Poe, Persons, and Property
Author(s): Joan Dayan
Source: *American Literary History*, Vol. 11, No. 3 (Autumn, 1999), pp. 405-425
Published by: Oxford University Press
Stable URL: http://www.jstor.org/stable/490126
Accessed: 21-09-2017 15:45 UTC

Poe, Persons, and Property

Joan Dayan

For when it is now clear beyond all dispute, that the criminal is no longer fit to live upon the earth, but is to be exterminated as a monster and ban to human society, the law sets a note of infamy upon him. . . . He is then called attaint, attinctus, stained, or blackened.

William Blackstone, ***Commentaries on the Laws of England***

In an unforgettable passage of *Discourse on Colonialism* (1955), Aimé Césaire, obsessed by the fecal motives implicit in the rule of law, reflected on the colonies as a safety valve for modern civil society. But he warned that, inevitably, the pristine locale purged of barbarism turns into "a receptacle into which there flow all the dirty waters of history" (45). Edgar Allan Poe's preoccupation with what is pernicious, dark, and deadly might be qualified somewhat more cautiously as his attempt to make his tales those circumscribed places that would contain what his society deemed monstrous and unfit. Let us take Césaire's dirty flood and all-encroaching dunghill as an apt image for theorizing Poe's recycling of persons and property, the way his characters portray again and again the waste products, the residue, the outcasts excluded from the privileges and immunities granted citizens in the nation's legal order.

Which Poe character enjoys life and liberty, and at what cost? Who in Poe's tales pursues and obtains happiness and safety, and for how long? What kinds of property are acquired and possessed, and for what purpose? I do not intend to answer these questions point by point, but rather to offer a reading of Poe that depends on understanding the particular kind of degradation and defilement that mattered to him, the sense of crime and punishment that made his writing an alternative version of life and death in antebellum America.[1] Emancipated, or rather ejected, from the circle of citizenry, disdained, wandering, and known by a baptismal or false name only, these narrators generally suggest that we recognize how persons and privilege might be compromised or threatened by forbidden love, perverse will,

or other kinds of disabilities made literal in tales of disease, domination, and duress: "The Masque of the Red Death" (1842), "The Pit and the Pendulum" (1842), "The Man Who Was Used Up" (1839), "The Tell-Tale Heart" (1843), "Ligeia" (1838), and "Berenice" (1835), to name just six of Poe's meditations on incapacitation.

Both "The Masque of the Red Death" and "The Pit and the Pendulum" are fictions of containment, depending for their effects on what Poe praised in "The Philosophy of Composition" (1846) as "a *close circumscription of space*" (*Essays* 21). Both were published in 1842, the same year that Charles Dickens made his visit to Eastern Penitentiary in Philadelphia. Known popularly as "Cherry Hill," this prison was immortalized by Gustave de Beaumont and Alexis de Tocqueville in *On the Penitentiary System in the United States* (1833) as the locale for "absolute solitude," which "destroys the criminal without intermission and without pity; it does not reform, it kills" (5). The "Philadelphia System," operating according to the prescripts of utter seclusion, justified separate confinement as the method most certain to protect criminals "from mutual pollution" or "fatal contamination" (23). No doubt the severity of this penal reform, which depended for its effectiveness on a Gothic architecture both costly and imposing, led Beaumont and Tocqueville to conclude: "Whilst society in the United States gives the example of the most extended liberty, the prisons of the same country offer the spectacle of the most complete despotism" (47).

On 8 March 1842 Dickens visited Eastern Penitentiary. He had written Poe two days before, answering positively Poe's request for an interview. Whether they met before or after Dickens's visit to the prison he would later describe in *American Notes* (1842) as a monument to "solitary horrors," where men are "buried alive; to be dug out in the slow round of years; and in the meantime dead to everything but torturing anxieties and horrible despair," remains uncertain (qtd. in Dickens, 101).[2] What can be argued, however, is that Poe's decors of lavish, medieval ornament, gates of iron, crenellated towers and picturesque effects, premature burials, and the singular torments of narrators who experience unnatural solitude and dark phantoms, owe their force to his knowledge of the excesses of the Pennsylvania System of prison discipline. Living in Philadelphia from 1838–1844, a city infatuated with prisons and the numerous theories concerning them, Poe had ample evidence of the material apparatus that both guaranteed and maintained the phantasm of criminality essential to the American project.[3] Sites of artificial disorder regulated by varying containment strategies would figure in tales

as disparate as "The Fall of the House of Usher" (1839), "The Tell-Tale Heart," "The Black Cat" (1843), and "The System of Doctor Tarr and Professor Fether" (1844). The Gothic locale of the last is a cross between a plantation and a madhouse with patients thinking themselves teapots, donkeys, cheese, frogs, or pinches of snuff, delusions of depersonalization that Poe knew to have their source in the thorny legal discourse of slaves as chattel. For Poe, prison, madhouse, and plantation were synonymous in "treating" those who, once branded as nonpersons, have forfeited all claims to individual rights.

I am less interested, however, in Poe's fictions of containment and architectures of surveillance than in his redefinition of civil life in the nineteenth-century US, which for him meant disclosing how the law operates both forward and backward along a temporal continuum to exclude, subordinate, and annihilate. Whether orangutan, prosthetic general, Parisian grisette, mummy, corpse, or criminal, Poe uses these materials to reflect on the status of persons and property. In other words, in fictions of law Poe found expressed the stigma or taint that deviously could be made the cause of negative personhood: the "captive" whom Orlando Patterson, quoting Claude Meillassoux in *Slavery and Social Death* (1982), described as "marked by an original, indelible defect which weighs endlessly upon his destiny" (38). For Poe, the law engendered the stigma that became an indelible truth, a mandate for perpetual incapacity, while the cunning violence of legal inquiry ensured that these marks were something other than—and somehow unrelated to—the laws that stigmatized them.[4]

Poe's fiction frames a particular understanding of the law, which, like Poe's "Poetic Principle," is the ideal construct, the place of beauty, harmony, and consistency. But, as happens throughout Poe's stories, that form is eroded from below by something akin to "the atmosphere of Usher's domain"—a "pestilent and mystic vapor" (*Poetry* 319). This power of defilement yields a way to discuss "race," one that complicates an easy alliance of race with blackness, as if the mere mention of the term "race" means we have darkness in tow. For Poe's ability to complicate the issues of human servitude lies not in any narrow delineation of slavery, which was broad and variously applied in the nineteenth century, but in his portrayal of the slippage between degrees of color, gradations of personhood, and the bounds of civility and savagery.

