UNIVERSITY OF CALIFORNIA, IRVINE

Literary Executions: Plotting Death Sentences in U. S. Law and Literature, 1830-1925

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In English

by

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2005
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American literature (especially the nineteenth century), legal and cultural studies, critical theory, African American literature, and rhetoric and composition
ABSTRACT OF THE DISSERTATION

Literary Executions:

Plotting Death Sentences in U.S. Law and Literature, 1830-1925

By

John Cyril Barton

Doctor of Philosophy in English

University of California, Irvine, 2005

Professor Brook Thomas, Chair

This dissertation examines representations of, responses to, and arguments for and against capital punishment in American law and literature from 1830 to 1925. In exploring this topic, I expand the usual definition of “capital punishment” as lawful institution in order to consider lynching as an unofficial or illicit form of the death penalty, since one of my central lines of inquiry explores the fine line that separates legal from extralegal executions. Although an act of lynching differs in obvious and important ways from the death penalty as a legal act, it qualifies as a kind of death sentence insofar as it takes place through social or communal violence, assumes supreme authority over its condemned subject, and is often carried out in the name of “the people,” a highly contested category that my study problematizes.

The dissertation centers on the work of Nathaniel Hawthorne, Charles W. Chesnutt, and Theodore Dreiser, but it also considers anti-gallows or anti-lynching writing by authors such as John L. O’Sullivan, Frederick Douglass, Ida B. Wells, and Paul Laurence Dunbar in relation to statements in favor of capital punishment made
by important cultural figures of the time. Furthermore, my project gives close
attention to legal discourse, such as summations by Daniel Webster and Clarence
Darrow in prominent capital cases, as well as important anti-lynching movements in
the nineteenth century. My underlying thesis is that the high stakes and sharply
delineated contours of "capital punishment" (again, both legal and extralegal)
dramatize the confrontation between the citizen-subject and sovereign authority in its
starkest terms. In particular, I examine interrelationships among literary and legal
discourses in terms of questions concerning political and social forms of rule,
subjectivity and citizenship, and social responsibility during this transformative
period in the history of capital punishment in America.

Chapter 1 provides an overview of my project and gives particular attention to
literature in relation to capital punishment. Chapters 2 and 5 serve as book ends,
focusing on specific literary works by Hawthorne and Dreiser respectively in relation
to the lawful administration of death. Chapters 3 and 4, the middle chapters, examine
the work of Douglass, Wells, and Chesnutt in response to racial lynching and its
rhetoric of justification.
Depend upon it, sir, when a man knows he is to be hanged in a fortnight, it concentrates his mind wonderfully.

—Samuel Johnson
Chapter 1

Introduction: Literary Executions

Put the scaffold on the Common,
Where the multitude can meet;
All the schools and ladies summon,
Let them all enjoy the treat.
What’s the use of being “private”?
Hanging is a righteous cause;
Men should witness what you drive at,
When you execute the laws.

—Anti-gallows poem (1849)

I

Capital punishment has played an important role in American cultural and political life ever since the inception of the United States. During the colonial period and in the early years of the Republic, “Hanging Day” and its concomitant practices—the execution sermon, the condemned’s last words or dying confession, the public spectacle of the execution itself, and official narratives or popular broadsides documenting the event—served to promote religious order and good citizenship.

However, the role and place of the death penalty changed dramatically in the decades following the Revolutionary War. In the late eighteenth and early nineteenth centuries, the Enlightenment ideal of a less severe, more proportional government and the belief in the benevolence of human beings, coupled with a Republican disdain for the so-called “right” of a state to take its citizens’ lives, led prominent thinkers from Benjamin Franklin and Benjamin Rush to Edward Livingston and Horace Greeley to challenge the scope and legitimacy of capital punishment.

The reformation of penal codes and capital statutes had long been a concern in Pennsylvania (in 1794 the state abolished the death penalty for all offenses except
first-degree murder), but the reform movement became a topic of national interest in the nineteenth century. During the antebellum period, this spirit of death-penalty reform peaked in the 1830s and 40s when social organizations such as the New York and Massachusetts Societies for the Abolition of Capital Punishment were formed and debates about the death penalty spread across the nation. It was during this time that many Northern and some Southern states began revising capital statutes and moving executions from the public square to the enclosed, “private” space of the prison-yard (a practice ridiculed in the anti-gallows poem cited as my epigraph). By 1853, three states—Michigan in 1847, Rhode Island in 1851, and Maine in 1853—abolished the death penalty; and only the impending Civil War and the inevitable violence associated with the effort to abolish slavery, a movement with which the reformation of capital punishment was intimately connected (Masur 157), did death-penalty abolitionism lose its momentum, not fully to return to the public spotlight until Populist and Progressive ideas at the turn of the century prompted a more scientific attitude toward crime and social behavior.

If the death penalty in the United States had its first great era of reform in the decades preceding the Civil War, the second great reform era began in 1897 when the federal government drastically reduced its number of capital offences. It was also during this year that Massachusetts prison reformer Florence G. Spooner founded the Anti-Death Penalty League and that Colorado became the fourth state to abolish capital punishment (Colorado, however, reinstated the death penalty in 1900 when retentionists successfully argued that several recent lynchings resulted in part because official capital punishment was no longer a legal option). Thanks to the efforts of
Spooner and others, Massachusetts came closer than it ever had to abolishing capital punishment in 1900, and during the 1910s there were more organizations advocating the abolition of capital punishment than at any time since the 1840s.

By 1917, nine more states had stricken the death penalty from their statutes, while several others since the turn of the twentieth century—Illinois, Ohio, and New Jersey among them—had come close to passing legislation banning the state’s ultimate sanction against its condemned citizens. A crime wave following the aftermath of World War I led several states to reinstate the death penalty (e.g. Missouri, Washington, and Arizona reenacted capital statutes in 1919), and in the early 1920s the reform movement began to slacken. But by the mid 1920s reformers regrouped and intensified their efforts. In 1925, prominent activists from different parts of the country joined forces to establish the American League to Abolish Capital Punishment, a national organization (with offices in New York City) which “sought to organize and coordinate abolition attempts in state legislatures” (Mackey, *Voices*, xxxix).¹

The 1830s through the mid 1920s in the United States also saw the practical origins and rise of “Lynch Law,” a form of lethal, extralegal violence carried out by a community and perpetrated against a “condemned” subject alleged to have committed a criminal act. To be sure, collective lethal violence performed outside the law is as old (if not older) than the death penalty itself, but the term “lynching” did not enter into popular usage until 1835 when residents of Vicksburg, Mississippi, hanged five gamblers who were seen as a threat to the community. The Vicksburg “lynchings,” as they were called, created a national “sensation” in the press of the day; and “soon
the terms ‘Lynch law’ and ‘lynching’” became, according to a writer in 1859 recollecting the Vicksburg incident, “familiar as household words.”^{2} With Western migration in the 1840s and 50s Judge Lynch moved to the frontier, where the absence of established courts (or the claim of inadequate ones) led apologists of lynching to defend the practice as a necessary response to serious crimes, such as horse theft and murder.

During and after the Civil War, lynch law became predominantly a form of racial violence committed by white mobs against African Americans and other minorities; by the mid 1880s such acts of “popular justice” had developed a sophisticated rhetoric of justification. Although racial lynchings were largely a Southern phenomenon, they also occurred in the North, especially in the North Central states of Ohio, Indiana, and Illinois. In the 1890s, lynchings clearly outnumbered legally-imposed executions. For instance, sociologist William J. Bowers records 1,540 known lynchings to 1,215 lawful executions during the decade (56). While lynchings gradually “declined from their peak in the 1890s, the rituals became increasingly elaborate in the early decades of the twentieth century, turning into ever larger and more widely publicized open-air events that drew huge crowds and transformed often quiet forms of vigilante ‘justice’ into a modern viewing phenomena in which small town folks watched their neighbors torture others or helped to do it themselves” (Apel 468). Spectacle lynchings became less and less frequent as the twentieth century marched forward, but in the 1920s a new form of racial injustice within the law was soon identified: the “legal lynching,” that is, a
swift, openly discriminatory act of lethal and lawful violence that often occurred in
capital cases when race was a factor.\(^3\)

II

This dissertation examines American literature in relation to legal and extralegal
executions from 1830 to 1925, a transformative period in the history of "capital
punishment": a broad category within which I include not just court reports in
reference to salient capital cases and lynchings of the time, but also legislative acts
and legal opinions, statutes, treatises, histories and articles related to the subject.
Within this historical period, I focus on the work of three important fiction writers:
Nathaniel Hawthorne, Charles W. Chesnutt, and Theodore Dreiser. While my
emphasis on the literature of the period attends primarily to novels and short fiction
by these writers, I also consider the anti-gallows or anti-lynching journalism, poetry,
short stories and oratory of John Greenleaf Whittier, John L. O'Sullivan, Frederick
Douglass, Ida B. Wells, Paul Laurence Dunbar, and others in relation to statements in
favor of capital punishment (legal or extralegal) made by important cultural figures of
the time. In doing so, I complement my treatment of capital punishment as a
prominent theme in literature by giving sustained attention to language and rhetorical
form in some of the important legal documents from the period. For example, I look
closely at summations in capital cases by Daniel Webster and Clarence Darrow, as
well as writings concerning an important but little-known anti-lynching campaign that
took place in Ohio and influenced the passage of several state anti-lynching statutes.
In this respect, I read law as literature; and the title of my project—"Literary
Executions”—capitalizes on the fact that many of the literary and legal texts I examine are themselves carefully executed, well-orchestrated rhetorical acts.

Of course, “literary executions” has a more obvious and immediate resonance with the principle subject of my dissertation: dramatic representations or invocations of capital punishment in literature. In exploring this topic, I expand the usual definition of “capital punishment” as lawful institution in order to include extralegal as well as legal executions, since one of my central lines of inquiry examines lynching as an illicit form of the death penalty. For although an act of lynching differs in obvious ways from capital punishment as legal institution, it qualifies as a kind of death sentence insofar as it takes place through social or communal violence, assumes supreme authority over its condemned subject, and is often carried out in the name of “the people,” a highly contested category in many of the works I study. Moreover, historical lynchings during the latter half of the nineteenth century frequently played off the official enactment of capital punishment, and these acts of vigilante justice helped to render the actual spectacle of execution both public and visible long after the legal infliction of death had moved behind prison walls.

I supplement my analysis of legal executions with extralegal ones because every lawful execution, I argue, is riddled with questions of legitimacy: hence the elaborate rituals and formal procedures as well as the rhetoric of justification built up around state-sanctioned executions. Thus, one of the specific theoretical problems my dissertation examines is the thin line that separates the death penalty from lethal, extralegal acts of communal violence carried out in the name of “the people.” An interesting example of this thin line can be found in George Washington’s decision
during the Revolutionary War to execute Major John Andre for espionage. This event looms large in Cooper’s *The Spy* (1821), a popular work that likely influenced a number of the works I consider. The execution of Major Andre is controversial for many reasons, one of them being that the act was carried out by the authority of the United States *before* the United States existed as such and was recognized as a sovereign nation.⁵

Another instance of the thin line separating legal and extralegal executions occurs in Herman Melville’s “Benito Cereno” (1856), a novella which concludes with the lawful hanging and decapitation of Babo, the black slave and mutineer who led the revolt aboard the slave-ship, *San Dominick*. In terms of its brutality and social effect, the lawful execution of Babo reproduces the illicit violence and the horror it seeks to condemn. For just as Babo murders a Spanish sailor during the insurgency and festoons his skeletal remains across the ship’s hull as a warning to others, the Spanish court at Lima executes Babo upon the gibbet and displays his severed head in the town square. In this respect, “Benito Cereno” constitutes a literary execution which, like Melville’s *Billy Budd*, complicates the legal one it dramatizes.

Whether the factual or fictional executions I analyze take place within the law or outside of it as extralegal violence, each of them depicts profound confrontations among competing theories of justice and foregrounds moments of decision and acts of judgment. Capital punishment has a discourse as rich and contentious as any in the history of the United States, and the executions I examine—literary or otherwise—engage the full spectrum of moral, philosophical, ethical, political, and legal arguments related to this controversial subject. These scenes of execution frequently
do not make simple or even coherent statements for or against capital punishment. Instead, they very often register competing and even contradictory positions on the subject and, at times, get caught up in a politics of representation in a double sense: that is, they not only compete with other print media in the representation of legal or extralegal executions but are themselves often implicated in a representative process of legal or communal putting-to-death that Wendy Lesser, Austin Sarat, and others have recently described as a complex interaction of identification and detachment that is complicitous with the act of execution itself. After all, state-sanctioned executions of the latter nineteenth and twentieth centuries, like many lynchings of the period, were carried out in the name of the people—an act which implicated a broader range of state and U.S. citizens involved in its performance.

This claim to execute in the name of the people requires me to develop an argument about the structure and force of sovereign authority in the modern state and the diffusivity of responsibility for those supreme acts of judgment. To this end, I argue that that the high stakes and sharply delineated contours of capital punishment dramatize the confrontation between the citizen-subject and sovereign authority in its starkest terms. In developing this thesis, I interrogate the dramaturgy of the death penalty: the central players involved in its dramatic enactment, the immense juridico-political stage on which it is set, and the complex social field within which its drama unfolds. Not only do judges, lawyers, condemned subjects, criminals, witnesses, prosecutors, spectators, and state authorities populate these execution scenes, but so, too, do agents acting outside or “above” the law: “outlaws” and lynch mobs, as well as state governors whose prerogative to grant a gubernatorial pardon necessarily
places them outside the law. Insofar as they engage the cultural discourse of capital
punishment, the literary executions I examine engender what might be termed a
“performative aesthetics” in the making of death-penalty politics—most notably in
how they shape or respond to a legal or extralegal process carried out in the name of a
people (whatever that “name” and “people” may be).

Given the reasons adumbrated above, the subtitle of my project emphasizes
“Plotting Death Sentences” in order to call attention to the choreography and
participatory action of capital punishment both inside and outside literature. For if, as
many critics have argued in just as many ways, the criminal and especially the capital
trial—with its investigation, courtroom drama, and formal verdict and sentencing (if a
guilty finding is reached)—operates according to dramatic structures and principles,
then an execution makes for the ultimate dénouement in the dispensation of justice.6
The finality of such an outcome, whether it takes place through the primal scene of
lynching or on the bureaucratic stage of a state-imposed execution (with its elaborate
review process, possibility of last-minute appeals, and so on), enacts the two
counterpoints of Aristotelian poetics: plot and spectacle, what Aristotle deems the
high and the low respectively in aesthetic representation. In this respect, my
dissertation focuses not only on representations of executions but on how these
representations are “plotted” rhetorically in the literary, legal, and cultural texts I
examine. In doing so, I draw upon theories of the performative in order to highlight
“death sentences” as both legal and linguistic acts.

Perhaps the most obvious example of a literary execution in American
literature occurs in Melville’s Billy Budd (first published in 1924), a novella that
culminates with a drumhead trial and a legal execution carried out through military law. Melville’s novella also provides an extended meditation on the sovereign violence of law, especially through its depiction of Captain Vere’s decision to uphold the letter of the law: a statute that demands Billy’s death, no matter the circumstances or his intention, for striking a superior officer. Published one year after *Billy Budd*, Dreiser’s *An American Tragedy* offers a more complex exploration of the death penalty by staging a lengthy capital trial and post-conviction proceedings in a civil (as opposed to a military) court of law. Dreiser further complicates matters by emphasizing the social and environmental factors that contribute to the capital offense for which Clyde Griffiths, the novel’s protagonist, is put to death by the State of New York.

Yet not all the literary executions my dissertation examines use the dramatic structure of a criminal trial to inform their plots. For instance, Hawthorne’s *The House of the Seven Gables* neither dramatizes a capital trial nor overtly engages questions about the death penalty per se. Instead it employs, in two separate but ultimately related events, a scene of lethal, seemingly extralegal violence and a commuted death sentence in a court of law. Plotting these two death sentences helps to frame a complex story of manipulated circumstances and false witness. Similarly, Chesnutt’s *The Marrow of Tradition* is centered around a lynching plot in which the lynching ultimately does not occur but whose logic and accompanying drama closely mimic a conventional scene in death-penalty literature: the race against the clock to stop an execution from taking place. Such a plot drives, in different ways, the narrative structure of such diverse works as Cooper’s *The Spy* and Thomas Dixon’s
*The Clansman* (1905). In fact, despite their differences, the impending execution at the end of these two works is prevented when an innocent man switches places with the legally condemned in order to help him escape incarceration and certain death. In *The Marrow of Tradition*, Chesnutt parodies this conventional formula in death-penalty narratives by organizing his novel around an imminent lynching plot which is not only expressly prohibited by law but orchestrated by the community’s leading citizens and supported by its local officials.

By calling attention to conspiratorial schemes and manufactured circumstances, my dissertation explores “plotting” in another sense: namely, as conspiracy or political intrigue. For like an act of lynching, the administration of the criminal justice system and the death penalty can, under certain circumstances and within particular contexts, lend itself not only to the general charge of discrimination (especially in terms of race and class), but also to more specific instances of, say, malicious prosecution, insufficient council, or arbitrary statutes. This is true in much of the fiction I study as well as in the historical contexts to which many of the literary works I examine refer or imaginatively respond. Particularly interesting historical examples of plotting as conspiracy relevant to my study include Jereboam Beauchamp’s murder in 1825 of Colonel Solomon Sharp, who allegedly seduced Beauchamp’s wife some years before they were married, and the execution of John W. Webster in 1850 for the murder of George Parkman. While many at the time of Sharp’s murder believed Beauchamp’s act to be part of “a carefully organized political act” instead of a deed motivated by personal vengeance (Bruce, “The
Kentucky Tragedy” 183), numerous published accounts at the time of Webster’s execution declared him innocent of the crime for which he was lawfully hanged.

My study takes up the 1850 Webster murder trial at length in relation to Hawthorne’s The House of the Seven Gables, but it is important to note here that the 1825 Sharp murder case, commonly referred to as the “Kentucky Tragedy,” has occasioned no fewer than five literary executions, including a 1835 play by Edgar Allan Poe, Politian, and a popular novel by William Gilmore Simms entitled Beauchampe: of the Kentucky Tragedy (1842, revised and reprinted in 1852).7 Thus, addressing “plotting” as conspiracy or political intrigue, in addition to the aesthetic coordination of events, enables me to investigate larger questions about the status of legal evidence and historical construction of evidentiary value during the nineteenth and early twentieth centuries.

Besides exploring the construction of “evidence,” my dissertation addresses questions about “agency,” “citizenship,” “guilt/innocence,” “autonomy/determinism” and other key terms or binary oppositions around which, like the broader rubrics of “sovereignty” and “responsibility” under which they fall, it is important to place (re)iterative quotation marks. For the works I examine destabilize these operative categories or oppositions from the range of perspectives and disparate approaches they take in plotting death sentences. Indeed, only Dreiser’s An American Tragedy, the work with which my study concludes, offers an overt attack upon capital punishment by providing a criminal biography and narrative of the condemned subject vis-à-vis the criminal justice system in modern America.
The other works I concentrate on stage or invoke capital punishment (again, legal or extralegal) in more oblique but no less dramatic ways in their unsettling of the complex relationship between sovereignty and responsibility. In fact, this vexed relationship between sovereignty and responsibility receives particular attention from a number of the historical figures from whose work each of my chapters draw. Allow me here to mention briefly two of these figures, one from the beginning and the other from the end of my study, both of whose work is important to my study but stands in its background. The first is Robert Rantoul, preeminent Massachusetts congressman and death-penalty opponent, who argued in an 1836 report to the state legislature against the social-contract theories of Locke, Blackstone, and Rousseau in order to assert the position that one’s natural right to life cannot be alienated, waived, or forfeited. (Bedau v). The second figure is Harold J. Laski, the influential socialist and legal thinker, who in 1921 asserted that the sovereign authority of the government was coextensive with what he called “state-responsibility” (Harvard Law Review 85).

III

This introductory chapter lays out the theoretical and historical scope of my project as a whole, especially as it pertains to the death penalty and literature. Chapter 2 builds upon this analytic frame by concentrating on Hawthorne’s fiction and exploring a number of different ways in which the term “literary executions” functions in my study. In particular, it centers around a comparative analysis of Hawthorne’s The House of the Seven Gables and the two most famous criminal trials of antebellum Massachusetts: the Joseph White murder case of 1831, a notorious Salem trial for
which Rantoul served as defense council and on which Hawthorne modeled his novel; and the John W. Webster murder case, a sensational trial that took place in 1850 just before Hawthorne began writing *The House of the Seven Gables*. The chapter generally concerns questions of evidentiary value in Hawthorne’s work related to the death penalty and argues, particularly, that *The House of the Seven Gables* presents a literary counter-argument to legal narratives of guilt in capital cases constructed from circumstantial evidence and based upon probability. It then concludes with a brief analysis of Hawthorne’s justification of John Brown’s execution and raises broader questions about the social logic of capital punishment—a traditional acceptance and defense of the death penalty that informs Hawthorne’s thinking, especially with regard to the lawful hanging of John Brown.

Chapter 3 turns to questions of lynching and its rhetoric of justification. Since my introductory chapter (Chapter 1) gives special attention to the death penalty and literature, Chapter 3 conceptualizes the relationship between literature and lynching and examines the extent to which the social logic of the capital punishment influences what I shall call lynch law’s cultural rhetoric of legitimation. In particular, Chapter 3 looks closely at “lynching plots,” a term I use to refer not only to the contrived, ideological narrative or popular myth of black men raping white women, but also to the systemic “plot” or political conspiracy among whites to execute blacks on the pretext of protecting white womanhood. Chapter 4 engages the analytic frame propounded in Chapter 3 through a sustained, literary analysis of the lynching plot in Chesnutt’s *The Marrow of Tradition*. This chapter also explores Chesnutt’s writing (especially *The Marrow of Tradition*) in relation to the Ohio anti-lynching campaign.
of 1892-1900. The Ohio campaign is crucial to my argument not only because, as I demonstrate, Chesnutt participated both directly and indirectly in the campaign, which was based in Cleveland, Chesnutt’s hometown and the city in which he lived while writing most of his fiction. It is also vital to my project because the campaign centered around the drafting of an anti-lynching bill which made communities in which lynchings occurred financially liable and collectively responsible for acts of mob violence.

My dissertation then concludes with a rhetorical analysis of An American Tragedy, the first major work of American literature that is explicitly written from an anti-death penalty perspective. In this fifth and final chapter, I read Dreiser’s novel both in light of Clarence Darrow’s closing argument in the infamous trial of Leopold and Loeb (1924) and in terms of a highly-publicized debate, “Is Capital Punishment a Wise Policy?,” in which Darrow participated shortly after the verdict in Leopold and Loeb. Chapter 5 concludes by reading Dreiser’s novel against a 1927 prize-winning article on the question, “Was Clyde Griffiths Guilty of Murder in the First Degree?” The essay contest was sponsored by the publishers of An American Tragedy, and the contest’s winner was Albert Lévitt, a law professor at Washington and Lee University who, a year earlier, had taught Dreiser’s novel in his course on criminal law. Examining the novel both through and against Lévitt’s prize-winning essay helps me call attention to the novel’s “realistic” and “moral” registers, two distinct and competing narrative strands that form the work’s dominant structure. On the one hand, the predominant “realistic” strand implicates society as a whole in the production of murderers like Clyde Griffiths and shows how the legal system that
sanctions Clyde’s execution endlessly defers responsibility for that supreme act of judgment. On the other hand, the “moral” narrative strand condemns the horror of murder—both Clyde’s act and the act committed by the State, in turn—and demands that someone be held individually responsible for it.

IV

In each of the proceeding chapters, my historical orientation and critical juxtaposition of law and literature as mutually illuminating cultural discourses owe a great deal to the method of “cross-examinations” that Brook Thomas propounds in his study by that name. Indeed, cross-examining literary and legal discourse on lynching and capital punishment enables me to give an account of the changing assumptions and evolving conceptions of sovereignty and responsibility that otherwise would not be told. The story I tell starts in 1830 because, as mentioned earlier, this date marks the beginning of the shift from public to private executions as well as the rise of reform organizations and public debate that targeted the death penalty. The date is also important because it marks Alexis de Tocqueville’s famous visit to American penitentiaries (and his subsequent writings on the concept of sovereignty in U.S. government) and the abrupt disappearance of traditional broadsheets documenting executions and the development of a new “gallows literature” through improved print technology (Papke 26). Each of these historical changes or events, I argue, contributes to the emergence of the modern State in nineteenth-century America—a modernization processes that, in terms of my project, gradually reached completion in several states with the legislative and administrative abolition of capital punishment
in the 1930s and 40s and finally ended with the two U.S. Supreme Court decisions dealing with the death penalty and its constitutionality: *Furman v. Georgia* (1972) which declared capital punishment, as currently administered, cruel and unusual; and *Gregg v. Georgia* (1976) which reinstated the death penalty's constitutionality if all the checks and balances of the newly revised system were in place.

Literary executions—like representations of or responses to different formulations of capital punishment in newspapers, magazines, and other print media—provide crucial insight into this modernization process for the very reason that, as my central thesis holds, they dramatize the confrontation between citizen-subject and sovereign authority in its starkest terms. For if war is the ultimate form of violence a state wages against its enemies, then the death penalty could be said to constitute a state’s supreme act of violence directed against its own citizens—an act which Walter Benjamin and others call a “conserving” rather than a “founding” act of state violence. By rendering the spectacle of executions both visible and public as they became increasingly less visible and moved behind closed doors, literary accounts of the death penalty play an important role in the complex network of discursive practices that raise challenging questions about state sovereignty and social responsibility, two principles that run through any discourse on the legitimacy of capital punishment. But unlike other modes of representation or response, literary executions do not merely reflect the administration of the death penalty or the phenomenon of lynching; nor do they simply make statements either for or against these practices (though such statements are made—explicitly or implicitly—by characters, narrators, and authors themselves). Instead, they create an imaginative
space or virtual reality through which larger questions of authority and responsibility, the evaluation of evidence and the assignation of guilt or punishment, and acts of judgment and conceptions of justice are not so much resolved as they are put in question.

In this respect, my dissertation privileges literary executions as rich sites for cultural critique that expose and negotiate the limits of law—an approach that draws on (among others) Wai Chee Dimock’s *Residues of Justice*, a provocative study that explores specific literary works as registering a supplement or remainder in the historical dispensation of legal justice.\(^9\) And like Dimock’s interdisciplinary study of “Law, Literature, and Philosophy” (the subtitle of *Residues*), I give special attention to the role literature plays in the historical conceptualization of the philosophy of law. For as Jacques Derrida repeatedly insisted in his late seminars on the death penalty at UC Irvine, it is literature and not philosophy that has historically provided an intellectual space of resistance to capital punishment.

In addition to Dimock’s work, several law-and-literature related studies of the nineteenth century help me situate American literature (especially the romance or novel) in relation to criminal law. Whereas Dimock proposes a general theory of “historical semantics” (192) and singles out the category of “crime” within that theory as a particularly rich “signifying field” (31-36), David Ray Papke in *Framing the Criminal* offers a detailed historical analysis of “crime-related products,” such as newspaper reporting, journalism, popular fiction, and police writing, which “both reflect and actually make visible the crime, social experience and normative restructuring of the modernizing United States” (xiv). My project benefits from the
social history of crime that Papke generates, but it complicates his (old historicist) reflection model by integrating, à la Thomas’ “cross-examinations” and other New Historicist models, cultural texts and historical contexts as a dialectical negotiation in the production of social realities. I have also benefited from Nan Goodman’s nuanced analysis of “agency” and “responsibility” in tort law and American literature in *Shifting the Blame* and Jan-Melissa Schramm’s exploration of testimony and the manipulation of evidence in *Testimony and Advocacy in Victorian Law, Literature, and Theology*.

In particular, two studies focusing on the British novel and criminal law during the nineteenth century have helped to shape my study. The first is Alexander Welsh’s *Strong Representations*, an invaluable study of narrative and circumstantial evidence that provides the starting point for my examination of the rhetoric of evidentiary value in the legal and literary executions during the period of American history I examine. Yet as Lisa Rodensky argues in *The Crime in Mind* (the second of these influential works), Welsh’s almost exclusive attention to the similarities in legal and literary narratives of the nineteenth century overlooks a fundamental yet productive distinction between these two discursive forms of narrative: that imaginative fiction (especially the novel) grants direct access to its characters’ minds and thus enables an examination of motive, intention, and responsibility unavailable through legal discourse, a narrative mode which necessarily presumes certain facts about its subject and must approach such an examination from outside a criminal’s head. In Rodensky’s words: “Novels invite readers to imagine that they are in the mind of the criminal. This access to the mind distinguishes fiction—and the novel in
particular—from law, from history, from psychology, and even from other literary genres, like biography and drama” (6).

My dissertation extends Rodensky’s insight into this crucial distinction between criminal law and the novel as competing narratives but shifts its focal point. Rather than emphasizing the interiority of a criminal’s mind and the privileged perspective granted through the “novel’s third-person narrator” (5), I stress the free-indirect discourse of the novels I examine as well as the narratological and rhetorical strategies they employ in representing or responding to lynching or the death penalty, an act whose complex structure and dramatic unfolding demands an analysis from the plurality of voices and perspectives that novelistic discourse puts into play. To this end, I draw from the narrative theory of Mikhail Bakhtin for (at least) two reasons: first, because his theory of a multi-styled, multi-voiced, and “multi-languaged” discourse, coupled with an historical understanding of the multi-styled, socio-rhetorical genres out of which the novel is composed, provides a rich analytical frame for looking at literary discourse as a reiterative enactment of social codes and regulations; and second, because Bakhtin’s notion of social heteroglossia and the “double-voiced” discourse of the novel stands in a curious relation to the monologic, authoritative discourse of (the) Law. My study complicates a straightforward use of Bakhtin by linking his notion of internal dialogism (i.e. every word repeats or reenacts its previous uses and is saturated with prior dialogues) to Derridean iterability in order to engage a performative theory of law and literature, what this study proposes as one of the many meanings “literary executions.”

