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“Never Allowed for Property”:
Harriet Jacobs and Layli Long Soldier
before the Law

Abstract This article reads Harriet Jacobs’s *Incidents in the Life of a Slave Girl* (1861) alongside Layli Long Soldier’s *Whereas* (2017) to argue that both texts challenge the ideology of property ownership that has long been central to Black and Indigenous subjugation. By reading these texts through Cedric Robinson’s theorization of the Black Radical Tradition, which “never allowed for property,” this essay argues that both texts bring into being a world that precedes and exceeds the violence of legal regulation. Jacobs and Long Soldier both locate an alternative to law in the radical divinity of maternal care. Through Jacobs’s and Long Soldier’s discussions of holy maternal care, we can recognize the interrelation of Black and Indigenous freedom struggles in a way that’s not solely defined by shared subjugation.

Keywords property, law, abolition, Harriet Jacobs, Layli Long Soldier

The radical abolition of property law is a major facet of both Indigenous and Black freedom struggles. Property and property law have historically been among the foremost means for the subjugation of Black and Indigenous people. As Harriet Jacobs (2009: 7), one of the earliest Black feminist critics of property law, writes: “according to Southern laws, a slave, *being* property, can *hold* no property.” Since Jacobs, numerous other writers have theorized what Cheryl I. Harris (1993: 1714) calls “this entangled relationship between race and property.”¹ Property and property law undergird both anti-Blackness and the subjugation of Indigenous people largely because, as Brenna Bhandar (2018: 5) argues, “legal forms of property ownership and the modern racial subject are articulated and realized in conjunction with one other [*sic*].” Bhandar elaborates: “The colonial encounter produced a racial regime of ownership that persists into the present . . . not only was property law the primary means of appropriating land and resources, but property ownership was central to the formation of the proper

legal subject” (4). The violence of property emerges from the interrelation of slavery and colonialism and, as Harris (1993: 1723) argues, has been central to the subjugation of Indigenous as well as Black people; Harris writes, “the racial oppression of Indians [is] inherent in the American regimes of property” (1724). Indigenous scholars such as Aileen Moreton-Robinson (Goenpul) have written about the racialized violence of property, arguing that “race indelibly marks the law’s possessiveness” and “logics of white possession and the disavowal of Indigenous sovereignty are materially and discursively linked” (Moreton-Robinson 2015: xii, xiii). But what does effective resistance to the property form look like? J. Kēhaulani Kauanui (2018: 106–7) (Kanaka Maoli) articulates the central challenge of Indigenous resistances to white property logics, writing: “the paradoxical task is to counter U.S. claims to ownership without asserting that Indigenous peoples owned the land in a Lockean sense. Tribal nations may make claims to their traditional territories, but decolonial modes acknowledge that the land does not belong to the people(s): the people(s) belong to the land.”

The Black Radical Tradition offers language to theorize what Kauanui might consider one of these “decolonial modes” of relation to land. Cedric Robinson (2000: 168) writes that the Black Radical Tradition entails “the preservation of the ontological totality granted by a metaphysical system that had never allowed for property in either the physical, philosophical, temporal, legal, social or psychic senses.” “Never allowed for property” describes a relation in which property is not only abolished but is also made to have always been unthinkable. “Never allowed for” refashions the movement of time and history such that what is prior is not in linear, sequential relation to the present but rather saturates it and is ongoing. “Never allowed for” is a radical reorientation, which assumes that a life-world other than Western modernity has existed and continues to exist, even in the margins of a settler colonial society. It proposes, as Fred Moten (2004) and J. Kameron Carter (2019) have argued, that resistance is prior to regulation, not a reaction to it. Resistance—the “had never allowed for” is what the law must bracket in order to come into being. The law cannot abide radical Black and Indigenous traditions that are utterly incompatible with property. This idea is significant in Indigenous freedom struggles as well. Indigenous scholars, including Leanne Betasamosake Simpson (2014) (Michi Saagiig Nishnaabeg), have described the many ways Indigenous conceptions of land are defined relationally, as well as precede and are inassimilable to settler legal definitions of property. Simpson reminds readers to refuse “colonial permanence”

by centering Indigenous modes of learning and living that “[disrupt] settler colonial commodification and ownership of the land” (8). Mishuana Goeman (2008: 24) (Tonawanda Band of Seneca) uses the concept of “land” to “[deconstruct] the discourse of property and [reformulate] the political vitality of a storied land,” which, she writes, “means reaching back across generations . . . and reaching forward to create a healthier relationship for future generations.” Goeman’s invocation of intergenerational time resonates with Robinson’s idea of “never allowed for property” and suggests that “storied land” both precedes and exceeds settler property logics. Simpson’s refusal of “colonial permanence” also suggests an unsettling of colonial temporal logics that trace their origins to the creation of property.

This article considers two texts, Harriet Jacobs’s *Incidents in the Life of a Slave Girl* (1861) and Layli Long Soldier’s *Whereas* (2017), that describe alternatives to law and to the dominance of the property form by turning away from law and toward the sacred and the spiritual.² Jacobs’s and Long Soldier’s texts differ vastly in both form and historical contexts: *Incidents* is a nineteenth-century autobiography; *Whereas* is a contemporary book of experimental poetry. I bring these texts together, though, because both reconfigure legal concepts—the loophole in Jacobs, “whereas” in Long Soldier—to describe a world that not only “never allowed for property” but rejects the law itself. Reading these texts together enables a way of thinking about the relationship between Black and Indigenous struggles, in particular struggles with law, in terms not defined exclusively by resistance to racist and settler violence. Rather than locating the points of solidarity for Black and Indigenous politics exclusively in the shared injury of conquest and genocide, reading Jacobs and Long Soldier together—across time and across genre—brings into focus an image of life not exhausted by law but rather premised on connections of love, joy, and spirit.³

Each of these two seemingly disparate texts performs what I term an *antinomian* practice: they reject the very premise of secular law in favor of an abiding belief in a variation on free grace—in this case, maternal care. Antinomianism describes the idea that because God grants grace freely, one need not follow earthly law to ensure salvation.⁴ I repurpose this theological concept, usually associated with seventeenth-century white, Puritan dissidents, to describe a rejection of the very premises of the laws that constitutively denied protection to Black and Indigenous Americans.⁵ I use the term *antinomianism* to describe the lived practice of Robinson’s “never allowed for property.” Although *antinomianism* is usually understood through the way the

theological concept of grace—God’s unmerited favor—acts as an alternative to civil law, Jacobs and Long Soldier don’t require a Christian framework. They find other ways to access the “*ante-*,” which is to say, the *before*, of *antinomianism*. Jacobs picks up the elements of Christianity that are useful to her and reconfigures them, leaving behind what she doesn’t need. Long Soldier’s antinomianism is wholly outside of a Christian tradition. But both locate an alternative to law in the radical divinity of maternal care.

