

Flags, Verdicts and Texts: Dissident Narratives and Literary Mandates for Re-Writing Empire

Muchativugwa Liberty Hove

<https://orcid.org/0000-0002-6021-4639>

North-West University, South Africa

muchativugwahv@gmail.com

Abstract

Researchers theorising the intersection and intertextuality between literature and law have explored and analysed democracy, governance, and trust from diverse analytical approaches. Political and legal structures are undergoing polycrises and governance is assailed by wicked policy problems, while democratic norms and legitimacy are eroded. Trust—in all its elasticity—is increasingly polarised among groups and linked to ethnic, cultural, and place-based identities and resentments. Past and present experiences in the face of memory show that racial categories have persisted into the postcolonial chronos, and we need to question what this means for the rhizome of democracy. New ideas and identities challenge how democracy can represent diverse groups and interests, emphasising the nourishing and symbiotic relationships between literature and law within the context of decolonising notions of global-glocal knowledge economies. Governance and legal architecture are held hostage by powerful interest groups, and axiomatic aspirations to kairos and trust in the fair distribution of wealth and resources for the institutionalisation of democracy have been enfeebled. New forms of democratic participation are emerging which challenge the concepts and premises of choice and plurality. Repeated pressures to understand major crises such as criminal and gendered violence where geopolitical instabilities weaken trust in the capacity of democratic processes have not provided acceptable and socially just verdicts. If external pressures on democratic institutions are growing, criticisms against forms of poor governance (e.g., corruption, presidential personalisation of the state, short-termism, polarisation) are also increasingly made against legal and political institutions. New expressions of distrust in flags and resistance against legal, cultural, and economic powers are immanent in literary texts. This article uses *Native Son*, *Mating Birds*, and *The Trial of Dedan Kimathi* to address the following question: What are the pre-requisites and co-requisites for democracy and socially just governance to flourish in legal and literary situations of heightened economic marginalisation, extreme cultural oppressions, and

diminishing political legitimacy? The nexus and intersectionality between legal and literary textual structures allow for an analysis of the role and impact of social, cultural, political, and juridical reformulations in the three selected texts. I argue that the (counter)story, as interdisciplinary method, is thus tasked (and suffused) with immense possibilities.

Keywords: interdisciplinarity; intertextuality; intersectionality; polycrises; verdicts; representation; Black subjectivities

Introduction

This article is deliberately entitled “Flags, Verdicts and Texts” for its quest to explore the nexus and intersections between dissident literary narratives and juridical mandates for re-writing empire (Ashcroft, Griffiths, and Tiffin 1989). I am not aware of any published critical analysis at this juncture that has sought to link law—its binding force and territoriality—with the narrative geopolitics and psychological depth of *The Trial of Dedan Kimathi* (wa Thiong’o and Mugo 1976), *Mating Birds* (Nkosi [1982] 2004), and *Native Son* (Wright [1940] 2000). The article therefore charts new territory in exploring the social, cultural, and political significance of apartheid laws as witnessed through the selected literary corpora. If the flag is the distinctive and symbolic representation of the ideals and aspirations of a nation, then filiation and the claiming of territory/space become contiguous with belonging. In tandem, (counter)narratives in the selected texts take on the task of documenting the unspeakable stories of Black and white subjectivities wrestling to own the Other in slavery and colonial inventions such as the courtroom, as discussed in this article. The act of writing (back) then becomes a performance to reclaim space and voice from which one has been excluded and silenced. In the act of modifying filiation to the flag, the (counter)texts assign contested sites designated as marginal while simultaneously deconstructing hegemonic positionings. At each site of enunciation, the coloniser and the colonised can perform their identity, where the nationalist flag, for the colonised, becomes an embodiment of subverting a hegemonic institution.

It is instructive to take a cue from Jerry Seabrook (2023, 1) who critically reflects on nationalist flags and (un)constitutional verdicts and indicts us to understand “the injustices of the present so as to generate a fuller understanding of the injustices of the past.” Seabrook further adds that understanding the past alone is insufficient to deal with the (legal and constitutional) wrongs of the present. Today’s penitentiary postures by the distant beneficiaries of great historic iniquities do not erase the multiple and often *invisibilised* ills of the contemporary world; indeed, lamentations (and laminations) over the past are as likely to obscure as to illuminate them.

Epistemologies, Identities and Inequalities

If we read the three selected texts as exemplars of re-interpretations of the carceral space as a Foucauldian panopticon for disciplining and punishing non-conformity, we could equally benefit from seeing them as challenging the marginalisation of Black bodies.

