

The Master Norm: On the Question of Redressing Slavery

Maria Grahn-Farley

Follow this and additional works at: <https://via.library.depaul.edu/law-review>

Recommended Citation

Maria Grahn-Farley, *The Master Norm: On the Question of Redressing Slavery*, 53 DePaul L. Rev. 1215 (2004)
Available at: <https://via.library.depaul.edu/law-review/vol53/iss3/11>

This Article is brought to you for free and open access by the College of Law at Via Sapientiae. It has been accepted for inclusion in DePaul Law Review by an authorized editor of Via Sapientiae. For more information, please contact wsulliv6@depaul.edu, c.mcclure@depaul.edu.

THE MASTER NORM: ON THE QUESTION OF REDRESSING SLAVERY

*Maria Grahn-Farley**

As all the negroes introduced into America were brought as slaves, the black color of the race raises the presumption of slavery, contrary to the principles of common law, which would presume freedom This presumption is extended, in most of the States, to mulattoes or persons of mixed blood, casting upon them the onus of proving a free *maternal* ancestor.¹

INTRODUCTION

The slave and the slave master took the place of the human in the times of slavery. When every person is divided into free and unfree, there is no room for the human; there is only room for the oppressed and the oppressor. For the human to take the place of the slave and the slave master in the present time, it is not enough that people are no longer made into slaves or slave masters through law. Redress of slavery is what will make the slave and the slave master human. For that to happen, the line of slavery has to be broken. The line of slavery is still unbroken; it is only in the Amendments that slavery has been let go; the legal line of the Slave-Constitution is unbroken.² The

* Maria Grahn-Farley, Visiting Scholar, Boston College Department of Sociology (2003-2004); Andrew W. Mellon Post-Doctoral Fellow, Humanities Research Institute of the University of California (2002-2003). LL.M. Candidate, Harvard Law School. LL.M. Gothenburg University School of Economics and Commercial Law (Sweden). I want to thank the *DePaul Law Review* for inviting me to present this Article. I want to thank Michele Goodwin of the DePaul University College of Law. I want to thank Saidiya V. Hartman and Stephen M. Best of the English Department of the University of California at Berkeley for inviting me to participate in the research group on *Redress in Social Thought, Law, and Literature* (2002-2003); this Article is the fruit of that invitation. Finally, I want to thank my husband, Anthony Paul Farley, for his support and encouragement.

1. THOMAS READ ROOTES COBB, AN INQUIRY INTO THE LAW OF NEGRO SLAVERY IN THE UNITED STATES OF AMERICA; TO WHICH IS PREFIXED, AN HISTORICAL SKETCH OF SLAVERY § 69 (Univ. of Ga. Press 1999) (1858), *reprinted in* PAUL FINKELMAN, THE LAW OF FREEDOM AND BONDAGE: A CASEBOOK 21 (1986).

2. The Thirteenth, Fourteenth, and Fifteenth Amendments do not constitute breaks in the line of legal slavery as a fundamental part of American constitutional thinking. A new constitution that would acknowledge the illegitimacy of the previous Slave-Constitution by taking its place as a whole would be a break of the line of legal slavery. One example of an effort to create a break with an illegitimate constitution is South Africa. South Africa wrote a new constitution after the fall of Apartheid. South Africa did not just amend the Apartheid Constitution. The author

economic power is still white; the economic line of a slave-economy is unbroken. The political power is still white; the political line of the ruling slave master is unbroken. To redress slavery is to break the lines of slavery and thus allow the human to come forward.

II. THE MEMORY OF SLAVERY FOLLOWS THE COLORLINE

To make the question of redressing slavery into a simple matter of how best to resolve legal and economic issues regarding the appropriate accounting practices is to foreclose a general social critique of a culture of racism and a history of oppressive racial relations.³ To foreclose such a critique is also to detach the question of reparations from questions of ethics and humanism.⁴ Instead of focusing on the legal and monetary parts of the question of reparations, I will focus on the value of a collective memory. This should not be interpreted as an argument that legal and monetary reparations should not be supported. My argument is that redressing slavery is much wider than what law and economics can give through mere reparations. Redressing slavery means eliminating the power whites have over blacks in the form of human, economic, and organizational resources.⁵ The white over black relationship springs out of slavery.⁶ The structure of

traveled to South Africa after the end of Apartheid as a member of the National Board of Rädga Barnen (Save the Children—Sweden) for several meetings with the South African Minister of Justice and other officials of the new government to talk about implementation of the United Nations Convention of the Rights of the Child and the writing of a new constitution.