Jacobs and Long Soldier envision a world that “never allowed for property” by imagining a world that does not begin with slavery and settler colonialism. J. Kameron Carter and Sarah Jane Cervenak (2017) have argued that the beginning of so-called Western Civilization is marked by the instantiation of property ownership. They suggest this is manifested most clearly through two events: the beginning of Genesis, in which God gives form to the earth, which was, until that point, “without form and void” (Gen. 1:2), and John Locke’s (2015: 54) famous quip that “in the beginning all the world was America.” Both of these moments—God’s giving of form, and the understanding of America as *terra nullius*, “uninhabited land” available to be colonized through the imposition of private property—are at the root of some of the foremost modes of subjugation in history. Carter and Cervenak (2017) take up a call from Gayl Jones to “‘say’ the beginning better than what was said in the beginning,” to rewrite beginnings such that they comprise not what they call “propertizing violences” but rather a world that “never allowed for property.” I turn, then, to *Incidents* and *Whereas*, two texts that rewrite the beginnings of a world that will have always been *before* the law. Rather than operating in terms of a sovereign gesture that inaugurates “Being,” be that the arrival of the first ship carrying enslaved people or even the arrival of Christopher Columbus, these texts offer what elsewhere might be called emergence, or what in the Hebrew of the Book of Genesis is called *tehom*, or “the deep.” Rethinking the meaning of the beginning so it’s not characterized exclusively by slavery and colonization makes it possible to think Blackness and Indigeneity together in a way that’s not solely defined by shared subjugation.

To read Jacobs and Long Soldier as imagining an alternative to the propertizing beginning of Genesis, I turn to feminist theologian Catherine Keller’s theorization of the Biblical concept of *tehom*, or “the deep.” Keller offers an alternative to the conventional reading of Genesis 1 in which God creates the heavens and the earth out of nothing.

In the conventional reading, creation is a sovereign act of mastery in which an all-powerful individual creates something out of nothing. Rather than reading the creation of the world as a law-making act that imposes order and form upon chaos, Keller (2003) argues for a “tehom theology” that emphasizes Genesis 1:2: “the earth was without form and void and darkness was upon the face of the deep [tehom].”⁶ This feminist theology rewrites beginnings by taking seriously the tehom—the “without form and void” and the “deep”—to argue that the world was not created from nothing but rather from a dense and meaningful chaos, the darkness of which is not incidentally racialized as Black. Moten (2015) notes that the “face of the deep seems to predate the sovereign ‘let there be,’” suggesting that the tehom precedes the law. Tehomic theology, like Black religious thought, is invested in unsettling the primacy of the sovereign, what Carter (2019: 96) describes as the “theopolitical project” of “American politicality” that’s premised upon “property or settler enclosure.”

Although the idea of tehom arises from the Hebrew Bible, the concept of a generative, cosmogonic darkness is not limited to Jewish or Christian religious frameworks. The Hawaiian and Polynesian concept of *Pō*, which Joyce Pualani Warren (2019: 52) describes as the “cosmogonic darkness which birthed the universe,” offers a way to consider the *ante*-nomianism of Blackness and Indigeneity: their being before the law. Without collapsing the distinction between Kanaka Maoli, Lakota (in the case of Long Soldier), and Christian beliefs, I follow Warren in believing that even beyond the specific Kanaka Maoli context, *Pō* can help us “think about how blackness and indigeneity have deep, nuanced, and mutually constitutive roots that belie settler colonialism’s recent construction of the two as mutually exclusive” (51.) Although Christianity has historically figured Blackness as degraded, both Warren and Joy Enomoto (2017) argue that *Pō*, in its (an)original divinity, has enabled Indigenous—specifically Kanaka Maoli—people to destigmatize blackness and render it as something holy, something other than negation. I read the blackness of *Pō* and the blackness of tehom through what Moten (2007: 223) calls Blackness’s “anoriginal lawlessness.” As Marquis Bey (2017: 282) writes, following Moten, “blackness stands in as a perennial refusal of lawfulness—indeed, of law—and is unable to acknowledge the law. The law can never grab blackness.” Blackness, like tehom, like antinomianism, is that which the law must do away with in order to come into being. Blackness and fugitivity are prior to law, prior to regulation, and as such, to use Moten’s terms, begin “to get at the divine, to get at an

original or originary being” (Moten 2018a: 245). This, I think, is what Jacobs is after, as she manifests in *Incidents* a fugitive politics of (an) originary Black divinity. Jacobs’s antinomian religious practice is *ante-nomian*: it positions Blackness and fugitivity as holy, generative, and prior to law.

Harriet Jacobs’s Beginnings

In *Incidents in the Life of a Slave Girl*, Harriet Jacobs writes often, and quite explicitly, about the fact that the law does not protect the enslaved. Early on in the text she states plainly: “The reader probably knows that no promise or writing given to a slave is legally binding” (Jacobs 2009: 7). In a moment addressing white readers, she writes: “You never knew what it is to be a slave; to be entirely unprotected by law or custom; to have the laws reduce you to the condition of a chattel, entirely subject to the will of another” (71). When explaining her decision to send her daughter Ellen to New York, out of anxiety that Ellen’s father, Mr. Sands, would not free her, she writes, “There was no protecting arm of the law for me to invoke” (177). In the absence of legal protection, Jacobs must seek refuge by other means. Rather than appeal for inclusion in the protection of a legal system that perpetuates enslavement, Jacobs engenders a wholly other relation to the law. She relies on the divine protection of Black maternity.

