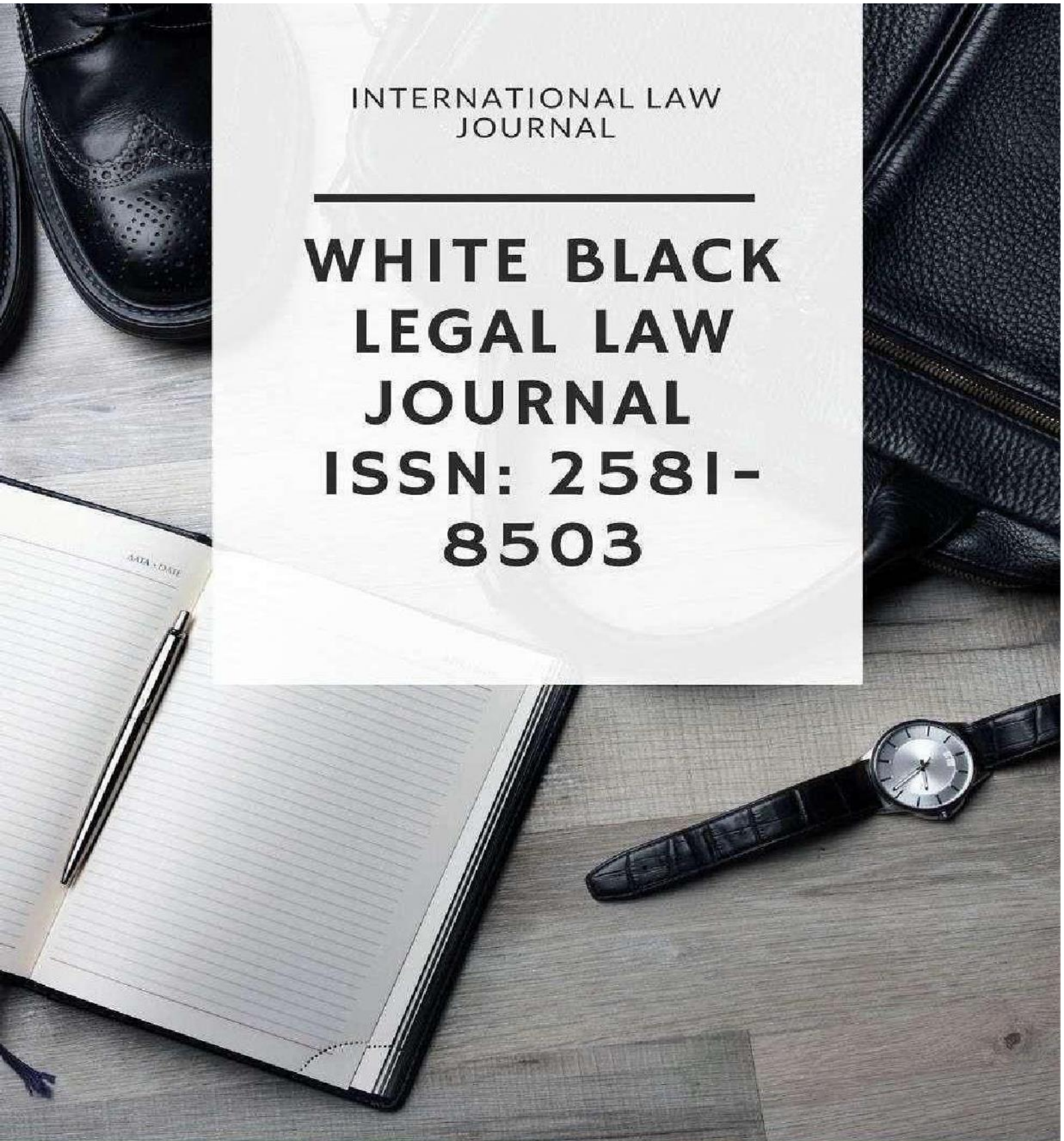




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THE GHOST OF LAW: THE AFTERLIFE OF UNRESOLVED JUSTICE IN LITERATURE

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ABSTRACT

This paper examines haunting as a conceptual framework for understanding the persistent gap between legal finality and moral justice, drawing on Jacques Derrida's hauntology, Avery Gordon's theory of ghostly matters, and the psychoanalytic traditions of trauma and the uncanny, it argues that legal systems generate their own spectres, the unresolved wrongs, silenced witnesses, and suppressed claims that formal closure cannot extinguish. Through interdisciplinary engagement with literary texts ranging from Kafka and Toni Morrison to postcolonial writers such as Achebe, Rushdie, and Ngugi the paper demonstrates how literature functions as a counter-archive, preserving what law officially forecloses. It interrogates doctrines of legal finality, including res judicata, limitation periods, and transitional amnesty, as instruments that produce rather than resolve haunting. Engaging with Paul Ricoeur's ethics of memory and Aristotelian equity, the paper concludes by proposing a "haunted jurisprudence" a mode of legal reasoning marked by institutional humility, acknowledgement of incompleteness, and genuine openness to historically excluded claims. It argues that literature is not law's rival but its necessary supplement.

KEYWORDS: hauntology, legal finality, law, literature, postcolonial, res judicata, trauma, moral, jurisprudence, memory

THE GHOST OF LAW: THE AFTERLIFE OF UNRESOLVED JUSTICE

IN LITERATURE

“The past is never dead. It’s not even the past”

- William Faulkner, 1951

1. LAW, JUSTICE AND THE METAPHOR OF HAUNTING

INTRODUCTION

The law does not forget, or rather it cannot, hidden in its language, its silences, its footnotes and loopholes, are the ghosts of those it failed to protect, those it crushed, those it promised justice and then abandoned at the courthouse steps. Every legal system carries its dead with it, shuffling through the corridors of doctrine, pressing their cases against doors that have long since been sealed shut.