The potency of the imaginative capacity of fiction in challenging colonialism and racism lies in its re-presentation of real-life experiences that go beyond mimesis to suggesting alternative ways of becoming through re-imagining inequalities, Blackness, and gender. In the triad of texts in this article, the prison and the gallows are projected as the most visible manifestations and menacing symbols of racialised jurisprudence and colonial rule (Arnold 2004, 32). From Richard Wright to Lewis Nkosi, we witness continuity of incarceration during and after the practice of slavery in colonial territories where the trope retains racial classification as a norm to arbitrarily apply the concept of criminality. The prison system was (and continues to be) instrumental in consolidating colonial rule and served to accelerate the capitalist mode of production. Prison was at the intersection of imperial surveillance, criminal case law, and military-corporate governance. The expansion of military power and imperial rule was symbiotic to the prison system; thus we witness in Kimathi's incarceration the ways in which British colonial rule used prisons to consolidate the process of imperial expansion. In *Native Son*, the discourse of criminalisation and racial hierarchy is reinforced in the United States (US) after the abolition of slavery to maintain the capitalist mode of production. In fact, the history of the US prison corresponds to the authorisation of slavery as punishment; the authorisation of Bigger's death becomes, *ipso facto*, the discursive grounds to challenge a dominant history of state-sponsored violence and suppression.

Justyna Stiepanov (2017, 1) sets a preamble to her study of *Native Son* on the conceptual boundary created by the notions of lawfulness and lawlessness on the individual. Boundaries can be understood in various ways, amongst them the political, cartographical, cultural, psychological, and juridical. Stiepanov argues that law in Western culture is a goal-oriented instrument of the state. The legal limits established in legislative acts and judicial decisions delineate a territory for potential action. As a normative and bounded domain, the law guides human conduct in the process of individual practical reasoning. In states where codes and statutes go against natural human inclinations, individuals view the conceptual boundary of law as a challenge, which leads to conflicts between the system and the individual. I take a cue from this instructive preamble to analyse the conflict in the first-person narrative of Bigger Thomas, the protagonist in Richard Wright's *Native Son*. The growing tension caused by the discriminatory system of Jim Crow laws ends in Bigger Thomas crossing legal- and white-custom determined boundaries. If we accept the notion that laws are socially constructed and therefore characterised by an obvious moral ambivalence, we would recognise that laws discriminate against one social group to guarantee the authority and hegemony of another.

Bigger's racially bifurcated world in Chicago's South Side faces exceptional social, economic, and geopolitical challenges, including the history of enslavement, forced migration, conflict, political extremism, erosion of democratic institutions, protest, violence, and growing public distrust of governance and legal expertise. These affect not only the institutions of democratic government but also the wider structures and processes that make societies work and hold together. *Native Son* explores specifically

how democracy, governance, and trust are integral to the tackling of both short-term crises and long-term challenges that constitute the focus of the narrative of discontent and disruption. It is a (counter)narrative that develops diverse methodological, disciplinary, and cross-national perspectives in relation to racism, the causes of fear, flight and fate in Bigger's life, and the dynamics of responding to these polycrises. This text also allows us to interrogate how a raciolinguistic perspective disrupts the colonial reproduction and transformation of modern knowledge projects and lifeways across societal contexts, as well as continually interrogating the fundamental nature of law, raciolinguistics, and power.

The violent history of colonialism and post-imperial displacement calls for the (re)mapping of a dissident aesthetics in works by Richard Wright, Ngũgĩ wa Thiong'o, and Lewis Nkosi to demonstrate and amplify the inescapable argument that today's global inequalities are traceable and interconnected to the brutality of enslavement of aboriginal peoples, occupation of their lands, usurpation of their wealth, and subjugation of their populations. The features of non-linearity, polyvocality, and decolonial metaphor enable these writers to bear witness to the complex histories of empire, transatlantic slavery, decolonisation, and displacement from the colonial "margins." These dynamics require careful attention to various hegemonies of law, race, and language that produce deeply contested, contradictory, and consequential boundaries and hierarchies (Flores and Rosa 2023; Maeso 2018). These aesthetics of disorder in the dissident narratives counter a dominant narrative of decolonial order, making the (counter)story, as interdisciplinary method, an engagement tasked with immense and hopeful possibilities.

I purposively selected these three texts on the basis that they make explicit connections between Black subjectivities and the law. Further, they dramatise the convictions in real colonial courts of law where the Black convict represents their exploited and marginalised constituencies in markedly justice-oriented embodiments. Clearly, one of the reasons that *Native Son*, *The Trial of Dedan Kimathi*, and *Mating Birds* are included in law-and-literature scholarship and courses is that they fit neatly into one of the two main branches of law-and-literature scholarship: "law-in-literature," which addresses the inscription of legal themes or the depiction of legal actors or processes in fiction or drama. The novels and the drama also fit neatly within the most recent branch of law-and-literature, championed by Martha Nussbaum among others, which focuses on the empathetic possibilities of literature contributing towards legal and social change. In *Poetic Justice*, Nussbaum (1997, 2) argues:

[W]e should seek narratives and texts that depict the special circumstances of groups with whom we live and whom we want to understand, cultivating the habit of seeing the fulfilment or frustration of their aspirations and desires within a social world ... characterised by institutional equalities.

