that "[c]ontrary to pronouncements that sentiment

[114] These quotations are from the paragraph from "War Matters" that precedes the one quoted above, in which Hawthorne describes a group of fugitives he encounters. For a reading of how this passage shows Hawthorne's aesthetics of racism, see Arthur Riss, *Race Slavery, and Liberalism in Nineteenth-Century American Literature* (Cambridge: Cambridge UP, 2006), 136-163.

[115] See Saidiya Hartman's reading of a letter by white anti-slavery activist John Rankin to his slaveholding brother. Hartman argues that Rankin's detailed and lurid descriptions of Black suffering and his imagining of himself in the position of the enslaved person undergoing torture actually impedes recognition of Black pain. Saidiya Hartman, *Scenes of Subjection* (New York: Oxford UP, 1997), 17-23 especially 20.

would abate brutality, feelings intensified the violence of law and posed dire consequences for the calculation of black humanity."[116]

The version of antinomianism Hawthorne articulates in *The Scarlet Letter* offers an alternative anti-slavery politics free of white abolitionism's hypocritically benevolent deployment of feeling, which, following from Hartman, exacerbates the violence of law. Hawthorne was familiar with antinomianism, a belief that God's free grace makes adherence to civil law inessential, made famous by Puritan dissident Anne Hutchinson and which is prevalent in *The Scarlet Letter*. In this chapter, I theorize antinomianism—expanding from its historical importance in the Puritan setting, I recover it as a concept for thinking through law's undoing. To this end, I turn to the contemporary poet-critic Susan Howe, who uses the term in *The Birth-mark* to frame her ideas around feminine modes of resistance against male literary authority. My understanding of the term differs somewhat from hers. Though I agree that antinomianism is gendered feminine, because slavery has been central to the formation of law in the U.S. and colonial Britain, antinomian disobedience must also be thought alongside resistance to slavery. As Colin Dayan writes, "The ghost of slavery still haunts our legal language."[117] Linking Hawthorne's 1840s politics to *The Scarlet Letter*'s 1640s setting and its preoccupation with antinomianism can offer a thicker reading of Hawthorne's politics of abolition and articulate antinomianism an alternative to his political impasse**,** which I argue Hawthorne

[116] Hawthorne, "War Matters;" Hartman 93.

[117] Colin Dayan, *The Story of Cruel and Unusual*, (Cambridge, MA: Boston Review, MIT Press, 2007), 16.
See also Dayan's *The Law is a White Dog* (Princeton: Princeton UP, 2011) on US and British law's constitutive relation with slavery.

knows is available but is too frightened of to endorse fully. Without exonerating Hawthorne's deplorable politics, I argue that in his recognition of the hypocrisy of white abolition and of the inherent rebelliousness of Puritan antinomianism he offers at least a language, if not a method, for a critique of the sentimentalization of law practiced by abolitionists.

The *Mayflower* passage also suggests that antinomianism portends Black rebellion. Though many critics have examined the way in the antinomian Anne Hutchinson is partially reincarnated in Hester,[118] I argue that it is actually Pearl who is the novel's antinomian force, and that her antinomianism both portends and embodies Black rebellion. The *Mayflower* passage implies that both settlers and enslaved are signs of a coming calamity. Both the ship's "white progeny" and "her dark one" are "portents [sprung] from an identical source."[119] A literal reading infers that the arrival of Pilgrims and the enslaved portended the inevitability of Civil War. But I argue, by way of a reading of *The Scarlet Letter* through both its seventeenth- and nineteenth-century contexts, that the "blood and ruin" that the "monstrous" birth of the enslaved anticipates also refers to fugitive Black rebellion, which, in the novel is linked to antinomianism. In shifting the locus of the antinomian from Hester to Pearl, this chapter considers that the means of rebelliousness articulated in *The Scarlet Letter* may be diffuse, partial, and fugitive. To this end, I put forth a Black feminist reading of *The Scarlet Letter* that puts

[118] Colacurcio "Footsteps of Anne Hutchinson," Lang*, Prophetic Woman*.
[119] Hawthorne, "War Matters."

Pearl at its center.[120] To do a Black feminist reading of this text is also to argue for the necessity of reading nineteenth-century American literature through Black feminism. Centering women of color in readings of American literature makes possible understandings of freedom that are spiritual, collective, embodied, and articulated in terms other than those of law and sentimentality. In what follows, I show how *The Scarlet Letter* operates as a critique of sentimental abolition and how Pearl, the product of a monstrous birth, acts as an antinomian force of Black rebelliousness.

HAWTHORNE AND THE ABOLITIONISTS

The *Scarlet Letter* discusses the operations of law and sentiment in 1642 Puritan Salem in order to critique the sentimental legalism of 1840s abolition. The novel offers antinomianism as useful for Hawthorne in that he seems to believe it can hold law and sentimentality apart, but in my reading, it acts as a force that can undo both law and sentimentality, even though they may ultimately be too mutually imbricated to be separated.

Hawthorne's criticism of abolition began long before the outbreak of the Civil War. In his 1852 biography of Franklin Pierce (a noted slavery defender), he supports Pierce's beliefs that "the evil [of abolition] would be certain, while the good was, at best, a contingency."[121] And as early as 1838, upon encountering a group of people of African descent at a gathering in Williamstown, Massachusetts, he writes in a journal entry: "On

[120] Leland S. Person does link Hester to Black maternity. See Leland S. Person, "The Dark Labyrinth of Mind: Hawthorne, Hester, and the Ironies of Racial Mothering," *Studies in American Fiction* 29:1 (Spring 2001): 33-48.
[121] Hawthorne, *Franklin Pierce* 111.

the whole, I find myself rather more of an abolitionist in feeling than in principle."[122] The possibility of maintaining this distinction between "feeling" and "principle" will prove to be crucial not only to understanding Hawthorne's views on slavery and abolition but also to the tactics and rhetoric of the abolitionist movement itself. Randall Stewart, the editor of a 1932 edition of *The American Notebooks* glosses this entry as follows:

> Regarded from the point of view of feeling alone, slavery was deplorable. But an intellectual view of the subject as a problem of practical politics led Hawthorne to believe that slavery was entitled to recognition and protection under the constitution; that the Union was threatened with disruption by the activities of the abolitionists; and that the welfare and happiness of the negro himself might be jeopardized by his emancipation.[123]

This gloss gives us at least a three-fold definition of principle, each of which implies a slightly different stance on the proper arena and method for abolition, all of which were in play in the abolitionists' own discussions at the time. First, principle comes to stand for an "intellectual view," as opposed to one of feeling. Then, it comes to mean "a problem of practical politics." And next it comes to mean an investment in legal "recognition and protection." The category of "principle" is noticeably unstable, but most potent for my purposes, though, is how "principle" comes to mean "legal protection," and that legal protection, for Hawthorne, can be wholly separated from a domain of "feeling." Slavery, for Hawthorne, was a problem best left to the realm of sentiment; when abolition was brought into the domain of law, the entire legal structure would be threatened. In his biography of Franklin Pierce, Hawthorne writes: "human efforts cannot subvert [slavery]

[122] Hawthorne, *The American Notebooks,* Randall Stewart ed., (New Haven: Yale University Press, 1932), 48.
[123] Hawthorne, *American Notebooks* 290n27.

except by tearing to pieces the constitution, breaking the pledges which it sanctions, and severing into distracted fragments that common country which Providence brought into one nation."[124] Hawthorne's opposition to abolition directly corresponded to his belief in the sanctity of constitutional law. Abolition, in other words, had the potential to be antinomian.

Despite law and sentiment's inevitable co-contamination, Hawthorne held fast to his attempts to ensure that each operated only in of their proper domain. He critiques the influence of "public sentiment" on law early in *The Scarlet Letter*, as the townspeople of Salem gather around the prison door waiting for Hester Prynne to emerge:

> Amongst any other population, or at a later period in the history of New England, the grim rigidity that petrified the bearded physiognomies of these good people would have augured some awful business in hand. It could have betokened nothing short of the anticipated execution of some noted culprit, on whom the sentence of a legal tribunal had but confirmed the verdict of public sentiment. But, in that early severity of the Puritan character, an inference of this kind could not so indubitably be drawn.[125]

The double temporality of this moment exemplifies the way Hawthorne used the Puritans to explore his positions on slavery and abolition. The Puritans at the scaffold in 1642 dilate in and out of view as the passage hypothetically describes what, "in a later period" "could" have been happening. The 1640s and 1840s move in parallax with the sentences' syntax, and the difficulty of distinguishing which historical group is in focus at any moment is part of the passage's force. Though Hawthorne criticizes the Puritans' "grim rigidity" and "severity," he is nostalgic for their ability to hold law and sentiment apart.

[124] Hawthorne, *Franklin Pierce* 111.
[125] Hawthorne, *The Scarlet Letter* (New York: Penguin, 2016), 47. All subsequent citations will be in-text.

Unlike the people of "a later period in the history of New England"—the abolitionists—for whom emotional performance both grants knowledge of and enacts legal events, the Puritans' stoicism obstructs any connection between public sentiment and legal verdict. He criticizes the nineteenth century legal system for doing nothing "but confirm" a "verdict" that sentiment has already delivered and a political world, like that of 1840s abolitionism, in which law becomes merely supplemental to the workings of public feeling.

The Puritans appear to offer an alternative in which legal tribunals did not merely "confirm" public sentiment, but even the Puritans cannot keep sentiment and law apart. Though the gravity of Hester's sin should lead the colonial governors to "put in force the extremity of our righteous law" and sentence her to death, because the authorities suspect her husband is dead—because they feel sympathy for her—"in their great mercy and tenderness of heart" they reduce her sentence to a few hours of public display on the scaffold and the wearing of the scarlet letter (59). The law punishes through ongoing subjection to the confirmation of public sentiment. This is Hawthorne's political impasse: he tries to locate in the Puritans an alternative to the overlapping of sentiment and law. But because of slavery and Puritanism's entangled histories, the distinction continually collapses.

The deployment of sentiment to mitigate the violence of law, as the colonial governors do to Hester's sentence, is also, according to Saidiya Hartman, characteristic of the power relations between master and bondswoman. She writes: "Feelings [the so-called "bonds of affection" between master and bondswoman] repudiated and corrected

the violence legitimated by law;" law comes to be supplemental to feeling.[126] Abolitionist politics replicated this legal-sentimental nexus, which mobilized public sentiment in the name of changing law. The colonial governors' sympathy-driven shortening of Hester's sentence and their public-sentimental punishment are akin to white abolitionist attempts change law on the basis of public feeling. Her sentencing mimics how changes to laws around slavery did little to ameliorate structural racism. As the commutation of Hester's sentence does not abolish her vulnerability to public judgment, the abolition of slavery does not eliminate racism. For Hester, public sentiment is first deployed as a sympathetic alternative to legal punishment, but the public judgment that replaces it is just as harsh. In this scene, then, the Puritan orthodoxy is aligned with white abolitionists. Abolitionists might arouse sympathy for the enslaved and make minor legal changes, but that supposed sympathy ultimately services white supremacy.

Antinomianism opposes Puritan orthodoxy's deployment of sentiment as supposed mitigation of legal punishment and offers an alternative to white abolitionists' sentimental politics. Antinomianism saturates the scene at the prison door. Salem's inhabitants are in rapt contemplation of the door because "It might be that an Antinomian, a Quaker, or other heterodox religionist, was to be scourged out of the town…" (*Scarlet Letter* 46). The antinomian must be banished for public sentiment to function; the tribunal's ability to determine Hester's sentence hinges on the antinomian's social expulsion. When the antinomian is cast out, public sentiment can be deployed to

[126] Hartman 92.

enact law. Hawthorne aligns himself with antinomianism's capacity to disrupt public sentimentality.

The antinomian, however, is not only potentially within the prison, but also but rooted underneath and growing outside it in the form of a rose-bush:

> This rose-bush, by a strange chance, has been kept alive in history; but whether it had merely survived out of the stern old wilderness, so long after the fall of the gigantic pines and oaks that originally overshadowed it,— or whether, as there is fair authority for believing, it had sprung up under the footsteps of the sainted Ann [sic] Hutchinson, as she entered the prison-door,— we shall not take upon us to determine (46).

Anne Hutchinson, under whose footsteps the rose bush may have "sprung up," was an antinomian Puritan dissident, banished from the Massachusetts Bay colony for refusing to obey civil law. She believed because God gave grace freely, one needed only to follow His law to ensure salvation, making adherence to secular law unnecessary. Hutchinson and her followers' relation to law was not explicitly oppositional. They did not advocate breaking civil law so much as they felt that it simply did not apply to them. Rather than endorse the validity of civil law by way of explicit opposition, the antinomians' indifference to the law invalidated it slant-wise. Critics including Michael Colacurcio and Amy Schrager Lang have examined the connections between Hutchinson and Hester, for whom "the world's law was no law for her mind" (151), but antinomianism suffuses the novel and its material world beyond Hester's mind.[127] The rose bush is Hutchinson's antinomian legacy, springing up at the entrance to the space of law's enactment. Its roots expand underneath the prison, suggesting that law is built upon its own undoing which

[127] Colacurcio, "Footsteps of Anne Hutchinson," Lang, *Prophetic Woman.*

grows unruly beneath law's edifices. Though the "anti-" in "antinomian" can be misconstrued to mean "against" the law, the rose bush shows that antinomianism cannot be understood merely through oppositionality. Rather, law's undoing "springs up," growing branches from its roots beneath law's sanctuary. Antinomianism's mode of deconstruction is generative; it destroys law through its own uncontainable flourishing. Antinomianism persists; it's in the roots and above the ground; in the prison and emerging from the door; "kept alive in history" (like slavery) for two hundred years in the "stern old wilderness," outliving the "gigantic pines and oaks that originally overshadowed it."

ABOLITIONIST SENTIMENT

In the decades immediately before the Civil War, the fractious politics of the abolitionist movement saturated the historical context in which Hawthorne would write *The Scarlet Letter.*[128] The radical abolitionist movement, led by William Lloyd Garrison, constellates the key concepts of my argument—antinomianism, the law, sentimentality, and Black rebellion—in such a way that the espousers of white abolitionist doctrine imagine to be liberatory, virtuous, and to the benefit of the enslaved, but which I argue ultimately retrenches white fear and self-interest, and is propped up by anti-Black racism.

In 1840, just a decade before *The Scarlet Letter*'s publication in 1850, the formerly more-or-less unified abolitionist movement splintered into multiple factions. Explanations for the schism and the varieties of abolitionist strategies that emerged in its

[128] On Hawthorne's explicit disdain for abolitionist political action, see Yellin 144.

wake are myriad, but most significant for my argument is the shift in radical abolitionist discourse from a sentimental language of "moral suasion" to political and legal rhetoric and tactics.[129] On one side, the so-called "nonresistants"—a group of Christian anarchists (Garrison among them) believed that the law of man—civil government—was necessarily oppressive. They believed instead in adhering to the higher law of God,[130] and so opposed using politics to further the abolitionist cause.[131] On the other side, the political abolitionists formed the Liberty Party (1838) and used politics to promote their anti-slavery agenda. The founders of the Liberty Party had begun to lose faith in the Garrisonians' apolitical techniques and their rejection of any government underwritten by a Constitution that, in their view, allowed for slavery, and so broke off from Garrison's American Anti-Slavery Society (founded in 1831). We might characterize the split between the nonresistants and the political abolitionists as a distinction between anti-slavery "sentiment" and anti-slavery "interest." Having lost faith in the power of radical sentiment, the political abolitionists switched their tactics fully to those of "interest," turning abolition into another platform item for party politics.

Hawthorne's 1838 articulation of the conflict between "feeling" and "principle" partially aligns with the conflict between "sentiment" and "interest" in the divergent abolitionist factions, which dates back to at least as early as the drafting of the Constitution. The Constitutional Convention of 1789 was divided between "a slavery

[129] See Ronald G. Walters, *The Anti-Slavery Appeal* (Baltimore: The Johns Hopkins University Press, 1976).
[130] See Lewis Perry, *Radical Abolitionism: Anarchism and the Government of God in Antislavery Thought* (Knoxville: University of Tennessee Press, 1995).
[131] Walters 12-13.

interest and an anti-slavery sentiment" and as a result, the framers omitted explicit legislation about the present or future legality of slavery.[132] In 1789, "interest" won out; sentiment wasn't strong enough to make law. For Hawthorne, this ambiguity deserved to be upheld. Abolition, he believed, necessitated a disregard for the Constitution's express ambiguity about the present and future legality of slavery. Garrison and his fellow *Liberator* contributors, however, did not grant the Constitution the benefit of ambiguity, declaring instead that "The existing Constitution of the United States is a covenant with death, and an agreement with hell."[133] The radical abolitionists believed the Constitution allowed for slavery and thus should not be upheld. Because the Garrisonians saw the Constitution as irredeemably corrupted, they declined to advocate for abolition through legal or political means. The political abolitionists, on the other hand, in a revision of the situation in 1789, made being anti-slavery in their interest by using it as leverage to win votes for members of the Liberty Party.[134]

The "antinomian" abolitionists, though, were sentimental.[135] They relied on "moral suasion": on convincing white liberals of the humanity of the enslaved. The abolitionist penchant for deploying sentiment is enshrined perhaps most famously in Harriet Beecher Stowe's call at the end of *Uncle Tom's Cabin* (1852) for "every

[132] Don E. Fehrenbacher, *Slavery, Law, and Politics: The Dred Scott Case in Historical Perspective* (New York: Oxford University Press, 1981), 15.
[133] William Lloyd Garrison, ed. *The Liberator* XVII: 21, May 21, 1847, http://fair-use.org/the liberator, accessed April 27, 2017.
[134] See Walters, Eric Foner, *Politics and Ideology in the Age of Civil War* (New York: Oxford University Press, 1980).
[135] The sole exception to this may be Wendell Phillips, who, in "Surrender of Sims" (Speech before Massachusetts Antislavery Society, 1852), *Speeches, Lectures, and Letters* 55-97 claimed "We have no right to use up fugitives for the manufacture of antislavery sentiment" (78).

individual" to "see to it that *they feel right*" in order to do their part in the moral crusade against the evils of slavery.[136] I follow Saidiya Hartman and Lauren Berlant in their critiques of white abolitionist sentimentality: Hartman argues that white abolitionists, in their effort to produce white sympathy for the enslaved, simultaneously elide and spectacularize Black pain, and Berlant argues that abolitionist sentimentality comes to act as a false and ineffectual substitute for material social change.[137] Sentimental abolition, despite its antinomianism and despite, or perhaps because of its good intentions toward the enslaved, was not primarily an anti-racist movement. For the nonresistant antinomians, slavery was often deployed as a metaphor and a universalizable theological concept, not a particular condition of Black suffering. All men governed by other men rather than by God were enslaved, they argued. Chattel slavery was only a special case; it was only a matter of time before the bloodthirsty demon of slavery came to subject white people as well, warned radical white non-resistant Adin Ballou: "Do we imagine that it will never make war upon our rights and possessions?...It is a Spirit that cannot brook restraint…Every year it craves more blood and sinews. It covets new domains and grasps at more distant spoils. It cries 'give, give' and never saith 'it is enough,'…[it] threatens vengeance, with or without law, against all who dare to plead the cause of its speechless victims."[138] In this view, abolition was necessary in order to protect white Protestants from slavery's encroachment and to shore up the Protestant anarchist opposition to

[136] Harriet Beecher Stowe, *Uncle Tom's Cabin* (New York: The Modern Library, 2001), 632.
[137] See Saidiya Hartman, Scenes of Subjection, Lauren Berlant, "Poor Eliza" in The Female Complaint and "The Subject of True Feeling" in Cultural Pluralism, Identity Politics, and the Law, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor: The University of Michigan Press, 1999).
[138] Adin Ballou, *A Discourse on the Subject of American Slavery* (Boston: I. Knapp, 1837), 27).

government by men. White radical abolitionists' metaphorics around slavery were slippery—sometimes slavery was personified as a flesh-devouring spirit, other times as a depersonalized force but each of these rhetorical moves departicularizes and dehistoricizes slavery, allowing abolition to be entirely continuous with anti-Blackness.[139] If slavery is understood as a force or spirit, the violence of the institution becomes abstracted; responsibility for it gets displaced away from its perpetrators and onto something unseen. When mobilized by white abolitionists, this rhetoric shifts the focus of abolition away from white-inflicted Black suffering.

Despite the apparent split between the radical abolitionists' tactics of sentiment and the political abolitionists' tactics of law or interest, Hawthorne, I speculate, became concerned around the time he was writing *The Scarlet Letter*, that anti-slavery "interest" and "sentiment" were becoming entangled; that the radical abolitionists were using their sentimental rhetoric to appeal for legal change. We see Hawthorne's suspicion of Garrison and his cohort, for whom legal action around abolition "confirmed" public sentiment, in his derision of the "later period in the history of New England" in which a "legal tribunal" might "but [confirm] the verdict of public sentiment" in the scene cited above (*Scarlet Letter* 47). Throughout the 1830s, 40s, and 50s radical abolitionists' rhetoric and tactics shifted. More than twenty years before Stowe's incitement to sentimental politics, radical abolitionists too began to doubt the efficacy fighting slavery through primarily affective and moral means. Garrison and the radical abolitionists' move

[139] Ballou 17. My thinking on the metaphorization of slavery is indebted to Colin (Joan) Dayan's "Paul Gilroy's Slaves, Ships, and Routes: The Middle Passage as Metaphor," Research in African Literatures 27:4 (Winter, 1996): 7-14.

to support immediate emancipation over gradualism required a merging of the radical abolitionists' sentimental antinomianism with practical appeals for changes in law. The New York Anti-Slavery Society, in their "Address to the People of New York," for example, merges the language of sentiment with the tactics of law in their call for Immediate Emancipation in 1833:

> *We do not address ourselves to the oppressed;* but with hearts of benevolence to both master and slave, we beseech the master to grant to his slave, what humanity, justice, interest, conscience and God demand. By immediate emancipation, therefore, we mean that measures shall be immediately taken to deliver the slave from the arbitrary will of the master, and place him under the salutary restraints and protection of law. We do not aim at any interference with the constitutional rights of the slave holding states, for Congress, as is well understood, has no power to abolish slavery in the several states.[140]

The idea of "plac[ing] slaves under law" would have threatened Hawthorne's belief in constitutional integrity and unionism at all costs. Although the New York Anti-Slavery Society makes a point that any law for immediate emancipation would be up to the states and so would not violate the constitution, Hawthorne, based on his statements in the Pierce biography, would have found such a move a violation of constitutional integrity, and so would not want emancipated slaves to be placed under law at all.

