January 2001

Lacan & Voting Rights

Anthony Paul Farley

Follow this and additional works at: https://digitalcommons.law.yale.edu/yjlh

Part of the History Commons, and the Law Commons

Recommended Citation
Available at: https://digitalcommons.law.yale.edu/yjlh/vol13/iss1/10

This Article is brought to you for free and open access by Yale Law School Legal Scholarship Repository. It has been accepted for inclusion in Yale Journal of Law & the Humanities by an authorized editor of Yale Law School Legal Scholarship Repository. For more information, please contact julian.aiken@yale.edu.
Lacan & Voting Rights

Anthony Paul Farley*

Southern trees bear strange fruit,
Blood on the leaves and blood at the root,
Black body swinging in the southern breeze,
Strange fruit hanging from the poplar trees.

—Billie Holiday, Strange Fruit

INTRODUCTION: LEVIATHAN

White majorities rarely elect black representatives. The black image in the white mind is not representative of white representational desires. Whites see themselves as whites. Whites represent themselves as whites. Peering into the dark mirror of the Other, peering into the mirror of the dark Other, standing opposite the mirror, whites see themselves as white, whites see themselves represented as white, whites represent themselves as white. The mirror is both for and before the look. Enter the Other: a dark, two-dimensional figure which seems, paradoxically, to possess an infinite depth. So stands the mirror image known as the “black” Other.

* Anthony Paul Farley, Associate Professor, Boston College Law School. J.D., Harvard Law School. Earlier versions of this article were presented at the University of Toronto and at Yale University. The writing of this article was supported by a summer research grant from Boston College. I thank Austin Sarat for his encouragement of this project and for his brilliant contributions to legal theory in general. I thank my co-panelists Shoshana Felman and Nahum Chandler for their excellent contributions and comments. I thank the editors of the Yale Journal of Law & the Humanities for their excellent work. I thank my wife, Maria Grahn-Farley, for her always brilliant comments on legal theory.

1. Billie Holiday, Strange Fruit, on Lady Day (1939-1944) (Commodore Records 1988). This lyric, credited to “Richard Allen,” was sung and made known to the world by Billie Holiday. “Richard Allen” was really Abel Meeropol, the adoptive father of the two sons of the Rosenbergs. See David Margolick, Strange Fruit: The Biography of a Song 11 (2001).

2. When I write of “whites” I write not of persons, peoples, or of any essential qualities of persons or peoples. When I write of “whites” I write of a form of sadistic pleasure in humiliating blacks, directly or indirectly, through the colorline. When I write of “blacks” I write not of persons, peoples, or of any essential qualities of persons or peoples. When I write of “blacks” I write of a form of masochistic pleasure in being humiliated, directly or indirectly, by the colorline. Both forms of ecstasy, pleasure in producing pain by treating Others as objects and pleasure in suffering the pain of being treated as Other and as object, provide the sense of self-identity and coherence known as “race.” See generally Anthony Paul Farley, The Black Body as Fetish Object, 76 OR. L. REV. 457 (1997) [hereinafter Farley, Black Body]; Anthony Paul Farley, S/M & the Colorline, in Black Men on Race, Gender & Sexuality: A Critical Reader (Devon Carbado ed., 1999) [hereinafter Farley, S/M].
Whites look deep into the mirror—the place of the black—to see themselves as sufficient unto themselves, as absolute beginnings, as coherent parts of a whole, as Leviathan. This Essay is a look at this look and a discussion of the ways in which this look is written into law, specifically, voting rights.

Our yearning for rights is nothing other than the expression of our wounds. Rights talk is the language of the wound. Rights are the words our wounds speak. We are political animals, according to Aristotle. Our wounds are politics. We are wounded animals and when our wounds speak we become human. We are our wounds.

Our wounds speak of rituals of scarification that are codified as law and made into memories of future behavior. Our wounds, then, are the beginning of the social order. We become a social order, a body politic, a Leviathan, in and through memories of pain, memories of fragmentation, memories of underdevelopment. The social order, the body politic, Leviathan, is a collective work composed of the various scars written on our bodies by painful operations of law. And our bodies are, therefore, our collective works. Our bodies are the collective art we have made of ourselves. Each of us finds our place and function in the social order, the body politic, Leviathan, literally cut into our flesh.

One of the deepest cuts of the twentieth and now the twenty-first century is caused by the colorline. The wound it opens is race. The scar left in its wake is race relations. The colorline cuts so deeply into our bodies that our psyches must literally be pulled to pieces for us to see its operations clearly. The wound called race causes such pain that its reality overwhelms all else. The scar called race relations marks and masks our inability to imagine or grow healthy flesh over the wound opened by the colorline. Race relations serves as the tough, leathery substitute for the full recovery of undifferentiated flesh, for the full healing of the wound, for the end of the colorline.

In the imagination of the white Overmind the body politic is held together in a form known as Leviathan. The Leviathan’s organs are us. We are held together as a body politic by our mutual fear of and desire for the ordered liberty that is Leviathan. This fearful desire, a remembrance of pain, is sometimes expressed as a contract: a social contract. We are said to have engaged in a war of all against all until each of us surrendered her autonomy to the superior catholic hand of Leviathan. Until that moment in which we all chose to surrender that which we were made to surrender we are said to have led lives that were “solitary, poore, nasty, brutish, and short”:

Whatever therefore is consequent to a time of Warre, where every man is Enemy to every man; the same is consequent to the time,

3. I owe this observation about rights to Maria Grahn-Farley (untitled, unpublished manuscript on file with author).
wherein men live without other security, than what their own strength, and their own invention shall furnish them withall. In such condition, there is no place for Industry; because the fruit thereof is uncertain: and consequently no Culture of the Earth; no Navigation, nor use of the commodities that may be imported by Sea; no commodious Building; no Instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth; no account of Time; no Arts; no Letters; no Society; and which is worst of all, continuall feare, and danger of violent death; And the life of man, solitary, poore, nasty, brutish, and short.⁴

We do not remember these past lives. Our past lives are said to have occurred in the non-time before the social contract. Leviathan is eternal. In the twentieth century and now in the twenty-first, Leviathan is white. In thinking of Leviathan and of the way we become ourselves in and through it and of the way it forms our connection not just to ourselves but to each other, we are thinking thoughts that take us to the deepest depths of our humanity. We are plunging deep into the mirror.

