

I. Harriet Jacobs'
"Loophole of Retreat"
(1835-1842)

*The Loophole of Critique:
Provisional Notes on Black Evasion¹*

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I

In 1861, American abolitionist and author Harriet Jacobs (1813-1897) published *Incidents in the Life of a Slave Girl: Written by Herself*, an autobiography chronicling her seventeen year long escape from slavery. Jacobs' flight began in 1835 when her master, Dr. James Norcom, threatened her two children after she refused to submit to his sexual abuses.² In the pivotal chapter titled "The Loophole of Retreat," situated at the exact center of the text, she recounts seeking asylum in the attic crawlspace (the "garret") of her grandmother's home.³ The 9' x 7' x 3' garret prevented her from standing and became completely dark when its concealed trap door was closed. In "The Loophole of Retreat," she writes of blindly encountering a hand drill, or "gimlet," with which she creates a small peephole in the wall. Through this "loophole," she is able to access fresh air and observe the world — monitoring her children's growth, as well as attempts to locate her made by slave catchers and her master — outside her "retreat." She would spend seven years hidden in the garret before successfully fleeing north.⁴

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² In *Incidents in the Life of a Slave Girl*, Jacobs uses pseudonyms for herself and all the figures in her life. The book was first published under the name Linda Brent. Her master, Dr. James Norcom, appeared as Dr. Flint. See Jacobs, Harriet. *Incidents in the Life of a Slave Girl: Written by Herself*. Edited by L. Maria Child. 1861.

³ The apparent significance of "The Loophole of Retreat" (the 21st of 41 chapters in *Incidents*) as a pivot-point was first observed by Michelle Burnham in her essay "Loopholes of Resistance: Harriet Jacobs' Slave Narrative and the Critique of Agency in Foucault" *Arizona Quarterly: A Journal of American Literature, Culture, and Theory*, vol. 49, no. 2, 1993, pp. 53-73

⁴ Jacobs, Harriet. *Incidents in the Life of a Slave Girl*. 1861.

Throughout *Incidents*, Jacobs' use of the term "loophole" refers specifically to the peephole she bored through the wall of her crawlspace. This usage closely reflects the word's origins as a synonym of "embrasure," a slit-like opening built into the wall of a castle or fort, generally for defense. Since Jacobs penned *Incidents*, "loophole" has evolved to include its more common, contemporary usage as a term for a structural gap or oversight that allows the circumnavigation of unfavorable laws or regulations. In the abundance of critical analysis exploring Jacobs' complex ontological position while trapped in the garret, these material and symbolic definitions of the loophole have been blurred. As Katherine McKittrick notes in *Demonic Grounds: Black Women and the Cartographies of Struggle*, "The garret can be conceptualized as usable paradoxical space" in which Jacobs is both free and unfree, seeing and unseen. Jacobs, McKittrick writes, "is positioned across (rather than inside or outside, or inevitably bound to) slavery while in the garret. The garret locates her in and amongst the irrational workings of slavery as a witness, participant, and fugitive."⁵

Seen as such, Jacobs' position opens new avenues for conceptualization of what her loophole represents. While the gimlet's loophole provided her with a connection to her family and a small window to the outside world, the garret represented a kind of structural loophole (both materially and symbolically) to the regime of slavery. In the garret, her status as "witness, participant, and fugitive" remained firmly defined by the bounds of slavery, however its secluded protection allowed her to remain a participant on her own terms, evading the aspects of these roles designed to sexually and economically objectify black women. During her hiding, she monitors and indirectly contributes, through her grandmother, to the raising of her children. Later, in a successful effort to mislead Norcom, she arranges for letters of her authorship to be sent to him with New York listed as the return address. Then, in her final act from the garret, she conspires with her grandmother and friend to plan an escape north. In other words, Jacobs' retreat furnished her with novel forms of agency — agencies around which the immediate utility of the symbolic loophole begins to form.⁶ And from this liminal position "across (rather than inside or outside, or inevitably bound to) slavery,"⁷ Jacobs' evasive, antagonistic agency resolved into what we might consider critique.