Hawthorne rejects the belief that law is the proper organ to dispense justice around matters of sentiment. This is evident in his criticism of Reverend John Wilson's treatment of Hester, who, the narrator claims, has "no…right" to "meddle" in Hester's sentimental affairs "of human guilt, passion, and anguish" (*Scarlet Letter* 61). Wilson is "a great scholar" and a man of religious law whose "kind and genial spirit" is "less

[140] New York Anti-S lavery Society, "Address to the People of New York" (New York: West & Trow, 1833), 5.

carefully developed than his intellectual gifts." Because he is a man of "principle" (to use Hawthorne's term from his 1838 journal entry) and not of feeling, his intervention into Hester's matters of the heart is inappropriate. Slavery, for Hawthorne, like Hester's dalliance, is a "question of human guilt, passion, and anguish," in other words, a matter of sentiment.

Hawthorne asserts his views on the inappropriateness and futility of legal abolition in his biography of Pierce, calling slavery "one of those evils which divine Providence does not leave to be remedied by human contrivances, but which, in its own good time, by some means impossible to be anticipated, but of the simplest and easiest operation, when all its uses shall have been fulfilled, it causes to vanish like a dream."[141] Hawthorne's anti-abolitionist assertion that slavery's disappearance should be governed not by man but by God bears a strange similarity to the radical anarchist abolitionists' belief that men should be governed not by other men but by God. If humans need not intervene in the practice of abolition, slavery exists in the realm of the theological, not the legal or political. It is antinomian to believe that slavery, like law, is God's business. The abolitionists' antinomianism, however, does not undo civil law, and can be co-opted by sentimentality.

Although Hawthorne's anti-abolitionist politics are abhorrent, if we take seriously his critiques of the supposed "benevolence" or the "protection of law," we can use his language to develop a critique of abolitionist sentimental legalism. Legal protection is no guarantee of safety, rather, the law is itself an instrument of violence, designed to

[141] Hawthorne, *Franklin Pierce* 113.

perpetuate Black subjection.[142] Abolitionist rhetoric, like that of the New York Anti-Slavery Society address, assumes that when benevolence is combined with legal protection, justice will be delivered. It declines, however, to challenge the constitutional rights of slave states. The legal change, then, can be only superficial, not structural. It relies on the "hearts" of the slave masters to enact legal protection; on the making-public of sentiment. But neither benevolence nor law can protect the enslaved, or even the formerly enslaved.[143] As former slave and active anti-slavery writer William Wells Brown states: "we are told that the Slave is protected; that there is law and public sentiment! It is all a dead letter to the Slave."[144]

ABOLITION AND BLACK REBELLION

The radical abolitionists' move to immediatism was not based wholly in benevolence. This shift in their tactical relationship to sentiment coincided with a shift in their attitude toward Black insurrection. Garrison came to advocate for immediate emancipation because he feared the enslaved would revolt, leading to a race war.[145] In the early 1830s, abolitionist writings were dense with fears of slave insurrection, in part inspired by Black abolitionist David Walker's 1829 militant pamphlet in favor of insurrection; Nat Turner's rebellion in 1831; and rebellions of enslaved people in

[142] See Dayan, *The Story of Cruel and Unusual* & *The Law is a White Dog*.
[143] In 1842, Prigg v Pennsylvania upheld the Fugitive Slave Clause of 1793. In 1850, the Fugitive Slave Law will exacerbate this legislation.
[144] William Wells Brown, "A Lecture Delivered before the Female Anti-Slavery Society of Salem (1847)" in *William Wells Brown: A Reader* ed. Ezra Greenspan (Atlanta & London: The University of Georgia Press, 2008), 111.
[145] Robert H. Abzug, "The Influence of Garrisonian Abolitionists' Fears of Slave Violence on the Antislavery Argument, 1829-1840," *The Journal of Negro History* 55:1 (1970), 15-26.

Martinique and Jamaica. But in the latter half of the decade, fears of slave rebellion seemed to subside. On August 1st 1833, slavery is abolished in the British West Indies, and in 1848, the French colonies abolish slavery as well. The Garrisonians interpreted these instances of abolition as peaceful, which undid some of the fear that associated emancipation with bloodshed, generated by the violence of the Haitian revolution.[146] In an 1829 July 4th address, Garrison urges his listeners that without immediate abolition, violent Black rebellion will ensue:

> if defeat [of abolition] follow, woe to the safety of this people! The nation will be shaken as if by a mighty earthquake. A cry of horror, a cry of revenge, will go up to heaven in the darkness of midnight, and re-echo from every cloud. Blood will flow like water—the blood of guilty men, and of innocent women and children. Then will be heard lamentations and weeping, such as will blot out the remembrance of the horrors of St. Domingo. The terrible judgments of an incensed God will complete the catastrophe of republican America.[147]

Like Ballou, Garrison does not frame his concern as for the liberation of the enslaved, but rather for an apocalyptic scene of future violence. He follows this purple prophecy with an elaboration that sentiment, not law, is best suited to the abolitionist cause: "But do these laws [of the slave States] hinder our prayers or obstruct the flow of our sympathies? Cannot our charities alleviate the condition of the slave, and perhaps break his fetters? Can we not operate upon public sentiment, (the lever that can move the moral world,) by way of remonstrance, advice, or entreaty."[148] Here, Garrison believes that the power of sentiment is stronger than that of law, but he also fears Black rebellion. The abolitionist

[146] Abzug, also see Elizur Wright "The Horrors of St Domingo," *The Quarterly Anti-slavery Magazine* Volume 1 (1836), 241-313.Whether these incidents were, in fact peaceful, is debatable. See Eric Williams, *Capitalism and Slavery* (Chapel Hill: University of North Carolina Press, 1944).
[147] Wendell Phillips Garrison and Francis Jackson Garrison, *William Lloyd Garrison, 1805-1879, The Story of His Life Told By His Children*, Vol 1. 1805-1835 (New York: The Century Co, 1885), 135.
[148] Garrison and Garrison 133.

"sentiment" here has a clear interest: preventing slave insurrection and avoiding a bloodshed akin to the Haitian Revolution ("the horrors of St. Domingo") as well as God's catastrophic destruction of America. As early as 1829, white abolitionist sentiment was self-serving and fearful. Abolitionist sentiment, not least when combined with anti-slavery interest, was still anti-Black.

Garrison's fears of slave rebellion appear under the sign of sentiment, but in fact already merge sentiment and (self-)interest. With the decline of these fears, the overlapping of sentiment and interest becomes more evident. In fact, Garrison and other radical abolitionists came to advocate for violent Black insurrection. The radical abolitionists' practice of sentimental antinomianism which strategically appeals to law and advocates for Black rebellion was likely intolerable to Hawthorne, who opposed both the deployment of law for sentimental matters and Black insurrection. Hawthorne blames the abolitionists' "false" antinomianism for their failure to preserve the sanctity of constitutional law and to prevent Black rebellion. But though Hawthorne disdains this tactical abolitionist version of antinomianism, *The Scarlet Letter* suggests that for him, the real antinomian threat was the possibility of Black rebellion. The rebellion of the enslaved could not be conceived of in merely oppositional terms; rebels and fugitives were not "breaking" the law that held them captive as chattel. The enslaved's fugitivity attested to the law's non-applicability. Opposition to law requires that one dignify the law's legitimacy; antinomianism, however, rejects the validity of the law at all. Slave rebellions, like Hutchinson and her fellow religious dissidents, threaten the legal order.

This law is not our law, declares antinomian resistance; on us, the enforcement of this law cannot be justified.[149]

Hawthorne may not have been explicit about his fear of slave insurrection in 1850, but by 1862 he made his opinions about John Brown's raid on Harper's Ferry known. Calling Brown a "blood-stained fanatic," Hawthorne claims: "Nobody was ever more justly hanged" and deems the raid an event of "enormous folly."[150] If anything was more objectionable to Hawthorne than Black rebellion it was Black rebellion incited by white abolitionists. These traitors would not only undo the Constitution by using sentiment to alter law, but would incite the more profound antinomian force of black rebellion. Through his critique of abolition, Hawthorne develops a set of concepts for thinking Black revolution as antinomian, anti-sentimental, and utterly indifferent to law.

THE BLACK PEARL

Pearl, Hester Prynne's "freakish," "elfish," and "possessed" "imp of evil" (*Scarlet Letter* 84, 90) is the novel's most potent antinomian force. She embodies Hawthorne's fears that the enslaved would rebel, but resists his authorial attempts to contain her. In other words, I think that Pearl is Black.[151] I theorize Pearl as a force of Black feminine rebelliousness through contemporaneous Black feminist figures, namely Frado/Nig in

[149] For suggestive meditations on law with out force, see Giorgio Agamben on the force of law under erasure in *States of Exception*, translated by Kevin Attell (Chicago: University of Chicago Press, 2005), and Jacques Derrida "Force of Law: the 'Mystical Foundation of Authority'" trans. Mary Quaintance, *Cardozo Law Review* 11:919 (1990), 920-1045 on the (im)possibility of law without force.
[150] Hawthorne, "War Matters."
[151] My reading of Pearl's Blackness is in part inspired by David Lloyd, "'To Live Surrounded by a White Song' or, The Sublimation of Race in Experiment," *Journal of British and Irish Innovative Poetry* 5:1 (2013): 61-80.

Harriet Wilson's *Our Nig* (1859), who resists torture and oppression through disobedient pranks and weeping;[152] Linda Brent in Harriet Jacobs' *Incidents in the Life of a Slave Girl* (1861), whose fugitivity in the "loophole of retreat" invites a critique of liberal ideals of freedom and modes of emancipation;[153] and through her insurgent occupation of stereotype, Topsy in Stowe's *Uncle Tom's Cabin*. I read each of these figures and their modes of rebelliousness as, like Pearl, antinomian.

If in "Chiefly about War Matters," Hawthorne claims that enslaved Africans are the "monstrous" other borne of the same womb as the Pilgrims, it follows that if Pearl is the "monstrous" child of a Puritan dissident (Hester as Anne Hutchinson reincarnate), Pearl's monstrosity is akin to the "monstrosity" of enslaved persons. She is, after all, the child of Hester, who is described as a "life-long bond-slave" (212), and the "mark" of Hester's meeting with "the Black Man" (172).[154] I propose a Black feminist reading of Pearl, which, following Hortense Spillers, claims Pearl's "monstrosity" for its insurrectionary potential.[155] Drawing on Toni Morrison's field-revolutionizing claim that American literature is underwritten by "a dark, abiding, signing, Africanist presence" through which whiteness comes to understand and define itself.[156] I read Pearl as a figure of Black female rebelliousness. Pearl's Blackness is not the phantasmatic background

[152] I'm indebted to Kiersten King's "Feeling Disobedient: A Feminist Analysis of Black Feminine Fugitive and Insurgent Acts in Harriet Wilson's *Our Nig*," UCR Honors Capstone Project (unpublished, 2016) for this reading.
[153] On Harriet Jacobs as a political theorist of freedom, see Jasmine Syedullah, "'Is This Freedom?': A political theory of Harriet Jacobs' loopholes of emancipation," (Dissertation: Politics, UC Santa Cruz, 2014).
[154] On "blackness" as an ambiguously racialized language of diabolism in Hawthorne, see Yellin and Riss.
[155] Spillers 80.
[156] Toni Morrison, *Playing in the Dark: Whiteness and the Literary Imagination* (New York: Random House, 1992), 5.

against which *The Scarlet Letter*'s white-American-ness defines itself, rather, her lawlessness—her "beautiful and brilliant…disorder" (84)—is a trace of ineradicable dissent. Pearl embodies fugitivity: "As to any other kind of discipline…little Pearl might or might not be within its reach" (86). Her "wild flow of spirits" (86) exceeds the law's attempted grasp.[157]

Hawthorne's criticism of the intrusion of the law into "private matters" (the sentimental) in his account of Governor Bellingham and Reverend Wilson's intervention into Hester's custody over Pearl is bound up with the legal status of maternity of enslaved women. The magistrates want to take Pearl out of Hester's sinful hands and place her into "wiser and better guardianship" (93). The narrator comments:

> It may appear singular, and, indeed, not a little ludicrous, that an affair of this kind, which, in later days, would have been referred to no higher jurisdiction than that of the selectmen of the town, should then have been a question publicly discussed, and on which statesmen of eminence took sides. At that epoch of pristine simplicity, however, matters of even lighter public interest, and of far less intrinsic weight than the welfare of Hester and her child, were strangely mixed up with the deliberations of legislators and acts of state (94).

Hawthorne mocks the way in which this private issue—the "welfare" of a mother and child—becomes not only a public concern, but one taken to the "jurisdiction" of "statesmen of eminence." It is "ludicrous" that this relation of sentiment becomes the matter of legal debate. Slavery, too, for Hawthorne, was a sentimental and private matter that did not warrant legal intervention. That the "private matter" into which Hawthorne

[157] I understand fugitivity primarily through the work of Fred Moten. See Stefano Harney and Fred Moten, *The Undercommons: Fugitive Planning and Black Study* (London: Minor Compositions, 2013), Moten "Knowledge of Freedom," *The New Centennial Review* 4:2 (2002), 269-310 as well as through nineteenth century theorists including Harriet Jacobs in *Incidents in the Life of a Slave Girl* and Frederick Douglass, particularly in *The Heroic Slave* (New Haven: Yale University Press, 2015).

criticizes law's intervention is the possible separation of a child from her mother also links Hester and Pearl's situation to slavery. As Spillers famously argues, because the enslaved child became the property of the "master," the enslaved mother could not mother. Spillers writes: "even though the enslaved female reproduced other enslaved persons, we do not read 'birth' in this instance as a reproduction of mothering precisely because the female, like the male, has been robbed of the parental right."[158] Black motherhood can never be wholly private; it is always already intertwined with the legal and constituted by the deprivation of a right. For the enslaved female, kinship and law are bound at the womb—slavery's doxa of *partus sequitur ventrum* translates literally to "the condition of the child follows from the womb"—thereby demolishing clear boundaries between "private matters" and "matters of law." Spillers argues that because the enslaved mother could not mother, Black motherhood gets deemed "monstrous." Reading the "monstrosity" of Pearl's birth and Hester's motherhood through Spillers' account of Black maternity aligns Black rebelliousness with antinomianism.

This discussion of Hester's custody battle appears to contradict Hawthorne's nostalgic portrayal of the Puritans' "grim rigidity" in the scene at the scaffold (47). The temporality of this scene parallels that of the earlier moment: again, Hawthorne claims that "in later days" *x* would have happened (in this case, "an affair of this kind…would have been referred to no higher jurisdiction than that of the selectmen of the town," but at this moment, in the 1640s, *x* does not occur. Whereas in the scaffold scene the "later

[158] Spillers 77-78.

days" are marked by the contamination of law by sentiment which the "early severity of the Puritan character" (47) forecloses, in this scene, even in that "epoch of pristine simplicity" (the 1640s), matters of sentiment such as "the welfare" of a mother and child are "strangely mixed up" with the legal. It appears Hawthorne wants to have it both ways: he wants to hold up the Puritans as exemplars of the separation between law and sentiment, in contrast to what he perceives to be their mingling in the 1840s, but he also cannot help but criticize the Puritans for their own sentimentalization of the law. Antinomianism becomes useful, here, as an ideology that is within Puritanism, but dissents from its legal orthodoxy. Even in the 1640s, antinomianism claims that matters of feeling are not matters of law; because antinomians preached a doctrine of free grace, they were not concerned with what civil law had to say about sentimental or personal affairs. Only the law of God applied. In this way, Hawthorne aligns himself with the antinomian position, but because antinomianism anticipates and is aligned with Black rebellion, which he opposes and fears, he will not avow this identification outright.

Pearl is the product of a "monstrous" birth and the moral force of the novel hinges on the question of her origins. Though we learn eventually that she is the illegitimate child of Arthur Dimmesdale, when asked by John Wilson who made her, Pearl "announced that she had not been made at all, but had been plucked by her mother off the bush of wild roses, that grew by the prison door" (103). Pearl, by her own account, has other-than-human provenance—she's made from allegorical rose bushes and their antinomian roots, from oyster shells and fugitive ships. She attests to the monstrosity of her own birth. This resonates, too, with Topsy's assertion that she "Never

had any mother" and "Never was born."[159] Pearl's non-maternal origins and her other-than-humanity suggest that she is "monstrous" in the way that Spillers articulates that Black maternity is monstrous.

Pearl's Black feminine monstrosity is antinomian. Her reference to the wild rose bush at the prison door, famously associated with Anne Hutchinson, entangles Pearl with historical antinomianism. But Pearl's pointing to this rose bush as her origin suggests that she arises out of this organ of law's undoing. Pearl is both outside of rules and constituted through the breaking of law. Her birth disorders Puritan orthodoxy and cannot be incorporated into Puritan legal, sentimental, or semiotic order. In fact, when she "come[s] to [Hester] from the spiritual world" (152), she explodes Puritan taxonomies of understanding:

> The child could not be made amenable to rules. In giving her existence, a great law had been broken; and the result was a being, whose elements were perhaps beautiful and brilliant, but all in disorder; or with an order peculiar to themselves, amidst which the point of variety and arrangement was difficult or impossible to be discovered (84).

Pearl's beginnings are antinomian: her "existence" is the product of the breaking of "a great law." She is born despite a prohibition on the conditions that would produce her birth. Like Hutchinson's antinomianism, her relation to law engenders liveliness through destruction; it gives rise to monstrous order. As a "being, whose elements were…with an order peculiar to themselves," Pearl resists Puritan orthodoxy's attempt to make sense of her. Only God, not man, can understand her form and the way in which she is made.

[159] Stowe 343.

It is not only Pearl's having "been born amiss" (152) that is antinomian—she remains outside of law into her childhood; this lawlessness is ongoing. Roger Chillingworth says of her: "There is no law, nor reverence for authority, no regard for human ordinances or opinions, right or wrong, mixed up with that child's composition" (123). Not only does she not follow law, but it is not part of her constitution. She embodies an insurrectionary potential that threatens to undo the very validity of law. Pearl's only apparent sentiment is tied to law's undoing: when Chillingworth asks of her "'Hath she affections?" Dimmesdale responds, "'None,—save the freedom of a broken law'" (124). Law and affection are simultaneously undone; the broken law is the form Pearl's freedom takes.

Pearl materializes broken law ecologically. Like her aquatic namesake, Pearl is constructed from matter out of place. As pearls are made from the organic buildup that mollusks generate in response to an irritant or foreign particle, Pearl is "plucked" from the rose bush, the roots of which "irritate" the prison and its laws. She becomes the "playmate" of nature which, like her, is "wild" and "heathen" and "never subjugated by human law" (189-190). Pearl and the forest enter into friendship, a partnership not bound by contract or by law.[160] Her most sustained ecological partnership is with the "melancholy" and "murmuring" brook:

> The child went singing away, following up the current of the brook, and striving to mingle a more lightsome cadence with its melancholy voice. But the little stream would not be comforted, and still kept telling its unintelligible secret of some very mournful mystery that had happened—or making a prophetic lamentation about something that was yet to happen—within the verge of the

[160] See Jacques Derrida "Politics of Friendship," *American Imago* 50:3 (1993): 353-391.

> dismal forest. So Pearl, who had enough of shadow in her own little life, chose to break off all acquaintance with this repining brook (174).

Although Pearl eventually "break[s] off all acquaintance" with this sorrowing brook, in "mingling" her "more lightsome cadence with its melancholy voice," she attests to the possibility of an inseparable mingling of the human and the non-human, sweetness and despair. Through this indivisible ecology, Pearl's spirit might float in the current of song made of the brook's voice and her own. Pearl's relation with the brook and the woods resembles Monique Allewaert's concept of "ecological personhood"—a "minoritarian" "alternative materialism of the body" and agency in which bodies are "disaggregated" and "by which human beings are made richer and stranger through their entwinement with…climatological forces as well as plant and animal bodies."[161] But what Pearl materializes differs from ecological personhood; at stake in her ecology is not precisely alternative agency or ontology. Though her being is indeed disaggregated, her ecological life evinces the appositional generation of matter, flesh, and spirit from a place not proper to it, and which, like the brook, is always in motion.