3. John O. Calmore argues that as long as race does not affect the way that whites live their everyday lives, "their everyday racism will continue to manifest itself in interpersonal relations, institutional arrangements, and cultural expressions." John O. Calmore, *The Law and Culture-Shift: Race and the Warren Court Legacy*, 59 WASH. & LEE L. REV. 1095, 1102 (2002).

4. *Id.* at 1134. Calmore points to the origin of the civil rights movement as connected to a wider movement addressing freedom, justice, and human dignity. Calmore writes, "The true tragedy of the civil rights movement is that it was too quickly disconnected from the humanizing aspects of the struggle that marked its origins and animated it. . . . Once severed from the larger community, law was easily cabined, justice easily delayed, and racist resistance easily enabled." *Id.*

5. David Parker has defined resources in three main categories: Human, Economic, and Organizational. David Parker, *Resources and Child Rights: An Economic Perspective*, in IMPLEMENTING THE CONVENTION ON THE RIGHTS OF THE CHILD: RESOURCES MOBILIZATION IN LOW-INCOME COUNTRIES 33 (James R. Himes ed., 1995). Examples of Human Resources include: skills, professionalism, motivation, knowledge, experience, exchange of information, and experience. Examples of Economic Resources include: land, natural resources, savings, credit, supplies, and profit. Examples of Organizational Resources include: administrative structures, laws and regulations, professional organizations, political power, leadership, control over political organizations, local organizations and committees, participation, and mobilization power. *See id.* at 35-37.

6. Robin Blackburn observes:

Twelve million captives on the coast of Africa between 1500 and 1870 helped to make possible the construction of one of the largest systems of slavery in human history. . . .

white over black has survived, through nurturing, from the time of slavery, through the time of segregation and, finally, to the present time of neo-segregation.⁷ This is why the memory of slavery is still of importance and still serves as a resource to white people. The memory of slavery itself functions in the present as a threat toward black people because the power relationship between black and white people has not changed. At every turn, white people have been able, through their advantage of resources, to preserve their white dominance. At the end of slavery, white people were able to reconstitute racial relations through segregation; at the end of segregation, white people were able to reconstitute racial relations through neo-segregation; and at each turn, white people have been willing to die and kill to preserve slavery and segregation.⁸ It should not be forgotten that slavery was not given up without a tremendous fight, and segregation was not given up without a tremendous fight, which is why the memory of slavery still serves as a reminder to black people of what white people are willing to do and what white people are willing to sacrifice in order to maintain racial domination.⁹ The memory of slavery is a white threat against blacks that is made possible because the power relationship between black and white has not changed. The memory

Over a million and a half captives died during the "Middle Passage." . . . Once in the New World, between a tenth and a fifth of the slaves died within a year. Those who survived found their life drastically organized to secure from them as much labour as possible.

ROBIN BLACKBURN, *THE MAKING OF NEW WORLD SLAVERY: FROM THE BAROQUE TO THE MODERN 1492-1800*, at 3 (1997).

7. Derrick Bell, *Living with the Specter of Calhoun*, 1 *UMOJA* L.J. 1 vi (1996). Bell, reflecting on the civil rights victories over legal segregation, wrote: "[S]egregation was merely a manifestation of the real evil, the determination to maintain white dominance in all matters of importance and value." *Id.*

8. Alfred L. Brophy, *Some Conceptual and Legal Problems in Reparations for Slavery* 58 *N.Y.U. ANN. SURV. AM. L.* 497, 498 (2003). Brophy makes this argument for reparations:

Following Reconstruction, however, there were decades of state-mandated segregation in housing, public accommodations, and education, and state-mandated limits of voting. This legacy, and the sad realization that Reconstruction left former slaves not with economic independence but in many instances in long-term labor contracts with their former owners and subjected to harsh "black codes," is central to the current debate over reparation. Had there been adequate measures taken to allow former slaves to gain economic and educational advancement, it is doubtful that anyone would be talking about reparations now, for there would be no need for them. African Americans would have educational opportunities and wealth equivalent to that of the white population.

Id.

9. Anthony Paul Farley writes: "Civil rights will not create the raceless society. Until the distribution of goods—material and spiritual—no longer tracks the colorline, we will have race. And there is no race without suffering and humiliation." Anthony Paul Farley, *Thirteen Stories*, 15 *TOURO L. REV.* 543, 586 (1999).

of slavery, then, is a threat—*this is what whites can and have done to blacks*—that is a resource for whites. The memory of slavery will always remind black people of the price they will have to pay for their liberation from racial oppression.¹⁰ The memory of slavery will remain a threat, and a white resource, until the threat is made impossible to carry out. The threat can only be made impossible to carry out when whites no longer have power over blacks. Until that moment, the memory of slavery will remain a threat and that threat will remain a white resource and a black burden.

