The Subject of Law: Toni Morrison, Critical Race Theory, and the Narration of Cultural Criticism

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"I have but one language - yet that language is not mine."
- Jacques Derrida, Monolingualism of the Other: Or, the Prothesis of Origin.

"...we must not merely change the narratives of our histories, but transform our sense of what it means to live, to be, in other times and different spaces, both human and historical."
- Homi Bhabha, The Location of Culture.

Introduction

Toni Morrison interrupted work on Beloved during the winter of 1985/1986 to complete her play, "Dreaming Emmett." The play, which revises the story of the murder of Emmett Till, explores how race continues to function as a limit in African American life in the 1980s, even though racial exclusions took on a different guise from that of the 1950s.[i] This interruption in the production of Beloved reveals the question of temporality in Morrison's work. What are readers to make of Morrison's historical fictions? Why would Morrison suspend her efforts on a story set in the mid 1850s with another story from the 1950s, while writing in the 1980s? I propose to link these historical fictions with the shifts in the legal culture of the United States. Rather than focus exclusively on her fictions, I argue that Morrison's texts can form the basis of a critique of legal discourse. If "Dreaming Emmett" is a reworking of the Civil Rights Movement and its litigation strategy given the then current meaning of race, might Beloved and Morrison=s other novels be engaged in a similar strategy of cultural-legal criticism? Do Morrison's temporal dislocations signal a cultural-legal criticism that may be unspeakable in the "present"?

It is now fairly common to assert that Morrison seeks to depict the subjectivity of African Americans whose inner lives have been lost to history.[iii] For example, Beloved's Sethe offers insight into the seemingly incomprehensible and irrational acts of Margaret Garner, an enslaved woman who sought to free her children from the horrors of slavery by killing them.[iii] One way to approach Morrison's re-enactment of "lost" subjectivities is to examine the difference between being a subject of law and being a subject in law. Sethe tries to remove her children as subjects of (property) law by killing them because she sees no possibility of their being subjects in law (i.e. property owners). Jon-Christian Suggs has argued that African American literary and cultural productions chronicle "the substance of African American life under American law."[iv] His argument hinges on the assumption that African Americans are subjects of law, not subjects in law. One text to which Suggs cites to demonstrate his thesis is Morrison's Beloved.[v] The case of Morrison is complicated, in terms of Suggs's thesis, because her ostensible subject matter is historical. Is Morrison representing "the substance of African American life under law" of the past or the present? In order to interrogate this temporal gap located at the intersection of African American narrative and American law, I will use Toni Morrison's non-fiction essays to examine African American textuality and American legal ideology[vii] because her non-fiction essays seemingly address her "present" concerns.
Rather than focus on narrativity, which tends to depict textual production as self-creation, I explore how legal ideology helps to establish the foundational fictions of literary production. I am arguing that neither narrative nor law offers a discursive framework untainted by the other. Thus neither should be privileged, nor should they be opposed in some binary fashion. Such compartmentalization[vii] may be how liberal regimes defer and thus defuse the very conflicts which liberalism supposedly manages. [viii] Toni Morrison, in her essays on the Clarence Thomas/Anita Hill hearings[ix] and the O.J. Simpson case,[x] examines how narrativity and storytelling are precisely the problem - a seemingly strange position for an accomplished novelist! In Morrison's analysis, Hill and Simpson, while attempting to create a selves through narrative, found their stories incomprehensible to those who subscribed to dominant ideologies. In a very subtle manner, Morrison shifts her focus from the production of texts and selves to the consumption and circulation of texts and selves. This shift corresponds with the dichotomy between being a subject of law and being a subject in law. Being a subject of law means being labeled, identified, and defined by law and legal discourse. Being a subject in law signifies using law, legal ideology, and the legal apparatus of the state as a means to an end.

Narrative, as self-creation through storytelling, cannot be the "end" of textuality. Morrison's post-Beloved turn to the production of cultural-legal criticism contests the circulation and reproduction of legal ideology, despite attempts at self-production like those of Hill and Simpson. The issue of textual consumption, for Morrison in particular, becomes paramount once the priests of taste canonize her work as stories of "lost" subjectivities. Despite her many novels, does Morrison "lose" her voice once her novels get consumed as literary, or canonical, texts? Consumption, how stories are read and understood, becomes a central issue once those narratives have been successful in producing selves. Do these budding subjects in law revert back to subjects of law if consumed within a hegemonic legal ideology that refuses to acknowledge African Americans as subjects in law?

Necessary Relation Between Law and Literature?

Literature, if it can be distinguished from romance novels, detective fiction, autobiography, and other narrative forms, is supposed to challenge the reader's sense of self and what she thinks she knows. In this vein literature should challenge the very tropes, narratives, and myths that make storytelling and hence identity possible. Morrison, in her fictional work, may be challenging the categories and structures of literature (particularly the modernist novel) because the disciplinary formation, itself, may impede the telling of certain stories. Critics have noted the difficulty of Morrison's novels. Doris Sommer, for example, has argued that Morrison's novels constitute "resistant" texts because the position of the writer "is primary and that access to it is limited."[xii] Through an examination of her non-fiction writings, I will argue that it is not the texts that are resistant but the discipline of literature, literary-minded readers, and dominant culture that resist the articulation of "lost" subjectivities. Literature and its adherents resist the language of Morrison because it challenges the foundations on which literature stands. In this sense, Morrison displaces literature and the promise of narrative. This claim may, at first glance, seem ridiculous. How can Morrison displace literature if she has come to represent one "center" of literary discourse? Morrison is the one African American woman winner of the Nobel Prize for Literature. By integrating Morrison's critical works with her fiction, my goal is to chart how Morrison has attempted to intervene in literary discourse and its regulation of her work.