21
While there are no literary studies organized around nineteenth-century literature and the death penalty, there are two important works in American cultural history that look more broadly at the problem of crime, especially murder, during this period. The first of these is David Brion Davis' *Homicide in American Fiction: A Study of Social Values* (1957), a pioneering interdisciplinary study which, along with his essay, “The Movement to Abolish Capital Punishment, 1787-1861,” provides an historical frame upon which I rely in developing my more specific discussion of antebellum literature and capital punishment, a topic Davis briefly takes up at the conclusion of *Homicide in American Fiction*. Davis' work, as one recent critic of murder in twentieth-century American culture puts it, “allows us a first glimpse at the discursive characteristics of murder narrative: the psychiatrization of the murderer; sexuality and gender as pathology; confession, secrecy, and truth; metaphysical speculation and the mystification of mortality” (Knox 5).

Karen Halttunen's much more recent study, *Murder Most Foul: The Killer and the American Gothic Imagination* (2000), updates Davis's inaugural work by examining the late eighteenth- and nineteenth-century murder narrative from within a contemporary cultural-studies paradigm. Halttunun's work is especially important to my project insofar as it develops an historical argument about the shift of authority in the interpretation of murder from the “execution sermon” of the seventeenth and eighteenth centuries, a genre empowered through religious authority and one which viewed the murderer as common sinner and representative of the community as a whole, to a diffused body of secular authority strongly influenced by the popular press and the unprecedented proliferation of court reports, crime pamphlets, and other
discursive forms from various disciplinary communities, including established fields such as law and science as well as the emerging disciplines of psychology and sociology. This diffusion of cultural authority through disciplinary practices and interpretive communities, Hulttenun argues, corresponded with the expanding readerships of sensational crime-related literature and gothic fiction—itself a diverse body of writing in which readers participated in the construction of murder as mystery and murderer as social aberration. Such a vision of murder and murderer, Haltunen goes on to claim, differs sharply from the explanatory design offered in the execution sermon.

Although no prior study (literary or otherwise) exists that focuses on the death penalty in nineteenth-century American literature, two recent critics have written on capital punishment and the twentieth-century American novel. In *Sentenced to Death*, David Guest examines five major works of U.S. fiction as prime examples of what he calls the “execution novel,” a novel which not only tells "the story of a life that leads to the gallows (or to the electric chair, the gas chamber, the firing squad, or the injection table)” but which also participates in a broader “discourse that enables both capital punishment and the criminal justice system” (xv-xvi). Guest argues that Frank Norris’ *McTeague*, Drieser’s *An American Tragedy*, Richard Wright’s *Native Son*, Truman Capote’s *In Cold Blood*, and Norman Mailer’s *Executioner’s Song* are twentieth-century successors of the “diagnostic biography,” his term for a subgenre of nineteenth-century crime literature which includes popular biographies, autobiographies, death-cell confessions, court transcripts, and similar genres that concern criminals and/or the acts they commit. In *The Courtroom as Forum*, Anne
M. Algeo gives a thematic reading of the same novels that Guest discusses, with the exception of *McTeague*. She claims that, since the publication of *An American Tragedy* in 1925, a major work of American fiction engaging the death penalty has been published roughly every fifteen years.

While sharing some of their concerns, my project ends where Algeo’s and Guest’s begins (i.e. a reading of *An American Tragedy*) in order to explore the cultural politics of the death penalty and lynching during what I argue is its most transformative period in American history, 1830-1925. In doing so, I draw upon Steven Mailloux’s definition of rhetoric as “the political effectivity of trope and argument in culture” (xii) and his neopragmatic theory of rhetorical hermeneutics in order to develop an analysis of capital punishment as both topic and trope in specific historical moments and within particular ideological and cultural contexts. For “capital punishment” was not only a hotly contested topic during this period but also a broader cultural trope that took discursive shape through a plethora of powerful figures—including the gallows, the gibbet, the rope, the Hangman, the chair, and the lynching tree and its “strange fruit,” to name but a few. Moreover, unlike Algeo and Guest, my project is not organized around novels that, however different in the particular issues they raise, tell a similar story about the condemned subject vis-à-vis the criminal justice system in modern America. Instead, I have arranged my study around a set of literary and legal texts that approach or frame questions of the death penalty in radically different ways.
In addition to Mackey’s Voices Against Death: American Opposition to Capital Punishment, 1787-1975, my historical overview of the death penalty draws from Mackey’s Hanging in the Balance: The Anti-Capital Punishment Movement in New York State, 1776-1861; Bower’s Legal Homicide: Death as Punishment in America, 1864-1982; Masur’s Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865; and Banner’s The Death Penalty: An American History.

“Lynch Law,” Harper’s Monthly Magazine 18 (May 1859): 794. The anonymous author of the story begins with the following remarks: “I think I had never heard of Lynch law until about the year 1834 [sic 1835?], when the citizens of Vicksburg organized themselves into a Court of Uncommon Pleas, with special reference to certain men in their midst who were, or were said to be, ‘living on the borders of the law.’ And I well remember, boy as I was, the sensation with which the news of the hanging of the Vicksburg gamblers was received in the old States, and how soon the terms ‘Lynch law’ and ‘lynching’ became familiar as household words” (794). For a rhetorical history of the terms “lynching” and “lynch law,” see Waldrep’s The Many Faces of Judge Lynch: Extralegal Violence and Punishment in America.

In The Tragedy of Lynching (1933), Arthur Franklin Raper was the first to use the term “legal lynching” in an academic study.

I am not alone in considering lynching as a form of “capital punishment” in both principle and practice. In 1937, the sociologist John Dollard wrote “Every Negro in the South knows that he is under a kind of sentence of death” (qtd. in Brundage), and a recent collection of sociological and historical essays, Under Sentence of Death: Lynching in the South, has taken up Dollard’s observation as one of its more allusive themes. Similarly, William J. Bowers, a leading sociologist of the death penalty, supplements his study of “state-imposed executions” with consideration of “executions imposed without duly constituted legal authority, that is, lynchings” (55). As Bower goes on to write:

Some might argue that a lynching is not an execution but a murder, and, indeed, the laws of a number of states have defined lynching as a capital offense. Yet lynchings have much in common with legally imposed executions. The lynching is an action of the community.
against someone thought to have violated its most basic mores. It is intended as retribution for the alleged offender and as a deterrent to others who might be tempted to follow in his footsteps. It is performed by community representatives (albeit self-designated) who “take the law in their own hands in order to see to it that justice is done,” to use the language of the lynch mob. The method of execution is typically the same as authorities have traditionally used to dispose of the legally condemned. And, indeed, the composition and behavior of the lynch mob may have no closer parallel than to the crowds at legally imposed public executions. (55)

More recently, Stuart Banner refers (in passing) to lynching as “a form of unofficial capital punishment” (229) in his authoritative study, The Death Penalty: An American History, whereas Franklin E. Zimring draws a comparison between the death penalty and the tradition of vigilante justice in The Contradictions of American Capital Punishment. I take up Banner’s passing comparison of the death penalty and lynching in Chapter 3 of this study, and it is my intention to extend and deepen a comparative analysis of these two forms of “capital punishment” through a literary analysis of the plotting and spectacle of legal and extralegal executions in the historical period I consider.

5 My point here calls to mind Jacques Derrida’s analysis of the performative dimension fundamental to a political Declaration of Independence. For example, Derrida argues that the question of “who signs, and with what so-called proper name, the declarative act which founds an institution” (8) problematizes both the agent and the event presumed to be brought into being in this revolutionary (speech) act. For example, the American Declaration of Independence produces the “good people” of the United States in whose name the Declaration speaks, precisely because it comes before the existence of the country and people as such. At the same time, however, the proclamation itself presupposes the existence of these “good people” to make the declarative utterance in the first place. See Derrida, “ Declarations of Independence.”

6 Interest in the extent to which legal forms inform the structure of a dramatic or aesthetic work, such as a play or novel, is one of the primary themes in the law-and-literature movement. In particular, see Robert Wiesberg’s discussion of “law in literature” in his seminal essay, “The Law and Literature Enterprise,” and Robert Cover’s discussion of the legal process, especially in criminal law, as
“inherently dramatic” in his essay, “The Bonds of Constitutional Interpretation: Of the Word, the Deed, and the Role.” It is also important to note that many critics not working directly in law-and-literature have called attention to the way a legal form, particularly that of a criminal trial, helps to structure, resolve, or bring to a climax the central drama of a literary work. For instance, in his analysis of Bleak House in The Novel and the Police, D. A. Miller argues that Dickens’ use of the criminal trial simplifies and resolves the more complicated issues the novel raises through the civil suit of Jarnadyce vs. Jarnadyce.

7 Other literary works directly responding to or influenced by the Kentucky Tragedy include George Lippard’s The Quaker City; or The Monks of Monk Hall (1844), Thomas Holley Chivers’ verse drama, Conrad and Eudora; or The Death of Alonzo (1834), Charles Fenno Hoffman’s Greyslaer: A Romance of the Mohawk (1840), and Robert Penn Warren’s novel, World Enough and Time (1950). For a discussion of the Kentucky Tragedy and the literary works it inspired, see Goldhurst, “The New Revenge Tragedy: Comparative Treatments of the Beauchamp Case.” See also Dickson D. Bruce’s two essays, “Sentimentalism and Honor in the Early American Republic: Revisiting the Kentucky Tragedy” and “The Kentucky Tragedy and the Transformation of Politics in the Early American Republic.”

8 See Benjamin’s “A Critique of Violence.” Jacques Derrida, in his critique and revision of Benjamin’s “Critique,” collapses Benjamin’s opposition between “founding” and “conserving” acts of state violence in order to argue that any act of conserving violence (e.g. police enforcement or a judge’s ruling upholding a law) is also an act of founding violence, just as any act of founding violence is also an act of conserving violence insofar as it anticipates in advance the necessity of preserving the law and social order of the state. In other words, either act of violence serves to instantiate the state, and the death penalty—like an act of war—is an ultimate form of founding/conserving violence. See Derrida, “Force of Law: The Mystical Foundation of Authority.”

9 It is important to note, however, that Dimock’s theory of the absolutization of legal justice and the supplementarity (in a deconstructive sense) of literature is not without its problems. While I admire her penetrating analyses and far-reaching claims, I agree with Gregg Crane that Dimock’s theory, in the final analysis, tends to erect a barrier between legal and literary discourses and to privilege the
latter over the former in a manner that ultimately aligns Dimock's work with that of Richard Posner, a critic whose work she criticizes in *Residues*. In response to both Dimock’s and Posner’s studies, Crane offers the following alternative: “Instead of theorizing an essential barrier between the discourses, one might situate these discourses in the historical moment (for example, the proximity of each to state power, the various roles each has played in reproducing or challenging dominant notions of the social order, the types of institutional and material support each has received, and the effects on each of commercial or professional development)” (722). Insofar as I link legal and literary discourses on the death penalty within specific moments in history and cultural debate, my project follows Crane’s advice. Still, in terms of critical methodology and orientation (if not so much in terms of the specific conclusions she reaches), I find Dimock’s approach a useful and compelling one.

10 I take a first step towards this goal in my recent article, “Iterability and the Order-Plateau: A ‘Politics of the Performative.’” In quite a number of different ways, however, many prominent theorists working in law and literature have found speech-act theory an especially apt way of connecting literary and legal texts in the cultural production of meaning. See in particular the works in my bibliography by Judith Butler, Robert Cover, Jacques Derrida, Stanley Fish, Elaine Scarry, and Austin Sarat. This work informs my understanding of the speech act, but I also goes back to the work of J. L. Austin, the initiator of speech-act theory, who relies heavily on legal discourse and examples from law (especially American law) in formulating his inaugural theory of the performative. But rather than proposing a general “Theory” of the speech act (foundationalist or otherwise), my study shall deploy several theories (with a small “t”) in order to make an argument about what I earlier called a “performative aesthetics” in the making of death-penalty politics. Such an approach, of course, becomes a kind of anti-Theory theory or neopragmatism along the lines of Fish, Derrida, and Mailloux.
Chapter 2

Plotting Death Sentences:
Nathaniel Hawthorne and the Evidentiary Value of Literature

To see within his prison-yard,
Through the small window, iron-barred,
The gallows shadow rising dim
Between the sunrise heaven and him;
A horror in God's blessed air;
—John Greenleaf Whittier, "Human Sacrifice" (1843)

Nathaniel Hawthorne's "The New Adam and Eve" (1843) imagines the return of the world's primogenitors after the "Day of Doom has burst upon the globe, and swept away the whole race of men" (247). The tale, one could call it a parable, criticizes contemporary values and advocates the reformation of certain social and political institutions through Adam and Eve's encounter with the present world and its moral corruption. In the tale's introductory frame, Hawthorne describes a world in which "each living thing is gone," but, he says, "the abodes of man and all that he has accomplished, the foot-prints of his wanderings, and the results of his toil, the visible symbols of his intellectual cultivation and moral progress—in short, everything physical that can give evidence of his present position—shall remain untouched by the hand of destiny" (247). In the absence of human life, the material artifacts of this fallen world provide the only "evidence" by which its moral and intellectual achievements can be evaluated. Through the figures of "footprints" and "visible symbols," Hawthorne calls attention to the indirect and circumstantial nature of this evidence, thus suggesting that it provides clues to some greater Truth which calls for further investigation.
Roughly midway through the tale, the “New” Adam and Eve are depicted as they enter a prison and wander through its bleak corridors and narrow cells—cells, presumably, with small iron-barred windows like the one out of which Whittier’s condemned man looks in the poem I have cited as an epigraph. The novelty of Adam and Eve’s experience provides the narrator with the opportunity to comment generally on the sad state of crime and punishment with which the recently deceased world was plagued, but nothing within the prison provokes strong reaction from either Adam and Eve or the narrator. All that changes, however, when, “passing from the interior of the prison into the space within its outward wall, Adam pauses beneath a structure of the simplest contrivance, yet altogether unaccountable to him” (255). This structure, we are told, “consists merely of two upright posts, supporting a transverse beam, from which dangles a cord” (255). The menacing object that Adam finds “altogether unaccountable” is, of course, the gallows; and its foreboding presence elicits the following exchange between Adam and Eve:

“Eve, Eve!” cries Adam, shuddering with a nameless horror. “What can this thing be?”

“I know not,” answers Eve; “but, Adam, my heart is sick! There seems to be no more sky,—no more sunshine!” (255)

Without knowledge of the world to which the gallows belongs, neither Adam nor Eve can place “this thing” within their interpretive frame. Nonetheless, intuition into the instrument’s cruel design sends a “nameless horror” through Adam and affects Eve with heartache and a momentary sense of despair.
Adam and Eve’s response prompts the narrator to justify the couple’s reaction:

Well might Adam shudder and poor Eve be sick at heart; for this mysterious object was the type of mankind’s whole system, in regard to the great difficulties which God had given to be solved—a system of fear and vengeance, never successful, yet followed to the last. Here, on the morning when the final summons came, a criminal—one criminal, where none were guiltless—had died upon the gallows. (255)

This authorial intrusion serves not only to endorse Adam and Eve’s moral response but also to raise questions about the institution of capital punishment, “a system,” the narrator asserts, “of fear and vengeance, never successful, yet followed to the last.” Such a description calls attention to negative affects of the death penalty (i.e. “fear” and “vengeance”), and these affects are given dramatic expression through the example of that “final summons” when “a criminal—one criminal, where none were guiltless—had died upon the gallows.” By shifting mid-sentence from the indefinite, “a criminal,” to the definite, “one criminal,” the narrator at once suggests the finality of all executions and the singularity of this one, while the emphasis upon the universal guilt of humanity undercuts the position of moral superiority from which a society typically justifies the death penalty. The whole scene, in short, presents the gallows as a peculiarly rich kind of evidence—“a mysterious object” that, within the tale’s typological framework, represents “the type of mankind’s whole system.”

The gallows and the death penalty play a similar role in “Earth’s Holocaust,” Hawthorne’s 1844 tale which recounts its narrator’s journey to the American
Midwest to witness the immolation of all the world’s “worn-out trumpery,” its “condemned rubbish” (381). Midway through the tale, following the successive destruction of signs of rank and social prestige, liquors and tea, articles of high fashions, and instruments of war, the body of reformers responsible for maintaining the great bonfire—this “Earth’s Holocaust”—turns its attention to “materials that had hitherto been considered of even greater importance to the well-being of society, than the warlike munitions which we had already seen consumed” (391). These materials consist of “the machinery by which the different nations were accustomed to inflict the punishment of death;” and “as these ghastly emblems were dragged forward,” we are told that “a shudder passed through the multitude” (392), much as it did for the New Adam and Eve when they encountered the gallows. The narrator of “Earth’s Holocaust” then describes what happens as each of these “old implements of cruelty” is thrust into the fire:

Even the flames seemed at first to shrink away, displaying the shape and murderous contrivance of each in a full blaze of light, which, of itself, was sufficient to convince mankind of the long and deadly error of human law. Those old implements of cruelty—those horrible monsters of mechanism—those inventions which it seemed to demand something worse than man’s natural heart to contrive, and which had lurked in the dusky nooks of ancient prisons, the subject of terror-stricken legends—were now brought forth to view. Headsmen’s axes, with the rust of noble and royal blood upon them, and a vast collection of halters that had choked the breath of plebeian victims, were thrown in together. A shout greeted the arrival of the guillotine, which
was thrust forward on the same wheels that had borne it from one to another of the blood-stained streets of Paris. But the loudest roar of applause went up, telling the distant sky of the triumph of the earth’s redemption, when the gallows made its appearance. (392)

As these two examples from Hawthorne’s fiction of the early 1840s indicate, Hawthorne was obsessed with the death penalty. Whereas “The New Adam and Eve” denigrates capital punishment as a system based on “fear and vengeance,” the narrator of “Earth’s Holocaust,” in the above passage, goes so far as to say that the sight of each instrument of death engulfed in flames “was sufficient to convince mankind of the long and deadly error of human law.” What is more, “The New Adam and Eve” was first published in the United States Magazine and Democratic Review, a popular and influential periodical that was edited by John L. O’Sullivan, the foremost proponent for the abolition of capital punishment in the 1840s and author of Report in Favor of The Abolition of the Punishment of Death by Law (1841), a widely read book that was first delivered as an official report to the State Legislature of New York and, for two decades after its initial publication, served as the standard text for arguments against the death penalty. A close friend of Hawthorne’s and a well-known figure in Democratic politics, O’Sullivan also participated in a high-profile debate on the death penalty with Reverend George B. Cheever, the most prominent supporter of the gallows and author of the popular book Punishment by Death: Its Authority and Expediency (1842). In addition to public debate, O’Sullivan attacked Cheever’s position in his article “The Gallows and the Gospel,” which was published in the Democratic Review in 1843, the same year that
Hawthorne’s “The New Adam and Eve” and Whittier’s “Human Sacrifice” appeared in the magazine. And while editor of the Democratic Review, O’Sullivan published a number of Hawthorne’s tales in his magazine—some of them side-by-side articles attacking the death penalty.¹

It would be a mistake, however, to assume that because O’Sullivan publishes Hawthorne’s fiction that Hawthorne is an unequivocal supporter of abolition. Hawthorne may be horrified by the finality of its judgment; he may also recognize that, as a system of “fear and vengeance,” capital punishment is “never successful.” But he does not necessarily argue for its abolition. In “The New Adam and Eve,” the gallows elicits a profane horror, as it does in Whittier’s “Human Sacrifice.” For Hawthorne’s New Adam and Eve, however, the gallows also betokens the world of sin and mortality into which they have entered, and it reminds us that each human being is, so to speak, sentenced to death. Similarly, despite all the efforts of the reformers in “Earth’s Holocaust,” death and sin in that tale cannot be eradicated from the world. Thus, whereas Hawthorne joins those like O’Sullivan in recognizing the flaws of capital punishment as a social institution, he also suggests that its elimination is as unlikely as the elimination of death and sin from the world. It is precisely at this point where Hawthorne differs with abolitionists, like fellow Democrat O’Sullivan, and that we can start to define Hawthorne’s complicated take on the death penalty. For Hawthorne, the question of capital punishment is a matter of evidence. Because human beings are fallible and capable of error, and because death is final, evidence used to convict one of death must pass the bar of a higher standard than that used to sentence convicted criminals to lesser penalties.
In this chapter, I show that the death penalty constitutes a significant aspect of Hawthorne’s fiction and social vision that critics have failed to consider. In developing my argument, however, I do not simply trace capital punishment as an important theme in Hawthorne’s work, thereby performing a law-in-literature analysis. Rather, I engage a law-and-literature analysis by cross-examining Hawthorne’s *The House of the Seven Gables*—a work whose plot is predicated on false witness and manipulated circumstances in two separate yet ultimately interrelated capital cases—in relation to two of the most famous capital trials in antebellum America. The first of these historical cases is the 1830 trial and execution of John Francis Knapp, a sensational event which took place in Salem, Massachusetts, Hawthorne’s hometown and the city in which *The House of the Seven Gables* is set. The second is the 1850 trial and execution of John W. Webster, which took place in Cambridge, Massachusetts, just before Hawthorne began writing *The House of the Seven Gables*. Like the Knapp trial before it, the Webster trial was a sensational event that attracted national—indeed international—attention.

I focus on a cross-examination of Hawthorne’s novel and the Knapp and Webster trials for several reasons. To begin with, each of these trials was not only an infamous event; each trail also constituted an important episode in the history of American criminal law insofar as it altered the evidentiary standards necessary to bring about a capital conviction. To put it crudely, whereas the prosecution in the Knapp trial provided an example of how to turn an “accessory” into a “principle” in a murder case by virtue of indirect and circumstantial evidence, Chief Justice Lemuel
Shaw in the Webster trial instructed the jury that, in a capital case, *corpus delicti*—
"the substantial and fundamental fact necessary to prove the commission of a crime"
(*Merriam-Webster's Dictionary*)—could be established through circumstantial
evidence alone. As a work of imaginative fiction that rigorously engages questions of
*corpus delicti*, of circumstantial and direct evidence, *The House of the Seven Gables*
offers, as it were, a literary counter-argument to the legal narratives of guilt
propounded by the State of Massachusetts in the Knapp and Webster trials. That is,
by constructing a narrative of actual innocence that turns on the problem of
manipulated circumstances and the imperfection of human evidence, Hawthorne calls
into question legal narratives of guilt that are based upon probability and constructed
from circumstantial evidence in cases in which the irreversible penalty of death is at
stake.

Again, to say that Hawthorne presents such a counter-argument is not to
suggest that he was against the death penalty itself. Far from it. There is, in fact,
evidence to indicate that Hawthorne even approved of capital punishment in certain
situations. For instance, in a letter written to a cousin in 1830, Hawthorne speaks
with utter contempt about a dissolute young man who stabbed and allegedly killed
another young man in a fracas that took place in his native Salem: "I do not know
whether he is in custody," Hawthorne writes of the alleged murderer, "but if the story
is correct, he certainly deserves death, and will very probably be brought to the
gallows."\(^2\) In another letter written to his cousin a few months later, Hawthorne goes
on at length about the Knapp trial, a subject with which he was clearly preoccupied.
While expressing sympathy for Frank Knapp (whose trial for the murder of Joseph

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White I will examine shortly), Hawthorne condemns Frank’s bother, Joseph, who was also charged with White’s murder and, like Frank, executed for it. "For my part," Hawthorne says, "I wish Joe to be punished, but I should not be very sorry if Frank were to escape" (qtd. in Hungerford 455). Literary historian Edward B. Hungerford suggests that Hawthorne almost certainly attended the Knapp trials and executions, both of which were public, and may have even written a sympathetic account of Frank’s final days in prison for the Salem Gazette (461-63). Notwithstanding his pity for Frank, there is no evidence to suggest that Hawthorne opposed these or any other executions—even though, as any reader of the memorable first scene of The Scarlet Letter knows, the figure of the gallows casts an ominous shadow over much of his fiction.

It is precisely because The House of the Seven Gables does not present an argument against the death penalty per se that I have taken it up as the principle subject of my opening dissertation chapter. Focusing on this work as opposed to, say, an anti-gallows poem by Whittier (of which there are several), enables an exploration of the relationship between literature and capital punishment unencumbered by an author’s overt political agenda. Even so, the irreversibility of capital punishment left a strong impression upon Hawthorne’s imagination;³ and in this respect, one could say that The House of the Seven Gables renders an argument for higher evidentiary standards when the ultimate sanction of death is at stake. From this perspective, one could also say that Hawthorne’s novel exhibits a deep concern for what Peter Schneck has recently termed the “‘evidentiary value’ of fiction, that is, the way in
which imaginative literature could be acknowledged as a reliable and even necessary form of ‘testimony’” (174).

“Suspicious Circumstances”

In *Strong Representations: Narrative and Circumstantial Evidence in England*, Alexander Welsh has convincingly shown that, following the Enlightenment, a new paradigm emerged for the persuasive presentation of facts in law and literature of the mid-eighteenth and nineteenth centuries. During this time, circumstantial evidence and inferential reasoning derived from it displaced direct testimony, which could be mistaken or perjured, as the basis for “strong representations,” Welsh’s term for efficacious narrative or argumentation “built on carefully managed circumstantial evidence” (17). Thus, what went unseen but fit within a larger pattern of corroborating circumstances was often given more evidentiary value than what eyewitnesses claimed to have seen or heard. As Welsh points out, “Circumstantial cannot lie!” became a motto explicitly invoked in courtrooms as well as a guiding principle implicitly at work in the literature of the period (17, 24). As a heuristic analogue for effective uses and formulations of rhetoric and narrative in the fields of law and literature, “strong representations” has much in common with my notion of “literary executions,” and in essence we can make the same general claims about the importance of “strong representations”—of circumstantial evidence, inferential reasoning, and the careful management or execution of evidence—in nineteenth-century American law and literature.
In *The House of the Seven Gables*, however, Hawthorne presents a challenge to Welsh’s paradigm. Rather than reconciling an assortment of circumstances in order to make the facts of a case or a past event speak for themselves, Hawthorne constructs a narrative around circumstances that are not only misleading but manufactured. To highlight the problematic status of such evidence, I have organized this section of my chapter around the idea of “suspicious circumstances,” a phrase that occurs not only in *The House of the Seven Gables* but in the Knapp and Webster murder trials as well. Used ironically in Hawthorne’s novel to denote artifice and duplicity, the phrase is used earnestly and deliberately by the prosecutions in the Knapp and Webster trials, so as to place a particular construction upon the facts—a construction which shifts the burden of proof from the State and onto the defendant, who must now account for the “suspicious circumstances” under which the evidence has placed him. As a literary work that problematizes legal narratives of probability and circumstantial evidence, *The House of the Seven Gables* contests the privileged status granted to such strong representations. Hawthorne’s novel, in fact, goes so far as to expose the inherent instability of the very idea of “facts.” In other words, it demonstrates that circumstances never simply exist as brute facts of a given reality but are instead rhetorical constructions that—in the hands of capable lawyers, novelists, or story-tellers—take shape *as if* they indisputably exist or occurred.

Hawthorne himself makes a point along these lines when he opposes the “Novel” to “Romance” in the Preface of *The House of the Seven Gables*. Thus far I have casually referred to *The House of the Seven Gables* as a “novel,” but in his Preface Hawthorne is quick to distinguish his present work as a “Romance”—that is,
a work concerned principally with the “possible” and even the “Marvelous” (his
terms)—from a mode or genre of fiction-writing commonly referred to as a “Novel.”
Unlike a romance, a novel for Hawthorne “presume[s] to aim at a very minute
fidelity, not merely to the possible, but to the probable and the ordinary course of
man’s experience” (1 my emphasis). That Hawthorne begins his Preface by drawing
this distinction signals its importance in the narrative to follow, and the analysis I
offer of Hawthorne’s interrogation of evidentiary value and the legal ideology of its
day depends upon reading *The House of the Seven Gables* as romance. For whereas a
novel strives to depict a faithful picture of human relations and social realities that is
based upon probable circumstances and inferential reasoning (which is nothing short
of Welsh’s thesis), a romance, Hawthorne argues, grants a writer “a certain latitude”
in the presentation and development of a truth. As a literary form, however, a
romance “must rigidly subject itself to laws, and while it sins unpardonably” when
measured against the rules and conventions governing a novel’s representation of
truth, a romance gives the “right to present that truth under circumstances, to a great
extent, of the writer’s own choosing or creation.” “If he think fit,” Hawthorne
continues, “he may so manage his atmospheric medium as to bring out or mellow
the lights and deepen and enrich the shadows of the picture” (1). Laying claim to a
writer’s right to “manage” his medium and evidence as he sees fit and to attend to the
“possible” and “Marvelous,” Hawthorne justifies his self-conscious return to romance
during an age dominated by what we could call, building off Welsh, the cult of
probability and circumstantial evidence. While a romance “sins unpardonably”
against a novel’s expectations and governing assumptions, it provides for Hawthorne
a representation of truth that goes beyond the strictly probable to account for what gets lost in such a representation and, consequently, to present a more complete picture of the event or truth being represented. And in presenting such a representation, Hawthorne asserts, the writer “can hardly be said . . . to commit a literary crime” (4).

The narrative of *The House of the Seven Gables* begins with the plotting of two death sentences. The first takes place in colonial New England and is recounted in the romance’s introductory frame. Here, we learn that a land dispute involving Matthew Maule and Colonel Pyncheon led the latter to accuse the former of witchcraft. Based on the colonel’s testimony and corroborating circumstances, Maule is put to death by the community for his alleged crime. The penalty is carried out by the “leaders of the people,” whose actions are likened to those of the “maddest mob,” and the narrator goes on to describe the execution in decidedly negative terms: “Clergymen, judges, statesmen,—the wisest, calmest, holiest persons of their day,—stood in the inner circle round about the gallows, loudest to applaud the work of blood, latest to confess themselves miserably deceived” (8). A scene in which one individual manipulates the law for his own gain and to the detriment of another, Maule’s execution frames the narrative proper and leaves readers with an important moral: that a community’s leaders, those responsible for upholding the law and through whom its sovereign violence is exercised, are themselves fallible and at times susceptible to corruption.

The second death sentence resonates with the first and puts in play the narrative’s central drama. Unlike the first, however, the second death sentence is not
enacted, and the narrator initially provides little detail or commentary about it.