I have chosen to illustrate the unbroken line of slave-time with our-time in a poem.

The memory of slavery, for white people, is the memory of what it is to be on the top.

To turn a human into an object.

To experience total power.

Slavery, for white people, was worth going to war for.

Slavery, for white people, was worth dying for.

The memory of slavery, for white people, is the manifestation of how far white people can go to keep black people as slaves.

The memory of slavery, for black people, is the memory of what it is to be on the bottom.

To be turned into an object.

To experience total helplessness.

The memory of slavery, for white people, is that slavery was, for white people, worth going to war for.

The memory of slavery, for white people, is that slavery was, for white people, worth dying for.

The memory of slavery, for black people, is that slavery was, for white people, worth going to war for.

The memory of slavery, for black people, is that slavery was, for white people, worth dying for.

The memory of slavery, for black people, is the manifestation of how far white people can go to keep black people as slaves.

The memory of slavery is a death threat of the present.

10. Professor Alfred L. Brophy, Presentation at *DePaul Law Review* Symposium, Race as Proxy in Law and Society: Emerging Issues in Race and the Law (Mar. 8, 2003) (describing the fact that the black community had economically surpassed the white community before the mass lynching of blacks by whites known as the Tulsa Riot).

Reparation for slavery is the undoing of the present value of the memory of slavery itself. Reparation for slavery is the redress of the meaning of the past through the change of its meaning in the present. When racism is eradicated, the memory of slavery will have lost its value in the present.¹¹ Reparation for slavery is the redress of the memory of slavery so that its value does not track the colorline.

As long as the color of the skin determines the income a family receives, reparation for slavery has not been made. Today, in the United States, 18.3% of all children are living in poverty.¹² Today, in the United States, 12.5% of all white children are living in poverty, while 39.8% of all black children are living in poverty.¹³ Needless to say, no one should have to live in poverty, especially in the United States with all of its wealth. A child in the United States is more likely to be poor today than twenty or thirty years ago.¹⁴ Schools serving poor children tend to be under-funded.¹⁵ As long as the color of the

11. Michael Hanchard, *Afro-Modernity: Temporality, Politics, and the African Diaspora*, 11 PUB. CULTURE 252 (1999). Michael Hanchard tracks the colorline through what he calls "racial time" to its origin in racial slavery. *Id.* Hanchard describes three ways in which time is racial: 1) Waiting: members from the subordinate groups objectively perceive the material consequence of social inequality, as they are literally made to wait for goods and services that are delivered first to members of the dominant group; 2) Time appropriation: seizing another's time and making it one's own; and 3) The ethico-political relationship between temporality and notions of human progress: that the future comes with an improvement out of the combination of racial prejudice, socioeconomic exploitation, and violence. *Id.* at 266.

12. CHILDREN'S DEFENSE FUND, THE STATE OF AMERICA'S CHILDREN, YEARBOOK 2001, at tbl. 2 (2001).

13. *Id.*

14. In the United States, the child poverty rate is twice as high as it is in Canada or Germany, and six times higher than in France, Belgium, or Austria. *Id.* Unemployment was about twice as common for blacks (7.6%) as for whites (3.5%), a disparity that has barely changed in forty-seven years. *Id.* According to the Children's Defense Fund:

The poorest one-fifth of American families saw their inflation-adjusted incomes dwindle by 4 percent during the 20 years since 1979 (from \$13,504 to \$13,332 in 1999 dollars). The middle one-fifth of families gained 11 percent (from \$44,030 in 1979 to \$48,933 in 1999). Widening the gap between the rich and the poor, the richest one-fifth of families gained 42 percent (from \$103,972 in 1979 to \$147,779 in 1999).

Id.

15. The Children's Defense Fund reports:

Nearly five decades after the *Brown v. Board of Education* decision, too many minority children still do not have equal opportunity to succeed in school and their future careers. . . . Today, white students make up only [ten] percent of the school population in [forty] percent of all urban schools. [T]he richest school districts spent [fifty-six] percent more per student than the poorest did. Schools serving large numbers of poor children tend to have teachers with less training and fewer books and supplies. The report found that more than [seventy] percent of teachers on schools with high concentration of low-income students reported lacking some necessary materials for their classes. And these students were more likely than students attending more affluent schools to be taught by teachers who did not major in the subject are in which they taught.

skin determines the quality of the education received, reparation for slavery has not been made.

