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BLACK CODES RE-ENVISIONED: THE DRED SCOTT MAJORITY OPINION AS  
AN ANTIBLACK PERFORMATIVE SPEECH ACT

By

Tiffany Dillard-Knox  
B.A., University of Louisville, 2001  
M.A., University of Louisville, 2014

A Dissertation  
Submitted to the Faculty of the  
College of Arts and Sciences of the University of Louisville  
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for the Degree of

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in Pan-African Studies

Department of Pan-African Studies  
University of Louisville  
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December 2021



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A Dissertation Approved on

November 23, 2021

by the following Dissertation Committee:

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Dr. Ricky Jones

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Dr. Karl Swinehart

## DEDICATION

This dissertation is dedicated to my family who have been my biggest cheerleaders and support network throughout my entire educational journey.

In memory of J. Blaine Hudson.

I made a promise to you. Here is the fulfillment of that promise.

## ACKNOWLEDGEMENTS

I'd first like to thank my family for always having my back, without your support none of this would be possible. Momma, Daddy, Lad, LaTica, Corey, Demetrius, Devin, Lasia, Tayla, Jaelynn, Jordyn, Serenity, and Lehlani, I love yall to the moon and back!

To my committee, each of you have played an important role in helping me complete this phase of my educational career. Dr. Jones, you have been my mentor and a believer of me since the 90's. Dr. McCormack, thanks for challenging and pushing me to think more deeply about Afro-Pessimism and to find my voice within the literature. Dr. Swinehart, it was your honest feedback on that first draft that forced me to focus my big thoughts into a complex but clearly articulated dissertation. Dr. Washington, my forever hype man, thank you for all of your encouragement and positivity in the most crucial time of my writing endeavor. Without each of your contributions, I would not have completed this thing on time. Thank you.

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## ABSTRACT

### BLACK CODES RE-ENVISIONED: THE DRED SCOTT MAJORITY OPINION AS AN ANTIBLACK PERFORMATIVE SPEECH ACT

Tiffany Dillard-Knox

November 23, 2021

This dissertation is a discursive analysis of the decision in the *Dred Scott v Sandford*, 1857 case written by Chief Justice Roger Taney. It begins with an overview of the literature on performative speech acts, focusing on the aspects of performatives that relate to Louis Miron and Jonathan Xavier Inda's thesis that race is a performative speech act. Breaking from their use of race as the analytic, this analysis is situated within a black/nonblack paradigm. This provides a framework that focuses on the unique ways in which the discourse of the text enacts, accumulates and renders blackness fungible. The latter part of the dissertation argues that the Dred Scott decision does the work of extending colonial discourses into the future by flattening blackness and embedding the technologies of antiblackness within what I call double-speak.

The discourse analysis was performed in three steps. The first was to identify the use of identity markers and their corresponding descriptors. These identity markers were compared/contrasted and analyzed to get a better sense of how these various identities were enacted within the text. The second identified the use of universal terms and



phrases. These universal terms and phrases were then analyzed to determine the capacity for blacks to assimilate via an inclusion/exclusion framework. The third and final step was to identify the moments of antiblackness as determined by the tenets of accumulation and fungibility.

In the end the majority opinion can be described as an antiblack performative speech act that named blackness, reiterated the representations of blackness, and generated the force of authority that allows for further citation of those representations of blackness. Furthermore, the analysis provided a means for exploring the role of Fanon's racial corporeal schema as a linguistic marker that carries the logics of slavery into the future without having to use the language of slavery. Finally, utilizing antiblackness as a theoretical intervention, I was able to identify a gap in the literature on the effects of performatives. This effect I call double-speak, which happens when there is contradiction across groups as to the successfulness or unsuccessfulness of a single performative utterance.

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## INTRODUCTION

As I write this dissertation, the United States is on fire. Protests have erupted all over the country during a global pandemic over a disease much greater than COVID-19. Antiracism is the name of the infectious disease that has run rampant in this country for several centuries, with no vaccine in sight. Although there are many who would say that we have come a long way since slavery, the myriad of unarmed black men and women killed by the police state, with no justice served—too many to list here—over the last few decades have once again sparked a “long hot summer.” This, however, is the exact result that one would/should expect when the history of the country is undergirded by a discourse of antiracist sentiment. The language of the country provides a roadmap of divisiveness and violence and the target is racism.

On May 1, 2020, President Donald Trump tweeted, “The Governor of Michigan should give a little, and put out the fire. These are very good people, but they are angry. They want their lives back again, safely! See them, talk to them, make a deal.” This was in reference to a group of armed white protestors who were rallying against the stay-at-home orders issued by the Governor of Michigan, orders that were being issued all across the country—the world really—in order to control the spread of the deadly disease known as COVID-19.

Fast forward to the end of May 2020 when protests began erupting throughout the country over a series of killings of unarmed black men and a black woman—Ahmaud Arbery, George Floyd, and Breonna Taylor—at the hands of police and former police. In response to the protests in Minnesota the President tweeted, “...These THUGS are dishonoring the memory of George Floyd, and I won’t let that happen. Just spoke to Governor Tim Walz and told him that the military is with him all the way. Any difficulty and we will assume control but, when the looting starts, the shooting starts. Thank you!”

The rhetorical difference between the two tweets is significant and important to the moment that we find ourselves in in this country. The contrast between the use of “very fine people” in one instance and “THUGS” in another colors the perception and responses to each act of protest and the people involved. These are not inconsequential descriptors. There are material implications, often fatal. Unfortunately, this is not new and President Trump is not the first.

While the above example highlights an obvious and overt distinction, most of the more recent racial rhetoric in the United States have been instances of covert divisiveness dating back to the 1960s. The advice of Republican campaign strategist, Lee Atwater when he said of the “Southern Strategy” (Lamis, 1990, 26) was,

[It’s a matter of] how abstract you handle the race thing. In other words, you start out...Now y’all aren’t quoting me on this...you start out in 1954 by saying, ‘Nigger, nigger, nigger.’ By 1968 you can’t say nigger—that hurts you, backfires. So, you say stuff like, uh, forced busing, states’ rights, and all that stuff. And you’re getting so abstract now, you’re talking about cutting taxes, and all these

things you're talking about are totally economic things and a byproduct of them is, blacks get hurt worse than whites... 'We want to cut this,' is much more abstract than even the busing thing, uh, and a hell of a lot more abstract than 'nigger, nigger'

Richard Nixon, in conjunction with Harry Dent and others, devised a rhetorical campaign that appealed to the racist sentiments of southern voters. Relying on the rhetoric of "law and order" following the urban riots—rebellions—of the late 1960s and appealing to the racial fears and antagonisms was central to the "Southern Strategy<sup>1</sup>." However, it had to be done surreptitiously. Nixon stated, "that you have to face the fact that the whole problem is really the Blacks. The key is to devise a system that recognized this while not appearing to (Alexander, 2010, 44)". According to Michelle Alexander (2010) in her book, *The New Jim Crow*, Nixon's campaign dedicated seventeen speeches solely to the topic of law and order, one of his television ads explicitly called on voters to reject the lawlessness of civil rights activists and embrace order in the United States (46).

Ronald Reagan continued with the law and order rhetoric and added the "War on Drugs." He made implicit racial appeals on crime, welfare, taxes, and states' rights. The colorblind frame of his rhetoric made the racial dimension of his language impossible to prove. He was afforded plausible deniability due to the coded nature of his racial appeals. Reagan made popular the terms "welfare queen," "crack whores," "crack

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<sup>1</sup> Term used in Matthew Lassiter's book, "The Silent Majority: Suburban Politics in the Sunbelt South," to describe the political strategy used to realign the Republican party and usher in a new defacto segregation in the United States.

babies,” and “gangbangers” and did so in such a way that they automatically signified black.

George H. W. Bush’s most famous racial appeal was the Willie Horton ad that featured a dark-skinned black man, a convicted murderer who escaped while on work furlough and allegedly raped and murdered a white woman in her home. It was used to depict the effects of politicians being “soft on crime.” Once elected, Bush continued the drug war theme and even used it to militarize domestic drug law enforcement. The rhetorical strategy worked to influence public opinion so much so that actual drug statistics did not correlate with public concern of illegal drug activity (Alexander, 2010).

Bill Clinton deployed a “get tough on crime” rhetoric that matched the anti-black legislation that he passed. Having one of the most detrimental presidencies for blacks since Reconstruction, Clinton passed the three-strikes law, minimal sentencing, and signed into law the Personal Responsibility and Work Opportunity Reconciliation Act, which destroyed the effectiveness of previous welfare reform.

George W. Bush expanded the reach of the rhetorical strategy to include immigrants with his War on Terror rhetoric. According to Ryannon McLeod (2010), “George W. Bush was able to formulate a narrative in which the enemies of the United States were not merely dehumanized, but cast as monstrous, murderous entities whose sole purpose was to destroy the American way of life (1).” Although Bush never names this “enemy” of the State, the relationship between the War on Terror and 9/11 automatically creates the visual image of enemy.

The strategy of racial rhetoric came full circle with the campaign/presidency of Donald Trump. His widely known campaign slogan covers all of the strategies that came

before him, “Make America Great, Again.” Included in that one simple phrase are messages of racism, sexism, homophobia, anti-immigration, conservatism, corporatism, and law and order politics.

However, this has not been just a strategy used to win races for political office, it has been used by the media to differentially describe whites and blacks engaging in similar acts. During media reports on Hurricane Katrina, photos of people perceived to be white taking items from stores were labeled “finding” items from a store while people perceived to be black were labeled as “looting” from a grocery store (Ralli, 2005).

Eduardo Bonilla-Silva (2014) offers one of the most comprehensive understandings of how colorblind rhetoric functions in the United States beyond politicians and media to produce *Racism without Racists*. Racism without racists means that the substance of racism that has historically defined America’s past still exists, the difference is found in the covert, deniable nature that racism manifests in its contemporary formulations. Bonilla-Silva outlines four frames through which colorblind racism manifests: abstract liberalism, naturalization, cultural racism, and minimization of racism.

Abstract liberalism is found in the language of meritocracy. Those who believe that affirmative action programs are no longer needed and in fact justify instances of “reverse racism” fall into this particular category. An example of this would be the recent investigations by the Department of Justice into institutions of higher education such as, Harvard, over claims of discrimination regarding admissions. A recent article in the Harvard Crimson (Franklin and Zwickel, 2018) reported that the Justice Department’s civil rights division sought to investigate instances of discrimination against Asian

American students and reverse discrimination against white students. At the same time, there is no active investigations looking into the discriminatory admission practices of legacy admits at these same institutions.

Naturalization is the idea that people naturally cluster into like groups. The language of naturalization is used to justify things such as residential segregation without ever considering the effects of housing discrimination. Residential segregation leads to the creation of myths such as “black on black” crime that is heavily circulated in the media when discussing intra-racial violence in black communities. Unfortunately, there is no similar phrase denoting “white on white crime”.

Those who criticize the morality values, work ethic and other behaviors as justifications for inequality invoke notions of cultural racism. Cultural racism stems from the 1960s “culture of poverty<sup>2</sup>” theory, developed by Oscar Lewis in 1966, and rhetoric that leads to victim blaming. Arguments that justify police brutality by saying, “if they would have just obeyed the police officer, none of this would have happened”. Yet, George Floyd was not resisting arrest when he was killed, Ahmuad Arbery was jogging when he was chased down and killed, and Breonna Taylor was asleep in her own home when she was gunned down and killed. Similar acts of victim blaming occur when discussing government assistance, “they need to get a job and work like the rest of us”. The first example exhibits an underlying moral critique while the second is a judgment of work ethic. Neither of the two examples put things like police brutality and poverty into their proper historical context.

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<sup>2</sup> The culture of poverty theory argues that the values of people in poverty perpetuate their condition, sustaining a cycle of poverty across generations.



Lastly, are those who believe that racism no longer exists and those who believe that we are “better off” than we were in the past. These arguments of a post-racial America invoke ideas that equality exists and that oppression was something that happened over a century ago. This was a comment made by former NFL player and coach, Mike Ditka (Schwab, 2017). Although that was the most extreme part of his rant, the rest of what he was quoted saying includes other frames of colorblind rhetoric (emphasis mine):

I don't know what social injustices [there] have been ... *You have to look at a person for what he is and what he stands for and how he produces — not by the color of his skin.* That has never had anything to do with anything,” Ditka said. “But, all of a sudden, it has become a big deal now — about oppression. **There has been no oppression in the last 100 years that I know of.** Now maybe I'm not watching it as carefully as other people. *I think the opportunity is there for everybody — race, religion, creed, color, nationality. If you want to work, if you want to try, if you want to put effort in, you can accomplish anything.* And we have watched that throughout our history of our country.

Unfortunately, not all “race talk” is color-blind or neutral. In fact, antiblack rhetoric is often targeted and intentional. This research will examine one such instance of targeted antiblack discourse that has laid the foundation for and intensified the oft fatal consequences of all other instances since, the majority opinion in the *Dred Scott v Sandford* case of 1857.

Dred Scott was a Missouri slave. Sold to Army surgeon John Emerson in Saint Louis around 1833, Scott was taken to Illinois, a free State, and on to the free Wisconsin Territory before returning to Missouri. When Emerson died in 1843, Scott sued Emerson's widow for his freedom in the Missouri Supreme Court, claiming that his residence in the free soil of Illinois made him a free man. After defeat in State courts, Scott brought suit in a local federal court. Eleven years after Scott's initial suit, the case came before the U.S. Supreme Court.

The lawsuits submitted on behalf of Dred and Harriet Scott in the 1840s and 1850s were to determine the status of the Scotts as either free persons or slaves. By the final rendering of the U.S. Supreme Court in 1857, the courts had decided that Dred Scott and by proxy, Harriet Scott and their children, were slaves who never had the right to file a suit in the court of law. However, the majority opinion written by Judge Roger Taney did more than just render a decision regarding the status of the Scotts. Instead, Taney set a legal precedent for the status of all blacks in the United States, free and enslaved, by concluding that blacks were “so far inferior that they have no rights which the white man is bound to respect (U.S. Constitution: A Reader, 2012, 488).” This was the first time that the status of free blacks and slaves (read: black slaves) were legally determined to be the same, supplementing “blacks” for “slaves.” As a result, free blacks were stripped of all access to citizenship, thus personhood within the law, a status that only black slaves previously occupied. The development of the Dred Scott case in tandem with the discourse used in writing the majority opinion of the U.S. Supreme Court decision is significant to understanding the manner by which blackness, not slaveness, was

discursively codified to be synonymous with property, or what Frank Wilderson (2010) calls “sentient objects”.