Throughout *Incidents*, Jacobs vehemently opposes the idea that she would gain her freedom by someone purchasing her. Although she doesn’t disdain when others (including her grandmother) achieve freedom that way, she refuses to dignify the operating logic of enslavement by allowing herself to be purchased. Shortly before she does achieve her legal freedom, she writes of her grandmother:

I resolved that not another cent of her hard earnings should be spent to pay rapacious slaveholders for what they called their property. And even if I had not been unwilling to buy what I had already a right to possess, common humanity would have prevented me from accepting the generous offer, at the expense of turning my aged relative out of house and home, when she was trembling on the brink of the grave. (193)

Jacobs levies a sophisticated critique of the making of property in persons. Stating that she is “unwilling to buy what I had already a right to possess,” she critiques the very idea that a “self” is something that one might “possess.” Jacobs also illuminates Robinson’s point about the “ontological totality” that precedes the law: she will not

turn into property something that is already hers. She redefines both *right* and *possession* such that neither is contingent upon a legalized conception of ownership. This refusal to engage with enslavement on its own terms—her refusal to have her freedom bought—is emblematic of the theory and practice of freedom that Jacobs puts forth throughout the book. Although her freedom was eventually purchased by a white woman, throughout her life Jacobs practiced unconventional, constrained, and otherwise partial forms of freedom, rather than recognizing the legitimacy of a system that would have her—or any persons—be property.

Jacobs uses what we might call a *tehom* spirituality to imagine an alternative to a world in which the law transforms the earth into property (Carter 2019: 96). Jacobs “says the beginning” differently (Carter and Cervenak 2017). She creates a space for living that precedes and exceeds the law’s violent transformations of person and land into property, while she is still subject to the law’s regulation. This space that the law cannot capture is most literally manifested in the text through the “loophole of retreat” (Jacobs 2009: 146), the garret in which she hides and achieves a kind of provisional freedom while still legally enslaved. But I go first to Jacobs’s own theory of the beginning, and I discuss how she manifests a beginning-as-*tehom* rather than as sovereign gesture, which makes possible a way of living in this space before and outside of the law.

One of the ways Jacobs rewrites “the beginning” is through a Black feminist reimagining of the Book of Genesis. In Jacobs’s reimagining of Genesis, divinity takes the shape not of a sovereign God but rather of Black maternity. In Genesis, God’s law and care are linked to the establishment of property. When God makes a covenant with Abraham, he grants to his descendants “this land, from the river of Egypt unto the great river, the river Euphrates” (Gen. 15:18). But for Jacobs, at the beginning is her Aunt Nancy and Black maternal care. She writes of Nancy: “She was, in fact, at the beginning and end of every thing” (Jacobs 2009: 14). In this radical cosmology, it’s not God who is at the beginning and the end of everything but rather an enslaved Black woman—her kin. For Linda (Jacobs’s alter-ego), Nancy is both world generating and world sustaining, like the chaotic feminine darkness of *tehom*. Nancy is, in a way, divine. While Linda is in the garret, she “often . . . kneel[s] down to listen to her [Nancy’s] words of consolation, whispered through a crack!” (185). Linda kneels in prayer to hear Nancy’s consolation, telling Nancy that she “should always remember her as the good friend who had been the comfort of my life” (185). Nancy’s being at the beginning and the end of everything has

implications for the narrative's definition of freedom. Rather than plotting a teleological progression from enslavement to freedom, in which enslavement is the before and freedom the after, or in which the before is being property and the after is owning property—what Saidiya V. Hartman (1997: 116) calls “the burdened individuality of freedom”—a provisional kind of freedom is already there, at the beginning, in the formless form of Nancy's and Jacobs's grandmother Martha's practices of care.

Jacobs resignifies freedom such that it isn't defined juridically. Rather, it's something lived and felt in moments, even under the conditions of enslavement. It's what Jasmine Syedullah (2014: 12) calls a “fugitive abolitionism” that takes place in the loophole of retreat, and which is “a critique of the kinds of emancipation slavery made desirable.” Neither freedom nor unfreedom is wholly defined by property relations. As Hartman (1997: 116) argues, emancipation's legal bestowal of freedom reproduces the logic of property in which “rights, liberty, and equality” come to be things to be owned, perpetuating “racial domination.” Even while legally enslaved, Linda has access to a fugitive kind of freedom, and even when she is legally emancipated, Linda's entrance into the wage economy does only a little to alleviate her constraint. But the kind of freedom Linda practices, the kind that is immanent in Black maternity, is not defined by property.

Although for Linda maternal care—her own, her aunt's, and her grandmother's—is a source of protection, maternity is, under enslavement, unquestionably fraught. As Hortense J. Spillers (1987: 77–78) argues in her own reading of Jacobs: “even though the enslaved female reproduced other enslaved persons, we do not read ‘birth’ in this instance as a reproduction of mothering precisely because the female, like the male, has been robbed of the parental right, the parental function.” Because the child of the enslaved would become “property” of the enslaver, the Black mother, Spillers argues, cannot claim parenthood (64–81). “What tangled skeins are the genealogies of slavery!” writes Jacobs (2009: 101), on deciding what name to give her infant son. “I loved my father; but it mortified me to be obliged to bestow his name on my children” because “my grandfather on the paternal side was a white gentleman”—presumably her paternal grandmother's enslaver. Lines of familial relation are entangled with lines of property ownership, but these disruptions of kinship do not exhaust the freedom embodied in maternity.