As long as the color of the skin determines the quality of the health care available, reparation for slavery has not been made. One out of six black children and one out of four Hispanic children are uninsured, compared with one out of eleven white children.¹⁶ Another area of racism in practice is the juvenile justice system:¹⁷

Black youth are more than twice as likely as White youths to be held in a detention facility, even after controlling for offenses. Black youth are also held in detention facilities an average of two weeks longer than White youths for the same offenses. Nearly seven out of [ten] youths in secure confinement facilities are members of minority groups, and more than [seventy-five] percent of youths newly admitted into state prisons were minorities.¹⁸

As long as the color of the skin determines the time that will be spent as unfree in the custody of the state in one of the many prisons around the country, reparation for slavery has not been made.

As long as what determines whether one would have been free or unfree in the times of slavery is the same thing that determines whether one is free or unfree today, reparation for slavery has not been made. As long as it is the color of the skin that determines whether one is free or unfree, reparation for slavery has not been made.

III. MEMORY

The memory of slavery is always at least two memories even when the facts have been agreed upon as one. It is the memory of power and control and it is the memory of helplessness and lack of control. For white people, the memory of slavery in the United States is an empowering memory. Even if the person in the present rejects slavery, the memory is itself a resource that empowers. For white people, the memory of slavery will always serve as proof that it is possible to obtain total and complete power over someone based on the color of the skin.

Id. at 64 (citing U.S. DEP'T OF NAT'L EDUC. CTR. FOR EDUC. STATISTICS, *THE CONDITION OF EDUCATION 1997: THE SOCIAL CONTEXT OF EDUCATION* (1999)).

16. CHILDREN'S DEFENSE FUND, *supra* note 11, at 23 (citing U.S. BUREAU OF THE CENSUS, *CURRENT POPULATION SURVEY* (2000)).

17. *See generally* Maria Grahn-Farley, *A Child Perspective on the Juvenile Justice System*, 6 J. GENDER, RACE & JUST. 297 (2002).

18. CHILDREN'S DEFENSE FUND, *supra* note 11, at 111 (citing U.S. DEP'T OF JUSTICE, *JUVENILE JUSTICE BULLETIN: MINORITIES IN THE JUVENILE JUSTICE SYSTEM* (1999)).

For black people, the memory of slavery in the United States is a disempowering memory, even if the person in the present lives under circumstances above a white person. The memory of slavery for black people is always proof that total and complete defeat is possible based on the color of the skin.

For white people, the memory of slavery will always be the memory of the power to undo the humanity of someone else, to deconstruct the self and the Other.¹⁹ It is a memory of a power sprung out of the pigments of the skin, the color of skin.

For black people, the memory of slavery will always be the memory of the powerlessness of being undone, of what it is to be the one whose humanity is being undone, to be deconstructed, and to be made to fall apart.²⁰ It is a memory of a power sprung out of the pigments of the skin, the color of skin.

The collective memory of slavery does not come with your blood; it comes with the color of your skin.²¹ The feeling of becoming white is described by a young woman from Sweden when she arrived in the United States:

It was really difficult. I don't think that I've ever felt such discomfort in all my life. When I was taking the bus, there were only blacks. There were also Latin Americans, so to speak, they are not "black-black," but they still had, you still see that they're Latin Americans. But it was winter, so I wore gloves, then I saw my skin, like this, and then I thought "Oh my God, I'm white" sort of. I never thought of that, I've never reflected on my own—I mean, you know you're white, it's nothing more than that—but I've never been conscious of it, because there I was white first, then you might have been woman, or young, or student or whatever you might be. Here

19. In fact, the word "deconstruction" is closely related not to the word "destruction" but to the word "analysis," which etymologically means "to undo"—a virtual synonym for "to deconstruct." Barbara Johnson, *Introduction to JACQUES DERRIDA, DISSEMINATION* vii, xiv (Barbara Johnson trans., Univ. of Chi. Press 1981) (1972).