If we begin to look at Poe's characters as legal personalities, then we can read many of his tales as concerning (1) the existence of actual as opposed to civil or legal facts, for example, the physical person (solely body and appetite) and personhood (the social

and civic components of personal identity); the fact of natural and the fiction (or metaphor) of civil death; and (2) the supernatural relation of the believer to the dead who do not die, as opposed to the natural though extraordinary task of relating to the living who are dead, those who have undergone "civil death."[5] Indeed, what has been called "supernatural" might better be termed "intralegal." By invoking the twofold condition of the undead, Poe tackled the problematic status of human materials, the uncertainty in defining legally a "person." In cordoning off certain humans from the bounds of empathy, or more precisely, treating humans as if not accorded the rights or status of persons, but rather as entities located at the margins of civilization, Poe moved the realm of myth or religion into the place of law.[6]

1. Creatures of Law

In May 1841, a case came before the Court of Errors in Columbia, South Carolina, on appeal from the judgment of the circuit court. The question before the court was whether Joyce, a young female slave, had to be returned bodily to the plaintiff or whether the defendant could replace her by paying money damages as remedy for her loss. The decision turned on whether slaves are to be regarded as chattels—things personal and movable, mere merchandise, perishables in the market—or real estate, affixed to or growing upon the land. In this case, Joyce is argued to be no "mere toy" or "snuff-box" but a valuable entity: "Is there anything in a barren sand hill that could attach a purchaser to it, and give it a peculiar and special value that may not be found in an able, honest, and faithful slave. It is answered that with the value of the slave in money, recovered as damages, you may buy another. Is this true? Can you go into market, daily, and buy one like him, as you might a bale of goods, or a flock of sheep?" (*Young v. Burton* 162). Suddenly infused with nonfungible attributes, Joyce's body became a new kind of property in law. In law a slave had no legitimate will of her own and belonged bodily to her owner. As property, a slave could be bought and sold. As animated property, she could be forced to work like a domestic animal, but one needing special restraints and care.

What, then, is this species of property? If, in regard to civil rights and relations, slaves are what constitutional and statute law makes them and nothing more, then once we enter the realm of feeling or attachment, these objects of law undergo strange metamorphoses. For on one hand they must be kept in their

proper place of absolute civil nonentity, and on the other they must be deemed, when it served the needs of the owner, as a peculiar kind of property: a "creature" that engenders sentiments of friendship, affection, and esteem. In order to create this special legal creature, the courts had recourse to fantastic fictions—for example, in transport a slave "resembled a passenger, and not a package of goods," but even this comparison had to be qualified. Slaves were like "dogs, cattle, wild animals," over which "the carrier has not and cannot have the same absolute control as over a common package" (*Bailey & als v. Poindexter's Ex'or* 148). When lost or stolen, an irreplaceable slave would be like "a cherry-stone very finely engraved" or "an extraordinary wrought piece of plate" rather than "diamonds," where "one may be as good as another" (*Summers & al. v. Bean* 411).[7]

Poe returned to Richmond, Virginia, in 1835, after an absence of eight years. In 1831, Nat Turner, called "General Nat" and compared with the rebel slave and founder of Haiti, Jean-Jacques Dessalines, had led a failed insurrection some 70 miles below Richmond. The revolt produced what became known as the Great Southern Reaction that ended all talk of emancipation and instead increased the control and disenfranchisement of slaves. Poe knew the chains and coins that accompanied the peculiar institution. In passing by slave auctions in the market two blocks away from *The Southern Literary Messenger,* Poe witnessed the frequent sale of bodies, for the profit in this brand of property had sharply increased in the 1830s.[8]

In rethinking Poe's highly stylized descriptions of law's power to create new, paradoxical, and often unnatural entities, I recall how, in numerous cases regarding slaves, there were moments when that legal nondescript, who had no civil rights to lose, could nevertheless gain qualities like devotion or attachment at the hands of the definers. The law could, when necessary, create a person out of a thing, or more precisely, give extra-added value and uniqueness to the property item. What kind of being is created by the law when that entity is a slave? Worked at from the outside in: What kind of external world can exist for the object of law? Is lacking the ability to perform a civil act, to count in terms of civil rights and relations, something like losing a soul and keeping only a body, with or without limbs, as the law sees fit?

Is lacking the ability to perform a civil act, to count in terms of civil rights and relations, something like losing a soul and keeping only a body, with or without limbs, as the law sees fit?

In *Creswell's Executor v. Walker* (1861), the court considered whether or not slaves, upon the death of their master, had a legal capacity to elect freedom or servitude, having inherited the right to election in testamentary trust. Deciding first that a master could not "by his will" give his slaves the power to change by

an act of their will their own civil status, Judge James B. Clark engaged in an alternating process of decreation and reconstitution.

In the primary retraction of personhood, slaves are uncreated insofar as their effects in society: "So far as their civil status is concerned, slaves are mere property, and their condition is that of absolute civil incapacity. Being, in respect of all civil rights and relations, not persons, but things, they are incapable of owning property, or of performing any civil legal act, by which the property of others can be alienated" (233).[9] In this diagnosis of a state of society, the court announces that the will of the dead master cannot, or can no longer, be given. For the slave cannot choose or elect freedom; if these actions were allowed, the slave would thereby gain a legal personality. For the court this is impossible: "No man can create a new species of property unknown to the law" (233). But this rhetoric of divestment can be retracted, and in this secondary operation, the slave moves from property to person. What is known to the law, hence, what is possible, is that slaves can be declared human only insofar as they err. The accretion of positive or human qualities, yoked as it is to the fact of property, outfits slaves for one thing only: crime. Their only possible act, recognized by society, is a negative one. "So far as civil acts are concerned, the slave, not being a person, has no legal mind, no will which the law can recognize. But as soon as we pass into the region of crime, he is treated as a person, as having a legal mind, a will, capable of originating acts for which he may be subjected to punishment as a criminal" (236).[10] As an object of possession or a criminal, this body becomes the vessel for an oddly additive procedure, a surfeit of qualities that juridically make or unmake the idea of the person, who is actually nothing more than a "creature of law."