Rather, it is shrouded in mystery as a complex part of the Pyncheon family history to be gradually revealed as the story unfolds. The narrator, in fact, tells us only that it involved “the violent death—for so it was adjudged—of one member of the family by the criminal act of another.” “Certain circumstances,” he adds,

attending this fatal occurrence had brought the deed irresistibly home to a nephew of the deceased Pyncheon. The young man was tried and convicted of the crime; but either the circumstantial nature of the evidence, and possibly some lurking doubt in the breast of the Executive, or, lastly—an argument of greater weight in a republic, than it could have been under a monarchy—the high respectability and political influence of the criminal’s connections, had availed to mitigate his doom from death to perpetual imprisonment. (22)

The key point introduced here is “the circumstantial nature of the evidence” that led to the conviction. Over the course of the narrative we learn that Clifford Pyncheon—the ghostly, skittish old man who returns to the House of the Seven Gables—was the “young man tried and convicted” for the murder of Jaffrey Pyncheon, a wealthy uncle with whom Clifford was living at the time of the alleged murder. Later we also learn to whom or to what Clifford primarily owes his commuted sentence and spared life—although each of the factors described probably played a role in that commutation.

It is, however, not until the end of the romance that we get a fuller picture of the circumstances surrounding Jaffrey Pyncheon’s death. In returning to these circumstances, the narrator divulges the incriminating evidence that pointed to Clifford’s guilt. What brings about this disclosure is the sudden death of Judge
Pyncheon, the work’s antagonist who almost certainly dies from natural causes, even though the circumstances surrounding it indicate foul play. The apparent fact of the judge’s natural death, coupled with the recent discovery of a predisposition to apoplexy in the Pyncheon family, strongly suggests that Jaffrey Pyncheon, some thirty years earlier, also died from apoplexy. As the narrator explains:

The medical opinion, with regard to [Judge Pyncheon’s] recent and regretted death, had almost entirely obviated the idea that a murder was committed, in the former case. Yet, as the record showed, there were circumstances irrefragably indicating that some person had gained access to old Jaffrey Pyncheon’s private apartments, at or near the moment of his death. His desk and private drawers, in a room contiguous to his bedchamber, had been ransacked; money and valuable articles were missing; there was a bloody hand-print on the old man’s linen; and, by a powerfully welded chain of deductive evidence, the guilt of the robbery and apparent murder had been fixed on Clifford, then residing with his uncle in the House of the Seven Gables. (310)

For my purposes, the key phrase in this passage is the figure of “a powerfully welded chain of deductive evidence” used by the State in its construction of the case against Clifford. I will return to the metaphor of the “chain” and to this accumulation of circumstantial evidence—the ransacked drawers, the missing money and valuables, the “bloody handprint,” and the fact that a perpetrator (if there was one) must have had access to the dead man’s private chambers—all of which pointed “irrefragably,” we are told, to Clifford’s guilt. But in the spirit of The House of the Seven Gables

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(or any good detective story), which delays the revelation of the truth in the interest of promoting mystery and suspense, I want to hold in abeyance further discussion of Clifford’s legal predicament as I now turn to the sensational murder of John W. White and the role Daniel Webster played in the infamous trial of Frank Knapp for White’s murder.

In April of 1830 Captain Joseph White, an elderly and wealthy Salem merchant (on whose ship Hawthorne’s father had worked), was found murdered in his bedroom. News of White’s murder spread quickly through Salem, and a vigilance committee was formed that pursued all leads in the eighty-two year old’s death with a zeal that, for some critics, called to mind the witch hunts of two centuries earlier. Suspicion for the murder eventually fell upon two sets of brothers, both from prominent families: Frank and Joseph Knapp, the later of whom was related to White through family marriage; and Richard and George Crowninshield. The State’s theory of the crime held that Joseph had hired Richard to kill Captain White, and that while Richard was committing the murder Joseph searched for and destroyed a recent will that had cut Joseph’s mother-in-law out of the White inheritance. It was Joseph’s belief, the State asserted, that without this will the White estate would be divided equally among White’s relations. Joseph, however, had destroyed the wrong will; the right one was safely locked up in the office of White’s attorney. While neither Frank nor George directly participated in the crime, the State argued that both of these defendants conspired to commit the crime and therefore served as accessories before the fact.
As more than one critic has noted, similarities between the historic White murder and the (apparent) murder plot of old Jaffrey Pyncheon in *The House of the Seven Gables* are striking. Both, for instance, involve the death of a rich old bachelor, a stolen or destroyed will, and suspects related to the (alleged) victim who stood to inherit from the deceased. In addition, both cases include an aspect of judicial misconduct or abuse: whereas “the high respectability and political influence” of the Pyncheon family (in spite of Clifford’s actual innocence) unduly influenced the commutation of Clifford’s death sentence and ultimately led to his release from prison, the district attorney’s office in the White murder hired Daniel Webster as lead counsel for the prosecution. Webster was, of course, the most famous lawyer and orator of the time; and many citizens of Salem were outraged that Webster was brought in from outside the county to lead the prosecution. In fact, one citizen of the Salem went so far as to call Webster’s prosecution “an example of judicial murder” (qtd. in Bradley 10), a phrase which calls to mind Hawthorne’s description of the Salem witch trials and Mathew Maule’s execution as one of history’s “judicial massacres” (*The House of the Seven Gables* 8).

My purpose here, though, is not to rehearse the details of the White murder and their many parallels with *The House of the Seven Gables* but instead to cross-examine Hawthorne’s romance in relation to the narrative of legal guilt constructed in the capital trial of Frank Knapp, a defendant originally charged as an accessory in White’s murder. To this end, I will focus on Daniel Webster’s summation in the case against Frank Knapp. Considered today as a classic in the literature of criminal law—the summation has even been called the “greatest ever delivered to an American
jury” (qtd. in Bradley)—Webster’s closing argument fits my definition of literary executions not only in that it played an important role in bringing about Frank’s conviction and subsequent execution, but also because it has often been anthologized for its literary merits. In fact, Webster himself thought enough of his closing argument to include it for publication in Volume VI of his *Collected Works*, an immensely popular book that was published in 1851, the same year as *The House of the Seven Gables*.

“Daniel Webster never spoke nor looked so like an angel...”

Near the end of “Mr. Higginbotham’s Catastrophe,” a tale written by Hawthorne shortly after the Knapp trial, a young niece of the supposedly murdered Mr. Higginbotham defends Dominicus Pike, the young man who started rumors of her uncle’s death. Young Miss Higginbotham’s plea for mercy quells an outraged community determined to teach Dominicus a painful lesson for the mischief caused by his gossip. At the end of her speech, the tale’s narrator comments, “Daniel Webster never spoke nor looked so like an angel as Miss Higginbotham, while defending [Dominicus] from the wrathful populace at Parker’s Falls” (116).

Based upon this (ironic) allusion to Webster’s skills in forensic oratory, Edward B. Hungerford has speculated that Hawthorne drew the image from Webster’s closing argument in the Knapp trial, an event Hawthorne likely attended (460-61). Hungerford’s speculation becomes all the more credible when one considers that Hawthorne’s tale concerns a thwarted murder plot and explores issues related to second-hand information, oral testimony, eye-witnessing, and “ambiguous
circumstances” (a key phrase in the tale). Indeed, each of these issues—especially that of “ambiguous circumstances”—plays an important role in the Knapp trial. Of course as lead attorney for the Knapp prosecution, it was Daniel Webster’s job to transform the case’s “ambiguous circumstances” into circumstances that would convict Frank Knapp as a co-conspirator in the White murder. Lacking any direct evidence against Frank, Webster relied entirely on constructing a narrative of guilt based upon probability and circumstantial evidence. The skill with which Webster managed his evidence and built his case illustrates Welsh’s thesis in *Strong Representations* to such an extent that Welsh, had he concentrated on American law and literature, could have used Webster’s summation as a case-in-point.

True to Welsh’s argument, circumstantial evidence figures prominently in Webster’s summation. Webster, for instance, opens his closing argument by invoking the moral argument (or cliché) that “murder will out”: the idea that God or Providence, combined with the vigilance of a concerned community, will illuminate “every circumstance connected with the time and place” of a given crime. Such an effort, Webster claims, will help “to kindle the slightest circumstance into a blaze of discovery.” If the murderer still goes undetected, Webster argues that the killer’s irrepresible guilt will either consume his conscience and hence expose him through his demeanor or conduct; or his guilty heart will drive him to confession. In either case, Webster concludes that the guilty party will become inextricably entangled in a “net of circumstance” (410), from which the only possible escape is confession or suicide.
This line of argument characterizes Webster’s summation as a whole and, in the course of it, he strenuously objects to the defense’s dismissal of the prosecution’s case as nothing more than “circumstantial stuff” (416). In fact, Webster later appropriates this pejorative phrase and uses it to his advantage when, in reference to an incriminating letter allegedly written by Frank, he emphatically tells the jury: “Fix your eye steadily on this part of the ‘circumstantial stuff’ which is in the case, and see what can be made of it” (419). For his part, Webster makes a great deal of this “circumstantial stuff.” He infers from it that Frank bears legal responsibility for White’s murder, even though Knapp was neither the person who actually killed White nor even present at the scene of the crime. According to the prosecution’s theory, the actual killer was Richard Crowninshield, whom Knapp aided and abetted by meeting in Brown Street, a location clearly removed but not far from the murder scene. At issue in the trial, then, are two technical aspects of law: the distinction between principal and accessory; and the legal definition of “constructive presence.” I will first discuss the significance of the principal-accessory distinction as it applies to the case; then I will look more closely at the legal definition of constructive presence, the keystone in Webster’s architectonics of circumstantial evidence.

At the time of the White murder, Massachusetts law stated that a principal must first be convicted in order for an accessory to stand trial. Learning of this legal technicality, Richard Crowninshield, an obvious principle, promptly hanged himself in an apparent effort to save the necks of his alleged coconspirators, his brother George and Frank and Joseph Knapp. In light of Richard’s suicide, Webster and the prosecution team changed their theory of the crime and the strategies they would use
in arguing the case. The prosecution now charged Frank as a “principal,” upon the assumption that he played a central role in the murder. Yet when it came to his closing argument, the point Webster hammered home had little (if anything) to do with Frank’s role as a mastermind of the crime—an argument one might reasonably expect to be made of a principal who had neither drawn a blade nor pulled a trigger in the commission of a murder. Instead, Webster built his entire case around the legal theory of “constructive presence,” a concept in criminal law that allows for culpability to be defined not in terms of actual presence or participation in a crime but strictly in terms of whether the individual on trial knowingly aided and abetted in the act. For to aid or embolden a murderer in any way is—as Webster dramatically argued near the end of his summation—“the same as though the person stood at his elbow with his sword drawn” (425).

According to Webster’s liberal interpretation of constructive presence, the only issue in question was whether or not Frank was in Brown Street at the time of the murder and there by appointment with Richard. The defense offered a different interpretation of the law—one that rejected a formal application of constructive presence in favor of a consideration of the practical consequences arising from Frank’s so-called participatory presence. “Even if [Frank] was in Brown street,” the defense argued, “he was not present except by a mere fiction of law. To make a man constructively present, he must be in a capacity to render assistance, and must be there for that purpose, and must actually assist” (qtd. in Bradley 70). Calling attention in this way to the “fiction of law” raises a subtle point that I will take up in the conclusion to this chapter: that legal narratives, like legal theories, necessarily
incorporate and rely upon an element of fiction insofar as they cannot speak with complete accuracy about how unseen events actually occurred. But the important point here is that Webster, in his summation, did not so much respond to the defense's argument against his use of constructive presence as he dismissed the defense's claim as wholly irrelevant. As Webster argued to the jury: "The question for you to consider is, did the defendant go into Brown street in aid of this murder? Did he go there by agreement, —by appointment with the perpetrator? If so, everything else follows. The main thing—indeed the only thing—is to inquire whether he was in Brown street by appointment with Richard Crowninshield" (423). By placing great weight upon Frank’s constructive presence and ruling out the question of whether any actual assistance was given, Webster lays the theoretical groundwork for a chain of circumstances to follow—or, as he succinctly puts it, so that “everything else follows.”

For Webster, then, the entire case ("everything") hinges on Frank’s being in Brown Street by appointment with Crowninshield. Any consideration of the actual assistance or practical consequences resulting from Frank’s presence is beside the point. Webster drives this point home throughout his summation. If Frank was in Brown Street by agreement with Crowninshield, “then he was,” Webster goes on to argue, “in the language of the law, present, aiding and abetting in the murder. His interest lay in being somewhere else. . . . If he had nothing to do with the murder, he would be at home, where he could prove his alibi” (424). By suggesting where Knapp should have been to prove his alibi, Webster shifts the burden of proof from the prosecution and onto the defense in the same breath that he speaks of “the
language of the law.” This “language of the law” to which Webster refers here and elsewhere is a formal, clear-cut language of strict oppositions and airtight definitions. To use Webster’s terminology, the presence of Frank in Brown Street means one of two things: either “he was there consenting to the murder” or “he was there as a spectator only” (425). Webster further emphasizes this either/or logic by posing a more general question for the jury’s consideration: “Where is the line to be drawn between acting and omitting to act?” (425) Again, for Webster the answer is clear enough: Frank’s presence in Brown Street, in conjunction with other suspicious circumstances, makes him both acting in and consenting to the murder. In fact, Webster makes this argument despite the fact that two witnesses testified in court either to have seen or been with Frank around the time of the murder. Webster dismisses this testimony as an unreliable and unsatisfactory explanation of Frank’s whereabouts. He argues instead that, as he dramatically asserts near the end of his summation, “This fearful concatenation of circumstances puts [Frank] to an account” (429).

Hawthorne’s attention to the instability of circumstantial evidence in The House of the Seven Gables calls into question legal arguments like that of Webster’s summation in the Knapp trial. In sharp contrast to the utter certitude with which Webster speaks of the overwhelming circumstances indicating Frank’s guilt, a deep skepticism and uncertainty punctuate Hawthorne’s narrative as a whole and the presentation of the evidence in the case against Clifford in particular. Indeed, whereas Webster strives to reconcile various circumstances in order to establish an unbroken chain of evidence that points to Frank as a principle in the White murder,
*The House of the Seven Gables* emphasizes, as its narrator at one point puts it, “... the tendency of every strange circumstance to tell its own story” (144). Such a remark suggests that, while circumstances can be pieced together to tell a unified story (as in Webster’s summation), a collection of seemingly related circumstances can just as easily pull a given story into different—even contradictory—directions.

Hawthorne’s romance teaches this lesson by demystifying the mystified circumstances that, in a court of law, proved Clifford’s guilt beyond a reasonable doubt. It turns out that the circumstances in the legal case against Clifford were not only misleading but manipulated. Holgrave, the daguerreotypist and boarder of the House of the Seven Gables, comes to this conclusion when he discovers the body of Judge Pyncheon. He explains the judge’s death as an “idiosyncrasy” of the Pyncheon family, a death resulting from natural causes and *not* from foul play, as the circumstances of the blood-stained shirt and the sudden disappearance of Clifford and Hepzibah, the judge’s cousins who, as we shall later see, have a interest in seeing the judge dead. In offering his explanation to Phoebe Pyncheon, Clifford and Hepzibah’s young cousin, Holgrave emphasizes “a minute and almost exact similarity in the appearances” of Judge Pyncheon’s death and the death of Jaffrey Pyncheon, whom Clifford was convicted of murdering thirty years earlier. Like Webster in the Knapp trial, Holgrave bases his finding on circumstantial evidence and inferential reasoning. Drawing an analogy between the apparent similarities in these two deaths, he concludes that Clifford was innocent of Jaffrey Pyncheon’s apparent murder and that Jaffrey, like Judge Pyncheon, died from natural causes.
Yet in spite of this discovery, Holgrave acknowledges the compelling evidence in the case against Clifford: “It is true, there was a certain arrangement of circumstances,” he reasons to Phoebe, “which made it possible nay, as men look at these things, probable, or even certain—that old Jaffrey Pyncheon came to a violent death, and by Clifford’s hands” (304 my emphasis). When Phoebe goes on to ask, “Whence came those circumstances?,” Holgrave emphatically replies:

They were arranged . . . at least such has long been my conviction, —they were arranged after the uncle’s death, and before it was made public, by the man [Judge Pyncheon] who sits in yonder parlor. His own death, so like that former one, yet attended by none of those suspicious circumstances, seems the stroke of God upon him, at once a punishment for his wickedness, and making plain the innocence of Clifford. But this flight,—it distorts everything! (304)

Holgrave’s explanation to Phoebe is instructive. In it, Holgrave makes it clear that, just because these circumstances present a probable case, they might be the product of a clever arrangement of evidence rather than a transparent reflection of the truth. He thus begins his explanation by presenting a succinct account of the legal reasoning that led to Clifford’s conviction. Highlighting the “suspicious circumstances” in the case against Clifford and producing a logic of probability akin to the logic of Webster’s summation, Holgrave shows that the evidence against Clifford made it seem in the eyes of the law not only “possible” and “probable” but almost “certain” that Clifford killed Jaffrey. But Holgrave then undercuts this logic by arguing that those suspicious circumstances “were arranged” by the dead man sitting “in yonder parlor”: Judge Jaffrey Pyncheon who, as a young man, manufactured evidence to
frame Clifford for his uncle’s murder. For Holgrave, as for Webster in the Knapp trial, “murder will out”; but in the world represented in The House of the Seven Gables, the agent responsible for that moral revelation is not always human. Indeed, the young Jaffrey Pyncheon’s crime, which was to frame Clifford for an accidental death and to destroy a will favoring him, is detected and brought to justice by God.⁸ And it is God, as Holgrave suggests, who punishes Judge Pyncheon’s “wickedness” through premature death and who “mak[es] plain the innocence of Clifford” in a single stroke. Yet this particular act of divine justice produces, in the human world within which it takes place, “suspicious circumstances”—this time through Clifford and Hepzibah’s flight from what appears to be a crime scene. In Holgrave’s words: “this flight,—distorts everything!”

This potential for distortion—that is, the potential for circumstances to be twisted to fit a probable narrative, what Robert Newsom calls “a likely story” in his study by that name—is emblematic of the shifty, opaque social world of actions and consequences depicted in The House of the Seven Gables. Nothing in this world can be taken for granted. Even the narrator’s final explanation of the events surrounding old Jaffrey’s death is couched in uncertainty. “Now it is averred,” the narrator tells us, “—but whether on authority available in a court of justice, we do not pretend to have investigated,—that the young man [Jaffrey Pyncheon, Jr.] was tempted by the devil, one night, to search his uncle’s private drawers, to which he had unsuspected means of access” (311 my emphasis). By hedging his claims, the narrator undercuts or at least qualifies his authority to speak definitively about how old Jaffrey came to meet his death. Indeed, rather than saying what definitively happened, the narrator
offers his explanation as “a theory,” developed by Holgrave and “affirmed” by many, “that undertook . . . to account for these circumstances [so] as to exclude the idea of Clifford’s agency” (310-11). “According to this version of the story” (my emphasis), the narrator goes on to report, “Judge Pyncheon, exemplary as we have portrayed him in our narrative, was, in his youth, an apparently irreclaimable scapegrace.” This “theory” or “version” of the crime, a story which the narrator confidently endorses but does not present as a certainty, culminates with an account of how Old Jaffrey late one night surprised young Jaffrey as the former was “criminally occupied” in ransacking the latter’s private cabinets. “The surprise of such a discovery, his agitation, alarm, and horror, brought on the crisis of a disorder to which the old bachelor had an hereditary liability;—he seemed to choke with blood, and fell upon the floor, striking his temple a heavy blow against the corner of a table” (311). With the body of his dead uncle lying before him, young Jaffrey

continued his search of the drawers, and found a will, of recent date, in favor of Clifford,—which he destroyed,—and an older one, in his own favor, which he suffered to remain. But, before retiring, bethought himself of the evidence, in these ransacked drawers, that some one had visited the chamber with sinister purposes. Suspicion, unless averted, might fix upon the real offender. In the very presence of the dead man, therefore, he laid a scheme that should free himself at the expense of Clifford, his rival, for whose character he had at once a contempt and a repugnance. (312)

Inasmuch as it confirms Holgrave’s “theory,” the narrator’s account of what probably happened constitutes a strong representation: a careful reckoning of the
circumstantial evidence surrounding old Jaffrey’s death. But as just another “story” or “version” of the facts, it allows for the possibility of Clifford’s guilt and the accuracy of the legal verdict that condemned him in the first place. In this respect, the literary narrative of Clifford’s probable innocence (but possible guilt) differs pointedly from the legal narrative of guilt that Daniel Webster expounds in the Knapp murder trial. In sharp contrast to the narrator’s closing statement regarding the Jaffrey Pyncheon murder case, Webster’s summation in the Knapp trial proceeds from the assumption that, as Webster makes explicit near its end, “truth always fits” (437). On the one hand, Webster looks for a way of bringing together the various strands of circumstantial evidence in order to tell a unifying and coherent narrative of probability and legal guilt. Hawthorne, on the other hand, attends to multiple possibilities in the death of old Jaffrey and stresses the potential for circumstances, like testimony, to be perjured, and for the probable to be a distortion of the truth. This contrast becomes all the more dramatic when judgment is rendered through the death penalty, a form of punishment that is both final and irrevocable. For Hawthorne, the irreversibility of the death penalty, coupled with the possibility of innocence in capital cases based upon circumstantial evidence, provides a set of circumstances in which the ultimate legal sanction is untenable. To flesh out my cross-examination of The House of the Seven Gables and the legal ideology of its day, I will now turn to the problem of corpus delicti and the imperfection of human evidence—two interrelated issues at the center of the notorious trial of John W. Webster for the murder of George Parkman. A lurid tale of murder and dismemberment involving conspicuous personas of Boston society and covered by
nearly every Massachusetts paper, the Webster trial certainly caught Hawthorne’s interest and likely influenced the composition of *The House of the Seven Gables*.

*Corpus Delicti—Bodies of Evidence and Actual Innocence*

George Parkman, a professor at the Harvard Medical School and one of the wealthiest men in America, disappeared on November 23, 1849. The last person known to speak with Parkman was Dr. John W. Webster, a colleague at the Medical School who met with Parkman by appointment the afternoon of the 23rd. A spendthrift and aspirant to Boston’s high society who tended to live beyond his means, Webster over the years had accrued a debt to Parkman of almost $500 (a considerable sum for the time), which he claimed to have settled the day Parkman went missing. A week later, Webster was arrested for Parkman’s murder.

The case against Webster was founded entirely on circumstantial evidence. In addition to Webster’s motive for murder (his substantial debt to Parkman) and the fact that he was the last person known to speak with Parkman, the State of Massachusetts amassed a plethora of suspicious circumstances against its suspect. Chief among these circumstances were false teeth as well as skeletal and human remains discovered in Webster’s laboratories, and the testimony of the medical school’s janitor, Ephraim Littlefield, who claimed to have discovered the teeth and human remains in a furnace in Webster’s laboratory at the medical school. According to Littlefield, it was Webster’s odd behavior in the days after Parkman’s disappearance that led him to suspect Webster as the murderer and to conduct an independent search of Webster’s laboratory.
There was of course a great deal more to the State’s case, but the human remains and Littlefield’s testimony constituted the key links in the chain of circumstantial evidence presented at trial by the prosecution. Ironically, the evidence used to verify Parkman’s death was not even an actual part of his body but instead the artificial teeth which Parkman’s dentist identified and swore to have made for Parkman some four years earlier. The defense, in turn, challenged this evidence through the expert testimony of Dr. William Morton, a physician renowned for discovering anesthesia, who said it would be impossible to identify for whom these teeth were made because of the extensive fire damage they withstood while in the furnace. Despite Morton’s testimony, the preponderance of circumstantial evidence against Webster was bolstered through statements by prominent witnesses for the State, such as Oliver Wendell Holmes who testified: “I am familiar with the appearance of Dr. Parkman’s form, and I saw nothing dissimilar” in the discovered remains (qtd. in Sullivan 89). In terms of probative value, Holmes’ testimony was not particularly compelling, but it shows how evidence gains authority because of the stature of expert witnesses.

At the time of the Webster murder trial, evidentiary standards in capital cases held that corpus delicti (literally, “the body of the crime”) had to be established through direct evidence, and only after the fundamental fact of the crime had been positively proven could the State present an argument to show a defendant’s guilt beyond reasonable doubt. This evidentiary standard was perceived as a necessary safeguard so that the State could avoid, or at least decrease, the possibility of
convicting and executing a suspect who did not commit the crime for which he or she was charged. As legal historian Robert Sullivan explains:

Starkie, McNally, and Roscoe, the leading authorities upon the law of criminal evidence in 1850, made it quite clear that the fact of the corpus delicti, or the commission of the homicide, had to be proven by direct evidence to an absolute certainty, or beyond the least doubt. After this had been established absolutely, then the burden of proof was on the prosecution to show that the defendant had committed the crime beyond a reasonable doubt. These legal authorities of the English-speaking world were firm on this point, and they advanced the explanation that this rule of certainty of the fact of the homicide was altogether warranted by the melancholy experience of the conviction and execution of supposed murderers of “victims” who had in fact survived their “murder.” (144)

As Sullivan goes on to show, Chief Justice Shaw in the Webster trial set a new evidentiary standard in his charge to the jury by stating that corpus delicti could be established through circumstantial evidence alone and that a defendant’s guilt could be satisfied by merely going “beyond a reasonable doubt.” Today Shaw’s charge is considered an “all-time classic in the field of criminal law” (Sullivan 172) and still cited in case law for its authoritative definitions of “circumstantial” and “direct” evidence, “moral certainty,” and the degrees of homicide. But when Shaw first delivered his charge, it was hardly hailed as a landmark in the literature of criminal law. On the contrary, a significant portion of the legal community saw Shaw’s charge as a gross violation of judicial authority. For example, one pamphleteer, identifying
himself as a “Member of the Legal Profession,” denigrated Shaw’s charge as “law manufactured for the occasion.” He claimed that, “From beginning to end,” the charge was “an argument against the prisoner” and thus constituted “an extraordinary judicial usurpation” of established authority. This writer joined many others at the time in “affirm[ing] that the corpus delicti cannot be established by circumstantial evidence and that Shaw cannot find authority or precedence for his assertion—the well-settled law is precisely the reverse of that stated by the judge to the jury” (Statement of Reasons 22). One lawyer in agreement with this anonymous pamphleteer was Stephen A. Phillips, editor of America’s leading American law journal, Monthly Law Reporter. “The Court,” Phillips wrote of the Webster trial, “evidently thought it necessary to secure an unanimous verdict, and such a verdict as would correspond with public opinion. This is the only way we can account for the extremely ARGUMENTATIVE character of the charge of Chief Justice Shaw” (qtd. in Sullivan 169).

What outraged Phillips and others was that Webster was condemned to death in a case in which corpus delicti was not established through direct evidence. For this reason, part of the passage I cited above from Robert Sullivan bears repeating: that the “rule of certainty of the fact of the homicide was altogether warranted by the melancholy experience of the conviction and execution of supposed murderers of ‘victims’ who had in fact survived their ‘murder’” (144). In fact, the so-called “facts” in cases against those actually innocent but executed play a crucial role in John O’Sullivan’s Report in Favor of The Abolition of the Punishment of Death by Law. In his Report, O’Sullivan speaks with grave suspicion of capital cases that revolve
around “suspicious circumstances” (a term O’Sullivan uses). In setting up a
discussion of numerous well-documented cases in which innocent men have been
legally executed for crimes they did not commit, O’Sullivan argues: “The
imperfection inseparable from all human evidence, whether positive or presumptive,
ought to make us shrink from the infliction of a doom thus forever irremediable (116-
17). To extend my cross-examination of The House of the Seven Gables and the legal
ideology of its day, I want to take up the “imperfection” of human evidence in the
murder trial of Professor Webster in relation to Hawthorne’s exploration of
evidentiary value in his romance. Doing so will enable me to analyze the
relationship between narratives of probability and theories of sovereign authority in
law and literature when the ultimate sanction of death is at stake.

Like the Frank Knapp murder trial two decades earlier, arguments in the Webster trial
boiled down to, as Judge Shaw put it at the beginning of his charge, “a question of
evidence” (Stone 277). While the prosecution did all it could to present a highly
probable narrative in which the facts of the case would speak for themselves, the
defense mustered all its rhetorical force to highlight the possibility of Webster’s
innocence and the consequences of an unjust execution, as well as to break crucial
links in the State’s construction of chain of evidence against the defendant. In this
respect, the prosecution’s case against Webster, like Daniel Webster’s summation in
the Knapp trial, could be used to exemplify Welsh’s thesis of “strong
representations,” whereas the defense’s counter-argument—like The House of the
Seven Gables’—presents a challenge to that thesis by devaluing circumstantial
evidence and showing how a strict adherence to probability can lead one astray from the truth. In fact, the Webster defense cites the very phrase that Welsh identifies as a “rallying-cry” in nineteenth-century courtrooms and novels: “Circumstances cannot lie!” (Strong Representations 17, 24). The defense, however, quotes this phrase ironically and provides several obvious examples of how facts can be feigned and circumstances manufactured. “There is reason,” the defense concludes after citing such examples, “to fear blind reliance upon the dictum ‘that circumstances cannot lie,’ [which] has occasionally exercised a mischievous effect in the administration of justice” (Stone 139). Similarly, the defense belittles the State’s argument against Webster by calling it “one great chain of circumstantial proof, with which they [the prosecution] have endeavored to surround the defendant, and by the weight of which they have endeavored to crush him” (118).

Notwithstanding such moments of wit and sarcasm, the predominant tone of the defense’s argument is one of sympathy and solemnity. For instance, in his opening statement on behalf of Professor Webster, defense attorney Edward D. Sohier calls the jury’s attention to the decision each one of them will have to make. “A duty,” he tells the jury, “devolve[s] upon you; and if you err, you see the victim. He it is, and his is the family, who must be offered up as an atoning sacrifice to that error, unless indeed, you err on Mercy’s side— . . . on a side where no woman’s groan, no widow’s sob or orphan’s tear, bears witness to it (124). Sohier builds off this sympathy for Webster and the jury’s responsibility for their decision by contesting the prosecution’s theory of the crime. He does so by emphasizing the importance of direct evidence and the utter absence of it in the present case.
Circumstantial evidence, Sohier argues, requires substantial elucidation, whereas “direct evidence,” he asserts, “needs no explanation; and in point of fact, there is none of it in this case.” Sohier elaborates this comparison by reasoning that direct evidence “consists of . . . testimony derived from persons who have actual knowledge of the facts in dispute,” while circumstantial evidence creates a scenario in which “a fact is attempted to be proved, not by anybody who saw it, not by anyone who knows it, but by proving in advance certain other circumstances, and certain other facts, and then drawing a conclusion, from those facts and circumstances, that these particular facts which we are endeavoring to ascertain exist” (115).