20. FRANTZ FANON, *BLACK SKIN, WHITE MASK* 113 (Charles Lam Markmann trans., Grove Press 1967) (1952). Fanon wrote: "Look at the nigger! . . . Mama, a Negro! . . . Hell, he's getting mad. . . . Take no notice, sir, he does not know that you are as civilized as we. . . . My body was given back to me sprawled out, distorted, recolored, clad in mourning in that white winter day." *Id.*

21. Devon Carbado describes his becoming a black American before becoming an American citizen, previously having been a citizen of the United Kingdom. Devon W. Carbado, *Erasing the Fourth Amendment*, 100 MICH. L. REV. 946, 947 (2002). Anita Brnic made a similar observation about becoming "white" when arriving in the United States. Brnic studies Swedish immigrants from former Yugoslavia and how, in Sweden, they were the "other," and upon arrival to the United States, they became white. Brnic quoted a young woman: "However, I was in USA lately and there I felt it, in the area where I worked. It was a black area and that's the first time that I felt white." ANITA BRNIC, *SPEAKING OF NATIONALITY, ON NARRATIVES OF NATIONAL BELONGING AND THE 'IMMIGRANT'* 144 (2002).

in Sweden you're never white first. It's pretty far back. So, it was really difficult for me.²²

This, the process of "becoming" white or black is also, for white people, an invitation to join the collective memory of slavery. For black people, it is not an invitation; the memory of slavery is placed upon the skin; there is no space for agency, not in the present nor in the times of slavery. John O. Calmore quotes a black journalist's description of one way that the memory of slavery is placed on black skin: "To almost all cops and most of society, I am a criminal who happens not to have committed his first crime."²³

You do not have to know your grandfather or grandmother to know if you would have belonged to the free or unfree during times of slavery; it is enough to know the color of your skin.²⁴ You do not have to know your grandfather or grandmother to know whether you belong to the free or unfree in the times of the industrial prison complex; it is enough to know the color of your skin. This is why the memory of slavery is a history of the present, present in your skin.

There is indeed a "fall," in quotation marks, but the falls it causes are from one time to the other, I dare not say from time to time or now and then [*de temps en temps ou de temps a' autre*]. The falls it causes are not *from spirit* [*de l'esprit*] into time. But from time into time, one time into another. And if "spirit" in quotation marks becomes temporalization itself, one ought just as much to speak of the fall of one spirit into the other.²⁵

Michael Hanchard comments on the relationship between time and race: "[I]n order to radically transform the temporal inequities of

22. BRNIC, *supra* note 21, at 145.

23. See Calmore, *supra* note 3, at 1105-06.

24. Passing might be interpreted as an exception to the rule that it is the knowledge of the color of the skin that trumps the knowledge of the grandparents. However, Robert Westley argues that passing actually maintains the skin color rule. Robert Westley, *First-Time Encounters: "Passing" Revisited and Demystification as a Critical Practice*, 18 YALE L. & POL'Y REV. 297 (2000). Westley gives two examples of the relationship between the absence or presence of knowledge of one's grandparents and the visual knowledge of skin color, in establishing one's belongingness to the group of the free or the unfree. *Id.* at 297, 317. Westley uses the concept of passing to highlight the role that passing plays in maintaining an ideology of white supremacy. *Id.* at 349. The first example is the one of Jacqueline Ann Henley from New Orleans, classified as white but looking possibly black. *Id.* at 297 (citing *Green v. City of New Orleans*, 88 So.2d 76 (La. Ct. App. 1956)). Because she was classified as white, she could not be adopted by a person classified as black even though she was placed in a house for black children because of her skin color. *Id.* Her father was not known and her mother was dead. *Id.* at 297-98. The second example is of the case of Susie Phipps. *Id.* at 317 (citing *Doe v. State*, 479 So.2d 369 (La. Ct. App. 1985)). Susie Phipps was a woman that had been living her life as white and found out that she was listed as of color in her birth certificate. Westley, *supra*, at 317. The records of the fact that Phipps's great great great great grandmother had been classified as a slave served to prove that Phipps was in fact black. *Id.* at 320-21.

25. JACQUES DERRIDA, *OF SPIRIT* 28 (Geoffrey Bennington & Rachel Bowlby trans., 1989).

their circumstances, slaves would have had to . . . transform themselves racially, an impossibility for the overwhelming majority of those considered black.”²⁶ The memory of slavery is not a heritage channeled through the veins of your blood but through the pigment of your skin.

IV. THE MASTER’S NORM

The law of the master is also the law of man. The slave master is an essential part of the concept of both law and fatherhood in the United States.²⁷ The creation mythology of the nation rests on the “Founding Fathers,” slave masters as fathers of the nation and the law are at the core of this nation’s memory.²⁸ The norm of man is the master’s norm; man is ruled by a Master Norm.²⁹ Slavery is not about the slave. Slavery is about the slave master and his norms. Reparation is not about the descendents of the slaves. Reparation is about the descendants of the slave master and his norms.