A necessary starting point is Morrison's statement that she is not writing for white people, as much African American literature has and does.[xiii] Also, she has insisted that African-American culture informs and positions her work.[xiii] Responding to frequent comparisons of her work to white male writers, Morrison has replied that "I [Morrison] am not like James Joyce; I am not like Thomas Hardy; I am not like Faulkner" (Emphasis in original).[xiv] Barbara Christian has asked, "Is it that as an African American woman writer, clearly a 'genius,' you [Morrison] must have a Western white literary father and mother?" (emphasis mine).[xv] Christian's rhetorical question is a powerful one evoking the link between whiteness and literature. The emphasis, as
Christian's question implies, on literary forbearers may contain the critical vision of Toni Morrison because the name literature "always already" (to use a tired phrase) may imply a certain idealization of whiteness.

Christian's rhetorical question, however, implies that Morrison's texts can and should be mastered via a given genre/discourse and then presented for analysis and criticism. Christian seems to assume the stability of "the literary." Disciplinary structures, such as literature, help to stabilize meaning and make texts safe for popular consumption. Most readers, including Christian apparently, assume that Morrison is speaking exclusively to and within the framework of literature. While she clearly invokes and references the literary, Morrison cannot be contained within literature and literary discourse without severing her from the cultural dialogue in which she participates. By confining her to literature, critics and readers alike make her work safe for orderly and thus uncritical consumption. Rather than relying on and fortifying the structure of literature, Morrison deploys literature to further a cultural-legal critique. Morrison describes herself and her work:

I am a black writer struggling with and through a language that can powerfully evoke and enforce hidden signs of racial superiority, cultural hegemony, and dismissive "othering" of people and language which are by no means marginal and completely known and knowable in my work.[xvi]

Morrison criticizes literature in this quotation from Playing in the Dark and links literature with its importance in structuring the imaginary domain, which in turn shapes the legal order. Her literary endeavors are premised on how literature grounds legal discourse and the social order. From this starting point, it would be a mistake to disregard the dialogue with critical race theory that occurs in her writing.

Morrison's work is filled with the most violent of crimes: rape and murder. Yet she rarely, if at all, allows traditional legal notions to determine the resolution of these "legal" problems. Instead, Morrison examines how these crimes constitute cultural problems, illustrative of how racialized thinking affects the psyche and communal identification. Thus literature constitutes the "Subject of Law" because literature offers a way to tell comprehensible stories, even within legal discourse. This does not negate the possibility that law founds literary discourse for without these great crimes, already catalogued via legal discourse, Morrison's novels might present issues only of limited or local concern. Through her non-fiction writing on the Thomas-Hill hearings and the Simpson trial, Morrison recites and re-sites legal problems to demonstrate their origins in cultural practices. By identifying how legal discourse structures everyday life, Morrison marks the ubiquitous and the seemingly irremediable nature of racism. It is only through such a displacement of the concept of racism within legal discourse that its limitations can be seen. These non-fiction essays also connect her work to other critical race theorists such as Patricia Williams, Derrick Bell, and Kimberlé Crenshaw. Following and developing critical race theory, Morrison redefines equality to mean political (Plessy) [xvii], social (Brown)[xviii], and cultural equality[xix] (a step not yet taken by the Supreme Court of the United States). This may explain why her literary texts depict potential legal conflicts yet defer the forms and structures of legal discourse. It is precisely this unspoken legal context, which give Morrison's acts of literature meaning.

The Possibilities of Narrative/Limits of Consumption

In her introductory essay to the edited collection on Hill and Thomas, entitled, "Friday on the Potomac," Morrison writes: "The problem of internalizing the master's tongue is the problem of the rescued. Unlike the problems of survivors who may be lucky, fated, etc., the rescued have the problem of debt" ("Race-ing," xxv). In her analysis of the Anita Hill-Clarence Thomas hearings, Morrison explores why Clarence Thomas presented such a fascination for Americans. Comparing Thomas to Friday from Robinson Crusoe, Morrison argues that Thomas represents those who have so internalized the master's language that meaningful resistance becomes impossible. The story of Thomas matched dominant (i.e. white) stories about black upward mobility. Thus, a mostly white
audience eagerly consumed because Thomas did not offer a subjectivity that has been
hidden by legal and cultural discourses. In other words, the narratives offered by
Thomas fortified the status of African Americans as subjects of law rather than as
subjects in law. Derrick Bell argued that Thomas's endorsement of the conservative
narrative about the role of race in social relations suggested that Thomas was, in fact, a
"radical double agent." According to Bell, Thomas's mimicry of hegemonic white
narratives would "spark racial revolt" due to "this society's growing hostility to African
Americans."[xx] Bell's tongue in cheek analysis of Thomas offers another articulation of
Morrison's critique of the role of narrative in altering social relations. Bell looks to the
possible effects of narratives rather than their apparent content or meaning.

While there remains considerable debate about the value of applying postcolonial
theory to African Americans,[xxi] Morrison's reference to Robinson Crusoe and Bell's
characterization of Thomas as mimic invite comparison to the work of postcolonial
theory. The work of Homi Bhabha may be most relevant in this instance. Bhabha's The
Location of Culture both begins and ends with references to Toni Morrison,[xxii] and Bell
seems to apply Bhabha's account of mimicry. Of mimicry, Bhabha writes that "[t]he
success of colonial appropriation depends on a proliferation of inappropriate objects that
ensure its strategic failure, so that mimicry is at once resemblance and menace."[xxiii]
In his ironic reading of Thomas, Bell argues that Thomas's articulation of conservative
social narratives may lead to revolution despite his apparent colonialist/conservative
rhetoric.