This nexus between literature and the law is also explored by Peters (2005) who heuristically identifies three major branches of law-and-literature: humanism, dominant

in the 1970s and early 1980s and characterised by its focus on the edifying effects of literary texts; hermeneutics, dominant in the late 1980s and focusing on the use of literary theory to explicate legal texts; and narrative, dominant in the late 1980s and early 1990s and focusing on the interplay between legal cases and oppositional storytelling. Further, the three texts selected here make a corpus relevant in understanding critical race theory and penology, foregrounding the ways in which society and the law actively participate in the construction(s) of (in)equality, race, and gender. Capers (2006, 4) argues that the real crime motivating Bigger's prosecution (and in tandem the prosecutions/persecutions of Dedan Kimathi and Ndi Sibiya) is not murder or rape, but a violation of the "white-letter law of trespass." In essence, I argue in the same vein as Rosi Braidotti (2019, 31) who states that works of art are valuable because they are multivalent. Stories, in different ways, embody feelings, ideas, myths, politics, and values, and those selected in this article specifically touch on (il)legalities.

My contention is that in unjust legal statutes, the metaphorical line running between the concepts of lawfulness and lawlessness forms a conceptual boundary that ultimately leads to a conflict between the inherent moral ambivalence in the legal system and the individual. This article therefore explores the violent and complex history of colonialism, slavery, and cultural-linguistic genocide as rendered in the dissident narratives so that we can locate the more complex transatlantic, colonial, and legal architecture that triangulates Britain, Africa, and the Americas (Whittle 2023). Indeed, as Bigger's attorney, Max, in *Native Son* states, Bigger's story is one that speaks to the existential reality that "taken collectively, [Black people] are not simply twelve million people [in America]; in reality they constitute a separate nation, stunted, stripped, and held captive within this nation, devoid of political, social, economic, and property rights" (Wright 2005, ix).

Theory-Praxis Dialectic in Understanding Legal Verdicts and the Aesthetics of Disorder

Charles M. Blow (2021, 27) unscrambles the name America, and states in a matter-of-fact wryness that this name spells "I am race." He proceeds to state again and again that "in the struggle for political and economic mastery, the Negro is a pawn," echoing verbatim what James Baldwin wrote in the inimitable essay, "Journey to Atlanta" ([1964] 2003). A consistent point that runs through *The Devil You Know* (Blow 2021) is that America is propped by an architecture of endemic racial subjugation that its denizens refuse to relinquish and that must be pried open. *Native Son* by Richard Wright is crafted to explore the cultural currency of racism as it is constituted in the laws governing being and becoming Black in America. Stokely Carmichael (1966), a contemporary of Richard Wright, once said that "racism is not a question of attitude but a question of power." Ngũgĩ wa Thiong'o (2016) highlights four journeys of capital: the slave trade, the slave plantation system, colonialism, and the 21st century global debt slavery. This framework helps ground the four phases of structural adjustment of African economies, linking the theoretical and the empirical. What emerges clearly in

the various entrapments of evolving global capital is the undercutting of anti-systemic resistance and extra-structural agency of the African people. wa Thiong'o's analysis directly responds to Frederick Cooper's (2014, 9) question: How did the relationship between Africa and Europe come to be so asymmetrical? Bigger Thomas's attorney, Max, in *Native Son* is on point in recognising this asymmetry when he states that Black people in America "constitute a separate nation, stunted, stripped, and held captive within this nation, devoid of political, social, economic, and property rights" (Wright [1940] 2000, 389). Taylor (2016, 185) concurs and amplifies the argument that in *Native Son* Wright shows how race and racism intersect with biopolitics and function as both a microphysics of power and a power enforced by broader social and institutional structures. At the level of a microphysics of power, Wright articulates how the white gaze attempts to discipline Bigger and gestures towards plantation-style modes of political subjection before he dramatises biopolitical philosophy. That Wright structures his narrative around these two modalities of power demonstrates how he thought modern forms of power exercised over Black bodies can be traced to the space of the plantation. At the social and institutional level, Wright provides an account of how race and racism are embedded in biopolitics in the juridical and judicial arenas, capital punishment, and racially segregated cities during the era of Jim Crow segregation.