Even under enslavement, Black social life thrived at the margins of law. The enslaved engaged in small, everyday acts of resistance,

which Hartman (1997: 68) terms "stealing away" (see also Camp 2004). Stealing away, Hartman (1997: 65) argues, took place "formally outside the space of politics," and, I would add, outside the space of law. Because the enslaved were, according to law, objects of property, for them to "steal away" was, in effect, for them to steal themselves. Hartman writes: "Through stealing away, counterclaims about justice and freedom were advanced that denied the sanctity or legitimacy of rights of property" (69).⁷ Black social life undermined the legitimacy of property law. When Martha was still enslaved, she "stole away" by baking crackers, which she both sold for a small profit and gave away to Linda. The cracker baking, which happened at midnight, took place in the shadows of the law. Sanctioned by Martha's enslaver, the baking was a way for her to steal time to care for her family. Later, when Martha is free, her house becomes a somewhat precarious Black social hub, even as Linda is hidden in the garret. The movement of information and of care among Black people, often women, protects Linda's hiding place. I build upon Hartman to argue that not only does this social life undermine the law, but it's this kind of social living that the law must contain in order to come into being.

In an effort to stifle these threatening care and kinship ties, enslavers turned to law's regulatory tools, including imprisonment. At one point while Linda is in hiding, Dr. Flint, Linda's enslaver, puts her brother, her children, and Nancy in prison, in an attempt to blackmail them into providing information about Linda's whereabouts. Although the imprisonment is an attempt at punishment, it actually serves, at least for Linda's daughter, Ellen, as a place of refuge from Mrs. Flint's cruelty. At one point, Ellen is taken out of the prison in order to receive some medical treatment, but "poor little Ellen crie[s] all day to be carried back to prison . . . She kn[ows] she was loved in the jail . . ." (131). I read this desire to return to the prison as antinomian: it is an absolute rejection of the validity of the legal system. Rather than break out of the prison, which would dignify the prison's power as a space of containment, breaking in to the prison poses a challenge to the prison's violence. Though the prison constrains mobility and incites fear, in the presence of Nancy and her Black feminine care, it also has space for love. Though this care cannot nullify the prison's force, its persistence poses a threat to any presumption that the force of law might be without gaps or limits.

The prison is by no means a perfect refuge, but the precariousness of this refuge is part of what puts it in an oblique relationship to the law. In the Bible, "cities of refuge" are places where people who have been accused of murder can find safety from punishment. In describing the uncertain refuges of the prison, and eventually of the garret,

Jacobs places her family member's lives under the purview of God's grace, in adherence to God's law rather than the law of the enslaver. The cities of refuge are places where someone who "killeth any person at unawares" (Num. 35:11) can be safe from revenge, at least until judgment has been rendered. By alluding to cities of refuge, Jacobs suggests that the person who has broken an unjust law—who has run away from enslavement—is worthy of refuge. Black maternity is its own kind of city of refuge, a respite from the overarching law of slavery, which condemns the enslaved and the fugitive to death. In the prison and in the garret, Linda and her family are granted a strange kind of sanctuary.

The prison becomes a momentary sanctuary because Nancy herself is a refuge—Jacobs calls Nancy "my refuge" (183) from Dr. Flint's sexual pursuits, which places her in a divine position.⁸ In the Bible, it is most often God who is referred to as a refuge, for example: "God is our refuge and strength, a very present help in trouble" (Ps. 46:1). Black maternal refuge redefines the contours of legalized space. In the prison, the divinity of motherly care, in the form of Nancy, brackets the efficacy of the law. Her being a refuge marks a limit of the law's transformation of person into property. Even as Nancy is subjugated in the Flints' home, she holds space for Linda's troubles. Even under enslavement, Nancy has always been holy.

Jacobs and her fellow enslaved people also find refuge in the church that they built and the Methodist services held therein. Just as the legal system offers the enslaved no protection, the white religious system not only offers no protection but also acts as a space of surveillance. When the enslaved are compelled to go to service led by the white Reverend Pike, his sermon consists of a refrain of "God sees you" and God "will punish you" and "Obey your . . . master" (89). The enslaved have no patience for this series of chastising threats under the guise of worship; Jacobs writes, "It was so long before the reverend gentleman descended from his comfortable parlor that the slaves left, and went to enjoy a Methodist shout. They never seem so happy as when shouting and singing at religious meetings" (90). The Methodist shout is an inspired, embodied refuge from the surveillance of enslavement, what Ashon T. Crawley (2016) calls "otherwise possibility." This fugitive religious practice is yet another kind of "stealing away," which Hartman (1997: 66) writes manifests how "the recognition of divine authority superseded, if not negated, the mastery of the slave owner." Jacobs and her kin can, here, experience God's grace while negating the power of the enslaver.

The narrative’s most famous space that is simultaneously prison and refuge is the garret above her grandmother’s storeroom where Linda hides for seven years. Many scholars, including Hartman (1997), Syedullah (2014), Crawley (2012), and Valerie Smith (1991), have examined the tension between enslavement and freedom enacted in the loophole of retreat, and I build on their work to suggest that the loophole of retreat, which Hartman (1997: 9) describes as “a space of freedom that is at the same time a space of captivity,” is an antinomian space. The garret resembles both a womb and the hold of a ship that transported enslaved people, and in this paradoxical space, Linda finds a provisional kind of freedom, creating a womb—a space of safety—within the hold. The loophole materializes a figurative term closely aligned with antinomianism: the *legal loophole*.⁹ The Oxford English Dictionary defines *loophole* as: “An outlet or means of escape. Often applied to an ambiguity or omission in a statute, etc., which affords opportunity for evading its intention.”¹⁰ The loophole of retreat is, almost literally, a loophole in the law: it allows Linda to hide in plain sight. As a loophole in the law offers a temporary strategy for getting around—or slipping underneath—a law’s intention, Jacobs’s loophole of retreat works as a form of partial freedom that is simultaneously within, beneath, around, and (given the spatial positioning of the garret) above the law of slavery, in what Jenny Sharpe calls the “crevices of power” (J. Sharpe 2002: xxi). The loophole is something the law can never grab (Bey 2017: 282). As Christian believers are meant to be “in but not of the world”—meant to turn toward God and away from worldliness—the loophole is “in but not of” the law.¹¹ The “in but not of” is an antinomian relation, giving God’s grace primacy over the secular.