The critical slant of Jacobs' evasion is twofold: first, while in the garret, Jacobs is able to envision, fabricate, and eventually set into motion a reality in which she is no longer enslaved, living free in the north; and second, Norcom's continued striving for Jacobs in her absence reveals his fundamental libidinal investment in her (notably in excess of the economic investment to which slavery is often reduced). More generally, these operations of *imagining* alternatives and *revealing* latent dynamics structure what I propose to be the ideological intervention of the loophole. For Jacobs, the immediate object of critique is her relationship with Norcom, yet the scope of her critique can just as easily be extended to the whole of slavery in

⁵ McKittrick, Katherine. *Demonic Grounds: Black Women and the Cartographies of Struggle*. University of Minnesota Press, 2006, pp. 43-4.

⁶ Burnham uses Jacobs' narrative to extend Foucault's theories of institutional concealment and criminal confession to posit that agency is emergently produced by the interaction of the individual and the system at the site of the loophole. See Michelle Burnham, "Loopholes of Resistance: Harriet Jacobs' Slave Narrative and the Critique of Agency in Foucault," 1993.

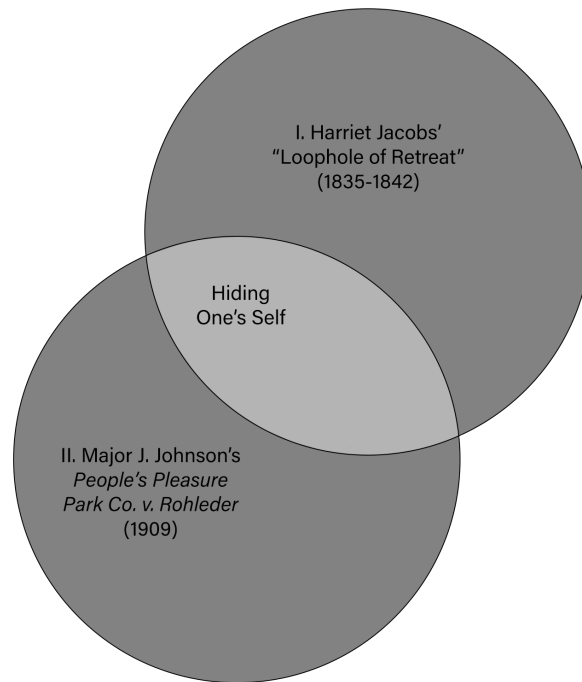
⁷ McKittrick, Katherine. *Demonic Grounds: Black Women and the Cartographies of Struggle*. 2006.

19th century America. Each was based in the ideology of racial-sexual hierarchy, and reinforced by the limited social conditions one trapped within such ideology can envision as possible. Because of these dependencies, both proverbial “master’s houses” (to borrow the language of Audre Lorde) are rendered particularly vulnerable to the dual critique that the loophole presents.⁸

Applying Lorde’s framework refocuses us on the final characteristic of the loophole: its derivation from the same system it hopes to circumvent. Put in Lorde’s terminology, each loophole is an appropriation of “the master’s tools.” For Jacobs, the tools of the master with which her loophole takes shape (her gimlet and, by extension, the garret it built) are strictly material.⁹ As the strictures on black life increasingly took the form of racially explicit policy during the Reconstruction era and Jim Crow, the need for more bureaucratic loopholes arose.

⁸ In her polemical essay, Lorde frames this master’s tools as “racism, sexism, and homophobia,” arguing that where two (racism and homophobia) exist, the third (sexism) will always also prevail. See Audre Lorde. “The Master’s Tools Will Never Dismantle the Master’s House.” 1984. *Sister Outsider: Essays and Speeches*. Crossing Press, 2007, pp. 110-114.

⁹ In *Incidents*, it is unclear whether the gimlet is owned by a white slavemaster or is the property of Jacobs’ uncle Mark (pseudonym Phillip). In the text, Jacobs assumes the gimlet she finds in the garret to have been left by Mark. Though Jacobs does not specify the status of her uncle Mark as enslaved or free in *Incidents*, historical documents suggest he was enslaved at the time of the garret’s construction. In such an event, the gimlet may have been a literal tool of the master. See J. Gilleland-Rasheed, “Re: Molly Horniblow & Harriet Jacobs.” *Genealogy*, May 5, 2006, <https://rb.gy/9p7ex>. Accessed April 4, 2023.