To be more precise, reparation is about the enjoyment of the master’s norm.³⁰ One way of seeing the value of skin color is to follow the trail of human, economic, and organizational resources until the resources can be connected to a face, and then look at the color of that face. This is how the color of the skin can be both invisible and visible at the same time. The master’s norm is both what justifies the will of the master and, at the same time, dictates the acts of the master. It is in the violence toward the Other that the master and his

26. Michael Hanchard, *Afro-Modernity: Temporality, Politics, and the African Diaspora*, 11 *PUB. CULTURE* 245, 256 (1999).

27. Austin Sarat addresses the close and often interchangeable relationship between law and fatherhood and how the image of the father affects the image of the law at the same time that the image of the law affects the image of the father. See Austin Sarat, *Presidential Address: Imagining the Law of the Father: Loss, Dread, and Mourning in The Sweet Hereafter*, 34 *LAW & SOC’Y REV.* 3 (2000).

28. William E. Cain, *Washington Forced His Slaves To Work 16 Hours a Day, Six Days a Week*, *BOSTON GLOBE*, Nov. 9, 2003, at D6. Cain, a writer for the *Boston Globe*, wrote:

We know Thomas Jefferson and George Washington owned slaves—we commend ourselves for being able at least to acknowledge this fact in the lives of great Americans we admire and honor: But are we mature enough as a nation to face the possibility that we should not admire or honor them at all?

Id. (reviewing GARY WILLS, “NEGRO PRESIDENT”: JEFFERSON AND THE SLAVE POWER (2003) and HENRY WIENCEK, AN IMPERFECT GOD: GEORGE WASHINGTON, HIS SLAVES, AND THE CREATION OF AMERICA (2003)).

29. For a critique of constitutional mythology, see Pierre Schlag, *The Empty Circles of Liberal Justification*, 96 *MICH. L. REV.* 1 (1997).

30. See Parker, *supra* note 5, at 37.

norm melt together inseparably.³¹ The enjoyment of the master's norms is what makes it possible for the descendants of the slave master to argue that the reparation for slavery is impossible. This enjoyment is what makes it possible for the descendant of the slave master to make eradication of racism impossible. The meaning of the past manifests itself in the fact that it matters in the present. Reparation is about changing the meaning of slavery, in the sense that it is about changing the meaning of the color of the skin in the present. The meaning of the color of the skin is connected to its value; as long as wealth, freedom, and health are connected to the color of the skin in the present in the same way as in the past, the value of slavery will also be a value of the present.

V. AT QUESTION

The underlying meaning of the question of reparation can only be addressed through a redress of the harm caused by questioning someone's humanity.³² To ask the question of what is human is both suicide and murder. To ask the question of what is human is the killing of the self and the killing of the Other. To ask the question of what is human is to give birth to the nonhuman through the practice of inhumanism.³³ Inhumanism is a denial of the human.

The human has to be presumed. The human is what has to remain the unproved. The human is what has to be true even without a truth. The human is what has to be proven without proof. It is to see while blind. It is to hear while deaf. It is to live before being born. It is to go to the end before it began. It is the presumption that must be.

A. *Suicide*

The master committed suicide when he became the master. To search for the human is to search for the nonhuman at the same time; this search is an inhuman practice that leads to inhumanism. To ask a question is to create a space for an answer.³⁴ It is to be the accomplice of a suicide. To answer is to commit suicide. To be committed to search for the human is to commit to killing. In the search for the

31. Austin Sarat demonstrates the "law as divine violence working its will in, and over, the world." Sarat, *supra* note 27, at 13. At the same time, "law [is] giving way, abandoning the child to the world-shattering violence of the father." *Id.*

32. MARTIN HEIDEGGER, *BEING AND TIME* § 5 (John Macquarrie & Edward Robinson trans., 1962). "But all inquiry about something is somehow a questioning of something . . . *that which is interrogated.*" *Id.*

33. "Dead, extinguished, or hidden, that star is more dangerous than ever." DERRIDA, *supra* note 19, at 84.

34. See HEIDEGGER, *supra* note 32.

human—man, the sender of the question and recipient of the answer are the same.³⁵

B. Murder

To search for the human is to simultaneously search for the nonhuman; this search is an inhuman practice that leads to inhumanism. To ask a question is to create a space for an answer. To ask “what is humanity” and “who is human” is to be the accomplice to the murder of the Other. To answer is to commit murder. To be committed to search for the human is to commit a killing. In the search for the human—man, the sender of the question and the recipient of the answer, are the same. Two are not needed.³⁶ In the search for man, for the human, the sender of the question and the recipient of the answer are the same.