Whiteness is a peculiar thing and to divine its deep meaning is no easy feat. The whiteness of our corporate body is produced by its mirror: those “beings of an inferior order altogether unfit to associate with the white race.”⁵ Voting is the way that Leviathan binds itself together as a coherent being. Voting is the way that this colorlined society binds itself together in a vast white skin. Leviathan is white; to be white is to exclude blacks from the drama of becoming Leviathan. The central drama of Leviathan is, in the imagination of the white Overmind, the vote. To exclude blacks from the body politic, from becoming Leviathan, it is necessary to prevent blacks from exercising a meaningful vote.

The rituals of exclusion that together formed our notion of the “right” to vote are well known. Lillian Smith observed:

The race issue was used, roughly, in this fashion: One politician outsmarted his rival by slapping the poll tax on his state’s law books. His opponent retaliated by bloc-voting the Negroes. This led to fresh retaliation. The first one who could, put further restrictions on voting by setting up “literacy tests” (which could be passed by most whites, through the quickly enacted “grandfather clause,” which exempted an illiterate from the test if his grandfather had voted). So it went, each building power for himself and his machine by reducing the number of people who could vote—and doing it in any way he could. But politicians, powerful as they are, cannot write poll-tax laws and grandfather clauses on a state’s books—not in a democracy. The people must put them there. To persuade them to do so, fears must

⁵ Dred Scott v. Sandford, 60 U.S. 393 (1856).
first be aroused. So the demagogues got busy. They drilled with their electric lies deep into our memories, stirring up the unhappy past, telling ghost stories about "race dangers," seasoning their barbecue speeches with obscene innuendoes about "mongrelizing," about "your sister marrying a Negro," and sadistic phrases: rivers of blood . . . troops with bayonets . . . invasion of the home. Then what happened? More lynchings—naturally. For the mentally unstable (white and colored) were aroused by such speeches and did violent, foolish things, hardly knowing why they did them. Immediately after a lynching, more segregation statutes were put on lawbooks to "control racial violence." Signs went over doors, over drinking fountains; public buildings were often out of bounds to Negroes. Jim Crow travel cars were set up—hooked onto trains going South at Washington, D.C. Eating together in restaurants and in trains in the South was banned.6

Smith's observation was mirrored in the shattered bodies of black would-be voters. Robert Toatley, a former slave, reported the consequences of attempting to enter the white body politic:

Night rider come by and drop something at your door and say, "I'll just leave you something for dinner." Then ride off in a gallop. When you open the sack, what you reckon in there? One time it was six nigger heads that was left at the door. Was it at my house door? Oh, no! It was at the door of a nigger too active in politics.7

Let us look at the bodies that are ruined in order to produce the mirror image upon which the white body politic relies for its vision of itself, its body, and its future possibilities. It may be enlightening for us to follow the colorline all the way down to the wounds it caused and causes and then to the scars that those wounds have been rationalized into being. Let us read the scars as signs, as meanings, as terms of art in the social contract, as the codification of fear and desire, as the flesh and bone and blood of Leviathan.

THE MIRROR

These are the images of castration, mutilation, dismemberment, dislocation, evisceration, devouring, bursting open of the body . . . One has only to listen to children aged between two and five playing, alone or together, to know that pulling off the head and ripping open of the belly are themes that occur spontaneously to their imagination,

---

and that this is corroborated by the experience of the doll torn to pieces . . . .

—Jacques Lacan

And everybody started screaming again. And I looked and I saw the troopers charging us again and some of them were swinging their arms and throwing canisters of tear gas. And beyond them I saw the horsemen starting their charge toward us. I was terrified. What happened then is something I’ll never forget as long as I live. Never. In fact, I still dream about it sometimes. I saw those horsemen coming toward me and they had those awful masks on; they rode right through the cloud of tear gas. Some of them had clubs, others had ropes or whips, which they swung about them like they were driving cattle . . . . I don’t know if I was screaming or not, but everyone else was.

—Sheyann Webb

Lacan argued that the infant sees in its reflection an imagined future coherence, a coherence that is not yet. The infant—fragmented—sees in the mirror an image of a wholeness, an integrity that it does not possess. The infant comes to exist as an individual through the disjunction between its actual fragmentation and the imagined unified self it sees in the mirror. There is a necessary moment of fiction in the creation of the self. This stage, called the mirror stage by Lacan, is not really a stage because it is never really over.

The infant is dependent upon others to provide it with a mirror, just as the adult it will later become is dependent on others to provide a mirror image. Drucilla Cornell argues that the law serves as a lifelong mirror: “[T]he state and the legal system should themselves be understood as symbolic Others that confirm and constitute who is established as a person.”

The law gives us a reflection of a coherence that we do not truly possess:

It is only through the mirroring process that the infant comes to have an identity. The body’s coherence depends on the future anteriority of


the projection, in that what has yet to be, is imagined as already given. The infant, then, does not recognize a self that is already "there" in the mirror. Instead, the self is constituted in and through the mirroring process as other to its reality of bodily disorganization, and by having itself mirrored by others as a whole.\textsuperscript{11}

We imagine ourselves as actually possessing the qualities we see reflected in the mirror of the law:

Our "bodies," then are never really our own. The idea that we own our bodies is a fantasy that imagines as completed that which always remains in the future anterior. Therefore, to protect "ourselves" from threats to our bodily integrity, we have to protect the future into which we project our unity and have our bodily integrity respected by others.\textsuperscript{12}

The future ("we have the protect the future into which we project our unity"), when it comes to black voting rights, resembles the past. Black voting rights have ever been imagined as intimately connected to the protection from threats to bodily integrity. The dismemberment of the black body politic provides the white body politic with a mirror of its white unity and protection for its white future. In 1965, the year of the Voting Rights Act, nine-year-old Sheyann Webb, on the eve of her decision to fully participate in the Selma Movement, understood the connection between bodily integrity, self-ownership, and the vote: "I kept thinking about the words Hosea Williams had said about if you can't vote, then you're a slave."\textsuperscript{13}

Justice Sandra Day O'Connor, writing for the Court in \textit{Shaw v. Reno}, upheld a challenge by white voters to the plan under which North Carolina sent black Representatives to Congress for the first time since Reconstruction.\textsuperscript{14} At issue in \textit{Shaw v. Reno} was a North Carolina reapportionment plan creating two majority-black voting districts for the House of Representatives. As Justice O'Connor's opinion notes, one voting district had "been compared to a 'Rorschach ink-blot test and a bug splattered on a windshield.'"\textsuperscript{15} The other voting district, Justice O'Connor's opinion informs us, was "even more unusually shaped... [being] approximately 160 miles long, ... for much of its length no wider than the I-85 corridor, ... [and moving] in snake-like fashion through tobacco country, financial centers, and manufacturing areas 'until it

\textsuperscript{11} Id. at 224.