Linda practices the holiness of maternal love when she sees her daughter, shortly before Ellen is sent to live in Brooklyn: “I exhorted her to be a good child, to try to please the people where she was going, and that God would raise her up friends. I told her to say her prayers, and remember always to pray for her poor mother, and that God would permit us to meet again” (Jacobs 2009: 179). Linda’s invocations of God and her reminders for Ellen to pray could (and were probably meant to) be read as conventional female piety, however, I suggest that Linda’s exhortations for Ellen to “be a good child” and her promises that God “would raise her up friends” and “permit us to meet again” are not in causal relation. Linda’s enduring faith implies that God’s grace is not dependent upon her or Ellen’s good works but rather that God’s unmerited favor pays no heed to Ellen’s behavior or to Linda’s enslaved status.

God, as many nineteenth-century texts by people of color note, “is no respecter of persons” (Acts 10:34). But when Linda is talking about God here, she is also talking about her own maternal love. Linda’s faith that “God would permit us to meet again” is not entirely separable, or even differentiable, from her boundless love for her daughter. Her Black maternal love is as powerful as the love of God.

Black women’s love remains strong, despite enslavement’s structural assault on Black maternity. *Incidents* provides a counterpoint to slavery’s disruptions of kinship and prohibitions on maternal love, as they have been articulated by Spillers (1987: 64–81). Jacobs shows how Black feminine love precedes and exceeds the bounds of enslavement. As Jennifer C. Nash (2001: 16) writes, “black feminist love-politics implicitly offers a critique of the state and its capacity (or incapacity) to ever adequately remedy injuries.” For Nash, love-politics offers an alternative to intersectionality, which she argues is dictated by identity politics and describes as a “*juridical intervention*” into antidiscrimination law (6). But love-politics, she argues “transcends the self,” and by extension, the juridical subject (10). Nash proposes “how a radical ethic of care, rather than an assertion of shared injury . . . can form the basis of a public” (15). Though one may read Jacobs’s intervention into abolitionist literature in intersectional terms (highlighting the difficulty of being enslaved *and* a woman), Nash’s articulation of a politics based on a radical ethic of care rather than on shared injury can speak to ways of articulating solidarity between Black and Indigenous people that extend beyond experiences of genocide.

This Unholding

I turn now to Layli Long Soldier’s *Whereas*, a text that appears wholly different from *Incidents* in both form and historical context. But *Whereas*, like *Incidents*, simultaneously enumerates the violence of law and attests to the ongoingness of love politics as a critique of the state. *Whereas* offers both an antinomian alternative to the legal violence that turns land into property and a new way of conceptualizing Black and Indigenous solidarity in relation to oppressive legal force: through love and radical care, rather than through genocide and conquest.¹² The social and historical conditions Long Soldier is addressing are distinct from those in Jacobs. She is not talking specifically about a legal order in which persons were turned into property but rather about property law’s violent conversion of Indigenous land into “the United States” and territory governed by treaties, which more often than not are not even upheld.¹³

In *Whereas*, Oglala Lakota poet Long Soldier theorizes a world prior to law’s inception as a regulatory force. Written in response to the US Congress’s 2009 Apology to Indigenous peoples,¹⁴ *Whereas* rewrites both the so-called Apology and the settler colonial conditions that engendered it, such that the congressional declaration is revealed to have always been null and void. In a series of poems that mimic the form of the Apology, Long Soldier reveals the emptiness of legal declarations that are meant to be reparative. The Congressional Apology, which Long Soldier riffs on and repurposes in this book, is technically a senate resolution embedded in a military appropriations bill. The resolution was signed by Barack Obama in 2009 and, as Long Soldier (2107d) writes in the introduction Part II of *Whereas*, “No tribal leaders or official representatives were invited to witness and receive the Apology on behalf of tribal nations. President Obama never read the Apology aloud, publicly.” The Apology consists of a series of “Whereas” statements, such as “Whereas while establishment of permanent European settlements in North America did stir conflict with nearby Indian tribes, peaceful and mutually beneficial interactions also took place;” each of the poems in this section takes up the form of the statements in the Apology: they begin with “Whereas” and end with a semicolon. Many of them use exact language from the resolution.

In repurposing language from the Congressional Apology, Long Soldier reveals the emptiness of such legal gestures. In formal legal documents, the word *whereas* cannot introduce a new fact; it can only reference facts that are already believed to be true. Long Soldier writes: “whatever comes after the word ‘Whereas’ and before the semicolon in a congressional document falls short of legal grounds, is never cause to sue the Government” (70). Because each clause in the government document begins with “Whereas,” it implies that all of the “facts” it states are already believed to be true and, as such, bring no new truths into being. Following the “Whereas” statements, in both the poem and the Apology, are “Resolutions,” which are meant to introduce new information and policy, but, as Long Soldier dramatizes, these resolutions have minimal, if any, force. Both the document and the book end with two “Disclaimers,” which, in the case of the Apology, only emphasize the resolution’s impotence. The official disclaimers read: “(b) Disclaimer. — Nothing in this Joint Resolution— (1) authorizes or supports any claim against the United States; or (2) serves as a settlement of any claim against the United States” (Apology). Throughout *Whereas*, Long Soldier shows how only the laws meant to harm Indigenous people have force, whereas those meant to protect them do not. This transforms and

deforms the work that the law does, imagining an alternate world in which no settler law—in particular, property law—has force.

Long Soldier identifies herself in the poems as a citizen of both the United States and of the Oglala Lakota Nation.¹⁵ Which is to say, she is, self-professedly, subject to US law but not necessarily entitled to its protections. She writes:

WHEREAS I query my uneasiness with the statement, ‘Native Peoples are endowed by their Creator with certain unalienable rights, and among those are life, liberty, and the pursuit of happiness.’ I shift in my seat a needle in my back. Though ‘unalienable,’ they’re rights I cannot legally claim if placed within a Whereas Statement. Meaning whatever comes after the word ‘Whereas’ and before the semicolon in a Congressional document falls short of legal grounds, is never cause to sue the Government. (Long Soldier 2017f: 70)