All of Poe's fiction is about property and possession and moves rhetorically back and forth between the extremes of affect (heartfelt devotion or undying love) and dispassion (cold mutilation or self-absorbed insensitivity). But this engagement with the alternating themes of legally ordained deprivation and recompense gains authority because of his confrontation with the undeniable claims of civil life. Poe plays with the working dichotomy that construes both persons and privilege: not only the opposition between natural (read physical) death and unnatural (read legal) death, but also the strategic agenda implied in the distinction between natural rights and civil rights. One can, hypothetically, retain natural rights but still be disabled by statutory abridgment, condemned by societal (or civilized) needs. In

this arena of law and rights, the claim for personal rights, then, like the very meaning of personhood, becomes shifting and tentative, even paradoxical.

The concept of the legal person obsessed Poe, as did similar philosophical inquiries into the constitution of personal identity (Dayan, *Fables* 133–84). But he is ultimately concerned with the law, both as an ideology so powerful that it can announce apocalypse in *Eureka* (1848)—that day when matter folds into oneness, or in his words, the "condensation of *laws* into *Law*" (*Poetry* 1313)—and as an actuality so pervasive that terror, the raw material of authority, becomes synonymous with the legal instruments of punishment: incarceration, dismemberment, and torture. Legal thought relied on a set of fictions to sustain such precepts as the absolute concept of property and the alternating distinction of slaves as things or persons, depending on whether the context was civil action (as article of property, utterly deprived of civil capacity) or criminal action (as capable of crime, recognized as a rational being). In both cases, what is legally possible or impossible demands the give-and-take between categories such as contract or tort, public or private, thing or self, physical or incorporeal.

Poe's criminals dabble in the convertibility between, or rather, pursue alternative ways of seeing, tangible and intangible, bodies and spirits, persons and property, and, finally, natural and unnatural death. Whether we turn to the ultimate conversion of wife into object in "The Oval Portrait" (1842) or to the many narrators involved in varying kinds of immurements, dismembering, cutting, or turning body parts into fungible commodities, we encounter the perils of possession. Control and enjoyment implicate personhood and will.[11] In "Morella" (1835), "Ligeia," and "Berenice," the most hallowed days of love and attachment end in hate and repulsion, as these feelings usher in reflections on bodies that return as the living dead. These memoirs of the will to possess become paradigmatic of loss: the dissolution of self, identity, and mind. Berenice, once disabled by mysterious illness, makes inevitable the narrator's obsession and the consequent violation that transforms a once idealized beloved into personal property. Once her person is reduced into nothing but overvalued teeth, those things are taken and boxed, as her body is buried. Poe's women, then, though adored or treasured, are never quite human. Indeed, Poe's obsession with possession, personal identity, and the will—as Ligeia's "will," which is or is not lost with death—is no empty philosophizing or haunting but an appeal to the paradoxes necessary to sustain slavery, to its spe-

cific forms of degradation and figurative death. Poe's tales about women enact what it means legally to disable, kill off, or nullify the person in the slave body.

In drawing our attention to legal philosophy and practice, Poe demands a way of reading that escapes the binary bind of the racist or nonracist Poe, which, like all antinomies applied to Poe, delimit and distort his writings. I suggest another kind of analysis, one that moves us into a model of reading embodiment into what otherwise might remain a specter of law, a means by which degradation can be envisioned and imagined, that is to say, interpreted. When I argued that we read "Poe's romantic fictions as bound to the realities of race," I concentrated on the necessary connection for proslavery apologists between ladies, "those rarified vessels of spirit," and brutes, "the negro" ("Amorous Bondage" 113–14). For Poe understood more than any other writer of the American Renaissance that the very separation of these two specimens of "person" said much about how the cult of sentiment allowed the radical denaturing of both women and blacks (182–84). I wanted to suggest how deeply Poe understood the terrible knot of complicity, that unerring reciprocity between one who calls him- or herself master and one who responds as slave. Whether or not Poe wrote what has become known as the "Paulding-Drayton Review" in the April 1836 issue of the *Southern Literary Messenger* is not my point here, since in the course of his life, he complicated what might first have seemed his mere regionalist or apparently proslavery sentiment.[12] As Poe confirmed in "The Black Cat," perfect submission, a black pet loved and owned by an increasingly cruel master, effects a damning conversion: the once benevolent owner utterly bestialized, reduced by the very thing he brutalized.

In 1849, during the last year of his life, Poe wrote his most horrible tale of retribution, "Hop-Frog; or, The Eight Chained Ourang-Outangs." Here, the orangutan murder in the Rue Morgue gets mind and motive in the person of the enslaved dwarf "from some barbarous region . . . no person ever heard of" (*Poetry* 900). Hop-Frog and his female companion dwarf Tripetta are war loot, captives turned into gifts for the cruel king of the story. The king, who likes nothing better than a good joke, usually at Hop-Frog's expense, underestimates the reasoning powers of his chattel. And this is Poe's joke, a final joke on the gentry both North and South, who with tortuous ingenuity defined property in women, workers, and slaves, fixing them and their progeny in their status and location, kept low down in the hierarchy of entitlements.

To the king's joyous "Hop-Frog! I will make a man of you,"

Poe treats his readers to the literal dehumanizing of the king and his seven privy councilors. Poe creates a pseudo-Africa within the sumptuous artifice of the masquerade, setting the scene for the conversion of masters into slaves. The chained circle of tar-saturated, flax-covered king and ministers, once turned into orangutans, "very rarely . . . seen in any part of the civilized world," are hoisted up between the skylight and the floor, torched and burned to "a fetid, blackened, hideous, and indistinguishable mass" (908).[13]

2. Disabled but Not Dead

The marks of inferiority and degradation impressed upon blacks did not escape Poe, but he never forgot that racial imperatives like bondage or servitude did not occupy a place cordoned off from civil society. The indelible mark of infamy remained a threat to certain individuals no matter their color or the abstract claims for individual rights. In fact, until ratification of the Fourteenth Amendment, the Constitution nowhere defined the term "citizen" (Graham 502–04). Into the same society that sanctioned the accumulation of money, goods, and land seeped the rot of surfeit, captured in the stink of the tarn into which the Great House of Usher ultimately falls. If we take Blackstone's stunning embrace of property as the "sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe" (2: 2),[14] we find a key not only to Poe's monomaniacal narrators but more importantly to his obsession with investment, inheritance, descent, and lineage.