II

In 1906, a formerly enslaved black man named Major Joseph B. Johnson sought to purchase a parcel of land on which he could build a park for “the amusement of colored people.”¹⁰ But the deed to the plot in Henrico County, Virginia, like many land contracts at the time, contained a racially restrictive covenant prohibiting the land from ever being “vest[ed] in a person or persons of African descent.”¹¹ Seizing on this restriction, a white woman named Florence E. Rohleder, who hoped to block the establishment of a “colored park” near her property, filed a civil suit in the Circuit Court of Henrico County alleging the sale was in violation of the parcel’s deed. Crucially, however, Johnson’s offer was made by his corporation, *People's Pleasure Park Co.*, and not himself. The Circuit Court that first heard the case refrained from ruling on the applicability of a racially restrictive covenant to Johnson’s corporation, but it did enjoin the operation of People’s Pleasure Park until the corporation compensated Rohleder for its disruptive presence with the full value of her adjoining land. People’s Pleasure Park appealed, and in 1909 the prior ruling was reversed by Virginia’s Supreme Court of Appeals. The Appeals Court asserted that because a corporation “has a distinct existence... separate from that of its stockholders and directors,” the racially restrictive covenant could not be enforced and no injunctions were warranted.¹²

¹⁰ Supreme Court of Appeals of Virginia. *People's Pleasure Park Co. v. Rohleder*. 61 S.E. 794, March 11, 1909, Harvard Law School Caselaw Access Project; see also Gatewood, Willard B. “Virginia’s Negro Regiment in the Spanish-American War. The Sixth Virginia Volunteers.” *The Virginia Magazine of History and Biography*, vol. 80, no. 2, 1972, pp. 193–209.

¹¹ *People's Pleasure Park Co. v. Rohleder*, 1909.

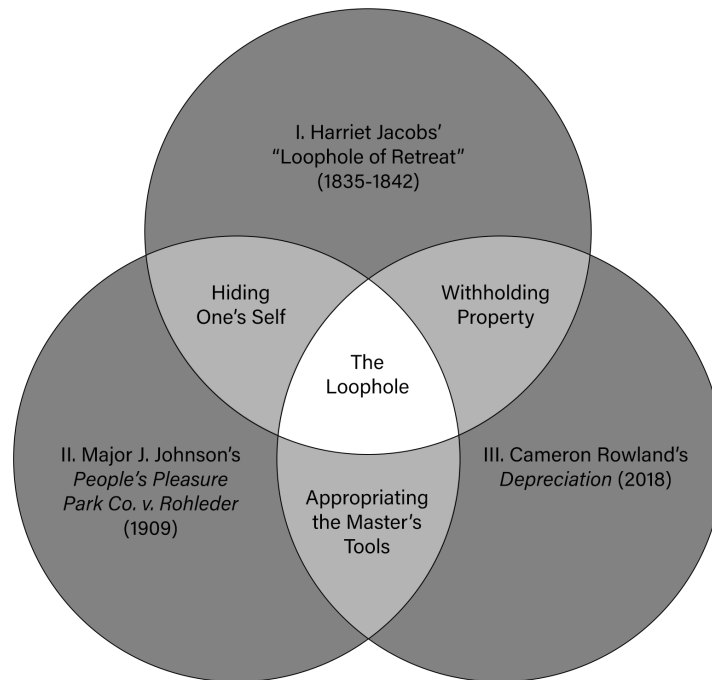
¹² *Ibid.*

Around Johnson's corporation, a loophole had formed. The Appeals Court ruling allowed him to use People's Pleasure Park Co. as a legal avatar and, hiding his blackness behind this "corporate veil," negotiate Jim Crow with relative immunity.¹³ As a critical act of revelation, Johnson's success via incorporation foregrounded the disparity in rights between a fictitious "legal person" and an actual human one.¹⁴ During Jim Crow, and even today, this hierarchy would strike many as unsurprising, but the revelatory critique in Johnson's evasion lies also in the fact that its outcome short-circuited this hierarchy. He was able to realize, if only fleetingly, a system in which the racial identity of an economic actor would be insufficient legal cause to proscribe their activity. However, this Afrofuturist slant of *People's Pleasure Park Co. v. Rohleder* was also limited in that Johnson's goals were primarily assimilationist: to become a landowner despite Jim Crow property law, and to economically compete with white owners of other colored amusement parks.¹⁵ Unlike Jacobs' view through the loophole into a world in which her freedom was secure, Johnson's metaphorical loophole functioned more like a mirror, reflecting his vision back onto the same system he sought to circumvent. As a result, his intervention was able only to foreshadow, and briefly actualize, the similarly fraught neoliberal present in which the structural forces of property relations and anti-blackness remain unscathed. In order to identify a critique closer to the theoretical depths of Afropessimism's exposure and Afrofuturism's reimagination of these structural roots, we must look more closely at the bureaucratic loophole whose end is evasion itself.