In another register, the readings of Thomas by Morrison and Bell echo Gayatri Spivak's
attempt to stage a reading of two women who have left barely a mark on the written
records of history.[xxiv] Spivak identifies these two women as subaltern, her metaphor
"for the space out of any serious touch with the logic of capitalism or socialism . . ."
Spivak cautions however that the figure of the subaltern should not be confused with
"unorganized labor, women as such, the proletarian, the colonized, the object of
ethnography, migrant labor, political refugees, etc."[xxv] Spivak's deployment of the
figure of the subaltern has a certain resonance with the case of the Thomas (and the
complete silencing of Anita Hill). While Thomas may be speaking, the question remains
as to whose voice and whose subjectivity is narrated and consumed.

The mimicry of Thomas suggests the problem of relying on dominant discourses and
institutions for achieving social transformation. Morrison's implicit and explicit
engagements with legal discourse via her novels and her edited collections underscore
the problem of the "Subject of Law." Thomas, in one sense, represents a color-blind or
race-neutral approach to equality that refuses to acknowledge the contingent nature of
social and cultural relations, precisely the relations that give the words and categories of
legal discourse meaning. Morrison and Bell's critique of Thomas matches the putative
ideals of legal discourse with the "realities" those ideals mask. Can the ideals of
Thomas and legal discourse, more generally, be used to transform the very realities that
give legal discourse its persuasive, or hegemonic, force? Legal discourse and an
unreconstructed ideal of equality may be yet another instance where the master's
language makes meaningful resistance impossible, unless offered in the menacing
mimicry suggested by Bell's critique of Thomas. The question remains, after the Civil
Rights movements when the nation seemingly rooted out overt racism, what rhetorical
strategies can historically marginalized people access? Can law, as a discourse of
dominance, appear as anything other than at the margins or borders in the narratives of
those seeking to transform social relations? If so, how can a transformative legal
critique appear and circulate?

Critical Race Theory

Morrison's final words of the essay offer insight into this question. "Only through
thoughtful, incisive, and far-ranging dialogue will all of us be able to appraise and
benefit from Friday's [i.e. Thomas's] dilemma" ("Race-ing," xxx). Morrison calls for a
dialogue, which is then followed by a series of essays, including those written by
Patricia Williams, Kendall Thomas, and Kimberlé Crenshaw. I emphasize her call for
dialogue and the inclusion of a number of critical race theorists because it may suggest a way of situating Morrison's work within and against current social and cultural debates (and not just literary ones). Rather than "discovering" her literary forbearers, criticism of Morrison should focus on foregrounding those with whom she is in dialogue. By including critical race theorists within the discussion disseminated under her name, Race-ing Justice, En-gender-ing Power provides a clue to whom Morrison is writing and which discourses she hopes to influence.

Of the Thomas-Hill hearings, Morrison writes:

At stake was a court: stacked or balanced; irreproachable in its ethical and judicial standards or malleable and compliant in its political agenda; alert to and mindful of the real lives, as these are measured by the good of the republic, or a court that is aloof, delusional, indifferent to any mandate, popular or unpopular . . . ("Race-ing," xix).

Morrison's words note how the selection of Thomas as a Supreme Court Justice confirmed the worst fears of some African Americans about the possibility of using established institutions as avenues for social reform. In addition, her comments echo the growing body of work of critical race theorists, both those who were included in the Thomas collection and those who were not. For Leon Higginbotham, the late veteran of the Civil Rights movement and Federal Appellate Judge, Thomas represents a potential reversal of African American activism for social reform that stretches from Frederick Douglass and Sojourner Truth through Martin Luther King and Thurgood Marshall. In an open letter to Thomas, he writes, "I hope that you have the strength of character to exemplify those values so that the sacrifices of all these men and women will not have been in vain."[xxvi] Higginbotham concludes his letter by "wish[ing] you [Thomas] well as a thoughtful and worthy successor to Justice Marshall in the ever ongoing struggle to assure equal justice under the law for all persons."[xxvii] Thomas represents the end, if the death knell had not already been sounded, of an era in which the Supreme Court and legal discourse, more generally, seemed the most efficacious institutional location, under the Fourteenth Amendment's requirement of "equal protection" to pursue the struggle for Civil Rights.

Reflecting changes in social conditions and building on the insights of critical legal studies, critical race theorists have criticized the view that the Supreme Court is the branch best suited to protect against discrimination. Girardeau Spann argues that because members of the Court must be nominated and confirmed to receive their commission, it is unlikely that alternative narratives can be represented. In Spann's analysis, subordination is structural because of the cultural forces that shape successful lawyers, not conspiratorial.[xxviii] Therefore, a balanced approach to social reform that includes alternative venues must be pursued because solutions to discrimination and subordination require hybrid strategies that seek change in multiple disciplines simultaneously as disciplinary strategies may do nothing other than fortify that discipline. Implicit to Spann's argument is that law cannot be distinguished from the dominant culture which it maintains. Social and cultural reform cannot rely on an unreconstructed legal discourse because the status of African Americans as objects, not subjects, founds legal knowledge. The exclusion of the subjectivity of African Americans founds legal discourse and enables the creation of legal rationality.