To ask “who is human” and “what is human” is also to question someone’s humanity. To question someone’s humanity is also to undo their humanity. The master committed murder when he became the master.

C. Birth

The question gave birth to twins—the master and the slave—when it killed. Out of the question sprang the slave master and the slave, both born at the moment of the killing. First they were named and then they were born.³⁷ They were born out of their names:³⁸

[T]o have knowledge of things, one must first give them a name. This, in any case, seems to me to have been Christopher Columbus’ principle, for he named and named: he named places, he named people, he named things. This world he saw before him had a blankness to it, the blankness of the newly made, the newly born.³⁹

Like orphans, they were naked with only their color of the skin as their covering.⁴⁰ They were born with the color of their skin as their only signs of belonging.⁴¹ Both were born into this New World naked

35. GEOFFREY BENNINGTON, *LEGISLATIONS: THE POLITICS OF DECONSTRUCTION* 249 (1994).

36. MARTIN HEIDEGGER, *IDENTITY AND DIFFERENCE* 24 (Joan Stambaugh trans., Harper & Row 1969) (1957).

37. COLETTE GUILLAUMIN, *RACISM, SEXISM, POWER AND IDEOLOGY* 133, 141 (Mary Jo Lake-land trans., 1995).

38. GARGI BHATTACHARYYA, *TALES OF DARK-SKINNED WOMEN: RACE, GENDER AND GLOBAL CULTURE* 76 (1998).

39. Jamaica Kincaid, *In History*, 20 *CALLALOO* 2 (1997).

40. See Derrida, *supra* note 19, at 77.

41. Maria Grahn-Farley, *Not for Sale! Race & Gender Identity in Post-Colonial Europe*, 17 *N.Y.L. Sch. J. Hum. Rts.* 271 (2000).

and without living parents, owning only the color of their skin.⁴² You do not have to know your grandfather or grandmother to know if you would have belonged to the free or unfree group during times of slavery; it is enough to know the color of your skin. You do not have to know your grandfather or grandmother to know whether you belong to the free or unfree group in the times of the industrial prison complex; it is enough to know the color of your skin. The origin of slavery is the same as the origin of the memory of slavery. The memory of your grandfather or your grandmother did not matter then, and it does not matter now. What mattered then was the color of the skin, what matters now is the color of the skin.

VI. LAW ROOM⁴³

Questions about difference are questions about sameness:⁴⁴

Whereas some doubts have arisen wheter children got by English men upon a negro woman should be slave or ffree, Be it therefore enacted . . . that all children borne in this country shall be held bond or free only according to the condition of the mother, and that if any christian shall committ ffornication with a negro man or

42. The New World does not mean the WHOLE world; it means the world not seen by Europeans before. America was the New World to Columbus; *Lapland* was the New World to Linnee. See Kincaid, *supra* note 39.

43. Maria Grahn-Farley, *The Law Room: Hyperrealist Jurisprudence & Postmodern Politics*, 36 NEW ENG. L. REV. 29 (2001). The Law Room is where and when time and space are captured by law; it is populated by legal subjects that come to life by being touched by the Law Room itself. The Law Room is the way that the legal text places a spatial and temporal limit on the spaceless and timeless interactions between *social* subjects by making them into *legal* subjects. *Id.*

44. A young Swedish woman with an immigrant background working as an *au pair* in the United States discovered that in the United States she was “white” and apparently more “white” than her host family, who thought of themselves and were treated by others as white. In an interview with Anita Brnic, the young Swedish woman describes the way her white host family became very upset when they thought that she, a “white” person, was dating a black man and how puzzled she was over the fact that her host family failed to understand fully their own questionable United States “whiteness”:

The people that I stayed with went crazy when [a young man] called me at home. . . . The first question was if he was black. . . . They were very racist. . . . She [the wife in the host family] was brought up in Southern USA. . . . I could just as well give my number to a black guy. I don't think that we think like that. For me, if you think about it, then the Americans look like our Turks and Greeks and Syrians do here, . . . most Americans look like our immigrants do here, but there they are [white] Americans. . . . I had to explain to them that we don't have as many Blacks here [in Sweden] . . . we have different groups . . . from Ghana, Ethiopia, Somalia . . . their American Blacks are a certain kind of people, we don't have many of those here. They have a special appearance and we, Swedes, can find them really attractive . . . so, I thought that was a really strange question, I mean, it doesn't matter [if he's black], does it?