This historical moment is significant because prior to this decision, free blacks occupied various degrees of differing statuses than black slaves in some parts of the United States. Post this decision they became one. This unification point created the foundation for the paradox from slavery to freedom that Saidiya Hartman (1997) describes in her text, *Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America*. A paradox which she describes by explaining, “the transformation of black subjectivity effected by emancipation is described as nascent individualism not simply because blacks were considered less than human and a hybrid of property and person prior to emancipation but because the abolition of slavery conferred on them the inalienable rights of man and brought them into the fold of liberal individualism. Prior to this, legal precedents like *State v. Mann* and *Dred Scott v. Sandford* made the notions of blacks’ rights and black citizenship untenable, if not impossible (117).”

In some ways human subjectivities are intimately tied to nationality, thus citizenship status. Therefore, any attempts to articulate black subjectivity must begin with the untangling of blackness and slaveness. Understanding the origin of the entanglement is the first step. I argue that the nexus of this entanglement can be found within the text of the Dred Scott decision. As an authoritative discursive text, the Dred Scott decision has the power to function as the mechanism that constitutes the subject position for blacks which then gets taken up by society and iterated in everyday speech. This process can be understood in terms of what linguistic scholars refer to as a performative speech act.

Therefore, the goal of this dissertation is to analyze the Dred Scott decision, specifically the majority opinion given by Judge Roger Taney, to determine if it could be categorized as an antiblack performative speech act.

Chapter One will examine the manner in which discourse is used to constitute subject positions through the use of performative speech acts. Specifically, this chapter will explore the theoretical development of race as a performative speech act established by Louis Miron and Jonathan Xavier Inda (2000). The chapter explores naming, iteration and the force of authority as the three primary aspects of performatives that constitute and maintain particular subject positions. Performative speech act theory is a solid starting point for examining race, language and subject constitution. However, this chapter will challenge Miron and Inda's conclusion regarding the possibilities for the rearticulation of blackness within the gaps and fissures of discourse by arguing that blacks occupy a unique structural position that does not get captured in the theory of race as a performative speech act.

From there, chapter two will lay out the theoretical foundation for understanding the nature and extent of that unique structural position which is often obscured under the larger framework of race. This chapter begins by exploring George Yancey's African American Alienation Thesis in order to posit the black/nonblack binary as an alternative paradigmatic lens to the white/nonwhite binary so often used by race scholars. The next section will include a discussion of the difference between conflictual power relations and antagonistic power dynamics, while simultaneously situating blacks within the frame of the latter. It is from this understanding that the chapter moves into an exploration of

the two primary tenets of what has been dubbed by Afropessimist scholars as antiblackness, accumulation and fungibility.

Chapter three lays out the methodological steps taken to conduct a discourse analysis of the majority opinion rendered in the *Dred Scott* decision of 1857. The discourse analysis seeks to answer the following question: Is the majority opinion in the *Dred Scott* decision an antiblack performative speech act? The analysis will consist of three major parts: identifying identity markers and the descriptors that complement those markers, examining the use of universal terms and phrases, and identifying the moments of accumulation and fungibility of blackness. The results will be presented in the following chapter.

The final chapter will posit a theory of antiblack performative speech acts. As I conceive it, antiblack performative speech acts are similar to Miron and Inda's theory of race as a performative speech act. However, the point of divergence between the two has significant implications on the function of performative speech acts in relation to blackness. The introduction of an alternative theory of power shifts the dynamics in such a way that produces an effect I call double-speak. The concept of double-speak offers a starting point for understanding the relationship between blackness and the world in new ways. The second implication is that the racial corporeal schema acts as a linguistic marker within the process of iteration. The racial corporeal schema blocks the possibility for rearticulation of blackness in ways that differ significantly from other subject positions. From there, the chapter will explore ideas around ontology, agency,

relationality and subjectivities<sup>3</sup>. The chapter will conclude with suggestions for future research within the study of language and antiblackness that has the potential to transcend the current academic discourses surrounding language and race.

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<sup>3</sup> While there will not be an exhaustive discussion surrounding these topics within this dissertation, it is important to speak to these questions to some degree. Given the fact that I challenge Miron and Inda's conclusion about the possibilities of rearticulation for blacks, I find it necessary to clarify that I do not take the position that blacks are forever doomed to the fate of that which has named, described and positioned them. I am an optimistic-realist and believe that hope is necessary to sustain black life. However, we must be hyper-critical of the role that language plays in the maintenance of the structure of antiblackness. As such, antiblackness **as an analytic** is critically important to understanding black positionality while at the same time, should not be understood to represent all that black life is or is to become.

## CHAPTER ONE: LITERATURE REVIEW

### Race as a Performative Speech Act

Louis Miron and Jonathan Xavier Inda (2000) proposed a theory that articulated race as a kind of speech act whereby they argue that race is not a fact of nature, rather a reiterated enactment of norms that retroactively construct the appearance of race as a static essence. This process of reiteration occurs through discourse which they define according to Stuart Hall (1992) as being both language and practice. In other words, discourse is not purely a linguistic phenomenon but is embodied in institutions, rituals and so forth. As such, discourse operates to constitute racial subjects through its material embodiment within institutions. In order to understand how Miron and Inda arrived at such a theory it is important to provide some background knowledge of the history and development of performative speech act theory. Given the expansiveness of the literature on performativity and speech act theory, it is necessary to limit the review of the literature to just the scholarship that is critical to understanding race as a performative speech act as proposed by Miron and Inda. Their theoretical development is built on three fundamental elements of performative speech act theory; the process of naming (Foucault, 1979), the process of iteration (Derrida, 1972), and the force of authority (Butler, 1988). Prior to that, we must first understand what is a performative speech act at its most basic level.

Philosopher J.L. Austin delivered the 1955 William James Lectures from a series of ongoing notes that began as a part of his Oxford Lecture series, *Words and Deeds*. These notes were transcribed and published in the 1962 text, *How to do Things with Words*. It was this seminal text that initiated a scholarly discussion around what Austin called performative utterances, or simply put, performatives. He argued that, “it has come to be seen that many specially perplexing words embedded in apparently descriptive statements do not serve to indicate some specially odd additional feature in the reality reported, but to indicate (not to report) the circumstances in which the statement is made or reservations to which it is subject or the way in which it is to be taken and the like (3).” Austin challenged the prior philosophical assumption that utterances are solely descriptive (Saussure, 1916; Bloomfield, 1933), or that they are only used for the statement of falsifiable facts—which he calls constatives. He argued instead, that there is another category of statements, called performatives, which do not describe, report or constate anything at all but perform an act through the very process of uttering said statement. Put another way, to utter a sentence is to perform some action. An example would be to say ‘I bet five dollars on horse three.’ In saying the words ‘I bet’ one has not only made a statement about betting but also performed the bet, assuming the appropriate circumstances are met, such as the bet being received. When two people say ‘I do’ during a wedding ceremony, that too is considered a performative utterance.

As Austin further advanced his theory of performatives, he began to develop the conditions for successful and unsuccessful performatives. All of the conditions are not necessary to explore here, as there are many, but there are two things worth noting. First, Austin excluded cases that he identified as “nonserious” or “parasitic,” instances in which



the speech acts are used outside of their normal or proper contexts. Second, while Austin deals with instances of mutual exclusivity, he does not speak to the extremely important instances of contradiction, which will be discussed in more detail later<sup>4</sup>. For now, let's explore the significance of Austin's excluded cases and the first of the three fundamental elements of Miron and Inda's theory of racial performatives, iterability.

In Lecture II, Austin claimed that happy performatives require that six conditions<sup>5</sup> be met. If one or more of those conditions are not met, then the performative utterance is said to be unhappy, or infelicitous, whereas those infelicities are not a question of true/false but of successfulness. Austin recognized the myriad of ways that a performative utterance can go wrong but chose to exclude those instances as “non-serious,” “parasitic,” or “non-ordinary.” In contrast, Philosopher Jacques Derrida (1972) argued that those excluded instances are integral to the successfulness of any class of performatives through his notion of iterability, defined by the capacity to be repeatable. Nonserious and parasitic speech, Derrida argues, is simply a citation of a serious speech act—a repetition of an accepted conventional procedure. Rather than serious and nonserious speech acts belonging to separate and opposing orders, Derrida concludes that an utterance can only take place if it is iterable, can be repeated, quoted or cited in a

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<sup>4</sup> Instances of contradiction are important to understanding the concept of double-speak that is laid out in Chapter 5.

<sup>5</sup> The six conditions are as follows:

(A. 2) the particular persons and circumstances in a given case must be appropriate for the invocation of the particular procedure invoked.

(B. 1) The procedure must be executed by all participants both correctly and

(B. 2) completely.

(T.1) Where, as often, the procedure is designed for use by persons having certain thoughts or feelings, or for the inauguration of certain consequential conduct on the part of any participant, then a person participating in and so invoking the procedure must in fact have those thoughts or feelings, and the participants must intend so to conduct themselves, and further

(T. 2) must actually so conduct themselves subsequently.

variety of serious and nonserious contexts, making them different kinds of iteration within the category of general iterability.

Miron and Inda take up Derrida's theory of general iterability and apply it to race in order to contend that this process of iteration is used within discourse to "procure a naturalized effect through repeated reference" to the racialized subject (99). As such, racial performativity is not a singular act of racial subject constitution but a reiterative practice through which discourse brings about the effect that it names. They maintain that race itself is an empty category that alone has no connotative capacity but instead "retroactively constitutes and naturalizes the groupings to which it refers (99)." This is not to argue that race is static in meaning but as an empty category has the capacity to be defined and redefined over time. However, the process of iterability gives the term race its naturalized force. Over time there have been various iterations of race from biological to cultural but despite the differences in definition, the category of race itself has endured. Its endurance has come not as a result of a single act of racial subject constitution but as a reiterative practice effectuated through discourse. In this way, race is not a constative utterance—statement of fact—but a performative utterance.

Another significant aspect of Derrida's theory of iterability is the idea that performatives can successfully function despite the fact that certain utterances or aspects of utterances are not present, which he calls the structure of absence theory. He argued that supplementation and representation act as markers. Thus, the speaker, receiver, original context, or intention do not have to be present in order for a performative to function successfully. Instead, the speaker, receiver, context, and intention of the original utterance are presupposed as a result of its repetition. This is evidenced by a 2008 study

conducted by Phillip Goff et. al which examined historical representations and how they create implicit contemporary associations. They found that while historical representations of blacks as ape-like have largely disappeared in the United States, a mental association between blacks and apes remains. This perduring association prompted Goff et al. to conduct six studies in order to assess the extent of the black-ape association. They found that the association does exist. Additionally, the association is not based on explicit knowledge of the historical representations. Next, they found that there is no longer an explicit association in the media to describe blacks as ape but there does exist metaphorically coded language. Finally, they found that these associations continue to justify violence against blacks and impact the judgement of jurors, even in life or death cases.

Miron and Inda highlight Michel Foucault's discursive approach to representation—naming—to explain how the process of presupposition becomes embedded into the fabric of society. Foucault believed that representation was based on relations of power instead of relations of meaning. Using war as the analytic frame to understand how subjects are constituted, Foucault situated his theory of representation within a paradigm of conflict in order to highlight the violence associated with the process of subject constitution through representation. Using this frame demystifies the neutrality by which we come to understand language. Rather than studying language itself, Foucault opted to examine discourse as a system of representation. Similar to Hall's definition of discourse, Foucault describes it as 'a group of statements which provide a language for talking about -a way of representing the knowledge about -a particular topic at a particular historical moment.... Discourse is about the production of

knowledge through language. But ... since all social practices entail meaning. And meanings shape and influence what we do -our conduct -all practices have a discursive aspect' (Foucault, 1972). In other words, discourse is about language and practice and nothing acquires meaning outside of discourse.

Locating discourse within the context of historical development, Foucault moves away from an ahistorical examination of language. This is significant because rather than understanding subject positions as knowable facts, one can instead trace their naming and development through the discourse that produced them and attached to them particular meaning(s) over space and time. Put differently, subjects are 'constituted by all that was said, in all the statements that named it, divided it up, described it, explained it, traced its development, indicated its various correlations, judged it, and possibly gave it speech by articulating, in its name, discourses that were to be taken as its own' (Foucault, 1972). But how does a society determine which discourses get taken up and circulated as truth or fact?

Foucault argued that there is an inextricable link between knowledge and power. First, he argued that not only is knowledge always a form of power but power is implicated in the questions of whether and in what circumstances knowledge is to be applied or not. Knowledge is not an absolute Truth but becomes true through its application in society. What is believed to be known—knowledge—creates the context for when, how, and to whom power gets applied. Knowledge, once applied has real effects that allow that very knowledge to become true. In other words, knowledge presupposes and constitutes power relations. Second, Foucault proposes a new conception of power that rejects the notion that power is always top-down and negative.

Instead, he contends that power circulates and can be productive. While recognizing the dominance present within the state, Foucault argues that everyone in society is entangled within the circulation of power, it permeates every site of social existence. In this sense, power is a productive network that circulates through the whole social body.

Understanding knowledge and power in this manner provides a lens by which we come to understand subject constitution. The body, subject, is produced within discourse according to different discursive formations circulated through a network of power relations. Gender Studies scholar Judith Butler (1988) does similar analysis in her work on gender constitution. She situates her work in the context of the phenomenological distinction between the natural facts of the physical body and the active constitution of the bodily experience. In doing so, Butler reaffirms Foucault's description of the relation between knowledge, power and the body to be one of embodiment or "that through which meaning is performed or enacted (521)." She argues that power does not cease at the moment a subject is constituted but through embodied repetition, a subject is constituted and reconstituted time and time again gaining what she calls, the force of authority.