Beyond merely breaking law, Pearl's being threatens to reveal that the law's punishments and protections have never been and will never be universal. When Hester and Dimmesdale commune in the woods and Hester casts off the scarlet letter, Pearl refuses to partake in their sentimental ecstasy and insists that Hester re-don the symbol that doubles as her sentence. Pearl knows that Hester is subject to law whether or not she wears its visible marker. When Hester, in "honeysweet expressions" (195) implores Pearl

[161] Monique Allewaert, *Ariel's Ecology: Plantations, Personhood, and Colonialism in the American Tropics* (Minneapolis: University of Minnesota Press, 2015), 1-3.

to "leap across the brook" (194) to join her and Dimmesdale in their sun-spattered bliss, Pearl "suddenly burst into a fit of passion, gesticulating violently, and throwing her small figure into the most extravagant contortions. She accompanied this wild outbreak with the most piercing shrieks, which the woods reverberated on all sides; so that alone as she was in her childish and unreasonable wrath, it seemed as if a hidden multitude were lending her their sympathy and encouragement" (195-6). Pearl resists Hester's entreaties through movement and through sound.[162] In response to Hester's request that she come gracefully toward her, Pearl does precisely the opposite, moving erratically and violently, and she meets Hester's sweet words with "piercing shrieks." She has no care for human comportment, but rather finds herself encouraged by the "multitude" of the wood. Like the radical abolitionists, she has no care for the governance of man, but rather finds herself exclusively under the jurisdiction of God or, in this case, the forest. More radical even than the anarchy espoused by the radical abolitionists who believed that men still required governance, just by God rather than by law, Pearl suggests a politics that necessitates a new arrangement of power. It is the precarious freedom of a slave rebellion, a freedom that refuses to have ever legitimated the law, a freedom never sanctioned by law nor under its protection.

Pearl's antinomianism, unlike that of the radical abolitionists, is profoundly anti-sentimental. When Pearl is young, she rejects Hester's shows of affection:

> Pearl would frown, and clench her little fist, and harden her small features into a stern, unsympathizing look of discontent. Not seldom, she would laugh anew, and louder than before, like a thing incapable and unintelligent of human sorrow.

[162] On fugitivity and sound see Fred Moten, *In the Break*, (Minneapolis: University of Minnesota Press, 2003) and Ashon T. Crawley *Blackpentecostal Breath* (New York: Fordham University Press, 2017).

> Or—but this more rarely happened—she would be convulsed with a rage of grief, and sob out her love for her mother, in broken words, and yet seem intent on proving that she had a heart, by breaking it (86).

Pearl uses sentiment only tactically—it is not natural to her. She responds to her mother's tenderness alternately with maniacal laughter and "a rage of grief;" her affect is unpredictable, apparently inappropriate to the situation, destructive. Pearl's being "like a thing" aligns her with the enslaved as persons-turned-things, but she insists upon preserving this thingliness, resisting Hester's and later Dimmesdale's attempts to turn her into an object of sympathy and defying their appropriative claims to shared humanity.[163] Hawthorne's descriptions of Pearl's insensibility and thingliness anticipate Stowe's descriptions of Topsy: Topsy is described as "the thing" with eyes "glittering as glass beads," a "shrill voice….odd and unearthly as that of a steam-whistle," and a facial expression "over which was oddly drawn, like a kind of veil, an expression of the most doleful gravity and solemnity."[164] Though Topsy can be understood as racist caricature who is eventually incorporated into Stowe's sentimental order, if we read her as exercising something like what Daphne Brooks calls the "spectacular opacity" Black female performers deploy to reconfigure the terms of their visibility, we can locate potential resistance in Topsy's expressive inscrutability.[165]

When Dimmesdale, who I read as a sentimental abolitionist, tries to incorporate Pearl into his aspirationally normative family unit, she forcefully rejects him:

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[163] On the resistance of the object see Moten, *In the Break*.
[164] Stowe 338-339.
[165] Jayna Brown argues that Topsy can be recovered as "a trope for black female expressive resilience." *Babylon Girls* (Durham, NC: Duke University Press, 2009), 56. But I argue, by way of Daphne Brooks' in addition, her "thingliness" can operate as a form of non-expressive resilience. See Daphne Brooks, *Bodies in Dissent* (Durham, NC: Duke University Press, 2006), 8.

> The minister—painfully embarrassed, but hoping that a kiss might prove a talisman to admit him into the child's kindlier regards—bent forward, and impressed on her brow. Hereupon, Pearl broke away from her mother, and, running to the brook, stooped over it, and bathed her forehead, until the unwelcome kiss was quite washed off, and diffused through a long lapse of the gliding water. She then remained apart, silently watching Hester and the clergyman…. (198)

Pearl is emotionally, and perhaps also sexually violated—kissed on the forehead—by the white abolitionist, who also happens to be her father. She first refuses him, and then baptizes herself in the brook. Pearl will not abide by the clergy's sentimental governance and chooses un-consecrated baptism in the stream instead. Like Hutchinson, she opts for an unmediated relation to God.

It is in part Pearl's refusal of sympathy that makes Hester, Chillingworth, and Dimmesdale doubt her humanity. Her own mother "could not help questioning…whether Pearl was a human child" (86). I read Pearl's non-humanity through Alexander Weheliye's articulation of the foundationally anti-Black character of the Western category of the human: "blackness," he writes, "designates a changing system of unequal power structures that apportion and delimit which humans can lay claim to full human status and which humans cannot."[166] Pearl is not and cannot be made into what Weheliye terms "the human as Man."[167] Despite Hester's wishes, Pearl cannot experience "a grief that should deeply touch her, and thus humanize and make her capable of sympathy" (171). Slavery supporters used Black people's supposed unreachability by sympathy as justification for their enslavement. Stowe attempts to critique this in her description of

[166] Alexander Weheliye, *Habeas Viscus: Racializing Assemblages, Biopolitics, and Black Feminist Theories of the Human* (Durham: Duke University Press) 2014, 3.
[167] Weheliye 4-5.

Topsy, whose "round shining eyes, glittering as glass beads" suggest she is hard, reflective, and impermeable by feeling.[168] Stowe then incorporates Topsy into sentimentality and humanity by means of Christly Eva's missionary efforts: just before Eva's death, Topsy, "wiping the tears from her eyes" promises Eva that she's "tryin…to be good," and then "[hides] her eyes…in her apron."[169] In hiding her eyes, she conceals the feature which previously marked her inhumanity. But despite her newly granted "humanity," Topsy remains enslaved and without legal protection. Hawthorne seems to recognize Stowe's error: merely incorporating people of African descent into sympathy does not right the evils of slavery. It appears Hawthorne recognizes the legal limitations of the abolitionists' argument that slavery is immoral because the enslaved are in fact worthy of sympathy. Hawthorne suggests that extending sympathy to the enslaved on the basis of a humanity "granted" to them "benevolently" by white abolitionists warrants criticism. For Hawthorne, this is because abolitionist sympathy will not prevent Black rebellion, but in my reading of Pearl, abolitionist sympathy is suspect because it "reinscribe[s]" the enslaved's "subjugated status."[170] It is Black rebelliousness's incompatibility with a definition of humanity premised on sympathy that makes it, at least temporarily, liberatory.

Pearl's monstrous unavailability to sympathy is anarchic and insurgent. Rather than appealing to sympathy or to changes in law, Pearl rebels, ultimately, by escaping the bounds of the novel. By the end, Pearl appears to be incorporated into a sentimental

[168] Stowe 338.
[169] Stowe 412.
[170] Hartman 22.

fantasy; she does consent to kiss Dimmesdale right before his death, but at this point he is no longer trying to "tame" her; he has already given himself up to the pain and shame of public judgment by revealing his own scarlet letter. Pearl's consent to his kiss does not negate her untamable force of rebellion. Years later, "some people…persisted in considering her" "the elf-child, the demon offspring" (243), despite rumors, which "would now and then find [their] way across the sea—like a shapeless piece of driftwood tost ashore, with the initials of a name upon it" (243), that she had become a wealthy heiress, "no tidings of them unquestionably authentic were received" (243). She evaporates out of the narrative, which could only ever feign to contain her.

Pearl inhabits a collective form of personhood that Edouard Glissant describes as "consent not to be a single being."[171] Glissant writes that at the moment one traces the route of the caravels of the Atlantic slave trade one "attempts to be many beings at the same time. In other words, for me every diaspora is the passage from unity to multiplicity."[172] Pearl embodies this kind of multiple being:

> Her one baby-voice served a multitude of imaginary personages, old and young, to talk withal. The pine-trees, aged, black, and solemn, and flinging groans and other melancholy utterances on the breeze, needed little transformation to figure as Puritan elders; the ugliest weeds of the garden were their children, whom Pearl smote down and uprooted, most unmercifully. It was wonderful, the vast variety of forms into which she threw her intellect, with no continuity, indeed, but darting up and dancing, always in a state of preternatural activity,—soon sinking down, as if exhausted by so rapid and feverish a tide of life,—and succeeded by other shapes of a similar wild energy (88-89).

[171] Edouard Glissant in conversation with Manthia Diawara, "One World in Relation," *Nka Journal of Contemporary African Art* 28 (Spring 2011), 5. See also Moten "to consent not to be a single being," *Harriet: A Poetry Blog*, February 2010. https://www.poetryfoundation.org/harriet/2010/02/to-consent-not-to-be-a-single-being/ accessed April 28, 2017.
[172] Glissant and Diawara 5.

Through her voice, Pearl becomes "a multitude of imaginary personages." Her rebelliousness resists singularity; it defies containment and completion. Her multiplicity, like her "wild energy" makes her untamable by law. By means of that same voice, she upsets Puritan legalism: she turns trees and weeds into the Puritan elders who would separate her from her mother and shame her and their children who would taunt her, and then "smote[s] down" and "uproot[s]" them. But reading in the context of Glissant's writing on the Middle Passage, we must acknowledge that this multiplicity emerges in proximity to death. One becomes multiple in the hold because individual subjectivity is foreclosed. Pearl's liveliness is bound up with pain: it comes in a "feverish tide," linking it to both illness and to the sea. This "tide of life" exhausts her and leads her to "[sink] down," but the exhaustion is not total; a "similar wild energy" returns in "other shapes." Liveliness may not always be a feverish tide; her spirit cannot be contained in a single form, neither her spirit nor the forms it inhabits are reducible to pain.

What, then, is the meaning of Pearl's Blackness? I want to suggest that it takes place through form. Pearl's spirit moves through a "vast variety of forms…with no continuity" (88-89). Like Morrison's "reined-in, bound, suppressed, and repressed darkness…objectified in American literature as an Africanist persona," Pearl is produced by the white imagination, but she slips the sentimental bonds of the romance narrative form.[173] Hawthorne avows this in "The Custom-House": "The characters of the narrative would not be warmed and rendered malleable, by any heat that I could kindle at my intellectual forge. They would take neither the glow of passion nor the tenderness of

[173] Morrison 38-39.

sentiment, but retained all the rigidity of dead corpses, and stared me in the face with a fixed and ghastly grin of contemptuous defiance" (34). The narrator wants desperately to produce human characters with interiority, but Pearl stubbornly remains "rigid" and corpse-like. As Pearl resists incorporation into the order of the human, she also resists Hawthorne's conceptualization of "life." And yet, Pearl's spirit is undoubtedly lively. But because she lacks interiority, her liveliness is unaccountable in Hawthorne's white-supremacist schema and registers instead as death. Pearl's refusal to adopt "the glow of passion" and "the tenderness of sentiment" is yet another site of her rebellious potential. She is more insurgent exactly where Hawthorne claims she "fails."

At the end of the novel, Pearl remains unknowable, associated with shapelessness and the unpredictable fancies of the sea. Like a piece of driftwood carrying an indecipherable sign, Pearl exists in an ambiguous position between sign, being, and spirit. Messages about Pearl appear "like" driftwood, but perhaps the "initials of a name upon" the driftwood are themselves the messages, or maybe it is Pearl who is the driftwood, an undecidable material trace; maybe a piece of tree or boat, perhaps natural, perhaps manmade, tossed to shore. Perhaps Pearl's spirit has moved into the form of driftwood, into the trace of the hold, broken off from the boat. Glissant theorizes the temporality of the ship, the womb, the sea as a beginning, like Pearl's, that is marked by both destruction and persistence:

> Whenever a fleet of ships gave chase to slave ships, it was easier just to lighten the boat by throwing cargo overboard, weighing it down with balls and chains…In actual fact the abyss is a tautology: the entire ocean, the entire sea,

> gently collapsing In the end into the pleasures of sand, make one vast beginning but a beginning whose time is marked by these balls and chains gone green.[174]

As driftwood, Pearl is like the "balls and chains gone green." She is the lasting trace of a past violence, but also the bearer of inscrutable, but decidedly material messages. Though Pearl disappears from the text, she doesn't sublimate into abstraction. Her presence persists as driftwood's broken space of protest.

Pearl's abyssal temporality explodes any obvious relation between signs and occurrences, prophecies and their fulfillments. Her "[fulfillment]" of her "errand as a messenger of anguish" (238) may allude to the "Sermon on the Mount" in which Christ says, "Think not that I am come to destroy the law, or the prophets: I am not come to destroy, but to fulfil."[175] Pearl fulfills her role as "messenger of anguish" as Christ "fulfills" the law. Reading Pearl in proximity to this biblical allusion, we see her relation to law as not oppositional, but rather as law's fulfillment. In turn, the fulfillment of antebellum U.S. law, unsustainably predicated upon Black subjection, is its own undoing. But Pearl's wildness is also portentious: "Children have always a sympathy in the agitations of those connected with them; always, especially, a sense of any trouble or impending revolution…therefore Pearl…betrayed, by the very dance of her spirits, the emotions which none could detect…" (213). Pearl's "agitated" and "danc[ing]…spirits" are both rebellious and signs of rebellions to come; perhaps the future has already

[174] Edouard Glissant, *Poetics of Relation* trans. Betsy Wing (Ann Arbor: University of Michigan Press, 2010), 6.
[175] Matthew 5:17, King James Version. It is also worth noting that this verse comes just three verses after "A city on a hill cannot be hid," the verse famous for its citation in John Winthrop's "A Modell of Christian Charity," the de facto "founding document" of the Massachusetts Bay Colony.

arrived. Signs and their fulfillment may exist simultaneously, defying ordered chronology. Pearl both embodies and anticipates law's undoing.

Pearl is not enslaved, but she is subject to the structural conditions of enslavement, and performs freedom accordingly. Her Black freedom shows that in a world structured by slavery, antinomianism might in fact be the ongoing condition of Black life. She shows that Black rebellion, and Black freedom, cannot be contained by the law that attempts to negate it completely.

Chapter 3: William Apess and the Nullification of Settler Law

I speak of promised lands
Soil as soft as momma's hands
Running water, standing still
Endless fields of daffodils and chamomile
Rice under black beans
Walked into Apple with cracked screens
And told prophetic stories of freedom…
-Chance the Rapper

I don't want no fucking country…
-Dionne Brand

In this chapter, I employ the concept of antinomianism to stage a conversation between Indigenous Studies and Black Studies, and between struggles for decolonization and abolition, through readings of two texts by Pequot Methodist preacher William Apess.[176] Written during the period of president Andrew Jackson's policies of Indian removal, *Indian Nullification,* from 1835, is a composite of writings—by Apess and others—about the Mashpee tribe's struggle for sovereignty and *A Son of the Forest* is Apess's 1829 autobiography. I argue that Apess's formally experimental writings challenge logics of property and so offer a way to conceptualize solidarity between Indigenous and Black freedom struggles in the nineteenth century and beyond. I read Apess as writing in the spirit of Black writers from the eighteenth century, like Phillis Wheatley and Olaudah Equiano, who practiced freedom and undermined the legal

[176] On the importance of thinking Black studies together with Indigenous and settler colonial studies, see the special issue of Theory and Event: "On Colonial Unknowing" 19:4 (2016) edited by Alyosha Goldstein, Juliana Hu Pegues, and Manu Vimalassery; especially Tiffany Lethabo King, "New World Grammars: The 'Unthought' Black Discourses of Conquest." See also Iyko Day, "Being or Nothingness: Indigeneity, Antiblackness, and Settler Colonial Critique," *Critical Ethnic Studies* 1:2 (2015): 102-121.

institution of slavery by claiming that they were in bondage not to man, but to God; and also in the spirit of Apess's contemporary, the Black abolitionist David Walker, who, in addition to appealing to the justice of God, proposed a solidarity between Black and Indigenous people on the basis of "color" in his *Appeal to the Coloured Citizens of the World.* I will argue that antinomianism offers a way to think about how Black and Indigenous dissenters used both already existing spiritual practices and strategic engagements with settler law to challenge regimes of property law that were based upon Indigenous and Black subjugation. Apess practices antinomianism through the nullification of property law, as it has been applied to both land and persons.[177]

Indian Nullification of the Unconstitutional Laws of Massachusetts, Relative to the Marshpee Tribe: or, The Pretended Riot Explained is made up of a collection of documents summarizing the events of what would come to be called the Mashpee Revolt. In 1833, Apess visited the Mashpee tribe of Cape Cod, Massachusetts to help them resolve a legal dispute with the Massachusetts government. The Massachusetts government was, through a variety of means, restricting Mashpee self-governance and denying them collective control of the land they had lived on for centuries. The government limited the tribe's ability to sell and buy land; had imposed white "overseers" to supervise all Mashpee business; used Mashpee funds to hire a white preacher, against the tribe's will; and refused to entertain their grievances about a number of issues, including white men repeatedly seizing wood from Mashpee forest land. In

[177] "Nullification" is just one of a number of strategies Indigenous people have used to contest and overturn subjugating state and legal forces. See for example Audra Simpson's theorization of the politics of refusal in *Mohawk Interruptus* (Durham: Duke University Press, 2014).

response, Apess helped the Mashpee to draw up a series of documents, including a petition to the Massachusetts government demanding the right to self-governance, and declaring that "we will put said resolutions in force"—regardless of penalty (Apess 175).[178] These petitions suggested not only a breaking of Massachusetts law, but a refusal to even dignify its terms—a *nullification* of Massachusetts law. One might nullify a law, rather than merely break it, in order to draw attention to its injustice. Nullification is a more profound undoing of law than a mere refusal to follow it. As such, nullification is distinct from Thoreauvian "civil disobedience," which, though it advocates for disobeying unjust laws, is premised upon a logic of liberal individualism and a sense that the state is, in fact perfectible, rather than predicated on the fundamental and ongoing violence of settler colonialism and slavery. Nullification abolishes the very conditions that allow such laws to exist: in this case, the property form.[179] It engenders a world that, in the words of Cedric Robinson on the Black Radical Tradition, "had never allowed for property in either the physical, philosophical, temporal, legal, social or psychic sense."[180] I read nullification, both in Apess and more generally, as an antinomian practice.

Nullification is not only a secular legal practice, but also part of the theological aspect of antinomianism. Nullification is an antinomian mode of relation, a kind of radical abolition that sidesteps the law in favor of an abiding faith in grace. Whether or not Jesus "abolishes" or "nullifies" the law is a central question of both Pauline theology

[178] This and all following in-text citations to Apess's writings are from *On Our Own Ground*, ed. Barry O'Connell (Amherst: University of Massachusetts Press, 1992).
[179] For a compelling account of the way Apess uses nullification to show the exclusions at the heart of the Constitution and of American democracy, see Adam Dahl, "Nullifying Settler Democracy: William Apess and the Paradox of Settler Sovereignty," *Polity* vol. 48, no.2 (April 2016), 279-304.
[180] Cedric Robinson, *Black Marxism* (University of North Carolina Press, 2000), 168.

and seventeenth-century Antinomianism. In the Sermon on the Mount, Jesus states: "Think not that I am come to destroy the law, or the prophets: I am come not to destroy, but to fulfill" (Matthew 5:17).[181] In several other translations, "destroy" [katalysai :καταλῦσαι] is rendered as "abolish." St. Paul asks in Romans "Do we then make void [katargoumen :καταργοῦμεν] the law through faith? God forbid: yea, we establish the law." (Romans 3:31). The Greek for "make void" here is also elsewhere translated as either "nullify" or "abolish," which suggests a continuity, if not a synonymous relation between the meanings of "destroy," "make void," "nullify," and "abolish." To *nullify* a law means to deem it void—in effect, to abolish it. At stake in St. Paul's question is whether the arrival of Jesus and the presence of God's grace nullifies the need for believers to adhere to the law. Though St. Paul asserts here that faith does *not* nullify law, the seventeenth-century Antinomians believed otherwise. They believed that God's grace did in fact nullify secular law. I read Apess's use of nullification as grounded in this antinomian logic: that it's specifically God's grace that demands the nullification of the Massachusetts laws that are unjustly subjugating the Mashpee and all Native people.

INDIAN NULLIFICATION

Nullification was a crucial tactic for Apess in his support of Mashpee sovereignty, because the state had refused to either hear or acknowledge the Mashpee's grievances about the misuse of their tribal funds and resources. Laws that were nominally written to

[181] All Bible references are to the King James translation, unless otherwise noted. Some of Apess's biblical citations correspond to the KJV, whereas others appear to be his own variations.

protect the Mashpee were, in practice, instruments of Mashpee subjection. These laws denied the tribe an opportunity to express their grievance in a conventional legal forum, much less achieve redress. When at one point, white officials tell Apess that he should "wait for the session of the Legislature" to "apply for redress," instead of just undermining or protesting the laws, Apess is quick to point out that the Mashpee have never been granted the privileges of citizenship, and so cannot expect the "good treatment" of the government (173). As Glenn Coulthard has argued, conventional legal means are inadequate to Indigenous causes: states' implementations of rights and recognition often "reproduce the very configurations of colonialist, racist, patriarchal state power that Indigenous peoples' demands for recognition have historically sought to transcend."[182]

Indian Nullification is compiled from the petition to the Massachusetts government, along with other petitions the Mashpee authored, as well as newspaper articles, legal documents, and Apess's own commentary on the texts and events. Although critics such as Maureen Konkle locate the significance of Apess's work in his individual authorship—his literacy and ability to use white rhetorical strategies toward Indigenous liberation—I argue that it is his not his individual voice but rather his use of a form of collective voice that enables this particular mode of resistance to property.[183] By

[182] Glen Sean Coulthard, *Red Skins White Masks* (Minneapolis: University of Minnesota Press, 2014), 3.
[183] See Maureen Konkle, *Writing Indian Nations* (Chapel Hill, NC: University of North Carolina Press, 2004), 97-159. My interpretation also differs from that of Theresa Gaul, who argues that Apess's juxtaposition of often conflicting viewpoints argues for a pluralistic United States public sphere that allows for the inclusive co-existence of multiple perspective. See Theresa Gaul, "Dialogue and public discourse in William Apess's Indian Nullification" *American Transcendental Quarterly: 19th century American literature and culture* 15:4 (Dec 2001), 275-292.

presenting this text in a collective voice, Apess produces a formal nullification of the settler regime of private property. Mashpee land had historically been held in common. Natural resources there were available for collective use. The settlers, however, were both exploiting Mashpee resources by stealing much-needed wood from the forest and enclosing this common land into units of property. The textual form of *Indian Nullification* performatively models collective ownership and a challenge to enclosure, by assembling documents by various authors in various genres. As such, Apess abdicates any claim to individual ownership over this text, and instead produces this document as a community endeavor, in which formal legal texts have no particular authority.