The philosopher Jacques Derrida, writing in *Specters of Marx* (1994), coined the term hauntology, the idea that societies are structured not only by what exists, but by what is absent yet persistently present.¹ He was writing about Marxism, about the specters that outlive their declared endings. If lawyers are honest, they will recognize the sensation immediately. Law is perhaps the most haunted institution we have as it is built on precedent on the voices of the deceased, on cases decided in courtrooms long demolished and on the sufferings transformed into *ratio decidendi* and fled away.

The metaphor of haunting offers a uniquely productive lens through which we can examine the relationship between law and justice. Where law operates through closure, through finality of judgements, the expiry of limitation periods and the sealing of records, justice resists such neat endings. Justice, in its most demanding register, insists on reckoning. It asks not merely what law has decided, but what the law has suppressed; not just what the court recorded, but what the court refused to hear.

This is not at its core a new anxiety rather legal philosophers have recognized the tension between the generality of law and the particularity of injustice. The Aristotelian concept of *epieikeia*, which means equity and fairness or the correction of law² where law fails carefully

¹ Jacques Derrida, *Specters of Marx: The State of the Debt, the Work of Mourning and the New International* 10 (Peggy Kamuf trans., Routledge 1994).

² Aristotle, *Nicomachean Ethics* bk. V, ch. 10 (Terence Irwin trans., Hackett 1999). The concept of *epieikeia* (equity) corrects the law where its generality produces injustice.

acknowledges that legal rules, however carefully crafted, will produce results that violate the underlying moral principles they were meant to serve.

The metaphor of haunting names something that legal positivism cannot easily accommodate, the way that unacknowledged wrong continues to exert pressure on the present. It describes a condition in which the past is neither safely past nor fully present in which, to borrow William Faulkner's words, the past is not dead³; it is not even the past. The wrongful conviction overturned after twenty years produces a legal remedy but not a restored life. The colonial land seizure declared lawful under a now repealed statute still shapes the geography of poverty and the violence perpetrated under a dictatorship, amnestied by transitional legislation, still visits itself upon survivors and descendants. This study examines haunting as a metaphor in literature as both a metaphor and a methodology for understanding legal failure.