If this definition of circumstantial evidence sounds excessively complex and difficult to prove, then Sohier has done his job. After all, his task is twofold: first, to diminish the credibility of circumstantial evidence while elevating that of direct evidence; and second, to emphasize both the potential for human error in cases involving circumstantial evidence and the impossibility of reversing judgment in a capital case once a death sentence has been executed. To this end, Sohier juxtaposes circumstantial and direct evidence and argues to the jury that “as you see at once, in this matter of evidence, there is no comparison between the strength of direct and circumstantial evidence. Circumstantial evidence is weak, compared with direct; and for the reason that the opportunities for human error are multiplied. All we can do, in the investigation of facts—all we ever can do—is to approximate towards certainty” (137).

As The House of the Seven Gables demonstrates, an approximation of certainty is vital in capital trials in which a defendant’s life hangs in the balance. To
underscore the dangers of approximating certainty in the Webster case, Sohier presents the jury with two scenarios in which a guilty verdict might be reached. He first asks the jury to imagine a case in which a capital conviction is reached through direct evidence. In such a case, “What are the chances of a Jury being led into error?,” Sohier asks rhetorically. “The chances depend upon his lying. If he swears falsely, then we are misled. But he comes, and swears to a solitary fact. But he is not likely to mislead us, because it is so simple” (137). Sohier then asks the jury to think of a scenario in which a finding of guilt is arrived at through circumstantial evidence, as the case would have to be in the Webster trial: “The proof sometimes consists, as in this case, of numerous facts—of scores of facts. Every single fact is a distinct issue. Every single fact must be proved, beyond a reasonable doubt. . . . Here the chances of error accumulate” (137).

Sohier’s repeated attention to the complex nature of “Every single fact” calls to mind Hawthorne’s claim about the singularity of facts that I underscored earlier: “. . . the tendency of every strange circumstance to tell its own story” (*The House of the Seven Gables* 144). Both statements remind us of the potential of circumstances to be misconstrued and the fallibility of human judgment. For this reason the claim, “Nothing human is infallible,” becomes a sort of mantra in Sohier’s opening and closing arguments, a point to which he returns again and again in his attempt to expose the imperfection of circumstantial evidence. For example, Sohier at one point argues: “Circumstantial proof is exposed to error from beginning to end; errors in testimony from which the circumstances are intended to be established; errors in the inferences and conclusions which we draw from them after we have collected them”
(137-38). Applying this criticism to the case at hand, Sohier questions the integrity of the prosecution’s argument by turning one of their chief tropes—the “chain” or “train” of circumstances—to his advantage: “if in a long train of circumstances, upon which the case is hung up by the Government, there is any one single circumstance which fails, there is an end to the whole case at once. They undertake to anchor their case by a chain of circumstances. If one link breaks, by its own intrinsic weakness, or by any force which the opposite party brings against it, there is an end to the case” (139). In setting up this claim, Sohier had explained that the rules of law in a criminal case were developed “for the purpose of guarding, as far as possible, against error”; and by singling out the potential of a “single circumstance” in a “long train of circumstances” to be misconstrued, Sohier points to the tenuous composition of such evidence—a kind of evidence that becomes intrinsically weaker with every link it contains.

In his closing argument for the prosecution, district attorney John H. Clifford argues directly against Sohier’s definitions of circumstantial and direct evidence. Clifford, in fact, goes beyond simply inverting the relative importance of these two kinds of evidence (privileging the latter over the former) by suggesting that all evidence is more or less circumstantial: “Now, Gentlemen,” Clifford asks the jury rhetorically, “what is the nature of the evidence upon which you are to arrive at your conclusion? It is circumstantial. So, I think, it must be said, is almost all evidence. We are not here, Gentlemen of the Jury, dealing with or expecting to find absolute verities—pure, absolute truth. That, Gentlemen, belongs not to fallible man but to the omniscient and infallible God” (225). Like the defense, Clifford stresses the
inaccessibility of “absolute truth” as well as the fallibility of human judgment. He
does so, however, not to warn against the possibility of a wrongful conviction, let
alone an execution, as Sohier does for the defense. On the contrary, he accepts such
convictions and executions as unfortunate but necessary consequences of an effective,
robust criminal justice system. “Innocent men have, doubtless,” Clifford
acknowledges, “been convicted and executed on circumstantial evidence; but,
innocent men have sometimes been convicted and executed on what is called positive
proof. What, then? Such convictions are accidents, which must be encountered; and
the innocent victims of them have perished for the common good, as much as soldiers
who have perished in battle” (227).

Not only are wrongful executions excused by Clifford as “accidents” which
“must be encountered,” but he transforms these “innocent victims” into martyrs of the
State who, like soldiers of war, have “perished for the common good.” By likening
the wrongfully condemned to soldiers, Clifford appropriates the legally (if
mistakenly) condemned within a larger cultural narrative of legitimation: the age-old
story of the State’s absolute right to take the lives of its citizens in the interest of
protecting society at large and of promoting law and order. After justifying the
State’s use of lethal, sovereign violence that errs for a greater good, Clifford
immediately goes on to reiterate one of the prosecution’s central points: “All evidence
is more or less circumstantial, the difference being only in the degree” (227). In The
House of the Seven Gables, Hawthorne develops a similar argument about the
imperfection of all human evidence, but he does so from a different perspective.
Hawthorne also takes up the problem of “innocent victims,” and I will explain how
shortly. First, however, I want to explore Clifford’s claim that “All evidence is more or less circumstantial” as it relates to Hawthorne’s romance. Pursuing this claim will force us to confront a dilemma that runs through Hawthorne’s fiction: that while the use of circumstantial evidence to arrive at the truth is always problematic, in many cases it is the only evidence available. Indeed, Hawthorne often frustrates our desire for direct evidence precisely when our judgment depends upon it. In this respect, Hawthorne creates a world in which nothing is certain and speculation abounds.

As we have seen, The House of the Seven Gables unsettles the privileged status granted to circumstantial evidence in legal and literary narratives based on probability. Yet direct evidence in the romance is just as problematic. A telling example occurs in the scene in which Holgrave explains to Phoebe that Judge Pyncheon is dead. When Phoebe returns to Salem the day after the judge’s death and enters the House of the Seven Gables, she is greeted by Holgrave, who informs her of the judge’s death not by pointing her to the judge’s corpse, which lies within the house, but by presenting her with a daguerreotype of the recently deceased. The sight of this picture prompts Phoebe to exclaim, “This is death! . . . Judge Pyncheon dead!,” to which Holgrave replies: “Such as there represented [my emphasis] . . . He sits in the next room. The Judge is dead, and Clifford and Hepzibah have vanished. I know no more. All beyond is conjecture” (302). Holgrave, we have already seen, certainly knows quite a bit about the judge’s death—enough not only to free Clifford and Hepzibah of having anything to do with it but also to exonerate Clifford of a murder conviction for which he served thirty years in prison. But the important point here is that Holgrave provides evidence of the judge’s death through a
representation—a daguerreotype, to be more precise, which, by the legal standards of
the time, constituted a form of indirect evidence.\textsuperscript{11} That Holgrave appeals to indirect
evidence when direct, incontrovertible proof of the judge’s death (the corpse itself)
lies in the very next room complicates an analysis of evidentiary value that, like the
defense’s in the Webster case, draws simple distinctions between direct and
circumstantial forms of evidence.

In Hawthorne’s romance, the question of evidence becomes even more
complex if one takes a closer look, as several critics have, at the circumstances
surrounding Judge Pyncheon’s death. We can begin such an investigation with
Alfred H. Marks’ seminal essay, “Who Killed Judge Pyncheon?: The Role of the
Imagination in The House of the Seven Gables.” According to Marks, the apparition
of Clifford startled the judge and induced the heart attack which killed him. In
making his case for Clifford as the “killer,” Marks brings to light an array of
circumstantial evidence through a careful inspection of the scenes just before and
after the judge’s death.\textsuperscript{12} More recently, Clara B. Cox has challenged Marks’ theory
She instead casts suspicion on Holgrave, whom she considers a more likely suspect
for several reasons. Not only was Holgrave likely present at the time of Judge
Pyncheon’s death, but as a descendent of the reputed wizard whom Colonel Pyncheon
helped execute, Holgrave has good reason to induce the death of the present-day
Pyncheon who most resembles the Puritan forebear who led the case for the execution
of Matthew Maule, an ancestor of Holgrave. In addition to motive and opportunity
(which both Clifford and Hepzibah have), Holgrave has the means of precipitating the
judge’s death: knowledge of the Judge Pyncheon’s predisposition to apoplexy as well as a propensity for mesmerism, a means by which he could disarm the judge and place him in a state of mind conducive to producing a heart attack.

Cox’s argument becomes even more compelling if one considers evidence which she does not: namely, Holgrave’s explanation to Phoebe about why he had taken the photograph of the dead judge. “As a point of evidence that may be useful to Clifford,” Holgrave says, “and also as a memorial valuable to myself,—for, Phoebe, there are hereditary reasons that connect me strangely with that man’s fate,—I used the means at my disposal to preserve this pictorial record of Judge Pyncheon’s death” (303). Holgrave never makes it clear how this picture “may be useful to Clifford,” but as a “memorial valuable” to himself, coupled with an admission that his own past is “strangely” connected with the dead man’s “fate,” the cherished picture of the dead judge could be used as evidence against Clifford. After all, the picture not only places Holgrave at a potential crime scene, but it could be interpreted as Holgrave’s self-conscious effort to create evidence—a manipulation of circumstances very similar to the act with which Holgrave charges the judge in the death of old Jaffrey.

But to entertain the idea of Holgrave as Judge Pyncheon’s “killer” is to undercut a powerful albeit conventional interpretation of The House of the Seven Gables in which Holgrave plays the lead role precisely in not avenging the wrongs committed against his forefathers by the Pyncheons. According to this reading, Holgrave—like Clifford, Hepzibah, and Phoebe—is born into a cycle of revenge perpetuated by the Pyncheon-Maule feud of yore. At best, Cox’s argument for Holgrave’s participation in the judge’s death is an ingenious case based upon
suspicious circumstances. But it loses its force and becomes, in my opinion, improbable when one considers that Hawthorne provides an explicit example of Holgrave consciously deciding not to take possession of a Pyncheon’s will when the opportunity to do so falls right into his lap. I am, of course, referring to the scene immediately proceeding “Alice Pyncheon,” the story which Holgrave tells Phoebe of her long-deceased relative whose will (and life) was taken hold of by a descendant of Mathew Maule in retaliation for Colonel Pyncheon’s original crime. By virtue of his power as a story-teller, Holgrave inadvertently hypnotizes Phoebe, just as the Maule in the story Holgrave tells intentionally mesmerizes Alice Pyncheon. Thus, by breaking the spell that has fallen upon Phoebe, Holgrave takes the first step toward breaking the cycle of revenge that animates the Pyncheon-Maule feud—a process that is completed when Holgrave, in the romance’s final chapter, confesses that “in this long drama of wrong and retribution, I represent the old wizard” and asks for Phoebe’s hand in marriage (316).

In light of this evidence, then, I find Cox’s argument—provocative though it be—ultimately unconvincing. Even so, I have pursued her line of reasoning to show that in Hawthorne’s romance, as in the prosecution’s treatment of evidence in the Webster murder trial, all evidence is deeply problematic and more or less circumstantial. In this respect, one could say that both The House of the Seven Gables and the Webster prosecution proceed from the assumption that evidence is a product of persuasive reasoning and effective argumentation rather than a key providing unmediated access to the truth of what really happened. Yet despite this shared assumption, Hawthorne’s romance and the Webster prosecution are at odds in
terms of the conclusions they reach from it. For example, whereas the prosecution argues that, as District Attorney Clifford at one point puts it, "No human testimony is superior to doubt; the machinery of criminal justice, like every other production of man, is necessarily imperfect; but you are not, therefore, to stop its wheels" (277), *The House of the Seven Gables* can be seen as providing strong grounds for halting the inexorable wheels of that legal machinery—at least in capital cases in which guilt is determined by circumstantial evidence. In this respect, Hawthorne's romance abides by the old adage in Blackstone that it is better for a hundred guilty persons to go free than for one innocent person to be put to death, although one could hardly reduce the work to this moral cliché.

Still, such a principle is at work in the story Hawthorne tells about "innocent victims," to return to that controversial category at issue in the Webster trial. One of these victims is, of course, Mathew Maule—the alleged wizard whose imprecation, "God will give him blood to drink!" (8) falls upon Colonel Pyncheon and his lineage like a veritable death sentence. The other innocent victim is Clifford—almost. For even though Clifford, unlike Maule, is *not* executed for his reputed crime, his thirty-year imprisonment under a commuted death sentence sufficiently destroys his life, turning him into—in one of the romance’s many figures for his blighted existence—"another dead and long-buried person, on whom the Governor and Council have wrought a necromantic miracle" (216). This figure of a "necromantic miracle" calls attention to the performative force of a death sentence that does not kill, and Clifford’s status as an innocent victim differs from Maule’s. For if Maule’s unjust albeit lawful execution functions as a painful and constant reminder of the
irreversibility of an enacted death sentence, Clifford’s spared life (blighted though it be) provides at least the possibility of redressing a grievous wrong.

But *The House of the Seven Gables* is not only about innocent victims. It is also about the social positions and relations of power that enable Colonel and Judge Pyncheon, two men whose titles entitle them to prestige and authority within their respective societies, to subjugate individuals such as Mathew Maule and Clifford and Hepzibah Pyncheon. To this end, Hawthorne repeatedly calls attention to the resemblances between the judge and the colonel by drawing a sustained comparison between the two characters’ “characters”—most notably when Holgrave holds a daguerreotype of Judge Pyncheon up to the ancestral portrait of Colonel Pyncheon which hangs within the House of the Seven Gables. Within the contemporary world of the romance, the past and present abuse of the colonel and judge’s power bears its full weight upon Clifford and Hepzibah. Indeed, while the oppressive eyes of the Puritan forbear gaze down upon Hepzibah and Clifford from within the house, the judge monitors their lives from without in a manner of subdued tyranny. As Clara B. Cox suggests, Hawthorne’s romance even invites us to think of Judge Pyncheon as a reincarnation of Colonel Pyncheon, and such a reincarnation gives material form to the work’s central theme of the sins of the father, the wrong-doings of one generation, playing out in subsequent generations (101). To conclude this chapter I would like now to judge Judge Pyncheon, an act which the narrative suspends until, as it were, all the facts are in.
Judging the Judge: The Literary Execution of “Governor Pyncheon”

As we have seen, the jury is still out on whether Judge Pyncheon died naturally (i.e. by heart attack) or if his death was provoked by something else or even was the result of foul play. My interpretation of the Judge Pyncheon “murder case” (if it can be called one) has cleared Holgrave, but two other suspects remain: Clifford and Hepzibah. In this respect, the problem of corpus delicti in The House of the Seven Gables presents a mirror image, so to speak, of the controversy surrounding the historical debates over who killed George Parkman. That is, in the Parkman murder case we have a probable murder but a body that cannot be positively identified, whereas with Judge Pyncheon’s death, we have a positively identified body but an unlikely case of murder. My answer, then, to the question, “Who killed Judge Pyncheon?,” is no one within the narrative but the narrative itself—which, of course, is another way of saying that Hawthorne, as author, murdered Judge Pyncheon. Alfred H. Marks, the original framer of the question, suggests as much when he charges Hawthorne as “more than an accessory to this act” and goes to argue: “No murder was ever planned so calculatedly as was Judge Pyncheon’s demise in this novel” (355).

In disinterring this issue, however, I am less interested in disputing “Who Killed Judge Pyncheon?” and more interested in the undisputed fact of the judge’s death—an event that Hawthorne carefully plots and executes. That Judge Pyncheon’s death takes shape rhetorically as if it were an execution is intimated by Walter Benn Michaels: “Celebrating the death—one might better call it the execution—of Judge Pyncheon,” Michaels writes in an essay on romance and real estate, “the romance
joins the witch hunt, the attempt to imagine an escape from capitalism, defending the
self against possession, property against appropriation, and choosing death over life”
(101). Michaels’ concerns obviously differ from mine, but what interests me here is
his passing reference to Judge Pyncheon’s “execution” and Hawthorne’s celebration
of it. By all accounts, Judge Pyncheon is a bad man; and it is his wicked depravity
that, for most readers, justifies his execution. To appreciate Hawthorne’s literary
execution as both a “justified” and carefully plotted act, it is first necessary to look
more closely at how the judge’s character is developed in The House of the Seven
Gables.

From the moment Judge Pyncheon appears in the narrative, he is characterized
with an imperceptible evil that is masked by his illustrious persona and eminent
reputation. At first glance, the judge seems the consummate gentleman: a “stately
figure” whose fine clothes denote a “high respectability” and whose “dark, square
countenance”—“naturally impressive” and “stern”—was softened by a “look of
exceeding good-humor and benevolence” (116). Upon closer inspection, however,
there appears to be something amiss in the judge. “A susceptible observer,” the
narrator observes,

might have regarded it [the judge’s appearance] as affording very little
evidence of the genuine benignity of soul whereof it purported to be the
outward reflection. And if the observer chanced to be ill-natured, as well as
acute and susceptible, he would probably suspect that the smile on the
gentleman’s face was a good deal akin to the shine on his boots, and that each
must have cost him and his boot-black, respectively, a good deal of hard labor to bring out and preserve them. (116-17)

In other words, things are not always as they appear in this romance, and “the outward reflection” of the judge’s character does not necessarily match his inner worth. But such an opinion cannot be ventured forth with anything close to certainty; for it is only the “ill-natured” and “acute and susceptible” observer who detects artifice in the judge’s radiant smile—a polish akin to “the shine of his boots.” To the ordinary observer, the judge seems every bit the distinguished gentleman he presents himself to be.

Hawthorne develops this picture of Judge Pyncheon through much of the narrative. “The judge, beyond all question,” the narrator later tells us, “was a man of eminent respectability. The church acknowledged it; the state acknowledged it. It was denied by nobody” (228). Again, we are given no direct evidence by which the judge’s good name and reputation could be impugned; in fact, the opposite is stated. But the overstatement of this characterization smacks of Dickensian irony—a sarcasm that invites one to question what, from all appearances, is “beyond all question.” Lest the irony of these remarks be read too sharply, the narrator goes on to defend the judge from his few detractors, including Hepzibah and some unnamed political enemies, “who would have dreamed of seriously disputing his claim to a high and honorable place in the world’s regard.” The judge’s “conscience,” the narrator continues,

usually considered the surest witness to a man’s integrity,—his conscience,

unless it might be for the little space of five minutes in the twenty-four hours,
or, now and then, some black day in the whole year's circle,—his conscience bore an accordant testimony with the world's laudatory voice. And yet, strong as this evidence may seem to be, we should hesitate to peril our own conscience on the assertion, that the judge and the consenting world were right, and that poor Hepzibah, with her solitary prejudice, was wrong. (229)

I have devoted some time to the characterization of Judge Pyncheon not only to illustrate Hawthorne's own management of evidence (i.e. his setting up the case against the judge); I have done so also to show how the question of evidence gets thematized in The House of the Seven Gables. In the passage above, for example, "conscience" is described as "the surest witness to man's integrity," and we are told that the judge's conscience in particular "bore an accordant testimony with the world's laudatory voice." Hawthorne's romance, in other words, is all about evidentiary value. Indeed, it uses the language of evidence in evaluating its evidence regarding Judge Pyncheon's suspicious yet seemingly unimpeachable character. Yet as "strong as this evidence may seem to be," Hawthorne's narrator asks us to hesitate in judging the judge and the consenting world "right" and Hepzibah and her prejudice "wrong." In making such a request, the narrator cuts against the narrative of probability and circumstances that his own story is developing. And in doing so, Hawthorne at once presents an implicit critique of the nineteenth century's cult of probability and Alexander Welsh's theory of "strong representation," while nonetheless abiding by a logic of circumstances—a logic that pays close attention to its own management of textual evidence. It is, however, the vague intuition of some evil—"some black day in the whole year's circle"—that provokes the narrator's
suspicion of Judge Pyncheon’s character, even though the evidence at this point weighs decidedly in the judge’s favor.

Evidence against Judge Pyncheon does come to light later in “The Scowl and the Smile,” the chapter from which I have been quoting above. Here we come to see that the judge’s glib smile conceals a malignant heart and sinister intentions. We see through the fake smile and fine clothes, signs of artifice and duplicity, when Judge Pyncheon pays his final visit to the House of the Seven Gables. Once again, the judge has come to request an interview with Clifford, whom he believes has secret knowledge of materials—“the schedule, the documents, the evidences” (235 my emphasis)—that would entitle himself to vast property of the Colonel’s that was unknown at the time of the Colonel’s death. When Hepzibah denies him access to Clifford, the judge describes himself as Clifford’s “only friend, and an all-powerful one.” When Hepzibah persists in her refusal, the judge boasts that Clifford was released from prison not in spite of his influences but because of, as he puts it, “my efforts, my representations, the exertion of my whole influence, political, official, personal” (233). The judge then proclaims, “I set him free!,” and the directness of this assertion calls attention to the judge’s authority and his ability to subject Clifford to his will. The judge’s power becomes clearer when he reiterates his proclamation and adds an important dimension to it: “I set him free!” the judge declares. “And I have come hither now to decide whether he shall retain his freedom” (233). This repeated attention to the judge’s agency as well as his capacity “to decide” on Clifford’s freedom or imprisonment casts the judge, at least insofar as Clifford and
Hepzibah are concerned, in the role of the sovereign—a figure with immense political, social, and legal power at his disposal.

To show that his threats are not idle words, Judge Pyncheon gives Hepzibah an example of how his authority will work against her and Clifford should they refuse to cooperate. The judge’s statement to Hepzibah, including the narrator’s brief commentary to set it up, are worth citing at length:

“My dear cousin,” said Judge Pyncheon, with a quietude which he had the power of making more formidable than any violence, “since your brother’s return, I have taken the precaution (a highly proper one in the near kinsman and natural guardian of an individual so situated) to have his deportment and habits constantly and carefully overlooked. Your neighbors have been eye-witnesses to whatever has passed in the garden. The butcher, the baker, the fishmonger, some of the customers of your shop, and many a prying old woman, have told me several of the secrets of your interior. A still larger circle—I myself, among the rest—can testify to his extravagances at the arched window. Thousands beheld him, a week or two ago, on the point of flinging himself thence into the street. From all this testimony, I am led to apprehend—reluctantly, and with deep grief—that Clifford’s misfortunes have so affected his intellect, never very strong, that he cannot safely remain at large. The alternative, you must be aware,—and its adoption will depend entirely on the decision which I am now about to make,—the alternative is his confinement, probably for the remainder of his life, in a public asylum, for persons in his unfortunate state of mind.” (236 my emphasis)
A language of evidentiary value pervades Judge Pyncheon’s threat to Hepzibah, and through it the judge constructs a convincing argument against Clifford—an argument based upon direct and circumstantial evidence, and one which would prove felicitous—despite its insincerity—in a court of law. Indeed, from the day of Clifford’s release, the judge has plotted the means of his rival’s demise through a careful management and construction of evidence. Neighbors serve Judge Pyncheon as “eyewitnesses” to daily episodes within the garden; customers of Hepzibah’s cent-shop have functioned as informants and disclosed “several of the secrets of [the house’s] interior”; and Clifford’s well-known antics at the window become, in the judge’s capable hands, circumstantial evidence of the dangerous “extravagances” to which Clifford is prone.

In his ability to place Clifford and Hepzibah under constant surveillance and to marshal evidence to meet his ends, Judge Pyncheon becomes a symbolic representation of old-world despotism in contemporary America: a tyranny that is, for Hawthorne, epitomized in the historical example of the Salem witch trials which were presided over by Puritan magistrates, carried out in the name of the community, and often resulted in a death sentence when conviction was reached. Such a scene of despotism underwritten through the death penalty looms in the background of The House of the Seven Gables and is explicitly foregrounded in the romance’s opening account of Mathew Maule’s execution. In The Blithedale Romance, however, this scene comes to the fore when Miles Coverdale finds himself a reluctant witness to the climactic reckoning of Hollingsworth, Zenobia, and Priscilla—three of the work’s central characters who are embroiled in a love triangle. Indeed, this episode takes

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shape as though it were right out of the witch trials. Zenobia, the beautiful raconteur and champion of women's rights, imagines Hollingsworth's interrogation of her as, in her words, a "trial for my life." The image strikes accord with Coverdale, himself an author and visionary of sorts, and as his eyes wander "from one of the group to another" he sees

in Hollingsworth all that an artist could desire for the grim portrait of a Puritan magistrate holding inquest of life and death in a case of witchcraft; in Zenobia, the sorceress herself, not aged, wrinkled, and decrepit, but fair enough to tempt Satan with a force reciprocal to his own; and, in Priscilla, the pale victim, whose soul and body had been wasted by her spells. Had a pile of fagots been heaped against the rock, this hint of impending doom would have completed the suggestive picture. (220-21)

In this "grim portrait" offered up by Coverdale, the artist, we have the primal scene of sovereign authority à la colonial New England—the historical scene of power, violence, and irrevocable violence that haunts the contemporary world of The House of the Seven Gables and manifests itself in Judge Pyncheon's abuse of authority. In The Blithedale Romance, Zenobia completes the picture that Coverdale has painted by calling Hollingsworth a "judge, jury and accuser ... comprehended in one man!" She even goes so far as to liken Hollingsworth's judgment of her as "equivalent to a death sentence!" (221).

Of course Zenobia, like Coverdale, is speaking metaphorically in describing the recent events in her life in terms of a capital trial and death sentence; but the figure rings true in that Hollingsworth's judgment of her precipitates the novel's
tragic ending: Zenobia's suicide, a sort of figurative death sentence for which Coverdale holds Hollingsworth indirectly responsible. *The House of the Seven Gables* deals directly with actual death sentences, but its depiction of Judge Pyncheon's abuse of authority does not present such a clear picture of the relations of power that enable the judge to subject Clifford and Hepzibah to his sovereign will. Yet it is the ability of Judge Pyncheon, much more so than Hollingsworth, to wield sovereign authority over the lives of others—and to do so through legal means—that makes him such a dangerous and despicable character within the corpus of Hawthorne's fiction.

If, as Robert A. Ferguson claims, Judge Pyncheon is "Hawthorne's blackest villain" (240), it is not simply because he is (like Hollingsworth) associated with the abuse of power during the Salem witch trials. Rather, it is because tyrannical authority in *The House of the Seven Gables* emanates from one whose very identity and professional duty is to uphold and to ensure the integrity of the law. Judge Pyncheon also merits distinction as the only one of Hawthorne's villains for whom Hawthorne presents the spectacle of what one could call the judge's "death sentence," but only after Hawthorne, like a good prosecutor, presents a strong case against the defendant. Other antagonists in Hawthorne's corpus are killed off or drastically cut down to size, but none with such éclat as Judge Pyncheon. For instance, Hollingsworth's monomania for the reformation of criminals is ultimately self-destructive, and he finishes his days reforming, as he puts it, "a single murderer" (i.e. himself). Similarly Roger Chillingworth, the demonic antagonist of *The Scarlet Letter* who torments and exerts a controlling influence over Arthur Dimmsdale and
Hester Pryne, merely withers away and dies as a consequence of his own wicked actions. Arguably “Hawthorne’s blackest villain,” Chillingworth is spared the ignominy and disgrace of an execution like the highly stylized, elaborate death to which Judge Pyncheon is subjected.

We can get a better sense of the judge’s death as a literary execution—that is, an act of justice rendered through Hawthorne’s plotting of his death sentence—through a brief comparison with Hawthorne’s treatment of Professor Westervelt, a repugnant character from *The Blithedale Romance* whose beaming smile (of false teeth) and fine clothes make him akin to Judge Pyncheon. At the end of *The Blithedale Romance*, Coverdale has nothing but scorn and condemnation for Westervelt, whom he holds, along with Hollingsworth, indirectly responsible for Zenobia’s death. This contempt for Westervelt culminates in Coverdale’s plea for divine judgment to befall the professor: “Heaven deal with Westervelt according to his nature and deserts!—that is to say, annihilate him” (245). Such a condemnation, a literary death sentence of sorts, calls for precisely the kind of death that brings about Judge Pyncheon’s demise: annihilation through divine intervention and judgment. But lacking the sovereignty of God over subjects, or that of an omniscient narrator over characters, Coverdale’s curse constitutes an infelicitous speech act; it does not bring into being what it calls forth. Indeed, it lacks even the power of suggestion which animates Mathew Maule’s imprecation in *The House of the Seven Gables* with a quasi-performative force.

As a quasi-omniscient figure, the narrator of *The House of the Seven Gables* stands in a relationship of sovereign authority over the characters and events of his
narrative in a way that Coverdale, as a first-person narrator and character within the story he tells, cannot—at least without violating the plausibility of his narrative. Thus, the reprobate Westervelt is alive and well at the end of The Blithedale Romance, despite Coverdale’s (and possibly the reader’s) desire for Westervelt’s annihilation. The same, of course, cannot be said of Judge Pyncheon at the end of The House of the Seven Gables, and it is to his death—or rather execution—and its elaborate staging that I now will turn.

According to Hawthorne biographer James R. Mellow, “Contemporary readers of The House of the Seven Gables found the long episode of the death of Judge Pyncheon impressive” (360). Mellow himself considers “Governor Pyncheon,” the ironically titled chapter which celebrates the judge’s death, to be “a high point in the book and a great set piece in nineteenth-century American writing” (361). More than a high point, the chapter plays an indispensable role in the book’s plot: it not only functions as the climax, thus resolving the conflict that generates the central plot of Judge Pyncheon’s ruthless persecution and domination of Clifford and Hepzibah; it also brings about the dénouement in which the circumstances of Judge Pyncheon’s death exonerates Clifford of a crime he (probably) did not commit and breaks Matthew Maule’s curse through the marriage of Phoebe Pyncheon and Holgrave, the mysterious daguerreotypist who turns out to be a descendant of Mathew Maule.