Here she points to the way the “Whereas” statement emblemizes the emptiness of US declarations of rights for Indigenous people. It acts to protect the US government from liability rather than protect Indigenous people from expropriation. We can read “legal grounds” literally, as the “ground” designated by US law. If the violence of settler colonialism takes the form of creating “boundaries (reservations)”¹⁶—literally creating “legal ground”—to “fall short” of that would mean to have a relation to land that has never yet been legislated, that is before and beneath the law, what Kauanui (2018: 106) might call a “decolonial mode” of claims to land.¹⁷ But though “fall[ing] short of legal grounds” might be meant as a provision to protect the government, it can also be reimagined as an entirely different relation to law, one in which “falling short” does not indicate deficiency but rather plenitude. Each poem that comes after a “Whereas” statement and before a semicolon “falls short of legal grounds.” Each of these poems resides in a space left under the law. The strange spatiotemporal relationship “Whereas” has to law hearkens back to Jacobs’s loophole and its positioning within and beneath, and “in but not of” the law. Long Soldier, like Jacobs, repurposes an ambiguous legal term, using language to deactivate the force of law. If in a legal document, the word *whereas* has the power to make what follows it unenforceable, this poem seems to ask what power *whereas* might have when used in a poem, and in what ways the generative linguistic power of a poem might work to counteract the power of legal language.

In one poem, Long Soldier presents a particularly potent challenge to the regime of property law that undergirds both US settler colonialism

and the supposed Apology. She writes: “Whereas I have spent my life in unholding. *What do you mean by unholding?*” and then continues: “It is mine, this unholding” (Long Soldier 2017f: 79). I read “this unholding” as an Indigenous, lived imagining of an absolute refusal to abide by a legal system that was founded upon violent dispossession. A *holding* can mean an area of land, a kind of containment and also a legal decision; in turn, *unholding* can be read as a refusal of settlement, a refusal to abide by a world created and legislated by a legal logic of conquest (Moten 2018b). *Unholding* loosens possession’s grip. It softens. It manifests an alternative to law in the form of capacious, boundless care. *Whereas* and *this unholding* put forth a world in which maternal love and care, not state-sanctioned laws and apologies, are reparative. For example, in another poem, Long Soldier (2017c) writes of her daughter: “This one combs and places a clip just above her temple, sweeping back the curtain of *why/ and how come*. I kiss her head I say, *maybe you already know*.” Decolonial love has always been; decolonial love is something she already knows. The poems suggest that it is “unholding,” rather than propertizing or legislating, that makes it possible to survive the enduring violence of settler colonialism. This world of care is shaped by settler colonialism but precedes and exceeds it. Colonial violence does not exhaust this love, and empty congressional resolutions cannot destroy it.

The poem “*Waḥpániča*” begins to imagine a world that “never allowed for property”:

I wanted to write about *waḥpániča* a word translated into English as *poor* comma which means more precisely *to be destitute to have nothing of one’s own*. But tonight I cannot bring myself to swing a worn hammer at poverty to pound the conditions of that slow frustration . . .

Yet I feel forced to decide if *poor* really means brittle hands dust and candy-stained mouths at a neighbor girl’s teeth convenience store shelves . . . This is the cheapest form of poor I decide it’s the oil at the surface . . .

Because *waḥpániča* means to have *nothing* of one’s own. Nothing. Yet I intend the comma to mean what we do possess . . . (Long Soldier 2017e: 43–44)

This poem writes through the tensions and ambivalences of wanting a world without property, but without fetishizing materially existing poverty: people who, in the present, have nothing of their own. It asks what would make it possible to have a world in which *poor* didn’t mean being “stomach-sick over how to spend their last \$3 comma on milk or gas or half for both with two children in the backseat watching” (44)

but rather meant a world where everyone has “*nothing* of one’s own.” The poem also presents a paradox in translation: *waĥpániča* is translated into English as “poor,” but the word opens onto the possibilities of what kinds of immaterial things one might have or not have in order to feel or count as poor. The last lines read: “I feel *waĥpániča* I feel alone. But this is a spill-over translation for how I cannot speak my mind comma the meta-phrasal ache of being *language poor*” (44). Settler colonialism has created a poverty that is beyond the material—a poverty in which people are deprived of their own language.

The poem reimagines the relationship between ownership and poverty, such that “to have something of one’s own” is not necessarily a relation based in money or the material. One can have only “a dog’s matted fur a van seat pulled to the living room floor” (44) and therefore be, in English translation, destitute, but can nonetheless have kinship and have culture. However, the only way to make this situation of relation something other than a sentimental glamorization, which implies that even if one is materially poor, at least one has one’s culture, is to redefine the meaning of *having* so that it is detached from ownership. There are multiple senses already available in the word *having*. One might redefine *having* by replacing the phrase *to have nothing* with *had never been*, thereby shifting the meaning of *having* from a verb that denotes possession to a mere auxiliary verb. From *having* to *had never allowed*, grammar deactivates the ability of a word to denote ownership and transmutes it into a marker of time—of tense. This work of redefinition that in turn abolishes ownership is something a poem can do.

Settler colonialism—like slavery—does not exhaust social relations. It cannot ever turn everything into property. *Whereas* mobilizes what Avery Gordon (2018: 42) calls “abolitionist time”: “rather than stop the world, as if in an absolute break between now and then, it is a daily part of it. Abolitionist time is a way of being in the ongoing work of emancipation, a work whose success is not measured by legalistic pronouncements, a work which perforce must take place while you’re still enslaved.” It takes place, in the case of *Whereas*, under the conditions of colonization. What persists even when colonization has made it so one has “*nothing* of one’s own” is care—in these poems, maternal care. *Whereas* imagines ongoing maternal care as a decolonial and abolitionist force that lives within settler colonial violence but is not wholly transformed or obliterated by it. The mother still has to worry about how to spend her remaining \$3: a worry framed by both the poverty created by colonization and by the need to spend that \$3 for the “two children in the backseat watching.”

