If there is a seed text for the school of thought that has come to be called legal pragmatism, it is Oliver Wendell Holmes, Jr.’s *The Common Law* (1881). If there is a signature statement for this school of thought, it is the fourth sentence of this text: “the life of the law has not been logic: it has been experience.” Yet *The Common Law* says a good bit more than that. A collection of lectures on the history of criminal law, tort, and contract, it narrates the law’s evolution from an ancient collection of practices rooted in kinship and blood sacrifice to a contemporary system of common law jurisprudence. A narrative explanation of what Holmes means by “the life” of the law, *The Common Law* is a natural history of sorts as well as an explanation of the process through which common law jurisprudence emerged as a set of social norms that might masquerade as logic. As Holmes explains, these norms ossify over time, becoming divorced from the experience—or “life”—that produced them in the first place. For Holmes, they nonetheless provide a broad and sustainable basis for legal continuity. What is remarkable about this narrative is its presentation of the law’s functionality as the product of a material history that is both constitutive and dispensable. As Holmes explains, the experience that provides the law with its life is perpetually displaced within a legal narrative whose seamlessness elides the material history of the law itself. The historical explanation that *The Common Law* provides thus enables a judicial philosophy that is also a form of radical presentism: the law, by virtue of its history, allows the present to overturn the past. Holmes
would later write to his friend Harold Laski, “You respect the rights of man—I don’t, except those things a common crowd will fight for.” *(Holmes-Laski Letters, 2: 948)* *The Common Law* provides the theoretical basis for this statement. If it presents a legal system in which norms emerge from experience, it also frames the law’s power as witness to the materialization of these norms as they evolve over time. By contextualizing the law’s evolution, the history that Holmes provides renders the law perpetually amenable to new contexts. As I will argue, this presentist model is not a version of what Morton White famously called “anti-formalism.” Rather than a dismissal of the formal mechanisms of law, Holmes’s model is one in which the law functions as a re-embodied expression of the cultural logic that surrounds it. It is also one that corresponds eerily with the Supreme Court’s reconstruction of racial personhood in the late nineteenth century. *The Common Law* presents the law less as a collection of falsely elevated forms and principles than as a site for cultural excess awaiting its material—and newly legal—manifestation. Looking to the future as well as the past, the narrative that it provides is one of re-embodiment as well as displacement.