A conceptual apparatus that complicates the racial paradigms of black and white, offering a way of reading race into Poe, should not oversimplify the tangled plot of Poe's fiction. Let me put it another way: the forms of law energized the unconditional maintenance of a servile order, sometimes anchored in but more often unmoored from its racialized episteme in order to resurface, transmuted and terrible, under the guise of an essentialized criminal agency: socially excluded and civilly dead.[15]

In a ritual of banishment, William Wilson announces that his real name has become "an object for the scorn—for the horror—for the detestation of my race," describing himself as guilty of "infamy," "outcast of all outcasts most abandoned," utterly dead "to the earth," "to its honors, to its flowers, to its golden aspirations" (*Poetry* 334). His self-abnegation is more than mere hyperbole, for he has portrayed himself as suffering the curse of

"civil death": the status of a person who, having violated societal or positive laws, has been deprived of all civil rights: *civilter mortuus,* or "dead in law" (Blackstone 4: 374). William Wilson dies not once, but twice, as if Poe felt compelled to redouble this fiction of law, to make a fiction twice over, as captured in the doublet William Wilson. First, he is severed from his family ties and ousted from organized society; second, facing off his adversary—portrayed as consummate will—he plunges his sword into the breast of his antagonist, only to see his own blood-dabbled image in the mirror, dying as he murders his shadow-self.

The use of this unusual fiction of law to produce the juridical nonexistence of the person raised the specter of natural versus artificial. "Natural persons are such as the God of nature formed us," Blackstone argued, while "artificial are such as created and devised by human laws for the purposes of society and government" (1: 119).[16] In "Loss of Breath" (1850), Poe's natural man dies many deaths—losing his breath, breaking his neck, being hanged and dissected—but he remains intact as a civil creature who recalls, records, and constructs his story, as do other Poe narrators who write their narratives after what should be their natural death.

Existing as a good citizen, however, does have its costs. In "The Man That Was Used Up," Brevet Brigadier General John A. B. C. Smith has lost his natural body and voice fighting the Kickapoo Indians. Though he has lost his natural body, he is remade as artificial public hero, fit icon of the body politic. Civilly reconstructed each day, all his synthetic body parts put together by Pompey, his black valet, he literalizes just what it means to sacrifice the natural and gain those privileges, which, though unnatural, yet garner him with life, limbs, body, and reputation (Blackstone 1: 119, 125–28). With each successive body part replaced in pursuit of something suggestive of a "more perfect union," the general further articulates and ordains his place in civil society, regaining the right to enjoy his property (both his body and his servant) with each command, with each insult to the "old negro" on whom he utterly depends. Replete now with life, liberty, and possessions, Poe's consummate gentleman becomes the person who, in repossessing his body, repossesses the right to kill, enslave, and dispossess.

With living men regarded as dead, dead men returning to life, and the same man considered alive for one purpose but dead for another, the realm of legal fiction compels us to reconsider the nature of Poe's particular brand of Gothic: a supernatural grounded in the materials, the habits and usages of society, the very debates, whether philosophical, historical, or legal, that de-

fined and amplified the claims of the bodies politic. Slaves were judged things: "[T]he slave, not being a person, has no legal mind" for all purposes of civil identity. But "in the region of crime, he is treated as a person, as having a legal mind" (*Creswell's Executor v. Walker* 236). Criminals were held alive for the purpose of being sued or charged in execution, but dead insofar as transmitting their estate to their heirs.

How did civil death affect rights of property and privilege at common law? There were three principle incidents consequent upon an attainder for treason or felony: forfeiture, corruption of blood, and the extinction of civil rights, more or less complete. Of Saxon origin, forfeiture was part of the punishment of crime by which the goods and chattels, lands and tenements of the attainted felon were forfeited to the kin. According to the doctrine of corruption of blood, introduced after the Norman conquest, the blood of the attainted person was deemed to be corrupt, so that he could not transmit his estate to his heirs, nor could they inherit. The incident of civil death attended every attainder of treason or felony (Blackstone 4: 374–81).

The fiction of civil death depends on the belief that so powerful are the rules of civilization and the prescripts of law that one can be dead when alive. Law can make one dead-in-life; further, the law can determine just how dead one is, and when and if one can be resurrected. For William Wilson, once identified as pollutant of what had been a pure and legitimate pedigree inherited through blood, nothing is left to him but his written testament of crimes, debt, degradation, and banishment. Before institutionalized slavery and its codes that depended on the stain or drop of black blood for the biological ignominy that stigmatized persons, thus justifying their status as mere property, there had already existed a grid for producing noncitizens outside the bounds of civil society.

In suggesting that "civil death" juridically sustained the potent image of the servile body necessary to the public endorsement of dispossession, I am aware of the possible caveat that whereas the person declared civilly dead had property to lose, and once convicted of crime was condemned to a loss of civil rights, the slave never had property, was in fact property and could never have any relation to property. I am arguing, however, that Poe, in collapsing the two conditions of being, or more precisely, rendering them in tandem, moves us into a model of reading that attends both to the artifices of law and the imperatives of fiction. There are correlations to be made in these narrations: the thematization of legal authority with unlimited resources at its disposal, those of affirming and negating, acknowledging and

ignoring, giving and taking away. It is almost as if with each realization of the legal demand for disability, for certain groups or persons in society—and the juridical redefinition of status and personhood—Poe felt the need for more ingenious expressions of derangement.

Civil death sustained itself through two ruling metaphors: "corruption of blood" or "forfeiture of property." The English common-law fiction of strict civil death, to be "dead in law"—forfeiting property as well as personal rights—though generally rejected as a rule of American common law, was adopted by some states. The US Constitution specifically prohibits forfeiture and corruption of blood except during the life of a person convicted of treason. In addition, civil death was declared not to exist in the absence of an express statute. Yet in the US civil disabilities—and civil death more or less extreme—continued to play a significant role in the treatment of criminals.