In a literary work obsessed with the interrogation of evidence, “Governor Pyncheon” also provides the means through which judgment is finally rendered. This judgment, however, comes by way of irony and indirection—the primary example
being that Judge Pyncheon is killed by a stroke of divine violence (if we follow Holgrave’s reasoning) on the very day he is to become the leading candidate for governor, the closest thing to a state sovereign within the political structure of governance established by the U.S. Constitution. To this end, Hawthorne’s narrator repeatedly taunts the dead judge, commanding him again and again to rise up from his chair, consult his watch, and join the dinner party in progress where he will “virtually” become “governor of the glorious old State! Governor Pyncheon of Massachusetts!” (274) Like the public executions of yore, everything in this chapter is designed to make a spectacle and moral example out of the corrupt and hypocritical judge, who has nonetheless been chosen to run for governor by the leading political party of the day.

The death of a major character in a work of fiction is almost always a pivotal moment in the work’s narrative structure, and Judge Pyncheon’s execution is no exception. “At the moment of death in fiction,” Garrett Stewart writes in *Death Sentences: Styles of Dying in British Fiction*, “even when never before for a given character, life refuses to go without saying. Decease takes reflexive definition from pure antecedence. There is a well-worn vernacular formula for this that is still very much with us: the villain who ‘got his’” (15). The prolonged scene of Judge Pyncheon’s death gives high form to the conventional rendering of the death of “the villain who ‘got his.’” In “Governor Pyncheon,” nowhere is this sense of justice more apparent than in the image with which the chapter closes. Here, “we see a fly,—one of your common house-flies,” the narrator says, “such as are always buzzing on the window-pane,—which has smelt out Governor Pyncheon, and alights,
now on his forehead, now on his chin, and now, Heaven help us! is creeping over the bridge of his nose, towards the would-be chief-magistrate’s wide-open eyes!” As the fly meanders across the “would-be” Governor’s face, the narrator asks—or rather taunts: “Canst thou not brush the fly away? Art thou too sluggish? Thou man, that hadst so many busy projects yesterday! Art thou too weak, that wast so powerful? Not brush away a fly! Nay, then, we give thee up!” (233)

The elevated style in which the villainous Judge Pyncheon “Gets his,” replete with “thee’s” and “thou’s” and other formal markers that betoken judgment of Biblical proportions, constitutes an act of poetic justice in which vice is punished. For the judge to die in such a way on the day he is practically to become Governor is ironic as well as aesthetically satisfying, but there is nothing tragic or sympathetic about his death. On the contrary, it occasions the narrator’s joy, celebration, and even vindictive spite. Hawthorne heightens these emotions and gives this dramatic dispensation of justice a sense of immediacy by narrating the scene in the present tense. Doing so has the effect of putting readers in the room and round the body of the recently executed condemned—an event citizens of the State of Massachusetts and most other Northern States no longer had the privilege to see.14 Dramatizing the scene in this way puts Hawthorne’s narrator in the role of a spectator who takes satisfaction, even malicious delight, in the moral spectacle of the judge’s death. And if the narrator occupies the role of spectator, a witness to Judge Pyncheon’s death sentence, he does not also play the role of a disinterested agent through whom that sentence is executed. To be both an interested witness and executioner would, for Hawthorne, violate precisely what legitimates sovereign violence: the impartial
administration of justice, especially the irreversible act of a death sentence, through a series of checks and balances. In this respect, the literary execution of the judge approximates the rules of evidentiary value and due process one finds in the lawful administration of the death penalty.

There is, then, a law at work in Judge Pyncheon’s execution. His death, of course, does not come through positive law, the law of the state; nor, in the final analysis, does it come through divine law (God’s judgment) or the law of nature (apoplexy), although one can certainly make this argument, as Holgrave does. Rather, Judge Pyncheon’s death comes through a third law at work in Hawthorne’s romance: a literary law of poetic justice, a popular law in fiction which, like the positive law of the criminal justice system, demands that a criminal be punished, so long as that punishment is carried out in a prescribed manner and is reached after a careful evaluation of the evidence. In literature as in life, some criminals of course are never brought to justice. But that does not mean the demand for justice does not persist. In fact, for Hawthorne and for many of his time, the demand for justice assumes a logic of its own—a retributive logic that operates irrespective of one’s sympathy for the condemned or desire to see the condemned set free. Again, the literary execution of Judge Pyncheon approximates or draws from the social logic of capital punishment insofar as no person or group of persons takes the judge’s life out of revenge. For to kill out of vengeance is, according to this logic, to appropriate a sovereign violence to which only the State (or God) has a right. Indeed, a primary purpose of the State’s monopoly on violence, as well as the State’s right to exercise
that violence, is to prevent private citizens from taking lethal violence into their own hands or from engaging in vigilante acts of justice.

I have focused on Judge Pyncheon’s literary execution as an example of how the social logic of capital punishment informs the justice Hawthorne renders in The House of the Seven Gables, but Hawthorne’s clearest statement in support of capital punishment and its social logic of justification comes not in his fiction but in “Chiefly About War Matters,” an 1862 essay that was featured in the Atlantic Monthly. In the article, Hawthorne speaks powerfully and publicly in support of perhaps the most conspicuous and controversial executions in antebellum America: the hanging of John Brown, whose raid upon Harper’s Fairy resulted in the deaths of more than twenty men.15 Whereas supporters of John Brown condoned his violence as a necessary evil and saw those killed as casualties in an imminent war declared on a government that sanctioned slavery, Brown’s detractors condemned the violence of Brown and those participating in his raid as murderers who merited death in kind for their acts. Counting himself among the latter group, Hawthorne wrote:

I shall not pretend to be an admirer of old John Brown, any farther than sympathy with Whittier’s excellent ballad about him may go; nor did I expect ever to shrink so unutterably from any apophthegm of a sage, whose happy lips have uttered a hundred golden sentences, as from that saying, (perhaps falsely attributed to so honored a source,) that the death of this blood-stained fanatic has “made the Gallows as venerable as the Cross!” Nobody was ever more justly hanged.16
In defending Brown’s execution, Hawthorne took exception not so much to Whittier’s sympathy for the condemned, which Hawthorne could understand, but to that worthy “sage” (most likely Emerson \(^{17}\)) whose apophthegm worked to transform Brown’s death sentence into a “golden sentence”—to appropriate the turn of phrase Hawthorne uses in the above passage. By taking the State’s law into his own hands and wielding sovereign violence in the name of a “higher law” (a common trope deployed by opponents of slavery such as William Lloyd Garrison), Brown, in Hawthorne’s view, forfeited the right to his own life. To mitigate what he considered the pernicious affects of the statement that Brown “made the Gallows as venerable as the Cross!” Hawthorne offered the terse, prosaic rejoinder: “Nobody was ever more justly hanged.” Within the cultural discourse of the time, the rhetorical thrust of such a flat, matter-of-fact avowal served to deflate the poetry written into Brown’s act by Whittier, Emerson, Henry David Thoreau (in a “Plea for Captain John Brown”), and others who came to Brown’s defense.

The position Hawthorne takes contra Brown, however, is undercut as he further contemplates Brown’s act and the State’s response to it: “He won his martyrdom fairly,” Hawthorne writes of Brown, and took it firmly. He himself, I am persuaded, (such was his natural integrity,) would have acknowledged that Virginia had a right to take the life which he had staked and lost; although it would have been better for her, in the hour that is fast coming, if she could generously have forgotten the criminality of his attempt in its enormous folly. On the other hand, any common-sensible man, looking at the matter unsentimentally, must have felt a
certain intellectual satisfaction in seeing him hanged, if it were only in requital of his preposterous miscalculation of possibilities ("Chiefly about War-Matters" 54).

Hawthorne here upholds the State’s right to Brown’s life as a consequence of his actions, but in speaking of Brown’s own life as one which he had “staked and lost,” Hawthorne plays into the logic of warfare with which Brown and his supporters had justified his act in the first place. More importantly, by suggesting that the State of Virginia should have “forgotten,” if not forgiven, “the criminality of his attempt in its enormous folly,” Hawthorne gestures toward the politics accompanying this high-profile case and the national “impolitics,” if you will, of hanging Brown. But this point is complicated, in turn, as Hawthorne “look[s] at the matter unsentimentally” and through the eyes of “any common-sensible man” who, Hawthorne tells us, “must have felt a certain intellectual satisfaction in seeing him hanged, if it were only in requital of his preposterous miscalculation of possibilities.”

This attention to “possibilities” and to Brown’s “preposterous miscalculation” of them brings us back to the realm of romance and the art, in Hawthorne’s case, of plotting death sentences. While a romance, according to Hawthorne, privileges the “possible” over the “probable”—what might happen over what ordinarily occurs, of how the world ought to be rather than how it is—the success of a romance calls for a careful calculation of its “possibilities.” I underscore the concept of “calculation” here not only to establish a contrast between Hawthorne’s literary dispensation of justice and the extralegal justice that Brown dispensed in historical reality (a crucial point to which I will return momentarily); I also do so to highlight an affinity between
the calculation of possibilities in Hawthornian romance and the careful management of probabilities in the nineteenth-century novel as Alexander Welsh describes it. In other words, both modes of representation attend to a prudent execution of evidence. Nonetheless, a Hawthornian romance differs from a novel of circumstance and probability insofar as it self-consciously exposes the artifice and fiction, an artifice that belongs to any narrative act—whether it be Holgrave’s mesmerizing story of “Alice Pyncheon,” Hawthorne’s tale of *The House of the Seven Gables* itself, or even Daniel Webster’s riveting account of the guilt of Frank Knapp in the White murder. In this respect, Hawthorne’s romance calls attention to what Robert Newsom identifies as “the antinomy of fictional probability”: an escapable feature of fiction thatfastens readers in a double bind, requiring them at once “to accept the pretence of fiction, accept the ‘facts’ of the plot as they are presented,” while at the same time “to recognize the ‘facts’ of the novel as plainly fictional—that is, ‘false’” (9).

The antinomy of fictional or literary probability applies not just to literature but to any narrative act that depicts events it cannot know for certain. Criminal law, of course, constitutes such a narrative act; and Daniel Webster’s summation in the Knapp trial presents an exemplary case—not only by engaging a “fiction of law,” as the Knapp defense charges Webster in theorizing of “constructive presence” (Bradley 70), but in its overall narrative of Knapp’s guilt. In fact, Webster begins his summation by drawing explicitly upon the language of fiction, describing the White murder as a “bloody drama” without a “precedent anywhere,” those participating in it as “actors,” and the murder itself as a “new lesson for painters and poets” (London
408). Inasmuch as it inspired Hawthorne’s fiction, the White murder indeed presented such a lesson.

For Hawthorne, the execution of John Brown presented an altogether different kind of lesson. Brown’s execution was, for him, exemplary because, on the one hand, it avenged or “required” (as Hawthorne would put it) the many lives which the violence of Brown claimed while, on the other hand, it provided fellow citizens with a clear example of what befell them should they inflect lethal violence upon others or against the State. But at the same time, it is important to note the tension that pervades Hawthorne’s response as a whole to Brown’s execution. As we have seen, Hawthorne equivocates the initially uncompromising position he takes contra Brown and his supporters when he questions the expediency of the State of Virginia’s decision to hang Brown, however lawfully justifiable that decision be.

The undecidable moment through which Hawthorne’s decision passes results not just from a question of national politics—namely, that Brown’s execution would (as it did) turn Brown into a martyr and precipitate civil war; it also stems from that fact that Brown was no common murderer who killed out of malice, from the heat of passion, or for personal gain. Rather, Brown wielded sovereign violence and committed murder in the name of a “higher law”—a moral law which, for Brown and his supporters, superceded positive law and demanded that the profound evil of slavery be stopped by whatever means necessary. For Brown’s supporters and for many of his sympathizers, the lawful execution of a man who acted from moral principles and out of what he perceived a necessity called into question what
Hawthorne stated firmly if ultimately with some misgivings: that “Nobody was hanged more justly.” In the next chapter, I consider the question of extralegal, lethal violence from an altogether different perspective: from the perspective of those who justified racialized acts of lynching through an appeal to popular justice and to a higher, moral law which legitimates the use of such violence.

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Notes

1 Hawthorne contributed twenty-three works to the Democratic Review between October 1837 and April 1845 (Selected Letters 139). His “Egotism, or the Bosom Serpent” was published alongside O’Sullivan’s “The Gallows and the Gospel” in the March 1843 edition of the Democratic Review, and “The Artist of the Beautiful” was published alongside of “Capital Punishment. The Proceeding of the Recent Convention of the Friends of the Abolition of the Punishment of Death” in June 1844. And in August 1846, an article Hawthorne edited entitled “Papers of an Old Dartmoor Prisoner” was published along with an article attacking the death penalty titled “An Essay on the Ground and Reason of Punishment.” For discussions of the O’Sullivan-Cheever, see Robert D. Sampson’s John L.

O’Sullivan and his Times; Philip English Mackey’s Hanging in the Balance: The Anti-Capital Punishment Movement in New York State, 1776-1861; and Louis P. Masur’s Rites of Execution: Capital Punishment and the Transformation of American Culture, 1776-1865.

2 (qtd. in Hungerford 452). The letter was written to John S. Dike, Steubenville, Ohio. The victim of the assault Hawthorne describes in the letter did not die.

3 When Hawthorne was seventeen, a young man named Stephen Clark was convicted of arson in 1821 and executed for the crime in Salem. As biographer James R. Mellow notes, Hawthorne’s response to Clark’s hanging was curious: “I did not go to see Stephen Clark executed,” Hawthorne wrote his mother. “It is said that he could have been restored to life some time after his execution. I do not know why it was not done” (25).
4 For a helpful discussion of the metaphor of the “chain” in law and literature, see Brook Thomas’ *American Literary Realism and the Failed Promise of Contract*, 147-48, *New Historicism and Other Old Fashion Topics*, 93-94, and “Ineluctable though Even: On Experimental Historical Narratives,” 166-188.

5 My discussion of the White murder and its relation to Hawthorne draws on Brook Thomas’ *Cross-Examinations of Law and Literature*. Whereas Thomas addresses parallels of structure or “plot” in the White murder case and Hawthorne’s novel, I offer a comparative analysis of *The House of the Seven Gables* and Daniel Webster’s summation in the Frank Knapp murder trial. For other critics who discuss the White murder in relation to Hawthorne, see F.O. Matthiessen and Hungerford.

6 See “Summation in the Trial of John Francis Knapp for the Murder of Joseph White” in Ephraim London’s *The World of Law and Literature*.

7 *The World of Law and Literature*, 409. Unless otherwise noted, the citations I use from Webster’s summation are from the text anthologized by London.

8 In Hawthorne’s work, the best illustration of “murder will out” comes at the end of *The Marble Faun* when Donatello, haunted by the murder he committed, finally confesses his crime and is incarcerated at the end of the romance, possibly awaiting execution for his crime. See especially the fictional “Postscript” Hawthorne appends to the work.

9 My discussion of the Parkman murder case draws from Robert Sullivan’s *The Disappearance of Dr. Parkman* and Brook Thomas’s *Cross-Examinations of Law and Literature*.

10 In his *Report*, O’Sullivan writes: “There have been cases in which men have been hung on the most positive testimony to identity, (aided by many suspicious circumstances,) by persons familiar with their appearance, which have afterward proved grievous mistakes, growing out of remarkable personal resemblances” (188-89).


12 For instance, Marks calls attention to Hawthorne’s repeated description of Clifford as a “ghost” and argues that the shock of seeing Clifford’s ghostly specter for the first time in thirty years brings about the heart attack which causes the judge’s death. Marks also notes that Clifford, when Hepzibah first
calls upon him to inform him of Judge Pyncheon’s presence, is strangely absent from his room. And after the judge’s death is discovered, Marks emphasizes Clifford’s guilty demeanor before Hepzibah and that the two of them “almost guiltily flee the premises of the House of the Seven Gables, leaving the corpse behind them” (358). In addition to Marks and Clara B. Cox, whose essay I discuss in the body of this chapter, Paul J. Emmett has engaged the question, “Who Killed Judge Pyncheon?” For Emmett, the most likely suspect is neither Clifford nor Holgrave, the two suspects whom Marks and Cox respectively entertain as Judge Pyncheon’s “killer.” Rather, Emmett argues that Hepzibah is most likely responsible for the judge’s death. See his essay, “The Murder of Judge Pyncheon: Confusion and Suggestion in The House of the Seven Gables.” It is also important to mention that Richard Brodhead and Roy R. Male have engaged Marks’ original thesis and found it plausible.

13 See, for instance, Brook Thomas’ “The House of the Seven Gables: Reading the Romance of America”; F. O. Matthiessen’s The American Renaissance, 54; and Edgar F. Dryden’s “Hawthorne’s Castle in the Air: Form and Theme in The House of the Seven Gables.”

14 Massachusetts abolished public executions in 1836, six years after the Knapps were publicly hanged for the murder of Captain Joseph White. In 1830, Connecticut became the first state to abolish the practice of public hangings. By 1860, every Northern State had moved executions with the prison yard. See Banner’s The Death Penalty: An American History, 343-44, notes 18 and 20.


16 Atlantic Monthly (July 1862), 54.

17 Henry James provides this gloss when commenting on this passage in his critical biography, Hawthorne, 139.
Chapter 3

Lynching Plots:
Frederick Douglass, Ida B. Wells,
and Lynch Law’s Cultural Rhetoric of Legitimation

Abolish capital punishment altogether, and by that very act you establish either the primeval barbarous rule of blood-revenge by the next friend of the murdered, or a horrible Lynch court to take cognizance of crimes peculiarly atrocious. In other words, if the magistrate lays down the sword or bears it in vain—if the state, as such, abdicates its proper function of maintaining justice by penalties adequate to the protection of life, society itself, by an irresistible tendency, begins to be disorganized.

—Leonard Bacon, “Shall Punishment be Abolished?” (1846)

And now they beat at the prison door,
Ho, keeper, do not stay!
We are friends of him whom you hold within,
And we fain would take him away,

From those who ride fast on our heels
With mind to do him wrong,
They have no care for his innocence,
And the rope they bear is long.

—Paul Laurence Dunbar, from “The Haunted Oak” (1900)

The ultimate form of punishment administered outside and against the law, lynching occupies a peculiar place in the history of capital punishment in the United States. While originating in colonial times as a nonlethal, extralegal form of punishment (e.g. tar and feathering) that was inflicted upon whites and minorities alike, lynching became a racially-motivated act by the mid-nineteenth century and one that most often involved a black victim put to death by a white mob. Before the Civil War, lynching as a racial act committed against blacks was a comparatively rare form of punishment and served as a means of maintaining order among slaves by making public spectacles out of those who attempted to run away or who committed other acts which might provoke general rebellion.
After the war, and especially during the post-Reconstruction period, lynchings were a common occurrence and used to punish a full range of offenses—from murder to misdemeanor, to no crime at all. Lynch-law—the practice of administering the penalty of death without due process, often cruelly, and usually based merely on the presumption of guilt—reached its official height in 1892 with the lynching of 241 blacks that year.¹ In the years that followed, social agitation and various reform movements led to a slow and steady decline in the annual number of lynchings, although hundreds (possibly thousands) of blacks continued to be lynched from 1893 through the first two decades of the twentieth century.

Recent historical and sociological studies suggest that between 1880 and 1930, the traditional timeframe within which scholars usually study lynching, over 2800 acts of lethal mob violence occurred in the United States—nearly 2,500 of them involving black victims.² Yet these figures remain a conservative estimate for two reasons: first, because the official record does not, of course, include any of the unreported lynchings that certainly took place during this time; and second, because the number of black victims drastically increases if one factors in, as Jacquelyn Dowd Hall argues one must, “legal lynchings,” that is, swift, discriminatory but nonetheless legal trials that led to the lawful executions of blacks (and other minorities) when race was a factor.³ Whether taking place within or outside the law, each of these executions was intended to strike fear into the nation’s many black communities by making examples out of those who broke the written or unwritten laws of social custom.
One such example was made out of Reeves Smith, a black man accused of attempting to rape a well-respected white woman in De Soto Parish, Louisiana. In October of 1886, a mob comprised of “the best people in the parish” broke into the city’s local jail and summarily hanged Smith for the crime of attempted rape. Albeit a singular act of violence (as is the case in any execution), the lynching of Reeves Smith exemplified a broader cultural phenomenon being played out across the South: scenes of extralegal violence in which white mobs abducted black suspects from prisons or courtrooms and executed them in the name of a particular community or “the people” more generally. Like countless other cases in which so-called “popular justice” was meted out, Smith’s lynching occasioned public support in the local press. The De Soto Democratic, one of the community’s leading papers, voiced its approval of the people’s action:

While we deplore the necessity for mob law, we must commend it in this instance, for if the accused had been convicted of an “attempt at rape,” the penalty would only have been two years in the Penitentiary, which is worse than farce . . . [T]he action of the mob is approved by the best people in the parish, who realized that they had to do something to protect their families, as three men had been arrested within one month charged with attempting to outrage white ladies. . . . As we have said before, “the will of the people is the law of the land,” and all such monsters should be disposed of in a summary manner.4

Of the innumerable examples of lynching and its defense in the Southern press, I single out this one as a means of introduction because it distills four key
elements in lynch law’s cultural rhetoric of justification: (1) that the crime of rape or an “attempt at rape” necessitates the deplorable act of lynching; (2) that “mob law” dispenses a kind of justice unavailable in criminal law; (3) that “the people” have the right to assert their sovereign “will” against rapists; and (4) that black men accused of rape are nothing more than “monsters” whose lives merit summary destruction. In the late 1880s, throughout the 1890s, and well into the first two decades of the twentieth century, such a defense would typify lynch law’s rhetoric of justification—even though, as Ida B. Wells persuasively demonstrated in 1892, only one third of black lynching victims were even accused of sexual assault.⁵

This chapter complicates my study of U.S. law and literature related to the death penalty—“Literary Executions”—by examining the extent to which the social logic of capital punishment informs the cultural rhetoric of lynch law. Broadly speaking, it explores the complex relationship between lynching and the death penalty in terms of sovereign authority and social responsibility, the two overarching categories that frame my project as a whole. To this end I treat lynching as, in the words of Stuart Banner, “a form of unofficial capital punishment” (231). For like the lawful administration of death, lynching takes place through collective violence, assumes supreme authority over its condemned subject, and is carried out in the name of “the people,” a highly problematic and contested category in the cultural rhetorics of both lynching and the death penalty. Moreover, despite obvious and important differences (about which I will say more later), these two modes of execution have many conceptual features in common—chief among which is the claim to legitimate
authority and the diffusion of responsibility for that supreme act of violence. This structural similarity between such legal and extralegal executions highlights a logical fallacy inherent in the “Lynch Law” or “Judge Lynch” trope, given that lynching, by definition, is performed outside the law and therefore cannot lay claim to “legitimacy,” a concept etymologically linked to “law” or “legality” (as the common root word suggests).

It is, of course, precisely because lynching lacked legitimacy that apologists for this practice of “capital punishment”—a term they often used instead of “lynching”—needed to invent a rhetoric of justification. From the mid 1880s through the turn of the century, lynch mobs attempted to appropriate the legitimate authority of the Courts and the criminal justice system in numerous ways. For instance, lynch mobs often staged mock trials with testimony from witnesses and the presentation of evidence; and it was not unusual for state and local authorities as well as “leading citizens” (a common phrase in lynch law’s justification) to participate in lynchings. Furthermore, after a lynching occurred governing officials frequently condoned the violence by failing to prosecute a lynch mob’s ring leaders and by producing coroners’ findings of death “at the hands of persons unknown” (another common phrase within the rhetoric of justification).

In short, when race was at stake, distinctions between lynchings and legally-sanctioned executions were often blurred—a conflation of form and performance that made lynchings resemble the death penalty and the death penalty resemble lynchings. As Banner puts it in his recent study, *The Death Penalty: An American History*: “The line between a lynching and an official execution could be thin. The participants in
lynchings often included the very same people who, in their official capacities, administered the criminal justice system. Official trials and executions in the South could take place astonishingly fast, so fast as to closely resemble lynchings, when a case carried racial implications” (229). Banner supports this claim with reference to two “legal” executions which indeed took place astonishingly fast: “In Kentucky in 1906 a black man convicted of raping a white woman was hanged only fifty minutes from the time the jury was sworn. In Galveston, Texas, a black defendant was indicted, tried, and hanged in less than four hours” (229).

In this chapter and in Chapter 4 which follows, I extend Banner’s passing comparison of lynching and the death penalty by investigating the shared practices, arguments, and tropes in the cultural discourses surrounding these two modes of punishment in the 1890s and at the turn of the nineteenth century, the period in American history preceding the era of high-profile “legal lynchings” in the 1920s and 30s (the “Scottsboro Boys” trial being a primary example). One important argument and trope common to lynching and the death penalty is implicit in the De Soto Democrat’s justification of Reeve Smith’s execution as deplorable but necessary and encapsulated in the phrase that I have appropriated for the title of Chapter 4: “The Necessity of an Example.” This phrase comes from an ironic chapter heading justifying lynching in Charles W. Chesnutt’s The Marrow of Tradition, a literary work I will explore in detail in the next chapter. But the idea it expresses is also one of the oldest and most prevalent arguments in support of the death penalty. As one popular writer noted as early as 1837: “The great argument urged by the advocates of capital punishment in favour of the enforcement of the extreme penalty, has always
been the necessity of an example” (Grant 278). Grounded in a logic of deterrence and the belief that the force of law necessarily depends upon its dramatic enactment, the necessity-of-an-example argument figures prominently in the cultural rhetoric that both surrounds and permeates lynching and the death penalty in the late nineteenth and early twentieth centuries.

The title of this chapter, “Lynching Plots,” signals its particular focus. Rather than developing a sociological or strictly historical investigation of lynching as an illicit form of capital punishment, my analysis centers on what I shall call, building on recent work in African American studies, the “lynching plot”: the predominant narrative in turn-of-the-century America of black men raping white women and the unfortunate but necessary penalty of death for that “unspeakable” crime. Such a “story,” “myth,” “scenario,” or “plot,” as various critics have figured it, begins with the assumption that black men are innately and criminally attracted to white women, and it almost always ends with a lynching carried out and justified by a white community, as in the Reeve Smith execution to which the De Soto Democrat voiced its approval. Yet such a dénouement is hardly a foregone conclusion, since in many cases—such as Smith’s “attempt at rape”—conviction in a court of law would not have resulted in a legally-sanctioned death sentence, let alone in an execution. To be sure, the due forms and procedures of a criminal proceeding, as well as the lengthened duration of an official trial, could be used to factor in mitigating circumstances and evidence, just as a legal trial or a trial presided over by “Judge Lynch” could be used to exclude those circumstances and that evidence from coming into consideration.
A crucial difference, then, distinguishes lynching from the death penalty. That difference can be summed up in two words: *due process*. Nonetheless, in practice, if not in principle, the difference separating legal and extralegal capital punishment—a thin line to begin with—was blurred and at times altogether erased from the perspective of those who condoned "Lynch Law," a conception of popular justice in which, as the trope itself suggests, the illicit (lynch) and the licit (law) are fused together. Such a fusion represents what Jürgen Habermas and practitioners of critical legal theory have called a "legitimation" strategy, a strategy through which a culture’s social and political practices are made legitimate through an appeal to the positive law or, in the case of lynch law, through an imitation of positive law and an appeal to a "higher law" or a law of custom. In what follows, I draw upon this notion of legitimation to analyze the double register of "lynching plots," a term I use to refer not only to the contrived, ideological narrative or popular myth of black men raping white women but also to the systemic "plot" or political conspiracy among whites to execute blacks on the pretense of protecting white womanhood.

**The Lynching Plot as Legitimation Narrative**

To provide a clear picture of the conventional lynching plot, a story not without its psychological complexities, I would like to look closely at a striking passage from Philip A. Bruce’s immensely popular social history, *The Plantation Negro as a Freeman* (1889). As an authoritative text written by a prominent Southern lawyer, editor, and historian (the author held degrees from both the University of Virginia and Harvard Law School), Bruce’s historical treatise helped to legitimate and give
credibility to the popular myth of black-on-white rape that was used daily to justify the perpetration of extralegal violence against blacks in newspaper reports and editorials such as the *DeSoto Democrat's.*

In "The Negro and Criminal Law," Chapter IV of his study, Bruce identifies the rape of white women as the most pernicious crime to which blacks, as a race, are susceptible: "Rape," he argues,

is the most frightful crime which the negroes commit against the white people, and their disposition to perpetrate it has increased in spite of the quick and summary punishment that always follows . . . There is something strangely alluring and seductive to [negroes] in the appearance of a white woman; they are aroused and stimulated by its foreignness to their experience of sexual pleasures, and it moves them to gratify their lust at any cost and in spite of every obstacle. This proneness of the negro is so well understood that the white women of every class, from the highest to the lowest, are afraid to venture to any distance alone, or even to wander unprotected in the immediate vicinity of their homes; their appreciation of the danger being as keen, and their apprehension of corporal injury as vivid, as if the country were in arms. If it were not for this prudence and caution on their part, as well as the capital punishment that ensues so swiftly, this crime would be far more frequent than it is. (83-84)

Although the explicit racist assumptions and stereotypes of Bruce’s language hardly call for textual explication, I cite Bruce at length because he provides a detailed illustration of the pervasive racial ideology against which black and white opponents
of lynch law mounted their strategies of resistance. If the *De Soto Democratic*
encapsulates the central features of lynch law’s rhetoric of justification, then Bruce’s
theorizing of “the Negro and Criminal Law” could be said to emblematize a
generalizable narrative that legitimates lynching as a white response to alleged
instances of black violence.

To begin with, Bruce defines rape as crime committed *not* by one individual
against another but by one race against the other—a scenario in which he identifies
the perpetrator and victim as “the negroes” and “the white people” respectively. To
assure his audience that what he describes is a problem that goes without saying and
that everyone in the South knows of and believes in, he employs what might be called
a rhetoric of histrionics and hyperbole. For example, each sentence in this passage
compounds the exaggeration which precedes it in order to depict a dire situation “so
well understood” in the South that “every class of white women” exercises extreme
cautions when outdoors, lest she be sexually assaulted by marauding negroes (an
image that Thomas Dixon will later reinforce as “the roving criminal negro” in *The
Leopard’s Spots*). The deeper anxieties belied by Bruce’s rhetoric suggest fear of
miscegenation, while he articulates a distinctive racial psychology, a component
within lynching’s legitimation narrative about which I will say more in a moment.
And finally, this passage begins and ends with an implicit defense of lynch law as an
act more or less synonymous with the lawful institution of the death penalty. That is,
whereas Bruce begins by alluding to “the quick and summary punishment that always
follows” acts of black-on-white rape, he ends with a telling allusion to “capital
punishment.” Such a reference to legitimate punishment blurs or collapses the
distinction between legal and extralegal execution when issues of race and gender are at stake. For nowhere in “The Negro and Criminal Law,” nor anywhere else in The Plantation Negro as Freeman, does Bruce use the word “lynch” or “lynching” in reference to illicit acts of white mob violence against blacks.