In the analysis of the three texts, what emerges unequivocally is the fact that Wright, wa Thiong'o, and Nkosi dramatise that Black people become *killable* subjects to maintain a racialised social and political order. One of the key strategies used by and in the courts of law is to reduce the convict to a level lower than any human being through animalisation. Derrida (2005, 63) argues that democracy has always wanted to welcome individuals on the condition that they are citizens while simultaneously excluding "bad citizens, rogues, noncitizens, and all sorts of unlike and unrecognisable others," and offering hospitality to all those excluded. Derrida (2005, 66) notes that the *voyou* are excluded through the process of naming: "big man, bad boy, player, hence something of a seducer—the libidinal connotation remaining inefaceable in the accusation 'voyou'—rascal, hellion, good-for-nothing, ruffian, villain, crook, thug, gangster." Throughout the course of his deliberation in this unjust court, Buckley's diction is similar to the examples discussed by Derrida to exclude Bigger. The state attorney, embodying the flag and ideals of the American white nation, refers to Bigger as a "fiend" (Wright 2005, 298), a "sly thug" (299), a "bestial monstrosity" (309), a "hardened black thing" (311), a "rapacious beast" (354), a "maddened ape" (356), and a "ghoul" (383). We get the same (un) naming in *Mating Birds*, where Ndi Sibiyi is variously referred to in the following epithets: "a fractured pathological personality," "a baboon" (Nkosi [1982] 2004, 102), a "bloody racist kaffir bastard" (75), "a filthy black *dingus* ... the rotten swine" (127), "a native sex maniac" (128), and "*donderse kaffer*" (134). Such marginalising language describing the offender as detritus speaks to the observation attributed to Fyodor Dostoevsky who remarks that the degree of civilisation in a society can be judged by entering its prisons. Racial profiling and the consequent exclusion generate economic obstruction, that in turn closes spaces for economic, political, and cultural rights. These deprivations manifest in poverty, unemployment,

and other challenges that we witness in the rat-infested apartment Bigger Thomas and his family rent from the Daltons. They are re-choreographed in the rundown tenements to which Nonkanyezi, Ndi's mother, relocates. These deprivations are also markers of the macabre life that Ndi Sibiya ekes out in the shack where Nonkanyezi, his mother, is also pawed and ravished by Big Joe so that she can provide for his schooling (Nkosi 1982, 80).

Another important image is that of Africa ensnared by a spider web of coloniality. Mignolo (2018, 97) defines the colonial matrices of power as “a complex structure of management and control composed of domains, levels and flows” and as a “theoretical concept that helps make visible what is invisible to the naked (or rather the non-theoretical) eye.” This theoretical concept begins by establishing that coloniality is constitutive of modernity (there is no modernity without coloniality). This means that the positive rhetoric of modernity is always hiding the negative called global coloniality (2018, 98). The colonial matrix of power unfolded in terms of control of economy, authority, subjectivity, and knowledge (2018, 155). The colonial matrices of power were initially framed by theo-politics, then ego-politics and racist science. Today, mainstream media sustain these matrices by disseminating the rhetoric of modernity and its salvationist pretensions. Lewis Nkosi (2004, 91) describes South Africa as a “country that sternly forbids racial mixing” and that as an embodiment of Black subjectivity, Ndi Sibiya, the protagonist, “lived ... on the fringes of the white world that tried to keep [him] out” (2004, 81). Ndi's lawyer, uncannily named Max Siegfried Muller, resembles Bigger's lawyer in many respects in his “disgust by ... all the pantomime of crime and punishment” (2004, 127) where “death [of a Black subject/body] by hanging” is a foreclosed judgement.

Today, the Global South is, in its entirety, trapped by coloniality of markets with capitalism assuming an insidious and fundamentalist character of insisting that there is no other way of organising human reality. Ngũgĩ wa Thiong'o (2016, 23) dramatises the ubiquity of coloniality of markets in this lucid manner:

There is only one God, his name is market, and the West is his only guardian. Enter ye and throw your fate at the tender mercies of the market. [...] The voices of those who might see the writing on the wall are drowned by the calls for the worship of the market, literally, with the common credo of privatisation, reducible to a maxim: Privatisise or Perish.

Africa, together with the rest of the Global South, needs to draw lessons from its long history of contact and entrapment in global coloniality to intensify the unfinished decolonisation struggles. John Fire Lane Deer, born into the Mineconju Sioux ethnic group, is credited for stating one of the most indicting criticisms of legal instruments in the USA:

Before our white brothers arrived to make us civilised men, we didn't have any kind of prison. Because of this we had no delinquents. Without a prison there can be no

delinquents. We had no locks nor keys and therefore among us there were no thieves ... we were too uncivilised to give great importance to property. (Lame Deer n.d.)

What this great chief articulates is the fact that the design and development of the legal architecture currently in vogue were meant to protect white property while forever making racially motivated verdicts that incarcerate Black transgressors.

Ngũgĩ wa Thiong'o trenchantly observes that postcolonial Africa within the global framework is unbalanced. He incisively observes that we are in an era in which the West leads market fundamentalism, that relentless drive to subject all social and cultural life and the public sphere to marketisation. If this has become the currency of the ideational capitalist regime, then Ngũgĩ wa Thiong'o laments that we are at the point of perishing. The regime that he paints in the point-counterpoint courtroom exchange between Kimathi and Henderson demonstrates that an ideational regime is composed of those public narratives and assumptions that have become widely taken for granted in the political culture of the colonial regime's legal culture. Marketisation has created a radically unbalanced power dynamic where rights-bearing citizens are "hanged by the neck till dead." The play critiques this anomaly in the legal architecture of both colonial and postcolonial regimes.

