In the *Weltanschauung* of a colonized people there is an impurity, a flaw that outlaws any ontological explanation. Someone may object that this is the case with every individual, but such an objection merely conceals a basic problem. Ontology—once it is finally admitted as leaving existence by the wayside—does not permit us to understand the being of the black man. The black man has no ontological resistance in the eyes of the white man.

**FRANTZ FANON, Black Skin, White Masks**

The essence of law is not legal.... The essence of law is distorted in its ontic occurrence.... The Being of law is the unfolding of law.... We need to think through the essence of law in the order of Being.

**OREN BEN-DOR, Thinking about Law: In Silence with Heidegger**

What will preoccupy our investigation here is the relation, or (non)relation, between black being, law, and ontology. How exactly does the law produce and reproduce forms of terror that are ontological—meaning laws that sustain the metaphysical holocaust? As we unravel the layers of metaphysical violence occurring over deep time, we realize that law emerges as a crucial aspect of this violence. My concern is not a particular law, but that all laws are subordinate to a Law. The distinction between law and Law is the distinction between metaphysics and ontology that will serve as a heuristic guide in this investigation. I have argued that the ontological difference is not an issue for black being, since available equipment cannot present a proper ontological question—it lacks Being (one must present a proper metaphysical question without any hope of ontological explanation). But we use the
distinction between metaphysics and ontology as a way to understand, to the extent that we can do so, the multilayered manifestations of this terror.

Fanon builds a way into this (non)relation when he suggests, “There is an impurity, a flaw that outlaws any ontological explanation.” Black being is a certain contamination or imperfection within the precincts of ontometaphysics. And understanding or explaining this contamination (hermeneutics and epistemology, for example) not only is impossible with the instruments of ontology (since it does not permit us to understand black being) but is also outlawed—prohibited or forbidden. We might ask, then, what form of law both forbids ontological explanation and renders such explanation (and being) contaminated? Fanon adumbrates an ontological law, which manifests in other forms of phenomenological-existential violence. But ontology must outlaw ontological terror, since it presents its field as pure (i.e., Being is impervious to politics, violence, and terror), and violence within this field is an incomprehensible contamination. Thinking with the free black, we will investigate this practice of outlawing and the challenge it presents to postmetaphysics and black humanism.

Our investigation will propose the following: (1) There is a fundamental distinction between law (metaphysical incarnation) and Law (the ontological dimension). (2) Both the law and the Law outlaw black being, by necessity. The prohibition on black being, then, occurs on both the ontological and ontic levels. This collusion contaminates ontology, so black being is prohibited and is an inclusive exclusion. (3) The free black, as paradigm, presents both an allegory and instance of this violence on both levels through reification (freedom papers), temporal suspension, ontological insecurity (kidnapping), and a gifted self, which lacks ipseity. (4) A fundamental gap between freedom and emancipation exists that black humanists have collapsed in their philosophical romance. Black being only has access to emancipation, never freedom. Emancipation is an aperture on the domain of terror and not self-adequation.

Our investigation will proceed by reading Fanon alongside the postmetaphysical thinking of Heidegger, Nancy, and Ben-Dor to understand the essence of law as nothing other than antiblackness. Fanon presents an alternative essence that postmetaphysical legal theorists and philosophers have neglected because it defies explanation. The aim here is to trace out the techniques and strategies of outlawing and to demonstrate that these tactics
and strategies are forms of terror for black being—ontological terror. Ultimately, we arrive at the conclusion that the free black exists to not exist.

**THE LAW OF BEING AND THE BEING OF LAW**

We cannot think the essence of Law without the execration, the nothing, of black being. For this execration constitutes an unresolvable exception within the order of Being. What is the essence of Law? What is the exception that black being inhabits? I suggest that these two questions fold into each other, almost becoming indistinguishable, and the geometry of this enfolding is what Heidegger would call “ontological difference.” In other words, the essence of Law and the exception of black being are both problems of ontological difference: one a problem of distortion/deferral and the other a problem of exclusion (or inclusive exclusion). The question of Law is inseparable from the question of black being.

What sustains the law, or provides the condition of law’s possibility, is ontological difference itself. We can think of the essence of law not as a scientific thing or a metaphysical object of knowledge, but as an unfolding of Being through law, which mediates through ontic distortion. Following Heidegger, we understand that ontological difference is that primordial (non)relation between Being and being in which being represents itself through metaphysical predispositions within the world, predispositions that forget the grandeur of Being,¹ and Being presents itself to being against (and through) the distorted screen of metaphysics (i.e., the restriction of being as primarily representation, correlation, object, and predictability). Ontological difference is sustained through ontic distortion, since this distortion both conceals Being (enables its withdrawal) and occasions Being’s revealing or unfolding. The aim of a postmetaphysical enterprise, then, is to develop strategies to address this distortion so that the essence is revealed in its truth.

Since Being infuses itself into every facet of human existence, ontological difference and distortion are also issues for law. The metaphysical predispositions of law—the amendments, regulations, mandates, and legislations (what I will call the “being of law”)—distort the Law of Being [Dikē]. The Law of Being, or the order and call of Being in relation to human being, is one of abandonment. Being’s Law is that the human fully gives
himself to the ban (to exist in unbridled abandonment toward Being), the order of Being, which is nothing other than abandonment itself. I will expound on abandonment further as the argument unfolds, but for our purpose here, the point is that law is also a feature of a distorted ontological difference: between the Law of Being (ontology) and the being of law (law’s metaphysical incarnation as decree, formalist science, legislation). The relation between law’s essence, Being-as-essence unfolding through law, and law’s juridical and legislative incarnation is not only the precondition for anything like citizenship, justice, freedom, and political community to have any existence or meaning at all in the world, but also the space of a pernicious terror, what I will call “ontological terror,” from which black being as exception emerges.

Distortion, then, not only conceals Being within the metaphysical precincts of law, but also conceals the breakdown of the ontological difference—the terror at the heart of the ontological distinction. What I am suggesting here is that we must push the fact of the black-as-nothing to its extreme consequence: if the black is available equipment, a body without flesh, then the ontological distinction is not an issue for it (it is only an issue for the human). The ontological difference that preconditions the human’s freedom and citizenship, for example, is not a difference that provides grounding for the black as available equipment. In essence, black being is the physical incarnation of distortion, on another register, a register that provides the condition of possibility for the ontological difference so sacred to postmetaphysicians. The physical black body is a distortion and an ontic illusion. This black body, as equipment, cannot appeal to Being for grounding, freedom, or futurity, since it emerges as a thing for the human to understand ontological difference (by using black equipment—both ready-at-hand and present-at-hand—the human understands his there-ness within the world of objects, his historical place). Black being is a distortion to the extent that the black body conceals the breakdown of the ontological difference. Black being, as equipment, is not ontological but other, something we lack a proper grammar to describe—there isn’t a distinction apart from the metaphysical that can protect black being in an antiblack world. Thus, we cannot truly posit a fundamental difference between the metaphysical, antiblack body of commerce and an ontology beyond, or in spite of, this body. Asserting this “beyond” is the aspiration of black humanists and
postmetaphysicians, which I believe is flawed. This poses a particular problem for law, however, since black being necessitates a perversion of law’s function and objective ontologically.

To understand this function and objective of law, we must return to the ontological difference that is an issue for the human. In *Thinking about Law: In Silence with Heidegger*, Oren Ben-Dor understands law as a feature of Heidegger’s ontological difference, and from this difference we can envision an ethics that emerges from the Order of Being. Although Heidegger does not write explicitly about law (at least not with the metaphysical expectations of legal theorists and lawyers), his insight into the Greek word *dikē* provides an opening onto a postmetaphysical analysis of law. Ben-Dor revisits Heidegger’s critique of metaphysical thinking through his engagement with Plato’s *Republic* in the essays “The Scope and Context of Plato’s Meditation on the Relationship of Art and Truth,” “The Anaximander Fragment,” and “The Limitation of Being” (published in *Introduction to Metaphysics*).

According to Ben-Dor, *Dikē* “has three senses, all interconnected: of order [*fug* in the German], of protection and of justice. [These are] the threefold senses of the essence of law distorted in the ontic for-the-most-part being and thinking with and through law.” Furthermore, Ben-Dor suggests that “*Dikē* connotes the protection offered to the guardian of Being [Dasein] against the harm done to it by the entrenched legal,” and this is the “Law of the Being of being.”

Ben-Dor’s philosophical rereading of Heidegger’s work is sophisticated and complex, but what I find particularly illuminating, and what I will focus on here, is the *function* of law that he presents. He seems to suggest that the function of law—the metaphysical incarnation of it—is to protect and enforce the unfolding of Being or the primordial relation between the human and Being. This function is distorted, however, by an ontic legalism (or science of law), which focuses on calculating injury, objectifying redress, schematizing rights/privileges, and predicting consequences. What redress, rights, and consequences all conceal is their fundamental relationship to Being. In other words, you have rights to protect and sustain your relation with Being against forces designed to pulverize it (what we call “injury”). The self that anchors rights discourse, injury, and privilege becomes an ersatz, or insufficient, substitute for a (non)relation between the human’s there-ness and Being. Returning to this primordial function of law, as
protecting the unfolding of Being, helps us to sort through the seductions of legalism—that is, the proposed legal solutions to the problems of injury just sustain it, since these solutions forget Being. In short, as read through Heidegger and Ben-Dor, injury is the consequence of forgetting Being and distorting the function of this tool for the guardian of Being—to protect and enforce this (non)relation.

I would also suggest, following Heidegger and Ben-Dor, that “Ethics” and “Freedom” are two proper names for protecting and enforcing this (non)relation. Within the corpus of law, both freedom and ethics orbit around the protection of this self (the primordial relation) from the injuries of indignity and denial. Or, as Ben-Dor states, “To let Dasein gain ground, to let Dasein ground as one with the simple unity of the fourfold, is to be ethical. To let Dasein be open towards its unfolding world as the grounding of its nearest is ethical. To protect and enforce such ground is the essence of law.”

The law is an ontological instrument. Its purpose is distorted by the supremacy of metaphysical imperatives and objectives. But within this primordial function, we must tease out another distinction: the Law of Being and the being of law. What I have discussed thus far is the being of law—the metaphysical instrument designed to protect and enforce the Law of Being. The being of law is something akin to the executive agency of the Law of Being. Our legislative decrees, policies, and rights are all subordinate to the Law of Being.