\textsuperscript{12} Id.

\textsuperscript{13} WEBB & NELSON, supra note 9, at 11.


gobbles in enough enclaves of black neighborhoods." The voting
districts in question had been created in response to the objection of the
Attorney General of the United States, under the Voting Rights Act of
1965, to the dilution of black votes that would have occurred under a
previous plan providing for only one majority-black congressional district
in the state of North Carolina.

The first image of the opinion, that of the "Rorschach inkblot test,"
invites an examination of its second image, that of the "snake." The snake
evokes images of the Temptation and the Fall as well as images of the
phallus. The "Temptation" for Justice O'Connor seems to be the forbidden
fruit of race consciousness. However, one can turn her opinion's
"Rorschach ink-blot test" upon her opinion's own image and wonder
whether the strange fruit, the black body swaying from southern trees, is
not the temptation before which she herself has fallen. Lynching was and
remains a classic American way of severing black political connections.
Both the Voting Registrar and the lynchers' rope appear to be part and
parcel of the same process of white-over-black. It appears as though
Justice O'Connor has partaken of the strange fruit. And, as she herself
admits, "reapportionment is one area in which appearances do matter." We
are, therefore, not entirely out of line in seeing whether we can mark
traces of the colorline in the Shaw v. Reno voting rights decision. Justice
O'Connor writes:

A reapportionment plan that includes in one district individuals who
belong to the same race, but who are otherwise separated by
geographical and political boundaries, and who may have little in
common with one another but the color of their skin, bears an
uncomfortable resemblance to political apartheid.

For Justice O'Connor, such connections are "bizarre." Worse yet, they
serve to reinforce "the perception that members of the same racial group—
regardless of their age, education, economic status, or the community in
which they live—think alike, share the same political interests, and will
prefer the same candidates at the polls."

Residents of the "bizarre" voting district could have nothing in common
with each other, according to Justice O'Connor. For Justice O'Connor,
"race" means skin color: "Racial classifications of any sort pose the risk of
lasting harm to our society. They reinforce the belief, held by too many for
too much of our history, that individuals should be judged by the color of

16. 509 U.S. at 635-36.
17. Id. at 647.
18. Id.
19. Id. at 644.
20. Id. at 647.
their skin.”\textsuperscript{21} When Justice O’Connor writes of “our history” she cuts away the entire dreadful history of white-over-black in the United States, in an opinion which is both historically suspect and logically unsound.\textsuperscript{22}

**FRAGMENTS**

Imagine that there was a ritual of exclusion centered on the consumption of your body. Imagine a communion in remembrance of your exclusion from the body politic. Imagine it was your blood they drank and your body they ate as they imagined themselves freed by their feast from sin and mortality. Imagine that when you tried to register to vote—to enter the body politic—they gathered together as one flesh, one spirit, one witness, one whiteness, and then pulled your flesh to pieces while setting you ablaze. Imagine that they used their ecstasy in your pain as a way of remembering their right to exclude you from being, to exclude you from the body politic, to exclude you from Leviathan. Imagine that they used the Gothic horror of what you suffered as a sign and a warning to others of the rightness of the ritual, the whiteness of the ritual. Imagine that your fragmentation was the mirror of Leviathan’s future completion. To imagine all this is to see that this is the blood-stained gate, this is the birth of a nation, this is democracy in America.

Judicial opinions matter only to the extent that they are carved into our bodies. Voting—choosing our terms of endearment to each other and to Leviathan—is, in the imagination of the liberal Overmind, an important ritual of birthing the body politic. The colorline appears in the birth of a nation as an umbilical cord. C. Vann Woodward observes:

Thomas P. Bailey, a Southern educator, \textsuperscript{23} writes: “[D]isenfranchisement of the negroes has been concomitant with the growth of political and social solidarity among the whites.” The more white men sharply recognize their kinship with their fellow whites, and the more democracy in every sense of the term spreads among them, the more the negro is compelled to “keep his place”—a place that is gradually narrowing in the north as well as in the south.

The law both creates and is created by the myriad lines that cut and bind

\textsuperscript{21} Id. at 657.
\textsuperscript{22} Jayne Chong-Soon Lee observes:
Justice O’Connor exploits the rhetorical power of unitary definitions of race and an either/or binary framework of biological and social definitions of race. She depends on a biological notion of race to argue that the law should not recognize race. Tautologically, she defines race as skin color in order to prove that the law should not recognize race, since it means nothing more than skin color.


the social. These lines cut our bodies into different patterns, meanings, histories, destinies, and products. These cuts, these wounds, are feelings we have in and about our flesh, not just abstractions in our minds. These feelings are instructed, educated, and intensified according to patterns laid out in our flesh and our legal texts. White-over-black is an orientation towards a peculiar institutionalized form of S/M: the colorline. Justice O’Connor’s thoughts regarding district voting lines are not just thoughts, they are feelings of the flesh. Feelings long denied do not loose their hold over the body and its thoughts. Such feelings, moreover, are experienced in the body of the Justice as much as in the bodies of those upon whom her fantasies are imposed through law. Lacan observed:

A train arrives at a station. A little boy and a little girl, brother and sister, are seated in a compartment face to face next to the window through which the buildings along the station platform can be seen passing as the train pulls to a stop. “Look,” says the brother, “we’re at Ladies!”; “Idiot!” replies his sister, “Can’t you see we’re at Gentlemen?”