¹³ The etymological root of incorporation is *corporare*, which fittingly means "to form into a body." For more on the concept of the "corporate veil" as it applies to *People's Pleasure Park Co. v. Rohleder*, see Richard R. W. Brooks. "Incorporating Race." *Columbia Law Review*, vol. 106, no. 8, 2006, pp. 2023–94, and; Mariana Pargendler. "Veil Peeking: The Corporation as a Nexus for Regulation." *University of Pennsylvania Law Review*, vol 169 no. 3, 2021, pp. 717-81.

¹⁴ Interestingly, legal precedent concerning the racial identity of corporations has since been reversed to accommodate neoliberal policies designed to benefit corporations controlled by legally protected groups. See Brooks, "Incorporating Race." 2006, and Pargendler, "Veil Peeking." 2021, pp 757-62.

¹⁵ Brooks, Richard R. W. "Incorporating Race." 2006.



III

In 2018, artist Cameron Rowland opened their exhibition *D37* at the Museum of Contemporary Art, Los Angeles. Among the show's works was *Depreciation* (2018), a legal intervention which lists as its materials "Restrictive covenant; 1 acre on Edisto Island, South Carolina." To produce the work, Rowland purchased 8060 Maxie Road, Edisto Island, SC — land that was given to, and then expropriated from, emancipated black southerners in accordance with General William Tecumseh Sherman's "40 acres and a mule" Special Field Order, and its subsequent rescission following the Civil War.¹⁶ In the deed to this land, Rowland inserted a restrictive covenant prohibiting all use and development of the property by its owner. After this addition, the land was reappraised and assigned a value of \$0. As Rowland writes in their statement for *Depreciation*, "Rather than redistributing the property, the restriction imposed on 8060 Maxie Road's status as valuable and transactable real estate asserts antagonism to the regime of property as a means of reparation."¹⁷

Rowland's intervention, like Johnson's evasion, appropriates certain tools of the master (the deed, the restrictive covenant, the appraisal) to engineer a loophole. Yet unlike *People's Pleasure Park*, which deployed evasion as a tactic, Rowland's intervention locates evasion as its ultimate goal: "this covenant," Rowland writes, "asks how land might exist outside of the legal-economic regime of property that was instituted by slavery and colonization."¹⁸

¹⁶ Rowland, Cameron. *D37* (Exhibition Pamphlet). MOCA Grand Avenue, 2018.

¹⁷ Rowland, Cameron. *D37*, 2018.

¹⁸ *Ibid.*

Notably, *Depreciation*'s hiding is incomplete insofar as its liberation of land is still predicated on ownership.¹⁹ This incompleteness is characteristic of the loophole; as Lorde writes, "the master's tools will never dismantle the master's house."²⁰ If we take an expansive view of the master's house to frame its foundation as the universal hegemonies of sexism and anti-blackness, the limitations on the actor who wields the master's tools are also made clear. Physical escape is impossible, for there is no "outside." Instead, escape is only conceivable as total annihilation of the self — an extremity that draws to the fore the violence of the loophole's original meaning.²¹

As McKittrick observes in *Demonic Grounds*, "where slavery exists, there is no place that is wholly liberatory"; even for the runaway slave, the impossibility of escape transcends their literal status of enslavement. Jacob's own narrative makes this clear: upon her arrival in New York, she lived in constant fear of discovery; and after her freedom was legally secured, Jacobs still wrestled with "the afterlife of slavery" as it manifested in her personal trauma and the unrelenting racism of the Reconstruction Era.²² Thus, just as the garret represents a symbolic loophole in the regime of slavery, Jacobs' narrative of *evasion* in the garret and *escape* through it into the free north, resolves resolutely as metaphor for the critical potential and limitations of the loophole.