Given Higginbotham and Spann's analyses, in what way does Morrison's intervention into the debate around Clarence Thomas and Anita Hill constitute a "legal" one? Kimberlé Crenshaw's essay in Race-ing offers an answer.[xxix]

America simply stumbled into the place where African-American women live, a political vacuum of erasure and contradiction by the almost routine polarization of 'blacks and women' into separate and competing political camps.[xxx]

Crenshaw continues, "Hill faced . . . the lack of available and widely comprehended narratives to communicate the reality of her experience as a black woman to the world"
("Whose Story," 404, emphasis mine). It is a problem with legal language because Hill possessed no narrative framework within legal discourse in which her words, her story could make sense despite Hill's mastery of legal discourse.[xxxii] Because no framework exists in which Hill's story (and other stories like hers) could be told, legal discourse has been unable to recognize her claim, let alone forge remedies. In this piece and others, [xxxii] Crenshaw argues that the failure to acknowledge the multiple ways in which bodies are identified, manipulated and controlled limits the ability of legal discourse to offer a solution to social problems. In her conclusion, Crenshaw stresses that legal discourse and narrative are linked. Legal discourse can only respond to those stories that are authorized, acknowledged, and empowered. Changing legal discourse means transforming the ways that stories are told, authorized, acknowledged, studied, and recited.

This brings me back to the title of this essay: the “Subject of Law”. I hope that the examples of Thomas and Hill hint at the three potential meanings imbued by this phrase. First, the “Subject of Law” could mean an exploration of what constitutes the subject matter of law, the substance of law. In this vein, the “Subject of Law” suggests an exploration of the appropriate bounds of legal discourse. Traditionally, the subject matter of law has meant court decisions, statutes, or executive orders. Morrison’s criticisms of the Clarence Thomas hearings suggest at least two other related meanings. The “Subject of Law” could also mean the individual or individuals who use (s) the language and institutions of law to produce certain ends. Earlier in this essay, I have named this a subject in law, rather than a subject of law. Despite this heuristic distinction, the title of this paper and Morrison’s critical writings hold out the putative ideal that African American men and women can be such subjects in law. Morrison’s forays into legal discourse, here illustrated by her engagement with critical race theory and by how legal discourse frame the borders of her novels, seem to imply that this unrealized ideal remains. Consequently, a third sense of the “Subject of Law” gains importance in Morrison's critical vision. In this last meaning, the “Subject of Law” references those people who become the objects of legal knowledge and the narratives that the law tells about the world. Being a subject of law means lacking the ability to be recognized as anything other than as a figure within someone else’s stories. Critical race theory is the movement of legal scholars of color who explore how alternative legal subjectivities can come into existence. Morrison, while generally not recognized as such, has nonetheless worked in a similar mode as critical race theorists to narrate a new story about the “Subject of Law”. Thus, her stories that narrate lost subjectivities to history also necessarily implicate who can speak in contemporary legal discourse and to what effect.

About Anita Hill, Morrison writes: "[a]s in virtually all of this nation's great debates, nonwhites and women figure powerfully, although their presence may be disguised, denied, or obliterated" ("Race-ing," xix). "Anita Hill's description of Thomas's behavior toward her did not ignite a careful search for the truth; her testimony simply produced an exchange of racial tropes" ("Race-ing," xvi, emphasis mine). By rearranging her words, it becomes clear that what "disguises, denies or obliterates" women and nonwhites in public discourse is "the exchange of racial tropes." Morrison highlights that the only meaning that could be transferred successfully about Anita Hill was the white, male, heterosexual fantasy. Legal language, because of the unconscious cultural assumptions embedded in it, proves insufficient to "tell a free story." The public intellectual, social activist, or writer must then transcend the limitations of the language of the law, the language of equality, through hybrid interventions that defy easy disciplinary categorization.

For Morrison and critical race theory, the Thomas-Hill hearings underlined the metaphorical nature of language. Because language works through metaphor, language disrupts and detours any attempt at "pure" legal reasoning. The tropes that Hill could employ would prove ineffective in combating the words of Thomas and his supporters because her words relied too much on cultural narratives not shared by most whites or conservative African Americans both male and female. Illustrative of this, Patricia Williams used the occasion to "admit" that she and Hill are witches.[xxxiii] Williams and Hill are witches because they are incomprehensible under the dominant tropes that
ground communication and enable the transfer of meaning, particularly within legal discourse. Their behavior is not based on white, male standards and thus seems irrational. As a result, they are "doomed" to the realm of insanity, magic, and fantasy. If dominant culture views the experiences of an individual or group through the lenses of insanity, magic, and fantasy, then the harms endured will not be given equal protection of the law but will be disregarded as the stuff of fantasy or myth. Within this context, Morrison and critical race theory are engaged in the (re)writing of the myth (of rights) in order to re-define the subject matter of law and to transform African Americans from objects of law to subjects of law.

Drucilla Cornell offers a reading of the character, Wild Woman, from Jazz (a novel that is contemporaneous with Thomas-Hill hearings and the writing of "Friday on the Potomac") that complements my analysis of the "Subject of Law" within the work of Toni Morrison. Cornell writes: "[J]azz is not a liberal story, at least as we identify liberalism with the separation of the >messy' world of private fantasy and desire from the realm of public debate and sensible politics." Cornell continues and argues that "[J]azz ... can never be kept in its proper place. Jazz keeps breaking in, as the tremors that shake the foundation of so-called race-neutrality, which is always only a bar that pushes into the unconscious the significance of race."[xxxiv] Cornell's reading of the figure of the Wild Woman offers one connection between Morrison's literary and critical writings. What goes unexplored in Cornell's reading is the temporal dislocation between these two modes of writing and how these temporal and stylistic gaps must be read. Cornell writes presciently: "[t]he story of the Wild Woman, because she is only as she is imagined by men is not her story at all, but the story of the men who try endlessly to hunt her down."[xxxv] By coupling the historical fiction of Jazz and the then present situation of Anita Hill, it can be argued that Morrison's writing (both her fiction and non-fiction) implores its readers to examine how "private" images and fantasies have come to limit the possibility of social reform based on a liberal legal ideology. Of course, this is precisely the argument of critical race theory - the very legal scholars with whom Morrison is dialogue in her work.