This arrival at one’s destiny takes place in the non-time before one is. One’s destiny has already left the station. The system of white-over-black that is Leviathan anticipates our arrival just as certainly and as surely as the system marked “Ladies” and “Gentlemen” described by Lacan.

TELL ME HOW LONG THE TRAIN’S BEEN GONE

In Going to Meet the Man, James Baldwin writes of the persistence of memory in a way that sheds light on Justice O’Connor and the fin de siècle of voting rights:

“What’s the matter?” she asked.

“I don’t know,” he said, trying to laugh, “I guess I’m tired.”

The man, impotent, has lost his erotic connection to his wife; “[e]xcitement filled him like a toothache, but it refused to enter his flesh.” The empty space between them is filled with talk of black voting rights protests:

“Go to sleep,” she said, gently, “you got a hard day tomorrow.”

“Yeah,” he said, and rolled over on his side, facing her, one hand still on one breast. “Goddamn the niggers. The black stinking coons.

24. JACQUES LACAN, The Agency of the Letter in the Unconscious or Reason Since Freud, in ÉCRITS, supra note 8, at 146, 152.
25. JAMES BALDWIN, Going to Meet the Man, in GOING TO MEET THE MAN, 198, 198 (1965).
26. Id.
You’d think they’d learn. Wouldn’t you think they’d learn? I mean, wouldn’t you?"27

The specter of a black connection to the body politic has severed the man’s own erotic connection to his wife in ways he has hidden from himself. More terrible still, the idea of black solidarity—of a black unity of political interests—has undone their marital connection. The man, a Sheriff, has been hard at work denying the possibility of connection:

“There was this nigger today,” he said; and stopped; his voice sounded peculiar. He touched Grace. “You awake?” he asked. . . . “What a funny time,” he said, “to be thinking about a thing like that—you listening?” She mumbled something again. He rolled on his back. “This nigger’s one of the ringleaders. We had trouble with him before. We must have had him out there at the work farm three or four times. Well, Big Jim C. and some of the boys really had to whip that nigger’s ass today.” He looked over at Grace; he could not tell whether she was listening or not; and he was afraid to ask again. “They had this line you know, to register”—he laughed, but she did not—and they wouldn’t stay where Big Jim C. wanted them, no, they had to start blocking traffic all around the court house so couldn’t nothing or nobody get through, and Big Jim C. told them to disperse and they wouldn’t move and they just kept up the singing . . . .28

The blacks are all connected together in the struggle for the vote—in the struggle to join the body politic as equal citizens and live the bourgeois legality promised by the Fifteenth Amendment. They are in a state of grace as they wed themselves to piercing the colorline. Their struggle for the franchise—their line—undoes all manner of white connections (“blocking traffic all around the court house”). Their singing (“they just kept up the singing”) eludes the man’s understanding as he lies in bed with Grace, his wife. Somehow, the man understands his inability to enter a state of grace as intimately connected to the Sorrow Songs and to the black bodies which have become as one in this new ceremony called civil rights:

“They were still singing and I was supposed to make them stop. Well I couldn’t make them stop for me but I knew he could make them stop. He was lying on the ground jerking and moaning, they had threw him in a cell by himself, and blood was coming out his ears from where Big Jim C. and his boys had whipped him. Wouldn’t you think they’d learn? I put the prod to him and he jerked some more

27. Id.
28. Id. at 200-201.
and he kind of screamed—but he didn’t have much voice left.”

The man, still lying in bed with Grace, recalls the way he had conducted the torture ritual (“I put the prod to him”) but the singing does not stop (even though “he didn’t have much voice left”). Whether these are the Hosannas which greeted Christ and maddened the Romans, or the Trumpets with which Joshua fought the battle of Jericho, it is a joyful noise. Their singing enfeebles the whiteness all around:

“‘You are all going to stop your singing,’ I said to him, ‘and you are going to stop coming to the courthouse and disrupting traffic and molesting the people and keeping us from our duties and keeping doctors from getting to sick white women and getting all them northerners in this town to give our town a bad name—!’”

The man’s body does his thinking for him as he tries to rescue his white world from the singing: “His foot leapt out, he had not known it was going to, and caught the boy flush on the jaw.” The boy is knocked into darkness. Raising himself up from the pit of unconsciousness, he replies:

“White man,” said the boy, from the floor, behind him.

He stopped. For some reason, he grabbed his privates.

“You remember Old Julia?”

“Old Julia” was the “boy’s” grandmother. In one of the myriad microaggressions that make up the colorline, the man is forced to recall that he had years earlier refused to address “Old Julia” by her proper name. The ritual being acted out over voting rights and black connectedness had been acted out years earlier between the two antagonists:

The boy said from the floor, with his mouth full of blood, and one eye, barely open, glaring like the eye of a cat in the dark, “My grandmother’s name was Mrs. Julia Blossom. Mrs. Julia Blossom. You going to call our women by their right names yet.—And those kids ain’t going to stop singing. We going to keep on singing until every one of you miserable white mothers go stark raving out of your minds.” Then he closed the one eye; he spat blood; his head fell back

29. *Id.* at 201.
30. *Id.* at 201-02.
31. *Id.* at 202.
32. *Id.*
33. For a discussion of the way the legal system protects the microaggressions of which the colorline is composed, see generally Peggy Davis, *Law as Microaggression*, 98 YALE L.J. 1559 (1998).
on the floor.\footnote{BALDWIN, supra note 25, at 202.}

The man remembered the encounter and the inexplicable defiance of a boy, then less than ten years old:

"Old Julia home?" . . .

"Don't no Old Julia live here" . . .

"This is her house. I know her. She's lived here for years." . . .

"You might know a Old Julia someplace else, white man. But don't nobody by that name live here."