Nonetheless, the materiality of Jacobs' retreat makes it a highly effective analytical lens for the loopholes of Johnson and Rowland. Whereas Johnson's corporate veil allowed him to symbolically hide himself as an economic subject from the constraints of the law, Jacobs' bodily concealment was literal. Moreover, in hiding her physical body from her master, Jacobs became what Frederick Douglass described as "a thief and a robber" — on his own flight from enslavement, Douglass declared "I stole this head, these limbs, this body from my master and ran off with them."²³ What Jacobs' (and Douglass') stories make plainly legible is the entanglement

¹⁹ According to Rowland's restrictive covenant, any violation by future deed holders will revert ownership of 8060 Maxie Road back to the non-profit Rowland used to carry out the intervention. If Rowland's non-profit violates the covenant, the organization will be automatically dissolved. See Cameron Rowland, *Depreciation*. 2018. Restrictive covenant; 1 acre on Edisto Island, South Carolina. MOCA, Los Angeles. (Documentation courtesy of the artist.)

²⁰ Lorde, "The Master's Tools Will Never Dismantle the Master's House." 1984.

²¹ The continuum of violence is even more legible in the French term *meurtrière*, which means both "murderous" and "loophole" (as a synonym for "embrasure"). See Alan Bass, "Translator's Introduction: L Before K," *The Post Card: From Socrates to Freud and Beyond*, by Jacques Derrida, trans. Alan Bass (Chicago: University of Chicago Press, 1987) ix-xxx; cited in Michelle Burnham, "Loopholes of Resistance: Harriet Jacobs' Slave Narrative and the Critique of Agency in Foucault" *Arizona Quarterly: A Journal of American Literature, Culture, and Theory*, vol. 49, no. 2, 1993, pp. 70.

²² Jacobs' surviving papers document her 1865 trip to Savannah, GA (just South of Edisto Island in South Carolina), during which she was witness and subject to an important moment of racial animus in American history. Marking a notable connection to Cameron Rowland's *Depreciation*, her trip coincided with the reversal of General Sherman's Special Field Order No. 15. While working to support the black schools and hospital that had arisen following the war, she saw hundreds of displaced refugees flood into the city and, with them, weathered the escalation of racial violence that ensued. See Jean Fagan Yellin, *Harriet Jacobs: A Life*. Basic Civitas Books, 2006, pp. 190-97. "The afterlife of slavery" is a term coined by historian Saidiya Hartman

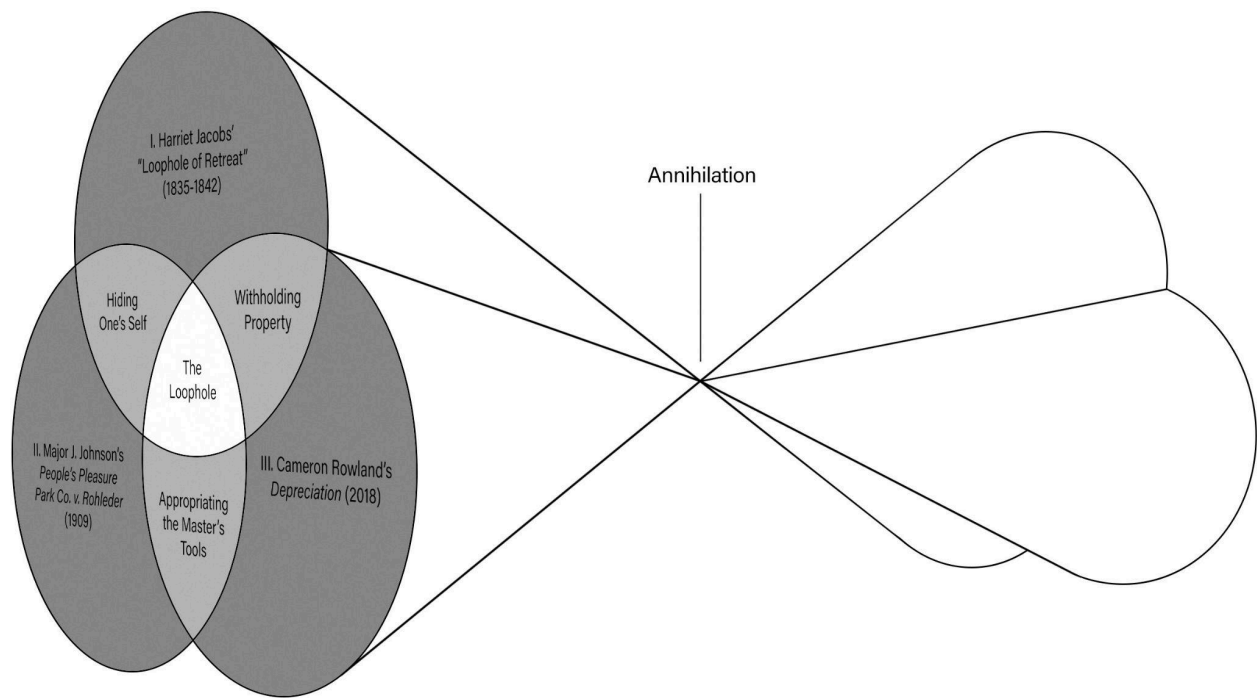
²³ Guyette, Fred. "Garrison versus Douglass on the Abolition of Slavery: An Ethics of Conviction versus an Ethics of Responsibility." *Max Weber Studies*, vol. 13, no. 2, 2013, pp. 254-63.