Maternity, for Long Soldier, is forged in a different context than it is for Jacobs, and so it takes on a slightly different shape. The trauma to which Long Soldier responds is not that of enslavement but rather a different intergenerational forced severing of ties—to family, to language, to land. In these poems, maternal care is still *tehomc* and antinomian but in a context fully divorced from Christian concepts of God and of grace. The “deep” from which it emerges is one of intergenerational story. The turn away from law is no longer toward anything resembling the Christian God but rather toward this divine maternal force. One poem in *Whereas* explicitly performs the reparative work of the maternal transmission of history as care:

WHEREAS I sipped winter water cold-steeped in pine needles, I could taste it for days afterward, I taste it now. When I woke alone gray curtains burned in sunrise and down my throat to the pit, a tincture of those green needles changed me. When should I recount detail, when’s it too much? My mother burrows herself for days at a time, so I listen to her. We speak about an envelope for receipts, dark roast coffee and the neighbor’s staple gun I want to borrow. In the smallest things I watch the compass needle of conversation register her back to center. What has become of us, mother to her former self. Daughter to mother, present selves. Citizen to country, former and past to present or, is it a matter of *presence*? My daughter wouldn’t do it when she was younger but this year she wanted to. For her birthday, an ear piercing. The needle gun hurts only for a moment, we assure her. In the old days Grandma held ice on my earlobes then punctured with a sewing needle. You’ll have it easier, I affirm. She rushes through the mall to the needle chair, her smile. Eagerness, the emotion-mark of presence. I want to write something kind, as things of country and nation and nation-to-nation burn, have tattooed me. Red-enflamed-needle-marked me. Yet in the possibility of ink through a needle, the greater picture arrives through a thousand blood dots. Long ago bones were fashioned into needles. If I had my choosing I’d use this tool here, a bone needle to break the skin. To ink-inject the permanent reminder: *I’m here I’m not / numb to a single dot*; (Long Soldier 2017f: 80)

In this poem, multigenerational maternal relations intertwine with those between citizen and nation, between nations. Needles move through this poem; their “taste” remains across generations, from pine needle to needle gun to sewing needle to tattoo needle. In its emphasis on *presence*, this poem manifests the ongoing struggle in abolitionist

time. As the shape of the needle changes over generations, colonization is ongoing, but nonetheless, mothers and grandmothers care for their daughters by inflicting pain “only for a moment.” “You’ll have it easier,” the speaker says to her daughter, referring both to the ear piercing and to navigating the relations between citizen and country, to being Lakota in a settler colonial nation. Both the violences of settler colonialism and the remedies to it take place not in the text of the law but in the piercing of the body. In physical *presence*.

The poem “Edge,” too, lives in the tender holiness of maternal care: “My name is Mommy on these drives the sand and brush the end of winter we pass. You in the rearview double buckled back center my love . . .” (Long Soldier 2017b). The holding of the seat belt’s double buckle, which is also the holding of the appellation “my love,” travels alongside “this unholding” (Long Soldier 2017f: 79). Being held, it suggests, is not necessarily a holding—not necessarily a legal decision or a containment. “Your mother’s mouth is a church” (Long Soldier 2017b), the poem continues. The mother’s mouth is a space of divinity—a dark space, *tehom*—where words and worlds come from. Its darkness is generative and sustaining. As in Jacobs the “hold” of the garret is also a womb, here the darkness of the mother’s mouth is also a church. This poem’s breathless run-on sentences exist in counterpoint to the deliberate articulated comma pauses, the holds, of “*Waḥpániča*”: “I do not know what to say how far to go the winter near dead as we drive you do not understand word for word the word for you is little.” There is neither pause nor poverty in this love, the words crashing into each other like the generative chaos of the boundless deep. “Edge” ends on what Toni Morrison would call a *rememory* of colonization—a memory located in place: “And I see it I Mommy the edge but do not point do not say *look* as we pass the heads gold and blowing these dry grasses eaten in fear by man and horses.” How can you teach a daughter to unremember, this asks? When care takes the shape of being in place, the impossibility of unknowing a history. Driving past grasses blowing . . . the grasses, Long Soldier tells us, that white merchant Andrew Myrick told the starving Dakota to eat, the grasses the Dakota then stuffed in the mouth of his corpse. Those grasses neither negate maternal love nor are they transcended by it. They’re just there. Whispering histories.

The Dark and Troubled Sea

At the end of *Incidents*, Jacobs is legally free, yet she points out that legal emancipation doesn’t mean that her freedom struggle is complete.

She writes: “Reader, my story ends with freedom; not in the usual way, with marriage. I and my children are now free! The dream of my life is not yet realized. I do not sit with my children in a home of my own. I still long for a hearthstone of my own, however humble” (Jacobs 2009: 259). I read this juxtaposition of freedom with the “not yet realized” as a theorization of freedom that is ongoing in abolitionist time. Not yet having a home of her own doesn’t negate the reality of her freedom in being together with her children. Although I (and many others) have argued that Jacobs experienced freedom even throughout her enslavement, by way of her relationships with her children and small, everyday instances of autonomy, this moment continues to resignify what counts as freedom. Freedom is possible even in the absence of property ownership.

The final passage of the narrative brings this resignification of freedom together with the narrative’s rewriting of Genesis in reverse. Jacobs loops around, ending her book with the Bible’s and the world’s unbeginning: “It has been painful to me, in many ways, to recall the dreary years I passed in bondage. I would gladly forget them if I could. Yet the retrospection is not altogether without solace; for with those gloomy recollections come tender memories of my good old grandmother, like light, fleecy clouds floating over a dark and troubled sea” (259). Jacobs here is, again and still, rewriting Genesis 1:2 through Black feminism. The verse from Genesis reads: “And the earth was without form, and void; and darkness was upon the face of the deep. And the Spirit of God moved upon the face of the waters.” Returning to the *tehom*—the formless void, the “face of the deep,” and the “dark and troubled sea” are not *nothing* but rather a generative feminine chaos. They are the anorigins of a Black feminist world prior to and in excess of law. In Jacobs’s version, the Spirit of God takes the form of “my good old grandmother,” takes the form of “light, fleecy clouds.” Martha, even after her death, is the Spirit of God, the divine that floats over formlessness. This was not Jacobs’s intended ending. The text originally ended with a chapter about John Brown’s armed rebellion, but Jacobs’s white editor, Lydia Maria Child, suggested the text end with her grandmother’s death (Mills 1992). However, this turn to her grandmother does not reproduce the sentimental myth that (white) domesticity is an adequate solution to national crisis. Rather than depoliticize the text, this divine invocation of Jacobs’s grandmother reinforces an abolitionist politics that is not reliant on militant masculinity but rather centers and historicizes a Black feminist ethics of care. Martha’s death is not the end but rather a reminder of the

ongoingness of the beginning, of the continued care and generative chaos of the “dark and troubled sea.” In Jacobs’s rewriting of the Bible, the beginning of the world, the bringing of Earth into being, is at the end of this narrative, suggesting that the formless void, the sea, has already been holding a world. The *tehom* arrives at what *appears* to be the end. However, we know it is not the end but rather the ongoing, continual practice of freedom.