Dedan Kimathi critiques the mercantilism of global capital as he refuses to plead guilty before Shaw Henderson to the charge of possessing a gun. Kimathi comes through as both an orator, philosopher, poet, and liberator, one whose voice and insight complement that of the great chief, John Fire Lame Deer, born into the Mineconju Sioux:

By what right dare you, a colonial judge, sit in [an imperialist court of law] in judgment over me? (wa Thiong'o and Mugo 1976, 3)

He explicates his stand in the matter where he recognises "two laws. Two justices. One law and one justice protects the man of property, the man of wealth, the foreign exploiter. Another law, another justice, silences the poor, the hungry, our people" (wa Thiong'o and Mugo 1976, 32).

He is defiant to the end and ultimately declares, "I will not plead to a law in which we had no part in the making" (wa Thiong'o and Mugo 1976, 36). Such is Kimathi's eloquence and defiance that he seeks to know whose law and whose justice Shaw Henderson juridically represents, critically considering that Black subjectivities must be agents in the social construction of the law/s.

Ngũgĩ and Mugo reposition themselves within a nationalist historiography where they use orature and indigenous knowledge systems to subvert the falsification of history choreographed by colonial administrators. The following exchange in the courtroom illustrates the difference in both the legal and ontological orientation of Henderson and Dedan Kimathi and in their perception of society. Henderson believes that the

master/servant relationship is inevitable, while Kimathi envisions a world that creates equal opportunities for all by eliminating inequality and segregation:

Henderson: Well, my friend, there has to be a horse and a rider.

Kimathi: There must be horses and riders, must there? Well, let me be Balaam's ass then. (Chuckles): Yes, the one who rejected his rider (pause): when the hunted has truly learnt to hunt his hunter, then the hunting game will be no more.

This reflexive jibe by Kimathi at the inconsistency of colonial legal instruments dramatises and privileges an Afrocentric performativity of law. The oppressed that he represents have learnt the hunting game. This is corroborated in the characterisation of the unnamed woman who brings a fresh perspective on the contributions of the female combatants and peasant women to the nationalist struggle in Kenya, and by extension, Africa in general.

According to Okunoye (2001, 34), “to counter the received assumptions about women in Africa, the playwrights give prominence to Woman, who represents the women veterans of the struggle, the village women who assisted the Mau Mau fighters.” She is actively engaged in mobilising the masses and even resolves the conflict between Boy and Girl, imparting popular vision to them to make them the future leaders of the struggle. Not only is the woman rehabilitated as a critical member of African society, but the playwrights draw on the history and the collective memory of their people to privilege the rehabilitation of historical figures or heroines who are often demonised in official and colonial history (Ndhlovu 2019; Okunoye 2001). *The Trial of Dedan Kimathi* represents and dramatises the possibilities that exist for the creative imagination in the decolonisation project. This is African drama par excellence that creates literary and legal space for interrogating historical distortions, if history is conceived as a form of drama in which people are compelled to take up different roles by political and socioeconomic forces.

The Legal Verdicts

Understanding decolonisation in relation to sovereignty situates decolonial practices within a very explicit framework of land back—the return of land to Indigenous Peoples. Tuck and Yang's (2012) infamous work “Decolonisation Is Not a Metaphor” cautions scholars against using decolonisation to further embed settler power and futurities. They note:

Decolonisation, which we assert is a distinct project from other civil and human rights-based social justice projects, is far too often subsumed into the directives of these projects, with no regard for how decolonisation wants something different than those forms of justice. Decolonise (a verb) and decolonisation (a noun) cannot easily be grafted onto pre-existing discourses/frameworks, even if they are critical, even if they are anti-racist, even if they are justice frameworks. (Tuck and Yang 2012, 3)

In postcolonial contexts, especially in literary, legal, and cultural studies, decolonisation is often used in ways that do not centre sovereignty, land return, and *justicing reparations*. Sometimes this is due to an absence of recognition of the Indigenous people, or because it is easier to talk about tweaking juridical systems than returning land and governance to the rightful people. Thus, it is credible for one to see, first, testimonial epistemic injustice which is enacted when a person is withheld any credentials such that their account of affairs is considered lower in credibility, as in the cases of Bigger Thomas, Dedan Kimathi, and Ndi Sibiya. Such denial of credentials is often a consequence of racial prejudice. Ndi Sibiya is unfettered, for instance, in his attack on the apartheid of juristic decisions:

As the days go by and the appointed hour of my execution draws near ... Dufre (the state attorney and psychology expert) will receive from his academic peers throughout the enlightened world the accolade of one whose labours deserve the highest recognition for having conducted such an illuminating study of the benighted tormented mind of an African criminal. (Nkosi [1982] 2004, 182)

The second is hermeneutic epistemic injustice, which is enacted when a person is withheld the cognitive resources to make sense of a social, political, and juridical situation, again as amply demonstrated in the three protagonists in this article. In a moving verdict, Earl Warren, Chief Justice of the Supreme Court, ruled in 1958 that:

Citizenship is man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen. His very existence is at the sufferance of the state within whose borders he happens to be. ... He will presumably enjoy, at most, only the limited rights of aliens, and like an alien he might even be ... deprived of the right to assert any rights. (*Trop v. Dulles*, 356 U.S. 86 (1958) pp. 356 U. S. 91–93)

And indeed, the protagonists in the three texts examined here reflect and refract their statelessness while at the same time representing those aspirations for the ideal of just laws. What courses as a common trait in the three protagonists and the penal codes under which they are arraigned are conflicts and contestations over the balance of power among the institutions, practices, and discourses of states, markets, and civil society. Whether these conflicts result in regimes of relatively democratic socially inclusive rights or regimes of social exclusion and statelessness largely depends on the ability of civil society, the public sphere, and the social state to exert countervailing force against the corrosive and divisive effects of market driven and juristic governance.

Decolonisation is often used to refer to the repealing of imperial (American and European) rule from sites of colonial power, including former colonies and peoples. To date, decolonisation in this context has often had an epistemological focus, including the dismantling of colonial knowledge structures, histories, iconography, and curriculum content. As demonstrated in this article, Bigger Thomas, Ndi Sibiya, and Dedan Kimathi are keen agents in repairing this asymmetry and understanding of both

power and knowledge as not simply being there (or not) at our disposal but instead as assets that need to be acquired or created before they can be used. Therefore, notions of ethics, as the question of “how to use power,” and notions of epistemology, as the question of “how to know,” should also be thought of as belonging together. For this reason, epistemic and criminal justice cannot suffice with only looking at the possibilities to develop knowledge and the recognition as a knowing subject. It also needs to account how the inextricable tandem of knowledge and power structures operates.

The Nexus between History, the Legal Architecture and Regimes of Narration

If *Native Son* is read as a series of antipodes situating Bigger as Black male against Mary Dalton as white female, Bigger’s Black mother against Mr Dalton as white male, and Bessie as Black female against Mary Dalton as white female, then we could equally transpose the antipodes to *Mating Birds* and *The Trial of Dedan Kimathi*. The dramatis personae in *Mating Birds* comprise Veronica Slatter (white female) pitted against Nonkanyezi Sibiya (Black female), and Ndi Sibiya set as an oppositional figuration to Kakmekaar, the white prosecutor.

Each character’s fate is thus inextricably linked to their race or gender. Moreover, each character’s fate can be viewed as dependent on where they fit within the following intersectional structure:

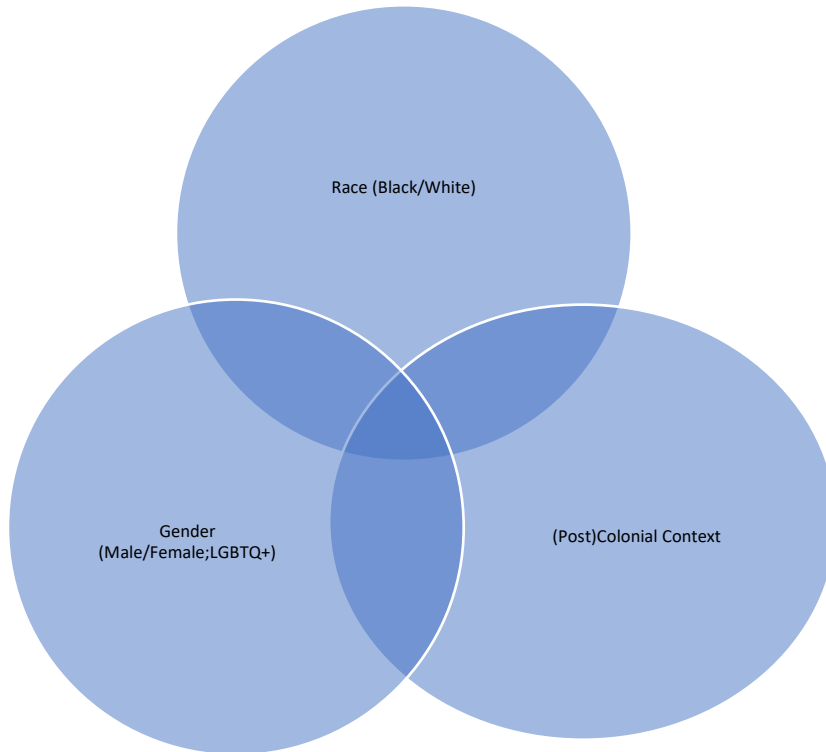


Figure 1: Antipodes of character representation

The novels use this series of antipodes to critique society and the law in relation to issues involving verdicts, power, authority, race, and gender. For Ndi’s “death by hanging,” the narrator presents a prescient anatomy of the racialisation of the state/courtroom:

I’ll die of a vaster, deeper, more cruel *conspiracy* by the rulers of my country who have made a certain knowledge between persons of different races not only impossible to achieve but positively dangerous even to attempt to acquire. They have made contact between the races a cause for profoundest alarm amongst white citizens. ... This English girl has been an instrument in whom is revealed in its most flagrant form the rot and corruption of a society that has cut itself entirely from the rest of humanity. ... [Veronica] became *a convenient pretext for the state to indulge in its well-documented appetite for murder and destruction*. (Nkosi 1982, 138; my italics)