ABANDONMENT AND OUTLAWING

What is the Law of Being? If we think of Law as the order of Being [dikē], then we understand this order, not just as a realm or field (e.g., like a political order), but also as a command (e.g., an order from a parental figure) of its particular saying, demand, or requirement. Perhaps the realm of Being is nothing more than this command itself. The Law of Being, then, is the order of Being—what it requires and how this requirement sustains Being (since the human is the guardian of Being and Being needs this guardianship, or care, to manifest). But this order is peculiar, and it confounds our diurnal (and metaphysical) understanding of a law and the order that characterizes law in general.
What is quite remarkable about Jean-Luc Nancy’s *The Birth of Presence* is his interpretation of the (non)relation between Being, being, and law. For the Law of Being is a law that conditions all law (our metaphysical understanding of law as this or that decree/legislation as it concerns beings) and a law that “gives nothing, but orders.” This order is revealed to be abandonment (the Law of Being is the Law of Abandonment). There is a fundamental (non)relation between law and abandonment; indeed, abandonment preconditions any law and is understood as the law outside of law that is itself a law (something akin to an exception that is within and without simultaneously). Abandonment is the “not” of law, to borrow Oren Ben-Dor’s conception—this “not” escapes simple negativity (i.e., “this is radically different from that,” a metaphysical formulation), but is the within/without exception that undergirds our metaphysical understanding of law. To return to Nancy, his presentation of abandonment, as the Law of Abandonment and the (non)relation between it and being (abandoned being) presents the condition of law as that which withholds or dissimulates itself within being. We can understand Nancy as suggesting the Law of Abandonment demands absolute submission to the withdrawal of Being through (and within) the there-ness of the human’s being (Being revealed through the dissimulation of itself within being—withdrawal). According to Nancy:

One always abandons to a law. The destitution of abandoned being is measured by the limitless severity of the law to which it finds itself exposed. Abandonment does not constitute a subpoena to present oneself before this or that court of law. It is a compulsion to appear absolutely under the law, under the law as such and in its totality. In the same way—it is the same thing—to be *banished* does not amount to coming under a provision of the law, but rather to coming under the entirety of the law. Turned over to the absolute of the law, the banished one is thereby abandoned completely outside its jurisdiction. The law of abandonment requires the law be applied through its withdrawal. The Law of abandonment is the other of the law, which constitutes the law.

Abandoned being finds itself deserted to a degree that it finds itself remitted, entrusted, or thrown to this law that constitutes the law, this other and same, to this other side of all law that borders and upholds a
legal universe; an absolute, solemn order, which prescribes nothing but abandonment…. Abandonment respects the law; it cannot do otherwise.\(^5\)

Nancy’s etymological investigation of abandonment presents the term as deriving from *bandon* (*bandum, band, bannen*), meaning an “order, prescription, a decree, a permission, and a power that holds these freely at its disposal. To *abandon* is to remit, entrust, or turn over to such a sovereign power, and to remit, entrust or turn over to its *ban*, that is to its proclaiming, to its convening, and to its sentencing.”\(^6\) Thus, Nancy suggests that the Law of Abandonment orders absolute submission, or remittance, to the ban (or law) of Being. This formulation necessitates a clarification of what the Law itself entails (we know, thus far, that it requires *absolute* submission to abandonment, as the withdrawal of Being through dissimulation). What is most important for our engagement with Nancy is precisely this clarification; for it adumbrates the inseparability of law and the human being:

Man is the being of abandoned being and as such is constituted or rather instituted only by the reception of the order to see man here, there where he is abandoned. To order to see is still an eidetic, or theoretical, order. But what it gives the order to see, the *there* of man, offers no idea, gives nothing to be seen … a place gives itself to be seen, configures itself, but *here* or *there* (it is the same, and the other), although it imparts places, although it broaches space and outlines its schemas, itself remains invisible. *Here* opens a spacing, clears an area upon which being is thrown, abandoned.\(^7\)

What, then, does Nancy mean with this spacing of the order? If what defines the human’s being is Da-sein [being *there*], then Being unfolds through the thrown-ness of the human in that very place (that very there). “Man is only ordered as being-there, or to be there—that is, *here.*”\(^8\) Thus, the Law of Abandonment *orders* the human to *see* this very place (space as there-ness) within which Being unfolds through it. But there is a conundrum: the law demands a seeing of the place of Being’s unfolding but this place is invisible—the demand to *see* what is invisible, as a necessity of the order, is what constitutes withdrawal. According to Nancy, this constitutes an impossible categorical imperative, an impossibility that sets something like Kant’s categorical imperative into motion (i.e., an *impossible* law founds the
instantiation of all laws). But why is this place invisible? It is invisible precisely because the place where Being unfolds is the place where it also withdraws. We are thus ordered to see the place of withdrawal that constitutes the human as such. This withdrawal does not conform to the metaphysical schema of time/space, so it demands obedience to an impossible demand.

What we can take from Nancy’s diacritical presentation is that all laws (i.e., legislation passed by Congress, amendments, decrees) are subordinate to an impossible demand to see an invisible space of Being’s withdrawal—into the very there-ness that one is thrown. Although one cannot see the place, the order to see anyway is the order upon which law gains its ethical ground. To see what is invisible sets the enterprise of law—as both protection and enforcement—into motion.

But what I would like to present is an additional problematic: all seeing is predicated upon blindness. Something must remain outside the field of vision for the seeing to take place—blindness provides the condition of possibility for the sight mandated, even to see the invisible. We can also conceive of Nancy’s ban through another perspective, as least etymologically, then. Ban also connotes a covering over or a censuring. When something is censured, it provides the condition of possibility for something else to be seen. Thus, the ban, the Law of Abandonment, not only requires the seeing of the invisible, but simultaneously the not seeing, the censuring, of the non-place (the always already not there or here). What I am suggesting is that the Law of Abandonment is doubled (and conceals this doubling). The double function is to see the invisible and not see that which never arrived—that which lacked a there-ness through which Being would withdraw.

This second, and hidden, order of law is what I will call “outlawing,” following Frantz Fanon. It is the demand not to see the nonarrival, which Being parasitically relies upon for its own withdrawal. This, I argue, is a simultaneous order not to see black being, since it is without a world and lacks a there-ness within the unfolding of Being. Blackness terrifies and is terrorized, ontologically, because it lacks a place from which an ethical imperative to see can emerge. Following Hortense Spillers, the consequence of this perverse imperative is that “we lose any hint or suggestion of a dimension of ethics, of relatedness … to that extent, the procedure adopted for the captive flesh demarcates a total objectification.”

Spillers also
suggests that “[the] undecipherable markings on the captive body render a kind of hieroglyphics of the flesh whose severe disjunctures come to be hidden to the cultural seeing of skin color”¹⁰ (emphasis mine). Spillers’s “cultural seeing” is precisely Nancy’s impossible imperative to see, and the metaphysical holocaust (destruction of the flesh as primary narrative), which censures (bans) blackness out of sight, hides this devastation and recasts it as an unseen ontological hieroglyphic within law—unreadable and unseen within the Order of Being. Thus, the refusal to see the unreadable sign of ontological violence (hieroglyphic) is the Order of Being.

Outlawing is the enforced not seeing and maintenance of onticide—the continued destruction of the flesh. This not seeing is a condition of all law, both ontologically and metaphysically. Outlawing entails (1) censuring the ontological seeing of black being’s holocaust, which continually obliterates there-ness and (2) the not of law, as the outside/inside formulation of the imperative. Outlawing is outside law, since it contravenes the ethical imperative to see the invisible, and also inside law, since it enables and conditions this very imperative—the censure is at the very heart of law. Outlawing is the exception that determines our legal and ethical norms.

To push this analysis further, I will suggest that the Law of Being (the Law of Abandonment) is antiblackness. Being can only provide a there-ness from which to withdraw from an antiblack order or injunction. Antiblackness is the place of Being’s historical unfolding, its perverse call to the human being. Why is this the case? The human requires equipment to re-member its (non)relation to Being, and for modernity, black being is the premier equipment of the human’s existential journey through the world in his thrown-ness. Without equipment to help the human through his existential journey, re-membering Being is an impossible feat.

In Race, Law, and Resistance, Patricia Tuitt presents an important analysis of modern law. Drawing on the groundbreaking work of critical race theorists such as Patricia Williams, Cheryl Harris, and Kimberly Crenshaw, Tuitt suggests that the slave was a cause of modern law. It is commonplace to assume that the law existed prior to slavery and that the slave was merely governed by various codes and regulations. But for Tuitt, the slave engenders law. We can understand this engendering as the attempt to reconcile the obliteration of the ethical relation (the production of equipment in human form) with the ontological function of law—to protect and enforce the
(non)relation between being and Being. Tuitt avers, “If we examine modern law in light of the emergence of its doctrine, it can be seen, that the slave existed at its earliest point. To be more precise, we can say that the slave was one of the chief causes of modern law, alongside animals and inanimate objects such as weapons and jewels. The slave was the only human agent among the ‘things’ that the law sought to integrate in its dominant conception of contractual relations, and was thus, I would suggest, one of the earliest subjects/objects of modern law.”

Although Tuitt’s analysis presents a humanist desire to reclaim the slave as a human agent, despite the fact the law considers the slave property alongside inanimate and animate objects, rendering it a subject/object (which I believe is a strategy that only yields contradiction and aporias), her claim that the presence of the slave engenders law provides insight into the relation between law and ontology. Contract law (law of chattel) is perhaps the hallmark of modern legal development, given the need to regulate commerce and specify the rights and entitlement of property holders. But this corpus of law emerges because one needs to integrate the slave into the world. In other words, contract law conceals an ontological project: it uses the discourse of property, chattel, rights, and trade to divide the world into human subjects [Dasein], those who are entitled to the protection and enforcement of their ontological (non)relation, and the world of things, those entities lacking such protection of any relation, but whose existence is necessary for the human to operate within the world. The law of chattel performs the work of dividing legal seeing from not seeing. Thus, the law of chattel, through the contract form, is predicated upon an ontological difference that it disavows (or more precisely forgets): the difference between Being (the self that is the locus of rights and entitlement, as a stand-in for the ontological [non]relation) and being (the world of objects that support this self).

To read Oren Ben-Dor’s postmetaphysical meditation on law through (and against) Patricia Tuitt’s theoretical analysis of contract law, we can suggest that the primary function of chattel law is to protect and enforce the ground of the (non)relation—this law is ethical to the extent that the rights bestowed to the property holder enable him to project himself into the world of things and to re-member Being. The destruction of the flesh, the onticide that renders the slave available equipment, is a legal necessity, since contract law depends on it—the slave is produced through this very violence. Ben-Dor’s suggestion
that “the essence of law is not legal” provides a hermeneutic for reading and interpreting law, as always already an ontological enterprise. Taking chattel law, for example, the essence of this law is not the regulation of commerce and property rights, but the ontological division the law engenders between the world of things (equipment) and the world of the subject (the being for which Being is an issue for it—and thus requires rights to discover this issue). Moreover, this legal division is predicated upon both Nancy’s “seeing the invisible” and outlawing black being. Ethics and freedom are the ontological discourses of law. They perform the crucial work of dividing the world between the free (the human) and unfree (the equipment of the human) and between humans and available equipment. Again, we lose any hint or suggestion of ethics between the human and his equipment (the not there), as Spillers suggests. The law of chattel relies on this loss of the ethical relation as a condition of its possibility—if the slave (as chattel) were to arrive in the withdrawn place of Being and have that inhabitation protected and enforced, the entire edifice of chattel law (a particular feature of modern contract law) would crumble.