Perhaps the most striking aspect of this passage from “The Negro and Criminal Law” is the claim that the mere “appearance of a white woman,” its “foreignness” to black sexual experience, “moves [negroes] to gratify their lust at any cost and in spite of every obstacle.” As the passage continues, Bruce complicates this theory of black psychology by identifying rape and murder (an act which, he argues, invariably follows rape if the assault is not interrupted) as a displaced act of violence committed by black men against the white race as a whole: “. . . for rape,” Bruce argues,

indescribably beastly and loathsome always, is marked, in the instance of its perpetration by a negro, by a diabolical persistence and a malignant atrocity of detail that have no reflection in the whole extent of the natural history of the most bestial and ferocious animals. He is not content merely with the consummation of his purpose, but takes that fiendish delight in the degradation of his victim which he always shows when he can reek [sic] his vengeance upon one whom he had hitherto been compelled to fear; and here, the white woman in his power is, for the time being, the representative of that race which has always overawed him. (84)

Again, the hyperbolic rhetoric and overt racism here hardly demand a close reading. Bruce’s language certainly speaks for itself, but it ends up saying more about white
male anxieties over miscegenation than it does about the motivations and drives of
the black mind, a psychological realm to which Bruce has no problem claiming
access here and throughout his study. In fact, the scene Bruce imagines can be seen
itself as a displaced act of racial violence: by dehumanizing the black subject in this
scenario and linking him to a “natural history of the most bestial and ferocious
animals,” Bruce figures “the Negro” (with a capital “N” in this essentialized,
universal account) as a malignant off-shoot, a cancer, of the human species—a beast
to be stamped out or eradicated, lest it destroy the human race as a whole.

I have looked closely at Bruce’s account of the lynching plot because it
provides a generalizable, theoretically coherent (if reprehensible) version of the
myriad lynching plots represented, reported, and editorialized in the popular press in
the late nineteenth and early twentieth centuries. To explore the rhetorical,
narratological, and political dimensions of the lynching plot as ideological narrative
and political conspiracy, I will now concentrate on two African American writers—
Frederick Douglass and Ida B. Wells—in relation to prominent white writers who
defended lynch law as well a dominant, Southern white discourse that condoned or
demonstrated an indifference to lethal mob violence against blacks. My attention to
these black writers and to these white voices from the dominant discourse is not to
suggest that the white population as a whole supported or accepted the lynching of
blacks. Albion Tourgée, George Washington Cable, William McKinley, and a
number of other white officials and influential citizens actively opposed lynching and
joined African Americans in protests against lynch law. Moreover, influential white
writers such as Tourgée, Mark Twain, and Owen Wister made powerful statements
against racially-motivated lynching in their fiction. For instance, although Judge Henry in Wister's *The Virginian* (1902) condones the practice of "hanging Wyoming horse-thieves in private," he condemns the practice of "burning negroes in public" and sees "the burning as a proof that the South is semi-barbarous . . ." (339). Similarly, Mark Twain held the nation as a whole responsible for racial lynchings through a caustic indictment of the American institution of lynch law through the fitting epithet, "The United States of Lyncherdom," in his 1901 essay by that name.⁹

Even so, if many important whites opposed the lynching plot and challenged its rhetoric of legitimation, the idea of a superior white race distinct from an inferior black race was a crucial element for those who *did* believe in the lynching plot and who employed its rhetoric. In the Southern white imaginary, this idea often took shape as a virtual war between the races—a war in which whites perceived themselves as justified in executing blacks as an exigency and means of self-defense. By figuring the lynching scene as a war between the races, white supremacists and lynch-law apologists imagined lynching not so much as a battleground for contested ideologies but as a quasi-wartime tribunal through which justice, especially for alleged crimes of rape, was dispensed with a popular authority that superceded positive law. While there was neither a monolithic nor monologic white culture of lynch law, as Bruce’s lynching plot or the blatant justification of the *De Soto Democrat* and other editorials would have it, a great many prominent white Southerners as well as Southern state governments and the Southern press more generally, did contribute to a racialized discourse within which "lynching plots," as I
use the term, functioned as both a contrived story or plot as well as a conspiracy or systemic plot to lynch blacks as a form of political, social, and economic terrorism.

**The Lynching Plot as Political Conspiracy**

In his 1894 speech, "The Lessons of the Hour," Frederick Douglass outlines "three distinct sets of excuses" that make up the recent history of racially-motivated lynching. For Douglass, this history culminates in the rape accusation: "a charge," he argues, "of recent origins" and one "never brought before" or "heard of in the time of slavery or in any other time in our history" (3). Such excuses, Douglass goes on to say,

> came along precisely in the order they were most needed. Each was made to fit its special place. First . . . it was insurrection. When that wore out, Negro supremacy became the excuse. When that was worn out, then came the charge of assault upon defenseless women. . . . [T]he orderly arrangement and periodicity of excuses are significant. They mean something, and should not be overlooked. They show design, plan, purpose and invention. (13)

While Douglass’ succinct discussion of the “orderly arrangement and periodicity of excuses” nicely sums up the history of lynch law, he emphasis here upon the “design, plan, purpose, and invention” of such excuses calls attention to their rhetorical construction, their plotted and contrived nature. Moreover, Douglass’ point about the nonexistence of the rape accusation prior to the Emancipation proclamation is well taken, although recent historians have shown that such accusations were far from unheard of in the antebellum period and during the Civil War.\(^\text{10}\) As we shall see,
however, Douglass’ utter rejection of rape as a justification for lynching was a late development in his thinking—a conclusion he arrived at only in the last year or so of his life and only after he read and collaborated with Ida B. Wells. Indeed, the force of the rape accusation and the conventional lynching plot was so strong that few, if any, black writers or intellectuals contested it before Wells’ groundbreaking analysis of race, rape, and lynching in 1892.

As a racially motivated act, the charge of black-on-white rape emerged as a common element of the lynching plot in the late 1870s; by the mid to late 1880s, as evinced by the *De Soto Democrat* editorial and Bruce’s *The Plantation Negro as Freeman*, it became a formulaic and conventional defense of lynch law as an illicit form of capital punishment. Prior to 1890, accounts of lynchings were almost entirely confined to sparse reports in local papers (Cutler, Hale 206). With the rise of mob violence in the early 1890s, however, a number of prominent magazines and journals began to run feature stories on lynchings. *Harper’s Century*, *Scribner’s*, *South Atlantic Quarterly*, and the *Atlantic Monthly* began covering the subject from a variety of perspectives, but the *North American Review* became the principle vehicle for national debate concerning lynching when in 1892 it published “Lynch Law in the South,” a featured essay written by Frederick Douglass, America’s foremost black writer and political activist.

To explore the permutations of the lynching plot at the close of the nineteenth century, I will begin with a rhetorical analysis of Douglass’ essay, because it is the first sustained attack against mob violence by a black writer to gain national attention. I then move to a specific (though indirect) response to Douglass that was written by a
white apologist for lynching and published just two months later in the *North American Review*. My analysis concludes with a detailed examination of Ida B. Wells’ savaging of the conventional lynching plot in the central texts comprising her anti-lynching campaign: *Southern Horrors: Lynch Law in All Its Phases* (1892); and *A Red Record: Tabulated Statistics and Alleged Causes of Lynchings in the United States, 1892-1893-1894* (1895). In these pamphlets, Wells offers a painstaking interrogation of the misconceptions, hypocrisies, and blatant racism of the conventional lynching plot. As in my discussion of Bruce, my analysis here relies on a close reading of the language and rhetorical strategies with which the lynching plot is challenged or reinforced by those who engage its discourses.

Douglass’ “Lynch Law in the South” begins by conjuring up the familiar scene of mob violence against blacks—save for one detail: “Think of an American woman,” he writes, “mingling with a howling mob, and with her own hand applying the torch to the fagots around the body of a negro condemned to death without a trial, and without a judge or jury, as was done only a few weeks ago in the so-called civilized State of Arkansas” (17). Rather than the conventional scene in which Southern men, the self-appointed representatives of civilization and defenders of female virtue, put to death a condemned black subject, Douglass evokes a scenario in which a white woman figures as the principle agent of mob violence. Changing her role from helpless victim to primary actor (as in the recent instance in Arkansas to which he refers), Douglass attacks the conventional gender role assigned to the Southern woman, the pivot upon which the lynching plot as ideological narrative turns. That
this example is *not* hypothetical but drawn from an actual event further undercuts the gender roles in lynch law’s rhetoric of justification, while Douglass’ attention to the utter absence of due process and legal forms marks a clear distinction between mob law and the official administration of criminal justice.

Immediately following this image of an execution without trial, judge, or jury, Douglass articulates his thesis—“that in no tolerable condition of society can lynch law be excused or defended”—by describing the conditions that have enabled lynch mobs to displace legal principles and authority in the administration of criminal law:

When all lawful remedies for the prevention of crime have been employed and have failed; when criminals administer the law in the interest of crime; when the government has become a foul and damning conspiracy against the welfare of society; when men guilty of the most infamous crimes are permitted to escape with impunity; when there is no longer any reasonable ground upon which to base a hope of reformation, there is at least an apology for the application of lynch law; but, even in this extremity, it must be regarded as an effort to neutralize one poison by the employment of another. Certain it is that in no tolerable condition of society can lynch law be excused or defended. Its presence is either an evidence of governmental depravity, or of a demoralized state of society. (17)

I cite this passage at length not only as an illustration of Douglass’ central argument but also to call attention to the way in which Douglass frames his line of reasoning. As a carefully crafted rhetorical act, Douglass employs repetition and parallelism in order to oppose the crime of lynching to the greater interests of society in maintaining
law and order. The mounting force of this comparison builds through anaphora and reaches a climax in an anticlimactic thesis whose understatement signals restraint and indignation that is founded on reason, rather than the unchecked vengeance that animates the lynch mob. The movement from controlled anger to a calm assertion of facts characterizes the logic and tone of the essay as a whole, while the particular point here is to suggest that lynching, for whatever reason, evinces one of two situations: “governmental depravity” or a “demoralized state of society.” In either case, and whether emerging from political or social factors, government by lynch law constitutes what Douglass calls “a foul and damning conspiracy against the welfare of society.” Such a figure for broadscale treachery epitomizes what I have described as the conspiratorial dimension of the lynching plot: that tacit, if not secret, agreement among whites to subjugate black citizens according to the unwritten laws of social custom.

Douglass frequently employs this figure of lynching as a plot or conspiracy against society as a whole and African Americans in particular. For instance, he represents government in the post-Reconstruction South as a government by the white people, as opposed to a government of “the whole people” in which each citizen, regardless of race, would have equal rights and protection of the law. To make matters worse, Douglass argues that the mob violence perpetrated against blacks on almost a daily basis undermines the basic principles upon which American government and its criminal justice system were founded. “Lynch Law,” as he puts it,
violates all of those merciful maxims of law and order which experience has shown to be wise and necessary for the protection of liberty, the security of the citizen, and the maintenance of justice for the whole people. It violates the principle which requires, for the conviction of crime, that a man shall be confronted in open court by his accusers. It violates the principle that it is better that ten guilty men shall escape than that one innocent man shall be punished. It violates the rule that presume innocence until guilt is proven. It compels the accused to prove his innocence and denies him a reasonable doubt in his favor. It simply constitutes itself not a court of trial, but a court of execution. (18)

By rehearsing the most inviolable principles of justice and legal protection in light of their gross violations under lynch law, Douglass identifies several arguments that have or will become common in challenges to racially motivated mob violence at the turn of the nineteenth century. These arguments include the ideal, as noted earlier, of justice for "the whole people"; the assumption of innocence until proven guilty; and the protection of one's right to confront accusers in a court of law. Douglass' enumeration of these principles and rights within a scathing indictment of lynch law crystallizes in the stark image of "a court of execution," the likes of which he detailed earlier through a depiction of the condemned black burned at the stake without trial, judge, or jury. Like his portrayal of the conditions under which lynchings thrive, Douglass' attention here to the flagrant illegality of mob violence divests lynch law of any claim to legitimate authority, thereby rejecting any excuse one might proffer in defense of such an act. Moreover, as in the articulation of his thesis, Douglass again
organizes his argument through a classic rhetorical style and from a dominant cultural position of white authority, even as his subject position as African American places him outside that tradition.

Two months after the appearance of Douglass' essay, the North American Review published issue an article that offered the kind of excuse for mob violence against blacks that Douglass found untenable. In “Lynch Law in the South” (September 1892), a title directly echoing (but without any reference to) Douglass' earlier piece by that name, Bruce W. Cabell argued that lynchings have risen in the South for two reasons: first because of the greater concentration of blacks in that region of the country; and second, because of the black male's innate sexual desire for white women. Whereas Douglass began his essay by revising the climactic scene in the conventional lynching plot, Cabell opens with an explanation of mob violence that rehashes a familiar argument: “If lynching is more prevalent in the South than elsewhere,” Cabell reasons, “it is because... the negro there has violated the chastity of white women with such appalling frequency, and under circumstances so unutterably shocking to human nature, that the white race there has been goaded into a degree of excited feeling for which no occasion has existed in other parts of the Union” (379). While later claiming, “Nothing can justify lynching,” Cabell here sympathizes with mob violence and explains away lynching as an understandable course of action into which the white race has been “goaded.” The moral horror Cabell exhibits is not directed at extralegal violence, as it is in Douglass' essay. Instead, it is aimed at the "unutterably shocking" crime which Southern blacks have committed “with such appalling frequency.” Citing recent reports in the Associated
Press of black men sexually assaulting white children in Florida, Virginia, Maryland, Mississippi, and Arkansas, Cabell links the recent rise in lynching to a "criminal impulse" in black men against which deterrence has proven ineffective: "So blindly irrational and overpowering appears to be the criminal impulse that danger of detection and absolute assurance of an awful fate, in the case of detection, have but little deterrent force" (379).

As opposing perspectives published just months apart in the North American Review, Cabell's and Douglass' "Lynch Law in the South" register a range of arguments representative of the cultural rhetoric of lynching in the late nineteenth century. On the one hand, Douglass' essay challenges lynching law's claim to legitimate authority over the condemned subjects it executes and broadens the scope of responsibility for those supreme acts of violence. Complicating the image of limited responsibility with which he begins (i.e. the "howling mob" and the woman who "with her own hands" lights the fire which consumes the condemned black), Douglass concludes his essay by asking: "where rests the responsibility for the lynching law prevalent in the South?" In response to that question, he writes: "It is evident that it is not entirely with the ignorant mob. The men who break open jails and with bloody hands destroy human life are not alone responsible. . . . They are simply the hangman, not the court, judge, or jury. They simply obey the public sentiment of the South, the sentiment created by wealth and respectability, by the press and the pulpit" (23). Likening the lynch mob to the "hangman," Douglass draws an analogy between lynch law and positive law (not unlike the analogy drawn by apologists) and ascribes responsibility for these acts of violence to white society as a whole—particularly the
press and the pulpit as well as wealthy and respectable citizens, all of whose influence fosters a public sentiment that allows lynch law to thrive. For if the lynch mob constitutes "the hangman," then society provides the "court" and serves as both the "judge" and "jury" that preside over these lethal, extralegal acts of sovereign violence.

Yet the South alone is not responsible for mob violence within its states. Thus Douglass concludes his essay by implicating the North in the production and perpetuation of lynch law in the South: "The finger of scorn at the North is correlated to the dagger of the assassin at the South," he proclaims. "The sin against the negro is both sectional and national, and until the voice of the North shall be heard in emphatic condemnation and withering reproach against these continued ruthless mob-law murders, it will remain equally involved with the South in this common crime" (24).

In contrast, Cabell depicts lynching as primarily (but by no means exclusively) a Southern problem and one for which most of the blame falls upon the negro for the unpardonable crime of rape. Yet Cabell argues that it is neither Southern customs nor social institutions that contribute to the much higher number of lynchings which occur annually in that part of the country. Instead, he suggests that it results from the simple fact that "the negro population of the Union is congested in the South mainly" (379); for the Northern negro, Cabell asserts, "is addicted to the same crime [of rape] to a degree altogether out of proportion to its number" (380). To demonstrate that white attitudes towards blacks and the crime of rape in the South
are essentially the same in the North, Cabell calls to mind the infamous lynching of Robert Lewis which occurred earlier that year in Port Jervis, New York:

That negro, lately dragged through the streets of Port Jervis, and hanged by a mob of a thousand people, for violating a white woman, and that coroner’s jury and that grand jury which were unable to secure a single eye-witness of the hanging, are as strong proofs as could be asked that there is no essential difference between white men in the State of New York and white men at Nashville who, last April, passed around the watchwords, “Remember your homes,” “Remember your wives and daughters” . . . There is no little pith in the late remark of the New York Herald that, “The difference between bad citizens who believe in lynch law, and good citizens who abhor lynch law, is largely in the fact that the good citizens live where their wives and daughters are perfectly safe.” (380)

Cabell’s reference to the Lewis “hanging” (note the term “lynching” is not used), as well as his citation of the New York Herald’s statement about lynch law and “good” versus “bad” citizens, effaces differences in racial prejudice in the North and South. Again, for Cabell the problem of lynching stems from black-on-white rape, a crime which he argues is equally intolerable in both sections of the country.

In spite of their differences, Cabell and Douglass both see lynching as a national problem, even though they acknowledge that mob violence occurs with much greater frequency in the South. Both Cabell and Douglass also share a common assumption central to the lynching plot as ideological narrative: that black men do pose a danger to white women and children. While Cabell explicitly relies on this
assumption and wholly accepts the “facts” concerning lynching as reported in the Southern and Associated Presses, Douglass fails to address the rape accusation, the central argument in defenses like Cabell’s and Philip A. Bruce’s. Instead, he concentrates on lynching as a blatant violation of due process and legal forms of criminal justice. ¹¹

Just months before Cabell and Douglass published their opposing perspectives on “Lynch Law in the South,” Ida B. Wells wrote her first article attacking the integrity of the rape charge. Like Douglass, Cabell, and countless others (white or black), Wells believed the stories she heard or read about black men raping white women. But after March 8, 1892, when three of her closest friends were lynched not for rape but because they fired upon an armed mob of whites attacking their grocery business, Wells began an exhaustive study of lynchings and alleged sexual assaults. In the May 21 issue of the Free Speech, a black Memphis newspaper she co-owned and edited, Wells published an editorial which made her not only infamous but, as it were, “wanted man.” That editorial ran:

Eight negroes lynched since last issue of the “Free Speech” one at Little Rock, Ark., last Saturday morning where the citizens broke (?) into the penitentiary and got their man; three near Anniston, Ala., one near New Orleans; and three at Clarksville, Ga., the last three for killing a white man, and five on the same old racket—the new alarm about raping white women. The same programme of hanging, then shooting bullets into the lifeless bodies was carried out to the letter.
Nobody in this section of the country believes the old thread bare lie that Negro men rape white women. If Southern white men are not careful, they will over-reach themselves and public sentiment will have a reaction; a conclusion will then be reached which will be very damaging to the moral reputation of their women. (51-52)

Wells’ article created public outcry within Memphis’ white community. Local white papers denounced it as “obscene,” “intolerable,” and nothing but “loathsome and repulsive calumnies.” One paper, in fact, went so far as to suggest that the author of such “calumnies” be hunted down and tied “to a stake” so that “those whom he has attacked” could “brand him in the forehead with a hot iron and perform upon him a surgical operation.”12 Only a depraved black man could write such a thing, so the argument went, and Wells avoided this and other threats of lynching by fleeing Tennessee and seeking asylum in New York, where later that year she would launch her national anti-lynching campaign with the publication of *Southern Horrors: Lynch Law in All Its Phases* (10,000 copies were published to inaugurate a national campaign).

Wells begins *Southern Horrors* by situating her notorious Free Speech editorial in relation to the violent reactions it generated in the Memphis papers and among white readers. She then cites the editorial in full as well as the white press’ responses from which I quoted above. In doing so, Wells reasserts the veracity of her words and reclains responsibility for them, while letting the barefaced racism of the white press’ reactions speak for itself. Such a critical orientation could not be more different from the one taken by Bruce, Cabell, and even Douglass. Whereas each of
these writers, despite their differences, appeals to a traditional notion of authority and relies upon conventional modes of argumentation. Wells places herself in a hostile relation to established authority and draws upon a range of innovative techniques. In contrast to the conventional forms of rhetoric and argumentation we have seen in Bruce, Cabell, and Douglass, Wells’ rhetorical strategies work both through and against the language she employs. Thus, insofar as she cites at length pro-lynching reports and editorials of mob violence from the white press, Wells engages an ironic, reiterative strategy of argumentation and analysis that, in terms of contemporary theory, one could associate with the Derridean principle of iterability and with what I have elsewhere called “a politics of iterability,” that is, a way of displacing a dominant discourse and inscribing a new one in its place. At the same time, Wells supplements this deconstructive approach by drawing upon staples of objective journalism: the use of statistical data, corroborated testimony, and other forms of empirical evidence.

We can get a clearer sense of how Wells’ language operates according to this logic of appropriation and displacement by comparing her Free Speech polemic, out of which much of her innovative style as a political writer and pamphleteer emerges, to Bruce’s rendering of the lynching plot. Whereas Bruce relies on histrionics and hyperbole, Wells provides a deadpan account of the facts concerning actual lynchings—a presentation dramatically enhanced through irony and understatement. In contrast to Bruce’s generalizations, Wells attends to the number, location, and criminal charges justifying these singular acts of mob violence, as well as to the fact that each followed a general “programme” of hanging and mutilation “carried out to
the letter,” as she puts it, as if in accordance with unwritten laws of social custom. At the same time her use of free-indirect discourse, such as the description of the “citizens [who] broke (?) into the penitentiary and got their man,” in addition to her detached, objective tone in relating these moral atrocities, infuses her rhetoric with a pervasive sarcasm. To this end, Wells quotes extensively from the white press and even interpolates question marks and other kinds of critical notations into her writing as a way of satirizing and challenging the authority of the dominant white discourse. As Patricia A. Schecter argues: “By disrupting these texts with quotations and question marks, Wells mocked their authority and created space for her own findings and re-readings of the material” (293).

Crucial to this contestation and creation of authority is the demystification of the conventional lynching plot as precisely that: a “plot” or fiction created and perpetuated through the official discourse of the popular press and legitimated through the “academic discourse,” if we can call it that, of cultural historians such as Philip A. Bruce, Esq. For instance, in the infamous (re)citation with which Southern Horrors begins, Wells discredits the accusations justifying five of these eight lynchings, which occurred within a week, as “the same old racket . . . new alarm.” Such an oxymoronic description calls attention to the hypocrisy of the rape charge and sets up the conclusion at which Wells, with characteristic understatement, arrives in the first sentence of the next paragraph: “Nobody in this section of the country believes the old thread bare lie that Negro men rape white women” (52). In this way, Wells sustains a cool, detached tone which heightens rather than diminishes the moral horror of the singular acts of violence she describes. Thus, if Bruce essentializes a
universal history of the “Negro” as inherent rapist, and Cabell and even Douglass accept the Associated Press reports on lynchings as essentially true, Wells debunks such a history and authority by drawing upon statistical data, verified evidence, and corroborated testimony. In doing so, she develops a critical methodology or historiography that speaks through and against the double speak of the official voice of the Southern white press. Such a method produces a powerful critique of the lynching plot as legitimation narrative.

Wells explicitly defines this revisionist (at times, deconstructive) mode of her analysis when addressing the “purpose” of her campaign in the opening chapter of A Red Record, the second and perhaps most influential of her pamphlets. “The purpose of the pages which follow,” she writes, “shall be to give the record which has been made, not by colored men, but that which is the result of compilations made by white men, of reports sent over the civilized world by white men in the South. Out of their own mouths shall the murderers be condemned” (82). By calling attention to the production and distribution of these lynching reports, Wells describes her approach as one of reading against the grain in order to condemn the abuse of white authority (vigilante acts of mob justice) through the use of white authority (reports in the white Southern press). She thus produces a double-voiced discourse that serves to displace the official record with what her title figures “A Red Record,” a record of barbarism, cruelty, and profound injustice which bleeds through the official record—the record, as she notes, that is created and “sent over the civilized world by white men in the South.”
This displacement of the official record in *A Red Record* and elsewhere takes place not only through Wells’ critical citation and re-contextualization of white lynching reports. It also occurs structurally through her fashioning of chapter and section headings in the manner of sensational headlines—a defining convention of newspapers and the popular press, the very source of social authority that Wells’ campaign simultaneously appropriates and calls into question. For instance, Chapter IV of *A Red Record*, titled “The Lynching of Innocent Men,” includes the following section headings: “Killed for His Stepfather’s Crime”; “Lynched Because the Jury Acquitted Him”; and “Lynched as a Scapegoat.” Likewise, Chapter V, “Lynched for Anything or Nothing,” relates preposterous (albeit factual) accounts of gruesome acts of mob violence committed for petty or nonexistent offenses. Its section headings include the following: “Hanged for Stealing Hogs”; “Lynched for No Offense”; “Lynched Because They Were Saucy”; “Lynched for a Quarrel”; “Suspected, Innocent, and Lynched”; and “Lynched for an Attempted Assault.” Each of these stories, varying in length and detail, not only describes a singular act of savage violence, but also designates a broader category into which similar acts of mob violence are classified. Even “Suspected, Innocent, and Lynched”—perhaps a unique story within the history of lynching insofar as it recounts the hanging of five blacks on suspicion that one or more of them poisoned a well that allegedly led to the deaths of two members of a prominent white family who drank from the well—nonetheless serves to illustrate, as its title suggests, the underlying logic of lynch law: presumed guilt and summary judgment.
In addition to ironic chapter headings, Wells structures her chapters around debunking the lynching plot and the legal rhetoric used by those who support lynch law. Chapter I of *Southern Horrors* is titled “The Offense,” as if in sardonic reference to the criminal charge of rape that Cabell and others have leveled against blacks in local and national papers. Similarly, the first chapter of *A Red Record* is titled “The Case Stated.” As its title suggests, this opening chapter takes shape rhetorically as an opening statement in a criminal trial. Like “The Offense” of *Southern Horrors*, it simultaneously appropriates and mocks legal authority in order to rhetoricize “facts” as the product of interpretive communities and persuasive argumentation rather than context-free knowledge that goes without saying and makes up a common reality taken for granted.

Wells expands this line of argument in “History of Some Cases of Rape,” Chapter VI of *A Red Record*. Written as if to demystify the hysteria and broad generalizations of Bruce’s account of rape in *The Plantation Negro as Freeman*, the chapter offers an analysis of many cases in which the “facts” concerning lynch law have been misconstrued, doctored, or blatantly falsified by the Associated Press. For instance, in a section headed “Suppressing the Truth,” Wells describes the following account of mistaken or manipulated facts:

In a county in Mississippi during the month of July the Associated Press dispatches sent out a report that the sheriff’s eight year old daughter had been assaulted by a big, black, burly brute who had been promptly lynched. The facts which have since been investigated show that the girl was more than
eighteen years old and that she was discovered by her father in this young
man’s room who was a servant on the place. (126)

By juxtaposing the newly discovered facts with those officially reported and thus
assumed to be true, Wells’ language suggests that reports of eight-year-old white
victims of rape are flagrant exaggerations, perhaps even fictions, bearing little or no
resemblance to the truth, much like the stereotypical “big, black, burly brute” of the
conventional rape scenario she ironically mentions here but without quotation marks.
Wells concludes this account by noting that the Associated Press has not published
corrections to this inaccurate report, in spite of clear evidence of its inaccuracy. She
then links the fiction of this rape story to other fallacious accounts whose “facts”
remain uncorrected by the Associated Press.

In another section of Chapter VI, Wells recounts numerous instances in which
white men have raped black women or girls with impunity. This section,
appropriately titled “Color Line Justice,” culminates with an inversion of the
conventional lynching plot’s racial categories and an invocation of “capital
punishment” as a potential corrective to color-line justice:

In Surry county, Virginia, C. L. Brock, a white man, criminally
assaulted a ten-year-old colored girl, and threatened to kill her if she told.
Notwithstanding, she confessed to her aunt, Mrs. Alice Bates, and the white
brute added further crime by killing Mrs. Bates when she upbraided him about
his crime upon her niece. He emptied the contents of his revolver into her
body as she lay. Brock has never been apprehended, and no effort has been
made to do so by the legal authorities.
But even when punishment is meted out by law to white villains for this horrible crime, it is seldom or never that capital punishment is invoked. Two cases just clipped from the daily papers will suffice to show how this crime is punished when committed by white offenders and black. (130)

This account of social and legal hypocrisy transposes the conventional roles of the lynching plot. For it is a “white brute,” as opposed to the proverbial “black, burly brute,” reported just pages earlier, who rapes a very young black girl. With regard to Bruce’s psychological theory of black-on-white rape, this account of white-on-black rape provides a telling example of displaced white sexual desire in which the prone body of Mrs. Bates becomes, like the ten-year old girl, another figure into which a white brute such as C. L. Brock “emptie[s] the contents of his revolver.”