BRNIC, *supra* note 21, at 146.

woman, hee or shee soe offending shall pay double the ffines imposed by the former act.⁴⁵

The question hints that both the slave master and the slave were in mind as belonging to each other in the same moment that the question was posed.⁴⁶ Laws about difference are laws about sameness. The law hints that both the slave master and the slave were in mind as belonging to each other in the same moment that the law was created.

The concern of the Master Norm is not with what *is* different but with what cannot be permitted to remain the same. This is why the ideology of the Master Norm is not about difference but about sameness—the same as the self, the same with the self.

The question of what is human seeks its inhuman answer in the human—man’s project of law. Law is the argument about the human laid down for a public debate.⁴⁷ When law is what answers the question of what is human, law becomes the tool through which the master and the slave become flesh.⁴⁸ It is through the body of law that the master and the slave become flesh; the master as white, the slave as black. Out of the desire to categorize springs the possibility to do so.⁴⁹

The law does not forget its origin, for, unlike the orphans, its father is still alive in the master.⁵⁰ The law remembers and recognizes its debt to its father, a father that is *present*, standing near it, behind it, within it, sustaining it with his rectitude, and attending it in person in his own name.⁵¹ The law of slavery has not been forgotten by the law of segregation; the law of segregation has not been forgotten by the law of neo-segregation. The law guarding the gates of slavery, segregation, and neo-segregation has not forgotten its origin; it remembers its father and grandfather before that. It knows what master it serves; it knows what color to count.

VII. SPIRIT

The belief in the human was traded for the spiritualization of categorization, a categorization codified in the master’s norm: “*Sept. 17, 1630 Hugh Davis* to be soundly whipt before an assembly of negroes

45. Act XII December 1662 (II Henning 170): Negro womens’ children to serve according to the condition of the mother, *reprinted in FINKELMAN, supra* note 1, at 16.

46. See HEIDEGGER, *supra* note 32, § 5.

47. See Maria Grahn-Farley, *The Ideology of Genus & the Ghost of Heidegger*, 29 BROOK. J. INT’L L. 1 (2003).

48. Anthony Paul Farley, *The Black Body as Fetish Object*, 76 OR. L. REV. 457 (1997).

49. See GUILLAUMIN, *supra* note 37, at 133-52.

50. Linguistics, logic, dialectics, and zoology are all in the same camp. See DERRIDA, *supra* note 19, at 79. Logos is a being; it is alive. *Id.*

51. *Id.* at 77.

[and] others for abusing himself to the dishonor of God and shame of Christianity by defiling his body in lying with a negro. Which fault he is to ack[nowledge]. Next *sabbath* day.”⁵² The spirit of the law took the place of the spirit of the human. Instead of belief in the human, there is belief in the law. Instead of the norm of humanism, there is the norm of the master. Instead of acts of humanity, there are acts of categorization. This is how white power ideology can be spiritualized into law. This is how whites as slave masters and blacks as slaves can be a way of living; a way of living worth killing for and worth dying for.

The memory of oneself as a slave master is itself empowering. The memory of oneself as a slave is itself disempowering. It is empowering to know that the ability to completely and brutally rule over another is within the value of the color of one's skin.⁵³ It is empowering to know that one always carries the power to rule and completely possess another in the pigment of one's skin.

It is also empowering to know that within the Other is the same memory of complete and brutal defeat; that it is the color of the skin of the Other that makes the Other fit to be ruled. It is disempowering to know that it is in the pigment of the skin that one carries the possibility of complete and brutal defeat. As long as it is the color of the skin that determines the place in society, the possibility of total defeat will always lay in the color of the skin.

The memory of slavery is the memory that what makes one into the owner and the other into the owned lies in the color of the skin. The memory of slavery is the knowledge that the difference between life and death lies in the color of the skin. The redress of slavery has to make it impossible that the destiny of one's life lies in the color of one's skin. As long as the allocation of human, economic, and organizational resources follows the colorline, slavery has not been redressed.

To ask for the human is to make the inhuman the only possible answer to receive. To search for the human is to make the inhuman the only possible condition to find. The human can only be found before the search itself.

52. See FINKELMAN, *supra* note 1.

53. For a discussion on the value embedded in white skin, see Cheryl I. Harris, *Whiteness as Property*, 106 HARV. L. REV. 1707 (1993). Even though the law is neither uniform nor explicit in all instances, in protecting settled expectations based on white privilege, American law has recognized a property interest in whiteness. *Id.* at 1713.