Much like Butler's contention on gender reconstitution, Miron and Inda argue for the possibility of rearticulating particular racialized subjects. Recalling the three elements of Miron and Inda's theory—naming, iterability, and force of authority—they conclude that "no scheme of racial domination can be a systemic totality predestined to hold racialized subjects in subordinate positions (101)." They contend that there are gaps and fissures that open up during the process of iteration that allows for the performance of normalization to be subverted. Recognizing the possibility of subversion, I argue that the effects of such aberrations will be minimal for blacks. This point I take up in greater

detail later but for now let's look at the example that they follow up with to describe the rearticulatory process. They use the historicity of the term "black" as the example in which they describe and argue that,

"The term black, to the extent as it has historically been associated with pathology and insult has operated as a discursive practice whose effect has been to shame the subject it names. The performative acts through which such shaming interpellations have taken place and authorized varying sets of racial relations have been of necessity repetitions. The idea here is that a performative act of racial shaming and constitution succeeds only insofar as 'that action echoes prior actions, and accumulates the force of authority through the repetition or citation of a prior, set of authoritative practices' (Butler, 1993). This means that the term black has historically derived its force to constitute racial subjects through the repeated invocation by which it has become linked to degradation, pathologization, and scorn...One could argue, then, that the fact that this reiteration is necessary is a sign that the shaming of a subject is never complete, that the shaming of a racial subject is a never-ending process...it means that the racial subject is open to the possibility of resignification, that the term 'black' is open to the prospect of being rearticulated otherwise (101)."

In this example, they argue that the Black Power Movement took the term black from its attachment to a history that linked black with degradation and shame and reconstituted the term as a sign of pride.

While there is so much to unpack within this single example, such as the fact that the term "black" was simultaneously introduced with the word "power" and thus meant

more than just a symbol of pride, I choose here to discuss only the effects associated with the possibility for rearticulation. The ordering of the above example is backwards and results in an illusion of possibilities. The term “black” was used to signify pride in contrast to the other terms used at the time—negro and nigger—which were the commonly used terms that signified degradation and pathology. The goal of Stokley Carmichael and others was to create a new representation within the fissures of iteration by “radically redefining the relationship between blacks and American society (Joseph, 2006, 2).” Unfortunately, the term became appropriated by those in power and reattached to the initial meanings ascribed to the black racial subject.

Hortense Spillers (1987) offers some insight into the lack of impact that rearticulation has for blacks regarding the power to name. She argues in her seminal text, *Mama’s Baby, Papa’s Maybe: An American Grammar*, the right to name for those considered captives in the New World was stripped of them. Not only in terms of literal names, such as the scene in the film “Roots” where Kunta Kinte is forced to recognize his “new name” Toby, but descriptive naming as well. These new names carry with them a particular spacio-temporal context. For those being renamed, a part of them is being erased and potentially lost for generations to come. Even when Malcolm Little changed his name to Malcolm X he was not able to recover that which was lost. Erasure is only one such effect. Distortion is another. Naming provides the power of distortion—an example would be Reagan’s use of the “welfare queen” trope to describe low-income women, particularly black women and women of color. This distortion occurs when the name given triggers particular associations that do not describe that which is named but intends to energize an alternative narrative.

Spillers continues, those names “embedded in bizarre axiological ground, demonstrate a sort of telegraphic coding; they are markers so loaded with mythical prepossession that there is no easy way for the agents buried beneath them to come clean (65).” When these names become a part of the public register, they become signifiers that carry contextualized meanings with every use. The argument here is that those meanings carry with them a particular function. They are not benign but transfer the particular sociohistorical order that has been assigned to them across time. In essence, this meaning never changes tense. It is always considered in present tense. Take Dr. Martin Luther King, Jr. for example, he is currently known as “the dreamer.” This name, this meaning was attached to him following his assassination. The rhetoric from his “I Have a Dream” speech was chosen as his memorialized persona, even though it was not the last speech he ever gave. It became the safe way to ascribe meaning to his life for the American social order. In his final address, King spoke of withdrawal of economic support to “redistribute the pain” and investment into black institutions<sup>6</sup>. Instead, “peace and dreams” was the chosen narrative. MLK, Jr. will forever be known as the dreamer, not the man who advocated a significant disruption to the capitalist system through wealth redistribution.

When naming is understood in tandem with the process of iteration, it becomes more evident that the process of rearticulation for blacks becomes harder to achieve. Using Daniel P. Moynihan’s (1965) use of the phrase “Negro Family<sup>7</sup>,” Spillers contends

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<sup>6</sup> Dr. Martin Luther King, Jr delivered the speech “I’ve Been to the Mountaintop” in Memphis, TN in support of the striking sanitation workers at the Mason Temple on April 3, 1968. A transcript of the speech can be found at: <https://www.afscme.org/about/history/mlk/mountaintop>.

<sup>7</sup> Moynihan was appointed to a position within the U.S. Department of Labor and hired to develop policy for the Johnson administration for its “War on Poverty.” The 1965 report on the status of the Negro Family was part of this work. As this report was highly critical of the “matriarchal structure of black culture”, a



that the phrase “borrows its narrative energies from the *grid of associations*, from the *semantic and iconic folds buried deep in the collective past*, that come to surround and signify the captive person (69).” Memory and rememory are two of those “iconic folds.” What one remembers becomes part of their narrative, aspects of the stories passed down to future generations. Therefore, memory and rememory are an integral part of the naming and iteration processes, as well as, social configurations across time. Memories, however, do not belong simply to those who have experienced certain people, places, events, moments, etc. Memories become visuals of stories that are passed down from generation to generation. With each and every story that is told, the hearer creates a visual in their mind that allows them to better experience the story. Those visuals become codified, connected to that story, and the hearer then has the capacity to recall those visuals with every remembrance of the story which inspired them. In the passing down of these stories, indices are created in the form of what Saleh-Hanna (2015) calls rememory. The following excerpt from Toni Morrison’s (1987) classic book *Beloved* provides a vivid understanding of the way that rememory creates indices across and through time:

*Oh, yes. Oh yes, yes, yes. Someday you be walking down the road and you hear something or see something going on. So clear. And you think it’s you thinking it up. A thought picture. But no. It’s when you bump into a rememory that belongs to somebody else. Where I was before I came here, that place is real. It’s never going away. Even if the whole farm – every tree and grass blade dies. The picture is still there and what’s more, if you go there – you who never was there – if you*

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discourse analysis of this report may offer insight into the role that language has played in constituting the contemporary subject position of black women.

*go there and stand in the place where it was, it will happen again; it will be there for you, waiting for you. So Denver, you can't never go there. Never. Because even though it's all over – over and done with – it's going to always be there waiting for you. That's how come I had to get all my children out. No matter what (36).*

In *Beloved*, Morrison presents 'rememory' as structural remembrance transcending individual or time-segregated acts of remembrance. Reflecting on her experiences of enslavement Sethe explains:

*It's so hard for me to believe in it [time]. Some things go. Pass on. Some things just stay. I used to think it was my rememory...But it's not... places are still there. If a house burns down, it's gone, but the place the picture of it – stays, and not just in my rememory, but out there, in the world (36).*

In rewriting our conceptions of memory into rememory Morrison invokes the intergenerational nature of structural violence, speaking to institutional and inter-generational memory held within the bodies of enslaved Africans, European slaveholders, settler-colonists and their descendants. When Orlando Patterson (1982) declared racial thinking constructs race upon “the assumption of innate differences based on real or imagined physical or other characteristics” he inspired us to consider how constructions of difference between races produces a likeness necessitating homogeneity within racial categories, giving rise to the stereotyping of blackness imagined by white culture (176). That homogeneity of the stereotype is a repeating and ghosted process whereby white rememory articulates across time the violent constructions of blackness implanted by their slaveholding and colonizing ancestors. The power that naming has had over time to

produce and reiterate the violent constructions of blackness created during the antebellum and postbellum periods has overwhelmed attempts at rearticulation of black subjecthood.

While Miron and Inda recognize that the meanings created within the fissures can never fully be controlled and will always remain in tension with the dominant meanings that they contest, they still conclude that performativity leaves open the possibility for alternative modalities of power even if it is “the labor of forging a future from resources inevitably impure (Butler, 1993b, 241).” They argue, as a result of the reiterative process, that the racial subject is open to being constituted otherwise.

Unfortunately, the role that supplementation and representation plays in the reiterative process impacts the capacity for rearticulation of racialized performatives to have any significant effects. This is particularly true for blacks. Recalling Derrida’s structure of absence theory<sup>8</sup>, supplementation and representation act as markers. For racialized performatives, these markers aren’t linguistic markers but corporeal ones. At the site where discourse and embodiment meet, performative speech acts take on a corporeal dimension that alters the functionality of race as a performative speech act. In chapter five of his text, *Black Skin, White Masks* (1967), Frantz Fanon describes the racial corporeal schema as the process of epidermalization that makes blackness a marker, not just a signifier, of evil, bad, to be feared, less than, etc. It is this markedness that attaches meaning to black bodies as factual, not perceptual. These markers have become social inscriptions that undervalue, overdetermine, or make invisible those that are marked by the “fact of the black body.”

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<sup>8</sup> See page 16.

Similarly, Jennifer Eberhardt et al. (2004) examined visual and conceptual coding and the influence of stereotypic associations. Their objective was to determine the extent of visual associations between blackness and crime. They found that black faces influence participants' ability to spontaneously detect degraded images of crime relevant objects such as guns. The study also revealed that abstract concepts, such as crime, induce attentional biases toward black male faces. Finally, the results showed that these processing biases may be related to the degree to which a social group member is physically representative of the social group. For example, when officers were given no information other than a face, race played a significant role in how judgments of criminality were made.

That "face of crime," according to Oliver et al. (2004) had a greater likelihood of having more Afrocentric features. Their study examined news readers' memories of race-related facial features of an individual pictured in the news. Participants were presented with a series of news stories, including one of four different versions of the news story of interest: nonstereotyped, stereotyped/noncrime, nonviolent crime, violent crime. Each of the four versions contained a photograph of an individual who was the focus of the story, with the same photograph appearing across news conditions. Results of the study showed that viewers' responses maintained if not reinforced stereotypes of blacks as criminal. This is partially due to the media's contribution to the prototype of the "black criminal" by providing viewers with a host of examples of crime and particularly salient, violent crime, in which blacks are more likely than whites to be portrayed as criminal (Dixon & Linz, 2000a, 2000b; Entman & Rojecki, 2000; Oliver 1994).

Thus, the corporeal dimension is an important aspect to the functioning of racialized performatives that voids the possibility for alternative modalities of power for blacks, at least in the sense articulated by Miron and Inda. In fact, instead of the possibility of transformation being found within the gaps and fissures, I contend that the process of reiteration masks and obscures even further the constituting elements of antiblackness, as well as, represents an illusion of agency via racial rearticulation that has become dangerous for those identified as black via corporeality. Saidiya Hartman (1997) argued that, “representations of [slave] agency have intensified the effects of subjugation and dispossession in the guise of will and denied the abject and ambivalent personhood of the captive in the facile and spurious attempt to incorporate the slave into the ethereal realms of the normative subject through demonstrations of his content and/or autonomy (53).” It is this attempt at incorporation via the illusion of agency in contrast with the effects of the corporeal dimension that create what will later be discussed as the performative double-speak. However, in order to fully capture the notion of performative double-speak, there must first be a deeper dive into the history of blacks/blackness in the United States.

In their work on performative speech acts and queer theory, Eve Sedgwick (2003) concluded chapter two of *Touching Feeling* by stating, “Specifically, I have been supposing that during the time of slavery, and for an uncircumscribable time after its abolition probably extending beyond the present, the cluster of ostentatiously potent linguistic acts that have been grouped loosely, since J. L. Austin, under the rubric of “performatives” must be understood continuously in relation to the exemplary instance of [chattel] slavery.” This period of history is a necessary starting point because it

provides the context for understanding the unique position that blacks occupy when examining the impact and potential for rearticulation across racialized subject positions.

The next chapter will provide a theoretical foundation that tethers slavery, not as a historical moment but an interpretive lens, to the following discourse analysis. Using antiblackness as the theoretical framework for the discourse analysis is a critical step in engaging contemporary strains of Black Studies, namely Afropessimism. This dissertation is not solely an exercise in linguistic analysis but is intended to expand the range of scholarship that attends to the role that language plays in the creation and maintenance of the structure of antiblackness.

## CHAPTER TWO: THEORY

### Black Lives Matter, Distinctly: A Theory of Antiblackness

In George Yancey's 2003 text, *Who Is White?: Latinos, Asians, and the New Black/NonBlack Divide*, he provides justification for a significant paradigmatic shift from a white/nonwhite binary view of race in the United States to a black/nonblack binary. Through a historical examination of nonblack assimilation into the category of white and what Yancey calls the African American alienation thesis, he provides the foundation for understanding the uniqueness that befalls blacks in the U. S. Yancey begins by challenging the oft heard statement that in the near future, whites will become a numerical racial minority within the United States. The time frame of when this demographic shift is to take place is not at question, but instead he contends that the parameters surrounding who is considered "white" is in constant flux. The flip side of Yancey's argument, in many ways the most important to this project, is the contention that African Americans experience a degree of alienation unlike that of other racial groups.

The transformation of nonblack minorities into the mainstream is occurring via the capacity to assimilate and adopt the views of the dominant on issues of race including, perceptions, social attitudes, political issues, social experiences, and social interests. Yancey utilized Milton Gordon's 1964 definition of assimilation to include

structural, marital, civic and identificational. Simultaneously, Yancey posits an “alienation thesis” which asserts that African Americans suffered from a qualitatively different level of alienation than did the two other major racial minority groups in American society: Latino and Asian Americans. The goal of his study was to assess whether nonblack racial and ethnic groups can undergo the same type of assimilation as European groups. He did this by conducting an empirical investigation, using the 1999-2000 Survey of American Attitudes and Friendships (LSAF), of the degree of structural, marital, and identificational assimilation experienced by Latino, Asian, and African Americans. While there are certainly more immigrant minority groups in the United States, Yancey has selected these groups because they have been in this country for more than 3 generations which provides a better analysis of assimilative practices.