Everything went awry that afternoon under the boy's gaze. The object—the black body—was looking back. The object was looking back in anger and thereby refashioning itself as a person, as a subject. The man—the white man—felt his world take a surrealistic turn:

The sun beat down on them both, still and silent; he had the feeling that he had been caught up in a nightmare, a nightmare dreamed by a child; perhaps one of those nightmares he himself had dreamed as a child. It had that feeling—everything familiar, without undergoing any other change, had been subtly and hideously displaced: the trees, the sun, the patches of grass in the yard, the leaning porch and the very weary steps and the cardboard in the windows and the black hole in the door which looked like a cave, and the eyes of the pickaninny, all, all were charged with malevolence. \textit{White man.}\footnote{\textit{Id.} at 203.}

The impotent man is still in bed with hand upon his wife's breast as he recalls this moment. He is in bed with his hand upon Grace's breast and he is standing in a cell over the broken body of his rebellious prisoner for black solidarity and he is standing in the sun as he recalls his encounter with that same rebellious prisoner as a "pickaninny" turned dangerous by thoughts of black solidarity. Time has lost its meaning and its grip; he is here, there, and everywhere. The memory within the memory disturbs him because his encounter with the black boy, too, had ended with the man's exclusion from his desired goal:

The boy said nothing.

"Well," he said, "tell her I passed by and I'll pass by next week." He started to go; he stopped. "You want some chewing gum?"

The boy got down from the swing and started for the house. He said, "I don't want nothing you got, white man." He walked into the house
and closed the door behind him.\text{^36}

The man, trembling "with what he believed was rage," begins the torture of his prisoner with a vengeance.\text{^37} The man's erection, as he "howled" over the boy's unconscious body, surprises him.\text{^38}

The singing does not stop.\text{^39} The man—his hand still on the breast of his wife Grace—recalls the singing of an earlier time, a time spent with his father and a time not spent with his boyhood friend, Otis: "He had a black friend, his age, eight, who lived nearby. His name was Otis. They wrestled together in the dirt. Now the thought of Otis made him sick."\text{^40}

"I stepped in the river at Jordan." The "line came flying up at him with melody and beat."\text{^41} The man's father had said, "I guess they singing for him."\text{^42} "Him" referred to the young person who was the communion meal of their family picnic: "You won't ever forget \textit{this} picnic—!"\text{^43} We recall through the eyes of this child who later chooses to be the man: "By this time there were three cars piled behind the first one, with everyone looking excited and shining, and Jesse noticed that they were carrying food. It was like a Fourth of July picnic."\text{^44} The man's name, we find out, is Jesse. Baldwin, himself the son of a preacher, names his protagonist after the father of King David:

What did he do? Jesse wondered. . . . He was seated on his father's shoulders, but his father was far away. There were two older men, friends of his father's, raising and lowering the chain; everyone indiscriminately responsible for the fire. There was no hair left on his privates, and the eyes, now, were wide open, as white as the eyes of a clown or a doll. The smoke now carried a terrible odor across the clearing, the odor of something burning which was both sweet and rotten.

\textbf{36.} \textit{Id.}
\textbf{37.} \textit{Id. at 204.}
\textbf{38.} \textit{Id.}
\textbf{39.} Rachel West recalls her participation, as a nine-year-old girl, in the civil rights movement: The people were standing there listening and I heard the sheriff say something to the effect, "You must disperse from the area of the courthouse. This is an unlawful assembly. You're ordered to cease this gathering and disperse." When he finished, he had held the paper down at his side, then placed his hands on his hips, sort of like those pictures you see of General George C. Patton. There wasn't a sound for a few seconds, just the wind blowing. Then from down at the far end, somebody started singing and it caught all along the ranks. \textit{We shall not, we shall not be moved}. "Shut up!" shouted the sheriff, and his voice was surprised and angry. "Stop that now! You niggers cut that out!" \textit{We shall not, we shall not be moved}. I was on the right side of the marchers, on the outside of the ranks, holding hands with an elderly woman and a teenage girl; we did that when we sang to show our unity.

\textbf{WEBB & NELSON, supra note 9, at 39.}
\textbf{40.} \textit{BALDWIN, supra note 25, at 208.}
\textbf{41.} \textit{Id. at 207.}
\textbf{42.} \textit{Id. at 208.}
\textbf{43.} \textit{Id. at 211.}
\textbf{44.} \textit{Id. at 210.}
He turned his head a little and saw the field of faces. He watched his mother’s face. Her eyes were very bright, her mouth was open: she was more beautiful than he had ever seen her, and more strange. He began to feel a joy he had never felt before. He watched the hanging, gleaming body, the most beautiful and terrible object he had ever seen till then. One of his father’s friends reached up and in his hands he held a knife: and Jesse wished he had been that man. It was a long, bright knife and the sun seemed to catch it, to play with it, to caress it—it was brighter than the fire. And a wave of laughter swept through the crowd. Jesse felt his father’s hands on his ankles slip and tighten. The man with the knife walked toward the crowd, smiling slightly; as though this were a signal, silence fell; he heard his mother cough. Then the man with the knife walked up to the hanging body. He turned and smiled again.... The man with the knife took the nigger’s privates in his hand, one hand, still smiling, as though he were weighing them. In the cradle of the one white hand, the nigger’s privates seemed as remote as meat being weighed in the scales; but seemed heavier, too, much heavier, and Jesse felt his scrotum tighten.... The white hand stretched them, cradled them, caressed them. Then the dying man’s eyes looked straight into Jesse’s eyes—it could not have been as long as a second, but it seemed longer than a year. Then Jesse screamed, and the crowd screamed as the knife flashed, first up, then down, cutting the dreadful thing away, and the blood came roaring down. Then the crowd rushed forward, tearing at the body with their hands, with knives, with rocks, with stones, howling and cursing. . . . Someone stepped forward and drenched the body with kerosene. Where the man had been, a great sheet of flame appeared. Jesse’s father lowered him to the ground.

“Well, I told you,” said his father, “you wasn’t never going to forget this picnic.” . . . At that moment Jesse loved his father more than he had ever loved him. He felt that his father had revealed to him a great secret which would be the key to his life forever.45

Afterwards, the man’s father says, “they’ll come and get him by and by. I reckon we better get over there and get some of that food before it’s all gone.”46 The ritual humiliation of the lynching was a form of communion (“you wasn’t never going to forget this picnic”). The entire ensemble, the American way of life, was connected to the ritual. The family feelings binding husband and wife, parent and child, neighbor and neighbor, were all connected to the “long, bright knife.” The knife is a mirror: the black body is alone, no longer attached to anything or anyone: “[A]nd this is what is hard to explain—you see people like you never saw them before. They shine as bright as a razor. Maybe it’s because you see people

45. Id. at 215-17.
46. Id. at 218.
differently than you saw them before your trouble started."47 "Trouble means you’re alone."48 Leviathan stirs, its connectedness reestablished by the lynching, by the ritual disintegration of the black body.