Critical legal theorist Patricia Williams argues that contract law “reduces life to fairy tale.” This is the case, since the contract forges a fantasy (a scenario of relations conceived in the actors’ minds)—it transforms imagination into legal obligation. But the contract creates not only the structure of relation between actors, but also the object through which the relation is sustained. In this case, the black object is constructed, or invented, within the vacuum (or hole) this structure produces. Bryan Wagner might describe this vacuum in the contract as blackness existing “in exchange without being party to exchange.” The object is exchanged between subjects, but the object itself is not a subject, not a party, within the contract. It exists merely within the black hole of the contract, as that which allows the structure to exist without a subjective existence itself. To exist in exchange is to lack existence outside transaction; existence for black being is ephemeral and tethered to the flimsy temporality of the contract structure. We might suggest, after Charles Mills, that an antiblack contract (a racial contract) is an instrument for dividing the world between acting subjects and inactive objects existing only in exchange. Thus, the contract performs important ontological work, and, for this reason, it has become central to legal metaphysics.
Frank Wilderson suggests, “African slavery did not present an ethical dilemma for global civil society. The ethical dilemmas were unthought.” The dilemmas are unthought because applying the ethical relation to a being that never arrives and is not seen presents a stupefying conundrum that ethics is unable to resolve. We lack an ontological procedure or grammar to situate the outlawed in relation to ethics. Our ethics are entangled in our ontological commitments. For this reason, black being is unable to appeal even to Levinasian ethics—although he desires to escape the violence of ontology (one might argue this escape is predicated on a misreading of Heidegger, which would mean Levinas leads us right back to Heideggerian ontology). For as Fanon rightly critiques Sartre—which I would argue also applies to Levinas—“The white man is not only The Other but also the master, whether real or imaginary.” In other words, the Other is always already constituted by outlawing—the Law of AntiBlackness. There isn’t a place in the work of either Heidegger (and neo-Heideggerians) or Levinas that is free from antiblackness. Such a place is a ruse.

In his critique of ontology, Fanon argues that “not only must the black man be black; he must be black in relation to the white man. Some critics will take it upon themselves to remind us that the proposition has a converse. I say this is false. The black man lacks ontological resistance in the eyes of the white man.” The phrase in relation opens us onto the impossibility of ethics, since ethics would require the very converse of the proposition that Fanon refuses. The black must be for the white man, as equipment in human form—the ontic illusion of humanity. But this being is not the being that grounds ethics or ontology; it is an existence untranslatable into the language of being and ethics (which is why “ontology does not permit an understanding of the black man”). This is why black being is an “impurity, a flaw that outlaws any ontological explanation,” as Fanon would argue. The procedure of outlawing rests on the severing of both the ethical relation and the ontological relation.

This also returns us to the function of law. If, as Oren Ben-Dor avers, “To let Dasein gain ground, to let Dasein ground as one with the simple unity of the fourfold, is to be ethical. To let Dasein be open towards its unfolding world as the grounding of its nearest is ethical. To protect and enforce such ground is the essence of law.” Then outlawing is a departure from this function. Rather than protecting
and enforcing an ontological ground (the ethical demand of Being), outlawing functions to render black being continuously vulnerable, accessible, and uncovered. It employs judicial procedures, discourses, and technologies to sustain this vulnerability—as it is the precondition for the Law of Being.

What I want to discuss now is certain legal technologies, tactics, strategies, and inventions that perform the work of outlawing, now that we have outlined its necessity. It is also imperative to understand that the (non)place of black being, produced through outlawing, is the emergence of ontological terror. Oren Ben-Dor provides a fruitful understanding of terror: “That which causes terror cannot protect from it. Terror occurs when the inexpressible is not allowed to be violently comported towards the order of Being. Terror occurs when no protection is offered to Dasein … when Dasein is not allowed to get its essential ‘dues,’ terror occurs.”

Terror, for Ben-Dor, is the lack of ontological protection, as one must rely on a legalism that just reinforces and produces forms of violation. When Dasein does not get its due—its ontological posture—it is exposed to violence. This terror, however, can be rectified if this due is provided by remembering the essence of law (as the law of Being). The ontological terror that I am proposing, however, is a permanent condition of black being and the world itself—it is beyond resolution and abandonment. Ben-Dor’s terror is situational, but his situational terror feeds off the permanent terror of outlawing. That which causes ontological terror, then, neither can (nor desires to) protect black being from it, nor offers a due that will bring it into relation to the Law of Being. The world depends on this terror—it is violence without end. As long as the world exists, so will it, by necessity. This terror is unlike other formations, since it is “hidden” by the “cultural seeing,” if we follow Hortense Spillers. Ontological terror is the blindness of being, what it cannot (and refuses) to see, since it conditions sight. My argument here is that outlawing—destructive apparatuses, strategies, rationales, and technologies of law—produces and sustains this terror. We cannot think modern law without this terror; in fact, ontological terror provides the very condition of legal thinking (i.e., we are able to understand the distinction between the
injured/uninjurable, the free/unfree, and the entitled/rightless because of this prior violence).

Ontological terror opens us up onto the abyss of Being—the exception that engenders order. It is through the free black, however, that this terror is exposed in all its absurdity and viciousness. For the free black brings to the fore the function of the law and the conflict presented when this function is applied to black being. The ethical and ontological ground of law desiccates. Since law’s ontological function is to shore up the ground of the human by not seeing blackness, the slave, through law, has been the site of this not seeing. As unfree and rightless, the slave’s place within the order of the material world is understood, although fragile (i.e., the slave is integrated into the world of things). The free black, however, forces an ontological conversation that otherwise would be left unsaid and unthought. And this is precisely why the free black serves as an excellent paradigm: because it exposes the ontological presumptions of ethics and freedom, which masquerade as universal (and it also exposes the universal as a fraudulent particularity). In other words, the free black presents a problem for legal reasoning because such a being is, indeed, a thought experiment—since it lacks ontological explanation. The law understands black being as an object of the material world, as available equipment. But a free black is inassimilable within law and engenders forms of paradox, contradiction, and absurdity when the law is forced to think blackness, freedom, and ethics together. The free black, then, exposes a double terror: the loss of the ontological ground that secures law’s freedom and ethics for the human and the lack of protection for black being against the machinations of antiblack outlawing practices—this is the twin axes of this devastating terror.

**CHIEF JUSTICE ROGER TANEY: ONTOMETAPHYSICIAN**

Hortense Spillers remarks, “[Antebellum] law is compelled to a point of saturation, or a reverse zero degree, beyond which it cannot move on behalf of the enslaved or the free.” This point of saturation, the place where we expect to find the movement of Being, its unfolding through law as event [Ereignis] is absent when black being is in question. The law, rather than serving as an aperture for this movement, becomes a terrifying stasis—or a
reverse zero degree. This dreaded geometrical figuration, this point, constitutes the irresolvable within the system of legal thinking and reasoning. This point of saturation cannot be reduced to mere ontic distortion, since this point is the absence of ontological difference—but an absence that enables the subject before the law to have movement, to bring forth grievance, to seek redress, and to maintain dignity. We might also consider this point of saturation the distortion of distortion. In other words, the ontic/legal distortion that perpetuates the forgetting of Being is predicated on another distortion, or a disavowed concealing. Law must conceptualize and outlaw this distortion of distortion (the concealment that makes legal concealment possible). Ronald Judy might also call this distortion an “interdiction,” in which “a censorship to be inarticulate, to not compel, to have no capacity to move, to be without effect, without agency, without thought.”\textsuperscript{24} The distortion, then, serves as an interdiction (or a censorship, a ban) on movement—the movement of thought, communication, and legal agency.

Legal reasoning must conceal this distortion, since the distortion throws law into crisis and produces contractions, paradoxes, and absurdities (like the Lacanian real rupturing the legal symbolic). For antebellum law, the free black incarnates this distortion because this figure foregrounds the problem with Being and law—the severing between blackness, ethics, and ontology—which the law would want to forget or to resolve through property rights. Can black being hold property in itself? Can black being constitute a being for itself and not for another? Should black being become an end in and of itself? The free black complicates these questions differently than it does for the slave, I would argue. The law uses property rights to resolve or answer these questions. Property is property, even if this property takes on a human form. The slave is indeed property, and the laws of property and propriety are in full effect. Despite the debates concerning the immorality of slavery, the rights of the property holder trump any appeal to the dignity or natural right one would assert on behalf of the slave. Put differently, the law’s function is to protect the dignity and ontological relation of the human to Being, and property/equipment is necessary to fulfill this function—even in distorted form. This is why the law can appeal to rights to resolve the dilemma of the slave. It is only the rights of the human, of the property holder, that really matter before the law. The slave becomes a means to that end.

The free black, however, presents a quandary of problematics: is this free
black still property? Does this freedom bring black being into an ontological relation to Being? Can the law accommodate black being, which is not property? What impact does this have on the human being? One must ask these questions of black being because the right in property becomes difficult to sustain as a rationale (although the state will claim property in the free black; I will discuss this as the chapter progresses). In other words, the free black enables the presentation of a proper metaphysical question, which the law is compelled to answer. And since the law assumes freedom as a sacred conceptual instrument for its human, it is within the law that the question of black being emerges. The law, then, engages in important ontological work—citizen, slave, human, and property are not mere issues of legal status, since each term carries ontological presumptions with it. Thus, the fundamental question before us, at the heart of our questioning: do the ontological presumptions encoded in legal terminology change as the status between property and free black changes? (Or does a change ever occur?) We might go as far to say that this is the reformulation of our question “How is it going with black being?”

Chief Justice Roger Taney provides an answer to these metaphysical questions. His opinion is much more than legalistic rationale; it is also philosophical discourse—ontometaphysical labor. For Taney did not just set for himself the task of addressing federalism (states’ rights vs. congressional power concerning naturalization/citizenship), but also the function of black being, the meaning of this freedom, and the ethical (non)relation between the human and black being. Through Taney, perhaps, we find the strongest answer to these metaphysical questions within law. Taney uses Dred Scott as a philosophical allegory, or paradigm, to work through the ontological presumptions about blackness in an antiblack order. The opinion, then, reproduces the master and slave (non)relation as Dred Scott becomes a discursive tool (putative equipment, as it were) for the ontometaphysical/putative labor of dividing the world into articles of merchandise and the human being who uses those commodities.

Dred Scott is presented as a plaintiff in error. In legal terminology, the plaintiff in error submits a writ of error to the court challenging the decision of a lower court. In this case, Scott submits a writ of error to the Supreme Court challenging the decision of the Circuit Court. The writ of error provides the occasion of presentation for the subject to present a grief and
seek redress. Etymologically, the term *plaintiff* originates from the Latin *plangere* (the infinitive verb form), to strike or beat in grief; the French *plainte* (noun), lamentation; and the Middle English *plaintiff*, a complaining person. The term *plaintiff* carries certain ontological presumptions with it—the legal subject *predicates* as a feature of its right (i.e., strikes out in grief) and presents this grief, or lamentation, to the court. The plaintiff, then, has the right to present, as an aspect of its relation to Being—its attempt to redress any injury hampering its Heideggerian projectionality, its unique project (i.e., life, happiness, and the pursuit of property). The *transit of grief* is foundational to any legal presentation—grief moves from the complaining person to the adjudicating body (the writ) and from the adjudicating body to the complaining person (through its decision). This movement creates a circuit of legal reasoning, and the law is invested in sustaining the integrity of this circuit.