The "Subject of Law" and the National Narrative: The case of OJ Simpson

Morrison examined the "Subject of Law" only once, perhaps my emphasis on it would be undue or idiosyncratic. Five years after the publication of Race-ing Justice, Engender-ing Power (1992), however, Morrison authorizes another collection of essays in her name. Birth of a Nation'hood: Gaze, Script, and Spectacle in the O.J. Simpson Case (1997) examines the cultural politics that surrounded the O.J. Simpson trial. Once again, the work of law scholars, such as Leon Higginbotham, Drucilla Cornell, Kimberlé Crenshaw, and Patricia Williams, and of cultural theorists, such as George Lipsitz, David Roediger, Andrew Ross and Ann du Cille, are included. These are Morrison's interlocutors in terms of her essay on the case and in her fiction. Given that the publication of Race-ing and Birth are simultaneous with the publication of her novels, Jazz and Paradise, it would be surprising if they shed no light on one another. The coincidence is even deeper given that both novels revolve around the social and cultural consequences (but not the legal consequences) of murder, an apparent "Subject of Law".

Morrison's approach to "The Subject of Law" does not stand still during the six year between Race-ing and Birth. She offers a repetition with a difference. In her essay, "The Official Story: Dead Man Golfing," Morrison's concern about the exchange of racial tropes becomes an analysis of national narratives. Morrison writes:

A national narrative is born in and from chaos. Its purpose is to restore or imitate order and to minimize confusion about what is at stake and who will pay the price of dissension. Once, long ago, these stories developed slowly. They became over time national epics, written, sung, performed and archived in the culture as memory, ideology and art ("Birth," xv-xvi).

The development of her analysis is profound. While critical race theorists, such as Crenshaw, Williams, Derrick Bell, and Richard Delgado, may have preceded her in
focusing on narrative, Morrison, in response to their work, transforms and redeploy the concept of narrative. The shift from "tropes" to "national narratives" is signaled in her 1993 Nobel Prize Lecture. Morrison prefaces her lecture by stating that "[n]arrative has never been merely entertainment for me. It is, I believe, one of the principal ways in which we absorb knowledge."[xxxvii] In this rendering, narrative has a double meaning that includes both text and context. Morrison’s concept of "narrative" includes both the "story" and the series of frameworks within and against which that story is told. In addition to arguing for the importance of literature and storytelling, Morrison implicitly criticizes the liberal account of the subject by insisting that the origin of knowledge is based in the liberal, the recounting or description of events, rather than in an objective mental process that culminates in pure perception of an object. Following from this premise, Morrison proceeds to tell an allegorical story, beginning with the words, "Once Upon a Time," that emphasizes the power and possibility of language.

Narrative, as a foundation for knowledge, implicates the nation and shapes collective identity. To dispute these narratives is to challenge the very identity of the nation. In her essay in Birth of a Nation'hood, Morrison no longer simply follows the transfer of racial tropes within various accounts of the spectacle of the Simpson case, as she does in Thomas-Hill hearings. Rather, she examines how racial tropes shape the narratives that can be told and circulated to create a supposedly national consensus. Morrison tried to create a believable narrative of Simpson's guilt from the admissible evidence put forward during the trial without relying on the racial identification of the killer. Morrison found that fiction readers would not accept such a story because "without the support of black irrationality . . . the fictional case not only could not be made, it was silly" ("Birth," xii-xiii). By doing so, Morrison examines what unconscious narratives structure the national consensus on the meaning and application of law. This consensus, one rooted in a liberal legal ideology, relies on a series of racialized narratives for its coherence.

"It was clear from the beginning that the real possibility of Mr. Simpson's innocence was a story that had no legs and would not walk, let alone sell" ("Birth," xvii, emphasis mine). The collection of essays explores why the national attention fixed itself upon the case and how different communities narrated the case in such opposing ways. By addressing these questions and the relations between law and storytelling, the collection challenges the traditional sense of the "Subject of Law". Not one essay defines law or legal discourse, though each one explores the narratives, tropes, and myths that give meaning to the ideals described therein. Patricia Williams argues that:

it is probably worth sifting out the real trial from the media sensation that surrounded it; it is probably worth acknowledging that there were two trials taking place: one in the courtroom, the other in the court of public opinion. Some barrier between the two worlds was supposedly ensured by the process of juror sequestration . . . It is therefore, important, I think to deal with what happened in the court of public opinion has its own kind of reality.[xxxvii]

Animating both Morrison's essay and critical race theory's critique of legal reasoning is the distinction between law and legal discourse. Law may be the court or the jury's decision of which party wins in a particular case, but legal discourse includes the narratives, the biases and the myths that rationalize, legitimate, and explain those decisions. At times, and the Simpson case may be one of those times, law, the decision, and legal discourse, the narratives that generally structure legal decisions, may conflict. Why is it that most whites, relying on legal discourse, "knew" that Simpson had to be guilty? The court of public opinion apparently relied on certain racialized narratives that the jury did not. Are those racialized narratives an integral, if not a grounding element, of legal discourse or are those narratives distinct from it? Does the rule of law fall apart without those racialized national narratives?