The black body’s fragmentation mirrors a future coherence for its white other. Indeed, the black body’s dismemberment is experienced as an ecstasy of whiteness. The man, upon recalling this scene from his childhood, “feels his old nature returned to him.” This, in turn, leads him to wake and make love with his wife Grace: “‘Come on, sugar, I’m going to do you like a nigger, just like a nigger, come on sugar, and love me just like you’d love a nigger.’ He thought of that morning as he labored and she moaned.”49 In the ecstatic moment of creating the wound, of capturing the phallus, of white-over-black, husband and wife and child and memory and forgetting and every white person with every other white person come together as one flesh. “There is a phallic kind of enjoyment in the symbolic operations of a language which stands for, and designates at the same time, another enjoyment, connected to sexual intercourse”50 write Lacan scholars Bice Benvenuto and Roger Kennedy, a comment that illuminates both Going to Meet the Man and Shaw v. Reno. In the case of the colorline, white-over-black is a form of pleasure akin to S/M.51

JUSTICE O’CONNOR’S PHALLUS

The phallus is the privileged signifier of that mark in which the role of the logos is joined with the advent of desire.52

—Jacques Lacan

Justice O’Connor’s opinion in Shaw v. Reno can be read as a celebration of white citizenship and white community akin to the one described in James Baldwin’s Going to Meet the Man. Her opinion can be read by the light of the “long, bright knife.” Her white “feminine” voice captures the moment perfectly. Suzanna Sherry suggests that the “thoroughly individualist liberal philosophy” that, in her view, has grounded most contemporary constitutional interpretation would be aided by a return to the “less individualist republican spirit” that animated “the Revolution.”53 Sherry fears that such a project may be a “futile exercise” unless it enlists the services of what she describes as a “feminine jurisprudence”:

47. JAMES BALDWIN, IF BEALE STREET COULD TALK 7 (Delta 2000) (1974).
48. Id. at 8.
49. BALDWIN, supra note 25, at 218.
51. See generally Farley, Black Body, supra note 2; Farley, S/M, supra note 2.
52. JACQUES LACAN, The Signification of the Phallus, in ÉCRITS, supra note 8, at 280, 287.
Modern liberalism is a characteristically masculine response to the failure of Jeffersonian republicanism. Because the masculine perspective has been the dominant—and virtually the sole—influence on the legal and political structure, that structure is bound to reflect a more masculine or liberal emphasis on individualism over community. A feminine jurisprudence, instead of rejecting the communitarian and virtue-based framework of Jeffersonian republicanism, might embrace and adapt it for modern society. 4

For Sherry, Justice O’Connor’s “feminine jurisprudence” has embraced and adapted “Jeffersonian republicanism” for our modern society. Thomas Jefferson, we may recall, kept blacks in slavery. Even as he enjoyed the strange fruit of black slavery, he advocated black exclusion from the Republic:

It will probably be asked, Why not retain and incorporate the blacks into the State, and thus save the expense of supplying by importation of white settlers, the vacancies they will leave? . . . To these objections, which are political, may be added others, which are physical and moral. The first difference is that of color . . . . Is it not the foundation of a greater or less share of beauty in the two races? Are not the fine mixtures of red and white, the expressions of every passion by greater or less suffusions of color in the one, preferable to that eternal monotony, which reigns in the countenances, that immovable veil of black which covers the emotions of the other race? Add to these, flowing hair, a more elegant symmetry of form, their own judgment in favor of whites, declared by their preference of them, as uniformly as is the preference of the Oran-ootan for the black woman over those of his own species. The circumstance of superior beauty, is thought worth attention in the propagation of our horses, dogs, and other domestic animals; why not in that name. 5

In addition to marking blacks as “ugly,” Jefferson the slavemaster held blacks to be stupid:

In reason [blacks are] much inferior, as I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid; and that in imagination they are dull, tasteless, and anomalous . . . . Never yet could I find that a black had uttered a thought above the level of plain narration; never saw even an

54. Id. at 543-44. Sherry turns a colorblind eye to the experiences of the enslaved, the segregated, and the neosegregated. Indeed, she uses the term “feminine” despite the fact that she writes only about the experiences of women who are white. The colorline marks the border of her exploration of the “feminine.” This is a serious limit. It is a limit, indeed, that defines her jurisprudence as well as Justice O’Connor’s.

elementary trait of painting or sculpture.\textsuperscript{56}

Jeffersonian republicanism, from what Sherry could call, in terms consistent with her own language, “the unique perspective of [blacks] in general,” was inextricably connected to black slavery. The “connections” between blacks during slavery took the form of chains. These connections were updated when the black codes were translated into segregation, and again when they were translated into neosegregation (as with Shaw v. Reno). Sherry concludes:

Finally, recognition of Justice O’Connor’s unique perspective, and the unique perspective of women in general, might aid us in ameliorating the distortions of an overly individualist liberal paradigm. Insufficient attention to connection promotes naked self-interest at the expense of altruism, impoverishes our self-perception, and stunts our capacity for growth. Merely communicating a feminine emphasis on connection may be enlightening: “Teaching is not always a matter of either arguing or providing evidence. . . . It is sometimes rather a matter of imparting a way of looking at things.”\textsuperscript{57}

O’Connor’s “way of looking at things” like the right to vote looks like the old way of looking at the right to vote. Justice O’Connor’s way of looking at things is as old as the colorline and older than the Republic. In Shaw v. Reno, Justice O’Connor pays white “feminine” attention to the “connections” by dismembering the black body politic. Justice O’Connor dismembers the black body politic by cutting away the snake-like district (“cutting the dreadful thing away”)\textsuperscript{58}. In so doing, she partakes of the forbidden fruit of Billie Holiday’s southern trees.