This conspiracy to exterminate Black lives corroborates Richard Wright ([1940] 2000), who admits in “How ‘Bigger’ Was Born” that many of the plot details in *Native Son* come from the arrest and prosecution of Robert Nixon. The news stories of this case began with reports that Florence Johnson, a white woman, had been “beaten to death with a brick by a black sex criminal ... in her apartment” ([1940] 2000, 17). Although the police seized “fifteen men of colour” in the investigation, the principal suspect was Nixon, a young Black man found five blocks from Johnson’s apartment with blood spots

on his clothes. Nixon was arraigned, quickly charged, “voluntarily” confessed to the murder as well as several prior brick slayings, and re-enacted the Johnson murder. Nixon also admitted that he had initially attempted to divert suspicion from himself, as Bigger Thomas did in *Native Son*, by scrawling on Johnson’s mirror “Black Legion,” the sobriquet of a northern version of the Ku Klux Klan.

The second case in the genealogy of Bigger Thomas is connected to *The Scottsboro Boys Case*, dating to 25 March 1931, when nine Black youths, between 13 and 20, riding onboard a freight train travelling between Tennessee and Alabama, got into an altercation with several white youths and forced them off the train. The white boys ran to the stationmaster and demanded that he press charges against the Black youths, and the sheriff assembled an armed posse to capture every negro on the train and bring them to Scottsboro. In Scottsboro, the posse boarded a freight car and found not only the Black youths, but two white girls as well, Victoria Price and Ruby Bates, who offered an explanation for why they had been travelling in a freight car with the Black youths: they had been *raped* by them. Their accusation of having been raped by Black souls set off one of the most significant cases in American legal history. Within days, the nine youths were indicted on charges of rape, a capital offence. After a series of one-day trials before all-white juries, eight of the nine young Black men were found guilty and sentenced to death, racialising and sexualising Black defendants while simultaneously racialising and en-gendering white women. In this case, the State Attorney General urged the jury to sentence one of the defendants to death, “not to avenge Victoria Price but to stop attacks upon [pure] white women by Negro *marauders*” (PBS n.d.)

A third node in “How Bigger Was Born” relates to *The Prosecution of Loeb and Leopold*. On 21 May 1924, two young men with an LGBTQ+ history, Nathan Leopold and Richard Loeb, postgraduate students at the University of Chicago, lured Robert Franks, a young neighbourhood boy, into their car and struck him repeatedly with a chisel, killing him. Later, they poured hydrochloric acid over his face and hid his naked body in a culvert. Leopold was the son of a millionaire box manufacturer, and Loeb was the son of a vice president at Sears Roebuck, and if we argue from the position that racism is ingrained and consolidated out of socialisation, then this could be one way of reading the racialisation in the murder and attempt at covering their trail. Clarence Darrow, who represented both Leopold and Loeb, planned to use their pleas of guilt, as well as expert testimony from psychologists, to convince the judge to spare the defendants the death penalty. Darrow’s core argument was that Loeb and Leopold were “so mentally ill that they were not morally blameworthy” (PBS n.d.). In a real travesty of justice, on 11 September 1924, Judge Caverly spared the defendants, sentencing them to life imprisonment for the murder, plus 99 years for the kidnapping. While references to homosexuality and Jewishness were whispered or shrouded in innuendo during the trial, homophobia and anti-Semitism nevertheless were writ large in the public reception of the crime and trial.

In Closing

This article explored the narratives in *Native Son*, *The Trial of Dedan Kimathi*, and *Mating Birds* and verified that the slow and unsatisfactory development of case-law concerning racism in the United States, Kenya, and South Africa needs to engage with wider political and policy developments that have silenced rigorous discussions about race and racism. I proposed an analysis of race-conscious, legal, and political literary texts that approached the discussion and negotiation of legal provisions that indict and critique racial discrimination. The critical discourse analysis and critical race theory approaches clarified the reproduction of the foundation of modern law that erases coloniality and institutional racism, specifically the embeddedness of race in the formation of the West and its spawning in the (post)colonial state.

The article engaged with the ways in which the arraignment of Black subjectivities personified in Ndi Sibiya constitutes evidence that case law was actively pursued in apartheid political/policy arrangements, jurisprudence, and academic knowledge production directed at institutionalising the Immorality Act. The dramatis personae in the South African apartheid courtroom participate in an ensemble of “elegant form, gorgeous ceremony, [and] empty ritual” (Nkosi 1982, 126). Law is presented as universal and yet informed by the values of the Western and racialised polity. This apparent contradiction is mediated by racism that allows the law to present itself as a unified and transcendent body of rules in constant progression that constitutes the West. Apartheid and colonialism incorporate and produce law as a civilizing law to bring order through the constant infliction of violence. In the architecture of case and criminal law, the colonised/racialised Other could only become human and enjoy rights through European conquest.