On 29 March 1799 a New York statute was enacted changing the language of "civil death" from the more lenient common-law wording, "shall thereafter be deemed civilly dead," to the more severe "be deemed dead to all intents and purposes in the law" (*Troup v. Wood* 299; *Platner v. Sherwood* 127). What are the limits of civil death? "How much of the convict is civilly dead, and how much civilly alive?" as dissenting Judge Earl put it in *Avery v. Everett* (1888) (335). In both *Troup v. Wood* (1819) and *Platner v. Sherwood* (1822), death exists on a continuum: on one extreme, one is alive but has no status at all, a mere cipher; on the other, one is not "dead in fact," as if naturally dead, for one can will property. Three months after statutory law defined civil death as the utter decimation of all civil rights, the legislature set up a system of laws for the gradual abolition of slavery in New York State. Not only is there a structural relation between slavery and civil death, but also, I would argue, civil death statutes became harsher, and more necessary, as the system of domestic slavery was ameliorated.[17]

The idea of civil death remains crucial to our understanding just how monstrous would be the legal annihilation of will, the incapacitation by fiat, the juridical decimation of personhood understood as domestic slavery. For what had been forfeiture of property and corruption of blood—indeed, those few circumstances in which civil death was coextensive with physical death—understood by Blackstone as caused by profession (as in a monk professed), abjuration from the realm (deportation for crime), and attainder and banishment (for treason), became the terms out of which came a new and terrible rendition of legal incapacity (1: 128–29).

3. Transmissible Blood

The institution of slavery kept civil death alive in the US. At least, its terms could be easily forced into the service of the ideology that underwrote the complex network of images for civility or savagery, ability or deficiency, naturalness or unnaturalness, slavery or freedom—the very rules for a modern concept of race. It was as easy to deem the extinction of civil rights and legal capacities as punishment for or as socially necessary consequence of the crime of color as it was for the conviction of crime. Even easier, perhaps. For color, this appearance of moral essence or transmissible evil, could stand in society as both a threat and a curse, or finally, as justification for the subjugation of those so tainted.

If we make slavery in the Americas our hypothetical still point, then we can move back and forth through varying considerations of what kinds of persons would end up being redefined or rendered as dead in law. The materiality of the slave, analogous to that of the civilly dead felon, links both in their status as unredeemed corporeality.[18] As vessels of corrupt blood, neither houses inheritable blood. In seeking out an idiom of servitude, Poe understood, as did Herman Melville, how the raw material of legal authority could become the stuff of literary fiction. Poe moves us back to a time when a myth of blood conferred an unpolluted, legitimate pedigree ("The Fall of the House of Usher" or "William Wilson") and forward to an analytics of blood that ushered in a complex of color: the ineradicable stain, the drop that could not be seen but must be feared ("Ligeia," "The Masque of the Red Death," or *The Narrative of Arthur Gordon Pym*).

As late as 1864, *Webster's Dictionary* noted that "[b]y the constitution of the United States, no bill of attainder shall be passed; and no attainder of treason (in consequence of a judicial sentence) shall work corruption of blood or forfeiture, except during the life of the person attainted" (70). How did corruption of blood come to equal forfeiture of property in attainder? When justifications for slavery were needed, no doubt this mysterious conjunction (influenced by its erroneously assumed relation to "taint," hence the idea of "corruption of blood") was appropriated illiberally and indiscriminately. When an innate quality (the unseen blood stain) could result in the conversion of person into property, a genetic trait (seen or unseen) could be substituted with a criminal deed and the loss and humiliation that followed.

Let me recall the ruses of color in colonial Saint-Domingue, a fiction that has occupied me for some time now. By 1773, the

number of *gens de couleur,* especially free women of color, had steadily increased. The necessity to separate materially what had been constituted as two races—and, in more extreme cases, fantasized as two species—even as they mixed, meant that the very idea of *free* or *freed* had to be transformed, or more precisely, degraded. That intermediate class of persons freed and "lightened" by interbreeding threatened the cause of white identity. New laws were needed to regulate their behavior and thus redefine their status as persons. Further, the curse of color, the sin of the flesh, had to be made indelible through time. In *The History of Jamaica* (1774), Edward Long refers to the Dutch method of experimentation to clarify the perpetuity of a drop of black blood: "They add drops of pure water to a single drop of dusky liquor, until it becomes tolerably pellucid. But this needs the apposition of such a multitude of drops, that, to apply the experiment by analogy to the human race, twenty or thirty generations, perhaps, would hardly be sufficient to discharge the stain" (2: 261).

But "whites" also could be "degenerated" or "disabled." The numerous whites who married women of color were accused of *misalliance* and hence formed yet another intermediate category, now deployed as that between whites and people of color. Once descended into the purgatory assigned to free coloreds, they suffered excommunication from public life. The lawyer Hilliard d'Auberteuil explained the reasoning behind this judgment of indelible contagion: "A white who legitimately marries a mulâtresse descends from the rank of whites, and becomes the equal of the affranchis [free coloreds]; even they consider him their inferior: in effect this man is despicable. Anyone who is so low as to fail himself, is even more sure to fail the laws of society, and one is right not only to scorn, but furthermore, to suspect the probity of those who by interest or by thoughtlessness, descends so low as to misally himself" (qtd. in Dayan, *Haiti* 225). No gift of liberty could remove the contamination of blood, the "ineradicable stain," as d'Auberteuil called it.

The rules for turning a person into thing were thus already prepared for by a terminology that had assured the connection between the condition of *being attainted* and *having in law stained and corrupted blood.* Once "attainted" was mistakenly derived as if from "taint," corruption of blood became articulated as the essence of attainder; for example, lawyers identified the stain or blood taint of a criminal capitally condemned. This working strategy of domination and control, once materialized in the taxonomies that quantified blood on a scale of white to black, would prove too powerful an apparatus to lose. And Poe knew it.

At this point, the metaphorical terrain thickens. I want to offer that complex ground as a way to reconsider Poe's own "close circumscription of space" and "predetermined effect." For once declared civilly dead, the person becomes grotesquely unrecognizable, the inexact or inelegant but nonetheless effective icon of brute matter. Within the bounds of numerous tales, Poe dramatizes the barbarism and waste so keenly assured and masked by the claims of civilization. Who gets to be human and who gets to be brute? Poe's stories about taint, disability, corruption of blood, and dispossession are relevant not only to the Fourth and Fifth Amendments that protect "persons" and "property"—yoked in the language of each amendment—but also to the extension of a model of possession that appears in Poe's turns on dislocation, immurement, and detention.