On social attitudes of racialized issues, Yancey found that nonblack minorities are at least as likely to match the attitudes of European Americans, supporting the idea of identificational assimilation. Identificational assimilation is considered by Yancey to be the most significant of the 4 types of assimilation to break down nonblack racial minority identities. Additionally, the data provides evidence that there seems to be a consensus among American racial groups that African Americans occupy the bottom social position in society. Furthermore, the data regarding marital and residential segregation shows that the rejection of African Americans, rather than the acceptance of European Americans, is the best explanation of social distance in the United States. These findings provide support for Yancey’s theory of nonblack assimilation, as well as, his “alienation thesis”—the foundational justifications for the black/nonblack paradigmatic shift.



Therefore, this paradigmatic binary shift to black/nonblack alters, in meaningful ways, the analytic lens by which we examine the positionality of blacks within U.S. racial dynamics. As Yancey stated, “these twin processes of nonblack assimilation and black separation will move the nonblack and black minorities in opposing directions—reinforcing the racial divide in the United States (4).” Thus, it is imperative that antiblackness, rather than race, be used as the analytical lens by which the following discourse analysis is to be performed. Antiblackness is a theory developed by Afropessimists who are critical theorists that have studied philosophies like Marxism and Psychoanalysis but contend that, independent of all other isms, a negrophobic genesis structures all institutional and private life, domestically and globally. Negrophobia is characterized by a fear, hatred, or extreme aversion to black people and black culture worldwide (Brooks, 2012). Therefore, antiblackness will provide a more nuanced and distinct understanding of the relationship between racial performatives and blackness, as well as, offering a critical perspective necessary to determine the capacity for the rearticulation of blackness. The rest of this chapter will provide a detailed overview of some of the leading Afropessimist scholars and highlight their work on antiblackness in order to set the theoretical foundation for interpreting the discourse of the Dred Scott decision.

*Conflict vs. Antagonism: a theory of power*

The theory of antiblackness provides an in-depth analysis of the Master-Slave relationship, a relationship defined by antagonisms rather than conflict. Comparative analysis between the Jewish Holocaust, the Middle Passage, and Native Genocide explored by Afropessimists makes clear this distinction. In response to scholars’

attempts to articulate the Holocaust as “unprecedented,” Frank Wilderson (2010) in his text, *Red, White and Black: Cinema and the Structure of U.S. Antagonisms*, reminds readers of the Middle Passage and Native American genocide as prior moments of a normal pattern of “unprecedented” suffering. He extends his argument further by contending that antiblackness is, in fact, not analogous to any other form of oppression. Wilderson challenges philosophers like Jean-Paul Sartre (1948) and Giorgio Agamben (1999), whose work positions the German/Jewish relation as the essential condition of structural antagonism, by following the work of Frantz Fanon (1967) who describes the Holocaust as “little family quarrels (115).” Fanon maintains that the difference between the position of the Jew and that of the Black is one of appearance, a racial corporeal schema. Being white prevents the position of the Jew from being overdetermined. Instead, “his actions, his behavior are the final determinant (115).” In this sense, the position of whiteness allows for the capacity of self-determination. In response to Sartre, Fanon makes clear that “the white man is not only The Other but also the master, whether real or imaginary (138).” The Middle Passage, on the other hand, functioned, as described by Wilderson, as a metaphysical holocaust that “wiped out [African] metaphysics, [African] customs and sources on which they are based (38).” Afropessimists argue that instead of power relations based on conflict—or little family quarrels—the power dynamics, as far as blackness is concerned, is one of an antagonistic nature where the relationship is defined through a relation of negation. Rinaldo Walcott (2021) describes this relationship through the use of the term black life-forms<sup>9</sup>. He argues

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<sup>9</sup> Walcott sees black life forms as having two perspectives, however. He does not contend that black life forms exist solely in the space of social death as socially dead, but it is here that also becomes a site of life-making. He further elaborates that black life forms provide a means by which to see other ways of being human.

that “Euro-American definitions and practices of the human offer black life no conceptual or actual space within the terrain of the human (9).” It is here that the black/nonblack paradigmatic shift becomes significant because the way in which we have come to know what is whiteness (the norm, humanity) is in contrast to what has been defined as blackness. Fanon makes a case for this in chapter five, *The Fact of Blackness*, when he writes, “The Jew belongs to the race of those who since the beginning of time have never known cannibalism. What an idea, to eat one’s father! Simple enough one has only not to be a nigger (115).” It is this relation of negation that structures the world and creates an ontological uncertainty for blackness. This uncertainty is derived from the idea that the corporeal schema used to define blackness is not based on essential characteristics but due to the historico-racial schema sketched by the other. Black by itself signifies nothing. It is an empty category that has been overdetermined by the historicity of blackness, by a thousand details, anecdotes, stories created by forces external to blacks themselves. In this way, blacks have become fixed, trapped, unable to articulate themselves beyond that schema; prevented from accessing autonomy, agency; locked out of that which defines Humanness, at least to the rest of the world. Here, Fanon makes distinct social oppression and structural suffering where social oppression is defined by alienation and exploitation while structural suffering is defined by accumulation and fungibility. This is further articulated by Wilderson when he asserts that, “the violence that turns the African into a thing is without analog because it does not simply oppress the Black through tactile and empirical technologies of oppression, like the ‘little family quarrels’ (38).” Attempts to conflate traditional technologies of oppression with structural suffering is what Wilderson calls the “ruse of analogy,” which he argues,

erroneously locates blacks in the world and mystifies and erases blackness's grammar of suffering defined by accumulation and fungibility.

Fungibility is to be understood as the foundational logic of the presumed ontology of antiblackness rather than an examination of the lived experiences of blacks. Spillers (1987) and Saidiya Hartman (1997) have maintained that the catastrophe of the transatlantic slave trade is singular in the systemic reduction of human lives into commodities and capital. This systemic reduction occurred through mathematical calculations that transformed blacks into cargo. Spillers (2003) makes note of these transformational calculations via a Captain's ledger from a slave ship: "every man slave is to be allowed six feet by one foot four inches for room, every woman five feet ten by one foot four, every boy five feet by one foot two, and every girl four feet six by one foot (214)." Slaves were abstracted into the metrics of property and capital as measurable units of cargo. This notion of abstraction of the human body to serve the needs of the political and libidinal economy defines the fungibility of blackness. Economically, fungibility refers to those goods and products that are substitutable for one another. Shannon Winnubst (2020) reasons that "to be fungible, in both its economic and legal meanings, is to have all distinctive human characteristics and content hollowed out (104)." In other words, all that makes one a human, an individual, is no longer recognized. Instead, slaves were reduced to a space of objecthood and recognized solely as cargo. Winnubst elaborates further by contending that "applying this logic of fungibility to human bodies, expands the scope of economic ontology beyond the non-human and the inanimate as viable objects of exchange...Fungibility exerts an ontological force that...renders blackness uncompromisingly exterior to the category of

the human (105).” This understanding of blackness frames the interpretation of the Dred Scott decision and how it functions as a performative speech act that names blacks as fungible (the speech) by identifying blacks as property via slaveness while simultaneously codifying this subject position within the law (the act). In this sense, blacks have become ontologically trapped in the space of the object unable to move, transform, be remedied or improved; unable to become human. As such, some Afropessimists contend that this ontology of object-hood incapacitates any possibility of black subjectivity, which would challenge Miron and Inda’s notions of rearticulation for blacks (Wilderson, 2010; Sexton, 2008; and Warren, 2018).

The logic of fungibility meaningfully impacts how conflictual power relations and antagonistic power relations function and are to be understood. Implied in Miron and Inda’s postulate of race as a performative speech act is a Foucauldian theory of power relations. While in agreeance with Foucault’s notion of discursive formation, divergence arises in that Foucault assumes that all forms of power are normatively equivalent. He argues that, “There cannot be relations of power unless subjects are free. If one were completely at the disposition of the other and became his thing, an object on which he can exercise an infinite and unlimited violence, there would not be relations of power. In order to exercise relations of power, there must be on both sides at least a certain form of liberty (Bernauer and Rasmussen, 1994, 12)<sup>10</sup>.” However, what is obvious here is the lack of consideration of the position of the slave who, through the logic of fungibility, was reduced to the status of object and endured infinite and unlimited violence.

According to Hartman (1997), “slavery is characterized by direct and simple forms of

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<sup>10</sup> This is a quote from an interview with Foucault that was translated by J.D. Guathier, S.J. called “The Ethic of Care for the Self as a Practice of Freedom.”

domination, the brutal asymmetry of power, the regular exercise of violence, and the denial of liberty that make it difficult, if not impossible, to direct one's own conduct, let alone the conduct of others (55).” As such, the position of the Black, as slave/object, is presupposed by three constituent elements that undergird the particular grammar of suffering in which they experience: gratuitous violence, natal alienation, and general dishonor (Patterson, 1982). Gratuitous violence is characterized as violence that is not contingent—triggered by some event—but violence that is open-ended, without reason or constraint. Hartman (1997) describes gratuitous violence as an extension of the Master's prerogative. Natal alienation is the lack of relational capacity, where this lack is not the direct result of being detached from land, lineage and customs during the Middle Passage but is articulated as an essence of blackness. Natal alienation can best be understood by the idea that the “slave had no socially recognized existence outside of their master...alienated from all rights or claims of birth, he ceased to belong in their own right to any legitimate social order (Patterson, 1982, 5).” Finally, general dishonor is understood as being considered dishonorable prior to any transgression being committed, as “the slave had no power, no independent social existence, hence no public worth (Patterson, 1982, 10).”

Understanding the three constituent elements of blacks' grammar of suffering, Foucault doesn't just miss the mark, instead the Foucauldian theory of power contributes to the erasure of the type of racist violence that blacks endure. In *Discipline and Punishment*, Foucault ignores the corporeal schema that undergirds racist violence which results in him analyzing policing with a focus on behavior rather than the identification of criminality based on the fact of blackness itself. Joy James (1996) makes note of this

when she argues, “Foucault writes of social fear and policing that are reflected in ‘binary division and branding,’ which produces the polarized social entities of the ‘mad/sane; dangerous/harmless; normal/abnormal’; this ‘coercive assignment’ of labeling, categorizing, and identifying places the individual under ‘constant surveillance.’ Foucault, however, makes no mention of sexual and racial binary oppositions to designate social inferiority and deviancy as biologically inscribed on the bodies of nonmales or nonwhites. Therefore, when he reports in *Discipline and Punish* that ‘the mechanisms of power’ are organized ‘around the abnormal individual, to brand him and to alter him,’ racial and sexual issues are evaded (26).” It is this notion of what James call the unspecified body that justifies and maintains the ruse of analogy while obscuring the specificity of violence borne by blacks.

*Hartman’s Paradox: From Slavery to Freedom*

The question remains, how do we get from the position of the slave to contemporary understandings of antiblack violence? What makes Dred Scott relevant given all of the constitutional and legislative changes that have occurred since the era of slavery? The ruse of analogy between conflict and antagonism conceals the paradox between slavery and freedom. In her chapter, “Burdened Individuality of Freedom” in *Scenes of Subjection*, Hartman begins her analysis of this paradox by examining the relationship between slavery and freedom. Freedom, she argues, gained authority in relation to slavery and slavery extended itself in the limitations and subjection of freedom (115). The entanglement of slavery and freedom led to an illusion of a definitive temporal separation of the two marked by what Hartman calls the “nonevent of emancipation (116).” Even more than an illusion, Emancipation marked the paradox between slavery and freedom which ultimately confounded autonomy with property. She

continues by maintaining that questions of sovereignty, right and power were inevitably framed via the relation of negation because dominion and domination of slavery were fundamentally defined by black subjection. As such “emancipatory discourses of rights, liberty and equality instigate, transmit and effect forms of racial domination while liberal narratives of individuality idealized mechanisms of domination and discipline (116).”

Hartman’s goal was to grapple with the changes wrought in the social fabric after the abolition of slavery. In doing so, she examined pedagogical handbooks designed to aid freed people in the transition from slavery to freedom, the itineracy of the freed and other “exorbitant” practices, agricultural reports concerned with the productivity of free labor, political debate on the Reconstruction Amendments, and legal cases—which included narratives of slavery and freedom. Hartman’s position was that the discrepant bestowal of emancipation can be found in the discourses of historical documents that deliberate the origins of slavery and the birth of the republic, the place of slavery in the Constitution, the substance of citizenship and the lineaments of black freedom (116).

This is significant because it highlights the importance of examining such an old text—the Dred Scott decision—by exposing the interconnectedness of historical discourses on contemporary manifestations of black positionality within society. While the Dred Scott decision happened pre-Emancipation, the paradox between slavery and freedom hinges on, what I have identified as, the process of naming that occurred within that document. Hartman describes the nascent individualism of emancipation as the burdened individuality that consumes black subjectivity because legal precedents prior to emancipation, such as Dred Scott, made blacks’ rights and black citizenship untenable, if not impossible (117). This ultimately produced a double-speak of freedom for nonblacks



simultaneously securing the incoherence of blackness post-Emancipation. The double-speak framed black subjectivity via contradictory positionalities such as: free from slavery and free of resources, emancipated and subordinated, self-possessed and indebted, equal and inferior, liberated and encumbered, sovereign and dominated, citizen and subject.

As mentioned above, Hartman (1997) describes the abolition of slavery as the “nonevent of emancipation.” This research takes a step back to ask the question, how did emancipation become a nonevent? Hartman contends that “slavery undergirded the rhetoric of the republic and equality defined so as to sanction subordination and segregation (116).” I argue that one of the pivotal moments in that discursive history came with the decision—more specifically, the majority opinion—given in the Dred Scott case. This case discursively made blackness synonymous with slaveness, thus property and co-constitutive with personhood. While there were certainly significant legal ramifications of this decision, the focus here is the discursive implications on blackness. Therefore, the theory of antiblackness will be used to interpret the discursive formation of Judge Taney’s majority opinion.

The significance of using antiblackness as a theoretical intervention is to provide a lens through which to understand the following analysis. This analysis is not just another example of applied research concerning performative speech acts relative to race. Instead, it provides a reconceptualization of the manner in which performatives are interpreted across race. Put another way, performative speech acts can have double meaning that on the one hand enables white innocence while simultaneously performing antiblack violence. It is at the level of double-speak where gratuitous violence becomes

obscured. A discourse analysis set within the proper historical context can expose the discursive structures used to constitute and maintain that violence.