2. HAUNTING AS A LITERARY CONCEPT

Before haunting can be deployed as a lens for legal analysis, it must be understood on its own literary and theoretical terms. The figure of the ghost is among the oldest in human storytelling, it appears in the Epic of Gilgamesh, in the Odyssey, in Sanskrit epic literature but the specific theoretical weight it carries in contemporary cultural and legal theory derives from a more recent and more self-conscious tradition of thinking about memory, trauma, and the persistence of the past.

2.1 GHOSTS, MEMORY, AND TRAUMA IN LITERATURE

The literary ghost has always been more than a supernatural entity. Even in its most archaic forms, the ghost functions as an emissary from the unresolved, a figure whose presence signals that something in the human or social order remains incomplete, unacknowledged, or unavenged. Hamlet's father does not return merely to frighten; he returns to demand justice⁵. The specter in Charlotte Brontë's *Jane Eyre* is not simply a Gothic effect; it is the embodiment⁶ of colonial exploitation and female suppression that Thornfield Hall has locked in its attic.

³ William Faulkner, *Requiem for a Nun* 92 (Random House 1951)

⁴ Mark, J. (2022). *Gilgamesh*. [online] World History Encyclopedia. Available at: <https://www.worldhistory.org/gilgamesh/>.

⁵ SparkNotes. (n.d.). *Hamlet: Act I, scene v–Act II, scene i*. [online] Available at: <https://www.sparknotes.com/shakespeare/hamlet/section4/>.

⁶ Mambrol, N. (2022). *Analysis of Charlotte Brontë's Napoleon and the Spectre*. [online] Literary Theory and Criticism. Available at: <https://literariness.org/2022/09/26/analysis-of-charlotte-brontes-napoleon-and-the-spectre/>.

Ghost stories, at their most searching, are stories about what cannot be put to rest because it has not been properly addressed.

The psychoanalytic tradition gave this literary intuition a theoretical framework. Sigmund Freud's concept of the uncanny, the *unheimlich*, literally the unhomely describes the experience of encountering something familiar yet strange⁷, something that should have remained hidden but has returned to visibility. What is particularly significant for legal analysis is the way that psychoanalytic accounts of haunting emphasize the relationship between silence and return. The ghost appears precisely because something has not been spoken, acknowledged, or mourned.

2.2 HAUNTING AS A RESPONSE TO UNRESOLVED INJUSTICE

Derrida's hauntology, introduced in *Specters of Marx* (1994), provided the most philosophically ambitious framework for understanding haunting as a social and political phenomenon. Writing in the aftermath of the Cold War, at a moment when liberal capitalism was declaring its definitive triumph over Marxism, Derrida insisted on the persistence of spectral Marxism the way that the critiques, aspirations, and unfulfilled promises of the Marxist tradition continued to press upon the present even after Marxism's apparent defeat. The concept of hauntology has been productively extended by Avery Gordon, whose *Ghostly Matters* (1997) brought it to bear on questions of social power, race, and historical violence. Gordon argues that haunting is a social figure, a way of describing what happens when something that has been officially disappeared, erased, or denied makes itself felt in the social world.⁸ The ghost, in Gordon's account, is not a supernatural being but a social force: the return of what social systems have attempted to render invisible. To be haunted, in this sense, is to be confronted with the costs of what one's social order has suppressed.

This account of haunting as response to unresolved injustice has obvious implications for legal analysis. Legal systems routinely make authoritative determinations that wrongs have been addressed, accounts of the past are correct, and claims are extinguished. But the wrongs that law has officially resolved do not always behave as resolved. They return in political movements, in the testimony of survivors, in the bodies and life chances of descendants, in the

⁷ Freud, S. (1919). *The 'Uncanny'*. [online] *Massachusetts Institute of Technology*, pp.1–21. Available at: <https://web.mit.edu/allanmc/www/freud1.pdf>

⁸ Avery F. Gordon, *Ghostly Matters: Haunting and the Sociological Imagination* 8 (Univ. of Minnesota Press 1997)

literature and art of communities whose histories have been legally erased. Haunting, in this sense, is the persistence of injustice despite law's declaration that the matter is closed.