Poe's fantasies of degeneration or disability, then, are never *only* about the enslavement of the African American, for then he would indeed be guilty of what Theodore W. Allen in *The Invention of the White Race* (1994) has called "White over Black, innate, ineradicable—a Calvinism of the genes, a Manifest Destiny of the White Soul" (9).[19] Instead, Poe set himself a riskier goal of puzzling over the mysteries of identity, the riddle of bodies and minds that lived during a generation that proclaimed perfectibility and progress but that he knew was steeped in disaffection, servility, and destitution. The rituals of blood accomplished by slavery, the metaphor of stain and corruption so handily embodied in the criminal, were not racially particular. How could they be when Poe understood so well that the legal terminology of disability and blood taint extended the terms of civil death, upward, downward, and for all time? Once surcharged with racial prejudice and market greed, the terms could remain so much a part of the deployment of power that anyone could become a creature of law, something like a synthetic or artificial slave: incapacitated and hence barbaric. For the dead-alive body in flesh and bones cannot forget that blood is everywhere: oozing out of pores in "The Masque of the Red Death," dropping from the ceiling in "Ligeia," and coloring the swamp in "Silence—A Fable" (1837).

Notes

1. Poe often mocks faith in human perfectibility, equality, and progress. In *Democracy in America,* Alexis de Tocqueville described the rights of private persons subsumed by what he called the "democratic community," "the state,"

or "modern society": "As the conditions of men become equal among a people, *individuals* seem of less and society of greater importance" (290). As Tocqueville warned that "[i]n modern society, everything threatens to become so much alike that the peculiar characteristics of each individual will soon be entirely lost in the general aspect of the world" (328), so Poe complains both in his fiction and his criticism of "the generalizing spirit" or the great and imposing "mass." In "Mellonta Tauta" (1849), the blustering Pundita from atop a balloon travels through space and time to survey "the habitation of Man," reveling in Poesque ironic distance: "I rejoice, my dear friend, that we live in an age so enlightened that no such thing as an individual is supposed to exist. It is the mass for which the true humanity cares" (873). In *Democracy and Punishment: Disciplinary Origins of the United States* (1987), Thomas Dumm describes the discourse of "liberal humanism" and "democratic equality" as preludes to a dangerous, indirect subjugation. Though much of Dumm's text is overly dependent on Michel Foucault's cult of discipline, he challenges his readers to rethink how punishment and incarceration—containers for the imperfect creatures necessitated by the idealized image of human perfection—not only became critical to the ideology of democracy, but also shaped a genealogy of property and possession essential to what he calls the "American project" (6).

2. Dwight Thomas and David K. Jackson's *The Poe Log: A Documentary Life of Edgar Allan Poe, 1809–1849* (1987) notes that around 7 March, "Poe has 'two long interviews' with Dickens, presumably at the United States Hotel" (362). Dickens's scathing description of "Philadelphia and Its Solitary Prison" and the effects of "this slow and daily tampering with the mysteries of the brain . . . immeasurably worse than any torture of the body" appeared in *American Notes for General Circulation* (1842) (99). I am indebted to my student Donald McNutt's work in progress on Poe, urban space, and incarceration in "Fictions of Confinement: Poe, Dickens, and Eastern State Penitentiary."

3. Finally completed in 1836, this solitary prison with towers, massive front building, and gigantic walls resulted in exorbitant expenditures. The wall alone cost $200,000, and before completion, the prison would cost Pennsylvania around $772,000, which raised the price of the cost of each cell to more than $1800. Contemporary descriptions of the prison treated the architectural design as a necessary symbolic reminder of the austerity and grimness of the regimen that awaited the prisoner who entered its walls. The layout owed much to experiments with Jeremy Bentham's Panopticon design, where the radial plan (at least hypothetically) made possible total surveillance. See Pierson 462–73 and Johnston, Finkel, and Cohen.

4. In *Dred Scott v. Sanford* (1856), the Supreme Court ultimately ruled that since freed blacks were not citizens within the meaning of the US Constitution, they were not entitled to the privilege of suing in US courts under Article III. Chief Justice Roger Brooke Taney asked: "Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the Constitution." Though rendered after Poe's death, Taney's argument depends on the collapse of a superior "state of feeling" into a fact of law that

proves the degradation of those felt to be so degraded: freed blacks are not members of the political community of the US, Taney argues, for an externally imposed stigma is derived from and remains integral to an inherent feature or type. In other words, what René Depestre in *Bonjour et Adieu à la Négritude* (1980) called a "somatic semiology" converted a stigma of the skin first into an imaginary essence or racial substance of inferiority, and second into a legal status. Though incomplete as descriptions of practice, judicial logic is integral as descriptions of thought, and Poe knew legal artifice as necessary not only to maintaining slavery but also to preserving a social order itself dependent on the ruses of civility and decency. For a discussion of how "a racialized conception of property implemented by force and ratified by law" produced "a peculiar, mixed category of property and humanity," see Harris.

5. I am indebted here to Orlando Patterson's discussion of "liminal incorporation" in *Slavery and Social Death:* "Although the slave might be socially dead, he remained nonetheless an element of society. So the problem arose: how was he to be incorporated? Religion explains how it is possible to relate to the dead who still live. It says little about how ordinary people should relate to the living who are dead" (45). In attempting to link what Patterson calls the slave's "social death" to the felon's "civil death" in my analysis of Poe's fiction, I stress how both conditions when brought into relation encode forms of historical memory, the residue of which remains with us still. In October 1998, Human Rights Watch and The Sentencing Project published *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States,* explicitly linking "slavery," "civil death," and contemporary disenfranchisement laws "that may be unique in the world": "[I]n fourteen states even ex-offenders who have fully served their sentences remain barred for life from voting." The impact of these laws reminds us that we face now the most radical redefinition of persons and property since slavery in the Americas: "[A]n estimated 3.9 million U.S. citizens are disenfranchised, including over one million who have fully completed their sentences. . . . Thirteen percent of African American men—1.4 million—are disenfranchised, representing just over one-third (36 percent) of the total disenfranchised population" (1–2).