Examples of this form of double speak can be found in various places throughout history. One of the most prominent examples of this would be the United States Constitution. As constitutional rights are generally understood as performative utterances, for blacks, this is not necessarily the case because the *conditions* under which the original utterances were written were not *appropriate*. The constitution was written at a time where “man/men” was universally assumed to mean land owning white men. As such, “the promise” of protected rights was granted only to the class of “men” it was intended to serve. Thus, under the guise of this colonial history it becomes difficult to assess the “appropriate conditions” of performative utterances universally. As such, one of the biggest conundrums across racially designated categories in regards to performative language is modality. There is a resulting disconnect between how something happens versus how it is experienced, interpreted, or understood across differential groups. The universal assumption among whites, in the contemporary, of sameness with regards to American citizenship creates conflicting assessments of what constitutes “appropriate conditions.” This disconnect results in a “felicitous performative” for some and an “infelicitous performative” for others. Another example would be for a police officer to vow to serve and protect citizens of the United States. This performative speech act, the vow, is complicated by the latter portion “citizens of the United States” in cases where said police officer assumes that blacks are not humans,

thus citizens (Wynter, 2015<sup>11</sup>). Unfortunately, citizenship—and humanness for that matter—is universally assumed, not questioned. Therefore, the vow is also assumed to be a happy functioning performative to all who assume the universality of United States citizenship. While J.L. Austin deals with instances of mutual exclusivity in Lecture II, he does not speak to the extremely important instances of contradiction that produce the effect of double-speak and are inevitable outcomes within structurally antagonistic relationships. These outcomes are inevitable because antagonistic relationships dictate that the opposing positions are inherently in contradiction to one another. Situating this analysis within the particular frame of antiblackness opens the possibility to further explore the contradictory effects of performatives via double-speak, effects that are significant to understanding black social and political life.

Additionally, it is at the level of double-speak where blackness maintains its incoherence. It becomes impossible for nonblacks to conceive of the meaning derived from particular discursive moments for blacks because they are differentially situated in opposition to one another through the entanglements of discourse and history. For blacks, double-speak makes illusory the power to choose. Double-speak creates the situation where refusal to “reiterate” or (re)produce the Master’s text reaffirms the pathological representations of blackness, thus producing a damned if you do, damned if you don’t non-choice for black action. In other words, you either assimilate, without success, or you refuse assimilation and become the example of black pathology/deviance. Think of all the instances where blacks were killed by police while not resisting, while in

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<sup>11</sup> Wynter wrote a piece called, No Human Involved, in which she identifies the use of the acronym N.H.I. by the Los Angeles Police Department. The acronym was routinely used in any case involving the breach of the rights of young black males who belonged to the jobless category of the inner city ghettos.

compliance. These are unsuccessful attempts to assimilate, to follow the moral order. Now think of all of the instances where blacks justifiably questioned the authority of police and were killed. The narratives following those incidents were “if they would have just complied with the police, they would not have been killed.” These examples are the results of the entanglements of discourse and history that must be unpacked in order to mitigate further reiteration of those violent constructions and to highlight the hidden functionality of discursive associations that have traversed slavery and freedom.

There are obvious drawbacks to using this theory. As noted by black feminist scholar, Tiffany King (2016), “there has been debate within Black Studies about whether or not theories of black fungibility are too chained to the hold of the (slave) ship and too death bound to do any good for theorizing and more importantly living black life (1024).” This debate is largely described by Stephen Marshall (2012) as tensions between theorists of “social death” (Wilderson, 2010 and Sexton, 2010) versus those who theorize “social life” (Moten, 2003 & 2008). This tension that exists between social death and social life can partially be explained by the difficult position that black race scholars find themselves in within academia. Ronald Judy (1993) explains, “the effect of delineating a peculiar African American historiography seems menacing and unbearable to the lone black scholar; and so, the black scholar labors to adjust the structure of his or her own nonrecuperable negativity in order to tell a story of an emerging subjectivity’s triumphant struggle to discover its identity and thereby ascend from the abject muteness of objectivity into productive subjectivity.” Having found myself often struggle with the tension created by the nihilistic feelings I have as a race scholar with the hope that I must maintain in order to survive, I have concluded that it is not necessary in this instance to

resolve that tension but to work within it<sup>12</sup>. Ultimately, I find using antiblackness as an analytic necessary to reveal the manner in which particular discursive formations produce this precarious position for black race scholars.

Furthermore, there are limitations to how this theory gets applied in this instance. While there is significant and important work from Afropessimist theorists on the role that gender and sexuality (Spillers, 1987; Hartman, 1997; King, 2016; Jackson, 2018; Warren, 2018) play within antiblackness, the specificity of that work extends beyond the scope of this particular project. This is also true of the relationship between antiblackness and ability studies (Bruce, 2021). It is not the intent here to ignore their theoretical contributions<sup>13</sup> but instead, this work seeks to lay the framework for how to situate those discussions in an examination of historical discourse as it relates to antiblackness, gender, sexuality, different abilities and performative speech acts. For example, a specific analysis of the discourse used in the *Missouri v Celia*, 1855 case

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<sup>12</sup> While I don't intend to resolve this tension here, I believe it is important to make clear how I understand social life and social death. It would appear in this chapter that I take a stance in favor of social death but that would be an inaccurate assumption. Here, I highlight antiblackness as a structural analytic only. As a structural analytic, antiblackness is understood as the mechanism that structures black life externally. Antiblackness becomes the mechanism by which the world relates to blackness. This however, does not completely and fully explain how black life exists within the world. As such, I would caution scholars from using antiblackness beyond its use as a structural analytic. I would argue that social life and social death operate on different registers, different conceptual planes, if you will. On the one hand, antiblackness positions and repositions blackness into a position void of historical movement. Repositions is the key word here, because on the other hand, blackness is forever moving. Blackness finds alternate conceptual spaces to move into in order to produce and reproduce social life. One would have to think of the relationship between social life and social death beyond the traditional confines of linear progression in order to understand the value in social life as it relates to social death. Therefore, working within the tension between social life and social death means that I find energy in the spaces of social life in order to continue the work of exposing the mechanics that produce the zones of social death.

<sup>13</sup> The theoretical importance of the work on antiblackness, gender, sexuality and ability studies is critically important because it becomes easy to flatten blackness and to conclude that all people that exist as part of the category of blackness are impacted in the same way, which often leads to intracommunal violence. The tendency towards the flattening of blackness misses the important textures that exist within blackness and lead to the reification of antiblack structural positions. Sexism, homophobia, transphobia and ableism within black communities occur because we so often take up the narratives of antiblackness in our attempts reiterate a "clean and pure" version of blackness, a version that is not real nor is it a possibility.

could provide meaningful contributions to the scholarship on gender, discourse, and antiblackness. Additionally, there exists an interplay between antiblackness and settler colonialism that is not explored in great depth in this work<sup>14</sup>.

One of the difficulties in operationalizing this theory is the leap from the discursive analysis of a historical text to the implications that it has on the contemporary moment. However, it is the presumed temporal and spacial distance that conceals the structural cohesion from slavery to now<sup>15</sup>. It is imperative that we, as academics, find all of the ways to connect those dots if we ever hope to alter structural antiblackness in any significant way. This dissertation attempts to bridge the gap between Linguistic Studies and Black Studies, particularly Afropessimism, in order to uncover a rhetorical moment in discursive history that coheres slavery to the modern world.

Finally, there is the inability to universalize the conclusions of this analysis across racial categories. However, this is the point. The attempts to universalize often obscure vital findings within the particular. It is not the goal of this research to provide a framework for “people of color” as it relates to the discussion of race and performative speech acts. Instead, this research seeks to unearth discursive practices that continuously allows violence to position and reposition blacks, preventing historical movement.

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<sup>14</sup> Wilderson (2010) explores this relationship in greater detail in *Red, White & Black*. Also see Tiffany King’s (2016) work on *Plantation Landscapes*.

<sup>15</sup> See the work by John Murillo III (2016) *Quantum Blackanics: Untimely Blackness and Black Literature out of Nowhere* for a more thorough reading on the relationship between antiblackness, time and space from the perspective of theoretical physics.

## CHAPTER THREE: METHODS

### A Discourse Analysis

#### *Scott v. Emerson (1852)*

Prior to explaining the methodological steps taken in order to conduct the discourse analysis, it is important to provide a synopsis of the Dred Scott case itself. The initial petition to request permission to bring suit against Irene Emerson in order to establish the right to freedom for Scott and his wife Harriett was filed on April 6, 1846 in the circuit court of St. Louis. This petition summarized the circumstances of their residence on free soil. The petition was granted and on the same day the Scott's filed separate declarations initiating actions of trespass for assault and false imprisonment. However, prior to determining the outcome of the suits filed by the Scotts, the validity of their claims of free personhood had to be determined. If it was decided that they were slaves, the alleged actions of the defendant would be considered legal rights of the slaveowner. If they were indeed free persons, then the alleged actions would be considered a crime.

On June 30, 1847, the jury decided in favor of the defendant, Mrs. Emerson. However, the courts granted the Scott's motion for a new trial which did not begin until January 12, 1850. This time, the court ruled in favor of the Scotts<sup>16</sup>, making them

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<sup>16</sup> The precedent for this decision was *Rachel v Walker*, 1836.

nominally free. Mrs. Emerson was then granted a new trial at the state supreme court and briefs were filed in March of 1850. Unfortunately, on March 22, 1852 amidst the sectional tension over the institution of slavery, the Missouri Supreme Court reversed the decision of the lower courts determining that the Scott's were still legal slaves and that they should have sued for their freedom while they lived in the free state.

In 1853, Dred Scott acquired new legal counsel and began a new suit for freedom in a federal circuit court after allegedly being sold to Emerson's brother, John Sandford. The new suit was filed under the diverse citizenship clause. Sandford sought dismissal of the case on the grounds of legal ownership of the Scotts. A judge upheld that Scott was indeed a citizen of Missouri as defined based on residence and legal capacity to own property. The judge did not, however, rule on the question of whether or not free blacks were considered citizens (Fehrenbacher, 1981)<sup>17</sup>. On May 15, 1854 the case went to trial and the jury returned a verdict in favor of Sandford. Scott's attorney filed an appeal to the Supreme Court and the record for *Scott v. Sandford* reached the Supreme Court on December 30, 1854.

#### *Scott v. Sandford (1857)*

Argument before the U.S. Supreme Court in *Scott v. Sandford* began on February 11, 1856. Scott's attorney, Montgomery Blair, filed a brief that argued for Scott's freedom and defended Negroes' right to sue in court on the grounds of citizenship. The defense put forth a case that argued that Negroes were, in fact, not citizens and forwarded an attack on the constitutionality of the Missouri Compromise restriction. The Court was divided on the question of the Negro right to sue and whether or not the court had the

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<sup>17</sup> Judge Robert Wells chose only to interpret the diverse-citizenship clause in Article Three, Section Two of the Constitution.



authority to review such an issue. As such, the Court ordered the case to be reargued in order to address these two questions. Re-argument began on December 15, 1856 following the highly controversial election of Democratic President James Buchanan. Blair focused his arguments on the question of citizenship while the defense focused their arguments on the question of jurisdiction. This line of argumentation made it the first time that the constitutionality of the Missouri Compromise came before the Supreme Court. The decision handed down by the Supreme Court of the United States in the Dred Scott v. Sandford case on March 6, 1857 ultimately concluded that: the Supreme Court had jurisdiction to review the case, Negroes were not citizens of the United States, Scott was a slave, the Missouri Compromise was unconstitutional, Missouri had the authority under the doctrine of reversion to uphold Scott's status as a slave upon his return to Missouri from Illinois, and the circuit court of Missouri must dismiss the case on the grounds of jurisdiction.

Each of these decisions was not arrived at in a vacuum. There were significant political debates that were occurring that influenced the progression of the Dred Scott case over time. Additionally, the people involved in the case such as lawyers, judges, political appointees, etc. were in constant flux. All of this mattered in determining what was deemed central to the case and important factors in how the case would proceed. According to Don Fehrenbacher (1981), there were three principal issues that Judge Roger Taney dealt with in his final written opinion: 1) the black race generally and free blacks in particular (citizenship); 2) the institution of slavery; and 3) the territorial system. Therefore, it is imperative to put the text of the majority opinion in conversation with archival documents that explore these three particular issues. The specific

documents referenced in the majority opinion include: the slave trade clause, the commerce clause, the privileges and immunities clause, the fugitive slave clause (thus the Fugitive Slave Act), the property/territory clause and the provision for admission of new states<sup>18</sup>. Additionally, and perhaps the most significant influence in the Dred Scott decision was the dispute over the constitutionality of the Missouri Compromise. Each of these texts and their supporting historical documents provide context for some of the significant constitutional debates that informed the Court's decision in the Scott case.

### *The Significance*

In order to investigate the hypothesis that the majority opinion in the Dred Scott v Sandford case is an antiblack performative speech act, it is important to recall the three foundational elements of a performative speech act theorized by Miron and Ina. The first is the process of naming. Analyzing the United States Supreme Court majority opinion written by Chief Justice Roger B. Taney in the case of *Dred Scott v. Sandford, 1857* as the primary text requires the identification of the descriptive names used to define blackness, in general, and the Scotts in particular. As Foucault (1972) argued, in order to understand a particular subject position, their naming and the meanings attached to those names must be traced back through history.

The second and third elements of a performative speech act are the process of iteration and the force of authority. Both of these elements are inherently present via the nature and role of the United States Supreme Court. The Supreme Court website articulates the role of the Court as “the final arbiter of the law, charged with ensuring the American people the promise of equal justice under the law and, thereby, also functions

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<sup>18</sup> Articles I and IV of the Constitution.

as *guardian* and *interpreter* of the Constitution (supremecourt.gov, 2021).” Linguistic scrutiny is intrinsic to the process of interpretation. The legal determinations, or opinions, of the Supreme Court rely on arguments presented, definitions presented within those arguments, and several layers of interpretation of the language of the laws and procedures. The very nature of the term "opinion" indicates the force of authority that language holds within the law. As such, a discourse analysis that examines the language of the Dred Scott decision is important to understanding the long-term implications set by the decision. The subjective nature of interpretation and the force of authority granted the Supreme Court renders an analysis of this kind significant. Understanding the implications of the precedents set, particularly regarding blacks in the United States, by the Supreme Court is important to provide clarity to the contemporary moment that we find ourselves in. The Dred Scott decision was one of the last precedents set regarding the status of blacks in the United States prior to the abolition of slavery, making it integral to the paradox between slavery and freedom that Hartman (1997) describes in *Scenes of Subjection*.