2.3 THE ETHICS OF REMEMBERING AND FORGETTING

Any serious engagement with haunting must also grapple with the ethics of memory with the question of when it is right to remember, how memory should be managed, and whether forgetting might sometimes be not only inevitable but necessary.⁹ The assumption that remembering is always ethically superior to forgetting is, on examination, complicated. Some forgetting enables social coexistence after collective violence; some insistence on memory perpetuates cycles of grievance and retaliation. The difficult question is not whether to remember but how.

Paul Ricoeur's rich account of memory in *Memory, History, Forgetting* (2004) distinguishes between the abuse of memory in which memory is deployed as a weapon, a means of maintaining domination or excluding others and the work of memory, which involves the honest confrontation with the past in all its complexity, including the acknowledgement of one's own complicity and the suffering of one's enemies.¹⁰ Memory, in Ricoeur's account, is not merely the passive reception of the past but an active, ethically charged engagement with it. For legal institutions, this ethical dimension of memory is particularly acute. Law's relationship to the past is constitutively selective: courts produce authoritative records that inevitably simplify, exclude, and sometimes distort the full complexity of what occurred. Legal records can become instruments of official forgetting ways of replacing a difficult, contested history with a sanitized, authoritative account. The doctrine of *res judicata*¹¹, which prevents the re-litigation of settled matters, is a legal instrument of enforced forgetting: it closes off inquiry in the interests of finality and social stability.¹² The question that haunts legal systems is whether such forgetting is merely pragmatic or whether it crosses a line into moral failure.

The ethics of haunting, as it emerges from literary and philosophical reflection, suggests that the relevant distinction is not between memory and forgetting but between acknowledgement and erasure. What the ghost demands, in the literary tradition and in social life, is not that the

⁹ Shami, N.A. (2025). *The Ethics of Memory: Should We Forget or Preserve Everything?* [online] Medium. Available at: <https://medium.com/@nadimchami/the-ethics-of-memory-should-we-forget-or-preserve-everything-49a72d3d808b>

¹⁰ Paul Ricoeur, *Memory, History, Forgetting* 412 (Kathleen Blamey & David Pellauer trans., Univ. of Chicago Press 2004).

¹¹ PahujaLawAcademy.com. (2024). *Doctrine of Res Judicata* | *Res Judicata* | *CPC- Pahuja Law Academy*. [online] Available at: <https://www.pahujaLawAcademy.com/doctrine-of-res-judicata>

¹² H.L.A. Hart, *The Concept of Law* 136 (2d ed., Oxford Univ. Press 1994)

past be relitigated but that it be acknowledged that the suffering it represents be recognized as real, that the wrong it embodies be admitted as wrong.

3. LEGAL FINALITY AND MORAL INCOMPLETENESS

The law's demand for finality is not arbitrary. Legal systems that permitted the indefinite re-opening of decided cases would be unable to function parties would be unable to plan their affairs with confidence, courts would be overwhelmed with relitigation, and the authority of judicial decisions would be progressively undermined.

3.1 THE DOCTRINE OF FINALITY IN LAW

The doctrine of finality expressed through the principles of res judicata, issue estoppel, the law of limitation, and the concept of the sealed record reflects a fundamental commitment to social order that is, in itself, a form of justice. Certainty is a legal value as well as a practical convenience.

At the constitutional and international levels, the doctrine of amnesty has been deployed controversially as a means of achieving political transition by legally foreclosing accountability for past violence.¹³ The South African Truth and Reconciliation Commission's amnesty provisions, the transitional justice mechanisms deployed across Latin America¹⁴, and the amnesties granted under various peace agreements all represent attempts to use legal finality in the service of political peace.

These are not, in themselves, indefensible choices. But they carry a cost that is precisely the cost of haunting: the claims that law has foreclosed do not disappear; they persist in the bodies and memories of those who were denied the remedy they sought, in the communities that continue to bear the consequences of wrongs that were legally erased, and in the political resentments that eventually, and sometimes violently, reassert themselves.