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Notes

- 1 See also Best 2004; Han 2015; Nichols 2020.
- 2 My thinking about the force of “turning away”—from both law and world—as an act of registering dissatisfaction with the given is informed by Terada 2009 and François 2008.
- 3 For recent work that brings Black and Indigenous studies together around the rubric of conquest, see King 2019. Whereas Tiffany Lethabo King argues that we must think Black and Indigenous struggles together in terms of genocide, I suggest that the connection via genocide, though important, is not exhaustive and does not foreclose points of solidarity through love. King’s writing on the relationship between Black and Indigenous studies is in conversation with work by Frank B. Wilderson III (2010) and Jared Sexton (2014). Sexton argues for a hierarchy of Black and Indigenous oppression, claiming that the oppression of Black people via enslavement will always be prior to and more profound than that of Indigenous people via settler colonialism. King’s argument does away with Sexton’s troubling hierarchy but nevertheless remains committed to an analytic that thinks Black and Indigenous studies primarily via shared injury. For a helpful discussion of the way Wilderson and Sexton pit Black and Indigenous studies against one another, see Day 2015. For other discussions of the relationship between slavery and settler colonialism, see Byrd 2019; Leroy 2016; Rifkin 2019.
- 4 For historical background on antinomianism, see Hall 1990; Lang 1987.
- 5 On repurposing the concept of antinomianism to theorize Black and Indigenous freedom struggles, see Manshel 2020.
- 6 All Biblical citations are from the King James version.
- 7 See also Nichols 2020 on the relationship between property, theft, and dispossession, and on its implications for colonization.

- 8 The idea of a person being a refuge has precedent in some Indigenous languages. In the Hawaiian language, the word *pu'uhonua* refers to a refuge that can be either person or place. I'm grateful to Craig Howes for teaching me this.
- 9 C. Riley Snorton brilliantly articulates some of the ways Linda also locates freedom in other loopholes within the law of slavery, beyond the garret. Snorton (2017: 69) argues that “fungibility emerges as a tactic of maneuvering from within the morass of slavery’s identity politics” and that Linda/Jacobs finds provisional freedom in a loophole within gender and the ungendering wrought by enslavement. They point to the ways that Jacobs finds provisional freedom in “passing” via disguises—both as a man and as darker skinned.
- 10 *Oxford English Dictionary*, “loophole, n.1,” <https://www-oed-com.eres.library.manoa.hawaii.edu/view/Entry/110180?rskey=mOPX3U&result=1&isAdvanced=false#eid> (accessed January 18, 2022).
- 11 See for example, 1 John 15:19, “If ye were of the world, the world would love his own: but because ye are not of the world, but I have chosen you out of the world, therefore the world hateth you” and 1 John 15:16, “They are not of the world, even as I am not of the world.”
- 12 On decolonial Indigenous love politics, see L. Simpson 2017, in particular the chapter “Land as Pedagogy.” Other Indigenous literary texts that practice decolonial love include Belcourt 2019; Diaz 2020; Whitehead 2018.
- 13 On broken treaties, see Deloria 1985; Deloria and Wilkins 1999. On Federal Indian Law, see Blackhawk 2019; Carrillo 199. On dispossession and contemporary Indigenous struggles against it, see Byrd et al. 2018; Pasternak and Scott 2020. Two podcasts, *The Red Nation Podcast* (2019–present) hosted by Nick Estes and *This Land* (2019–21) created by Rebecca Nagle, are also excellent sources for information on contemporary Indigenous struggles. Episodes of these podcasts can be found at: <https://directory.libsyn.com/shows/view/id/therednation> and <https://crooked.com/podcast-series/this-land/> (accessed January 18, 2022).
- 14 US Congress, Senate, *To acknowledge a long history of official depredations and ill-conceived policies by the Federal Government regarding Indian tribes and offer an apology to all Native Peoples on behalf of the United States*, S.J. Res. 14, 11th Congress, 1st sess., 2009. Hereafter cited as “Apology.”
- 15 This puts Long Soldier’s poems in an interesting relation to Audra Simpson’s politics of refusal. Although Long Soldier herself does not literally refuse US citizenship, as some of the subjects of *Mohawk Interruptus* (2014) do, I would argue that she does, as Simpson (2014: 7) writes, “articulate these modalities [of Indigenous nationhood] as [she lives] and [moves] within a territorial space that is overlaid with settler regimes that regulate or circumscribe [her] way of life,” as well as point to “colonialism’s ongoing existence and simultaneous failure.”
- 16 Long Soldier (2017a: 51) writes in the poem “38” about treaties the Dakota signed with the United States: “It would be said, this money was payment for the land the Dakota ceded; for living within assigned boundaries (a reservation).”

- 17 Practically speaking, many contemporary Native nations opt to strategically work within the grounds designated by US law, as that is often the only way they can achieve anything resembling sovereignty. One might consider, for example, the Mashpee Wampanoag's 2019–21 legal fight for claim to the reservation land that was supposed to have been held in trust for them by the federal government since 1934, or the 2020 US Supreme Court Case *McGirt v. Oklahoma*, in which a majority ruled to uphold nineteenth-century treaties dictating that about half of the state of Oklahoma is Indian land. These legal battles are important, and the victories granted often have material consequences. However, Long Soldier's poems imagine a radical, decolonial, abolitionist relationship to the law and to land in which these negotiations not only will not be, but also have never been, necessary. For a detailed account of the background of the *McGirt* case, see Rebecca Nagle's podcast *This Land* (2019–21).

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