Additionally, these precedents set by the opinion of the Supreme Court provide the basis for iteration to occur over time. Cornell Law (2020) defines precedent as, referring to a court decision that is considered as authority for deciding subsequent cases involving identical or similar facts, or similar legal issues. Precedent is incorporated into the doctrine of *stare decisis*<sup>19</sup> and requires courts to apply the law in the same manner to cases with the same facts, creating an on-going point of iteration over time. Furthermore, given the force of authority of the Supreme court, precedent extends beyond the legal

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<sup>19</sup> *Stare decisis* is Latin for “to stand by things decided.”

frame of reference and often gets taken up by society in everyday debate and discussion. It is the extralegal ramifications of Supreme Court decisions that endure long after those decisions have been overturned. Thus, in spite of the Civil Rights Act of 1866 and the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments, Judge Taney's words still have the possibility of carrying the force of authority well into the 21<sup>st</sup> century via the process of iteration as taken up by society. Although words and definitions may change over time, the function of the majority opinion has the power to sustain itself through discursive iteration.

The significance in identifying the Dredd Scott decision as a performative speech act is tied to the theory of antiblackness via black accumulation and fungibility. Unfortunately, instances of black fungibility become obscured through what Wilderson (2010) argues is the ruse of analogy. He argues that, the manner in which blacks become accumulated within antiblackness is through "the erroneous location of blacks in the world while mystifying and erasing black suffering (37)." Therefore, the analysis will attempt to unmask that ruse by identifying the specific occurrences within the Dred Scott decision by which the Scotts are humanized versus occurrences by which the Scotts are reduced to objecthood in steps one and three of the analysis.

However, categorizing the Scotts into human and object are only the first steps towards understanding the nature of fungibility within the Dred Scott decision. Chapter three identified three premises for identifying black fungibility. The first is the systematic reduction of human lives into commodities/capital, reducing blacks to an object of exchange (Spillers, 1987; Hartman, 1997). The second is the use of abstraction to serve the needs of the political economy (Spillers, 1987). Winnubst (2020) offered the third and final premise as, having all distinctive characteristics and content hollowed out,

shifting an individual's status to one that is categorically nonhuman. In order to accomplish this, it is necessary to explore the ways that language as a political tool has the power to constitute particular subject positions for political gain. Therefore, the third step of the analysis will interpret the interaction of black subject constitution in conversation with the political context that surrounded the case.

James Paul Gee (2014) states that, “in language, there are important connections among saying (informing), doing (action), and being (identity) (2).”—A large portion of the literature on race and language articulate “being” as identity based, even while recognizing that is not all that there is to being. Pulling identity out and using it as the variable of study misses a lot of nuanced analysis that is important to understanding why particular identity choices are made at any given moment. For example, blacks don't just choose to code switch because identity shifts are inevitable and necessary. Often times (more times than not) code switching for blacks can be the difference between life and death. Therefore, my research seeks to expand the scope of being to include the impact of structural positioning on the manner in which blacks choose to move through the world via their perceived ontological relationship(s) to the world. There are two major reasons for this expansion of scope. First, perceived ontologies<sup>20</sup> underscores how people think about themselves during the process of identity construction. Second, perceived ontologies—specifically perceived black ontologies—has a complex history that has real material implications on how blacks understand and navigate their position in the United

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<sup>20</sup> I use “perceived ontologies” because first, there is no singular ontology (see my discussion on ontology in the *Concluding Thoughts* chapter of this dissertation). Additionally, I say perceived because there is what we think our relationship is to the world based on our experiences and interactions and there is how the world sees us. Reality exists somewhere in between, a combination of those two forces. Lastly, there is often a disconnect between our conscious and subconscious thoughts about who we are and who we project ourselves to be.

States that is not limited to identity alone, be it political or social. Equally important is that using identity as a determining variable in research obscures the manner and extent to which subject positions are created externally and the implications this has on determining one's being. This makes the third step of the analysis crucial to coming to terms with the long-term impact of the Dred Scott decision. More specifically, this portion of the analysis may help to clarify the complexities inherent within the structural antagonism that undergirds our current political system.

### *The Method*

There were three steps in conducting the following discourse analysis. The first step of the analysis was to identify the use of identity markers and their corresponding descriptors. These identity markers were compared/contrasted and analyzed to get a better sense of how these various identities were enacted within the text and how they were depicted independently, as well as, in relation to one another.

The second step identified the use of universal terms and phrases within the text of the majority opinion. These universal terms and phrases were then analyzed to determine the capacity for blacks to assimilate via an inclusion/exclusion framework. This step was integral to assessing the efficacy of the black/nonblack paradigm posited within Yancey's African American Alienation Thesis. The black/nonblack paradigm shifts the analytic lens by which we examine the positionality of blacks within U.S. racial dynamics and undergirds the theory of antiblackness that provided the foundation for step three.

The third and final step was to identify the moments of antiblackness as determined by the tenets of accumulation and fungibility. To accumulate, according to Merriam-Webster Dictionary (2021) means, to gather or pile up especially little by little.

Therefore, this section of the analysis will look for portions of the text that collapse blackness into a singular category. Additionally, the examination of fungibility was guided by the three premises for identifying acts of fungibility as a means for analyzing and assessing the relationship of blacks to the issues of citizenship, the institution of slavery and the territorial system. The first premise, the systematic reduction of human lives into commodities, was measured in two ways: 1) the instances where blacks were identified explicitly as property and 2) the instances where blacks or the Scotts were discussed in any way related to ownership. The second premise, the use of abstraction to serve the needs of the political economy, was interpreted by examining the cases where blacks or the Scotts were discussed in relation to the financial economy, in general, and the Missouri Compromise, specifically. The third premise, having all distinctive human characteristics hollowed out, was interpreted by identifying all of the cases where blacks or the Scotts were categorically denied human characteristics, directly or indirectly.

### *The Limitations*

Despite the desire to be as thorough as possible, limitations in research are inevitable. The very nature of conducting an analysis on a decision from 1857 comes with unavoidable constraints such as the fact that some of the court records in the Dred Scott case have been destroyed or have disappeared. As such, certain context surrounding the case remains obscure. This however, does not diminish the significance of the analysis as the performative speech act can be assessed using the official written decision which has been done here. Additionally, features of discourse extend beyond the scope of what the written word can capture. Therefore, the analysis of static text excludes important extralinguistic features that could prove or disprove some of the conclusions derived at during the analysis. Examples of the extralinguistic features could

include emphasis on words or phrases, expressions, gestures, movements, etc. Next, comparison between the official written decision and the oral decision could provide more context for interpretation. The literature has indicated that there could have been substantial changes to the majority opinion from the time of its oral delivery to the submission of the official written opinion (Fehrenbacher, 1981). Unfortunately, there is no transcript of the oral opinion by which to engage a comparative analysis. The last limitation mentioned above concerns potential questions that could arise regarding the potential effects that the Civil Rights Act of 1866 and the 13<sup>th</sup>-15<sup>th</sup> Amendments have had on the long-term implications of the Dred Scott decision. Admittedly, it is difficult to attribute Judge Taney's speech act to instances of antiblackness in the contemporary without doing a comparative analysis across each of these texts. While it has been argued that Congress ignored Taney's ruling on the power of Congress to regulate slavery in the territories, a comparative analysis could offer insight into the legal force of authority granted to Taney's words over time. However, this level of analysis is beyond the scope of this particular project. What remains important, however, is the significance of the role that naming plays in the Dred Scott decision and that is within the scope of this particular analysis. Recalling Derrida's theory of iteration, performatives only have to have the capacity to be iterable. In that regard, even if legislative acts overturned the Court's decision in Dred Scott, the majority opinion maintains discursive power that exceeds the legal ramifications.



## CHAPTER FOUR: RESULTS

### Black is Slave

The analysis in this dissertation was conducted in three major parts. The first objective was to determine if the majority opinion text could be described as a performative speech act through the process of naming. This was achieved by identifying the identity markers and descriptors within the text. Secondly, an examination of the use of universal terms and phrases was conducted to establish whether the text provided any data in support of or counter to George Yancey's African American alienation thesis. Universal terms and phrases were used as a measure for the assimilative capacity of blacks via an inclusion/exclusion framework. The last aim was to determine if the language within the majority opinion could be interpreted as acts of antiblackness by identifying moments of accumulation and fungibility as defined in the previous theory chapter, as well as determining if the power relations were conflictual—"little family quarrels"—or antagonistic via a relation of negation.

#### *Discursive Representation and the Process of Naming*

Given the Constitution said very little about the content of citizenship (Chambers, 2011), the manner in which citizenship was defined in the Dred Scott case makes this case a defining moment in history for black subject constitution, at least in the United States. Citizenship was defined through the discursive use of identity markers in the first

section of the majority opinion. Therefore, it is necessary to identify those identity markers and analyze the context of their use. Figure 1 provides a list of each identity marker along with the descriptors associated with each identity.

*Figure 1: Identity Markers and Descriptors*

<b>Identity Marker</b>	<b>Descriptors</b>
African	Class of persons, an unfortunate race, imported, subordinate, inferior class of beings, subjugated, emancipated or not, unfit, article of property, enslaved, non-citizens
Slave	African, negro, Black, laborers, article of property, property of the master, non-citizens
Citizen	Member of the political community, people of the United States, political body, sovereign, power holders, conductors of government, constituents, political family, members of the several state communities upon adoption of the Constitution, distinguished, great men, high in literary acquirements, high in their sense of honor, incapable of inconsistency between word and action,
Negro/Black	African, ordinary article of merchandise and traffic, article of property, excluded from civilized government and the family of nations, doomed to slavery, unhappy, separated from white race by indelible marks, a separate class of persons, not “the people,” non-citizens
Alien	Non-citizen yet specifically undefined
European/English	Civilized, enlightened, human, equal, endowed by God
White	A race, European, part of the civilized/enlightened portions of the world, men
Master	Owner, trader, citizen
Inhabitant	Non-citizens in the territories yet specifically undefined

Within the text, nine<sup>21</sup> identity markers were found. Of those nine, four are racial or ethnic identifiers. The other five indicate status identity markers, where status is defined as a position or rank in relation to others (Merriam-Webster Dictionary Online, 2021). There are two unique outliers regarding identity markers that are not specifically

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<sup>21</sup> Black was only used once and it was used interchangeably with negro. Therefore, they are counted together as one of the nine total identity markers. The same is true for European/English.

defined as part of the other seven categories. The first is the identity marker “alien.”

Alien was used twice:

*Each State may still confer them upon an **alien**, or any one it thinks proper, or upon any class or description of persons; yet he would not be a citizen in the sense in which that word is used in the Constitution of the United States, nor entitled to sue as such in one of its courts, nor to the privileges and immunities of a citizen in the other States (U.S. Constitution: A Reader, 2012, p. 486-487).*

*Consequently, no State, since the adoption of the Constitution, can, by naturalizing an **alien**, invest him with the rights and privileges secured to a citizen of a State under the federal government, although, so far as the State alone was concerned, he would undoubtedly be entitled to the rights of a citizen, and clothed with all the rights and immunities which the Constitution and laws of the State attached to that character (U.S. Constitution: A Reader, 2012, p.487).*

The second outlier is “inhabitants” which appeared four times within the text, all in reference to the governance of territories:

*But until that time arrives, it is undoubtedly necessary that some government should be established, in order to organize society, and to protect the **inhabitants** in their persons and property...(U.S. Constitution: A Reader, 2012, p. 497)*

*It was their duty to establish the one that would be best suited for the protection and security of the citizens of the United States and other **inhabitants** who might be authorized to take up their abode there, and that must always depend upon the existing condition of the Territory, as to the number and character of*

*its **inhabitants**, and the situation in the Territory. In some cases a government, consisting of persons appointed by the Federal Government, would best subserve the interests of the Territory, when the **inhabitants** were few and scattered, and new to one another (p. 497).*

Recalling Foucault's (1972) discussion of representation, he argued that subjects are "constituted by all that was said, in all the statements that named it, divided it up, described it, explained it, traced its development, indicated its various correlations, judged it, and possibly gave it speech by articulating, in its name, discourses that were to be taken as its own (32)." Therefore, it is important to note the use of slave(s) in contrast to enslaved. *Slave(s)*, as a noun, was used a total of 29 times, while enslaved was only used once. As a noun, slave(s) represent an identity category—the naming of a subject—rather than the description of a subject's circumstance, as written to describe the condition of the African race:

*"But it is too clear for dispute, that the **enslaved African race** were not intended to be included, and formed no part of the people who framed and adopted this Declaration; (U.S. Constitution: A Reader, 2012, p.489)"*

Representation can also occur via presupposition according to Derrida's Structure of Absence theory as is the case for the use of the phrase "indelible marks." Chief Justice Taney used this phrase to position blacks external to the human family. In his use of the phrase, I expected to see actual descriptors of the "indelible marks" that separated the "unhappy black race" from "the white" but that doesn't happen within the text. Nevertheless, based on Derrida's (1972) Structure of Absence Theory which states that performatives can successfully function despite the fact that certain utterances or aspects

of utterances are not present, it is still possible for the majority opinion to successfully function as a performative speech act without those specific descriptors being present. The descriptors of the indelible marks referenced are presumed as common knowledge based on the racial corporeal schema that had been previously developed, described, defined and attached to slaveness.

Lastly, discourse operates to constitute racial subjects through its material embodiment within institutions (Miron and Inda, 2000). Chief Justice Taney led one of the most authoritative institutions within the United States. The act of presenting the majority opinion can be understood as a material embodiment of the decision arrived at in the Dred Scott case. The discursive choices Taney made to appeal to universals would further cement the idea that the majority opinion was an institutional representation, not the individual choices of each Supreme Court Justice. Taney's use of "we" to refer to the Justices would imply that the entire court was in agreement despite the 7-2 vote. There was no mention of the two dissenters, McClean and Curtis, nor their arguments in opposition to the majority opinion. It is this force of authority that codified the position of blackness within the law. Even though the Constitution granted Congress the authority to decide who can become a citizen of the United States, the federal courts have jurisdiction when citizen-parties are from different states. Therefore, the force of authority laid solely in the hands of the Taney Court on matters of citizenship, slavery and ultimately black subject constitution.