3.2 WHEN LAW DECLARES AN END BUT JUSTICE DOES NOT

The most acute cases of this disjunction arise when the law's declaration of closure is itself a form of injustice when finality is achieved not by resolving a wrong but by legally suppressing it. This occurs in amnesty laws that immunise perpetrators of state violence, in limitation

¹³ Baker, Hajar and Baker, Hajar, *Amnesty for Atrocities? The Rule of Law Denied* (September 20, 2013).

¹⁴ Hugo Van Der Merwe and Lamb, G. (2009). *Transitional Justice and DDR: The Case of South Africa*. [online] Available at: <https://www.ictj.org/sites/default/files/ICTJ-DDR-South-Africa-CaseStudy-2009-English.pdf>.

periods that expire before victims of systematic abuse can identify their abusers¹⁵, in statutes of limitations that were never designed with the circumstances of particular communities in mind, and in the failure of colonial legal systems to recognise the rights and claims of colonised peoples.

In such cases, legal finality does not merely fail to achieve moral completeness; it actively produces moral incompleteness by lending the authority of law to the suppression of legitimate claims. The ghost of the wrong does not merely persist despite the law's closure; it is in some sense created or intensified by it, because the closure itself is unjust and is perceived as unjust by those it most affects.

The Irish historian Roy Foster has spoken of the 'haunted' quality of Irish historical memory, the way that the wrongs of colonialism, famine, and displacement continue to shape Irish political culture and collective identity long after the formal end of colonial rule.¹⁶ This haunting is not merely the psychological residue of traumatic experience; it is produced and maintained by the legal and political mechanisms that were used to close off questions of accountability and restitution.¹⁷ Legal finality, in this context, is not the end of haunting but its condition of possibility.

4. LITERATURE AS A SYSTEM OF REMEMBERING

If law is a system that produces official accounts, authoritative, final, and necessarily incomplete literature functions, in many contexts, as a counter-system: a space in which the incomplete, the excluded, and the officially erased can find expression. Postcolonial literature has been, since its emergence as a recognisable category in the mid-twentieth century, profoundly concerned with the ghosts that colonialism left behind. Chinua Achebe's *Things Fall Apart* (1958), which opened the modern tradition of African literature in English, is structured around a haunting: the destruction of Igbo society and the silencing of Okonkwo's story are precisely what the novel is written to undo. The narrative itself is an act of remembering against erasure a restoration of what colonial discourse had rendered invisible.¹⁸

¹⁵ Nadine Ansorg, Sabine Kurtenbach, Promoting Peace and Impunity? Amnesty Laws after War in El Salvador and beyond, *Journal of Global Security Studies*, Volume 8, Issue 2, June 2023, ogad010, <https://doi.org/10.1093/jogss/ogad010>

¹⁶ Roy F. Foster, *The Irish Story: Telling Tales and Making It Up in Ireland* 211 (Allen Lane 2001).

¹⁷ Morrison, E. (2016). *Morrison Hauntings of the Irish Revolution: Veterans and Memory of the Independence Struggle and Civil War*. [online] Marguerite Corporaal, Christopher Cusack and Ruud van den Beuken (eds), *Irish Studies and the Dynamics of Memory: Transitions and Transformations*.

¹⁸ Chinua Achebe, *Things Fall Apart* (William Heinemann 1958).

This pattern recurs throughout postcolonial literature. Salman Rushdie's *Midnight's Children* (1981) treats the birth of independent India as a haunted event, a liberation that carries within it the ghosts of Partition, of colonial history, and of the compromises that shaped the postcolonial state.¹⁹ Ngugi wa Thiong'o's novels in both English and Gikuyu insist on the continuing presence of colonial violence in Kenyan political culture.²⁰ Derek Walcott's poetry moves between the splendour of the Caribbean landscape and the horror of its history, refusing the comfort of amnesia.²¹ In each case, the literary text functions as a space in which what official history and, often, official law has suppressed is brought into visibility and given form.