The law/legal discourse distinction, which Morrison examines, may be either "new" or "old" and either shocking or not shocking, depending on one's perspective. Developing a historical view of critical race theory and the law/legal discourse distinction is necessary to challenge critics who use their lack of familiarity with African American
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cultural criticism to argue that critical race theory is a "new" theory that attacks truth. Conversely, other critics argue that there is nothing "new" in critical race theory and dismiss it. This position too is troubling because it does not ask why this critique of law still is being articulated and developed even after the Civil Rights movement. In other words, why the persistence of historical narratives about racial injustice if racist narratives do not continue to haunt law and legal discourse in the present? The cynical answer might be that these narratives still circulate because it makes "celebrities" out of writers such as Toni Morrison. This answer, however, does not explain why people would eagerly consume these narratives if they did not speak to "reality" of powerlessness among African Americans.

If more space permitted, I could trace how this critique of law has roots in the work of slave narratives, the debate between Washington and Du Bois, the fiction of Frances Harper, Charles Chestnutt, and Paul Lawrence Dunbar, the work of the Harlem Renaissance, and in Langston Hughes's Semple stories. While positing and arguing for this distinction, I realize that it may not hold. Such theoretical claims cannot fully or adequately describe how things work. They can, however, enable critique of how law "functions" in producing subjects and citizens. By illustrating the distinction between law and legal discourse, Birth of a Nation'hood demonstrates that the phrase "a nation of laws, not men" is an unrealized ideal because historical and social conditions situate any text of law and structure its meaning. Contemporary African American public intellectuals seek to displace these ideals from the history of racism and exclusion on which their "ideal" nature was and is based. The Simpson case and the public reaction to it demonstrated the racialized narratives upon which liberal legal ideology rests. While few disagreed on the principle of whether murder should be prohibited, the divergent views produced by the case established that the "rational" and "neutral" application of principles supposedly universally accepted rely on an unspoken racialized national narrative. If the smooth operation of law requires these racialized narratives, is the "Subject of Law" necessarily a raced subject?

Is Morrison really a legal critic?

Do Morrison's essays constitute legal criticism? If so, what consequences follow from this insight? The answer to my first question is yes - though her work is a hybrid critique: part law, part literature. By characterizing Toni Morrison as a legal critic, I further Jon-Christian Suggs's recent thesis. Suggs argues that African American narrative primarily concerns itself with "the conflict between the substance of African American life and the status of that life under the law."[xxxviii] Reconstructing the dialogue between Morrison with her non-"literary" interlocutors offers one way to illustrate the social and cultural politics that flow through her stories. Such an emphasis stresses that role that literature does or can play in establishing the legal order. Such a thesis must rely on the complex relationship between the legal order and the imaginary domain. I borrow the concept of the imaginary domain from Drucilla Cornell, who employs it in a slightly different manner.[xxxi] For the purposes of this essay, the imaginary domain constitutes the social and cultural framework upon which the "Subject of Law" is founded. By examining the construction of this legal foundation, Morrison offers a criticism of legal discourse. To chart the consequences of this criticism, a brief close reading of her non-fiction essays follows.

In her essays on Thomas and Simpson, Morrison references Melville's short story "Benito Cereno." For Morrison, the story examines the two roles available for African Americans in the national imagination: "naturally docile, made for servitude" or "savage cannibal" ("Race-ing," xv). Morrison notes that: "[t]he confirmation hearings, as it turned out, had two black persons to nourish these fictions" ("Race-ing," xv). In "Race-ing," the reference to "Benito Cereno" works to ground the play of the two images of black people that animates the rest of her discussion and the other essays in the collection. The reference to Melville may also signal to whom she wishes to speak as Melville's tale concerns and criticizes the narratives that the white Captain Delano brings to the slave ship in revolt. Morrison writes:
The American captain spends the day on board the San Dominick, happily observing, inquiring, chatting and arranging relief for the distressed ship's population. Any mild uneasiness he feels is quickly obliterated by his supreme confidence in his assessment of the order of things ("Birth," ix).

In "Birth," Morrison stresses how the Captain misunderstands because he cannot comprehend the possibility of revolt. "The long deferment of this realization is understandable partly because of his trusting nature but mostly because of his certainty that blacks were incapable of so planned, so intricate an undertaking" ("Birth," x). Morrison writes against the generalized assumption among whites that Simpson was guilty, in which these white people bring a "supreme confidence in [their] assessment of the order of things." She writes, at the same time, as part of a broader coalition of scholars and activists, who question the narrative assumptions that people bring to texts (including those of the law). Deferring the question of his guilt or innocence, Morrison uses the moment produced by the O.J. Simpson case to interrogate the national story about law and order and police corruption. For the guilt or innocence of Simpson requires an implicit assumption about the ways in which police authority is applied ("Birth," xxi). The question - is he (i.e. Simpson) guilty? - has been transformed, in the national imagination, to - are they (i.e. black people) guilty? ("Birth," xxiv). The Simpson case offered an opportunity to look at the politics of interpretation, what I have described as consumption. Morrison’s subject is not the meaning of a given narrative. Rather Morrison focuses on how such narratives become cultural texts, once brought to national attention gets consumed given the persistence of racialized narratives.