One of the texts that is critical to *Indian Nullification'*s politics of nullification through both form and content is the 1783 deed that supposedly sequestered "a certain tract of land, being four hundred acres more or less…to lay as a parsonage forever," which was to be "set apart from the common land" (258-9). During Apess's time with the Mashpee, the community's white preacher, Phineas Fish, was claiming personal ownership of this tract and the parsonage on it. The inclusion of this deed shows how on both Mashpee and settler terms, the deed could never have been valid. It will have always been null and void. In both its descriptions of land and its inclusion in this polyvocal document, the deed nullifies any notion of Mashpee land—or speech—as private property. Additionally, the original signatories (one white man and four Mashpee self-designated Selectmen) did not have the authority to set this land aside. Because the land was owned in common, no piece of it could be legally transferred without the consent of each individual tenant, which is to say, every member of the tribe. This deed shows that

despite settler attempts, Mashpee land could never fully be transformed into private property. Here is the beginning of how the deed delimits the plot of land to be set aside:

> Beginning at a certain spring of fresh water which issues from the head of a small lagoon on the East side of Marshpee [sic] river aforesaid, and runs into said river a small distance below, and South of the spot where negro Scipio and his wife Jemimai had their house, which is now removed, and from which leads into Marshpee Neck…until it comes to the first station, leaving Quokin, and Phillis his wife, quiet in their possession which tract of land (except Mary Richards' fields and plantation), which is within the said boundaries and wood for Mary's own use… (259)

The boundaries of the plot are narrated in terms of a type of social relationality that is irreducible to individuated private property. For Sylvia Wynter, the term "plot," describes a bit of land the enslaved would use to grow their own subsistence crops. In contrast to the plantation, on the plot, social values were sustained and use value was not eclipsed by profit.[184] Even this ostensibly propertizing document gives an account of the land through a combination of references to "natural" features, like rivers and lagoons, and to human inhabitation. As such, the language of this deed destabilizes a clear boundary between the human and the natural. Quokin and Phillis's land (which, we should note, is not privately owned, but rather still part of the commons) is as valid a geographical marker as a "spring of fresh water." The deed also validates the history of the land: a home that's no longer standing—and significantly, a home that belonged to a Black couple—is as relevant a marker as a lagoon. The inhabitants of this space, both past and present, and the natural features, are kin. This common land has been home to Mashpee, Black, and, we presume, white inhabitants, all of whom occupied space in common without recourse

[184] Sylvia Wynter, "Novel and History, Plot and Plantation," *Savacou* 5: (June 1971): 95-102.

to private property ownership. Traces of what was once there remain relevant: this land has a history. This deed, in its very language, legitimates the non-proprietary relation to land that its implementation attempts to—but cannot ever successfully—displace. Because this deed is included in *Indian Nullification* alongside newspaper articles, Apess's commentary, the Mashpee petitions, etc., it gives the legal text no more authority or legitimacy than any other written document, and no more legitimacy than the physical traces of people's inhabitation of land. All of these factors, as well as the fact that that the people who signed never had the authority to do so in the first place, contribute to the deed's nullification. It's as if the very terms of property law self destruct, making the whole sequestration, and in turn, any enclosure of Mashpee land, null and void.

In his practice of nullification, Apess appeals to a justice beyond U.S. law. He argues "that the laws [subjugating the Mashpee] ought to be altered without delay; that it was perfectly manifest that they were unconstitutional" (184). This appears to be a semi-state-sanctioned kind of nullification: Vermont would do something similar around the Fugitive Slave Act 18 years later.[185] But he adds something that flirts with a nullification of the constitution itself, saying, "that, even if they were not so, there was nothing in them to authorize the white inhabitants as they had done" (184). The constitution, here, actually isn't the ultimate barometer of lawfulness. Even if these laws (here allowing white settlers to freely cut and take wood from the Mashpee plantation) were

[185] Horace K. Houston, "Another Nullification Crisis: Vermont's 1850 Habeas Corpus Law," *The New England Quarterly* 77:2 (Jun 2004): 252-272.

constitutional, the constitution would then be unjustifiable. He holds to a standard of justice other than the constitution: a justice perhaps best legislated by God.

These legal-theological strategies for decolonization are materially connected to the Mashpee religious practice. The Mashpee meetinghouse, where church services are held, is both the physical and symbolic center of the fight for Mashpee self-determination. When Apess arrives there for church service, he is surprised to find that the attendees are in fact white, not Native. He learns that this is because the white preacher, Phineas Fish, who is paid by the state government with funds that were meant to go to the Mashpee, has both taken over the leadership of the services in a way that is objectionable to the tribe, and has claimed personal ownership over the meetinghouse and the surrounding land. But the Mashpee relationship to this land both precedes and exceeds white settlement and private property law. The meetinghouse, which had been used by the Mashpee for generations, is spiritually entangled with the woods. Apess writes this of the meetinghouse: "The sacred edifice stood in the midst of a noble forest and seemed to be about a hundred years old…Hard by was an Indian burial ground, overgrown with pines" (170). The description of the meetinghouse's location "hard by" an "overgrown" Indian burial ground asserts that it's located on long-standing Indian land. The space is already occupied by both the dead and the living; the remains of the human allow the non-human to flourish, in the form of the overgrown pines. Even if the Massachusetts government and the white preacher are claiming ownership and control over the space, Apess quietly indicates that the Indians, not by legal title, but rather by way of their bones have sacred claim.

There is also a theological dimension to Apess's legal arguments. Much of the contention around this deed regards what exactly constitutes a parsonage. The land was explicitly set aside for "the support of the Gospel,…according to the discipline and worship of the Church in this place, which is Congregational" (262). This does not, Apess points out, specify a particular space in which this "support of the Gospel" is supposed to take place. Four hundred acres seems an excessive amount of land for a parsonage, defined as the residence of a clergy member. But underlying the legal minutia about whether the deed is valid, and if it were valid, whether the title to the parsonage belongs to the white minister, Fish, is the fact, that can only be indirectly recognized by law (if at all), that Mashpee (and other Indian) religious practice is not limited to the space of the meetinghouse or the parsonage. The burial ground and the trees surrounding the meetinghouse, like the woods Apess describes in *A Son of the Forest* are also sacred spaces where the Indians "support the Gospel." The space of religious worship exceeds and cannot be bounded by acreage marked by deed and title, but rather includes a myriad of overlapping, shifting informal spaces. And in fact, the Indians aren't attending Fish's church—part of the conflict is that this church and preacher that are being paid for with Mashpee funds are not even serving the Mashpee community.

Nullification refers to spiritual practice, as well as a legal and formal one. The services that Apess preaches enact a lived nullification of Phineas Fish's unpopular services. When Apess preaches to the Mashpee, he delivers a spirit-motivated and song filled religious practice in a schoolhouse—a location that was never set aside in deed for

religious practice, and yet serves as a holy space nonetheless. Apess describes what a white visitor might see were he to attend one of his services:

> He might then visit the other schoolhouse, at the neck, where he would find William Apess, an Indian, preaching to fifty, sixty, or seventy, and sometimes a hundred Indians all uniting in fervent devotion. After the sermon, he would hear a word of exhortation from several of the colored brethren and sisters, in their broken way, but which often touches the heart of the Indian, more than all the learning that Harvard College can bestow. He would hear the Indians singing praises to God and making melody in their hearts if not their voices (255).

Even amidst settler violence, the Mashpee gather to sing their devotion. They form a collective that, though they meet in a schoolhouse, relies not on formal (white) learning (Harvard College was one of the institutions against which the Mashpee were petitioning) but on exhortation and the heart. They unite "in their broken way," through un-wholeness. Brokenness and exhortation are not mutually exclusive, here. This brokenness might in part refer to the congregation's lack of fluency in English, but it could also refer to the worshippers' hearts. Their hearts are broken by colonization, but settler violence does not exhaust their capacity for worship. Their hearts make melody nonetheless. This devotional gathering resists the logic of property. When singing, the worshippers do not have property in themselves, but are rather given over to the lord. They are not individuated proprietary subjects, but are rather "unit[ed] in fervent devotion." Whereas Massachusetts law separates and discriminates, God's grace unites and is available to all.

The reason this service takes place in the schoolhouse is because in the wake of Apess's activism, Fish locks the Mashpee out of the meetinghouse, and refuses to let them in. Because the meetinghouse is under white legal control, it cannot function as a religious sanctuary, a space of legal protection, or a forum for the airing of Mashpee

grievances. When the Mashpee invite their lawyer "to explain to us the laws" at the meetinghouse and find that Fish has locked them out, "the people began to assemble under the trees…" (252). When denied access to formal, indoor space, the Mashpee improvise in the woods. They gather in the Indian burial ground, under the overgrown pines, to learn about and to nullify the laws. It is not the meetinghouse, the state-sanctioned sacred space, but rather the woods, that offers a space for collective expression.

Though the Mashpee worship in informal spaces, they strategically use the law make a case for needing the formal spaces—the parsonage, the meeting house etc. They actually don't need the law for its express purpose; the practice of their religion does not require ownership of a space designated by title and deed. Which is to say, the Mashpee are not petitioning in order to get what the law wants them to get, but rather to continue their way of life that doesn't require legal title to manage spaces of worship. The services in the woods and the meetings under the trees register a common relation to land that is not about enclosure—of self or of space.

It is possible that it is actually an open secret between the Mashpee and the white governors that the Mashpee practice religion in informal spaces, and that part of the reason the Court is so eager to "sequester" land for the parsonage and to forbid the Mashpee from selling their own land is to attempt to control and limit that informal religious practice and force religious practice into white-sanctioned spaces. And perhaps Apess knows that this mode of dispossession is in play, and so he makes his argument by citing two statutes from the Massachusetts constitutions: one about unlawful seizure and

one about religious freedom, once again using Anglo-American legal frameworks insurgently to advocate for Indian interests.

NULLIFICATION IN CONTEXT

As Neil Meyer has argued, Apess uses the term "nullification" to strategically signal a relationship between his cause and two different events that were receiving national attention in the early 1830s: the Cherokee cases in the Supreme Court, in which the Cherokee, Georgia, and the federal government were at odds regarding the legality of Indian removal, and the South Carolina Nullification Crisis of 1832, in which the state of South Carolina "nullified" federal law to protest paying what they saw to be an unjust tariff, and which would become part of a larger unfolding debate around the rights of states in relation to the federal government's policies around slavery.[186] Apess uses the associations of "nullification" with these incidents to draw a connection between the struggle for Indigenous autonomy and the struggle against slavery.

In the 1820s, the state of Georgia nullified Cherokee law, saying that Georgia laws were valid in Cherokee territory, and Cherokee laws were not. This served to nullify federal treaty law, which had (at least nominally) given the Cherokee autonomy over their own territory. This case then went to the Supreme Court, which ruled in *Worcester v. Georgia* (1832) that states have no right to make deals with Native Nations; that power

[186] Neil Meyer, "'To Preserve This Remnant:' William Apess, the Mashpee Indians, and the Politics of Nullification," *European journal of American Studies*, 13:2 (Summer 2018). My thinking on the relationship between *Indian Nullification* and the Marshall Trilogy of cases in the Supreme Court has been informed significantly by Joanne Barker's work in *Native Acts: Law, Recognition, and Cultural Authenticity*, (Durham, NC: Duke University Press, 2011) and "For Whom Sovereignty Matters" in *Sovereignty Matters*, Joanne Barker ed. (Lincoln, NE: University of Nebraska Press, 2005), 1-31.

is exclusively held by the federal government. In effect, the federal government said that states do not have the power to nullify federal law. However, President Andrew Jackson stood by Georgia: because he wanted to continue with his policy of Indian removal, it was in his interest to allow Georgia to restrict Cherokee sovereignty. The slaveholding elites of South Carolina saw an opportunity in Jackson's support of Georgia. If Georgia could use the language of nullification to argue for states' rights in the context of Indian Removal, South Carolina could use the language of nullification to argue for states' rights in the defense of slavery. The South Carolina Nullification Crisis of 1832 was nominally about the constitutionality of a few federal tariffs, which South Carolina opposed and so nullified. But the Nullification Crisis became part of a larger unfolding debate around the rights of states in relation to the federal government's policies around slavery, which would escalate with the passage of the Fugitive Slave Act.

Apess and the Mashpee pick up on the attention the slavery debate and the abolitionist movement was receiving in order to draw attention to Native struggles for land and self-governance. He capitalizes upon the Massachusetts government's self-representation as not only an ally of the abolitionists against the perpetuation of slavery, but also an ally of the Cherokee against Georgia's political and territorial encroachment, in order to show how this same Massachusetts government was in fact perpetuating similar injustices against the Mashpee—by denying them political autonomy and the maintenance of their collective voice and common claim to territory. In one of their petitions, the Mashpee write: "Perhaps you have heard of the oppression of the Cherokees and lamented over them much, and thought the Georgians were hard and cruel creatures;

but did you ever hear of the poor oppressed and degraded Mashpee Indians in Massachusetts…" (177).

Though "nullification" would have most immediately evoked a state's capacity to "nullify" a federal law it deemed unconstitutional, as with the South Carolina Nullification Crisis, Apess draws on the language of nullification not, as South Carolina does, to make a call for states' rights in order to perpetuate slavery and to reinforce claims to private property. Rather, he uses this language of nullifying federal (or, in this case state) law, to make a case for Mashpee collective control over land owned in common. The Mashpee are a community that speaks "as a body" and which petitions "as the voice of one, with but few exceptions" (175); a collective that nonetheless can account for difference. In *Indian Nullification*, Apess torques the language of nullification away from its use by pro-slavery governments, and appeals to the term's theological sense as radical abolition on behalf of a collective, in order to strategically assert Native self-determination and, ultimately, nullify the applicability of property law to Native use of land.

Legal nullification also has broader implications that can be used to link Black and Indigenous struggles. One mode of legal nullification is enacted through the power of the jury. Since as early as the seventeenth century, juries have had the power to acquit a defendant if they believe the law under which he is being prosecuted is unconstitutional or otherwise unjust. The jury's power to nullify, however, acts as an open secret. Because judges assert that it is not the jury's role to make law, but rather to interpret facts, and because of fears that knowledge of this power would destabilize the legal system, juries

are not told that they have the power to nullify, and when defense attorneys or other parties attempt to make juries aware of this power, they are often silenced. Juries must instead learn about nullification through informal means.[187] (For example, during the trials of people arrested for protesting at Donald Trump's inauguration in January 2017, someone wrote in a bathroom stall "google jury nullification".)[188] Although Apess is not writing about jury nullification, but rather nullification writ large, I want to suggest that jury nullification is just one example of the way in which legal nullification functions in an antinomian fashion. Jury nullification can only be used to acquit a defendant, never to convict; in this way nullification is an act of mercy, enacted by a community, that circumvents the letter of the law. Though a community's granting of mercy is not identical to God's granting of grace, they are both instances in which civil law is held in suspension. Nullification, like grace, mobilizes a collective spirit that exceeds the letter of the law.[189]

One of the most famous cases in which jury nullification was suggested centered on the Fugitive Slave act of 1850 (which required people living in free states to collaborate with enslavers by reporting and "returning" any fugitive people). *United States v. Morris* is a case from 1851 in which a Massachusetts man is put on trial for allegedly assisting a formerly enslaved man in his escape, in defiance of the Fugitive Slave Act. At one point during the trial, the defense attorney informs the jury of their

[187]Alan Scheflin and Jon Van Dyke, "Jury Nullification: The Contours of a Controversy," *Law and Contemporary Problems* 43:4 (Autumn 1980): 51-115.
[188] Ryan J. Reilly, "Jury Likely Deadlocked On Felony Charges Against Trump Inauguration Protesters," *The Huffington Post*, June 5 2018.
[189] Scheflin & Van Dyke.

power to nullify, saying "this being a criminal case, the jury were rightfully the judges of the law, as well as the fact; and if any of them conscientiously believed the act of 1850…commonly called the 'Fugitive Slave Act,' to be unconstitutional, they were bound by their oaths to disregard any direction to the contrary which the court might give them."[190] The defense attorney urges the jury to abide by their oaths—their swearing to God—rather than to the directions of the court—a reminder that even supposedly secular law is embroiled with the theological. Although Justice Benjamin Curtis rejects the attorney's argument for nullification, citing that the jury does not have the authority to make law (though he says nothing about un-making law), the mere suggestion of nullification shows that community mercy can be enacted in the service of de-activating law that would transform person into property. Poet M. NourbeSe Philip and legal scholar Colin Dayan call this potential law's "conjuring power."[191]

The language of "nullification" also circulated among white abolitionists in the mid-nineteenth century around debates over the Fugitive Slave Act's constitutionality. Abolitionists used the language of nullification to express their support for the non-enforcement of the Act, and their critiques used the term disparagingly to prophesy how nullification would lead to the Union's dissolution. In November 1850, Vermont passed the Habeas Corpus Law, which granted legal protection to anyone arrested as a fugitive slave. This statute effectively nullified the Fugitive Slave Act, which required Northern states to co-operate in the arrest and return to slavery of suspected fugitive slaves.

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[190] United States v Morris (1851) 26FED.CAS.-84, Case No. 15,815 via law.resource.org
[191] Colin Dayan, *The Law is a White Dog* (Princeton: Princeton University Press), 2011 and M. NourbeSe Philip, *Zong!* (Middletown, CT: Wesleyan University Press), 2008.

Numerous contemporary newspapers decried this law with headlines deeming it an act of nullification. In New York, the *Albany Argus* wrote that Vermont has "taken upon itself *by law to nullify the act of Congress, known as the fugitive bill, and thus to repudiate the constitutional provision on which that act is founded!"* and an article in the *Boston Post* calls the law a "direct and open nullification of a law of Congress."[192] In 1842 poet John Greenleaf Whittier declined a nomination for Massachusetts State Senator, saying in 1850 that "So far as that law [the Fugitive Slave Act] is concerned, I am a nullifier. By no act or countenance or consent of mine shall that law be enforced in *Massachusetts.*"[193] Several abolitionists, including William Lloyd Garrison, directly associate nullification with adhering to the law of God, rather than the law of man. Garrison defends Whittier, writing: "The 'nullification' [advocated by] Mr. Whittier was 'made easy' by the Apostles, eighteen hundred years ago, who declare—'We ought to obey God rather than man'…"[194]

At the conclusion of his last known work, his *Eulogy on King Philip*, Apess proposes an antinomian legal philosophy applicable to both Native and Black decolonial and abolitionist causes. After describing his mistrust of white people on account of their failure to "look upon me as a man and a Christian," he writes: "I say, then, a different course must be pursued, and different laws must be enacted, and all men must operate under one general law" (310). What is this "one general law," and from where might it originate? I want to suggest, based on Apess's critique of state law and his recourse to

[192] Houston, "Another Nullification Crisis," 267-268.
[193] Houston 257.
[194] Garrison, *Liberator* 1 Nov 1850, qtd in Houston 260.

Methodist spiritual practice, that this one general law could only be the law of God. And in fact, this law might not be law at all. For in order for it to be undiscriminating, in order for the law to treat all people justly, it must arise not from any one person's actions, but from God's unmerited favor. This one general law is actually law's nullification, its radical abolition in favor of a persistent and capacious state of grace.

Apess shares this desire for "one general law" with a number of abolitionists—both black and white—who invoked the discourse of a "higher law" to nullify slave law, in particular the Fugitive Slave Act.[195] When used by white men, this abolitionist antinomianism often espouses anti-Black and anti-Native racism under the guise of liberal benevolence: in 1850 then New York Senator William Henry Seward invoked "a higher law than the Constitution" to oppose slavery while simultaneously justifying settler expansion. However, when invoked by people of color, the "higher law" discourse is more closely aligned with Apess's twin calls for the nullification of Massachusetts law and for a "general law" for all men.[196] In 1859, a Black man named Charles Langston was brought to court for assisting an alleged fugitive, in violation of the Fugitive Slave Act.[197] Langston is quick to point out that he "cannot…expect…any mercy from the laws, from the constitution, or from the courts of the country."[198] "Black men," he states

[195] On Apess and abolitionism also Philip Gura's biography *The Life of William Apess, Pequot* (Chapel Hill: University of North Carolina Press, 2015), especially 54-68.
[196] William Henry Seward, "Higher Law" speech, 1850. Transcribed by Trina S. Rossman from George E. Baker, ed., The Works of William H. Seward (New York: Redfield, 1853), vol. I, 70-93. Accessed via history.furman.edu.
[197] For a full account of this incident, and for a detailed examination of the invocation of a "higher law" in opposition to the Fugitive Slave Act, see Steven Lubet, *Fugitive Justice: Runaways, Rescuers, and Slavery on Trial* (Cambridge: Harvard University Press, 2011) esp. 274-293.
[198] Charles Langston, "Speech at the Cuyahoga County Courthouse," Cleveland, May 12 1859, via Oberlin.edu.

emphatically, "have no rights which white men are bound to respect." Because of this, and because Black men—both fugitive and free—are granted neither due process nor a jury of their peers, "we are thrown back upon those last defenses of our rights, which cannot be taken from us, and which God gave us that we need not be slaves."[199] If civil law treats Black and white men unequally, Langston can make recourse to the "general law" that is the law of God. If the courts will not grant the Black man mercy (unless the jury nullifies), God will still grant him grace.