But it is also important that Dred Scott is a plaintiff in error. And in the case of Scott, this “in error” makes all the difference. The “error” indicates much more than the presentation of a writ, but that the presentation itself is in error—the presenter is disqualified, and thus the presentation is censored or not seen, a presentation disappeared by not seeing. “Plaintiff in error,” in this case, conceals a double error, or the error of error, which black being foregrounds. From a Heideggerian perspective, this error is nothing other than ontic distortion. According to Ben-Dor, “Errancy is a necessary part of the process of what it is to be human Dasein, namely a creature whose Being is an issue for it, and because it provides some openness. Some capacity for oppression by the essence of truth…. Error is counter-essence because in *Richtigkeit* Man does not yet grasp the essence of truth and the truth of essence—namely unification of essence and non-essence of truth.”

Humans depend on error for an opening into Being (since for the human the ontic is the way through the ontological). Law distorts the essence of truth by making humans believe that ultimate protection relies on legal reasoning and rights, when these instruments cause more pain by forgetting Being. Put differently, the human will always be in error in relation to law because the law distorts the ontic (non)relation.

The plaintiff, then, is in error—since presenting grief will, in essence, cause more grief if Being is not re-membered (the essence of truth). But error only works for the plaintiff to the extent that this error is predicated on an
ontological (non)relation. Error is productive if the (non)relation is brought forward in legal thinking. But, as I have argued, the ontological difference is not an issue for black being; it cannot rely on Being as essence of truth or the law as an instrument of re-membering. The Heideggerian error, then, conceals another error. When Dred Scott is in error, as a plaintiff, it is because he attempts to be seen against an interdiction of not seeing, and he attempts to move (grief) against an interdiction on movement (ungrievability). His error is not an aperture into Being and truth, but the terroristic mark of an outlawed being—one execrated. Scott’s error is an error against a fundamental Law (not merely the laws of Missouri); he attempts entry into an order that excludes him.

This error against antiblackness, as fundamental Law, is precisely what Taney attempts to articulate in his opinion. Scott errs against the human’s error—and it is the human’s exclusive right to error that Taney is protecting. These ontological issues condense on the term jurisdiction. For at the heart of Taney’s concern is whether the Circuit Court had jurisdiction to render a decision in the case at all. Plaintiffs must first evince that the case presented falls within the jurisdiction of the court—that the court could rightfully adjudicate the matter. The Circuit Court allows for citizens of different states to sue, and the plaintiff must aver in the plea that the two parties are in fact citizens. This is the way Taney sets up his argument concerning jurisdiction. It is precisely this oversight that concerns Taney, and he argues that the Circuit Court overlooked the problem with jurisdiction because Dred Scott was not a citizen (only citizens can present grievance in this court). Ultimately, jurisdiction brings the law to a zero-degree point, since the presentation of grief, its movement, is foreclosed from the very beginning—following Taney’s logic. This foreclosure engenders additional foreclosures within the law; for even the concept of injury, in this case, is emptied of efficacy because this injury never appears before the court. Kalpana Seshadri-Crooks might consider this the nexus between law and animality, which produces black muteness, or silence, as a feature of this zero-degree point in law.26 Black injury, then, is censored—a mandated not seeing—since this injury is outside the jurisdiction of the court. And this mandated not seeing preconditions the rights of the legal subject who can be seen (in the place that renders the subject invisible). Each refusal to see black injury or to present black grief expands the prerogative and rights of the legal subject. We might
even say the legal prerogative of the human in relation to black being is limitless, owing to jurisdiction.

Taney uses jurisdiction not just to correct this oversight, but also to perform important ontological work—work that needed to be done. His commentary on blackness and history are not extraneous or tangential; they are vitally important to the ontometaphysical labor he performs. He is both philosopher and judge. For what undergirds citizenship is ontological presumptions, which the Circuit Court does not address (perhaps, ironically, because such philosophizing is outside its jurisdiction). “Citizen” not only presumes nationality but also humanity. We might say that the courts take this ontological presumption for granted; it enables the law to function. Thus, “citizen” is a point of saturation. It condenses a host of presumptions, and Taney’s opinion is a painstaking unraveling of these presumptions in relation to black being. For Taney, the real error in this case was assuming that the ontological presumptions of the citizen (humanity and the ethical relation) applied to black being. The question of jurisdiction, then, conceals a more egregious distortion: can black being present itself to the Law of Being? Is it within the Law of Being’s jurisdiction (the order regulating the human’s relation to Being) to see blackness? For Taney, the answer is a resounding no.27

He begins his ontometaphysical work by dividing the world, making a clear distinction between the human and his available equipment (Taney calls this division an “impassable barrier”): “A perpetual and impassable barrier was intended to be erected between the white race and the one which had been reduced to slavery and governed by subjects with absolute despotic power … and no distinction was made between the free Negro and the slave, but this stigma of the deepest degradation, was fixed upon the whole race.”

“Citizen” becomes a synonym for the human in this legal rationale, and, concomitantly, “Negro” becomes the stand-in for the world of material objects, equipment, and merchandise. He situates this division by first posing his proper metaphysical question: “Can a negro, whose ancestors were imported into this county, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases
specified in the Constitution?”

Can the imported thing (Negro) gain access to the political community? This is the crux of his question. Political community serves a vital function because it provides a conceptual apparatus of presenting the world of the human, the being with [Mitwelt]. It is within the political community that Being unfolds as freedom, rights, and ethics. Unlike Jean-Luc Nancy, who would argue that the ontological function of community is to remain incomplete and open, constantly expanding and refashioning, Taney presents closure and exclusivity as absolutely essential to the human. For it is only through this closure that the law can protect the vulnerability of the citizen. An open political community threatens its very survival, and this is not a finitude that opens the citizen onto the horizon of possibility. It is only when the boundaries of the political community are strictly delimited and policed that law works in all its distortion.

But we also have the world of material objects (or Heidegger’s Umwelt), and no delineation is made between the free and enslaved. The Negro is a saturation of abject historicity and worldlessness; the Negro is that “thing” whose ancestors were imported and sold. Thus, Taney divides the world through disparate grammars: the grammar of the material world, imported and sold, and the grammar of the world of humans, the political community, rights, privileges, and immunities. The Dred Scott case forces a violent collision, or intermingling, of these grammars. And part of Taney’s ontometaphysical labor is to untangle these grammars so that society may be protected, as Foucault might argue.

Taney continues this division by making a stronger argument about the thing and the political community:

They [Negroes] had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race. Either in social or political relations; and so far inferior, that they had no rights which the white man was bound to respect; and that the negro might justly and lawfully be reduced to slavery for his benefit. He was bought and sold, and treated as an ordinary article of merchandise and traffic, whenever a profit could be made by it. This opinion was at that time fixed and regarded as an axiom in morals as well as in politics, which no one thought of disputing or supposed to be open to dispute; and men in
every grade and position in society daily and habitually acted upon it in their private pursuits [emphasis mine].

This is part of Taney’s philosophy of history, for Taney turns to historical contexts in England and the modern world to support the ontological presumptions and division he presents. Since the Negro entered into modernity as an “ordinary article of merchandise and traffic,” his ontological position was fixed and beyond dispute. There is no provision in this reading for an ontological transformation of property into human being. This, for Taney, is ludicrous and is the philosophical problem with emancipation.

Taney takes care to assert that the ontological division is not only fixed, but also an “axiom in morals.” It is here that Taney introduces an ethics of (non)relation. For the axiom in morals translates into the Negro having “no rights which the white man was bound to respect.” Taney obliterates any ethical relation or regulation between the human and black being. Since there is no right that the white man is bound to respect, either ethically or morally, not even the right to life or selfhood is protected. Under this ethical terror, black being is not protected and is rendered infinitely vulnerable to whatever violations the human desires. The law does not protect any fundamental right to being for blacks. In fact, under such conditions one could only be for the other, as the mechanisms for protecting and sustaining the self are absent. The Negro thing cannot properly inhabit the position of the Other—to do so is not only unethical but also immoral. Taney closes any philosophical gap we believe we have between ethics and morality and brings the two to an intense point of saturation. The “ought” and the “should” merge together in an axiom. Perhaps, this is one of Taney’s philosophical objectives: to define an antiblack axiomatic. The world of black things is deprived of both an “ought” and a “should,” and this continued deprivation is both the ethical and moral responsibility of the human. For the human depends upon it for his private pursuits (or Heidegger’s unique project).

Within this philosophical statement, Taney presents a somewhat paradoxical (non)relation between blackness, law, and existence. We could suggest that this formulation is the articulation of nothing in an antiblack world:

It is clear therefore, that no State can, by any act or law of its own, passed
since the adoption of the Constitution, introduce a new member into the political community created by the Constitution of the United States. It cannot make him a member of this community by making him a member of its own. And for the same reason it cannot introduce any person, or description of persons, who were not intended to be embraced in this new political family, which the Constitution brought into existence, but were intended to be excluded from it [emphasis mine].

The prepositional phrase “which the Constitution brought into existence, but were intended to be excluded from it” conceals an amphiboly. For the question upon which this double reading hinges is the modification of the “it.” My argument is that the phrase should be read in both ways: (1) as a statement of legal exclusion, when the “it” modifies Constitution, and (2) as a statement of ontometaphysics, when the “it” modifies existence. Both readings are supplements of each other, since ontological execration preconditions legal exclusion. But I want to focus on the ontological reading, which I believe contributes to our understanding of law, being, and blackness.

What this phrase, or axiom, as Taney might call it, seems to suggest is that the law (Constitution) introduces the Negro into existence, but that the purpose of the introduction is nonexistence. Put differently, the Negro exists to not exist. Black existence is predicated upon its perpetual erasure and obliteration; its existence is this very obliteration—existence as erasure. The Law recognizes the black only in its destruction, and this destruction is required for legal intelligibility. Thus, something like black redress is outside of the law’s jurisdiction to the extent that the aim of redress is restorative, and restoring black being is not only impossible, but antithetical to law’s aim (Law is commanded to see the invisible, not to see what never arrived). Law can only see blackness by not seeing through its fleeting presence in destruction. This not existing is, thus, the condition of any black existence. This is the dreaded condition of nothing in an antiblack world. It must be continuously obliterated for the world’s existence. There is no guarantee of being in law either through ontic distortion or ontological unfolding for blacks. The axiom Taney presents is an attempt to explain a phenomenology without Being. Black being, although appearing phenomenologically as “article of merchandise,” does not have being, since it has been outlawed
from Being. The commodity exists, but not in any sense that matters—not in any sense that necessitates relational ethics and rights. It is an existence that does not exist. Being without existence throws existence into crisis.

Taney’s antiblack ethics, then, is enabled by this axiom. The black “has no rights which the white man is bound to respect,” since rights are the domain of life, being, and relation. Another way of reformulating Taney’s statement is that there can be no right that would bring blacks into the domain of livable existence—since all rights are designed for this purpose. Thus, Taney’s statement is really about the absurdity that any right could ever change the formulation of black existence as nonexistence. Any restorative right that we could imagine would destroy the political community. Black rights would be the end of human rights. And this is precisely why Taney must perform this ontometaphysical labor. The occasion of Dred Scott v. Sandford created a sense of urgency for him.