Morrison explains that she began her essay with "Benito Cereno" "because the racist point of view of the narrator is hidden, the watcher is forced to discover racism as the paramount theme, the axis upon which all the action turns" ("Birth," xxvii). As a novelist and an astute literary critic, Morrison's choice seems fitting and engaging to a broad audience, including many white people and literary critics. What may be unstated about her choice, however, is that Melville's work has become part of the canon of the "Law and Literature" movement. Melville has been used within law and literature to examine how American legal culture condoned slavery and to critique legal reasoning. By connecting the Simpson trial with interpretations and applications of Melville (and the fugitive slave cases) Morrison elevates the Simpson case, a public spectacle seemingly devoid of what traditionally passes for legal import, to the cultural, social and legal importance of the fugitive slave cases. In other words, a case with seemingly more public importance than precedential weight is a signal that racism and racialization continue to haunt law and legal discourse. Legal discourse still cannot adequately resolve the dilemma posed by racist and sexist national narratives that deny the rights of citizenship to African Americans. These "new" narratives however are more insidious because they enable a hierarchy of difference without speaking the language of difference. Morrison's critique of law and legal discourse requires access to a language not already dominated by legal discourse and the imaginary domain that structures its meaning. For Morrison, the language that she employs to voice these concerns is that of literary and cultural criticism because it may be the only language that she has. No language untainted by racism and colonialism exists. The language of fantasy and fiction may be the only language accessible to colonized and dispossessed peoples because the colonized and the dispossessed exist as fantastic and mythical subjects, an unreal reality.

In "Unspeakable Things Unspoken," Morrison explores how the "whiteness" of the American literary canon derives from the work of critics who fail to explore the social, cultural and legal significance of texts adjudicated as literary. Morrison's critique focuses on how literary discourse structures the consumption of texts deemed to be literature. She writes, "[p]erhaps some of these writers, although under current house arrest, have much more to say than has been realized" ("Unspeakable," 212). Again, the writer whom she proceeds to discuss is Melville. The scholar on whose work she relies in her analysis is Michael Regin and his book, Subversive Genealogies.[xii] Regin's book suggests that Melville's work constitute political and legal allegories concerning the central issues, including the issue of race, facing the United States. In Morrison's
appraisal of Moby Dick, "Melville is not exploring white people, but whiteness idealized" ("Unspeakable," 215). She argues that Melville:

question[s] the very notion of white progress, the very idea of racial superiority, of whiteness as privileged place in the evolutionary ladder of humankind, and meditate[s] on the fraudulent, self-destroying philosophy of that superiority, to "pluck it out from under the robes of Senators and Judges," to drag the "judge himself to the bar" ("Unspeakable," 216).

This reading of Moby Dick precedes the edited collections on Clarence Thomas and O.J. Simpson. Morrison insists that we read Melville's work as grappling with the social, political and legal effects of slavery, the greatest conflict of his time. Implicitly, she exhorts readers to understand her own work as exploring the conflicts of her own age that cannot be spoken. (Hence my introductory question about the temporal gaps in Morrison's work). By intervening in the debates around Thomas and Simpson, Morrison offers us a glimpse of what drives her work, the idealization of whiteness and its consequences. Morrison, also, suggests that the divisiveness around the Thomas hearings and the Simpson case demonstrates that the final cultural emancipation of black people is still yet to come. Despite nearly a four hundred year presence on this continent, African Americans still find themselves homeless, without a home in the myth of nation. The national narratives that found the legal order remain grounded on the fantastic image of the racialized Other. Both Morrison's novels and her non-fiction seek to displace and transform that national narrative.

From the rape of Pecola in The Bluest Eye through the murders at the Convent in Paradise, racism and segregation enforced, maintained, and legitimated through legal discourse form the framework in which the psychic trauma of racial hierarchy endures. Morrison's work offers a new mapping of the "Subject of Law" because the place of law is not just the courtroom or the legislative chamber. Rather, law and legal discourse are lived experiences, not simply texts produced by legislators and judges. To criticize the Thomas hearings and the Simpson trial attacks law and legal discourse where it is most ubiquitous, where "ordinary" folks interact with the discourse of law and internalize its message, even if it is only in an ideological way. To most legal scholars, these events are unspeakable. They cannot be spoken because, on the one hand, they have little precedential value. On the other hand, they are unspeakable because they underscore the cultural politics that organize legal discourse.

To Morrison, such events demonstrate how the ideology of whiteness permeates the "Subject of Law". This legal crisis, in which an ideology of whiteness undergirds and legitimates legal discourse, limits the litigation strategy developed by the Civil Rights movements in the first half of the twentieth century. Morrison writes about what the Civil Rights movements failed to achieve through its intervention in legal discourse. Perhaps this explains why most of her novels take place before or during the victories of the Civil Rights Movement. Her fiction thus reveals the existence of these problems prior to the effort for social reform and to recognize the persistence of the psychic effects of racism and the limitations of our current remedies. Landmark legal decisions, such as Brown, have succeeded in remedying overt, intentional racism, but such cases have been unable to combat the way race and racism infect American culture. It is precisely the "infection" of racialized thinking, among people of all racial identifications, that is the subject of Morrison's work. In her novels, Morrison explores what legal discourse refuses to do - examine the psychic and material consequences of a racialized culture. For the ideal of equality to be realized, legal discourse must go beyond examining political or social structures. The relation between people, as embedded in American cultural practices, must be examined.

Conclusions

It is only since the publication and success of Beloved that Morrison has broadened her writing to include the production of texts of cultural and social criticism.[xii] These nonfiction essays may suggest the limitations of novel writing as a cultural intervention and may offer a way for Morrison to insist on her political project in the face of
incorporation into the canon, a canon that functions, in Morrison's own words, as a form of "house arrest" ("Unspeakable," 212). To see Morrison only as a novelist is to imprison her within literary discourse. Performing the role of legal critic (especially given how her performance of the role displaces the meaning of "law") may enable her to displace the label of "fiction writer" and maintain her voice as cultural critic. By identifying her critique as a "legal" one, scholars can chart the unconscious narratives that structure legal knowledge and legal practice.