That no attempt was made to bring Brock to justice stands in sharp contrast to all the cases of summary judgment—legal or extralegal—in which black men were executed for engaging in consensual sexual relations with white women. In a characteristic move, Wells links this case to similar ones in which racial judgment is meted out for the slightest intimation of black sexual desire for white women. The “two cases just clipped from the daily papers” that Wells cites as evidence involve, on the one hand, Smith Young, a black man sentenced to be hanged for criminally assaulting a white girl, and, on the other hand, Jacques Blucher, a white man sentenced to five years for committing the same offense. Wells then goes on to tell of two more recent cases in which white men received sentences of ten and eight years respectively for raping white girls, whereas the penalty unquestionably would have been death had these men been black and their victims white.
Wells draws a broader comparison between lynching and the death penalty at the end of A Red Record’s opening chapter, the one I likened earlier to an opening statement in a criminal case. “We plead not for the colored people alone,” Wells writes,

but for all victims of the terrible injustice which puts men and women to death without form of law. During the year 1894, there were 132 persons executed in the United States by due form of law, while in the same year, 197 persons were put to death by mobs who gave the victims no opportunity to make a lawful defense. No comment need to be made upon a condition of public sentiment responsible for such alarming results. (82)

Comparing the annual number of legal and extralegal executions, Wells shows that over fifty percent more people were lynched than were put to death through lawful means in 1894. Such a rhetoric of numbers provides compelling evidence which supplements the moral horror of lynching that Wells illustrates elsewhere through historical vignettes and appeals to pathos. Like Frederick Douglass, Wells places considerable weight upon the fact that the administration of lynch law carries out the ultimate penalty of death “without due form,” a phrase she uses twice in this plea for justice and equal protection. Yet unlike Douglass, a staunch death-penalty opponent (McFeely 189), Wells seems to have no problem with the lawful administration of capital punishment, and she avoids a demonstrable indignation characteristic of Douglass’ rhetorical appeal here in her refusal to comment upon the public sentiment responsible for lynch law. The facts, or in this case, the numbers, speak for themselves.
Yet the overall argument Wells delivers demonstrates powerfully that the facts cannot “speak for themselves,” even though she at times uses this trope in appealing to the plain facts as she describes them. Indeed, to let the facts simply speak for themselves would be to allow the tacit construction of a social reality that goes without saying or is constructed out of the “facts” established by the Associated Press. After all, Philip A. Bruce takes for granted such a world of self-evident facts, while Bruce W. Cabell and other apologists of lynch law rely uncritically on accounts circulated by the Associated Press—reports which Wells challenges and through which she speaks ironically to tell an alternative story of moral atrocity and political conspiracy.

Central to Wells’ reconstruction, or rather deconstruction, of the facts is the “reader,” an agent she often foregrounds in her writings. For instance, in “The Remedy,” the penultimate chapter of _A Red Record_, Wells addresses the reader directly and the crucial role he or she plays when outlining five steps one can take to combat lynch law. I cite here the first of these steps:

> What can you do, reader, to prevent lynching, to thwart anarchy and [to] promote law and order throughout our land?

1st. You can help disseminate the facts contained in this book by bringing them to the knowledge of every one with whom you come in contact, to the end that public sentiment may be revolutionized. Let the facts speak for themselves, with you as a medium. (154)

By reconstituting her argument in terms of its explicit rhetorical purpose and audience, Wells inscribes the “reader” into the social process of constructing and
disseminating the facts as she presents them. Again, the reader as “medium” plays an indispensable role in this production of knowledge precisely because “the facts,” as Wells’ study ingeniously demonstrates, cannot speak for themselves. In this respect, the rhetorical strategies of her anti-lynching campaign are more complex than her reliance on the commonplace argument, to “[l]et the facts speak for themselves,” suggests.

Thus, by emphasizing the rhetorical construction of facts, Wells politicizes the role of her readers by making them, in light of the facts she establishes, either supporters or opponents of lynch law. According to his either/or logic, there is no middle ground—no position from which to excuse oneself from the commission of mob violence by averting one’s gaze from the moral horror of extralegal executions or by claiming no responsibility for the community’s course of action. Once apprised of the facts, one must choose to act or not to act—a situation in which non-action or a failure to act becomes, for Wells, an act in support of lynching and complicitous with mob violence itself. As Wells puts it at one point in Southern Horrors: “The men and women in the South who disapprove of lynching and remain silent on the perpetration of such outrages, are particeps criminis, accomplices, accessories before and after the fact, equally guilty with the actual law-breakers who would not persist if they did not know that neither the law nor militia would be employed against them” (68).

By attributing equal guilt to those who sit in silent disapproval of lynching, Wells broadens the scope of criminal responsibility in order to indict social irresponsibility for lynch law and to challenge the institutions that legitimate mob violence as a popular albeit illicit form of capital punishment. While obviously
lacking the requisite authority legally to charge apathetic Southerners as “particips criminis.” Wells’ use of the technical term exposes the limitations and gross deficiency of the law—both State and Federal—in providing equal protection for black citizens, the racial group against whom the vast majority of lynchings were perpetrated (88 percent of those lynched between 1880 and 1930 were black). In 1892, the year both Wells’ *Southern Horrors* and Douglass’ “Lynch Law in the South” were published, there were no anti-lynching statutes of any kind in the books. In fact, to this day there is no federal anti-lynching legislation on the official record, in spite of the fact that since 1894 there have been nearly two hundred anti-lynching bills put before the Senate; three of them passed the House of Representatives, but none of them was approved by Congress.\(^1\)\(^4\) Given this history, it is important to note that, as I am bringing my study to an end, Congress issued a formal apology on June 13, 2005 for its failure to pass an anti-lynching bill, thus finally accepting its responsibility for this national horror.

The history of anti-lynching legislation at the state level provides a different story, and I shall examine a significant part of that history in the next chapter. But first I want to bring this chapter to a close with a brief discussion of works of African American fiction of the nineteenth and early twentieth centuries that, like Wells’ and Douglass’ oratory and journalism, constituted a form of extralegal political discourse that targeted the extralegal practice of lynching. For if Douglass and especially Wells laid bare the conventions, stereotypes, and rhetorical strategies that made up the lynching plot and its rhetoric of justification, African American fiction disrupted that discourse by creating dramatic, literary examples of lynching’s horrors that served to
counter the exemplary lynching plots told and retold in the popular literature and press of the dominant white culture. This literary discourse complimented and, in crucial ways, went beyond the work of Douglass and Wells by offering an aesthetic experience unavailable in strictly historical or statistical analyses of mob violence.

“A Warning to his Fellows”: Lynching Plots in African American Fiction

To conclude this chapter and to lay the groundwork for my literary analysis of the lynching plot in Chapter 4, I want briefly to examine several distinct instances in which a lynching plot figures prominently in African American fiction. To keep my discussion concise and to the point, I will only consider examples in which lynching as an example gets explicitly thematized (indeed, one might say rhetoricized) in literary works dealing with the subject. Doing so will enable me not only to return to questions about the evidentiary value of literature, a topic that I explored at length in Chapter 2, but also to explore the performative dimension of a literary lynching—a representation of mob violence which presents itself as an exemplary act to be evaluated and judged by readers.

Take, for example, Paul Lawrence Dunbar’s “The Lynching of Jube Benson” (1904). The short story begins as three white gentlemen wile away an evening in idle conversation. As their conversation turns to a “lynching story in a recent magazine” (169), the older of the three men, Dr. Melville, tells the younger two (one of whom is an aspiring journalist eager to witness a lynching) about his role in the lynching of Jube Benson, the doctor’s friend and the faithful servant of a respectable family whose daughter the doctor, as a younger man, was interested in courting. Over the
course of the story, Melville tells how the young woman is raped and murdered, a
crime for which Jube is summarily executed. Like the cases against Matthew Maul
and Clifford Pyncheon in *The House of the Seven Gables*, the evidence against Jube is
entirely circumstantial: it consists of the young woman’s dying words, “That Black .
.” (ellipses original), and Jube’s unexplained absence that day from his duties at the
family’s home. The victim’s father immediately forms a posse comprised of himself,
Dr. Melville, and several other local men who hunt down Jube, their “quarry,” and,
once cornering their pray, they gather “around him like hungry beasts” (177). In the
time between the young woman’s death and Jube’s lynching, Melville can think only
of his former friend as a “monster,” and Jube, who admits to having skipped work
that day to see his girlfriend in a neighboring town, is promptly hanged from a tree.
When the lynching is completed, the rope suspending Jube’s lifeless body is tied off
so that “the dead man may hang as a warning to his fellows” (178).

This admonitory spectacle, however, is short lived. Soon after the lynching
has been carried out, other members of the posse arrive with unassailable proof of
Jube’s innocence. It turns out that Tom Skinner, “the worst white ruffian in town”
(178), had not only committed the crime but had painted his face and limbs black so
as to divert attention away from himself and toward a black suspect, presumably
Jube, who would easily be targeted as the rapist/murderer. In framing another for his
crime, Tom Skinner commits an act similar to Judge Pyncheon in *The House of the
Seven Gables*: he manufactures evidence. Moreover, if Tom is like Hawthorne’s
Judge in this regard, then Jube, an innocent victim, is like both Clifford and Mathew
Maul, and Dunbar’s story, like Hawthorne’s romance, can be seen as a dramatic
representation of the irreversible consequences of capital punishment. Dunbar, in fact, heightens the drama by having Jube’s brother rush to the scene of the lynching shortly after it occurs, while the “good” doctor stands by unable to resuscitate the innocent Jube. To illustrate Dr. Melville’s remorse and the profound lesson he has learned, Dunbar concludes the story with an exclamatory “Blood guilt! Blood guilt!” ringing in the doctor’s ears as he excuses himself from his company with these parting words: “Gentlemen, that was my last lynching” (179).

As a performative act, the lynching of Jube Benson is intended not only to avenge a particular crime but to serve as a general “warning” to others. As a literary act—a literary execution, if you will—“The Lynching of Jube Benson” exposes the hypocrisy and barefaced racism of this private act of summary judgment, thereby reducing it to a form of vigilante terrorism, what Jeffory A. Clymer most recently and Ida B. Wells long before him identify as the underlying purpose of mob violence committed against blacks.15 Dunbar’s story also exerts a performative force of its own, and we can get a better sense of this force by examining this and other literary lynchings in terms of what Alexander Gelley has recently called the “rhetoric of exemplarity,” that is, the way in which an example functions rhetorically to elicit a response from its interlocutor or audience. “The rhetorical force of example,” Gelley writes, “is to impose on the audience or interlocutor an obligation to judge. Whether it be an argument or a narrative, the rhetoric of example stages an instance of judgment, and the reader, in order to grasp the point at issue, must be capable of occupying, however provisionally, the seat of judgment” (14). The lynching Dunbar dramatizes works precisely in this manner by “stag[ing] an instance of judgment,” to
use Gelley’s phrase, and by placing the story’s (white) readers, like the aspiring journalist within the story itself, on the “seat of judgment” so that they may judge lynching through the example provided in Dr. Melville’s story. In this respect, Dunbar places his readers in a position similar to the one into which readers of Wells’ anti-lynching campaign are placed: a position from which they must, in light of the facts or story presented, either condemn or condone white mob violence against blacks and take responsibility for these acts.

The exemplarity of lynching is, of course, by no means confined to its dramatic representation in literature. Indeed, the very idea of making an example is coextensive with the invention of lynching as a racial spectacle. A lynching, after all, must be seen, witnessed, reported, read about, and, ideally, published in various forms in order to achieve its full effect. Even a private lynching, like the one represented in Dunbar’s story, abides by a logic of the example and (re)produces a rhetoric of exemplarity. Jube, as we have seen, was to be left dangling from a tree’s limb as “a warning to his fellows,” that is, as an example of white supremacy and black subjection exemplified through the visual evidence of a hanging body.

If the logic of spectatorship is essential to lynching itself, then that logic reached a horrific apotheosis at the turn of the nineteenth and during the early twentieth centuries in what Grace Elizabeth Hale has called the “spectacle lynching,” an act of white mob violence in which hundreds (if not thousands) gathered to witness the torture and execution, usually by burning at the stake, of a condemned black subject. The “spectacle lynching,” as Hale argues, may largely be a product of twentieth-century technology and consumer culture, but, again, the underlying
principle of the spectacle is coterminous with the origins of racial lynching as an extralegal form of capital punishment in the United States.

Pauline Hopkins satirizes this practice in antebellum America in her turn-of-the-century romance, *Contending Forces* (1900). In the “Days Before the War,” Chapter II of the romance, Hopkins stages a casual conversation between Ben and Hank, a slave trader and overseer respectively, at a Southern port as they await the arrival of incoming ships at the tail end of the eighteenth century, a period in American history when slave trafficking in the United States was at its peak. When Bill asks Hank, “How’s things up yer way?, Hank responds:

Fair, fair to middlin’, Bill; thar’s been some talk ‘bout a risin’ among the niggers, and so we jes tuk a few o’ them an’strun ‘em up fer a eggsample to the res’. I tell you, Bill, we jes don’t spec’ to hav’ no foolin’ ’bout this yer question of who’s on top as regards a gentleman’s owning his niggers, an’ whomsoever goes ter foolin with that ar pertickler pint o’ discusshun is gwine ter be made a eggsample of, even ef it’s a white man. Didn’ hyar nuthin’ ’bout a circus up our way, did yer?” (35-36).

From Hank’s perspective, Hopkins ironically represents the inimitable force of lynching to proffer a warning, an “eggsample to the res.” Yet there is more at stake in the exemplary lynchings Hank describes. The lynchings Hank casually discusses also demonstrate the more general principle “of who’s on top as regards a gentleman’s owning his niggers.” Even a white man, Hank claims, is liable “ter be made a eggsample” in the instantiation of this principle.
In dramatizing this dialogue, Hopkins’ point is no doubt a serious one. But coming from Hank’s crude perspective, this justification for lynching reverberates sardonically and emphasizes the arbitrary use of these lynchings, while Hank’s offhand reference to the “circus” links the spectacle of the antebellum lynching to the present-day, carnival-like atmosphere of the turn-of-the-century spectacle lynching. As a brief account of lynching in a work of literature written in 1900, the dialogue Hopkins stages in *Contending Forces* does not present evidence—literary or otherwise—of the spectacle of an antebellum lynching. For such evidence, however, we can turn to William Wells Brown’s *Clotel; or the President’s Daughter* (1853), the first published African American novel and one which was contemporaneous with Hawthorne’s great romances of the early 1850s.

In “The Negro Chase,” Chapter III of *Clotel*, Brown incorporates into his novel an 1842 account of a lynching that resulted when two slaves “had run off owing to severe punishment” (74). Brown’s retelling of this story culminates when one of the two slaves, upon being captured, “committed an unpardonable offence: he resisted, and for that he must be made an example on their arrival home” (98 my emphasis). Brown then provides a succinct description of the events to follow: “A mob was collected together, and a Lynch court was held, to determine what was best to be done with the negro who had had the impudence to raise his hand against a white man. The Lynch court decided that the negro should be burnt at the stake” (98). Instead of describing the execution himself, Brown, anticipating Wells’ campaign by some forty years, lets the “facts” of the event (or at least their representation in the white press) speak for themselves by citing at length a
description of the lynching detailed in the *Free Trader*, a local white paper in
Natchez, Mississippi. Below I cite Brown, citing the Natchez *Free Trader* of June
16, 1842:

A Natchez newspaper, the *Free Trader*, giving an account of [the lynching] says,

“The body was taken and chained to a tree immediately on the banks of
the Mississippi, on what is called Union Point. Faggots were then collected
and piled around him, to which he appeared quite indifferent. When the work
was completed, he was asked what he had to say. *He then warned all to take
example by him* [my emphasis], and asked the prayers of all around; he then . .
. said, ‘Now set fire—I am ready to go in peace!’ The torches were lighted,
and placed in the pile, which soon ignited. He watched unmoved the curling
flame that grew, until it began to entwine itself around and feed upon his
body; then he sent forth cries of agony painful to the ear, begging some one to
blow his brains out; at the same time surging with almost superhuman
strength, until the staple with which the chain was fastened to the tree (not
being well secured) drew out, and he leaped from the burning pile. At that
moment the sharp ringing of several rifles was heard: the body of the negro
fell a corpse on the ground. He was picked up by some two or three, and again
thrown into the fire, and consumed, not a vestige remaining to show that such
a being ever existed.” (76-77)

By quoting this account in his novel Brown (again, like Wells in her
campaign) draws upon the authority of the white press to authenticate the horrors of
the lynching. Brown’s citation also calls attention to the white press’s role in
witnessing and legitimating this form of extralegal capital punishment, an argument Wells will later make explicit in her anti-lynching campaign. The horrors of the Natchez lynching do not require explication, but I have italicized the self-condemnatory role the *Free Trader* attributes to the condemned slave in order to highlight his participation in the execution ritual. Indeed, not only must the slave "be made an example," as Brown's narrator earlier put it; he is also made to identify himself as such, that is, as "an example." Whether or not the condemned slave says what the *Free Trader* ascribes to him, the account of the warning he offers to others serves to legitimate the lynching by calling to mind a key scene in the dramaturgy of the death penalty as a lawful, public event: namely, the condemned's advice to spectators to take himself or herself as an example. As recent historians of the death penalty have shown, such a role was frequently played by the legally condemned on "Hanging Day," the day on which a community would gather round the gallows to witness a lawful execution.  

The description of the Natchez lynching in *Clotel* further illustrates the extent to which lynch law draws from the cultural rituals legitimating the legal administration of the capital punishment: "Nearly 4,000 slaves were collected from the plantations in the neighbourhood to witness this scene," writes Brown, picking up the account of the lynching where the *Free Trader* leaves off. "Numerous speeches were made by the magistrates and ministers of religion to the large concourse of slaves, warning them, and telling them that the same fate awaited them, if they should prove rebellious to their owners" (77). The many speeches delivered by magistrates and ministers clearly play off the "execution sermon," a classic genre within the
broader category of gallows literature. Indeed, the execution sermon performed a fundamental role in the cultural ritual of capital punishment by inviting spectators to identify with the condemned and by exhorting them to take the condemned as an example. The speeches at the Natchez lynching, coupled with the condemned slave’s self-condemnation and the presence of the enormous crowd, function similarly to legitimate this illegitimate assumption of sovereign authority.

Even so, almost everyone in attendance at the lynching would have recognized it as an illegal act. The illegality of the act was heightened by the fact that in 1839, three years before the Natchez lynching, Mississippi, along with Alabama, became the only Southern state to have abolished public executions (although both Mississippi and Alabama briefly reinstated the practice of public executions around the turn of the century). Whereas every Northern state moved lawful executions behind prison walls between 1830 and 1860, most Southern states did not do so until the 1880s and 90s, and North Carolina, Mississippi (for the second time), Kentucky, and Florida did not abolish public executions until 1909, 1916, 1920, and 1923 respectively. The illegality of the Natchez lynching was further emphasized by its mode of execution: death by burning at the stake. Although this method of execution has a long history in English jurisprudence and was a legal option available to punish slaves found guilty of heinous crimes in Southern states, the legal practice was rare in the eighteenth century and virtually unheard of in the nineteenth century (Banner 70-71).

It was of course precisely this means of execution, compounded with prolonged public torture, that occurred many times in the South during the late
nineteenth and early twentieth centuries. On the one hand, Thomas Dixon, Thomas Nelson Page, and other writers of the Plantation School downplayed the barbarity of these lynchings and plotted lynching scenarios in their fiction in order to reinforce or perpetuate racial stereotypes and to justify lynch law. On the other, African American organizations and writers strove to unsettle these racist assumptions by turning the conventional lynching plot on its head. For instance, the National Baptist Convention commissioned the black fiction writer Sutton E. Griggs to write a work in response to Dixon’s immensely popular historical romance, *The Leopard’s Spots* (1902). To this end, Griggs wrote a counter-romance, *The Hindered Hand; or Persecution of the Lowly* (1905), which was published in 1905, the same year that saw the publication of *The Clansman*, Dixon’s sequel to *The Leopard’s Spots*.

Taking a page out of Brown’s *Clotel*, Griggs wove into his romance a horrific account of an actual lynching that was reported in the *Vicksburg Evening Post* on February 13, 1904. Realizing that the gruesome details of the lynching—which involved excessive torture, dismemberment, and death by burning—conflicted with the romance’s happy ending (the marriage of its central characters), Griggs justified the inclusion of that scene in “Notes for the Serious,” an afterword appended to the work: “The details of the Maulville burning,” Griggs wrote, “were given the author by an eyewitness of the tragedy, a man of national reputation among the Negroes. Some of the more revolting features of the occurrence have been suppressed for decency’s sake. We would have been glad to eliminate all of the details, but they have entered into the thought-life of the Negroes, and their influence must be taken into account” (299). Indeed, those details were gruesome enough. For instance,
Griggs’ narrator tells us not only how the fingers of each victim in this double lynching were “[o]ne by one . . . cut off and tossed into the crowd to be scrambled for,” but how a corkscrew was bored into the victims’ bodies and “the live quivering flesh” was “pulled forth” (133). For Griggs, these details merit description because they exemplify the horrors of lynching as nothing else can.

No fiction writer at the turn of the century worked more with the lynching plot as ideological narrative and political conspiracy than Griggs. In each of his five novels, *Imperium in Imperio* (1899), *Overshadowed* (1901), *Unfettered* (1902), *The Hindered Hand* (1905), and *Pointing the Way* (1908), Griggs used the lynching plot as both a structuring principle and as a political target. If no fiction writer at the time wrote more about lynching is his or her fiction, no one treated the subject with greater complexity than Charles W. Chesnutt did in his 1901 novel, *The Marrow of Tradition*. Like the lynching scene in *The Hindered Hand*, the elaborately planned lynching in *The Marrow of Tradition* promises to be every bit the spectacle: “Already the preparations were under way for the impending execution,” Chesnutt’s narrator tells us shortly after a black suspect has been arrested in connection to the robbery and murder of an eminent white woman. “A T-rail from the railroad yard had been procured, and men were burying it in the square before the jail. Others were bringing chains, and a load of pine wood was piled in convenient proximity. Some enterprising individual had begun the erection of seats from which, for a pecuniary consideration, the spectacle might be the more easily and comfortably viewed” (219).

But Chesnutt does not stop there in staging this scene of mob violence. His narrator also tells us that “the rail-roads would run excursions from the neighboring
towns in order to bring spectators to the scene” and that “the burning was to take place early in the evening, so that the children might not be kept up beyond their usual bedtime” (219). We even learn that “several young men [were] discussing the question of which portions of the negro's body they would prefer for souvenirs” (219). But unlike the other literary lynchings in the African American literature I have examined or alluded to in this chapter, Chesnutt’s criticism of lynch law does not depend on a dramatic enactment of the spectacle itself. Instead, it focuses on how that act is plotted and how it stands in relation to the law. To examine that plot and its engagement with political and legal discourse concerning lynching, my next chapter develops a cross-examination of Chesnutt’s writing and the Ohio antilynching campaign, a movement in state politics to secure an effective statute to help prevent the abominable practice of lynching. Like Douglass, Wells, and the African American fiction writers I have examined, Chesnutt broadened the scope of criminal responsibility for mob violence in order to make spectators in part accountable for lynching and to rally support among Northerners for federal anti-lynching legislation.

1 In Lynch Law: An Investigation into the History of Lynching in the United States (1905), the first academic study on the subject, James E. Cutler describes lynching as a “criminal practice which is peculiar to the United States” (1). Cutler then goes on to define lynching as “a practice whereby mobs capture individuals suspected of crimes, or take them from officers of the law, and execute them without any process at law, or break open jails and hang convicted criminals, with impunity...” (1). For the lynching statistics I use in this chapter, see Note 3 below.

2 These figures come from Tlnay and Beck’s landmark sociological study, A Festival of Violence (1995). Rather than the year 1880 as a starting date, some scholars begin their investigation of lynching with 1882, the year the Chicago Tribune began recording the annual number of lynchings. Unless otherwise noted, the statistics I use are from Tlnay and Beck.
See Hall, *Revolt against Chivalry*, 223.

This excerpt from the *DeSoto Democrat* is quoted in the *New Orleans Daily Picayune* (October 25, 1886, 8). For a somewhat different treatment of the *DeSoto Democrat*’s editorial, see Tolnay and Beck, 87-88.

Wells repeatedly makes this point in *Southern Horrors*, the first of her anti-lynching pamphlets. For instance, in “The New Cry” (Chapter III), she writes: “To palliate this record [of white mob violence]. . . and excuse some of the most heinous crimes that ever stained the history of a country, the South is shielding itself behind the plausible screen of defending the honor of its women. This, too, in the face of the fact that only one-third of the 728 victims to mobs have been charged with rape, to say nothing of those that one-third who were innocent of the charge” (61).


In addition to Habermas’ *Legitimation Crisis*, see Antonio Gramsci’s notion of “hegemony,” *Selections from the Prison Notebooks*, 195-96, 246-47. See Gordon S. Wood, “New Developments in Legal Theory,” for an overview of an approach in critical legal studies that takes up the notion of legitimation.
8 The quotation I have cited comes from Book II of *The Leopard's Spots*, specifically when Dixon's narrator describes how “country people had moved into the town, seeking refuge from a new terror that was growing of late more and more a menace to a country home, the roving criminal negro” (200 my emphasis). The image of the “roving criminal negro,” however, pervades Dixon's romance. For instance, a chapter entitled “The Negro Uprising” from Book I speaks of “marauding bands of negroes armed to the teeth terrorizing the country, stealing, burning and murdering” (100).

9 It is important to note that Mark Twain did not publish “The United States of Lyncherdom” during his lifetime. As L. Terry Ogge suggests, it is likely that Twain simply forgot about the essay he shelved, intending to publish it the next time a series of lynchings took place (incidentally, the annual number of lynchings declined each year after 1901, the year Twain wrote “The United States of Lyncherdom”). But it is just as likely, as Ogge acknowledges, that Twain decided not to publish the essay so as not to offend and potentially to lose his Southern readership. See Ogge, “I. Speaking Out about Race: ‘The United States of Lyncherdom’ Clemens Really Wrote.”

10 For instance, see Sommersby, “The Rape Myth in the Old South Reconsidered” and Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South*.

11 As biographer William McFeely puts it, in “Lynch Law in the South” Douglass “did not fully disavow the widely accepted assumption that the victims of the horrible executions were to blame for their fate, that black men were indeed a sexual threat to Southern white women” (361). See also Tommy L. Lott’s “Douglass on the Myth of the Black Rapist” for a sustained discussion of Douglass’ failure to address the rape accusation. It is important to note, however, that Douglass directly confronts the rape charge in the few essays and speeches he delivered after his exposure to Ida B. Wells’ work and shortly before his death. See, for instance, “The Lessons of the Hour,” the 1894 speech and essay I briefly discussed earlier in the body of my text.

12 The first two quotations are from *The Daily Commercial* (May 25, 1892); the quotation containing the threat of castration is from the *Evening Scimitar* (May 25, 1892). Wells cites this material in the opening chapter of *Southern Horrors*.

14 For the history of failed efforts to establish an anti-lynching bill at the federal level, see Claudine L. Ferrell’s *Nightmare and Dream: Antilynching in Congress, 1917-1922.*


16 Although racial lynchings had long been a problem in the nineteenth century, Hale argues that in the twentieth century there was “something new about lynchings in public, attended by thousands, captured in papers by reporters who wanted a souvenir and yet failed to get a coveted finger, toe, or fragment of bone. More was at stake than putting African American southerners brutally in their place . . . , for ‘private violence’ succeeded in limiting and often eliminating African American political activity and achieving significant white control of black labor. Explanations of the practice of lynching in the twentieth century, however, have focused on the persistence of the ‘barbaric’ practice of the past rather than its transformation, in the case of spectacle lynchings, into a peculiarly modern ritual” (202).

17 For a discussion of “Hanging Day” and its accompanying rituals in early American history up through the first few decades of the nineteenth century, see Banner, “Hanging Day” in *The Death Penalty*; Louis Masur’s “The Design of Public Executions in the Early American Republic” in *Rites of Execution,* and Hal tunen, “The Murderer as Common Sinner” in *Murder Most Foul.*

18 For a list of the years during which public executions were abolished in both the North and the South, see Notes 18 and 20 in Banner, *The Death Penalty,* 443-444.
Chapter 4

“The Necessity of an Example”:
Charles W. Chesnutt and the Ohio Anti-Lynching Campaign

[T]he question this book raises concerns the civilization of the white race, not of the black race, in the South. Is that civilization on the retrograde toward barbarism? And is the penalty for the awful iniquity of lynch law to be the growth of a love of turbulence, a passion for violence, an appetite for blood, a savage delight in torture, like that frenzy of the Iroquois which in the seventeenth century swept the forests of Canada and the Middle West almost clear of neighboring tribes, or like the Spanish descent from the chivalry of the middle ages to the cruelty of the Inquisition.

—Review of The Marrow of Tradition (1901)

The chief constitutional objection to [anti-lynching] legislation is that the federal Government has no more warrant to step in to punish lynching in the States than it has to prevent or punish any other form of murder or any other crime—arson, for example. I think it is safe to say that lynching is not simply murder; that it is murder plus something else.

—James Weldon Johnson, Testimony before the U.S. Senate (1926)

The lynching plot takes center stage in Chesnutt’s The Marrow of Tradition. It dramatically unfolds in the novel’s middle chapters and involves the familiar story of a black man who has “assaulted” a white woman. As Chesnutt’s narrator describes the scenario from the perspective from the (white) people: “The anger of the people was at a white heat. A white woman had been assaulted and murdered by a brutal negro. . . . To take the time to try him would be a criminal waste of public money. To hang him would be too slight a punishment for so dastardly a crime. An example must be made” (219). The inexorable need to make an example of this “brutal negro” mobilizes “the people” into action, and the novel’s lynching, as I noted last at the end of Chapter 3, promises to be a grand display of the people’s sovereign authority over those who break its written and unwritten laws.
Like Hawthorne’s *The House of the Seven Gables* and Dunbar’s “The Lynching of Jube Bensen,” the murder plot in *The Marrow of Tradition* is based upon “suspicious circumstances” (199) that, as we shall later see, were manufactured by the actual perpetrator of the crime. Chesnutt’s novel, like Dunbar’s short story, alters that murder plot through an exploration of the interrelated issues of race and gender, the pivot on which the conventional lynching plot turns. *The Marrow of Tradition*, however, significantly complicates the tight structure and condensed action of the lynching plot in Dunbar’s story through its sustained development of character, conflict, and social milieu and by embedding that plot within a larger cultural narrative of the color-line.