Rowland asserts between “the legal-economic regime of property” and “slavery and colonization.”²⁴

In naming this relationship, Rowland articulates the bounds of the “master’s house” on which *Depreciation*’s appropriated tools set their sights. “Rather than redistributing the property,” they go on to write, the evasion of their work “asserts antagonism to the regime of property as a means of reparation.”²⁵ By withholding 8060 Maxie Road from the “regime of property,” Rowland replicates the model of economic antagonism pioneered by Jacobs and Douglass when they “stole” their own bodies from their masters. Yet by defining *Depreciation*’s act of removal against the redistribution traditionally associated with reparations, Rowland confirms that repair is not (and could not be) accomplished through material division of the property regime. Instead, it works directly against the ideological structure of this regime as it exists psychologically within the viewer, confronting us with a rupture in our conception of property itself: a parcel of land, the original and essential economic object in America, that seems to evade the market completely. Unlike Johnson’s limited vision, Rowland’s sight is true. The proverbial loophole they bore shows us an “outside,” beyond the master’s house. This revelation is, of course, primarily gestural, but the impact of its critique is strong, for through it we also begin to see the walls of the master’s house as a construction, and not as truth.

²⁴ Rowland, Cameron. *D37*, 2018.

²⁵ *Ibid.*



IV

McKittrick's analysis of Jacobs' narrative neatly summarizes the limits and potentialities of the loophole in its physical and symbolic geographies: "...the question of geographic freedom is tied to the dismal perimeters of the garret...[Jacobs'] desired place cannot be fully resolved on the existing geographic terms laid out for her."²⁶ In McKittrick's writing, the essential conflict of the position within, or more accurately "*across* (rather than inside or outside, or inevitably bound to)," becomes clear.²⁷ The subject Jacobs exemplifies, working through the loophole, carves new space that is both defined by and gesturing beyond that which encloses it — whether that space be physical, political, psychological, or ideological.

However, it also highlights the compromise of the loophole's subversion: that its enactment entails the inevitable sacrifice of playing according to the "dismal perimeters" of the system one hopes to antagonize or abolish. The cost of operating within these perimeters is sustaining and navigating the often ideological limitations these parameters impose. In the case of People's Pleasure Park, it was precisely these limitations which informed Johnson's assimilationist ambition and, in turn, compromised the ideological critique of his corporate loophole. By contrast, the success of *Depreciation* demonstrates that the power of the loophole's critique is most incisive when it reflexively seeks to target these same limitations. Using the loophole as such is a delicate act, riddled with limits that are necessarily insurmountable — a fact made evident by the incompleteness of Rowland's *Depreciation*, and the impossibility for Jacobs of

²⁶ McKittrick uses the pseudonyms from Jacob's *Incidents* in her analysis. See Katherine McKittrick, *Demonic Grounds: Black Women and the Cartographies of Struggle*. 2006, pp. 43-4.

²⁷ Ibid.

ever reaching space that is “wholly liberatory.” But while escape remains always just out of reach, the loophole can still help us to envisage this “desired place” of liberation.

To return, finally, to the language of Lorde: though “the master’s tools will never dismantle the master’s house,” their appropriation can construct loopholes in its opaque walls. And perhaps these loopholes, looking out beyond the master’s house, create the essential condition of possibility for its ultimate undoing.