In his analysis of Morrison, Dwight McBride argues that "African American intellectuals continue to learn new ways of strategizing and essentializing in racialized discourses: because what is at stake is nothing less than the ability to narrate our own stories, witness our own experience."[^xiii] By examining how language was deployed in the Thomas hearings and the Simpson trial, Morrison confronts the myths, images, and tropes that structured the cultural politics of those spectacles and informed public consumption of those narratives. Following the lead of other critical race theorists, Morrison re-sites legal discourse from the courtroom and legislature to the linguistic structures, racialized tropes, and cultural myths that found the legal imagination and work to legitimate legal discourse and the social order. Despite her current authority within literature, Morrison's greatest influence might ultimately lie in other directions. Her cultural and legal criticism may ultimately shift the nature of social reform to models that focus on psychic trauma and national myths. This emphasis may signal a focus on the importance of cultural, as well as political and social, equality. While this message may not be "new," it is radical. It is noteworthy that unconscious racists narratives that structure law endure, despite the successes of the Civil Rights Movements. Does Morrison's concern with language, culture, and law reveal a longing for a revolutionary kind of equality that remains an Unspeakable Thing yet Unspoken?

Notes


[^v]. Suggs, 290-297.

[^vi]. In this essay, I examine legal ideology as opposed to law. I define law as the rule of the sovereign. Legal ideology, however, consists of the assumptions, categories, and analytical formulas used to structure and understand legal decisions. The distinction between law and legal ideology is crucial because it insists on the rhetorical role of legalese in winning the consent of the majority. Moreover, it is American legal ideology that makes the experiences of African Americans unremitting.

[^vii]. Fanon argues that compartmentalization colonizes the mind and masks colonial relations. See Frantz Fanon, Wretched of the Earth, Trans. Constance Farrington (New York: Grove Press, 1968) 52. The opposition of law and narrative makes it seem possible to choose one over the other as a strategy of social reform. My reading of Morrison's essays suggests that if one is forced to make such a choice, the cause of reform is lost.

[^viii]. I think that Stanley Fish describes this situation very well. See Stanley Fish, The Problem With Principle (Cambridge: Harvard University Press, 1999). The problem with Fish's analysis is that he relies on poststructuralist arguments to debunk liberalism without exploring the historical and cultural factors that have worked to produce his very argument. In other words, Fish neglects how the study of race has
contributed to his position. This omission is particularly egregious given that the very scholars (Patricia Williams, Derrick Bell, etc.) who have contributed to Fish's position do not dismiss liberalism as glibly as he does.


[x]. Toni Morrison and Claudia Brodsky Lacour, eds., Birth of a Nation'hood: Gaze, Script and Spectacle in the O.J. Simpson Case (New York: Pantheon, 1997). Hereafter will be referenced as "Birth".


[xvi]. Toni Morrison, Playing in the Dark: Whiteness and the Literary Imagination (New York: Vintage, 1992) x. Hereafter this will be referenced as “Playing.”

[xvii]. Plessy v. Ferguson 163 U.S. 537 (1896) In this decision the Supreme Court of the United States held that the Fourteenth Amendment only required political equality, not social equality.

[xviii]. Brown v. Board of Education of Topeka 349 U.S. 294 (1955) In this case, the Supreme Court overturned Plessy and held that social segregation was inherently unequal.


[xxii]. Homi Bhabha, The Location of Culture (New York: Routledge, 1994) 1-18 & 254-256.

[xxiii]. Bhabha, 86.


Bell hooks offers a prescient analysis of the Thomas/Hill hearings in regards to the “silencing” of Anita Hill. hooks points out that Hill identified with dominant white culture and “believed that it was possible for [her] to gain recognition, voice, a fair and just hearing within a white supremacist patriarchal state . . .” (80) Thus the silencing of Hill, through Thomas’s rhetorical construction of the proceedings as a “high-tech lynching” only furthers the postcolonial critique about what must be mimicked within liberal regimes. See bell hooks, “A Feminist Challenge: Must We Call Every Woman Sister?” Black Looks: Race and Representation (Boston: South End Press, 1992) 79-86.


Patricia Williams, "A Rare Case Study of Muleheadedness and Men or How to Try an Unruly Black Witch, with Excerpts from the Heretical Testimony of Four Women, Known to Be Hysteric, Speaking in Their Own Voices, as Translated for this Publication by Brothers Hatch, Simpson, DeConcini, and Specter," Race-ing Justice, En-Gendering Power: Essays on Anita Hill, Clarence Thomas and the Construction of Social Reality, ed. Toni Morrison (New York: Pantheon, 1992) 165-169.

Drucilla Cornell, "The Wild Woman and All That Jazz," Feminism Beside Itself, ed. Diane Elam and Robyn Wiegman (New York: Routledge, 1995) 315. What is surprising is that Cornell, given her own position as a legal scholar, neglects to connect her insightful reading of Jazz to critical race theory and then recent shifts in legal criticism.

Cornell, 316.

Toni Morrison, Nobel Prize Lecture (New York: Knopf, 1994) 7. Not all reproductions of her lecture include these opening remarks. For example, Toni Morrison: Critical and Theoretical Approaches, ed. Nancy J. Peterson (Baltimore, MD: Johns Hopkins University, 1997) 267-273 does not include Morrison’s introductory remarks.


Suggs, 8.

See Drucilla Cornell, The Imaginary Domain: Abortion, Pornography, and Sexual Harassment (New York: Routledge, 1995). Cornell argues that the imaginary domain constitutes the conditions out of which individuation occurs and that law should guarantee certain minimum conditions of individuation. (4)

41. It should be noted that Morrison, while not credited for her work, did play an important role in the production of The Black Book, Complied by Middleton Harris, et al. (New York: Random House, 1974).