The free black, however, remains unthinkable for him, although it creates the occasion for the philosophical labor. It is easy for Taney to discuss the “article of merchandise,” since it belongs to the world of material objects. The deprivation of freedom ensures that the degraded stigma is unmoved or challenged. But what about the free black? If the article of merchandise (slave) is virtually indistinguishable from the free black, what constitutes freedom? These questions place Taney within a double bind: he wants to protect the rights of property holders (slave masters) to discard property (by granting emancipation to the enslaved), but wants to retain the ontological status of property for these beings even after they are discarded (since he argues that emancipation does not incorporate blacks into the human family). Right rebounds upon itself, and we are left with an unthinkable that Taney sidesteps. Again, Taney can only think the free black as another feature of property, an aspect of the material world, since in his ontological division there is no other place for blacks. He must contend with the property that is no longer property—world poor, or more accurately, without a world. In other words, Taney is faced with the paradox, or enigma, of the nothing. Both inside and outside, inhabiting space but lacking place. And if the slave race has no rights that the white man is bound to respect, then the right to property in the self, the fundamental right of freedom, is not respected, either. The free black, then, cannot exist within Taney’s ontometaphysical imaginary. The lack of ethics and relation would undermine any existence of freedom,
resulting in a nonexistence.

This is why the free black serves as an excellent paradigm: because it brings us to this very space of impasse—which is the location of black being. The impossibility of the free black foregrounds the question of black being, since one must face the terror of this impasse. Through the free black, we understand the ontological determinations of freedom; it is designed for the human, and the attempt to integrate blacks into it results in grammatical instability and conceptual chaos. The free black exists to not exist as a mere speculative instrument, a paradigm, for working through our philosophical limits. The free black is a thought experiment. It has no place, ontologically, within the world—either as property or as human. It resides in the crevices of an active imagination, one designed for philosophical rumination and fiction. We have not witnessed (nor ever will) a free black in an antiblack world, despite the tomes of historiographical research on the subject.

What Taney’s ontometaphysical labor and its lacuna illuminate is the nonworldliness of the free black. This necessitates an important distinction, one that Taney broaches but never quite presents: the distinction between emancipation and freedom. Emancipation releases blacks into an abyss of terror, since freedom will always be impossible in an antiblack world (the world, indeed, would end with black freedom). Emancipated blacks are not free. Romantic narratives of emancipation collapse the distinction—without attending to the ontological presumptions of these terms—by just assuming that the black is a human.

But to return to Taney’s important axiom that blacks “exist to not exist,” we can put together the pieces of our investigation on the Law of Being, the ban (abandonment), black being, and emancipation. The ontic, distorted form of law is, nonetheless, subordinated to the Law of Being at the very essence, or truth, of law. The human exists because Being inhabits the place of existence and, paradoxically, withdraws and is re-membered in this very place of abandon. This place provides the possibility for freedom (without it, the human remains enslaved to metaphysical domination). The black, however, lacks this place; it is outlawed from the Law of Being and, thus, does not exist ontologically, since Being does not unfold. But the non-place of this outlawing is the condition of emancipation. What I am suggesting is that emancipation and freedom signify two different ontological conditions (not merely legal status). Taney used the opinion to protect this place of
Being’s unfolding—this is what he calls “political community.” His refusal, however, to conceptualize a place for free blacks is precisely the problem that emancipation absorbs. Rather than transforming property into personhood, emancipation outlaws blacks from the ontological political community—we lack a grammar to describe this (non)place (besides damnation/hell, as Fanon might call it). “Free black” is the dreaded syntagm of this ontological terror.  

EMANCIPATION AND FREEDOM

They are called free Negroes; but alas! What does their freedom amount to? What to them is the name, but a cruel mockery? In some respects they are even worse off than the slaves … they are an oppressed and degraded caste. They feel it every day of their lives, and it keeps them down. They are not looked upon as men, in the true and proper sense of the term [emphasis in the original].

——The African Repository, 1851

Emancipation is precisely this “cruel mockery.” The term free black explodes into onomastic absurdity and existential cruelty. This presents an ontic distortion, which conceals the ontological terror undergirding this term. Emancipation, then, is deceptive in that freedom is considered the outcome of this process; but this is not the case. Emancipation and freedom are antithetical, and the tendency in critical discourse and historiography to conflate the terms is problematic. The free black, as paradigm, necessitates an unraveling of these terms, since the ontological presumptions and objectives are exposed in their terror.

It is precisely this conflation that frustrates the author of the epigraph, and he insists that a free black is an oxymoron. Indeed, what type of freedom could blacks have in an antiblack order, especially when this freedom leaves blacks even worse off than slaves? Not only does this freedom amount to a pernicious form of bondage, but it also leaves these black beings without a proper ontological place, as “they are not looked upon as men, in the true and proper sense of the term.” Emancipation is an instrument of law, an ontic strategy of distortion. Rather than restoring black being, reuniting the body and the flesh, emancipation solidifies this fissure. Law, then, lacks a strategy, or tactic, to restore blackness, to transform available equipment into human being. In an antiblack order such a restorative enterprise is destructive—since the black object, as nothing, must be continuously obliterated. The free black
constitutes an ontological catachresis in that it lacks any proper referent to capture the being without place in the world. The true purpose of emancipation, then, is to entrap black being in an abyss of shattered signification, terroristic operations, and irreparable violation. The ontological transformation that emancipation promises is deceptive; rather than transforming property (being for another) into human (being for itself), it suspends becoming. This is the operation of ontological terror.

Within romantic, humanist narratives (both historiographical and philosophical), emancipation is presented as a legal process that restores what was taken from the human. The human is presumed as the ontological starting point, and emancipation, then, is merely a change in status, not a change in ontology. But as Taney’s decision illustrates, the human cannot be assumed as the ground for emancipation when it concerns blacks. Articles of merchandise are not human, and the transformation cannot be restorative. This is precisely why the author of the epigraph mocks the very idea of emancipation. Those released from physical bondage are “not looked upon as men, in the true and proper sense of the term.” Biological resemblance does not guarantee humanity—equipment in human form. The human, as I have argued, is an ontological relation and not a mere legal designation. The law is unable to transform what ontology will not allow. Perhaps, in the final analysis, this was Taney’s frustration. The law will fail as an instrument of humanism for blacks. To suggest that blacks are not human, however, is not to suggest that blacks do not have an existence, but we lack a grammar to describe whatever this existence entails. This is the misery of bearing the burden of nothing in an antiblack world.

In her groundbreaking *Scenes of Subjection*, Saidiya Hartman describes postbellum emancipation as “travestied” precisely because the promises of liberal individualism were not realized. I would argue that emancipation, regardless of metaphysical time schemes and historical temporalities, *succeeds in this very travesty*. In other words, emancipation never intended to fulfill the promises of individual liberalism; in fact, it could not. It was unable to transform the nothing of metaphysics into a form of humanist value. Individual liberalism becomes a practice of fantasy and imagination when blacks become its object. The fantasy of equality and the humanist imagination can dream about a world of freedom, justice, and equality, but it must continually disavow the nightmare of the metaphysical holocaust, which
continues. Whether we are in the antebellum period, the post-Reconstruction period, or the post–Civil Rights period, the metaphysical holocaust that obliterates black being and sustains ontological terror is unchanging. This, indeed, is a belief that progress is a myth, even if the calendar year changes. Emancipation is entangled in the myth of progress, temporal change, and freedom dreams.

Since the human and his freedom are foreclosed as options, blacks are thrown into the terroristic space of ontological terror. Emancipation is the legal technology of ontological terror; it is the distortion of distortion. Ontological terror constitutes the strategies, tactics, and technologies that sustain the fissure between the flesh and the body (the primary relation), the enforced not seeing of black being, and the obliteration of black bodies and cosmologies. It is precisely the space without place that is created for beings when the law rebounds upon itself. Put differently, ontological terror is the solution to Taney’s conundrum: how do you honor the property rights of the human (to discard black property) and, at the same time, protect the political community [Mitsein] from the black nothing, which would undermine it? Ontological terror resolves the tension to the extent that blacks are not “looked upon as men in the true and proper sense.” The lack of propriety in a political community is the terror that black being endures once emancipated. The political community offers protection for the ontological relation, even in distorted form, but without a political community blacks are left exposed, without any ontological security. Thus, a vicious choice is presented between continued captivity as “article of merchandise” or ontological insecurity and terroristic emancipation. This is the crux of black suffering, and now the line between these choices has blurred to a point of indistinction (or a “zone of indistinction,” as Agamben might call it).

Frank Wilderson, in Red, White, and Black, ponders the reduction of freedom, as an ontological structure, to freedom, as a political experience (or “negative freedom,” as philosopher Isaiah Berlin would describe it):

Black slavery is foundational to modern Humanism’s ontics because “freedom” is the hub of Humanism’s infinite conceptual trajectories. But these trajectories only appear to be infinite. They are finite in the sense that they are predicated on the idea of freedom from some contingency that can be named, or at least conceptualized. The contingent rider could
be freedom from patriarchy, freedom from economic exploitation, freedom from political tyranny (e.g., taxation without representation), freedom from heteronormativity, and so on. What I am suggesting is that first political discourse recognizes freedom as a structuring ontology and then it works to disavow this recognition by imagining freedom not through political ontology—where it rightfully began—but through political experience (and practice); whereupon it immediately loses its ontological foundations.\textsuperscript{32}

Following Wilderson, I would argue that the tendency to reduce freedom to a contingent experience is a strategy of romantic humanism, and this strategy sets emancipation agendas into motion. If one proceeds from the assumption that freedom can be achieved from political action, then humanism can distort antiblackness, such that it is no longer a question of being, but of action/hard work. The question of black \textit{being} is never broached, since romantic humanism just proceeds as if humanity is universal (and all humans can engage in political action). But when the question of black \textit{being} is foregrounded, contingent freedom becomes irrelevant because freedom is not predicated on any contingent experience but on the Law of Being. And this Law cannot be transformed or revised with political action. In other words, we reach the inefficacy of political experience, contingency, and emancipation when freedom is unmoored from these terms—since it is the idea of freedom that provides an idealistic/mystic power for these terms. Emancipation deceptively tethers itself to freedom so that ontological questions are not broached—emancipation occurs when freedom fails.

Emancipation does not resolve the ontological problem that black \textit{being} presents to the world. This is why the condition of slavery continues after emancipation. The legal distinctions between slave and free only matter within a romantic narrative in which emancipation is synonymous with freedom and freedom is reduced to the acquisition of rights. What the free black, as paradigm, reveals is that no right will restore black \textit{being}—such restoration is a ruse. The scant rights given to free blacks—such as voting, holding property, and assembly—were ineffective in securing humanity (resolution of the nothing in an antiblack world). These rights, rather than incorporating blacks into the political community, served to distort the continued metaphysical holocaust, since it connects rights to restoration. In
Scenes of Subjection, Saidiya Hartman argues that postbellum emancipation produced debt, burden, and instability. Emancipation is, thus, described as “travestied” because it created another form of bondage. Hartman’s analysis in the postbellum period and my analysis of the antebellum period provide a paradigmatic perspective on emancipation. In neither period did emancipation eradicate antiblackness and restore being. The postbellum period, I would argue, is merely the extension of ontological terror to the entire black population. These period changes, proffered by historiography, conceal the continuity of the question. The forms of bondage might differ, but the necessity of bondage remains consistent across metaphysical time. Why is bondage continuous? This question brings us back to our proper metaphysical question: How is it going with black being? Bondage continues, in disguised form, because blacks bear the burden of incarnating nothing in an antiblack world. Put differently, emancipation sustains the imposition of nothing; it does not relieve the burden.