In re-reading *Native Son*, I clarified that racism is embedded in the rule of law. Racism in *Native Son* shapes, following Fitzpatrick’s analysis (1992, 252), the form of law and how it operates in liberal societies, which starts from the assumption that regards racism as a *deviation*; thus, law proceeds as a *corrective measure* that redresses the victim of discrimination and re-establishes the legal order. In this context, the liberal form of law is grounded on the most potent dimension of liberal individualism, *intentionality*, which reinforces the episodic nature of discrimination, and even the operationalisation of categories introduced in the current legislation, such as the notion of *indirect discrimination* or the *shifting of the burden of proof* towards the respondent, tends to incorporate racist rationalisations into the realm of what is “justifiable” or “legitimate.” I concluded that Black people in the United States have a colonial relationship with the larger society, a relationship characterised by slavery and institutional racism. Max, Bigger’s lawyer, demonstrates that racism has concrete consequences in the lived experiences of the Bigger Thomases, such as housing segregation, poor education, inter-racial sexual relationships, and economic exploitation. Thus, Bigger Thomas is acutely aware of his predetermined sentencing as he reads the newspaper headlines. The narrator notes:

To hint that he had committed a sex crime was to pronounce the death sentence; it meant a wiping out of his life even before he was captured; it meant death before death came, for the white men who read those words would at once kill him in their hearts. (Wright [1940] 2000, 243)

In the theatrical rendition of *The Trial of Dedan Kimathi*, the article illustrated that the relationship between coloniality and institutional racism brings about a different framing of the nexus between law and racism beyond the gap between laws as written and as implemented in (il)legal practices. Kimathi sutures the persistent contradiction between democratic principles (namely, the *principle of equality*) and the persistence of prejudiced representations of *others* that need to be *corrected*. Rather, coloniality and institutional racism open the possibility of a counter-narrative to the persistence of racial discrimination in current settler colonial contexts. Colonial modern states *qua* racial states, embodied in Kenya's Judge Henderson, "speak through the law," that is, "the institutionalisation of race in and through the state is a form of legal reasoning" (Goldberg 2002, 123) that seeks to govern populations through their racialisation, dehumanisation, and the constant reproduction of racial hierarchies. Racialised Kimathis and all Black people are governed as a negative exception to the European "democratic" project within a process of continuous redrawing of boundaries between inclusion and confinement/exclusion. I showed that if the West is discursively produced as democratic and distinct from the Other, then racism is always constructed as an externality, a deviation, an exception. Anti-discrimination laws operate through the Eurocentric definition of racism as the effect of extremist and nationalist ideologies, and they are rendered compatible with legal provisions of confinement and exclusion of racialised bodies aimed to regulate exceptional circumstances. In all three texts, extremism reproduces the imaginary of racism as an aberration. Current experiences of the #NotInMyName, #ICan'tBreathe, #BlackLivesMatter, and the deaths of Eric Garner in New York and George Floyd in Minnesota created international outrage over the resurgence of racism. Dozens of videos, court documents, autopsies, and police reports involving a range of Black people who died in xenophobic confrontations with officers on the street, in jails or in their peripatetic spaces show a pattern of aggressive and often ethnic-driven, race-goaded tactics. This article therefore closes on the recognition that forced migration, citizenship law, and racial discrimination continue to be vexed and burning issues that call for recalibration of human rights law, the postcolonial governance, and control of migrancy and its racialising effects. Race is shaped by ethnic governmentalities; thus, is not to be understood as a biological or cultural *descriptor* but as a conglomerate of *sociopolitical relations* that *discipline humanity* into full humans, not-quite-humans, and nonhumans (Henning et al. 2024; Taylor 2016).

Ngũgĩ wa Thiong'o and Micere Mugo, together with Lewis Nkosi and Richard Wright, can be read as literary practitioners who textualise both negative and affirmative modes of biopolitics as they are intimately concerned with the politics of and over life and death vis-à-vis Black people on the African and American landscapes. Their articulation of biopolitical subjection allows for an extension of dominant biopolitical categories

into the law-producing and law-enforcing arena of the judicial sphere. Thus, reading the three writers' engagement with biopolitics allows us to understand the governing of Black bodies in accordance with colonial law, apartheid law, and criminal Jim Crow law. This article therefore demonstrates the importance of integrating biopolitical theory into the realm of interdisciplinary studies, specifically literary studies as a situated intersectional site to advance, extend, and engage biopolitical theory.

Interdiction and "death by hanging" as internment become a means of the suspension of the juridical order's validity. The texts demonstrate the threshold at which life and law, outside and inside, become indistinguishable, formulating a constitutive feature of the political in terms of an exclusionary biopolitics. There is more that the texts do with regards to bringing the *judicial* arena to the fore of biopolitics by not concentrating solely on the *juridical* arena and the law's enforcement.

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