INDIGENOUS AND BLACK SOLIDARITY

In his remarkable "cultural biography" of Apess, Drew Lopenzina writes "that Native and black communities had formed tight cultural and familial bonds in nineteenth-century New England."[200] There is historical evidence that the Mashpee community during this period was, in fact, interracial. A description of the town of Mashpee from 1802 asserts that "The inhabitants of Mashpee are denominated Indians; but very few of the pure race are left; there are negroes, mulattoes, and Germans."[201] And a report from 1820 notes that the many of the Mashpee had intermarried with people of African descent.[202] In fact, in the 1970s, the intermarriage between Mashpee and African-

[199] Langston
[200] Drew Lopenzina, *Through an Indian's Looking Glass* (Amherst: University of Massachusetts Press, 2017), 50. Apess's own mother may have been of African descent. Lopenzina also elaborates on the instability of racial categories in the period, and the slipperiness between the terms "negro" and "Indian."
[201] "A Description of Mashpee, in the County of Barnstable, September 16th, 1802." *Collections of the Massachusetts Historical Society* 3, Second Series (1815): 4. It was by way of Lisa Bier, *American Indian and African American People, Communities, and Interactions: An Annotated Bibliography* (Westport, CT: Praeger Publishers, 2004), 19 that I was able to locate this passage.
[202] Gura 75. See Jedediah Morse, *A Report to the Secretary of War of the United State…for the Purpose of Ascertaining for the Use of the Government, the Actual State of the Indian Tribes of our Country* (New Haven, Conn.: S. Convers, 1822), app. 69-70.

American people was used successfully in a federal court in an effort to claim that the Mashpee were "'more' African-American than American Indian" and therefore did not qualify for federal recognition the accompanying rights to land.[203] But it appears that only white observers were preoccupied with the so-called "purity" of the race of the Indian inhabitants of Mashpee. For Apess and the Mashpee, the interracial make up of the community was cause for solidarity.[204]

Indian Nullification puts forth several instances of connection and coalition between Native Americans and African Americans, which occur on the terms of the "people of color" (Apess's term) rather than on those of white abolitionists.[205] The 1783 deed discussed above references a Black couple, Scipio and Jemimai, who had previously

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[203] Jo Carillo, "Identity as Idiom: *Mashpee* Reconsidered," *Ind. L. Rev.* 28 (1994): 511. For an outsider's account of the 1976 lawsuit, which also includes interviews with a number of Mashpee tribal members, see Paul Brodeur, *Restitution: The land claims of Mashpee, Passamaquoddy, and Penobscot Indians of New England* (Boston: Northeastern University Press, 1985). Mashpee Wampanoag artist Ramona Peters gives a contemporary account of living as a person with mixed Mashpee and African-American ancestry on the episode of the podcast *Indigenous Politics* entitled "African-Native American Lives" from January 2012. See also *indiVisible: African-Native American Lives in the Americas*. Washington, D.C: Smithsonian Institution's National Museum of the American Indian, 2009, the book published alongside the exhibition about which Peters is speaking in the podcast episode.

[204] That being said, not all Black and Native relations during the period were harmonious. Daniel Heath Justice writes: "There is a long and ugly history of anti-Black violence in Indian Country that is sadly replicated in Indigenous Studies, through erasure and exclusions, if not outright dismissal, and we can't honestly contend with the legacies of settler colonialism if we don't also firmly address anti-Blackness in our scholarship our fiction, our politics, our families, and our lives," Daniel Heath Justice, *Why Indigenous Literatures Matter* (Waterloo, ON: Wilfrid Laurier University Press, 2018), 15. The Cherokee, for example, are known to have enslaved people of African descent and later disenfranchised their freed descendants (Justice 15), see also Barbara Krauthamer, *Black Slaves, Indian Masters* (Chapel Hill, NC: University of North Carolina Press, 2013). Nonetheless, I argue that this does not foreclose the possibilities of Black and Indigenous solidarity in other circumstances. Jodi Byrd's chapter "Been to the Nation, Lord, but I Couldn't Stay There" from *The Transit Of Empire* (Minneapolis: University of Minnesota Press, 2011), 117-146, also takes up this question. For an argument on ways in which Black and Indigenous struggles for liberation are non-identical, see Mark Rifkin, *Fictions of Land and Flesh* (Durham: Duke University Press, 2019).

[205] See also Apess's "An Indian's Looking Glass for the White Man" for his writing specifically on the matter of discrimination on the basis of race: "Is not religion the same now under a colored skin as it ever was? If so, I would ask, why is not a man of color respected" (158).

had a house in Mashpee but which "is now removed" (259). The language of "remove," in reference to Scipio and Jemimai's former home suggests a possible means for thinking about Black and Native solidarity in this space and time. We'll never know why exactly their house was "removed" from this spot, but the language of "removal" at this time would have been associated with the government's forcible displacement of Native people from their lands. That the home of this Black couple was "removed," but remains in the physical memory of the place poses a line of solidarity between Black and Native people, in which forcible removal cannot destroy social relations and physical memories. Additionally, in his description of the congregation that he preaches to, Apess writes "colored brethren and sisters" and then later "Indian," suggesting that perhaps some of the "colored" people were of African descent (255). From this we might speculate that the Mashpee version of collectivity, their community of "people of color," was inclusive of Black and mixed-race as well as Native people.

Nullification also performs solidarity between Indigenous and Black communities by way of its textual form. The text includes an excerpt from William Lloyd Garrison's abolitionist newspaper *The Liberator* in support of the Mashpee cause. By citing *The Liberator*, Apess brings the struggle against slavery into parallax view with the Mashpee struggle against dispossession, while simultaneously performing a methodological deconstruction of the individuated property of authorship, of enslaved-person-as-property, and of the idea of Indian land as private property. The editorial makes two explicit comparisons between the Mashpee cause and chattel slavery. First, the author (who is not named, neither by Apess nor in the original *Liberator* publication) references

"the enslavement of two millions of American people in the Southern States" to establish "the tyranny of this nation" and to lodge a "complaint…principally against the State" (222). Both enslavement and the deployment of Overseers to manage the Mashpee affairs are, to this writer, instances of profound State-sponsored injustice. And in the editorial's closing, the author uses florid abolitionist rhetoric to stir the readers' sentiments in support of the Mashpee, writing: "What belongs to the red man shall hereafter in truth be his; and, thirsting for knowledge and aspiring to be free, every fetter shall be broken and his soul made glad" (223).[206] The language of broken fetters and the desire for freedom brings the Indian struggle into the language of the anti-slavery struggle, and articulates the Mashpee cause as a common cause of freedom, bringing together Black and Native resistance to an unjust state. The writer also specifically uses the language of sovereignty, though, in insinuating that "the red man" has been dispossessed of what "shall hereafter in truth be his." It might appear that this rhetoric is simply employing a logic of property which I have been arguing Apess is working to deconstruct. However, this editorial's insertion in *Indian Nullification* as a bit of common-placed material re-purposes Garrison's sentimental liberalism to function as a profound demonstration of Black and Native solidarity in common cause against state dispossession.

Indian Nullification also uses figuration to align the Mashpee with the enslaved. Apess writes that "It is a fine thing to be an Indian. One might almost as well be a slave" (188) and quotes an article from the *Boston Advocate* saying "we know how strongly and unanimously they [the Mashpee] feel upon the subject of what they really believe to be,

[206] Quotes are from *The Liberator*, January 25, 1834.

their slavery to the overseers" (201). Importantly, these comparisons leave room for difference between the experiences of the Indigenous and the enslaved. The text does not use metaphor here, and so does not collapse the two experiences into false equivalence. Instead, this comparison on the basis of "almost being" and "believing to be" models a shared struggle that is not necessarily based on likeness, but that does appeal to the relative prominence of the abolitionist movement at the time, and the Massachusetts government's desire to be on the right side of it. At one point the text specifically lays out the commonality of the struggle of Black and Native people, framing it in terms of the shared struggle of "people of color" against a white supremacist establishment. Describing the damage the missionaries have caused in the Native community, Apess writes:

> Is it not strange that freemen should thus have been held in bondage more than two hundred years, and that setting them at liberty at this late day should be called *an experiment* now?…I greatly doubt that any missionary has even thought of making the Indian or African his equal...does the proud white think that a dark skin is less honorable in the sight of God than his own beautiful hide? All are alike, the sheep of his pasture and the workmanship of his hands. To say they are not alike to him is an insult to his justice. Who shall dare call that in question (230).

The only likeness that matters here is the likeness of Native and Black people to God. If the white man's laws—even when disseminated by supposedly Christian missionaries—don't fulfill their promises of equality, surely God's laws must. The perpetuation of racial inequality is an "insult" to God's justice. In the absence of constitutional or earthly protection, the Mashpee turn to divine justice.

The Mashpee's practice of worshiping in informal spaces, frequently in the woods or the wilderness, also connect Mashpee religious and freedom practices to those of

African-Americans. These informal spaces of worship, many of which are in what might be called "the wilderness" are central to Apess's antinomian practice of decolonization and abolition. The wilderness is the already-existing material instantiation of nullification. Even prior to his work with the Mashpee, Apess writes about the importance of the woods as a space of congregation and religious practice. Perhaps his most significant religious experiences take place not in the church or the meeting house but in the woods, among the trees. In his autobiography, *Son of the Forest,* he describes religious services held by his aunt Sally George:

> She was the handmaid of the Lord, and being a widow, she rented her lands to the whites, and it brought her in enough to live on. While here we had some very good times, Once in four weeks we had meeting, which was attended by people from Rhode Island, Stonington, and other places and generally lasted three days. These seasons were glorious. We observed particular forms, although we knew nothing about the dead languages, except that the knowledge thereof was not necessary for us to serve God. We had no house of divine worship, and believing 'that the groves were God's first temples,' thither we would repair when the weather permitted. The Lord often met with us, and we were happy in spite of the devil. Whenever we separated it was in perfect love and friendship (40).

These services take place in the wilderness, in the autobiography's eponymous forest. In settler logic, the wilderness is both a space that is available to be conquered and a space of fear. It is a space that has not yet been subjected to the imposition of property ownership—it remains in common—and it is also a space that threatens settler dominance over the land. White settlers do not know how to navigate so-called wilderness space in the way that Native people do. But for Apess and his "brethren" (as he calls fellow Native people), the wilderness is neither pristine nor uninhabited, rather, it's a social space, marked by use. The "wilderness" in which Aunt Sally George holds her services has already been violently seized by settler law, and therefore actually isn't

(and most likely never was) the primordial, pure wilderness of settler stereotype. But this fact of the space having been colonized does not exhaust antinomian possibility: for Sally George's congregation, the wilderness is "God's first temple," it is a space in which they can encounter the Christian God. In the woods, there is a kind of spirituality that precedes the institution of the church—there's holiness from the trees themselves, and this holiness doesn't discriminate. The congregation's relation to their temple is governed by weather—by contingent natural forces—rather than the institutional religious forces that would exclude them. The congregation re-signifies the wilderness; it finds holiness in its status as common land.

In the wilderness church, the worshippers' relationship to god is unmediated. This religious service doesn't require knowledge of "dead languages" or, what Apess calls in a Methodist service earlier in the autobiography, the "wisdom of men." Like Anne Hutchinson, to whom God appears "by an immediate revelation," the Lord appears, to "meet with" the worshippers without the mediation of text or of a literate preacher.[207] The services do not rely upon the letter of scripture, but rather upon what the seventeenth century antinomians would call "the indwelling of the spirit." Aunt Sally George, the "handmaid of the Lord" who initiates these services "could not read, but she could almost preach and, in her feeble manner, endeavor to give me much instruction." Her pedagogy is linked not to literacy, but to her orality and her "feeble" body.

[207] David Hall, ed. *The Antinomian Controversy, 1636-1638: A Documentary History, Second Edition* (Durham: Duke University Press), 1990.

Though informal, these services in the woods maintained some kind of structure. Apess's confounding phrase, "we observed particular forms," opens onto a multiplicity of meanings. "Observed" here could indicate observation in the visual sense—the worshippers saw "particular forms" of trees, persons, creatures, or spirits in the groves. But it could also indicate observation in the sense of adherence to ritual. The worshippers practice some kind of ritual that is structured, but not reliant upon "knowledge of the dead languages." Instead, we might imagine that this observance is based in an embodied or inspired knowledge. But both the ambiguity of the meaning of "observe" and the elusiveness of the referent of "particular forms" suggest that Apess is holding back some information. Though he wants to share the outline of this practice with his readers, its specifics are untranslatable; the particularity of its forms are sacred.[208]

The topos of wilderness also organizes some Black religious practice. In her groundbreaking work of womanist theology, *Sisters in the Wilderness*, Delores Williams argues that black women resignify the wilderness not as a space of desolation but as a space of holiness and grace. Though white settlers viewed the wilderness as a space that needed to be civilized, for the enslaved the wilderness was often a space of refuge. It was a space to hide from persecution and from which to gather plants to use for healing.[209] But the refuge the wilderness offered was precarious and often temporary. That sense of struggle persists, Williams writes, in contemporary black Christian women's use of the

[208] I'm grateful to Michelle Raheja for drawing this passage and its antinomian contours to my attention. For a full consideration of land, space, and wood in *Indian Nullification* and *A Son of the Forest*, in particular with regard to Apess's strategic use of settler rhetoric, see Lisa Brooks, *The Common Pot* (Minneapolis: University of Minnesota Press, 2008).
[209] Delores S. Williams, *Sisters in the Wilderness* (Maryknoll, New York: Orbis Books, 1996), 108-117.

terms "wilderness" or "wilderness experience," which are "symbolic term[s] used to represent a near-destruction situation in which Williams writes, "God gives personal direction to the believer and thereby helps her make a way out of what she thought was no way."[210] Through a reading of testimonies and songs of former slaves, Dwight Hopkins writes that "In the wilderness one was immersed in God's manifestation of the divine laws of natural freedom…The wilderness setting and nature tradition provided both a haven from white imposition of political power over black humanity as well as a communing with and reaffirmation of God's word of deliverance."[211] Spirituals sung by the enslaved attested: "I found…grace in the wilderness" and "I sought…my Lord in de wilderness/For I'm a-going home."[212] I want to be clear: Black and Native experiences of "wilderness" are by no means identical. But for both, the wilderness can be a space where grace prevails over the law of man. In the wilderness, the law's transformation of the enslaved into property could (even temporarily) be nullified. In the wilderness, the law's transformation of land into property could be nullified by the Mashpee bones and the Pequot meetings with the Lord—through ecological entanglement between the people and the land.

Although the wilderness is a space of grace for Apess, it is also a space of danger. Apess does not have an uncomplicated or romanticized relation to the forest, or to land. On the way to visit his father, Apess gets lost in a swamp that most likely should have been familiar to him.

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[210] Williams 108.
[211] Dwight N. Hopkins, "Slave Theology," in *Cut Loose Your Stammering Tongue,* Dwight N. Hopkins and George C. L. Cummings eds., (Maryknoll, New York: Orbis Books, 1991), 33
[212] Hopkins, "Slave Theology," 34.

> Unfortunately, I took the wrong road and was led into a swamp. I thought I was not far from the main road as I fancied that I heard teams passing on the other side of the swamp; and not being aware of the dangerous situation in which I was placed, I penetrated into the labyrinth of darkness with the hope of gaining the main road. At every step I became more and more entangled—the thickness of the branches above me shut out the little light afforded by the stars, and to my horror I found that the further I went, the deeper the mire; at last, I was brought to a dead stand… (42).[213]

Working against the stereotype that Native people have a purely harmonious and near supernatural relation to and understanding of the workings of land and nature, Apess's disorientation works within the conversion narrative convention of the movement from darkness to Enlightenment, except tangles the progressive course: his path to lightness is not unidirectional, but rather is itself swampy, labyrinthian, and entangled. The swamp may be the space of the commons, but commonness is not utopic—it is not without darkness and struggle. Though the settlers may engage in Romantic fantasy that that wilderness is unadulterated, and therefore conquerable, this account makes evident that the land has its own kind of agency, its own kind of resistance.

Aunt Sally George's wilderness services offer Apess a model for the kind of preacher he will eventually become. The kind of preacher that some might call "itinerant," but who, following J. Kameron Carter and Sarah Jane Cervenak's meditation on the idea, we might call "unchurched." "Unchurched gatherings," they write, allow for an "otherwise intimacy" and present a threat to the state and its attempted imposition of logics of private property.[214] The unchurched offers a space for black intimacy (which we

[213] For a compelling reading of this passage as Apess's own spiritual "wilderness experience" see O'Connell's introduction to *On Our Own Ground*, li-liii.
[214] J. Kameron Carter and Sarah Jane Cervenak, "Black Ether," *The New Centennial Review* 16:2 (Fall 2016): 218-219.

might also call the black commons) that resists incorporation into state logics of citizenship and property. Apess's writing makes clear that Indigenous people also practice this intimate commons of the unchurched.[215] Grace in the wilderness is available to those who have been property, grace in the wilderness is available to those whose who are being dispossessed of land by way of logics of property. Grace in the wilderness is a gentle but radical re-encommoning, coaxed into being through the guidance of unchurched women.

* * *

The Mashpee Wampanoag are currently *still* petitioning the federal government for the rights to their reservation lands. In September 2018, a federal judge ruled that the U.S. Department of the Interior could no longer hold in trust the 321 acres that, under the Obama administration, had been set aside as a reservation for the tribe because in 1934, at the time of the Indian Reorganization Act, the tribe was not under federal jurisdiction, and so the federal government had no authority to hold land for the tribe in trust. The Mashpee are currently suing the U.S. Department of the Interior, arguing that in fact, the tribe has inhabited this land since before the foundation of the US (and before the implementation of Federal Indian Law), and that they have, since before 1934, been under federal jurisdiction. They claim that the decision by the Department of the Interior

[215] We can also think here about another unchurched preacher referenced in Carter and Cervenak's article: Baby Suggs, from Toni Morrison's *Beloved* (1989). Baby Suggs's unchurched sermon on grace and the woods and the legacies of slavery bear resemblance to Sally George's unchurched services act as a mode of resistance to the legalized dispossession of Indigenous people.

is "arbitrary, capricious, and unlawful."[216] In early 2019, two democratic representatives of Massachusetts introduced a bill to Congress that would enable the Mashpee to reclaim the land (HR 312). The results of these cases rest on a technicality: whether or not the tribe was "under federal jurisdiction" in 1934, and as such, whether or not they legally are recognized as an "Indian Tribe." The bill passed the House on May 15th, 2019 and is, as of February 2020, still waiting to be reviewed by the Senate. On the same day, the House passed an amendment to the 1934 Indian Reorganization Act changing the language of "under Federal Jurisdiction" to "any federally recognized Indian Tribe," effectively eliminating the loophole that was used to deny the Mashpee their land.[217] One would think that the passage of such bills should be uncontentious in 2019, particularly the amendment that modifies what appears to be a small technicality of a 1934 law. But during the House Natural Resources committee hearing on these bills, a number of representatives raised various objections to both bills, primarily on the basis that they would deprive non-Native governments of revenue and authority.[218]

The Mashpee struggles of the nineteenth century quite directly continue into the present. The tribe continues to strategically appeal to the U.S. government for the

[216] *Mashpee Wampanoag Tribe v. Ryan Zinke and the U.S. Department of the Interior,* United States District Court, for the District of Columbia, September 27, 2018.
[217] U.S. Congress, House, *Mashpee Wampanoag Tribe Reservation Reaffirmation Act*, HR 312, 116th Congress, passed in House May 15, 2019, https://www.congress.gov/bill/116th-congress/house-bill/312; U.S. Congress, House, *To amend the Act of June 18 1934…,* HR 375, 116th Congress, passed in House May 15, 2019, https://www.congress.gov/bill/116th-congress/house-bill/375. See also Tanner Stening, "House Affirms Mashpee Wampanoag's Sovereignty," *Cape Cod Times*, May 15, 2019; Jonathan Ng, "House passes Mashpee Wampanoag land rights bill," *Bostonherald.com,* May 15, 2019; Mashpee Wampanoag Tribe, "Stand With Mashpee," https://mashpeewampanoagtribe-nsn.gov/standwithmashpee; Carrie Jung, "What's At Stake in the Mashpee Wampanoag Tribal Land Bill," *WBUR News*, May 13, 2019.
[218] House Natural Resources Committee Meeting, Full Committee Markup, May 1 2019, https://naturalresources.house.gov/hearings/full-committee-markup2.

restoration of conditions that would make Mashpee sovereignty possible. If the Senate passes HR 312 it would, in many ways, be a victory for the Mashpee and for Native land rights more broadly. But reading Apess alongside the long history of Federal Indian Law teaches us that Native victories in the legislature and the courts are still victories within a system that is fundamentally premised upon the continued theft of Native land. In 2019, the U.S. Supreme Court heard arguments for, but opted not to deice on *Carpenter v. Murphy*, a case that will determine whether half of the land in Oklahoma is Indian land—whether that land is still, according to an 1866 treaty, a reservation belonging to the Creek Nation.[219] In 2020, the court will hear *McGirt v. Oklahoma,* which will address the same questions through a different case. But regardless of the court's decision, the truth remains: what's now called "Oklahoma" is and has always been Indian land. True decolonization cannot take place through legal systems that perpetuate what Leanne Betasamosake Simpson calls "colonial permanence."[220] As *Indian Nullification* and *A Son of the Forest* show, the land will always be host to forms of relation—antinomianism, nullification, the sacred—that precede and exceed the law's attempts to delimit it into property.