6. I use the term *law* generally here and assume throughout that Poe not only knew Blackstone's *Commentaries,* which appeared in America in 1771–1772, but also used his fictions to dramatize the artificial identities construed in such legal fictions as civil death, human property, and the mind, will, and reason of the slave that can be decimated in law. A favorite text in the antebellum south, Blackstone's *Commentaries* appeared in a new edition by St. George Tucker in 1803. According to Robert M. Cover in *Justice Accused: Antislavery and the Judicial Process* (1975), "More than 1,000 textual footnotes updated the law, and more than 800 pages of appendices, consisting of essays, refuted or supplemented the *Commentaries* on major issues" (37). For a discussion of the demand for Blackstone's work and its influence on American law, see Granucci: "In 1775 Edmund Burke is reported to have told the House of Commons that almost as many copies of the *Commentaries* had been sold in America as in the whole of England" (863).

7. The court here cites an English case, *Pearne v. Lisle* (1749), regarding delivery of slaves on the island of Antigua.

8. For a lengthy discussion of Poe's return to Virginia and his "racialized gothic," see Dayan, "Amorous Bondage."

9. See also Justice Story, in *Emerson v. Howland et al.* (1816): "The owner of the slave has the most complete and perfect property in him. The slave may be sold or devised, or may pass by descent, in the same manner as other inheritable estate. He has no civil rights or privileges" (636).

10. During Reconstruction, with the advent of convict-lease and chain gang, this logic of control and subordination defined the law of the New South, taking to the extreme the production of nonpersons, now shorn of even the moral and intellectual qualities sometimes granted them as property. No longer the master's creatures, they were criminals newly defined as "slaves of the state." See *Ruffin v. Commonwealth* 796.

11. The legal relation of master and slave turned on the question of will, as do such Poe tales as "Ligeia," "Morella," "William Wilson," "The Imp of the Perverse," and "The Black Cat," which begins with a discussion of "the spirit of PERVERSENESS" and the longing "to violate that which is *Law,* merely because we understand it to be such" (599). Since civil status referred to property—the power of holding it, using it, acquiring it—as the singular right of the master, the slave remained unknown to the law except as the subject of property owned by another. What kind of being, asked the North Carolina Judge Thomas Ruffin in 1829 (*State v. Mann*), could be "doomed in his own person, and his posterity, to live without knowledge, and without the capacity to make anything his own"? Ruffin answered: "Such services can only be expected from one who has no will of his own; who surrenders his will in implicit obedience in the consequence only of uncontrolled authority over the body" (qtd. in Cover 77n and in Patterson 3–4).

12. One of the more disappointing developments in Poe studies is the increasingly racialized delimiting of Poe's exploration of the ambiguities of servitude and bondage (something like the unfortunate assignation of "postcolonial" to whatever is not white, not "first world," not Europe). When I argued that Poe wrote the "Paulding-Drayton Review," I did not mean to assign Poe to the stagnant role of proslavery apologist. Instead, I stressed that Poe, throughout his fictions, especially those later in his life, sought to expose the sureties of both Northern abolitionists and Southern proslavery advocates. For Poe is obsessed with blurring the sureties of distinctions, the strategic categorizations that leave, to paraphrase Toni Morrison in *Beloved* (1987), definitions in the hands of the definers (220). Poe instead analyzes the disabilities—and the terminologies—that link "the white male writer, the white woman of his dreams, and the ungendered, unmentioned black" (Dayan, "Amorous Bondage" 119).

13. In nineteenth-century America, "to be tarnished with the tar-brush" or "have a touch of the tar-brush" meant having black blood. In the climax of "Hop-Frog," Poe takes the "black drop" of blood and materializes it in the extravagant conversion of persons into property: the masters into a lump of foul matter.

14. If no physical thing was possessed, for example, as with an incorporeal hereditament, one had to be fictionalized. This set of fictions, throughout the

nineteenth century, sustained Blackstone's absolutist and physicalist conception of property.

15. For a superb meditation on the intricate fiction of civil death and the demands it makes on interpretation, see Kim Lane Scheppele, "Facing Facts in Legal Interpretation" (1990), which came to my attention after I had completed this essay. Meditating on how the fiction of being dead in law gives the ordinary term "death" a technical meaning that creates a new state, she clarifies the stakes of law language (especially for those who are the recipients of legal judgments): "What makes fictions *different* from other descriptive terms is that the technical, legal description created by the fiction overrides another ordinary description that is directly contrary to the fictional one. The civilly dead person is actually alive" (58).

16. For an exhaustive discussion of citizenship and social compact theory, and the characters and capacities of citizens from *Dred Scott v. Sanford* to the Fourteenth Amendment, see Smith.

17. The Thirteenth Amendment to the Constitution, announced in December 1865, clarifies what I have suggested as a connective tissue linking criminality and race. A discursive link between the civilly dead felon and the slave or social nonperson, it embodied exclusion through a kind of disembodiment, a realm of redefinition where criminality could be racialized and race criminalized. The Thirteenth Amendment outlawed slavery and involuntary servitude "except as punishment of crime where of the party shall have been duly convicted." During the second session of the 39th Congress (12 December 1866–8 January 1867), debates centered on the meaning of the exemption in the antislavery amendment. Charles Sumner warned that what had seemed "exclusively applicable" had now been "extended so as to cover some form of slavery." He asked that Congress "go farther and expurgate the phraseology from the text of the Constitution itself." The legal exception became the means of terminological slippage: those who were once slaves were now considered criminals. Under the guise of apprentice, vagrant, and contract regulations, various states kept blacks in servitude. Thus the burdens and disabilities that constituted the badges of slavery took powerful hold on the language of penal compulsion. A criminal punished with "civil death" became the "slave of the state," enduring both the substance and visible form of disability, as if imaginatively recolored, bound, and owned. See *Ruffin v. Commonwealth* (1871). This doubling transaction back and forth between prisoner and the ghosts of slaves past allowed that the entity called "citizen" alone be granted the fundamental privileges and immunities guaranteed in Section 1 of the Fourteenth Amendment. Attention to the too-often ignored Thirteenth Amendment would demonstrate how uncertain is the notion of a "constitutional person." Legal practice, as Justice John M. Harlan understood in his dissent in *The Civil Rights Cases* (1883)—which analyzes the Thirteenth Amendment at length—depends on this conceptual uncertainty in order to continue to grant only a minimum bundle of constitutional rights to certain categories of persons.

