

Colin Dayan

The Law is a White Dog: How Legal Rituals Make and Unmake Persons.

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Colin Dayan has written a challenging and ambitious book. Joining the interdisciplinary conversation about current forms of carceral society, this book could be placed on the same shelf as Avery Gordon's *Ghostly Matters*, Angela Davis's *Are Prisons Obsolete?* and Ruth Wilson Gilmore's *Golden Gulag*. Its interest for social and political philosophers and philosophers of law will be primarily its engagement with the question of how personhood is defined and materially shaped via the practice of law. In addition to extensive and generative engagement with case law, Dayan focuses on philosophical work from Locke and Bentham to set the stage for her searching inquiry into the formation of Western modernity at the tangled site of the legal boundaries of personhood.

On one level, this is a book about the very broad condition of being subject to law: that which shows up in law, is considered through law, or is defined by law. On another level, it is a book about particular social objects—or subjects, which is part of the question: slaves, prisoners, dogs, ghosts. And it is about social practices enacted through law: the way that some beings are considered persons, while others are objects or property. Perhaps the most compelling task of the book is to forward a necessarily allusive, poetic, searching argument for the irrationality and magical thinking of law itself as a way to understand how people can become things, how things can be imbued with spirit, and how reason and magic come together in law.

Law is a fiction on Dayan's account, a magical fabulation with the power to make the stories it tells real and material. The first chapter of the book examines how, for example, material, legal effects arise from a story of a haunting; while the ghosts haunting a house may not be real, they can be treated as real in the case that purported haunting affects real estate values. Similarly, ghosts, zombies, dogs, and slaves take on a shared place in relation to law: they exist on the margins of "normal" legal procedures and precedents and in that marginality define a certain centrality and a certain normality. Dayan writes: "Whether living or dead, there is something that links dogs and humans, damaged, diseased, or dead, in Anglo-American law" (34). That something is difficult to parse, because it is simultaneously a negation and a creation: the law, for Dayan, "creates persons much as the supernatural creates spirits" and in that transformative process weakens the strict demarcations we suppose lay between the terms of "person, ghost, thing, animal" (xvii).

The second chapter offers a rich legal genealogy of the category of civil death, that process whereby a person can live in body but be dead to the social world in law. Today, civil death in the US is for the most part lived by felons and convicts—people who, depending on their legal situation, can no longer vote or in other ways participate in civil society. Drawing on Alexis de Tocqueville, Dayan shows how the notion of civil death was made possible through the complex legal formulation of slavery in the US as in part a matter of attainted blood—heritable, "natural"

subordination. The transmutation that produced the enslaved as not a person until she or he committed a crime rendered them subject to civil death until they could experience civil death anew through being punished as criminals. Famously, the abolition of slavery in the US was excepted in the case that someone had committed a crime, leading to the convict lease systems of the past and, one could argue, the exploitative labor conditions of prisons today.

Chapter Three argues that it is, paradoxically, “not an absence of law but an abundance of it that allows government to engage in seemingly illegal practices. We need to explore this hyperlegal negation of civil existence” (72). Dayan takes a hard look at the situation of prisoners in supermax prisons, in permanent solitary confinement, and in other situations of “administratively heightened” detainment. Prisoners in these cases have not been sentenced to enhanced punishment—judges in their cases did not direct them to, for example, have no contact with any other human for years on end: rather, these terms of confinement are enacted by prison administrators. Dayan compellingly argues that we ought to worry about the effects of prison management practices on the status of personhood, particularly when these practices may unavoidably produce devastating dispossession of the self itself. The fourth chapter of the book addresses the taxonomic question of what, in law, is being punished or produced in current carceral logic. This chapter offers a rich line of connection between the present and the past, particularly focusing on the legal construction of what sort of being a slave could be.

The juridical diminution constituting the being of the slave defined that being as permanently incapacitated—as capable of criminal, but not civil, acts. Chapter Five focuses entirely (and fascinatingly) on *Bailey v. Poindexter’s Executer* (1858). This was the case of a slave owner who willed that, after his death, certain of “his” slaves would have the choice to remain enslaved or to buy their way out of slavery. The court ruled that this was a legal impossibility: slaves were by their legal nature incapable of making the choice of freedom. Conceiving of the enslaved in this way creates a legal situation in which “law is not to be mistaken for logic... But what kind of reason, we must ask again, defies logic?” (152) Chapter Six deepens the force of this question, turning to the seriously illogical yet legal contortions that enable current penal practices, including permanent solitary confinement, insufficient food and medical care, overcrowding in prisons, and more. Dayan illuminates a shift in legal judgment toward seeing the *intent* of the prison warden or guard as integral to whether any given penal practice will count as punishment—and, thus, whether it is assessable as cruel or unusual. This shift enables actual torture to be rendered merely tortious—and thus not actionable under the US’s Eight Amendment.

Dayan returns to the subject of the dog to close the book, arguing that slaves and dogs have in common “their standing outside the concerns of civil life” (214). This final chapter offers an interesting tour through legal treatments of dogs, mostly in the US, drawing some connections between these treatments and the topics of the rest of the book. Among other interesting nuggets is the fact that Justice Henry Billings Brown, the judge in *Plessy v. Ferguson* (the case that grounded legal segregation for many years in the US) also rendered judgment in a case about a dog killed by a streetcar (*Sentell v. New Orleans and Carolton Railroad Company*). Reading these cases together, Dayan argues that there are meaningful connections between the legal rendering of dogs and humans as less than persons—as trash.

There is a term apparently coined by the little-known and untranslated Nazi psychologist Klaus Conrad. It names an early phase of schizophrenia in which patients perceive meaning and connection in actually disconnected or random events: apophenia. Some readers may find the connections Dayan draws between dogs, prisoners, and slaves confusing and confounding in one of these ways, rather than offering analytic clarity to our understanding of the ways law variously shapes and torques these subject positions. The question of how seemingly disparate things may be related is in fact at the heart of this book, and the questions and discomforts that likely will come up for (especially) philosophical readers may be generative. I suspect that many readers of this book will experience Dayan's renderings of these entanglements, across history and context, as I did; simultaneously generative, provoking, engaging, and irritating. And readers not steeped in poetic and allusive theoretical work may well fling this book aside in irritation. I believe this would be a mistake; *The Law is a White Dog* offers much, perhaps at exactly the points it frustrates expectation. It would be appropriately read in upper-level undergraduate classes, particularly in philosophy of law, social and political philosophy, and animal studies.

Two final points, which I regard as genuine limitations, or openings for further work. First: the book focuses entirely on the United States and on its penal system. This is not a serious flaw, given the global reach of the US's approach to imprisonment. Still, it would have been illuminating for Dayan to place the book in a richer global context: how do these legal machinations play in other contexts? Are these solely US conceptions of personhood? Second: the book is, one might say, haunted by an underformulated conception of disablement. "Legal disablement" is, of course, a technical concept at law. It is central to the creation of the slave and the prisoner as subject to but beyond the bounds of law, and, perhaps, to the formulation of law as it applies to actual and figurative dogs. But given Dayan's focus on the co-production of the animal and the criminal as boundaries of personhood, it is generative and perhaps vital to consider how actual disability has been interwoven with the enactment of legal disability. A critical disability orientation to these topics would have deepened this already complex and rich book.

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