Sherry joins Justice O’Connor’s table. Justice O’Connor’s act of “cutting the dreadful thing away” resembles the way in which Sherry, in her celebration of Justice O’Connor’s jurisprudence, uses the terms “feminine” and “woman.” When Sherry describes “the unique perspective of women in general,” she represents a white-over-black perspective as the general perspective of women. What might be described as “the unique perspective of [blacks] in general” is lost through Sherry’s act of “cutting the dreadful thing away.” Sherry, in possession of the phallus, decides what is general and what is not. Sherry states that a “feminine jurisprudence” might pay attention to the “connections” and choose to “embrace” Jeffersonian Republicanism. Sherry’s “feminine jurisprudence” is white. It is difficult to imagine a black jurisprudence, feminine or masculine, so easily choosing to “embrace” Jeffersonian Republicanism. Slavery, the peculiar institution which was the cornerstone of Jefferson’s

\textsuperscript{56} Id.

\textsuperscript{57} Sherry, supra note 53, at 615-16 (citing Richard T. Eldridge, On Knowing How to Live: Coleridge’s “Frost At Midnight”, 7 PHIL. & LITERATURE 213, 227 (1983)) (emphasis added).

\textsuperscript{58} BALDWIN, supra note 25, at 215-17.
entire world of imagined possibilities, was a perpetual lynching. The attack on memory is itself an act of lynching. Sherry and Justice O'Connor both join the forces of forgetting in the battle against memory.

When we contemplate the spectacle of at least one form of lynching, we can see that race is often attached to gender. We may go further and examine the colorline itself as gendered. When white men and white women banded together as whites to unsex the bodies of the black would-be voters they selected for their mutilation rituals, they turned whiteness into a gender of sorts. Whiteness opposes blackness like a gender. The gender called white is the one with the phallus. Consider the lynching of Claude Neal in this regard: “After taking the nigger to the woods about four miles from Greenwood, they cut off his penis. He was made to eat it. Then they cut off his testicles and made him eat them and say he liked it.”

Why did whites so frequently sexually mutilate the black victims of their anti-voting registration drives? Perhaps, in cases involving male victims, the penis represented the phallus. Perhaps, in cases involving female victims, the phallus was represented by the penis. The bearer of the phallus is the one in charge. Whites, as bearers of the phallus, make themselves a common gender vis-à-vis blacks. This was, as can be seen from the Dionysian revelry of the lynching ritual, a deeply erotic moment, a white wedding, a coming together of scattered white bodies as one flesh, as Leviathan.

In the lynching, blacks are made into an opening. Blacks are made into an opening for whites to enter. And who can resist an opening? The phallus is, for whites in colorlined societies, both the symbol of their rightful place above blacks and the instrument of their pleasure-in-being-white. White-over-black is a form of ecstasy. The phallus is the key to this opening (“He felt that his father had revealed to him a great secret which would be the key to his life forever.”). The whites at the lynching of Claude Neal made their victim open his mouth to their now-white phallus and “say he liked it.” Whites—male and female alike—become as one flesh in this ritual and blacks become the Other flesh. Whiteness is the one and blackness is its Other. The Other is the one with the lack. The Other is the one with the wound. The “bizarre district” in Shaw v. Reno presented a Rorschach nightmare: a snake and a temptation. The phallus was torn from the black body politic by Justice O'Connor just as the phallus was torn from the black bodies in southern trees.

The phallus was shared by Baldwin’s white couple in their marital bed. There is no mourning the evisceration of the black body’s connections. To the contrary, the “bright shining blade” reflects the whiteness of the erotic

60. Baldwin, supra note 25, at 215-17.
experience that takes them until morning. In contemplating the snake-like
district that was cut away, recall that Robinson O. Everett of Durham,
North Carolina, arguing before the Supreme Court on behalf of the
appellants in Shaw v. Reno, twice-described the district as “political
pornography.”61 The past and the scars by which we can trace its passage
are not so easily cut away, whatever Justice O’Connor might write. As
Baldwin observed:

It is a sentimental error, therefore, to believe that the past is dead; it
means nothing to say that it is all forgotten, that the Negro himself
has forgotten it. It is not a question of memory. Oedipus did not
remember the thongs that bound his feet; nevertheless the marks they
left testified to that doom towards which his feet were leading him.62

PASTORAL SCENES OF THE GALLANT SOUTH

Consider James Meredith’s description of U.S. Highway 51 in August
1960 in the light of O’Connor’s “long bright knife,” and the lynching
quality of Shaw v. Reno becomes clear. The fact that black connectedness,
the black body politic, was the essence of Justice O’Connor’s problem
with so viewing North Carolina’s I-85 becomes clear. Obviously, Justice
O’Connor could have considered that the fact of white supremacy unified
the blacks along 1-85 as a community of interest, as a community
interested in the eradication of the colorline. Meredith’s description of
U.S. 51 illustrates a method:

Highway 51 is code word for the millions of Negroes who have
driven north to south and south to north for the past twenty-five
years. This was the route taken by us—my wife and six-month-old
son and me—into Mississippi . . . I had traveled the road many times
and knew practically every hill and curve . . . . It had long been my
practice to fill up the gas tank in Memphis, so I would not have to
face the “peckerwoods” at a station in Mississippi. One tank of gas
would take you to Kosciusko or Jackson where you could go to a
Negro-operated station. This time it was more pressing than ever to
get gas because I had my wife and son with me, and God only knew
what I would do if an incident occurred while I was with my family.63