4.1 LITERARY TEXTS REPRESENTING LEGAL FAILURE

A significant strand of literary writing has taken legal failure as its explicit subject, has used narrative to dramatise the gap between law's promise and law's performance, and to give voice and form to the experience of those who have fallen through that gap. Franz Kafka's *The Trial* (1925) is the paradigm case: a novel about a man prosecuted by a legal system that refuses to tell him what he has done wrong, what the charges against him are, or how he might defend himself.²² Kafka's courtrooms are not mere satire; they are an anatomy of the experience of legal alienation of encountering a system that claims authority over you while refusing to render itself intelligible or accountable.

Harper Lee's *To Kill a Mockingbird* (1960), for all its limitations as a representation of racial injustice (it centers the white lawyer rather than the Black defendant), offers a vivid account of legal failure: a Black man convicted by a white jury in the face of evidence of his innocence, and a legal system that can speak the language of justice while producing straightforwardly unjust results.²³ The ghost of Tom Robinson, wrongly convicted, subsequently killed, haunts the novel and the reader long after the legal proceedings have concluded.

More recently, literary texts have engaged directly with the legal dimensions of contemporary injustice. Viet Thanh Nguyen's *The Sympathizer* (2015)²⁴ explore the legal and political frameworks through which the Vietnam War and its aftermath were processed and the ways in which those frameworks produced systematic erasure of Vietnamese subjectivity and Vietnamese suffering. Mohsin Hamid's *Exit West* (2017) uses the speculative displacement of

¹⁹ Salman Rushdie, *Midnight's Children* 9 (Jonathan Cape 1981).

²⁰ Ngugi wa Thiong'o, *A Grain of Wheat* (William Heinemann 1967)

²¹ Derek Walcott, *Omeros* (Faber and Faber 1990).

²² Franz Kafka, *The Trial* (Willa Muir & Edwin Muir trans., Secker & Warburg 1937)

²³ Harper Lee, *To Kill a Mockingbird* (J.B. Lippincott & Co. 1960).

²⁴ Viet Thanh Nguyen, *The Sympathizer* (Grove Press 2015).

its protagonists to expose the brutality of immigration law and the inadequacy of legal frameworks for addressing forced migration.²⁵ In each case, the literary text offers what the legal record cannot: a full account of the human cost of legal decisions.

4.2 GHOSTS AS MORAL WITNESSES

The literary ghost, in its most morally serious deployments, functions as a witness to what the living have refused to acknowledge. It is not merely a narrative device or a Gothic effect; it is a figure for the claims of the dead and the disappeared upon the living a way of giving form and presence to what law and social convention have rendered invisible.

Toni Morrison has spoken of her fiction as an attempt to give form to the experiences of the enslaved to recover, through imaginative means, what historical records and legal documents cannot capture.²⁶ The ghost of *Beloved* is the ghost of slavery itself: the presence, in the lives of survivors and their descendants, of a history of violence and dehumanization that American society had attempted to seal away.²⁷ Morrison's project is not to re-open legal proceedings but to restore moral and psychic reality to what law had reduced to property, and history had reduced to statistics.

This function of the literary ghost as moral witness has a specifically legal dimension. In many contexts, legal procedures have operated to silence witnesses, to render certain forms of testimony inadmissible, and to make certain categories of victim invisible. The literary ghost speaks where the witness cannot: it carries the testimony that the court refused to hear, the claim that law declared extinguished, the suffering that official history erased. In doing so, it keeps open the question of justice in a register that law cannot close.

5. CAN LAW LEARN TO ACKNOWLEDGE ITS GHOSTS?

The question with which this research concludes is, deliberately, both practical and philosophical. It asks not merely whether it would be desirable for law to acknowledge the ghosts it has generated, the unresolved wrongs, the suppressed claims, the silenced witnesses, the continuing harms that legal finality has officially extinguished but whether such acknowledgement is, in any meaningful sense, possible within law's own frameworks. Can a

²⁵ Mohsin Hamid, *Exit West* (Riverhead Books 2017).