We must depart, then, from Orlando Patterson when he writes in Slavery and Social Death, “As enslavement is life-taking, it follows logically and symbolically that the release from slavery is life-giving and life-creating. The master gives, and in giving he creates … what results from this deliberate loss is a double negation: the negation of the negation of social life, resulting in a new creation—the new man, the free man. Manumission, then, is not simply an act of creation: it is rather, an act of creation brought about by an act of double negation initiated by his power—for nothing.”

Patterson’s romantic humanism avoids the question of black being that his theory of social death necessitates. The altruistic master, who gifts freedom for nothing, assumes an ontological function: creating a “new man, the free man.” What is the ontological procedure by which an article of merchandise outside the political community [Mitsein] becomes human? What philosophy of becoming sustains this romantic narrative? What type of life, given by the master, can transform the dead thing? This new man, which Patterson celebrates, is not “looked upon as a [man] in the true and proper sense.” The life bequeathed to the emancipated does not resolve the issue of ontological propriety. For this life is neither true nor proper; it is a life indistinguishable from death, an ontic distortion. The gift of life (this existential condescension) reveals itself as an execration, since this new man assumes space without place—the new man is an outlaw. In this sense, life is
fraudulent, as is as the master’s promise of transformation. A resurrection never occurs, simply the extension of death in a different form (a more insidious form, since it is deceptive). Nothing cannot be negated (i.e., the black as nothing in an antiblack world). The negation of negation is a Hegelian romantic view of synthesis in which the new created from the negation is an elevation. But Hegel fails us here, since, as Fanon argues, the black “has no ontological resistance in the eyes of white men” (and even Hegel places blacks outside the movement of history and synthesis). Put differently, the new creature does not join the master-class; he is not master of anything, not even his own body (as kidnapping will show us).

Within Patterson’s understanding, “free” (as in “free man”) is a legal experience, a transfer of property. But the ontological question would shift us toward the man, since freedom exists for the man. We could also suggest “man” cannot be reduced to “human.” Patterson assumes the two are synonymous and, thus, skirts the question of black being. What is this created thing? To assume that this creation is human begs the question about the ontological stability of this human. For this humanity is only given by another—the human is still a being-for-another, which is antithetical to a being-for-itself. (If the master decides to rescind his gift, what then?) This new human exists for (and at) the pleasure of his master. The man is still property, since he is born as a consequence of the master’s ultimate right in property—the master’s pleasure in his right to discard property at any time he so chooses. The slave, then, is never truly released from the master; he will always bear the stigma of the master’s power and ultimate authority over life and death (the master’s sovereignty remains in his creation). He breathes the breath of the master; it is in the master where his existence must be grounded and remain for the “gift” of freedom to hold. Thus, a man created (through legal decree) from a human is not a human. It is something else—something we lack an adequate grammar to describe. But whatever this something is, it is not the subject of humanism and cannot be easily incorporated into its romance (without facing the impasse of the question).

Alan Nadel suggests that once emancipated, or free, the black was “no longer the master’s property, the black lost the protection entailed in being his asset. Because the extralegal code of honor which respected another white man’s property (or the laws of slavery which protected his investment) no longer applied, the black became the universal slave of the white community
and the white began to realize the implicit ideal of southern democracy as the Richmond Enquirer had articulated it—that all whites could be masters.”

This new man is the property of all whites, the universal slave. The transformation (emancipation) is really just a move from the particular (single master) to the universal (community of whites/Mitsein), a transformation that retains slavery in essence. Thus, Patterson’s notion of life is not a gift of freedom for blacks at all, but a reconfiguration of antiblack mastery.

**TIME, DECISION, AND SUSPENSION**

The slave’s right to freedom took hold the instant it was granted. The court permitted a master to give a slave an “immediate right to present freedom [emphasis mine].”

—ARTHUR HOWINGTON, “A Property of Special and Peculiar Value”

The decision is an important aspect of law—either through an opinion, ruling, mandate, or order. It is through the decision that power manifests itself as sovereignty and demarcates between the legal and illegal by suspending this distinction between them. Following Agamben, we understand that the “state of exception” is the moment in which legal binaries are suspended into a zone of indistinction and sovereign power works through this indistinction. But what concerns me here is the relation between decision and suspension as ontological mechanisms, or the relation between decision, suspension, law, and the Law of Being. For the free black, as paradigm, illuminates this relation as one of terror.

In *The Birth of Presence*, Jean-Luc Nancy makes a distinction between the decision of disclosedness and the decision that closes off. The latter is a feature of a metaphysics that uses the decision to self-assure existence, to remove uncertainty, and to close the openness of Being’s thrown-ness. We might suggest that the legal decision exemplifies this closure, with its emphasis on precedent, resolution, and finality. This type of self-assurance distorts the mechanism of the decision, ontologically, since Being’s thrown-ness presents an openness that defies closure or certainty. Put differently, the ontological decision must be *undecidable*, a decision that will never be able to decide. Dasein must decide that the decision is undecidable regarding existence and remain open to the unfolding of Being in this place of indecision. This, ultimately, will stimulate anxiety or a mood that reinforces
indecision and exposes the absurdity of metaphysical security. Nancy and Heidegger would call this moment of indecision “suspension”: “In suspension, by definition, decision escapes; it does not take place; it can never take place…. This suspension is the condition and the constitution-of-Being of the existent as such.” The constitution of Being is such that it escapes any attempt to capture it within the net of understanding metaphysics provides for the “They.” We can also suggest, following Nancy and Heidegger, that the Law of Being mandates the decision to undermine itself in indeterminacy, an indeterminate decision, which is the only true decision that one might ever reach concerning Being. What is important here is that indecision and suspension are openings for the unfolding of Being, for the (non)relation between it and Dasein. Rather than limiting becoming, indecision and suspension are necessary for it to occur. Legal certainty—the closedness of the law—depends on the distortion of suspension and indecision.

Antiblackness, as fundamental Law, adds another layer of distortion (or violent perversion) to suspension and indecision. Rather than decision and suspension serving as apertures of Being and stimulating necessary moods, these mechanisms are instruments of ontological terror because they function to outlaw black being. Indecision and suspension provide the contours of an abyss concerning abject black nothing. We will have to turn to the metaphysics of law to understand this, since (1) the purpose of legal metaphysics is to secure self-assurance, and this is denied black being, and (2) the unfolding of Being in the place of indecision and suspension does not occur for black being because the ontological difference is not an issue for available equipment. In other words, if we must get to the ontological through the ontic, then reading moments of legal indecision and suspension illumines another feature of metaphysics that is distorted doubly.

Part of this distortion, or the self-certainty of law, is reliance on metaphysical temporality. For the human, the undecidable (the suspension) is situated in a temporality beyond time, a primordial time in which the present, future, and past are all thrown into crisis. The vulgarity of metaphysical time is such that it enables a distortion of the decision concerning existence. But law attempts to provide a retreat from the heaviness of the undecidable by compressing the legal subject into the present. As system theorist Niklas Luhmann suggests, “The concept of the present [in law] contains rules for
using the idea of simultaneity, which itself underlies the possibility of communication in social life.” The present provides a temporal structure of intelligibility, meaning, and communication for legal reasoning and decision. Law moves in the present—although it relies on the past (legal precedent) and the future to sustain this present.

Temporality and law are “conceptually fused in the West through their mutual implications of total order in relation to which social life acquires meaning,” according to legal theorist Carol J. Greenhouse. In its aim to provide the horizon of social meaning, law assumes a “mythic dimension” in relation to time: “it is a product of being in time (in that it is a human product) but also out of time (where did it or does it begin or end?).” Much like the Freudian primal father’s paradoxical relationship to law, as both within the law (as the embodiment of the law) and outside the law (as the exception that grounds the law), the law assumes a paradoxical relationship to time in that it is produced through time but also situated outside of it (this is one dimension of law’s aporia that Derrida, Benjamin, and Agamben adumbrate). For Greenhouse, the law is a primary vehicle for Western linear temporality, and this sustains its mythic nature.

What I am suggesting here through Luhmann and Greenhouse is that the present is the privileged site of legal constitution; the human assumes legal subjectivity through this fictive present. The law must maintain this fiction to ensure the integrity of its decision. This also, however, implicates freedom. The human’s freedom, as articulated through the metaphysics of law, always unfolds in the present. Freedom exists for the legal present, and its benefits are not deferred into an indefinite future.

The question concerning black being, then, is when does the free black emerge within the legal decision? Posing this question might seem rather awkward, since we think that the black received this freedom in the present, just as the human enjoys his freedom. The epigraph suggests that the slave’s right to freedom took hold the instant it was granted. The court permitted a master to give a slave an “immediate right to present freedom.” It assumes that the master’s ontological power took hold immediately, within the temporality of the human. The free black became free at the signatory moment, when the freedom paper registered the marks of the master and witness. But what the courts experienced was the disjuncture of time concerning the free black. In fact, courts found it difficult to maintain this
present for black being because it presented contradictions that were irresolvable.

According to historian Arthur Howington, “The owner had property in the slave, but the government had ‘control over his social condition.’ Manumission, then, necessarily involved a concurrent act by the owner of the slave and the government. The act of emancipation required not only the consent of the master but the consent of the government as well [emphasis mine].”

Manumission enabled owners to dispose of property and disinvest, but the state retained its investment in black equipment through what Howington is calling “social condition.” Although the master could grant manumission through declaration, this freedom was imperfect and incomplete until the state consented. In many cases, the captive could not obtain the consent of the state to complete the actualization of manumission. Thus, without the concurrent consent of master and government, present freedom proved to be a legal fiction, a fiction without which the legal system could not survive. Black being is fractured as property, both belonging to the master and the state—a “slave without a master,” as historian Ira Berlin would call it. The time of emancipation, then, is uncertain. The free black never obtains freedom because emancipation simply transfers property rights to the state. This is the condition of emancipation for blacks. Emancipation suspends temporality, precluding any chance of becoming. The free black lives in this suspension of time, which provides neither ontological restoration nor legal redress—black time.

Although the owner could abdicate the temporal ownership of the captive—remember the owner possesses the captive in perpetuity—this release of temporal materiality does not transform the captive into the mode of the present. In fact, the act of manumission places the free black out of time, in black time, without the temporal horizon that freedom bestows to the human. If the aim of metaphysics is to secure the fiction of being through time (self-assurance)—in particular, the present—then time mediates and illumines the relationship between humanity and freedom; freedom becomes a mode of temporizing, and the human being must activate existence in the present to have any intelligibility in a metaphysical world. Thus, the inability for the law to secure the freedom of the emancipated black in the present results from the temporal caesura created by the law itself. In producing the category
of the free black, the law attenuates into ambivalence and confusion. Black
time does not transition into human time. Emancipation exposes a temporal
zone of indistinction between the human being and property being, between
that which depreciates over time and that which self-actualizes over time.
Temporality without duration.