Like Lacan’s train station, Highway 51 is a destiny, albeit racial, rather
than gendered:

quoted in 221 LANDMARK BRIEFS AND ARGUMENTS OF THE SUPREME COURT OF THE UNITED STATES
557. See also Political Pornography—II, supra note 15; Shaw, 509 U.S. 630, 635 (quoting Political
Pornography—II, supra note 15).
62. JAMES BALDWIN, Many Thousands Gone, in NOTES OF A NATIVE SON 24, 29 (Beacon Press
63. JAMES MEREDITH, THREE YEARS IN MISSISSIPPI 3-4 (1966).
I pulled into a station that I had used for quite a few years on this route, because they did not have segregated toilets for “White Ladies,” “White Men,” and “Colored.” Thinking that the practice would be the same as before, I didn’t go through the customary ritual used when a Negro pulls into a gas station in the South and is not sure about the discrimination practices. Since some of the white folks there are a little more human, or just plain smarter, than the crackers and rednecks, they mark the facilities for whites as just “Ladies” and “Men” and put the Negro toilet in the back where you cannot see it. The Negro will ask the attendant, “Do you have a bathroom?” (although he is looking right at the big signs that read “Ladies” and “Men”). If the attendant says, “Yes, right there,” then the Negro says, “Fill it up, and check everything.” If the answer is, “Yeah, go round the back,” then the Negro drives away and looks for another station. I pulled up, spoke to the man, and told him to “fill it up.” Then my wife left to go to the bathroom. When she reached the toilet, the sign read “White Ladies ONLY.” Upon asking the attendant about the restrooms, we were told that the “Colored” was in the back. . . . It was filthy, nasty, and stinking. The toilet wouldn’t flush and there was no toilet paper or water to wash one’s hands. . . . This was the much talked-about progress I had been making since the 1954 Supreme Court decision that said “separate but equal” was no longer the law of the land.64

Meredith connects the personal and the political as he presents his phenomenology of U.S. 51:

The first thing you see when you head south on old U.S. 51 from Memphis and Shelby County, Tennessee—the home of the Cotton Queens and the famous or infamous, “Crump political machine” and the place where the Negro blues originated—is a big flashy sign: WELCOME TO MISSISSIPPI. This sign arouses mixed emotions in the thousands of Negroes who pass it. For many it is a joke; for others it recalls the days gone by, their work in the cotton fields in Mississippi, their migration to the North, their jobs in the warplants during the forties and in the factories of today.

For me, it is indeed a sign of frustration. Always, without fail, regardless of the number of times I enter Mississippi, it creates within me feelings that are felt at no other time. There is the feeling of joy. Joy because I have once again lived to enter the land of my fathers, the land of my birth, the only land in which I feel at home. It also inspires a feeling of hope because where there is life there is also a hope, a chance. At the same time, there is a feeling of sadness.

64. Id.
Sadness because I am immediately aware of the special subhuman role that I must play, because I am a Negro, or die.65

All along the way Meredith notes the political ties—local governments, businesses, police and police practices, entertainment centers, and places of integration—that bound black Mississippians to each other and to the land all along the asphalt.66 What emerges is a portrait of an irregularly shaped space—U.S. 51 seems rather like I-85—that connects the black body politic. Indeed, the white community of interests surrounding U.S. 51 was also quite recognizable to James Meredith, and to the entire world. It was, therefore, entirely unsurprising when his 1966 “March Against Fear”—an attempt to walk the length of Mississippi on U.S. 51—was greeted by buckshot which sent him north to the hospital.67

The black body is smashed into fragments and the broken bits form the mirror that casts an ideal reflection back on those who wish to see themselves as white. This is an old, old idea: “Negro districts are never able to elect Negro representatives because their districts comprise the center of pies in which the largest portions of each ward slice are white.”68

CONCLUSION: DOCTRINE AS CULTURE STUDY

Pastoral scene of the gallant south,
The bulging eyes and the twisted mouth,
Scent of magnolias, sweet and fresh,
Then the sudden smell of burning flesh.
Here is fruit for the crows to pluck,
For the rain to gather, for the wind to suck,
For the sun to rot, for the trees to drop,
Here is a strange and bitter crop.

—Billie Holiday, Strange Fruit69

Cultural studies as a field of knowledge may be characterized by the habit or tendency to listen to as many stories as possible. The stories to which one listens when doing cultural studies are those stories that people tell themselves and each other about what they think they are doing. This Symposium is filled with such stories. Cultural studies, then, is less a specific field of knowledge than a postmodern style or symptom. As a style, it is marked by its resistance to disciplinary boundaries such as the one dividing jurisprudence and psychoanalysis. As a symptom, it is marked by a deep skepticism toward grand narratives. Cultural studies has

65. Id. at 4-5.
66. Id. at 3-22.
68. STETSON KENNEDY, SOUTHERN EXPOSURE 124 (1946).
69. Holiday, supra note 1.
also to do with performance: to be recognized as doing cultural studies is to perform a routine or set of routines that display one’s antidisciplinary tendencies alongside with one’s interdisciplinary orientations.

We are always doing cultural studies but are not always open about doing it. Consider the Rorschach inkblot test and the snake-like district in Justice O’Connor’s opinion. Consider the use of poetry from a law review article alongside metaphors from the Wall Street Journal in Justice O’Connor’s opinion. Consider these things and what emerges is a portrait of Justice O’Connor as a cultural studies jurist. Everyone does cultural studies—albeit some less openly than others.

Legal realism too often stops with social science. Law, the realists argued, was not “science” but “science” was “science.” Law, therefore, was indeterminate and, therefore, political. They fought formalism because formalism blocked the path to science, and science they too often imagined as existing above or outside of politics in a place where it could be made to serve human values. Of course, those values came with choices and indeterminacies and politics, which tipped the scales to one or the other side of the either/or of binary thinking. To perform cultural studies is to move in a way that shows that no field of knowledge is “outside” of politics.

Legal realism/formalism—each is immanent in the other—is limited by its refusal to contest the politics of the discipline of law. Anti-disciplinary approaches—cultural studies, for example—have produced and will continue to produce many interesting, surprising performances. A surprise of great interest is the news that the “mainstream” is no more disciplined than its outside. Indeed, the stories told within the veil of law’s discipline can be reread to show the monsters and demons that reside within and provide the magic of apparently logical coherence.

In this Essay, I have tried to show, using Lacan and Baldwin, the Gothic horror within the voting rights jurisprudence of Justice Sandra Day O’Connor in Shaw v. Reno. Her opinion works because of these horrors. The horror is constitutive of the white body politic. The horror shatters—lynches—the black body politic. Leviathan is this perpetual white-over-black along with its perpetual denial. Politics, indeed, is merely the politic term for mutilation performed literally and literarily on black bodies by the “long, bright knife” that is always and everywhere “cutting the dreadful thing away.” This Essay—this performance—is part of the struggle of memory over forgetting that is cultural studies.