[219] For detailed reporting on this case, see the podcast *This Land*, hosted by Rebecca Nagle (2019) and the full documentation of the case at SCOTUSblog, https://www.scotusblog.com/case-files/cases/carpenter-v-murphy/.

[220] Leanne Betasamosake Simpson, "Land as Pedagogy," *Decolonization: Indigeneity, Education, & Society* vol. 3 no. 3 (2014): 1-25. The full passage reads "[Indigenous pedagogy is] Propelling us to rebel against the permanence of settler colonial reality and not just "dream alternative realities" but to create them, on the ground in the physical world, in spite of being occupied. If we accept colonial permanence, then our rebellion can only take place within settler colonial thought and reality;" (6). See also her book in which this essay appears, *As We Have Always Done* (Minneapolis: University of Minnesota Press, 2017).

Chapter 4:
Never Allowed for Property: Harriet Jacobs and Layli Long Soldier Before the Law

I get out, I'll get out of all your boxes
I get out, you can't hold me in these chains
I'll get out
Father free me from this bondage
...
If everything must go, then go
That's how I choose to live
-Lauryn Hill

In mid-August of 2019, the *New York Times* released to much media fanfare a massive multi-genre magazine edition called "The 1619 Project" to commemorate the "400th anniversary of the beginning of the American slavery." The editor's note claims that the project "aims to reframe the country's history, understanding 1619 as our true founding, and placing the consequences of slavery and the contributions of black Americans at the very center of the story we tell ourselves about who we are."[221] The issue included essays by high-profile Black journalists such as Nikole Hannah-Jones and Jamelle Bouie as well as "original literary works" by Eve Ewing, Jesmyn Ward, and others. A firestorm quickly erupted on Twitter. Siseton-Wahpeton Oyate scholar Kim Tallbear tweeted a link to Hannah-Jones's anchor essay, "America Wasn't a Democracy, Until Black Americans Made it One" with the comment "Your daily dose of US exceptionalism, imperialism & #IndigenousErasure. Much to challenge here incl stats that obvs exclude Native demographics. Anti-racism doesn't require erasing Indigenous

[221] Jake Silverstein, "Why We Published the 1619 Project," *New York Times*, December 20, 2019, https://www.nytimes.com/interactive/2019/12/20/magazine/1619-intro.html.

ppl, but makes it easier to sustain US exceptionalist dogma."[222] Mojave poet Natalie Diaz tweeted "I acknowledge the need for projects like the 1619 Project. But who are we willing to forget in order to be remembered? 'The Iroquois Confederacy/Haudenosaunee, founded in 1142, is the oldest living participatory democracy on Earth' Erasing one doesn't make the other more visible," adding "We all have origin points in America. Some of us have them before America. How much we are willing to remember of what this nation has done to the peoples of America determines how we all all all move forward and what chance we stand in the nation waiting for us there."[223] Diaz's tweet was swiftly met with accusations of anti-blackness. "So black people cannot tell our own stories ? Way to all lives matter this amazing project," wrote Twitter user @MissMilika (whose account has since been deleted).[224] "Had to promptly unfollow. I can't support a writer who perceives my narrative as insufficient" wrote another user, @N_I_K_Y_A_T_U.[225]

This debate about origins and erasure is just one particularly acrimonious example of the ways in which U.S. oppression of Black and Indigenous people are perceived to be

[222] Kim TallBear (@KimTallbear), 2019, "Your daily dose of US exceptionalism, imperialism & #IndigenousErasure. Much to challenge here incl stats that obvs exclude Native demographics. Anti-racism doesn't require erasing Indigenous ppl, but makes it easier to sustain US exceptionalist dogma" Twitter, August 2019.
[223] Natalie Diaz (@NatalieGDiaz), 2019, "I acknowledge the need for projects like the 1619 Project. But who are we willing to forget in order to be remembered? 'The Iroquois Confederacy/Haudenosaunee, founded in 1142, is the oldest living participatory democracy on Earth' Erasing one doesn't make the other more visible," Twitter, August, 2019; ""We all have origin points in America. Some of us have them before America. How much we are willing to remember of what this nation has done to the peoples of America determines how we all all all move forward and what chance we stand in the nation waiting for us there," Twitter, August 16 2019.
[224] @MissMilika, 2019, "So black people cannot tell our own stories ? Way to all lives matter this amazing project," Twitter, August 16 2019.
[225] Nikyatu Jusu, (@NotNikyatu), 2019 "Had to promptly unfollow. I can't support a writer who perceives my narrative as insufficient," Twitter, August 16, 2019.

at best, mutually exclusive, and at worst in a hierarchical relationship, such that observations of Indigenous oppression or erasure are instantly deemed to be anti-Black.[226] But the terms through which this conversation is framed—terms of origins, of "true founding," of first-ness—invite just this kind of animosity. Projects like the 1619 project, though valuable, reproduce an affective attachment to the very idea of American origins (Hannah-Jones's piece begins with an anecdote about growing up indignant and confused that her father, a Black veteran, would so proudly fly an American flag, and ends with the conclusion that it's in fact Black Americans who are responsible for any successes American democracy may claim).[227] By way of those origins, they perpetuate a false narrative of liberal progress and the perfectability of American democracy. As Alexandros Orphanides tweeted, "liberal progress narratives are dependent on the notion that there is something fundamentally good about the U.S. settler project."[228] Any such narrative of "American origins" implies a liberal notion of "American progress." American origin stories, even when consciously relocating those origins to the supposed beginning of slavery in the British colonies that would become the U.S., necessarily invite these accusations of Indigenous erasure and anti-Blackness. Situating the so-called origins of America in either slavery or settler colonialism still leads to defining Black and

[226] Work by Frank Wilderson and Jared Sexton comes to mind, as examples of this trend. Tiffany Lethabo King's recent book *The Black Shoals* (Durham: Duke UP, 2019) attempts to undo this hierarchy, but nonetheless insists on thinking Blackness and Indigeneity together primarily, if not exclusively, through the rubric of genocide.

[227] Nikole Hannah-Jones, "Our democracy's founding ideals were false when they were written. Black Americans have fought to make them true," *New York Times Magazine*, August 14, 2019.

[228] Alexandros Orphanides (@bodega_gyro_ao), "liberal progress narratives are dependent on the notion that there is something fundamentally good about the U.S. settler project," Twitter, August 14, 2019.

Indigenous life primarily in terms of what they oppose. I want to suggest that in order to fully think Black and Indigenous life together, in the history and present of what's called the U.S., we have to reconsider the very concept of origins. We have to reconceptualize the beginning and the before.

* * *

Although most of my dissertation project argues for the violent, dispossessive effects of property law and its proprietary-form giving imperative, this chapter does something slightly different. Rather than drawing on detailed legal history to describe both the conditions of constraint that law and the property form engender, as well as forms of resistance to them, this chapter turns to texts that are more conventionally recognized as "literature" to describe the textures of lives lived in antinomian fashion. Antinomianism, in its resistance to the regulatory forces of both law and signification, eludes clear definition. It isn't—it can't be—any one particular thing. Rather, I offer it as a kind of heuristic, something we can read with, can point to, can be held by. In this chapter, I'll consider two texts that describe antinomian alternatives to the dominance of the property form: Layli Long Soldier's *Whereas* (2017), and Harriet Jacobs's *Incidents in the Life of a Slave Girl* (1861). These texts objectively differ vastly in both form and historical contexts: *Incidents* is a nineteenth century autobiography, *Whereas* is a contemporary book of experimental poetry. But in reading them together, an image of life not exhausted by law comes into focus. Although much of my project theorizes antinomianism specifically through the way the theological concept of grace—God's unmerited favor—acts as an alternative to civil law, the writers in this chapter don't

require a Christian, theological framework. They find other ways to access the *ante*-, which is to say, the *before*, of antinomianism. Jacobs picks up the elements of Christianity that are useful to her and reconfigures them, leaving behind what she doesn't need. She learns from her grandmother, whose religious beliefs reckon with slavery by understanding it as "God's will," and yet she "condemns" her grandmother's beliefs, believing instead "that it was much more the will of God that we should be situated as she was," that is, free.[229] Long Soldier's antinomianism, however is wholly outside of a Christian tradition. But Jacobs and Long Soldier both locate an alternative to law in the radical divinity of maternal care.

NEVER ALLOWED FOR PROPERTY

The radical abolition of property law is a major facet of both Indigenous and Black freedom struggles. Cedric Robinson's description of the Black Radical Tradition in *Black Marxism* includes this crucial formulation: he writes that the Black Radical Tradition entails "the preservation of the ontological totality granted by a metaphysical system that had never allowed for property in either the physical, philosophical, temporal, legal, social or psychic sense."[230] "Never allowed for property" describes a relation in which property is not only abolished, but made to have always been unthinkable. "Never allowed for" refashions the movement of time and history such that what is prior is not in linear, sequential relation to the present, but rather saturates it and is ongoing. "Never

[229] Harriet Jacobs, *Incidents in the Life of a Slave Girl* (Cambridge: The Belknap Press of Harvard UP, 2009), 21. All subsequent citations to Jacobs will be in-text.
[230] Cedric Robinson, *Black Marxism* (Chapel Hill: UNC Press, 2000), 168.

allowed for" is a radical re-orientation, which assumes that a life-world other than Western modernity has existed and continues to exist even in the margins of a settler colonial society. It proposes, as Fred Moten and J. Kameron Carter have argued, that resistance is prior to regulation, not a reaction to it. Resistance—the "had never allowed for" is what the law must "bracket" in order to come into being.[231] This idea is significant in Indigenous freedom struggles as well. Indigenous scholars, including J. Kēhaulani Kauanui (Kanaka Maoli) and Leanne Betasamosake Simpson (Michi Saagiig Nishnaabeg), have described the many ways in which Indigenous conceptions of land are defined relationally, as well as precede and are inassimilable to settler legal definitions of property.[232] Simpson reminds readers to refuse "colonial permanence" by centering Indigenous modes of learning and living that "[disrupt] settler colonial commodification and ownership of the land."[233] The law cannot abide—has no space for—radical Black and Indigenous traditions that are utterly incompatible with property.

HARRIET JACOBS'S BEGINNINGS

In *Incidents in the Life of a Slave Girl*, her now-canonical 1861 autobiography, Harriet Jacobs writes often, and quite explicitly, about the fact that the law does not protect the enslaved. At the very start of the text she plainly states, "The reader probably knows that no promise or writing given to a slave is legally binding; for, according to

[231] See for example J. Kameron Carter, "Black Malpractice," *Social Text 139* 37:2, June 2019, 67-107 and Fred Moten, "Knowledge of Freedom," *The New Centennial Review* 4:2, Fall 2004, 269-310.
[232] J. Kēhaulani Kauanui, *Paradoxes of Hawaiian Sovereignty* (Durham: Duke UP, 2018), 98; Leanne Simpson, "Land as Pedagogy," *Decolonization: Indigeneity, Education & Society*, 3:3 (2014), 1-25.
[233] Simpson 8.

Southern laws, a slave *being* property, can *hold* no property" (7). In a moment addressing white readers, she writes: "You never knew what it is to be a slave; to be entirely unprotected by law or custom; to have the laws reduce you to the condition of a chattel, entirely subject to the will of another" (71). When explaining her decision to send her daughter Ellen to New York, out of anxiety that Ellen's father, Mr. Sands, would not free her, she writes, "There was no protecting arm of the law for me to invoke" (177). In the absence of legal protection, Jacobs must seek refuge by other means. Rather than appeal for inclusion into the protection of a legal system that perpetuates enslavement, Jacobs envisions and brings into being a wholly other relation to the law. She relies instead on the divine protection of Black maternity.

Throughout *Incidents*, Jacobs vehemently opposes the idea that she would gain her freedom by someone purchasing her. Although she doesn't disdain when others seek and achieve freedom that way, she refuses to dignify the operating logic of slavery by allowing herself to be purchased. Shortly before she does achieve her legal freedom, she writes of her grandmother: "I resolved that not another cent of her hard earnings should be spent to pay rapacious slaveholders for what they called their property. And even if I had not been unwilling to buy what I had already a right to possess, common humanity would have prevented me from accepting the generous offer, at the expense of turning my aged relative out of house and home, when she was trembling on the brink of the grave" (193). In this passage, Jacobs levies a sophisticated critique of the making of property in persons. Stating that she is "unwilling to buy what I already had a right to possess," she critiques the very idea that a "self" is something that one might "possess."

Jacobs also illuminates Robinson's point about the "ontological totality" that precedes the law: she will not turn into property something that is already hers. She redefines both "right" and "possession" such that neither is contingent upon a legalized conception of ownership. This refusal to engage with slavery on its own terms—her refusal to have her freedom bought—is emblematic of the theory and practice of freedom that Jacobs puts forth throughout the book. Although by the end of the text, her freedom is eventually purchased by a white woman, throughout her life Jacobs sought and practiced unconventional, constrained, and otherwise partial forms of freedom, rather than recognize the legitimacy of a system which would have her—or any persons—be property.

Jacobs envisions a world that "never allowed for property" by reordering temporality and by imagining a world, the beginning of which is not premised upon slavery and settler colonialism. J. Kameron Carter and Sarah Jane Cervenak have argued that beginning of so called "Western Civilization" is marked by the instantiation of property ownership. They suggest that this is manifested most clearly through two events: the beginning of Genesis, in which God gives form to the earth, which was, until that point, "was without form and void," and John Locke's famous quip that "in the beginning all the world was America." Both of these moments—God's giving of form, and the understanding of America as *terra nullius*—"uninhabited land" available to be colonized through the imposition of private property, are at the root of some of the foremost modes of subjugation in history. Carter and Cervenak take up a call from Gayl Jones to "'say' the beginning better than what was said in the beginning," which is to say to re-write

beginnings such that at the beginning is not what they call "propertizing violences," but rather a world that "never allowed for property."[234] I turn, then, to Jacobs and Long Soldier, two texts that rewrite the beginnings of a world that will have always been *before* the law. These texts alter chronology. Rather than operating in terms of a sovereign gesture that inaugurates "Being," be that the arrival of the Pilgrims or the arrival of the first slave ship or even the arrival of Columbus, they shift our understanding of time such that the origin myths required for any coherent narrative of "America" become impossible. In their stead, these texts offer what elsewhere might be called "emergence," or what in the Hebrew of the Book of Genesis is called *tehom*, or "the deep." Both texts also, I argue, put forth a theory of radical abolition in which structures of oppression, often manifested in the law, are unmade by the very things they constrain.[235] By reading, in both of these texts, this alternative-to-origins and this pattern in which oppressive structures self-destruct, we can also recognize the interrelation of Black and Indigenous freedom struggles. Rethinking the meaning of the beginning makes it possible to think Blackness and Indigeneity together in a way that's not solely defined by shared subjugation.

Feminist theologian Catherine Keller offers an alternative to the conventional reading of Genesis 1 in which God creates the heavens and the earth out of nothing. In the conventional reading, creation is a sovereign act of mastery in which an all-powerful

[234] J. Cameron Carter and Sarah Jane Cervenak, "The Black Outdoors," Humanities Futures, Franklin Humanities Institute, Duke University, 2017, https://humanitiesfutures.org/papers/the-black-outdoors-humanities-futures-after-property-and-possession/.

[235] I'm grateful to Jean-Thomas Tremblay for this formulation

individual creates something out of nothing. Rather than reading the creation of the world as a law-making act, an imposition of order upon chaos, and an imposition of form, Keller, instead argues for what she calls a "tehomic theology" that emphasizes Genesis 1:2: "the earth was without form and void and darkness was upon the face of the deep [tehom]."[236] This feminist theology rewrites beginnings by taking seriously the *tehom*—the "without form and void" and the "deep," to argue that the world was not created from nothing, but rather from a dense and meaningful chaos, the darkness of which is not incidentally racialized as Black.[237] Fred Moten has noted that the "face of the deep seems to predate the sovereign 'let there be,'" suggesting that the *tehom* is itself ante-nomian: before the law.[238] Tehomic theology, like Black religious thought, is invested in unsettling the primacy of the sovereign, what Carter describes as the "theopolitical project" of "American politicality" that's premised upon "property or settler enclosure."[239]

Jacobs uses what we might call a tehomic spirituality to imagine an alternative to a world order in which the law transforms the earth into property.[240] Jacobs "says the beginning" differently. She creates, in her narrative, a space for living that precedes and exceeds the law's violent transformations of person and land into property, even at the same time that she is, quite materially, subject to the law's regulation.[241] This space that

[236] All Biblical citations are from the King James Version.
[237] Catherine Keller, *The Face of the Deep* (London: Routledge, 2003).
[238] Fred Moten at roundtable discussion at UC Riverside, March 11, 2015.
[239] Carter, "Black Malpractice," 96.
[240] Carter 96.
[241] Carter also calls this "black rupture." We might also think of what Fred Moten describes as being "in the break."

the law cannot capture is most literally manifested in the text through the "loophole of retreat," the garret in which she hides and achieves a kind of provisional freedom while still legally enslaved. But I want to start here with Jacobs's own theory of the beginning, and discuss how she manifests a beginning-as-*tehom* rather than a beginning as sovereign gesture, which makes possible a way of living in this space before and outside of the law.

Jacobs re-imagines "the beginning" by quite literally re-writing the book of Genesis. In *Incidents*, divinity takes the shape not of a sovereign God, but rather of Black maternity. In Genesis, God's law and God's care are linked to the establishment of property. When God makes a covenant with Abraham, he grants to his descendants "this land, from the river of Egypt unto the great river, the river Euphrates" (Genesis 15:18). But for Jacobs, at the beginning is her Aunt Nancy and Black maternal care. She writes of her Aunt Nancy: "She was, in fact, at the beginning and end of every thing" (14). In this radical cosmology, it's not God who is at the beginning and the end of everything, but rather an enslaved Black woman—her kin. Although Aunt Nancy is enslaved, and so subjected to the propertizing violence of law that turns person into property, Aunt Nancy's life, and her role in Linda's (Jacobs's alter-ego) life, is in excess of her enslavement. While Linda is in the garret, she "often did…kneel down to listen to her [Nancy's] words of consolation, whispered through a crack!" (185). Linda kneels, in a kind of radical prayer, to hear Aunt Nancy's consolation. Linda tells Nancy that she "should always remember her as the good friend who had been the comfort of my life" (185). Aunt Nancy is, in a way, divine. Along with Linda's grandmother, she takes on a maternal role that does not require her to have literally *birthed* Linda. Maternal care isn't

sovereign world-creation, but rather a holy, ongoing practice world maintenance, that is not reducible to mere survival. Significantly, Jacobs describes Aunt Nancy as *at* the beginning and the end, rather than herself the beginning and the end. This displacement serves to upset a conception of God as sovereign, as "Alpha and Omega, the beginning and the end, the first and the last" (Revelation 22:13). Aunt Nancy may be holy, but she does not have absolute power. An absolutely powerful God is not what Jacobs's theology is after.

Aunt Nancy's being at the beginning and the end of everything also has implications for the narrative's definition of freedom. It disrupts linear chronology. Rather than plotting a teleological progression from slavery to freedom, in which slavery is the "before" and freedom the "after," or in which the "before" is "being property" and the after is "owning property," a provisional kind of freedom is already there, at the beginning, in the form of Aunt Nancy's and Jacobs's grandmother, Aunt Martha's, practices of care. She writes of her grandmother, "I was indebted to her for all my comforts, spiritual or temporal. It was *her* labor that supplied my scanty wardrobe" (12). It is Martha who is Linda's source of spiritual comfort, who takes on the position of "Comforter" usually occupied by God (for example John: 14:18, "I will not leave you comfortless.") Comfort is, of course, not synonymous with freedom. Linda's wardrobe is still "scanty," and the reason she needs Martha to supply her with it is because her enslaver, Mrs. Flint, does not adequately clothe her. Jacobs is also careful to resist writing Martha into a "mammy" stereotype of Black maternal benevolence, which can easily be coopted and depoliticized. Jacobs is clear that Martha is not just a comfort, but also a

fortress. Martha uses the power she has accrued in the community to hide Linda within her own home, at one point even distracting and deceiving Flint, Linda's enslaver, as to Linda's whereabouts while he looks for Linda in Martha's home—just downstairs from her hiding place.

But Martha's providing clothes and comfort for Linda produces a small pocket of care within the bounds of slavery. By describing Martha's care as a source "spiritual comfort," Jacobs aligns Martha with the divine. Martha practices care despite the obstacles that the law imposes. Through this invocation of comfort, Jacobs re-signifies freedom, such that it isn't defined juridically. Rather, it's something lived and felt in moments, even under the conditions of slavery. It's what Jasmine Syedullah calls a "fugitive abolitionism" that takes place in the loophole of retreat, and which "is a critique of the kinds of emancipation slavery made desirable."[242] Neither freedom nor unfreedom are wholly defined by property relations. Even while legally enslaved, Jacobs has access to a kind of freedom, and even when she is legally emancipated, Jacobs's entrance into the wage economy does only a little to alleviate her constraint. Freedom trips up time. It is immanent in the form of Black maternity. This kind of freedom is different than the one proposed by the 1619 project, which is premised upon the perfectability of American democracy. The freedom of *Incidents* is incompatible with origin myths and their teleologies.