The question remains, does the use of identity markers alone constitute a performative speech act? The answer is no. However, situating the use of those identity markers within the larger discursive framework provides the context of use that would be necessary for

interpreting the particular action performed through the use of identity markers. When examined in the context of a theory of antiblackness, the enactment of these identity markers can be understood anew. The next two sections will break down the language in use as a means of interpreting the nature and extent of black alienation, accumulation and fungibility.

*African American Alienation Thesis*

There are three major universal terms and phrases that are specifically defined in the section of the majority opinion where citizenship is discussed. Those terms/phrases are then presumed throughout the rest of the text using the we/they dichotomy. Those three terms/phrases are: we/they, the people, and public (opinion). Figure 2 situates each term/phrase with the corresponding groupings extracted from the text. One grouping represents those included in the majority, while the other grouping represents those excluded from the majority. While the we/they dichotomy flips who represents the “we” and who represents the “they” at any given point, the contrast between the categories remains the same throughout where blackness is excluded from the majority.

*Figure 2: Universal Terms and Phrases used by Justice Taney*

<b>Universal Terms and Phrases</b>	<b>Included Group(s)</b>	<b>Excluded Group(s)</b>
We/They	Framers of the Constitution, citizens at the time the Constitution was adopted, members of the several state communities, political communities, and political family	That class of persons only whose ancestors were negroes of the African race, imported into this country, and sold and held as slaves and their descendants
We/They	white race	beings of an inferior order
We/They	English people	Africans

We/They	Human	unhappy black race separated by indelible marks
The People	Citizens	slaves, their descendants-free or not
Public (opinion)	Civilized, enlightened portions of the world	“that unfortunate race”

The phrase “public (opinion)” is specifically used only twice but is presumed in five other instances:

1. “...that the negro might justly and lawfully be reduced to slavery for his benefit...This *opinion* was at the time *fixed and universal* in the civilized portion of the white race. It was regarded as an axiom in morals as well as in politics, which *no one* thought of disputing...(U.S. Constitution: A Reader, 2012, p. 488-489).”
2. “The *opinion* thus entertained and acted upon in England was *naturally* impressed upon the colonies they founded on this side of the Atlantic (p. 489).”
3. “But *no one* seems to have doubted the correctness of the prevailing *opinion* of the time (p. 489).”
4. “But it is *too clear for dispute*, that the enslaved African race were not intended to be included [in the whole human family]...(U.S. Constitution: A Reader, 2012, p. 489).”
5. “They [framers of the Declaration of Independence] spoke and acted according to the then established doctrines and principles, and in the ordinary language of the day, and *no one* misunderstood them (U.S. Constitution: A Reader, 2012, p.490).”

Additionally, Justice Taney uses universal terms and phrases such as, “common consent” and “naturalization” to ensure that people understand these words to be not of his own but the socially agreed upon understandings and essential (natural) way things are. This use of discourse to procure a naturalized effect (Derrida, 1972) is necessary for the iteration process but also is integral to explain away things like residential segregation as an effect of blacks just naturally grouping together (Bonilla-Silva, 2014). Common consent also constitutes and maintains societal norms. Blacks are excluded from the category of those whose consent is considered when setting those societal norms. This is, at least, partially indicated by the use of “indelible marks” as an indicator of black exclusion from “God’s human family,” as mentioned in the previous section.

Lastly, other nonwhite racially designated groups were not grouped with blacks/slaves indicated by the explicit statement that “the court must be understood as speaking in this opinion of *that class only* [whose ancestors were negroes of the African race].” Instead, the space for future inclusion remained a possibility for them to be considered citizens beyond the scope of this decision while simultaneously closing off that possibility for ALL blacks.

The discursive use of universal terms and phrases used throughout the text indicate an exclusion of blacks from citizenship. The wording of the text makes explicit black exclusion while simultaneously leaving open the possibility for inclusion of other groups. As Fanon (1967) noted, in order to be considered for citizenship “one has only not to be a nigger (115).” Secondly, the majority of the identity markers used are in the section discussing citizenship status. However, once it had been determined that The Scotts—and ultimately all blacks—were not considered citizens, black was thus reduced to the



identity category of property throughout the remaining two-thirds of the text. From that point forward, unless otherwise specifically defined, property/citizen become implied categories synonymous to black/nonblack. In combination, these two discursive moves lay the foundation for the African American Alienation thesis to become operationalized.

*Antiblackness via Accumulation and Fungibility*

The African American Alienation thesis has been operationalized through the relation of negation. The relation of negation can be interpreted through an examination of the section of the text that lays out the boundaries for one to be considered a citizen of the United States. A portion of this section describes the history surrounding the writing of the Declaration of Independence in which blacks were rhetorically separated from the rest of the world in a couple of ways. The first was the distinction between the civilized and enlightened world in contrast to the “unfortunate race” of blacks. The second was the exclusion—via their indelible marks—of blacks from “the whole human family,” who were naturally endowed by God to assume “the powers of the earth.” Since the marks were only defined as characteristic of the black race, that set the standard by which the relation of negation should be understood.

As such, the power relations established within the text cannot be considered conflictual. In chapter 3, conflictual power relations are described by Fanon as “little family quarrels.” However, the text makes clear in multiple instances (see Figure 3) that blacks do not belong to the “family” that constituted the United States citizenry. Figure 3 shows that there were seven total references to the word “family.” Two of those uses were in reference to Dred Scott’s family but the other five instances speak to the exclusion of blacks from the political, national, and human family. Conversely, the

standard created via the relation of negation formed an antagonistic power dynamic between blacks and the United States government and its citizenship. This power dynamic was constituted by the Master-Slave relationship, as slave was the position that all blacks were reduced to within the text through acts of accumulation and fungibility, which will be examined next.

*Figure 3: Familial Exclusions*

Family Reference	Source Location	Exclusion Reference
Political family	p. 487, para. 15	It (any State) cannot make him a member of this community by making him a member of its own...it cannot introduce any person, or description of persons, who were not intended to be embraced in this new <i>political family</i> ...but were intended to be excluded from it.
Political family	p. 487-88, para. 5	And the personal rights and privileges guaranteed to citizens of this new sovereignty were intended to embrace those only who were members of the several state communities, or who should afterwards, by birthright or otherwise, become members according to the provisions of the Constitution...It was the union of those who were at the time members of distinct and separate political communities into one <i>political family</i> ...
Family of independent nations	p. 488, para. 15-20	It becomes necessary, therefore, to determine who were citizens of the several States when the Constitution was adopted.

		<p>And in order to do this, we must recur to the governments and institutions of the thirteen Colonies, when they separated from Great Britain and formed new sovereignties, and took their places in the <i>family of independent nations</i>...neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not were then acknowledged as a part of the people, nor intended to be included...</p>
The whole human family	p. 489, para. 35	<p>The general words above quoted would seem to embrace <i>the whole human family</i>, and if they were used in a similar instrument at this day, would be so understood. But it is too clear for dispute that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this Declaration...</p>
Family of nations	p. 490, paras. 10-15	<p>They (framers of the Declaration of Independence) perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that it would not, in any part of the civilized world, be supposed to embrace the negro race, which, by common consent, had been excluded from civilized governments and the <i>family</i></p>

		<i>of nations</i> , and doomed to slavery.
Family	p.492, para. 15	Was he (Dred Scott) together with his <i>family</i> ...
Family	p. 500, para. 25	And that neither Dred Scott himself, nor any of his <i>family</i> ...

In order for blackness to become the static standard of demarcation for the relation of negation, all forms of blackness must be understood to be the same. This continual repositioning of blackness into a universal static category occurs through the process of accumulation. Throughout the text of the majority opinion, blackness is accumulated in a number of ways. First, the use of “class of persons” collapsed blackness into a singular category. Second, is the collapsing of the distinct categories of black, negro and African; as well as, emancipated and slave into one singular category—slave. Third, is the inclusion of descendants with the simultaneous exclusion of birthrights. This rhetorical act prevented blacks from accessing a loophole into the human family by permanently attaching all blacks to the status of slave.

As slaves, blacks became commodities of exchange—property—rendered fungible. In chapter two, fungibility was defined in three ways; the hollowing out of human characteristics (Winnubst); the systemic reduction of human lives into commodities and capital (Hartman); and the abstraction of the human body to serve the needs of the political economy (Spillers). There are instances of each of these within the text. On page 489, the Scotts were explicitly excluded from the “whole human family.” In essence, the Scotts’ human characteristics were voided. They were also referred to as being “an inferior class of beings (U.S. Constitution: A Reader, 2012, p. 486), article of property (U.S. Constitution: A Reader, 2012, p.489), and article of merchandise (U.S.

Constitution: A Reader, 2012, p. 488, p. 500).” There is fluctuation in the use of people, persons, and slaves to describe blacks in the beginning of the text. However, the point at which it is determined that the Scotts are solely to be understood as slaves, thus property; people and persons were not used to refer to blacks for the remainder of the text. This makes clear the relationship between citizens and human which distinctly excludes slaves and property.

Lastly, the first section of the majority opinion written by Taney sets out to answer the question of whether “a negro whose ancestors were imported into this country and sold as slaves, [can] 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?” Taney goes on to state, “...that the plea applies to that class of persons only whose ancestors were negroes of the African race, and imported into this country, and sold and held as slaves (485).” The combination of this linguistic maneuver serves to expand the scope of the decision from only evaluating the status of the Scotts to determining the status of the entire “class of persons” defined above, ultimately rendering the Scotts as fungible place-holders for all blacks, to be read as slaves, thus property. Viewed in this manner, it becomes easier to understand the relationship between the outcome of this case about freedom and the constitutionality of the Missouri Compromise. Positioning the Scotts as property made this case a precedent-setting case on interstate commerce and property rights. Additionally, in order to justify the application of property rights in this case, the Scotts had to first be determined to not count as persons. Otherwise, there would have been irreconcilable conflict between the

rights of property and the rights of persons. As such, the Scotts had to be rendered fungible objects in order to obscure the tautological nature of the Court's decision.

## CHAPTER FIVE: CONCLUDING THOUGHTS

### The Things They Did with Words

Often people focus on the line of the Dred Scott decision that states, "...they (the class of persons imported as slaves and their descendants) had no rights to which the white man was bound to respect<sup>22</sup>" as one of the most important aspects of Justice Taney's majority opinion. While this is certainly another indicator of the stripping of black humanity, Taney's written opinion did much more. This decision, in fact, laid the foundation for what blacks would become moving beyond emancipation. The Scott decision set in motion the *Paradox* of which Hartman speaks. By flattening blackness through language, Taney created an easy standard for the relation of negation. No longer were there free blacks, slaves, emancipated blacks, etc. There were just blacks. The collapsing of the categories of blackness into one made clear the line of demarcation for the black/nonblack binary. This binary has since been used to structurally position the world based on proximity to blackness; whereas, one has only not to be black.

It is important to acknowledge that the inner workings of the Dred Scott decision and its relationship to slavery is a complicated one. However, it should be made clear that whatever complexities exist, they cannot be used to ignore the role that slavery had in

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<sup>22</sup> The past tense is used here because Taney is interpreting the Declaration of Independence via his articulation of the historical context that existed within the "civilized and enlightened" parts of the world. An opinion which he argued was fixed, universal, and in line with the opinion of the founding fathers who drafted the Declaration of Independence on the question of whether slaves/their descendants were ever intended to be included in the citizenry of the United States.

each of the considerations within the case itself—from the question of citizenship to the constitutionality of the Missouri Compromise. Furthermore, the intent of the arguments made in justifying the decision are not the point here. What is significant is the paradox which was created that has perduring implications. The paradox has created a loophole that has been used to prevent real substantive change, through policy, for over a century. It has created a permanent space for antiblackness to thrive obscurely. A space in which the most well-intentioned people continue to justify the most intentional acts of oppression and violence only because they are mystified by that very paradox that was created so many years ago.

Now this paradox is ravaging this country across lines of demarcation regarding the COVID pandemic. The paradox created the illusion of meritocracy, individualism and choice, for white people and justified distrust of the government for black people and both of those foundational logics have created a moment that the decision to get the vaccine, for a lot of people, is understood in these terms—rightly or wrongly. The paradox made the Southern Strategy used by President Nixon effective and cemented its use over time. It created an ethics that allowed for armed white protestors to be described as “very good people” whose anger was justified while condemning black anger as “thug” behavior. The paradox created the world of “racists without racism” through the use of colorblind rhetoric that produces the illusion of neutrality while structurally damning the black masses to the effects of the afterlife of slavery. The paradox laid the foundation for the language of pathology that over codes black neighborhoods as lacking morals and ethics, ultimately justifying the continual killing of unarmed black people.



Unfortunately, it is difficult to untangle this complex web because everyone has become structurally positioned through the violence of language. It is imperative that future research endeavors seek to study the relationship between language and structural violence, more specifically the relationship between language and antiblackness. The latter is the mechanism used to create and maintain the ruse of analogy which hides the nexus point of structural violence across categories of difference. I agree with Taney when he stated, “Yet the men who framed this Declaration were...high in literary acquirements...They perfectly understood the meaning of the language they used, and how it would be understood by others; and they knew that it would not, in any part of the civilizing world, be supposed to embrace the negro race...(490)” So, is the majority opinion in the case of *Dred Scott v. Sandford*, 1857 an antiblack performative speech act? I would argue yes because, while identity markers are typically read by most as constatives that describe what is, they in fact function as performatives that enact what is to become when put into the context of the larger historical discourse on blackness.