Historian J. Merton England asserts, “A large number of Negroes seem to
have been quasi slaves, released from the dominion of the master but whose
freedom had not been sanctioned by the state. The nominal slave group was
probably at least as large as those whose freedom was recognized by law.”

In his seminal work on judicial cases, Catterall observed that the “status of
‘quasi slave’ had no terrors for the logicians of the Tennessee Court, even
though they also believed that ‘there was no middle ground between slavery
and freedom; no such thing as qualified freedom, or qualified slavery.’”

And, paradoxically, even though the justices of the Tennessee Court refused
to believe that a middle ground between freedom and bondage existed,
Justice Robert L. Caruthers acknowledged, “It is true that the Court’s stance
[seemed] to recognize a kind of intermediate state, between freedom and
slavery, which is difficult to manage and regulate.”

This contradictory stance, that an intermediate position exists and does not
exist for emancipated blacks, is a curious feature of antebellum law.
According to Caruthers, the courts were at great pains to “devise some plan
which would be just to the slave, and not inconsistent with the interests of
society—that would sustain his right to liberty, and at the same time save the
community from the evils of a free Negro population.” The courts attempted
to reconcile what appeared to be a paradox of law: to grant the captive liberty
but at the same time deny this liberty (as it would be an evil to society);
suspension became the solution to this conundrum. Within the dispensation
of suspension (black time), black being is undecidable. The courts hold this
inability to decide on the being of free blacks as a feature of terror, an
ontological terror. This suspension, then, is not the Heideggerian uprooting of
Dasein, in which indecision enables the unfolding of Being, but something
pernicious. The decision outlaws black being; this being remains a “being-
for-another,” since emancipation fails to provide this free self with
ontological security.

The community that needs saving is the very political community that
Taney’s decision was designed to protect. And the evil of the free Negro is
the nothing that invades this community, threatening to undo it. In other words, the conundrum that the courts are trying to work out is the mandate not to see and to refuse invisibility to black being. Suspension holds this contradiction as a feature of metaphysical indecision. Time is turned against the emancipated being such that a lack of the present is reconfigured in the decision not to decide. What I am suggesting here, through Caruthers, is that emancipation withholds the present from black being (since the present is the privileged temporality of the human citizen; despite Heidegger’s critique of vulgar time, this time is still fundamentally a racial privilege in an antiblack world. Furthermore, the philosopher cannot destroy metaphysical time without attending to the Negro’s temporal suspension). Ontological terror is a legal strategy designed to place freedom in an indefinite future, but a future that will never arrive.

Kara Keeling, rereading Fanon, would call such a temporality an interval in which the black waits for arrival. The suspension is precisely this waiting and deferral of ipseity. The emancipated black will always remain fractured within this interval, awaiting the judgment of another. Once emancipated, then, freedom never arrives, since it lacks a temporal frame for such arrival; instead, the emancipated is given “black time,” the abyss and fracturing of temporality. In black time, existence is predicated on perpetual waiting. The black self, the generous gift of the master, is never proper to itself because it still belongs to another—in this instance the state assumes absolute mastery.

**SELF-POSSESSION AND FREEDOM PAPERS**

But we must return to a proper metaphysical question, one the free black as paradigm brings to the fore with seismic force: what is this emancipated, new creature? What constitutes this “new man,” which the law brings forth through the master’s prerogative and a legal decree? Answering this question is, indeed, a difficult task, since it leads to more questions and impasse. We encircle this question, unable to approach it adequately with the ontometaphysical instruments at our disposal. But what we can think through is the legal ersatz, the stand-in for the ontological (non)relation—the self. The self is located at the place of Being’s unfolding, and the law mandates seeing this self, even though it is invisible (Nancy’s imperative to see the invisible).
Even though this metaphysical self is not completely reducible to Dasein, we must, nonetheless, go through the ontic to get to the ontological (or “build a way,” as Heidegger would suggest). So, it is here that we must start: with the self that is so crucial to the legal imaginary.

What renders the self so crucial is that it constitutes the mystical foundation of legal thought. This self is the raison d’être of rights, immunities, privileges, and redress. Our concern is the relation between this new creature and this legal self, since what the master owns is much more than the body; the master owns this self. The body is not reducible to the self, and it does not exhaust the field of the self. The self is the ultimate property because it anchors any ethical relation and possibility for freedom. Slavery is perverse precisely for this reason: it transforms the invisible and invaluable into something highly visible and monetized. The “high crime against the flesh,” as Spillers would call it, is this crude translation of the ontological into the science of arithmetic and finance. Therefore, Heidegger’s fear of metaphysics, that it would misuse technology, calculation, schematization, and predictability to turn the human into a mere object, is somewhat realized in slavery. The “flesh” (the primary relation) is severed, obliterated, and in its place the body stands as the object of market relations, statistical science, and arithmetic. Black nihilism would compel us to center the question of black being in any postmetaphysical investigatory procedure.

The self, as the stand-in for the primary (non)relation, is the mystical entity that is purloined during the financial transaction between the master and the seller. And, consequently, when a captive leaves the plantation to find freedom, he is said to have stolen this self. The self does not belong to the captive, and the attempt to reunite the self with other aspects of a fractured being is cast as criminal. For blacks, any restorative enterprise is criminal in an antiblack world. But, to return to Patterson’s humanism, we must ask, does the master, in creating this new man, return this self? Can the law rectify an ontological obliteration? And is the self purchased the same self returned to the emancipated? Thus, our questions concern the subjects of self-possession and self-dispossession. How does the law transfer property of the self from the owner back to the property? One strategy of transferring property is through the legal instrument “freedom papers.”

It is through the free black as paradigm that we begin to see extraordinary violence (ontological terror), as the immaterial, invisible self is not only
objectified but does not exist without this objectification. We might borrow the word *reification* from the Marxist-Leninist tradition to attempt to conceptualize this aspect of terror. My concern here is not commodity fetishism and market relations (although these do factor into the process of emancipation) with my use of reification, but to suggest that something that is supposed to remain immaterial and invisible is transformed into materiality. This is the form of ontological terror that emancipation introduced to the free black. The novelty of the new man created is that his returned property remains property, and the white public is the owner. It is still property for another, and the freedom paper is the *materialization* of this self-as-property.

Emancipation, then, ensures that the black self remains a visible object; it does not render this self immaterial and invaluable. This is precisely why the emancipated black is never free under such conditions, since emancipation does not restore the ontological relation upon which freedom is predicated. Freedom papers (deceptively named as such) actually served as “ontological” structures for free blacks. A piece of paper determined whether the black being in question was gifted with limited rights and autonomy or was an aspect of some master’s real estate. The free black is only free to the extent that he can produce this paper—but having to produce, or prove, freedom is not freedom, it is emancipation. If freedom papers were lost, stolen, destroyed, or even eaten, the being in question could transition from a new man to an owner’s property, at any time or any place. This is an aspect of ontological terror for blacks; since you never know when your freedom paper will become an issue for you or whether someone wants to reclaim you as property (per the Fugitive Act of 1850).

This is the crux of ontological terror for blacks: black being is violently reified into a material object (freedom paper), and this materiality is capable of infinite manipulation and destruction. Freedom papers are an indispensable technology of ontological terror because they enable the reification of the immaterial self, which leaves free blacks unprotected and vulnerable. The primary (non)relation cannot be secured, since this (non)relation depends on both a material object and the literary/hermeneutical judgment of a white inspector. Reification is a strategy for not seeing an invisible self and seeing an abject object.

The freedom paper served as proof of the master’s ontological power to create and gift life, but this self required incessant approval and recognition
from a human (nonreciprocal) recognition, which is the extremity of Fanon’s critique of Hegel. Since recognition is required, this black self always belongs to a white other (human); the human possesses this self through reading and emancipation. This celebrated gift is an execration, since what the master really creates is a condition of ontological terror. The master gifts terror, not ontological security.

For whites, reading and interpretation become an antiblack form of possessing the free black. Given that this self is materialized, the problem of reading becomes more than a literary concern, but an ontological one, as well. The stakes of (mis)reading become a matter of life and death for a free black standing before the human. Free blacks were required to present this paper whenever the human desired it. While standing before a human inspector, the free black was suspended ontometaphysically—awaiting a judgment from the human (i.e., stolen property of a master or a new creature). The free black, as paradigm, reveals the structure of black existence in an antiblack world as a unilateral conferral of execration and terror.

In *Freedom Papers*, Rebecca Scott and Jean Hébrand offer a beautiful tracing of the Tinchant family traveling from several countries and the way written documents are central to this odyssey. Freedom papers are particular vehicles of movement through antiblack landscapes:

This family emerges as one with a tenacious commitment to claiming dignity and respect. Members of each generation, moreover, showed an awareness of the crucial role of documents in making such claims, as they arranged for papers to be brought into being—sacramental records when taking a child to be baptized, notarial records when registering a contract, letters to the editor when engaging in public debate, private correspondence when conveying news to each other. For members of the family, individual nationality and formal citizenship were not clearly defined but a person could still make things happen by putting works on paper. The manumission documents drafted to protect the members of the first generations from slavery or reenslavement, for example, turn out to be highly complex creations, with a power both more fragile and more real than one might imagine [emphasis mine].

The authors are certainly correct about the fragility of the power, since
ontological terror renders such power (defined through romantic humanism) insecure or nonexistent. Indeed, what would power mean when the self is reified and consistently inspected? Or when white gazing (the “eyes of the white man,” as Fanon calls it) serves as the ultimate ontological procedure? What is also of interest is the linking between “claiming dignity and respect” (restoring the ontological relation) and arranging “for papers to be brought into being.” Such an arrangement, ontologically, is impossible. The papers must do more than appear (bringing into being in a phenomenological sense); for the papers to have effect, they must also be brought into Being (realm of the ontological). These papers must arrive (into) the place of a withdrawal and an unfolding. This doubled reading indicates that appearing is impotent without the placing into Being—for an appearance (a phenomenology) without Being is not seen. (This allegorizes the gap between ontology and phenomenology, within which a black nihilistic thinking must begin). Put differently, freedom papers deceive through appearance. This is what renders the papers so fragile, and it is the purpose of these papers to remain fragile. Emancipation trades in real estate for fragility. This new man is the unseen, reified object, which romantic humanism—the agency, will, progress, and universality fetish—is unable to restore.

If language is the house of Being, as Heidegger has suggested, then our analysis must turn to the word itself to understand Being’s execration—given that it is the word that creates this new man and gifts him with life. The dead letter of the law brings forth a life indistinguishable from death. In essence, the dead letter of the law transfers its death upon the nothing that bears the stigma of indistinction. Let us consider a freedom paper to demonstrate the manner in which the word works to dispossess at the very moment of purported self-possession. Not only is the material object fragile (it can be physically destroyed at any moment), but also at the level of the word we see the freedom paper as another form of dis-possession:

THESE ARE TO WHOM IT MAY CONCERN: that the Bearer hereof, Black Hector and his wife Black Sallo, is now free from me and my heirs, executors and administrators and at full liberty to act and do for themselves, to pass and repass about their Lawful concerns, without trouble, let, or molestation of me the Subscriber, as WITNESS my hand and seal, This Twenty-first Day of April, One-Thousand, Seven Hundred and Fifty-eight.