[242] Jasmine Syedullah, "'Is This Freedom?': A political theory of Harriet Jacobs' loopholes of emancipation," (Dissertation: Politics, UC Santa Cruz, 2014), 12.

Aunt Nancy is at the root of a kinship structure that is incommensurate with the patriarchal begetting the makes up much of the book of Genesis. From Book 4, with the birth of Cain and Abel, through Book 50 with the death of Joseph, the book of Genesis is concerned with delineating a genealogy of sons. Slavery puts pressure on this patriarchal world-originating story. Instead of fathers begetting sons, slavery produces a situation in which women nurse children who are not their own, in which women may nurse children who legally own them. From the early lists of "begats" through the story of Abram's wife Sarai's inability to conceive, and God requiring her Black servant Hagar to have a child with Abram instead; through Jacob blessing each of his sons in Book 49, Genesis in concerned with lineage. Although the Old Testament is filled with barren women who rely on divine intervention or surrogacy to bear children, the chains of descent it details are primarily linear and uninterrupted. *Incidents* re-writes an *an*original world-creating genealogy that is commensurate with slavery's disruptions of kinship. A world of *partus sequitur ventrem*, in which women can be "owned" by their children and children "owned" by their half-siblings, makes such lineage impossible. Jacobs writes a Black feminist genealogical account, in which kinship is rhizomatic and distributed, shaped by slavery, but nonetheless bounded by care. Jacobs figures kinship as decidedly matrilineal. Early in the narrative, she writes of her mother:

> My mother's mistress was the daughter of my grandmother's mistress. She was the foster sister of my mother; they were both nourished at my grandmother's breast. In fact, my mother had been weaned at three months old, that the babe of the mistress might obtains sufficient food. They played together as children; and, when they became women, my mother was a most faithful servant to her white foster sister (7).

This articulation of kinship marks a distinct contrast from:

> And Adam lived an hundred and thirty years, and begat a son in his own likeness, and after his image; and called his name Seth: And the days of Adam after he had begotten Seth were eight hundred years: and he begat sons and daughters: And all the days that Adam lived were nine hundred and thirty years: and he died. And Seth lived an hundred and five years, and begat Enos: And Seth lived after he begat Enos eight hundred and seven years, and begat sons and daughters… (Genesis 5:3-7).

In Jacobs, lines of familial relation are entangled with lines of property ownership. Both, however, are articulated matrilineally. Kinship forms less of a line and more of a web, connected not only through blood, but also through legal title and through breast milk. Slavery gives rise to a world in which a white child and a black child can be fed from the same Black mother's breast. Jacobs's passage here doesn't read immediately as condemnation. Rather, it takes a similar objective, reporting tone to the begats of Genesis. She's presenting a world in which these are, unquestionably, the facts. These are the *an*origins of familial relation. Even under slavery, there is Black social life existing at the margins of law. It's these margins that allow Linda's mother and her mother's "mistress" to play together as children, even when living under a law that would have the Black child weaned from her mother prematurely in order to feed the white child. These facts do not exhaust relation. They do not exhaust social life.

Even under slavery, Black social life thrives at the margins of law. It's an enslaved woman named Betty who protects Linda in her first hiding place and who dresses Linda in sailor's clothes to facilitate her move to the garret. When Aunt Martha was still enslaved, she baked crackers that "became so famous in the neighborhood that many people were desirous of obtaining them," and both sold them for a small profit and enabled Linda to "[receive] portions of the crackers, cakes, and preserves, she made to

sell" (7). The cracker baking, which happened at midnight, took place in the shadows of the law. Sanctioned by Martha's enslaver, the baking was a way for her to steal time to care for her family. Later, when Martha is free, her house becomes a somewhat precarious Black social hub, even as Linda is hidden in the garret. The movement of information and of care among Black people, often women, protects Linda's hiding place. It's this kind of living that the law must contain in order to come into being. The propertizing law can't tolerate a kind of care that is so fundamentally collective and not self-interested, and so the law—here, manifested in the abuses of the enslaver—comes into being to regulate it. Care and kinship ties were threatening to enslavers because they enabled Black people to care for themselves and each other within the economies of slavery. This work of care was exhausting—enslavers extracted Black women's care as a commodity in ways that would kill them: Aunt Nancy's death is hastened by her being forced to sleep on the floor outside a white woman's bedroom. Nonetheless, slavery could not fully exhaust Black maternal capacities for care.

In an effort to stifle these threatening care and kinship ties, the enslavers turn to law's regulatory tools, including imprisonment. At one point while Jacobs is in hiding, Flint puts her brother, her children, and Aunt Nancy in prison, in an attempt to blackmail them into providing information about Jacobs's whereabouts. Although the imprisonment is an attempt at punishment, it actually serves, at least for Linda's daughter, Ellen, as a place of refuge from Mrs. Flint's cruelty. At one point, Ellen is taken out of the prison in order to receive some medical treatment, but "Poor little Ellen cried all day to be carried back to prison…She knew she was loved in the jail..." (131). I read this desire to return to

the prison, and Jacobs's writing of it, as an antinomian practice. Rather than break out of the prison, which would dignify the prison's power as a space of containment, breaking in to the prison poses a challenge to the prison's violence. It makes evident that though the prison constrains mobility and incites fear, in the presence of Aunt Nancy, and her Black feminine care, the deviant space of the prison is refigured as a space in which love can be given. Jacobs writes, "I have always considered it as one of God's special providences that Ellen screamed til she was carried back to jail" (131-132). Conventionally, in freedom narratives, God's providence results in the granting of freedom. That God's providence here does not result in freedom, but rather in a return to prison suggests that God here supersedes the civil law that makes prison a space of captivity. Through God's providence, the enforcement of the prison means less in the face of familial and social relation. And it's not Ellen herself, here, who is thanking God for her own return to prison, but Ellen's mother, thanking God, on behalf of her daughter. Slavery creates a world in which mothers are grateful for the return of their daughters to prison. But in that world, the dual forces of God's providence and maternal care act together to unmake the punitive power of the prison. Care is manifested even in the space of the prison, appearing in the space that was created specifically to constrain it. And though this care cannot nullify the force of the prison, its persistence within the prison walls poses another kind of threat, nonetheless—a threat to any presumption that the force of law might be totalizing, and without gaps or limits.

It's significant, too, that the family's imprisonment was not for any crime. They were not imprisoned for breaking any law. Aunt Nancy is imprisoned "for no other crime

than loving" "her sister's orphan children" (130). She's imprisoned for enacting a kind of feminine care that transgresses the bounds of the nuclear family. She's imprisoned for loving, and specifically for loving her own blood kin, perhaps for loving them more than Mrs. Flint and her family. Aunt Nancy is released after "only" a month because Mrs. Flint "could not spare her any longer. She was tired of being her own housekeeper" (130). And of course her release from prison results in the continued unfreedom of enslavement. In prison, she at least can care for her own family, whereas when outside of prison, she's forced to care for Mrs. Flint and her white family. In the perverse system that is slavery, even prison can serve as a momentary refuge from the violent, extractive version of care that slavery demands.

The prison becomes a momentary sanctuary because Aunt Nancy herself is a refuge—Jacobs refers to Aunt Nancy as such, calling her "my refuge" (183) from Dr. Flint's sexual pursuits. By calling Aunt Nancy, a "refuge," Jacobs places her in a divine position. In the King James Bible, it is most often God who is referred to as a refuge, for example: "The Lord also will be a refuge for the oppressed, a refuge in times of trouble" (Psalm 9:9) and "God is our refuge and strength, a very present help in trouble" (Psalm 46:1). Black maternal refuge redefines the contours of legalized space. In the space of the prison, the divinity of motherly care, in the form of Aunt Nancy, brackets the efficacy of the law. Her being a refuge marks one of the limits of the law's transformation of person into property. Even as Aunt Nancy is subjugated in the space of the Flints' home, forced to sleep on the floor outside Mrs. Flint's door, she herself holds space for Linda's troubles. Even under enslavement, Aunt Nancy has always been and will always be holy.

Black maternal care also unsettles the force of imprisonment when Aunt Martha, Jacobs's grandmother, goes to visit her son Benjamin in prison. Benjamin runs away, and enslavers capture and imprison him. Linda and Martha were forbidden by law from visiting Benjamin in the jail, but they "had known the jailer for years, and he was a kind-hearted man" and so "at midnight he opened the jail door for my grandmother and myself to enter, in disguise" (26). Like Ellen, Linda and Martha are barred from entering the prison, which in those moments can offer a space of familial care. They have to break in to the prison—enter it illicitly—thereby undermining the role of prison as a space that the force of law puts people in against their wills. It's Martha and Linda's ability to use social relations to navigate around the legal structures that govern the prison, that enable them to enter. The jailer doesn't have the power to take Benjamin out of jail, so the efficacy of the prison hasn't been fully abolished, but this moment, at least some the force of law has been deactivated. When Linda and Martha enter the cell, it's midnight-dark and completely silent: "The moon had just risen, and cast an uncertain light through the bars of the window. We knelt down and took Benjamin's cold hands in ours. We did not speak. Sobs were heard, and Benjamin's lips were unsealed; for his mother was weeping on his neck" (26). The legal force of the prison is dissolved, partially and momentarily, through the medium of tears. Sobs dissolve the silence, tears dissolve the space between bodies. They bring Martha and Benjamin into physical intimacy that speaks care through material other than words. Through tears, individuals become unbounded. The darkness of the prison offers a refuge for this intimacy that they cannot perform in public. It grants them a perverse kind of privacy denied to them by slavery.

The prison is by no means a perfect refuge. Benjamin does not find freedom here. He is eventually purchased by a trader, from whom he escapes, and then goes to New York. But I want to suggest that it's the imperfection and temporariness of this refuge is part of what makes it antinomian—part of what makes puts it in an oblique relationship to the law. In the King James Bible, the second-most common use of the word refuge, after describing God as a refuge, is in reference to "cities of refuge," places in which people who had been accused of murder or other crimes could find safety from punishment. In describing the uncertain refuges of the prison, and eventually of the garret, Jacobs places her life and the lives of her family members under the purview of God's grace. She makes their lives Biblical, and so in adherence to God's law, rather than the law of the slaveholder. The cities of refuge are intended to be places where someone who "killeth any person unawares" (Numbers 35:11) can be safe from revenge, at least until judgment as been rendered. Benjamin's and Linda's experiences in the prison and the garret don't correspond absolutely with this Biblical situation, but we might read this as Jacobs's interpretation of who is worthy of refuge or asylum. In this case, the correlative of the accidental killer is the man who's broken an unjust law, who's run away from enslavement. The cities of refuge are ordered by God; they exist because of God's mercy. In the prison and in the garret, Benjamin and Linda are granted a strange kind of mercy—a strange kind of sanctuary.

The kind of refuge Aunt Nancy offers supports this idea that the sanctuary is a space that endorses the suspension of the law. Jacobs writes of her: "When my friends tried to discourage me from running away, she always encouraged me. When they

thought I had better return and ask my master's pardon, because there was no possibility of escape, she sent me word never to yield. She said if I persevered I might, perhaps, gain the freedom of my children; and even if I perished in doing it, that was better than to leave them to groan under the same persecutions that had blighted my own life" (184). Aunt Nancy encourages Linda to run away, to break the law, even when other friends of hers do not, even when other friends and relatives try to convince her to allow herself to be purchased, which to Linda would be a kind of capitulation to the bounds of the legal system.

Jacobs and her fellow enslaved people also find refuge or sanctuary in the church that they built and the Methodist services held therein. Just as the legal system offers them no protection, the white religion system not only offers no protection, but in fact acts as a space of surveillance. When the enslaved are compelled to go to service led by the white Reverend Pike, his sermon consists of a constant refrain of "God sees you" and "God will punish you" and "Obey your master" (89). The enslaved have no patience for this series of chastising threats under the guise of worship, and "It was so long before the reverend gentleman descended from his comfortable parlor that the slaves left, and went to enjoy a Methodist shout. They never seem so happy as when shouting and singing at religious meetings" (90). The Methodist shout is an enspirited, embodied refuge from the surveillance of enslavement.[243] Jacobs and her kin can, in this space, experience God's grace. Many of these worshippers, she writes, "are sincere, and nearer to the gate of heaven than sanctimonious Mr. Pike, and other longfaced Christians, who see wounded

[243] See Ashon Crawley, *Blackpentecostal Breath* (New York: Fordham UP, 2016).

Samaritans, and pass by on the other side" (90). Their religious practice is founded on kindness and generosity, and as such is a truer kind of Christianity than the "longfaced" kind practiced by Pike and his white congregation. She describes Pike as "sanctimonious," which implies that his piety was affected, rather than sincere. The Puritans who Hutchinson was dissenting from were "sanctimonious"—they were performing "good acts" in order to appear as if they were saved, rather than actually being inhabited by the spirit of grace. Pike's "sanctimony" contrasts with the Black worshippers' "sincerity": Pike is performing good works in order to *appear* saved, in the eyes of God, whereas the Black worshippers are in fact touched by God's grace. The spirit lives within them.

It was because of joy and kinship created through *ante*-nomian religious practice that Pike was brought in to regulate the enslaved through religious discipline. It was threatening to the enslavers that in their own "little church" they would "sing" and "pour out their hearts." In the church in the woods, they were experiencing too much happiness, they were practicing too much freedom. The enslaved's devotion, enspiritedness, and experience of grace preceded their being brought into the white church. The only reason the enslaved were at Pike's service is because the white people prohibited them from worshipping in, and then destroyed their own church:

> The slaves begged the privilege of again meeting at their little church in the woods, with their burying ground around it. It was built by the colored people, and they had no higher happiness than to meet there and sing hymns together, and pour out their hearts in spontaneous prayer. Their request was denied, and the church was demolished. They were permitted to attend the white churches, a certain portion of the galleries being appropriated to their use (86-87).

The church in the woods was their sanctuary, a sanctuary the enslaved had built themselves. In the church in the woods, the worship was collective. Boundaries between individuals dissolved as hearts were poured out "in spontaneous prayer." Prayer emanated from and enveloped the informal congregation. Love and joy were uncontainable. It's also significant that the church is surrounded by "their burying ground." This is a space in which they can commune with the dead as well as a living. It's a place where lineage and kinship can be marked, in a world where slavery distorts it or takes it away. As I discussed in the previous chapter about Apess, this church manifests the Black womanist theological phenomenon of "grace in the wilderness," in which God visits the Black woman in the wilderness—either literal or figurative—and helps her to make a way out of no way.[244] Nonetheless, Black worship outlives the destruction of the physical church. The destruction of the church may have been an attempt to constrain the freedom embodied in religious exuberance, but in the absence of a formal religious space, worship spills out of the bounds church, exceeding the attempt at containment. Antinomian grace and spiritual freedom practices existed before the law, and so the law is brought into being in order to regulate them. But even when the church is demolished, the Methodist shouts continue. The sincerity of their belief continues. The imposition of white surveillance does not do away with grace.

Of course the most famous space that is simultaneously prison and refuge/sanctuary is the garret above her grandmother's storeroom that Linda hides in for seven years. So much has been written about this that I'm not sure it bears repeating—I

[244] Delores S. Williams, *Sisters in the Wilderness* (Maryknoll, New York: Orbis Books, 1996).

might instead point to work by Jasmine Syedullah, Ashon Crawley, Valerie Smith, and others, who brilliantly argue for many dimensions of the tension between enslavement and freedom enacted in the loophole of retreat.[245] But I do want to suggest that the loophole of retreat is yet another variation on the theme of breaking into the prison. And that the "loophole" of retreat, as it refers to both the garret itself and the hole that Linda bores in its wall so she can see and hear her children, is the literal materialization of a figurative term closely aligned with antinomianism: that is, the legal loophole. The OED gives the figurative meaning of loophole as "An outlet or means of escape. Often applied to an ambiguity or omission in a statute, etc., which affords opportunity for evading its intention."

Ellen breaks in to the prison once more, shortly before she's sent away to live in Brooklyn. Ellen and Linda meet under darkness, in secret, but in the house, which is both Ellen's home and Linda's refuge/prison:

> I took her in my arms and told her I was a slave, and that was the reason she must never say she had seen me. I exhorted her to be a good child, to try to please the people where she was going, and that God would raise her up friends. I told her to say her prayers, and remember always to pray for her poor mother, and that God would permit us to meet again. She wept, and I did not check her tears. Perhaps she would never again have a chance to pour her tears into a mother's bosom. All night she nestled in my arms, and I had no inclination to slumber. The moments were too precious to lose any of them. Once, when I thought she was asleep, I kissed her forehead softly, and she said, 'I am not asleep, dear mother.'
>
> Before dawn they came to take me back to my den. I drew aside the window curtain, to take a last look of my child. The moonlight shone on her face, and I bent over her, as I had done years before, that wretched night when I ran away. I hugged her close to my throbbing heart; and tears, too sad for such young eyes to

[245] Syedullah, "Is This Freedom;" Crawley, "Harriet Jacobs Gets a Hearing," *Current Musicology* 93 (Spring 2012), 33-55; Valerie Smith, "Form and Ideology in Three Slave Narratives," in *Self-Discovery and Authority in Afro-American Narrative* (Cambridge: Harvard UP, 1991).

> shed, flowed down her cheeks, as she gave her last kiss, and whispered in my ear, 'Mother, I will never tell.' And she never did (179-180).

Although Ellen doesn't actually enter the garret, her meeting her mother in the house temporarily transforms the entire house into a hiding place. Through contact with her mother, Ellen is brought into the space of the loophole. It's this moment that brings Ellen into the knowledge that her mother is enslaved. In contrast to in other slave narratives, most notably that of Frederick Douglass, the knowledge of slavery does not comes to Ellen through a witnessing of brutal female suffering at the hands of a white man. Ellen is not brought into knowledge of enslavement through what Christina Sharpe, following Frederick Douglass calls "the blood-stained gate."[246] Rather, Linda transforms this scene of instruction into a moment of tenderness and love, and one filled with the promise of God's grace. Again, this is a re-writing of a beginning, but it's a beginning that isn't one. Linda doesn't tell Ellen that Ellen is enslaved, even though she technically is the property of her father Mr. Sands. Rather, she tells Ellen of her own enslavement, just before Ellen is about to leave her family for the North. This moment resists being read as a clear inception point of knowledge, or as a clear beginning of formal freedom. As with the scene with Benjamin in the prison, this scene is mediated by moonlight and tears. Tears dissolve boundaries between mother and daughter.

Linda's invocations of God and her reminders for Ellen to pray could be read (and were probably meant to be read) as conventional female piety, however, I want to suggest that Linda's exhortations for Ellen to "be a good child" and her promises that "God

[246] Christina Sharpe, *Monstrous Intimacies* (Durham: Duke UP, 2009).

would raise her up friends" and that "God would permit us to meet again" are not in causal relation. Linda's enduring faith implies that God's grace is not dependent upon hers or Ellen's "good works," but rather that God's unmerited favor pays no heed to Ellen's behavior or to Linda's enslaved status. God, as many nineteenth century texts by people of color note, "is no respecter of persons" (Acts 10:34). But when Linda is talking about God here, she is also talking about her own maternal love. As I've argued, in this text Jacobs repeatedly places Black women in the position of God—from Aunt Nancy being at the beginning, to being a refuge, Black maternal care is coextensive with God's love. Linda's faith that "God would permit us to meet again" is not entirely separable, or even differentiable, from her boundless love for her daughter. Her Black maternal love is as powerful as the love of God.

Black women's love—both maternal, and outside heteropatriarchal kinship structures—remains strong, despite slavery's structural assault on Black maternity. As Hortense Spillers has famously argued, because the child of the enslaved would become "property" of the enslaver, the Black mother could not mother.[247] *Incidents* provides a thorough counterpoint to slavery's disruptions of kinship and prohibitions on maternal love. Jacobs shows how Black feminine love precedes and exceeds the bounds of enslavement, how Black feminine love precedes and exceeds the kinship structures mandated and legislated by the law of slavery. As Jennifer Nash writes, "black feminist love-politics implicitly offers a critique of the state and its capacity (or incapacity) to ever

[247] Hortense Spillers, "Mama's Baby, Papa's Maybe," *Diacritics* 17:2 (Summer 1987): 64-81.

adequately remedy injuries."[248] Black women's love, here, also signifies on St. Paul's "Love worketh no ill to his neighbour: therefore love is the fulfilling (in Greek "*pleroma*") of the law" (Romans 13:10). In Jacobs, love offers a form of fulfillment that is also abolition: the fulfillment of law makes law always already have been obsolete. The mechanism for this fulfillment is Black maternal love, which holds in it the fullness of the divine—the *pleroma*—but also the *tehom*. It is the divinity of the void, of the deep, which is, at the same time, the divinity of absolute fullness. This is not to say that this force of Black maternal love is somehow transcendent or ahistorical. Jacobs's "black feminist love-politics" are explicitly shaped by historical force, they explicitly "offer a critique of the state," and of the very idea that the state might get to determine what constitutes fullness or what constitutes freedom.

THIS UNHOLDING

I turn now to Long Soldier's *Whereas*, a text that is, on its face, wholly different from *Incidents* in both form and historical context. But I want to suggest that *Whereas* attests to the ongoingness of the *ante*-nomian and to the ongoingness of love politics as a critique of the state, and as such offers both a new way of conceptualizing Black and Native solidarity in relation to oppressive legal force, and a new way of imagining an alternative to the American origin myths rooted in propertizing violence. The social and historical conditions Long Soldier is addressing are distinct from those in Jacobs. She is not talking specifically about a legal order in which persons were turned into property.