18. In the slave codes—especially the 1645 *Code Noir* in the French colonies—the attention to the limits of physical or bodily punishment and to the minimal needs of daily survival, food, clothing, and lodging bear an unsettling resemblance to the way the courts of the US have traditionally interpreted the

cruel and unusual punishments clause in the Eighth Amendment to the US Constitution. As Anthony F. Granucci notes: "It is indeed a paradox that the American colonists omitted a prohibition on excessive punishments [punishment should not be disproportionate to the offense charged] and adopted instead the prohibition of cruel methods of punishment, which had never existed in English law" (847). In recent conditions of confinement cases, the Supreme Court has currently adopted the corporal punishment paradigm: attending to the body, not the intangible qualities of the convicted criminal. Like the slave whose servile, brute body had yet to be protected against unnecessary mutilation or torture, the criminal is reduced to nothing but the physical person, suggesting that the term "human" in the phrase "a single, identifiable human need such as food, warmth, or exercise" (*Wilson v. Seiter* 305) juridically redefines what we mean by human when applied to the incarcerated. Bodily suffering or the needs of bare survival have become the standards for Eighth Amendment cases, not psychological pain or the social and civic components of confinement that are responsive to the needs of personhood.

19. See also Fanon: "[T]he black soul is a white man's artifact" (14).

Works Cited

Allen, Theodore W. *The Invention of the White Race.* London: Verso, 1994.

Avery v. Everett. 110 N.Y. 317 (1888).

Bailey & als v. Poindexter's Ex'or. Va. (14 Gratt.) 148 (1858).

Blackstone, William. *Commentaries on the Laws of England.* 1769. 4 vols. Chicago: U of Chicago P, 1979.

Césaire, Aimé. *Discourse on Colonialism.* Trans. Joan Pinkham. New York: Monthly Review P, 1955.

Cover, Robert M. *Justice Accused: Antislavery and the Judicial Process.* New Haven: Yale UP, 1975.

Creswell's Executor v. Walker. 37 Ala. 233 (1861).

Dayan, Joan. "Amorous Bondage: Poe, Ladies, and Slaves." *Subjects and Citizens: Nation, Race, and Gender from Oroonoko to Anita Hill.* Ed. Michael Moon and Cathy N. Davidson. Durham: Duke UP, 1995. 109–43. Rpt. in *The American Face of Edgar Allan Poe.* Ed. Shawn Rosenheim and Stephen Rachman. Baltimore: Johns Hopkins UP, 1995. 179–210.

———. *Fables of Mind: An Inquiry into Poe's Fiction.* New York: Oxford UP, 1987.

———. *Haiti, History, and the Gods.* 1995. Berkeley: U of California P, 1998.

Depestre, René. *Bonjour et Adieu à la Négritude.* Paris: Laffont, 1980.

Dickens, Charles. *American Notes and Pictures from Italy.* 1842. Introd. Sacheverell Sitwell. New York: Oxford UP, 1957.

Dred Scott v. Sanford. 60 U.S. (19 How.) 393 (1856).

Dumm, Thomas. *Democracy and Punishment: Disciplinary Origins of the United States.* Madison: U of Wisconsin P, 1987.

Emerson v. Howland et al. 8 Mass. 636 (1816).

Fanon, Frantz. *Black Skin, White Masks.* 1952. Trans. Charles Lam Markmann. New York: Grove, 1967.

Graham, Howard Jay. "The Early Antislavery Backgrounds of the Fourteenth Amendment." *Wisconsin Law Review* May 1950: 479–507.

Granucci, Anthony F. "'Nor Cruel and Unusual Punishments Inflicted': The Original Meaning." *California Law Review* 57 (1969): 863.

Harris, Cheryl. "Whiteness as Property." *Harvard Law Review* 106 (1993): 1710–91.

Human Rights Watch and The Sentencing Project. *Losing the Vote: The Impact of Felony Disenfranchisement Laws in the United States.* N.p., 1998.

Johnston, Norman, Kenneth Finkel, and Jeffrey A. Cohen. *Eastern State Penitentiary: Crucible of Good Intentions.* Philadelphia: Philadelphia Museum of Art, 1994.

Long, Edward. *The History of Jamaica, or the General Survey of the Ancient and Modern State of That Island.* London, 1774. Rpt. New York: Arno, 1972.

McNutt, Donald. "Fictions of Confinement: Poe, Dickens, and Eastern State Penitentiary." Unpublished ms.

Morrison, Toni. *Beloved.* New York: New American Library, 1987.

Patterson, Orlando. *Slavery and Social Death: A Comparative Study.* Cambridge: Harvard UP, 1982.

Pierson, George Wilson. *Tocqueville in America.* Baltimore: Johns Hopkins UP, 1938.

Platner v. Sherwood. 6 Johns. Ch. 127 (1822).

Poe, Edgar Allan. *Edgar Allan Poe: Essays and Reviews.* Ed. G. R. Thompson. New York: Library of America, 1984.

———. *Edgar Allan Poe: Poetry and Tales.* Ed. Patrick Quinn. New York: Library of America, 1984.

Ruffin v. Commonwealth. Va. (21 Gratt.) 796 (1871).

Scheppele, Kim Lane. "Facing Facts in Legal Interpretation." *Representations* 30 (1990): 42–77.

Smith, Douglas G. "Citizenship and the Fourteenth Amendment." *San Diego Law Review* 34 (1997): 681–807.

Summers & al. v. Bean. Va. (13 Gratt.) 411 (1856).

Thomas, Dwight, and David K. Jackson. *The Poe Log: A Documentary Life of Edgar Allan Poe, 1809–1849.* Boston: Hall, 1987.

Tocqueville, Alexis de, and Gustave de Beaumont. *On the Penitentiary System in the United States, and Its Application in France.* Trans. Francis Lieber. Philadelphia: Carey, 1833.

Troup v. Wood. 4 Johns. Ch. 299 (1819).

Webster's an American Dictionary of the English Language. Philadelphia: Lippincott, 1864.

Wilson v. Seiter. 501 U.S. 294 (1991).

Young v. Burton. S. Car. (26 McMul.) 255 (1841).