²⁶ Morrison, T. (1993) *Playing in the Dark: Whiteness and the Literary Imagination*. New York: Vintage Books.

²⁷ Toni Morrison, *Beloved* (Alfred A. Knopf 1987).

system structured around finality, precedent, and authoritative declaration genuinely open itself to the demands of haunting?

The answer this research offers is partial, provisional, and deliberately uncomfortable. Law can, in certain conditions and through certain mechanisms, develop what I will call a haunted jurisprudence, a mode of legal reasoning that takes the claims of the excluded seriously, acknowledges the limits of its own capacity to do justice, and remains genuinely open to the demands of those it has historically failed to hear. But this requires significant departures from standard legal practice, and it encounters genuine and not merely procedural obstacles.

The most significant departures can be observed in the development of transitional justice mechanisms, truth commissions, reparations programs, and institutional apology processes that supplement ordinary legal proceedings with forms of acknowledgement that those proceedings cannot provide. These mechanisms, imperfect as they are, represent genuine attempts to address the haunting that unacknowledged wrong produces. The South African TRC, despite its limitations, created space for testimony that no ordinary court could have heard.²⁸ The Canadian Truth and Reconciliation Commission's acknowledgement of the harms of the residential school system²⁹, and the subsequent legal settlements with survivors, represent a legal order attempting haltingly and incompletely to hear what it had previously refused to hear. At the level of doctrinal law, there are also grounds for cautious optimism. The development of reparations claims in international law, including the developing jurisprudence of the Inter-American Court of Human Rights on collective reparations for indigenous communities, represents legal reasoning that takes the continuing effects of historical wrongs seriously, even where those wrongs were committed before the current legal order was established.³⁰ The growing body of environmental law that acknowledges the rights of future generations and takes seriously the claims of those who are not yet born but whose interests are affected by current decisions represents a form of legal reasoning that reaches beyond the immediate parties to a dispute in ways that the metaphor of haunting illuminates.

²⁸ Anon, (n.d.). *Future Cases – The Truth and Reconciliation Commission*. [online] Available at: <https://unfinishedtrc.co.za/future-cases/>.

²⁹ Government of Canada (2020). *The Residential School System —National Historic Event - the Residential School System National Historic Event*. [online] [parks.canada.ca](https://parks.canada.ca/culture/designation/evenement-event/sys-pensionnats-residential-school-sys). Available at: <https://parks.canada.ca/culture/designation/evenement-event/sys-pensionnats-residential-school-sys>.

³⁰ Garduño, Diana & Sebastiaan, Rombouts. (2011). Collective Reparations for Indigenous Communities Before the Inter-American Court of Human Rights. *Merkourios : Utrecht Journal of International and European Law*. 27.

But these developments, however significant, do not dissolve the fundamental tension this research has explored. Law's structural commitment to finality is not merely a technical limitation; it reflects deep and defensible values about social order, individual liberty, and the dangers of perpetual uncertainty. A legal system that was genuinely open to every claim of unresolved historical wrong would quickly become ungovernable. The question is not whether finality should be abandoned, it should not, but whether finality can be achieved in ways that are more honest about what they foreclose.

What a haunted jurisprudence would require, in the end, is a form of legal humility, a recognition that the closed case is closed for legal purposes and not for moral ones, that the extinguished claim is extinguished for litigation and not for the purposes of justice, and that the gap between law and justice is not a failure of legal technique but a permanent feature of the human condition. The law can be more just than it has been; it cannot be just in the way that justice, in its most demanding register, demands.

Literature, in this context, is not law's rival but its supplement, the space in which what law cannot acknowledge continues to be said. The ghosts that haunt legal institutions are not enemies to be expelled but witnesses to be heard. They do not demand the impossible; they demand the honest acknowledgement of incompleteness. That acknowledgement, the willingness to say, this is what we could do; this is what remains undone, is perhaps the most that law, as law, can offer. And it may, in the end, be enough to begin with.

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