#### *Dred Scott Decision as an Antiblack Performative Speech Act*

Miron and Inda argue that race becomes a kind of speech act, a performative that in the act of uttering brings into being that which it names. Justice Taney uses several identity markers throughout the writing of the majority opinion. These identity markers serve to name blackness in all of its various forms; African, slaves, negro/black. This act of naming, through iteration, becomes a naturalizing effect that attempts to permanently fix what blackness is and is to become. Stuart Hall (1997a) argued that popular representations of everyday life under slavery clustered around two principles; subordinate status and primitivism. Both of these principles can be found within the

descriptions of blacks in the text. Taney explicitly describes Africans as “subordinate (486)” and an “inferior class of beings (486).” Throughout the discussion on citizenship, Taney continuously contrasts blackness with the more “civilized” parts of the world, in essence, marking blackness as primitive. Butler (1993a) argued that discourse gains “authority to bring about what it names through citing the conventions of authority (13).” The capacity for the United States Supreme Court to set precedents inherently instills the majority opinion with the force of authority needed for these naming conventions to be cited, thus reiterated, over time. Understood in this manner, blackness, through discourse, becomes a socially constructed category of knowledge that is historically contingent. In other words, the majority opinion can be described as a kind of performative speech act that named blackness, reiterated the representations of blackness, and generated the force of authority that allows for further citation of those representations of blackness.

Given the fact that Taney does not name in the first instance and that the text represents citations from earlier descriptors, what makes this particular instance significant? In order to understand the full effect and extent of the discourse used within the text, the theory of antiblackness was used as an intervention into Miron and Inda’s theory of race as a performative speech act. This intervention serves to explain the type of unequal power relations, as articulated by Foucault, as it applies specifically and uniquely to blackness. Hall (1997b) argued that Foucault “saw knowledge as always inextricably enmeshed in relations of power because it was always being applied to the regulation of social conduct in practice (47).” Foucault had the opportunity to put this theoretical understanding in conversation with other theorists such as Karl Marx and

Antonio Gramsci regarding class and ideology. However, it is equally important to examine the concepts of discourse, knowledge and power in the context of newer theorizations on antiblackness. Therefore, steps two and three of the analysis sought to uncover the dynamics of antiblackness at play within the discursive formations of the majority opinion.

Situating the analysis in the context of a theory of antiblackness allowed for the use of a black/nonblack interpretive lens to explore the effects of power through discourse on the socially constructed category of blackness. Foucault argued that power does not function from the top down but instead circulates throughout society. However, using the black/nonblack paradigmatic lens shows how the text mitigates this circulation of power by situating blacks in an antagonistic relationship to the network. Within the text blacks were situated outside the confines of “the people,” while the discourse within the text remained just vague enough to allow for the inclusion of other racial and ethnic groups.

Furthermore, revealing the instances of accumulation and fungibility in the text offers new insights into the effects of power, discourse and historically contingent, socially constructed knowledge. First, in the process of naming the black subject, Taney went a step further and collapsed the various categories of blackness into one singular category. The collapsing of the distinction between free and enslaved blacks resulted in the descriptors used to describe the slaves, becoming exemplars for the category of black, regardless of previously recognized statuses. These exemplars became an aspect of antiblackness in the aftermath of slavery, via the racial corporeal schema. Once blackness became synonymous with slaveness, the discourse of slave no longer needed to

be present in order for the antiblack performative speech act to function successfully. This is what Derrida was referring to when he developed the structure of absence theory discussed on page 16 chapter one. Supplementation and representation act as markers that carry the presupposed meaning inherent in such speech acts from its original utterance into future discursive events.

Representation within antiblack performatives often functions via the corporeal dimension, whereas the epidermalization of blackness functions as a linguistic marker that signifies all that blackness has been described as and named. As a linguistic marker, the racial corporeal schema attempts to void blackness of movement and repositions blackness towards structural violence. One effect of the racial corporeal schema is the idea of discursive capture, where epidermalization prevents a break from the cycle of interpellation and marks the point of (re)capture. As blacks were reduced to one singular category and tethered to the racial corporeal schema, the possibilities for rearticulating what blackness is has been over coded by epidermal attachments to the sociohistorical order. Looking back at the Black Power Movement example in chapter one, black was introduced as a rearticulation of what it meant to be black as opposed to the common terms nigger and negro that had been previously defined by the power structure. The collapsing of blackness into one singular category provided the basis by which the attempt at rearticulation could be captured and redeployed as synonymous with nigger and negro. In other words, the power associated with the new term “black” was over coded by the pathological associations that were attached to the previous names<sup>23</sup>. As

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<sup>23</sup> Discursive capture is one of the dangers of flattening blackness. Increasing the infinite textures that articulate what blackness is becomes a potential strategy for avoiding discursive capture. That would require that blacks find value in various differences that unfold within the category of blackness.

one cannot hide their skin tone, the corporeal dimension provides an additive effect of performative speech acts in relation to black subject constitution. Furthermore, the corporeal dimension provides a means by which to assess other groups' proximity to blackness. For example, during the "War on Terror," the racial corporeal schema served as a linguistic marker to define who were considered "terrorists" without ever having to say things like "the darker skinned-Muslims."

Second, the instances of fungibility removes the essence of humanity from the category of black. Recalling Winnubst's definition of fungibility as the hollowing out of human characteristics, provides the basis for the gratuitous violence that blacks have and continue to experience and produced the effect introduced in chapter two, called double-speak. Austin argued that a performative utterance can only be judged on the basis of its success or failure, in which he identified the conditions for success. However, Austin did not consider the possibility of contradiction in that a performative could meet all of the conditions and be considered successful for one group while simultaneously not meeting one or more of the conditions for another group. Within a single utterance, there can be multiple meanings perceived. However, when there is a common sense meaning and a meaning that exists in contradiction to that common sense meaning where one's subject position determines which meaning is perceived from that single utterance. That is what is described here as double-speak. Double-speak reconceptualizes of the manner in which performatives are interpreted across race. Put another way, performative speech acts can have double meaning that on the one hand enables white innocence while simultaneously performing antiblack violence. It is at the level of double-speak where gratuitous violence becomes obscured. For example, as long as blacks are stripped of

their human characteristics, it becomes easier to justify white police killings of unarmed blacks despite the vow to serve and protect. In this example, the white killer is further humanized because of their fear of the black victim, a nonhuman member of an “inferior class of beings.” As a result, the successfulness of the vow remains intact for everyone other than those who are deemed black or are structurally positioned in close proximity to blackness. In essence, double-speak as an effect of antiblack performatives is partially made possible through the fungibility of blackness and extends to other groups through the relation of negation. As explained above, the discourse within the text of the majority opinion laid the foundation for the paradox that allows for the contradiction found within antiblack performatives.

Given the fact that for performatives it is not a question of true/false but of successfulness, the burden of proof for evaluating the majority opinion as an antiblack performative does not require proving truthfulness. Rather, the analysis should show that the effects of the text as a speech act successfully performed an antiblackness. The results from the analysis show several instances of accumulation and fungibility, thus signaling the Dred Scott decision as an antiblack performative speech act.

### *Significant Contributions*

All in all, this project is significant in two major ways. First, this work expands the emerging genre of raciolinguistics by exploring an underdeveloped aspect of race and language. Although sociolinguistics has a rich history of research surrounding race and language, the more recent development of theories of Afropessimism provide an avenue for exploring the impact of language on blacks beyond the use of African American Vernacular English or as an identity category. Having a theoretical framework for

conceptualizing blackness as an antagonistic structural position has the potential to offer new insights into the role that language plays within contemporary discussions of antiracism.

Second, by putting theories of antiblackness in conversation with scholarly discussions surrounding performative speech acts, this project has laid the foundation for uncovering more aspects related to the functionality of performative speech acts. Here I have identified two new aspects, double-speak and the impact of the racial corporeal schema on performatives. Where double-speak is an effect of antiblack performative speech acts, the racial corporeal schema is a contributing factor to its functionality.

#### *Future Research*

Saidiya Hartman (2007) describes a heightened incidence of “premature death” as a perennial feature and function of the “afterlife of slavery.” Hartman writes, “If slavery persists as an issue in the political life of black America, it is not because of an antiquarian obsession with bygone days or the burden of a too-long memory, but because black lives are still imperiled and devalued by a racial calculus and a political arithmetic that were entrenched centuries ago. This is the afterlife of slavery — skewed life chances, limited access to health and education, premature death, incarceration, and impoverishment (6).” Language is one of the pinnacle tools used in the maintenance of that afterlife. Yet, the relationship between language and structural antiblackness remains understudied. So much of the scholarship surrounding language and blackness tends to focus on the use of African American Vernacular English or identity studies. Very little research has examined the nature and extent to which antiblackness over codes much of the language used to shape black life and the world’s understanding of it. As a

structural phenomenon, antiblackness implicates every institution in this country. Therefore, discursive examination of the ways that language, directly or indirectly, has been used to maintain the structure of antiblackness within these institutions must become a priority if we ever want exit the period that Walcott calls, “the long emancipation—defined as the continuation of the juridical and legislative status of Black nonbeing (3).” Walcott contends that the long emancipation is held together by the legacies of a juridical emancipated black status that remains tied to the social relations and former conditions of enslavement. I take this a step further and maintain that the antiblack performative speech acts uttered during slavery and their iteration throughout the afterlife of slavery continues to underpin and structure those social relations.

As such, it is imperative that scholars do the work of exposing antiblack performative speech acts and their origins within every institution in this country. Examples of this work could include exploring the historical relationship between language and the over policing of black neighborhoods, language and the disproportionate application of punishment of black students in schools, language and black maternal health disparities, and the list could go on. The point is that language drives perceptions and perceptions shape realities. As long as the logics of antiblackness persist through language, blacks will never achieve full citizenship, belonging, thus emancipation.

### *Shortcomings*

Although this work provides a framework for studying antiblack performative speech acts, the long history of antiblackness makes finding origins difficult if not impossible. However, referring back to the discussion of performativity, Butler (1988) reminds us that there is no reference to a pure subject. Confirmed by Miron and Inda’s



contention that race, thus blackness, is an empty category. Therefore, through discourse, subjects are continuously being enacted. Taken up any instance in time or space where blackness is being constituted through discourse makes for a worthwhile scholarly endeavor.

I also acknowledge that it is highly unusual to posit a theory of antiblack performative speech acts while also having that as part of the research question. Even still, while the conclusion articulates the theory as a whole, the parts of the theory were built into the chapters leading up to the methodology. This could be made clear if one were to think of the theory chapter as an intervention into the previous literature on performative speech acts. The results should be understood as the evidence used to validate the significance of that intervention. By no means do I contend that this theory of antiblack performative speech acts is complete but it lays the foundation for further development. Additionally, the concept of double-speak that was developed from this project is an important one that should be taken up in future research surrounding the social and material implications of antiblack discourse. Lastly, understanding Fanon's concept of the racial corporeal schema in the context of the literature on linguistic markers is novel and worthy of acknowledgement and exploration.

#### *Final Thoughts: Ontologies*

These results represent how the world understands and structures blackness. However, it does not represent the "ontology" of blackness because black is always *becoming*. Ontology, metaphysical or otherwise, seems to be the focus of discussions of *being*, rather than becoming, within philosophical circles. Unfortunately, ontology only describes the what, not the how or the why. This particular exercise in discursive

analysis has exposed two things regarding the dangers of prioritizing metaphysical ontology as descriptive of being. First, is that ontology is only a perception of the what from the outside looking in, not the reality of what. Second, is that ontology, when attached to group descriptors such as racial categories, push us towards universal understandings of ontology for those particular groups, flattening and distorting their individual relationship to the world. Furthermore, becoming gets blocked for blacks by the rhetorical contradictions of double-speak that allows for individuality for some but creates the burden of blackness for others. Instead, we should liken our understanding of ontology to the word truth(s) in that there are multiple ontologies, individual ontologies that develop through relationality. It is through this notion of relationality that blacks are individually becoming and not tethered to the perceptions of the name that the world gave them. Relationality is the point where agency is activated. However, it is not relationality that is built from the identity that was defined for them but relationality based on that which they seek to create for themselves. Desires must transcend the space of negation, tap into the space of the unthought as a possibility, in order to produce futures that redefine what it means to be human. In order to do this, we must fully understand that which has been thought, then move into the space of the unknown. It is my hope here, that I have contributed to a deeper understanding of the previously thought in order to move us towards the unthought where “us” is still yet to be defined. In fact, I contend that resignification should not be the goal because resignification happens from the point of the created subject. Instead, we should strive for non-articulation. We should seek to break the tether to that which has defined blackness for so long. I do not suggest here that we dismiss the history that has brought us to this contemporary

moment, rather we should be hyper aware, in our studies, of the intricacies of language that sustain the sociohistorical order in an effort to forge a different future, in our language, thoughts and desires, that transcend that which defines blackness. We must look for the excess to blackness and begin to build communities from there. Hartman (1997) speaks to something similar in her discussion of building community through sociality where the networks we build “are not reducible to race but are understood in terms of the possibilities of resistance conditioned by relations of power and the very purposeful and self-conscious effort to build community (59).” Whereas, Hartman focuses on the manner in which we build, I contend that there must also be special attention paid to how we talk about building community.

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## CURRICULUM VITA

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### **Summary:**

- Has demonstrated high proficiency as an adjunct faculty member in the Departments of Pan-African Studies and Communication.
- Has achieved excellence as the Director of Debate at the University of Louisville, successfully innovating new methods on the national circuit.
- Skilled at learning new concepts and theories quickly, working under pressure and clearly communicating ideas orally and in writing.
- Extensive training in research, debate, teaching and organizational management.
- Enthusiastic about scholarship with and emphasis in Pan-African Studies and Language.
- Proficient in online teaching platforms, specific experience using blackboard.

### **Education:**

- M.A. Pan-African Studies, 2014  
University of Louisville, Louisville, KY
- B.A. Communication, 2001  
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### **Career History and Accomplishments:**

Director of Debate, University of Louisville, 2011-Present

- Awarded Supervisor of the Year in the College of Arts and Sciences, 2020
- Named Southeast Regional Scholar of the Year, 2018
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- Named Southeast Regional Director of the Year, 2012
- Coached the program to its first Novice National Championship, 2011
- Plans the curriculum, coaches 8-10 students, directs research projects, supervises staff and maintains budget.

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Adjunct Faculty, Department of Communication, 2004-Present

- Teaches Communication 319, Debate
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- Teaches PAS 301, Race and Hip Hop
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**Service:**

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**Publications and Presentations:**

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