[248] Jennifer Nash, "Practicing Love," *Meridians* 11:2 (2001): 16.

The aspects of property law that *Whereas* critiques are those that violently turned Native land into "The United States" and to territory governed by treaties, which more often than not are not even upheld.

In *Whereas*, Oglala Lakota poet Layli Long Soldier theorizes a world prior to law's coming into being as a regulatory force. Written in response to the US Congress's 2009 Apology to Indigenous peoples, *Whereas* re-writes both the so-called apology and the settler colonial conditions that engendered it, such that the Congressional declaration is revealed to have always been null and void. In a series of poems that mimic the form of the Apology, Long Soldier reveals the emptiness of legal declarations that are meant to be reparative. *Whereas* puts forth a world in which it's not state-sanctioned laws or apologies that are reparative, but rather it's familial, and specifically maternal love and care that makes it possible for Native people to survive the enduring violences of settler colonialism. This world of care is shaped by settler colonialism, but precedes and exceeds it. Settler colonial violence does not exhaust this love, and empty Congressional declarations cannot destroy it.

The Congressional "Apology" is, technically, a Senate Resolution embedded in an enormous military appropriations bill. The resolution was signed by Barack Obama in 2009 and, as Long Soldier writes in her introduction to her poems that take up the document, "No tribal leaders or official representative were invited to witness and receive the Apology on behalf of tribal nations. President Obama never read the Apology aloud,

publicly…"[249] The apology consists of a series of "Whereas" statements, such as "Whereas while establishment of permanent European settlements in North America did stir conflict with nearby Indian tribes, peaceful and mutually beneficial interactions also took place;" and "Whereas Native Peoples are endowed by their Creator with certain unalienable rights, and among those are life, liberty, and the pursuit of happiness."[250] Each of the poems in this section of *Whereas* take up the form of the statements in the Apology: they begin with "Whereas" and end with a semicolon. Many of them use exact language from the Resolution.

In repurposing language from the Congressional apology, Long Soldier reveals the emptiness of such legal gestures. In formal legal documents, the word "whereas" cannot introduce a new fact; it can only reference facts that are already believed to be true. Long Soldier writes: "whatever comes after the word 'Whereas' and before the semicolon in a Congressional document falls short of legal grounds, is never cause to sue the Government" (70). Because each clause in the government document begins with "WHEREAS," it implies that all of the "facts" it states are already believed to be true, and as such, doesn't actually bring any new truths into being. Following the "Whereas" statements, in both the poem and the Congressional document are "Resolutions," which in the document are meant to introduce new information and policy, but, as Long Soldier dramatizes, these resolutions have minimal, if any force. Both the document and the book

[249] Layli Long Soldier, *Whereas* (Minneapolis: Graywolf, 2017), 57. All subsequent citations to *Whereas* will be in-text.
[250] U.S. Congress, Senate, *To acknowledge a long history of official depredations and ill-conceived policies by the Federal Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States,* S.J. Res. 14, 11th Congress, 1st sess., 2009. Hereafter cited as "Apology."

end with two "Disclaimers," which, in the case of the Congressional document, only emphasize the Resolution's impotence. The official disclaimers read:

"(b) DISCLAIMER.—Nothing in this Joint Resolution—

(1) authorizes or supports any claim against the United States; or

(2) serves as a settlement of any claim against the United States."[251]

Throughout *Whereas*, Long Soldier shows how only the laws meant to harm Native people have force, whereas those meant to protect do not. In this showing, she transforms and deforms the work that the law does, imagining not an activation of protective law, but rather an alternate world in which no settler law—and in particular property law—has force. The "Whereas" statement presences the ways in which the law can be without force.

Long Soldier identifies herself in the poems as a citizen of both the U.S. and of the Oglala Lakota Nation. Which is to say, she is, self-professedly, subject to U.S. law, but not necessarily entitled to its protections. She writes:

> WHEREAS I query my uneasiness with the statement, 'Native Peoples are endowed by their Creator with certain unalienable rights, and among those are life, liberty, and the pursuit of happiness.' I shift in my seat a needle in my back. Though 'unalienable,' they're rights I cannot legally claim if placed within a Whereas statement. Meaning whatever comes after the word 'Whereas' and before the semicolon in a Congressional document falls short of legal grounds, is never cause to sue the Government (70).

Here she points to the way the "Whereas" statement emblematizes the emptiness of U.S. declarations of rights and protections for Native people. The "Whereas" statement acts to

[251] "Apology" 6.

protect the US government from liability, rather than protect Native people from expropriation. But though "fall[ing] short of legal grounds" might be meant as a provision to protect the government, it can also be reimagined as an entirely different relation to law, one in which "falling short" does not indicate deficiency, but rather plenitude. By putting every poem in this section after a "Whereas" statement and before a semicolon, every poem in this section "falls short of legal grounds." This supposedly factual text is "left under" the law. Each of these poems resides in a space "left under" the law. We can also read "legal grounds" literally, as the "ground" designated by U.S. law. If the violence of settler colonialism takes the form of creating "boundaries (reservations)," which is to say, creating "legal ground," to "fall short" of that would be to have a relation to the land that has never yet been legislated. A relationship to land that is before and beneath the law.

In one of the poems, Long Soldier presents a particularly potent challenge to the regime of property law that undergirds both U.S. settler colonialism and the supposed apology. She writes: "Whereas I have spent my life in unholding. *What do you mean by unholding*?" and then continues: "It is mine, this unholding" (79). I turn here, to "this unholding," as an Indigenous lived imagining of an absolute refusal of a legal system founded upon violent dispossession. A "holding" can mean an area of land, a kind of containment, and also a legal decision, in turn, then,"unholding" can be read as a refusal of settlement, a refusal to abide by a world created and legislated by a legal logic of

conquest.[252] "Unholding" loosens possession's grip. It softens. It manifests an alternative to law in the form of capacious, boundless care. *Whereas*, and "this unholding" put forth a world in which maternal love and care, not state-sanctioned laws and apologies, are reparative. For example, in another poem, Long Soldier writes of her daughter: "This one combs and places a clip just above her temple, sweeping back the curtain of *why/* and *how come*. I kiss her head I say, *maybe you already know*" (10). Decolonial love has always been, decolonial love is something she already knows. The poems suggest that it is "unholding," rather than propertizing or legislating, that makes it possible to survive the enduring violence of settler colonialism. This world of care is shaped by settler colonialism, but precedes and exceeds it. Colonial violence does not exhaust this love, and empty Congressional resolutions cannot destroy it.

Long Soldier's poem, Waȟpániča, begins to imagine a world that "never allowed for property." Here are a few selections from the poem:

> I wanted to write about waȟpániča a word translated into English as *poor* comma which means more precisely *to be destitute to have nothing of one's own*. But tonight I cannot bring myself to swing a worn hammer at poverty to pound the conditions of that slow frustration
>
> Yet I feel forced to decide if *poor* really means brittle hands dust and candy-stained mouths at a neighbor girl's teeth convenience store shelves…This is the cheapest form of poor I decide it's the oil at the surface…
>
> Because waȟpániča means to have *nothing* of one's own. Nothing. Yet I intend the comma to mean what we do possess (43-44)

[252] Fred Moten, "this unholding, Long Soldier lays down the law," Poetics of Law/Poetics of Decolonization Conference, UC Riverside, May 18, 2018.

This poem writes through the tensions and ambivalences of wanting a world without property but without fetishizing materially existing poverty: people who, in the present, have nothing of their own. This poem asks what would make it possible to have a world in which *poor* didn't mean being "stomach-sick over how to spend their last $3 comma on milk or gas or half for both with two children in the backseat watching" (44) but rather meant a world in which everyone has "*nothing* of one's own." A world where one can be Native, where one can belong, but without "ownership." The poem also presents paradox in translation: waȟpániča is translated into English as "poor," but opens onto the possibilities of what kinds of immaterial things one might have or not have in order to feel or count as poor. The last lines of the poem read: "I feel waȟpániča I feel alone. But this is a spill-over translation for how I cannot speak my mind comma the meta-phrasal ache of being *language poor*" (44). Settler colonialism has created a poverty that is beyond the material—it has created a poverty in which people are deprived of their own language.

The poem reimagines the relationship between ownership and poverty, such that "to have something of one's own" is not necessarily a relation based in money or the material. One can have only "a dog's matted fur a van seat pulled to the living room floor" (44) and therefore be, in English translation, destitute, but can nonetheless have kinship and have culture. But the only way to make this situation of relation something other than a sentimental glamorization that implies that even if one is materially poor, at least one has one's culture, is to redefine the meaning of "having" so that it is detached from ownership. There are multiple senses already available in the word "having." One

might redefine “having” by replacing the phrase “to have nothing” with “had never been,” thereby shifting the meaning of “having” from a verb that denotes possession to a mere auxiliary verb. From “having” to “had never allowed,” grammar deactivates the ability of a word to denote ownership and transmutes it into a marker of time—of tense. This work of redefinition that in turn abolishes ownership is something a poem can do.

The poem “38” does not begin with a “Whereas” statement. The facts in this poem, then, do not bear that peculiar relation of “falling short” of US law. The poem spans five pages, the longest in the book, and falls directly before the Whereas poems. The work this poem does is different from the work of law; it is doing a telling of history. It’s made up of a series of single line statements—facts. The poem pedagogically presents the facts surrounding the state-sanctioned execution of the so-called Dakota 38 in 1862. The poem mimics the form and tone of a legal document, unfolding in a series of factual propositions with careful qualifications. The poem opens with attention to laws: “Here, the sentence will be respected./I will compose each sentence with care, by minding what the rules of writing dictate/For example, all sentences will begin with capital letters.” (49). The poem begins with an imperative that takes the syntax of a fact, something that is already true. And then moves on to articulate an adherence to “the rules” of writing. We are starting in a world of laws and of fact. Upon introducing the execution of 38 Dakota men by the US Government, she writes, “To date, this is the largest ‘legal’ mass execution in history.” (49). Already, the status of rules and of the legal—both civil and grammatical—is brought into question. For example: “In any case, you might be asking, ‘Why were thirty-eight Dakota men hung?’/ As a side note, the past

tense of hang is *hung*, but when referring to the capital punishment of hanging, the correct past tense is *hanged.*" This line draws attention to a strange grammatical law that governs how the past tense of a word is different when referring to capital punishment. But isn't a law that justifies a mass execution also strange?

"38" experiments with what, following M. NourbeSe Philip and Colin Dayan, we can call the "conjuring power" of law. Both Philip and Dayan introduce this power of the law as it relates to enslavement, as Philip writes: "In its potent ability to decree that what is and is not, as in a human ceasing to be and becoming an object, a thing or chattel, the law approaches the realm of magic and religion."[253] But law's conjuring power is also critical to the perpetuation of settler colonialism. Treaties turn land into property, turn waters and stones—which many Native peoples understand to be non-human relatives—into something owned, legislated, and, ultimately, stolen. Supreme Court cases turn Native people into "sovereign" or "domestic dependent" nations. But as in the case with the transformation of person into property, this transformation is not exhaustive. Land remains as land, remains enspirited, even when settler law attempts to incorporate it. Land remains, as Long Soldier writes in one of the "Resolution" poems "this land this land this land this land."

In *Whereas*, we see the conjuring power of treaty law in "38":

> But to make whatever-it-was official and binding, the US government drew up an initial treaty.
>
> This treaty was later replaced by another (more convenient) treaty, and then another.

[253] M. NourbeSe Philip, *Zong!* (Middletown, CT: Wesleyan UP, 2008), 96.

> I've had difficulty unraveling the terms of these treaties, given the legal speak and congressional language.
>
> As treaties were abrogated (broken) and new treaties were drafted, one after another, the new treaties often referenced old defunct treaties, and it is a muddy switchback trail to follow (50).

The treaties referenced are ones in which "Dakota leaders ceded land to the US government in exchange for money or goods, but most importantly, the safety of their people" (50). In her parentheticals, Long Soldier can enact parallel transformations to those of the law: where the US might make "another" treaty, the poem uses the parenthetical to modify that it is "more convenient." Where the law uses the word "abrogated," the parenthetical in the poem demystifies the "legal speak." The poem dramatizes the difference of responses to the breaking of grammatical "treaties" versus the breaking of legal ones. The poet breaks the grammatical treaty in order to transform or deactivate the work of the law. But by imagining the treaties as something to be "unraveled" and as a "muddy switchback trail," Long Soldier brings the language and history of these treaties into fabric and dirt—to things that can be felt and handled. It was the treaties that caused the Dakota people to starve, that took away the source of their material subsistence.

NourbeSe Philip's description of the way law and magic operate in her poetic practice bears on the text of *Whereas*. She writes:

> In simultaneously censoring the activity of the reported text while conjuring the presence of excised Africans, as well as their humanity, I become both censor and magician. As censor, I function like the law whose role is to proscribe and prescribe, deciding which aspects of the text will be removed and which

> remain…As magician, however, I conjure the infinite(ive) of to be of the 'negroes' on board the *Zong*.[254]

Long Soldier acts similarly, as both "censor and magician," as she uses the conjuring power of poetry to upset the laws: both of grammar, of punctuation and of the sentence, and the very idea of *law* as based upon "having" rather than "holding." In "38," she decides which facts about the so-called Sioux Uprising and the execution of the Dakota 38 to include in the poem. She writes: "Keep in mind, I am not a historian./So I will recount facts as best as I can, given limited resources and understanding" (50).

Because Long Soldier is a poet, and not a historian, she can experiment, in "38," with the implications of the past tense, with the way grammar does the telling of history. With the difference between "hung" and "hanged." In describing the suffering of the Dakota people she writes:

> Without money, store credit, or rights to hunt beyond their ten-mile tract of land, Dakota people/began to starve
>
> The Dakota people were starving.
>
> The Dakota people starved (51).

And then: "As a result—and without other options but to continue to starve—Dakota people retaliated" (52). Began to starve/were starving/starved/continue to starve. Three different past tenses. One present tense. "Starved" is in the simple past tense, which would usually denote a completed action. The purview of historians. But even after "The Dakota people starved" they were "without other options but to continue to starve," suggesting that "starved" does not indicate a completed action at all. The starving was

[254] Philip 199.

ongoing, the ongoing effect of US law and policy, of treaties both upheld and broken. The poem cannot make the starving "had never been." It cannot make the mass "legal" execution have never happened. But it can register the past as ongoing, the actions as not yet complete. The past may be prior, but it's not yet over. Settler colonialism is, in fact, ongoing.

Settler colonialism—like slavery—does not exhaust social relations. It cannot ever turn everything into property. *Whereas* mobilizes what Avery Gordon calls "abolitionist time." She writes: "Abolitionist time is a type of revolutionary time. But rather than stop the world, as if in an absolute break between now and then, it is a daily part of it. Abolitionist time is a way of being in the ongoing work of emancipation, a work whose success is not measured by legalistic pronouncements, a work which perforce must take place while you're still enslaved."[255] It takes place, in the case of *Whereas*, under the conditions of colonization. What persists even when colonization has made it so one has "nothing of one's own," is care. And specifically, in these poems, maternal care. *Whereas* imagines ongoing maternal care as a decolonial and abolitionist force, one that lives within settler colonial violence but is not wholly transformed or obliterated by it. The mother still has to worry about how to spend her remaining $3: a worry framed by both the poverty colonization made, and by the need to spend that $3 for the "two children in the back seat watching" (44). Maternity is still a means for the transmission of history, for the inscription of time.

[255] Avery Gordon, *The Hawthorn Archive* (New York: Fordham UP, 2018), 42.

Maternity, for Long Soldier, is forged in a different context than it is for Jacobs, and so takes on a slightly different shape. The trauma to which she responds is not that of enslavement, but rather of a different kind of intergenerational forced severing of ties—to family, to language, to land. One poem in *Whereas* explicitly performs the reparative work of the maternal transmission of history as care:

> WHEREAS I sipped winter water cold-steeped in pine needles, I could taste it for days afterward, I taste it now. When I woke alone gray curtains burned in sunrise and down my throat to the pit, a tincture of those green needles changed me. When should I recount detail, when's it too much? My mother burrows herself for days at a time, so I listen to her. We speak about an envelope for receipts, dark roast coffee and the neighbor's staple gun I want to borrow. In the smallest things I watch the compass needle of conversation register her back to center. What has become of us, mother to her former self. Daughter to mother, present selves. Citizen to country, former and past to present or, is it a matter of *presence?* My daughter wouldn't do it when she was younger but this year she wanted to. For her birthday, an ear piercing. The needle gun hurts only for a moment, we assure her. In the old days Grandma held ice on my earlobes then punctured with a sewing needle. You'll have it easier, I affirm. She rushes through the mall to the needle chair, her smile. Eagerness, the emotion-mark of presence. I want to write something kind, as things of country and nation and nation-to-nation burn, have tattooed me. Red-enflamed-needle-marked me. Yet in the possibility of ink through a needle, the greater picture arrives through a thousand blood dots. Long ago bones were fashioned into needles. If I had my choosing I'd use this tool here, a bone needle to break the skin. To ink-inject the permanent reminder: *I'm here I'm not / numb to a single dot;* (80)

In this poem, multi-generational maternal relations intertwine with those between citizen and nation, between nations. It's needles that move through this poem, their "taste" remains across generations, from pine needle to needle gun to sewing needle to tattoo needle. In its emphasis on *presence*, this poem manifests the ongoing struggle in abolitionist time. As the shape of the needle changes over the generations, colonization is ongoing, but nonetheless, mothers and grandmothers enact a kind of care for their daughters by inflicting pain "only for a moment." "You'll have it easier," the speaker

says to her daughter, referring both to the ear piercing and to navigating the relations between citizen and country, to being Lakota in a settler colonial nation. Both the violences of settler colonialism and the remedies to it take place not in the text of the law but in the piercing of the body. In physical *presence*.

The poem "Edge," too, lives in the tenderness of ongoing maternal care: "My name is Mommy on these drives the sand and brush the end of winter we pass. You in the rearview double buckled back center my love…" (48). In the holding of the seat-belt's double buckle. But this poem ends on what Toni Morrison would call a *rememory* of colonization—a memory located in place, "And I see it I mommy the edge but do not point do not say *look* as we pass the heads gold and blowing these dry grasses eaten in fear by man and horses" (48). How can you teach a daughter to unremember, this asks? When care takes the shape of being in place, the impossibility of unknowing a history. Driving past grasses blowing…the grasses, Long Soldier tells us, that white merchant Andrew Myrick told the starving Dakota to eat, the grasses the Dakota then stuffed in the mouth of his corpse. Those grasses neither negate maternal love nor are they transcended by it. They're just there. Whispering histories. Maternal love and care are distinctly historical.

* * *

At the end of her *Narrative*, Harriet Jacobs is legally free, yet she points out that legal emancipation doesn't mean that her freedom struggle is complete. She writes: "Reader, my story ends with freedom; not in the usual way, with marriage. I and my children are now free! The dream of my life is not yet realized. I do not sit with my

children in a home of my own. I still long for a hearthstone of my own, however humble" (259). I read this juxtaposition of freedom with the "not yet realized" as a theorization of freedom that persists within unfulfillment. Her freedom is ongoing in abolitionist time. Not yet having a home of her own does not negate the reality of her freedom, does not negate the presence and ongoingness of freedom as being together with her children. Although I (and many others) have argued that Jacobs experienced freedom even throughout her enslavement, by way of her relationships with her children, and small everyday instances of autonomy, this moment continues to resignify what counts as freedom. Jacobs resignifies freedom as possible even in the absence of property ownership. The freedom of the "not yet realized" is this unholding.

The final passage of the narrative bring this constant resignification of freedom together with the narrative's re-writing of Genesis in reverse. Jacobs loops around, ending her book with the Bible and the world's un-beginning:

> It has been painful to me, in many ways, to recall the dreary years I passed in bondage. I would gladly forget them if I could. Yet the retrospection is not altogether without solace; for with those gloomy recollections come tender memories of my good old grandmother, like light, fleecy clouds floating over a dark and troubled sea (259).

Jacobs here is, again and still, re-writing Genesis 1:2 through Black feminism. The verse from Genesis reads: "And the earth was without form, and void; and darkness was upon the face of the deep. And the Spirit of God moved upon the face of the waters." Returning to Catherine Keller's theorizing of the *tehom*, the formless void, the face of the deep, the dark and troubled sea are not *nothing* but are rather a generative feminine chaos. They are the anorigins of a Black feminist world, a world prior to and in excess of

law. In Jacobs's version, the Spirit of God takes the form of "my good old grandmother," takes the form of "light fleecy clouds." Aunt Martha, even after her death, is the Spirit of God, the divine that floats over formlessness. This was not Jacobs's intended ending for her narrative. The text originally ended with a chapter about John Brown's armed rebellion, but Jacobs's white editor, Lydia Maria Child, suggested that Jacobs instead end the text with her grandmother's death.[256] But this turn to her grandmother does not reproduce the sentimental myth that (white) domesticity is an adequate solution to national crisis. Rather than depoliticize the text, this divine invocation of Jacobs's grandmother reinforces an abolitionist politics that is not reliant on militant masculinity, but rather centers and historicizes a Black feminist ethics of care. In Jacobs's rewriting of the Bible, the beginning of the world, the bringing of Earth into being, is at the end of this narrative, suggesting that the formless void, the dark and troubled sea, has already been holding a world. The *tehom* arrives at what appears to be the end, but which we know is not the end, but is rather the ongoing, continual practice of freedom.

[256] Bruce Mills, "Lydia Maria Child and the Endings to Harriet Jacobs's *Incidents in the Life of a Slave Girl,*" *American Literature* 64:2 (1992), 255-272.

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