BE IT REMEMBERED: This, Twenty-first Day of April, One-Thousand-Seven-hundred and Fifty-eight, Came John Alexander of London Britain, Before me, John Scott, Esquire, And
acknowledged the above Certificate of Freedom for the above named, Black Hector, and his wife Black Sallo (two of his Negroes) to be his Act and Deed as Witness to my hand and Seal and desire that they might be recorded this Twenty first day of April, 1758.

—JOHN SCOTT (Justice of Peace) (Seal)

The law compels through the imperative voice (“Be it Remembered”), but who is the addressee? Who exactly is the subject called by the demand? The identity of the addressee is not clearly articulated in the freedom certificate. John Alexander provides a bit more clarity concerning the potential identity of the addressee. His witness opens with the phrase “THESE ARE TO WHOM IT MAY CONCERN.” This phrase, a seemingly innocuous formality, establishes a boundary of exclusion. It, of course, is not addressed to everyone, but to a particular addressee who is entitled to the freedom certificate. The freedom certificate does not properly belong to (concern) everyone. The opening witness suggests exclusive property; only those who are permitted to concern themselves with the contents of the document are invited and have a right to its contents. Therefore, it is quite probable that the addressee compelled to remember the initiating event by the Justice of Peace is the same addressee to whom the certificate properly belongs.

John Alexander identifies Black Hector and his wife, Black Sallo, as the bearer of the freedom certificate (“That the Bearer Hereof, Black Hector and his wife Black Sallo”). The bearer presents or yields the document to another; but if Black Hector and Black Sallo are merely bearers, beings who yield or surrender, can it be said that the freedom certificate properly belongs to them? The addressee is the one to whom the freedom certificate is surrendered, not the one who must surrender its content. Although the identity of the addressee is probably obvious by now, it is nevertheless important to tease out the rhetorical constructions of the freedom certificate to understand how black freedom undermines itself in an antiblack language that cannot accommodate such a being.

If the freedom certificate does not really concern Black Hector and Black Sallo, for they bear, surrender, and present a witness for another, then the freedom certificate also produces another instance of dispossession within its structure. Discursively, Black Hector and Black Sallo are excluded from the very structure that purportedly determines their ontological transformation (from property to personhood). We can suggest that the freedom certificate
belongs to the addressee, for the certificate is created (brought into being) for the benefit/pleasure of this subject. Put differently, the self of the free black is given to an Other in language, a dispossession that is established at the very instance of purported self-possession. They must surrender the self to another (this self never really belongs to them); and rather than becoming an “I,” Black Hector and Black Sallo become direct objects in a grammatical syntax attempting to bestow personhood. This grammatical objectification mimics the social objectification that a free black would experience in an antiblack order. Indeed, the freedom paper does not grant blacks the right to predicate (i.e., the inalienable capacities of the human); it only reconfigures objectification through grammar. Grammar, then, betrays the purported intentions of the freedom paper: the free black is dependent on the subject (the human) for the freedom paper to have any meaning or significance. Black beings are bereft of genuine predication, since available equipment can only act for another, for the benefit of the other.

Laws such as black codes and the Fugitive Slave Act of 1850, for example, deputized white citizenry—rendering each white citizen addressees of the freedom certificate. The “To Whom It May Concern” opening phrase of the certificate, then, is an invitation to white citizenry [Mitsein] to participate in a collective reading, a reading that properly belongs to the white citizen by virtue of civic responsibility (i.e., the obligation to report fugitives and to ensure social order as mandated by the Fugitive Slaves Laws). Thus, the certificate addresses an absent presence, a collectivity that exists outside the initiating moment/event of the signature (absence), yet is undoubtedly infused within the grammar of racial collectivity (presence). Consequently, the presence of Black Hector and Black Sallo is registered as an absence—since the black physical body is always already absent from the collectivity that matters. In other words, Black Hector and Black Sallo are never called and do not have a right to respond to the call, even though the freedom paper makes them “free.” Black freedom does not arrive in the place of Being’s unfolding, it is just a presence that is absent in its lack of being (appearance without Being).

The voice of the Law calls each white citizen to remember the event of the master’s signatory power—its ontological force. This involves a collective acknowledgment of the unlimited power of the master, to gift life to the dead. The signature attests to his act and deed. Following Agamben, we could also
suggest that the signature provides the “condition of possibility” for the master’s ontological power—his unique stamp on an antiblack metaphysical world. If, however, the call addresses a collectivity that exists outside the initiating moment of the signature (i.e., the white citizen was not physically present at the moment of the signing), how can this collectivity remember the event? Does the law, then, make a demand of the legal subject that is impossible to obey? Moreover, is an encounter with the impossible demand a precondition for obedience (like the demand to see the invisible)?

The law demands the reproducibility of the signatory event through the act of remembering, which is really an act of piecing together, re-membering, a fragmented narrative. Through the reconstruction of an event, the white citizen reconstitutes the ontology of Black Hector and Black Sallo at the time of inspection. In order for the will of the master’s signature to materialize as the emancipation of the bearers (upon each case of review), the originary event must be reproduced without alteration. The self of Black Hector and Black Sallo depends upon the unaltering, undifferentiating repetition of an original event (i.e., the original event of the master signing the freedom paper). Put differently, the black free self depends on the willingness of humans to fantasize, to imagine, an event for which they were not present, but which they are compelled to remember nonetheless. The black self, then, is constructed through exercises of fantasy mediated through grammar and literacy. If one is unable, or unwilling, to re-member an unknown event (the signing), the black self under inspection vanishes—and property arrives in the vacuous ontological space.

Black Hector and Black Sallo are continuously (re)produced through literacy and fantasy construction. Can we say that they are free? It is but a cruel mockery of freedom—freedom rebounding upon itself in absurdity. Thus, it matters little whether the freedom paper is forged or a master’s generous gift; the fundamental structure of the paper ensures the impossibility of ontological security and the opening of terror. Being is never secure if it must be reified in a document. This is the viciousness of emancipation. The freedom paper engenders a fraudulent self but not Being. This self is the vehicle, or object, through which the call of Being reaches the human. The free black is, thus, reinstrumentalized in its freedom.
KIDNAPPING AND TERROR

What renders ontological terror so vicious is the object that it takes as its obsession. I am calling this terror “ontological” because the antiblack network of technologies and tactics takes this self as its target. But since this terror is invisible, not perceptible to the discerning eye, it is unlimited in its destruction and scope. More than fear, ontological terror engenders unending instability, without relief. Any black can become the target of this terror, since what sustains it is the lack of ontological ground and security for blacks in an antiblack world. To speak of a war on terror, in this instance, is difficult, since we lack any tactical procedures, strategies, and technologies to provide security for this self. Indeed, how do you restore the severed flesh, the primary narrative, if this is ultimately the only solution? Rather than restoring the flesh, emancipation entraps blacks in a network of terror—terror predicated on the very self emancipation bestows. Without freedom, there is only terror. Ontological terror is sustained by the unbridgeable gap between freedom and emancipation.

The free black, as a paradigm, illumines this terror; for in this instance we learn its tactics and operations: (1) It materializes the free self in a physical document. (2) It creates unending instability, since materiality is not permanent and is vulnerable to manipulation. (3) It profits from the invisibility of the violence, since the terror directed against this self is unseen. (4) It uses law as the vehicle through which it violates its target. (5) It renders black freedom just another form of captivity. This terror is the outcome of a metaphysical holocaust and the unbearable burden that nothing must endure in an antiblack world.

Kidnapping free blacks is one form of this terror. We can suggest that the essence of kidnapping is not legal, but ontometaphysical. It could not exist without the ontological violence that sustains it. What kidnappers steal, then, is this precarious self and not just a black body. The black body encases a more vulnerable entity. Kidnappers preyed on this ontometaphysical instability. They stole free blacks, usually from Northern states, and sold them into slavery for a profit. But again, what is important here is that kidnapping relies on the precarious black self—since this self exists to not exist, it is fleeting and material. Kidnapping illustrates that the free black does not exist as human being, since the ontological presumptions of freedom are
denied blacks (and it is this denial that provides the condition of possibility for kidnapping). The lure of emancipation conceals the fact that freedom under such a condition is uncertain and stochastic. One experiences terror precisely because one never knows when this self will be targeted, or when one will be forced to prove the improvable. It is the terror of losing their freedom, as Carol Wilson has described it in *Freedom at Risk*. This terror is the ontological dimension of insecurity—at any time or place this self can be targeted.

A kidnapper can claim blacks as property at any time because, as Samira Kawash explains, black freedom “was never absolute or unassailable in a context of race slavery, freedom maintained a kind of contingency not shared with freedom applied to whites in general.” This contingency is the difference between equipment and human being. The white human cannot transition from human into equipment because she has Being, and Being provides the condition for her freedom. Put differently, freedom is unassailable ontologically because Being is unassailable. The unfolding of Being is the space of freedom for the human. This is not the case for black being, and this is why Taney argued that emancipation really did not matter much. Kidnappers benefited from this ontological problematic, since free blacks could move incessantly between property and freedom. This devastating transit is the ontological terror emancipation enables.

**CODA**

Philosophy is always already constitutively related to the law, and every philosophical work is always, quite literally, a decision on this relationship.

—GIORGIO AGAMBEN, *Potentialities: Collected Essays in Philosophy*

What I have proposed in this chapter is a theory of outlawing. Law is a fundamental instrument of terror, rendering black being unprotected, undefined, not seen, and reified. It exists to not exist. Outlawing departs from and challenges postmetaphysical thinkers and black humanists by asserting that blacks cannot rely on Being as an anchor for freedom, recognition, or ipseity because the Law of Being depends on black exclusion to enable the freedom of the human. The ontological difference must not become an issue for blackness, since black being is premier equipment for Dasein’s existential
journey in a modern world. Thus, the relation between the Law of Being and the being of law (the metaphysics of law) is a collusion of terror—both outlaw blacks. The Law of Being outlaws blacks ontologically by mandating not seeing this being within the order to see the invisible (Being itself, manifested in the human, is what is invisible but must be seen). And metaphysically, the self (the legal representation of the human’s being) is denied blacks. This self is reified (in a physical document), placed within an interval of temporality, that holds the present (black time), unstable is, and can transition into a human’s property at any time (kidnapping). For blacks, the ontological difference is suspended or withheld—Being will not stop the terror or serve as security against antiblackness. This is why outlawing departs from postmetaphysical thinkers—such as Nancy, Heidegger, and Ben-Dor—and humanists such as Patterson, Rebecca Scott, and Jean Hébrand.

The free black, as a paradigm, illumines the abyss of black being. Freedom is but a mockery within an antiblack world. Emancipation is the only option; there are no solutions to restoring the flesh and eradicating ontological terror. The form of terror might change, but the necessity and manifestation of terror remains. The free black teaches us not to become seduced by romantic humanism and postmetaphysics. A change in terroristic tactics and strategies is not progress or freedom; rather, it is the metaphysical holocaust “showing itself in endless disguise,” as Hortense Spillers would describe it.