Part of the novel’s complexity is registered in the 1901 review of *The Marrow of Tradition* in *Modern Culture* that I have cited as an epigraph to this chapter.¹ For this reviewer, Chesnutt’s novel raises an unsettling question about the white man’s “civilization” in the United States, particularly in regard to the “awful iniquity of lynch law” and the “passion for violence,” the “appetite for blood,” and the “savage delight in torture” it fosters. “Is that civilization on the retrograde toward barbarism?,” the reviewer asks. The answer to that question, this review implies, depends on whether the current era of Lynch Law will persist into the future. If it does, then turn-of-the-century America will be remembered historically alongside the excessive cruelties and injustices of the Spanish Inquisition abroad and the homegrown horrors of what the *Modern Culture*’s reviewer calls the Iroquois “frenzy.”
My chapter’s other epigraph comes from James Weldon Johnson’s testimony in support of a federal anti-lynching bill before a Senate judiciary committee in 1926, a date one year beyond the historical scope my dissertation investigates. In that testimony, Johnson objects to the opponents of the bill who claim that the Federal government has neither the right nor the authority to circumvent State jurisdiction in an effort to punish private citizens who engage in mob violence. For Johnson, however, lynching constitutes a special case. Not only is lynching a crime rarely, if ever, prosecuted under state laws; it is not “not simply murder” but, in Johnson’s words, “murder plus something else” (qtd. in White). That “something else” refers, of course, to racial prejudice, and today an act of lynching would be considered a hate crime. But Johnson’s apt phrase also suggests the complicity of State and local officials in acts of mob violence that so often go unpunished—an act with which the Federal government becomes, in turn, complicitous in its inability or unwillingness to see a distinction between lynching and other forms of murder. Coming as it does a quarter century after the publication of Chesnutt’s novel, Johnson’s remarks before the Senate serve as an important reminder that lynching remained a considerable problem long after the publication of The Marrow of Tradition.

This chapter takes up the issue of anti-lynching legislation through a cross-examination of Chesnutt’s writing, especially his writing of The Marrow of Tradition, in relation to the Ohio anti-lynching campaign of 1892-1900. The Ohio campaign is crucial to my argument not only because Chesnutt was living and working as a legal stenographer and fiction writer during this time in Cleveland, Ohio—the campaign’s
epicenter—but also because the campaign centered around the drafting and passage
of an anti-lynching bill that made communities in which lynchings occurred
financially liable and socially responsible for acts of mob violence. This line of
argument culminates near the end of the chapter when I entwine a comparative
analysis of Chesnutt’s novels, *The Marrow of Tradition* and *The Colonel’s Dream*
(1905), Ida B. Wells’ anti-lynching campaign, and specific aspects of Ohio’s
movement to pass an anti-lynching bill around an ironic representation of “How Not
to Prevent a Lynching,” a sardonic chapter heading from *The Marrow of Tradition.*

As I mentioned in Chapter 3, the title of this chapter is also an ironic chapter
heading from Chesnutt’s novel. The phrase not only refers specifically to a key
element in lynch law’s rhetoric of legitimation—“the necessity of an example”
(180)—but through its deployment the phrase both exemplifies the state of exception
posed by lynch law’s apologists and characterizes the histrionics of its rhetoric of
justification. In appropriating Chesnutt’s ironic chapter heading for my title, I hope
in turn to give it a further ironic twist by emphasizing the absurd position into which
Chesnutt, Ida B. Wells, James Weldon Johnson, and other African American writers
were put by the state and federal governments: the necessity of presenting painfully
obvious examples of how blacks in the South and elsewhere—Ohio, for example—
were brutally murdered through mob violence in spite of, and in some cases because
of, (ineffective) State laws prohibiting lynching as a cultural practice. Again, my
chapter comes to this conclusion in its final section, “How Not to Prevent a
Lynching.” I begin, however, with Chesnutt’s literary politics of lynching and the
example of *The Marrow of Tradition.*
Chesnutt's Literary Politics of Lynching and *The Marrow of Tradition*

Any discussion of Chesnutt's literary politics must acknowledge his oft-cited journal entry of 1882: "If I do write," Chesnutt writes,

I shall write for a purpose, a high, holy purpose, and this will inspire me to greater effort. The object of my writings would be not so much the elevation of the colored people as the elevation of the whites—for I consider the unjust spirit of caste which is so insidious as to pervade a whole nation, and so powerful as to subject a whole race and all connected with it to scorn and social ostracism—I consider this a barrier to the moral progress of the American people; and I would be one of the first to head a determined, organized crusade against it. Not a fierce indiscriminate onslaught; not an appeal to force, for this is something that force can but slightly affect; but a moral revolution which must be brought about in a different manner. (*Journal* 139-40)

As part of a broader tradition of political resistance beginning with Frederick Douglass, whose biography Chesnutt would go on to write almost two decades later, Chesnutt explains here how he would use literature as a way of bringing about a "moral revolution" within white readers, the primary audience for whom he would write (Andrews, Knadler, McElrath, Sundquist, Thomas "Legal Arguments"). The cultural institution and practice of lynch law would become a central concern for Chesnutt, as it would for both Douglass and Wells; and like them, Chesnutt would go on to attack lynch law in many of the essays he wrote and speeches he delivered on
his way to becoming a well known writer of fiction. In fact, the same year Douglass wrote “Lynch Law in the South” and Wells began her anti-lynching campaign, Chesnutt delivered a speech, “Why I Am a Republican” (1892), in which he denounced “the present Democratic regime” under which “a colored man accused of almost any crime is liable to be executed without judge or jury.” “More men,” he went on, “have been lynched in the South in the last year of enlightened, civilized Democratic rule, than during the entire carpet-bag era.”

By speaking out against lynching, Chesnutt joined Wells, Douglass, and other influential African Americans across the nation in condemning racial acts of mob violence. But unlike Wells’ and Douglass’ overtly political writing, Chesnutt’s most pointed attack of lynching occurred in his fiction. “The Sheriff’s Children” (1889) *Mandy Oxendine* (c. 1897), *The Colonel’s Dream* (1905), and “The Doll” (1912) all make important statements about lynching or include lynching scenes, but *The Marrow of Tradition* offers Chesnutt’s most comprehensive treatment of the subject. In *The Marrow of Tradition*, Chesnutt not only exposes the lynching plot as a contrived story and political conspiracy but also uses it to organize the work as a whole. Indeed, one could say, as I suggested earlier, that the lynching plot is central to the novel both structurally and thematically: it unfolds at the structural center of the work, thus bringing to a climax a series of comparatively minor racial conflicts (e.g. the segregated car scene and the scene in which Dr. Miller is excluded from the surgery at the Carterets’ home), and precipitates the out-and-out race riot with which the novel ends. That the novel’s lynching is ultimately prevented in no way diminishes its import in an analysis of lynch law and its rhetoric of justification. As
recent theorists in the interdisciplinary field of sociology and history have argued:
“Averted lynchings and episodes of near violence undoubtedly are of genuine moral and analytical importance in their own right. . . . [T]hey may be used . . . to help us think more systematically about lynchings as a generic happening, about how to study them, and about how to use them to penetrate the surface of white supremacy and unpeel the layers of meaning” (Griffen, Clark, and Sandberg 28). In their essay, “Narrative and Event: Lynching and Historical Sociology,” these critics go on to examine enacted and prevented lynchings under the general rubric of “lynchings-in-the-making” (29).

*The Marrow of Tradition*'s lynching-in-the-making takes shape following the robbery and apparent murder of old Mrs. Ochiltree, an elderly matriarch of one of the community’s oldest and most prominent families. In Chapter 20, “A Shocking Crime,” Chesnutt presents the discovery of the crime and the evidence concerning it the morning after it occurs from the perspective Olivia Carteret, Ochiltree’s niece, as she enters and explores the crime scene. Mrs. Ochiltree’s house. This point of view, however, quickly gives way to the official perspective of the law as first a “policeman, and a little later a sheriff’s officer, arrived at the house and took charge of the remains to await the arrival of the coroner.” “By nine o’clock,” Chesnutt’s narrator continues, “a coroner’s jury had been summoned, who, after deliberation, returned a verdict of willful murder at the hands of some person or persons unknown, while engaged in the commission of a burglary” (178).

The next step in the official and, as it were, unofficial investigation happens just as quickly: “No sooner was the verdict announced than the community, or at least
the white third of it, resolved itself spontaneously into a committee of the whole to discover the perpetrator of this dastardly crime, which, at this stage of the affair, seemed merely one of robbery and murder" (178). By calling attention to the racial partiality of this "committee of the whole," and by indicating at this point that the crime "seemed merely one of robbery and murder" (my emphasis), Chesnutt lays the foundation for the lynching plot to come. Nothing more than a glorified mob "[a]cting independently of the police force" (179), this committee almost immediately turns its attention to the community's black population, which has visibly shrunk since news of the murder has spread through Wellington, the fictional city in which the novel is set. But as the narrator is quick to point out: "This [shrinkage] could not be taken as any indication of guilt, but was merely a recognition of the palpable fact that the American habit of lynching had so whetted the thirst for black blood that a negro suspected of crime had to face at least the possibility of a short shrift and a long rope, not to mention more gruesome horrors, without the intervention of judge or jury" (179). In setting the stage for the lynching plot Chesnutt, like Douglass and Wells before him, diagnoses mob violence as an "American habit," not simply a Southern one, and emphasizes the "gruesome horrors" that usually accompany an execution enacted "without the intervention of judge or jury."

The capture and incarceration of Mrs. Ochiltree's suspected murderer occurs off stage, but we learn the suspect's identity and the evidence against him through a dialogue which begins the next chapter, "The Necessity of an Example." With an abrupt change in the setting, the chapter begins in the office of the Morning Chronicle, a local newspaper that was earlier described as "the leading organ of [the
Democratic] party and the most influential paper in the State” (2). Here we join a conversation in progress among Major Carteret, General Belmont, and Captain McBane—the novel’s chief white supremacists and community leaders—as they discuss the question of what should be done with “the scoundrel when we catch him” (180). And here, too, we learn, as do Carteret, Belmont, and McBane, that Sandy Campbell, a longtime and faithful servant to the Delameres (another one of Wellington’s oldest and most distinguished families) has been apprehended and charged with the murder and that his soiled clothes from the previous night, along with gold coins belonging to Mrs. Ochiltree, have been found in his room and collected as evidence.

Within the novel’s ironic representation of a dominant ideology of white supremacy, Carteret, Belmont, and McBane each embody discrete perspectives and degrees of racism and bigotry. Taken together they constitute, as they call themselves behind closed doors, “the Big Three” of Wellington politics—a self-appointed group that has come together to vanquish so-called “Negro Domination” and to restore the rule of the white man’s government, even though this group, as the narrator points out, represented “no organized body” and were “clothed in no legal authority” (180). Whereas Carteret and McBane represent refined and crude forms of white supremacy respectively, Belmont occupies a middle position of realpolitics that combines the gentility and respectability of Carteret’s bigotry with the barefaced racism of McBane. As the conversation about the nature of Sandy’s crime and the punishment he deserves continues, McBane is the first to offer a theory of black criminal behavior and to propose a course of action to be taken. In reply to Carteret’s incredulity over
Sandy—a “good negro,” by his standards—being named as the culprit, McBane “sententiously” remarks: “All niggers are alike . . . The only way to keep them from stealing is not to give them the chance. A nigger will steal a cent off a dead man’s eye. He has assaulted and murdered a white woman, —an example should be made of him” (181). In a series of claims, none of them necessarily following from the others, McBane voices the popular belief that blacks are innately depraved and that summary execution is the only way to deter their criminal behavior. No evidence suggests that a sexual assault occurred or was the object of the crime, but McBane’s attention to the fact that a “white woman” has been “assaulted” invokes the familiar rhetoric of rape, race, and the necessity of an example.

General Belmont, in turn, responds to McBane’s remarks by observing that Sandy will certainly “swing for” the crime (a popular trope that could be referring to either legal or extralegal execution), and the following dialogue ensues among Wellington’s Big Three:

“He’ll swing for it,” observed the general.

... 

“He should burn for it,” averred McBane. “I say, burn the nigger.”

“This,” said Carteret, “is something more than an ordinary crime, to be dealt with by the ordinary processes of law. It is a murderous and fatal assault upon a woman of our race, —upon our race in the person of its womanhood, its crown and flower. If such crimes are not punished with swift and terrible directness, the whole white womanhood of the South is in danger.”

“Burn the nigger,” repeated McBane automatically.
“Neither is this a mere sporadic crime,” Carteret went on. “It is symptomatic; it is the logical and inevitable result of the conditions which have prevailed in this town for the past year. It is the last straw.”

“Burn the nigger,” reiterated McBane. “We seem to have the right nigger, but whether we have or not, burn a nigger. It is an assault upon the white race, in the person of old Mrs. Ochiltree, committed by the black race, in the person of some nigger. It would justify the white people in burning any nigger. The example would be all the more powerful if we got the wrong one. It would serve notice on the niggers that we shall hold the whole race responsible for the misdeeds of each individual.”

“In ancient Rome,” said the general, “when a master was killed by a slave, all his slaves were put to the sword.”

“We couldn’t afford that before the war,” said McBane, “but the niggers don’t belong to anybody now, and there’s nothing to prevent our doing as we please with them. A dead nigger is no loss to any white man. I say, burn the nigger.”

“I do not believe,” said Carteret, who had gone to the window and was looking out, —“I do not believe that we need trouble ourselves personally about his punishment. I should judge, from the commotion in the street, that the public will take the matter into its own hands. I, for one, would prefer that any violence, however justifiable, should take place without my active intervention.”
“It won’t take place without mine, if I know it,” exclaimed McBane, starting for the door.

“Hold on a minute, captain,” exclaimed Carteret. “There’s more at stake in this matter than the life of a black scoundrel. Wellington is in the hands of negroes and scalawags. What better time to rescue it?”

“It’s a trifle premature,” replied the general. “I should have preferred to have this take place, if it was to happen, say three months hence, on the eve of the election …” (182-83)

I cite this dialogue at length because it not only depicts the moment at which the lynching plot is broached (and thus becomes the central plot in The Marrow of Tradition), but also because it puts into play or dialogizes, to use Mikhail Bakhtin’s term, disparate voices and visions within a dominant ideology of lynch law and its rhetoric of justification. In this respect, we can follow Henry Louis Gates, Jr. and other recent critics of African American literature by likening Chesnutt’s ironic appropriation of white lynching discourse to Bakhtin’s notion of a “double-voiced” discourse, a minoritarian language or politics of resistance that speaks through and against the official, monologic language of a dominant cultural discourse. In The Marrow of Tradition, the competing perspectives within the novel’s representation of white supremacy ultimately come together to give a concerted account of black male aggression and the necessity of lynching, but their depiction here provides a behind-the-scenes look at the various strands and rhetorical registers that make up the seemingly seamless story of the lynching plot as cultural narrative. While such a story is presented from a monological perspective that goes without saying (as in
Philip A. Bruce’s “The Negro and Criminal Law,” which I examined in Chapter 3), Chesnutt’s presentation of the Big Three’s conversation emphasizes the extent to which common arguments in support of lynching cannot be separated from the rhetorical forms through which they take shape. For instance, McBane’s coarse, laconic discourse expresses the voice from the streets and the uncensored vengeance of a racist people, while Carteret speaks the refined bigotry of parlor rooms and diner parties. It is, however, the purpose of lynch law’s rhetoric of legitimation to mask these differences in order to provide a concerted story that not only goes without saying but which presents itself as authoritative and unimpeachable.

To tease out the various layers of this discourse, it is necessary to look more closely at the dialogue cited above. Beginning with an equivocation of the death penalty and lynching (“He’ll swing for it”), punctuated by McBane’s insistent imperative, “Burn the nigger,” and concluding with an overt allusion to the political utility of Mrs. Ochiltree’s death, this dialogue offers a complex rendering of the logic, assumptions, and cultural attitudes at work in The Marrow of Tradition’s lynching plot. To begin with, the dialogue exemplifies the way in which Carteret and McBane express opposing perspectives within a white supremacist ideology, even though they essentially advocate the same course of action: death through mob violence. On the one hand, Carteret provides a genteel description of the crime and the response he believes it merits. Like Bruce in The Plantation Negro as Freeman, he transforms the criminal act purportedly committed by Sandy into a symbolic act committed by the black race against “the whole” of Southern white womanhood. Such a crime, Carteret argues, necessitates death as a means of self-defense—or rather, the defense
of defenseless white women. It creates a state of exception in which established laws may be suspended to protect the lives of white citizens. In Carteret’s words, Sandy’s alleged crime “is a murderous and fatal assault upon a woman of our race, —upon our race in the person of its womanhood, its crown and flower.” Carteret’s mid-sentence revision from an “assault upon a woman” to one “upon our race” reflects the lynch plot’s logic of race-against-race rather than a crime committed by one individual against another. From this perspective Carteret, with a histrionics characteristic of lynch law’s rhetoric of justification, concludes that “[i]f such crimes are not punished with swift and terrible directness, the whole white womanhood of the South is in danger.” Provoked by McBane’s persistent assertion, “Burn the nigger,” he goes on to add that such a crime is not “sporadic” but rather “symptomatic.” As he explains: “It is the logical and inevitable result of the conditions which have prevailed in this town for the past year.”

McBane, in contrast, presents an argument for Sandy’s lynching in crude terms and vulgar racism. In fact, he characterizes Sandy’s alleged crime in a way that directly echoes and, in effect, is made to parody the elevated rhetoric of Carteret’s genteel racism: “It is an assault upon the white race,” McBane says, “in the person of old Mrs. Ochiltree, committed by the black race, in the person of some nigger.” In rephrasing Carteret’s claim in these terms, McBane takes the argument a step further by suggesting that lynching the “wrong” black person would send a more compelling message: “It would justify the white people in burning any nigger” McBane avers. “The example would be all the more powerful if we got the wrong one. It would serve notice on the niggers that we shall hold the whole race responsible for the
misdeeds of each individual” (my emphasis). Again, this attention to racial rather than individual responsibility is indicative of the lynching plot’s ideological transformation of an alleged interracial crime into a virtual war between the races. The particular construction McBane gives to the plot pushes the idea of racial responsibility and exemplarity to its logical conclusion. His argument, however, is also telling in that it reveals an unstated premise that genteel apologists of lynch law take pains to avoid: that whites possess an absolute authority over blacks accused of committing crimes against whites.

As if to bring this assumption to the surface of the conversation, General Belmont supplements McBane’s theory of racial responsibility with an example drawn from classical antiquity: “In ancient Rome,” Belmont says, “when a master was killed by a slave, all his slaves were killed.” Although strictly speaking an example that turns on class rather than race, such an act (i.e. the penalty of death) demonstrated both through and upon its subjects instantiates the principle of total authority explicit in McBane’s racial theory and implicit in Carteret’s racialization of the murder allegedly committed by Sandy. While Belmont’s learned reference to ancient Rome complements the sophisticated rhetoric of Carteret’s genteel bigotry, Carteret himself disapproves of any display of violence which would point back to themselves, the Big Three, as the source from which it emanated. Instead, Carteret proposes a scenario in which “the public,” as he puts it, would “take the matter into its own hands,” thus precluding the need of “active intervention” on their part. By shifting responsibility for the violence from themselves to “the public” at large, Carteret advocates a theory of popular sovereignty in which the will of the people is
the law of the land. In such a scenario, Carteret argues, none of them would
“personally” bear responsibility for Sandy’s lynching, even though they would have
done a great deal to agitate the people into this course of action.

By the end of the dialogue, the lynching plot as cultural narrative gives way to
the lynching plot as political conspiracy when Carteret and Belmont overtly allude to
the important role a carefully planned act on their part will play in local, and
potentially state, politics. Immediately following the Big Three’s meeting, Carteret
puts their plot in motion by printing an extra edition of the *Morning Chronicle* in
which Sandy’s alleged crime is described “as an atrocious assault upon a defenseless
old lady, whose age and sex would have protected her from harm at the hands of any
one but a brute in the lowest human form” (185). Again, even though there is no
evidence to indicate a sexual assault was committed, Carteret’s article implies such a
crime, inviting readers to imagine the horrible details themselves. As an authoritative
account published by the State’s leading paper, Carteret’s editorial brings together the
multifarious aspects of the Big Three’s lynching plot into the single, monologic story.
This particular crime, the editorial argues, only serves to confirm a growing opinion
among the (white) people “that drastic efforts were necessary to protect the white
women of the South against brutal, lascivious, and murderous assaults at the hands of
negro men” (185). By appealing to the necessity defense and by stereotyping black
men as responsible for “brutal, lascivious” attacks and white women as helpless and
in need of defense, the editorial invokes the obligatory rhetoric of black-on-white
rape in order to set up the justification for lynch law that follows: “If an outraged
people,” the article (or the narrator’s paraphrasing of it) concludes,
justly infuriated, and impatient of the slow processes of the courts, should assert their inherent sovereignty, which the law after all was merely intended to embody, and should choose, in obedience to the higher law, to set aside, temporarily, the ordinary judicial procedure, it would serve as a warning and an example to the vicious elements of the community, of the swift and terrible punishment which would fall, like the judgment of God, upon any one who laid sacrilegious hands upon white womanhood. (185-86)

In a single sentence, this statement in support of mob violence hits all the high notes in lynch law’s rhetoric of justification, differing only in its elevated tone and style from more blatant statements such as the De Soto Democrat’s justification of Reeve Smith’s execution, the example with which I began my discussion of lynching in Chapter 3. As part of the novel’s broadscale criticism of racial prejudice, Carteret’s editorial resonates sardonically with all the other pro-lynching and anti-black statements made throughout the narrative; while as a particular statement in support of lynching, it undoes or exposes the double speak of the Morning Chronicle’s official perspective. After all, to claim the “inherent sovereignty” of the people in a community in which two-thirds of “the people” are black is an egregious assumption of popular authority. Thus, in direct opposition to Carteret and his co-conspirators who take it upon themselves to speak and act on behalf of Wellington, Chesnutt’s narrator frequently speaks of “the whole people” against whom the Big Three persistently act. A telling instance occurs when the narrator contrasts the interests of Carteret, McBane, and Belmont, whom he likens to a “bigot, self-seeking demagogue, and astute politician” respectively, to what the narrator identifies as “the
peace of the state and the liberties of the people, —by which is meant the whole people, and not any one class, sought to be built up at the expense of another” (92 my emphasis).

Chesnutt’s emphasis here upon “the whole people” calls to mind Frederick Douglass’ use of that phrase in his 1892 essay, “Lynch Law in the South.” As I demonstrated in Chapter 3, Douglass uses that phrase in contradistinction to the self-serving few whom lynch law serves and to argue that lynching is not a regional but a national problem—a problem facing the American people as a whole. Chesnutt’s reference to “the whole people” carries this general resonance, but it also points to the political circumstances surrounding the 1898 Wilmington race riot, an attempted coup d'état in which scores of black residents were killed through a conspiracy among white leaders who claimed to be acting in the name of the people.\(^5\)

**Ohio’s 1896 Anti-Lynching Bill and The Marrow of Tradition**

If much of *The Marrow of Tradition*’s criticism over the last twenty years has focused on the novel’s relationship to the Wilmington race riots, I want to suggest that it is equally important to situate the novel in relation to Ohio’s anti-lynching campaign, an important movement in state and local politics.\(^6\) That movement would come to center around the passage of an anti-lynching statute in 1896, but it had its origins in the early 1890s with political activism in the state’s alternative presses, most notably in Harry C. Smith’s African-American paper, the Cleveland Gazette. The campaign culminated with a State Supreme Court decision regarding the anti-lynching statute’s
constitutionality in 1900, the year Chesnutt began exploring ideas for *The Marrow of Tradition*.

Chesnutt, in fact, may have even written certain scenes of the novel in direct response to the State’s anti-lynching campaign and its recent encounters with Judge Lynch. For instance, the passage I cited above from the *Morning Chronicle*’s justification of lynching provides possible evidence for this claim insofar as its language—particularly its appeal to “higher law” and popular sovereignty—closely echoes an 1897 editorial in an Ohio newspaper that responded favorably to the lynching of Charles Mitchell, a black man, for allegedly raping a white woman. “There are occasions when statute law abdicates in favor of higher law,” an editorial in the *Urbana Citizen and Gazzette* declared. “In dealing with human monsters each community is and always will be a law unto itself. . . . Law is a good thing; order is greatly to be desired. But the holy rights of humanity and God’s eternal justice are above law and order.”

Whether or not this editorial directly influenced the composition of *The Marrow of Tradition*, there can be no doubt that Chesnutt was well aware of Ohio’s movement for anti-lynching legislation. Indeed, Chesnutt could even be considered an active participant in the early stages of the campaign. At Smith’s invitation in 1892, Chesnutt joined the Resolutions Committee of Cleveland’s Board of Negro Ministers and wrote up the board’s resolves in an document that was published in Smith’s paper. Chesnutt’s article, “Resolutions Concerning Recent Southern Outrages,” took direct aim at the nation’s current lynching epidemic and, in one of its many clauses, identified certain “citizens of this Republic, whose only crime is that
they contain in their veins African blood”; these “citizens,” the article continued, are victims who “are daily and mercilessly, without any legal or moral justification, whipped, shot, hung, burnt at the stake, mutilated and flayed alive.” Chesnutt’s article went on to conclude with an invitation and “appeal to all good citizens” to demand “the enactment of proper laws and that our chief executive and the judges of our federal Courts do so construe the Constitution and laws of this land as to protect all citizens at home as well as abroad” (Essays 89). Insofar as it calls attention to the Constitution and those responsible for enforcing the law, Chesnutt’s Cleveland Gazette article is representative of the political discourse that laid the groundwork for Ohio’s burgeoning anti-lynching movement. That movement, as Chesnutt’s appeal to “our chief executives and the judges of our federal Courts” suggests, began as an ambitious campaign for a federal anti-lynching bill; for practical reasons, it later shifted to the more realistic goal of a state anti-lynching bill to be put before Ohio’s state legislature.

Harry C. Smith, the Cleveland Gazette’s editor, would later become a state representative and a leading figure in Ohio’s campaign for an anti-lynching bill. The other key figure was Albion Tourgée, the famous white author, lawyer, and black rights activist who was a literary mentor to Chesnutt and who would later become a close friend. While Smith in the early 1890s used his paper to expose the horrors of mob violence and to rally public support against lynch law, Tourgée, whose “Bystander” columns were frequently syndicated in Smith’s Gazette, had been working for years on developing a legislative response to lynching at the federal level. In fact, the creation of such a law was one of Tourgée’s chief goals as the
director of the National Citizens Equal Rights League, an organization he in founded in 1890. What brought Tourgee and Smith together to draft a proposal for anti-lynching legislation in Ohio was the 1894 abduction and lynching of Roscoe Parker, a black teenager charged with "complicity" in the murder of an elderly white couple (Parker was not charged with committing the murder but with having information regarding it).

The campaign officially began when Tourgee, in response to the Parker lynching, wrote an open letter to the State's governor, William McKinley. Granting the popular claim that lynchings "never occur except in a community whose citizens favor and approve such outrage" (qtd. in the Cleveland Gazzette), 9 Tourgee outlined a plan that, in addition to leveling criminal charges against participants in mob violence, called for community responsibility for mob violence by making the county in which the violence occurred financially liable to the victims or their next of kin. By appropriating lynch law's rhetoric of justification in this way (i.e. that the best citizens approve of the violence), Tourgee questioned the lynching plot's logic of holding a race responsible for an individual's act by ascribing community responsibility for acts of individual citizens. For if blacks as a group are to be held responsible for the alleged criminal acts of individuals of their race, then a community ought to be held responsible for individuals within it who participate in lynchings.

Smith later revised Tourgee's plan and introduced it as a bill to the state legislature on January 20, 1896. The following month the House Judiciary Committee recommended the passage of Smith's anti-lynching bill, but it was
defeated when it reached a vote, thanks to the efforts of Aquila Wiley, a House Democrat who took issue with the concept of community liability and the notion that Ohio, a “Northern State,” needed such a law in the first place. In a speech rife with the histrionics of lynch law’s rhetoric of justification, Wiley declared that “Nobody is lynched here except those who have been guilty of so heinous [a] crime that the indignation of citizens arises in an uncontrollable frenzy” (qtd. in Gerber, “Lynch Law” 47). The Smith Plan, as the anti-lynching bill came to be known, finally did pass on March 24, but only after weeks of painstaking campaigning among House Republicans.

Prior to 1896 only two states, Georgia and North Carolina (the state in which The Marrow of Tradition is set), had laws to combat mob violence. Both of these laws were established in 1893. North Carolina’s law was essentially weak and ineffective; it simply enabled sheriffs to deputize local citizens in the protection of prisoners and city officials to penalize sheriffs found negligent of duty. Georgia’s was equally ineffective, although on paper it had more bite to it. But whatever force the Georgia law had in principle was undercut by its inept language. For instance, it provided state officials to impose a prison term of one to twenty years for any person convicted of “mobbing or lynching . . . without due process of law” (qtd. in White 201). As Walter White has pointed out, “the wording of the [Georgia] bill implied that there might be a mobbing or lynching with due process of law” (201). Thus, in the origins of anti-lynching legislation at the state level (Georgia’s bill was the first passed), one can see the problematic tension between legal and extralegal forms of capital punishment.
If legislatures conflated distinctions between lynching and the lawful administration of the death penalty, it is not surprising to find private citizens and local officials at the time who saw lynching, under certain circumstances and for certain offenders, to be a justifiable response to alleged crimes. Georgia’s and North Carolina’s anti-lynching statutes, as one can imagine, were rarely, if ever, enforced when the victim of mob violence was black. The Ohio bill sought to change anti-lynching legislation both in principle and practice, and its principle of communal responsibility had an almost immediate influence on other state legislatures. Within four years of Ohio’s passage of the Smith Plan, five states—South Carolina, Kentucky, New Jersey, West Virginia, and Wisconsin—had adopted the Smith/Tourgeé principle of communal liability in drafting their own anti-lynching statutes.

But as my earlier reference to the 1897 lynching of Charles Mitchell suggests, Ohio’s anti-lynching law, like the many statutes it influenced in other states, did not in itself prevent mob violence. The Mitchell lynching, which involved the familiar charge of black-on-white rape, provided Ohio’s new law with an important test. Just three weeks after Mitchell’s family had sued for damages under the statute’s provisions, a county judge ruled the Smith Plan unconstitutional because it allotted the collection of public taxes for private purposes, and because it imposed fixed penalties for those convicted of committing mob violence (Gerber, “Lynch Law” 49). In 1900, the year when Chesnutt began drafting The Marrow of Tradition, the suit of Mitchell’s family reached Ohio’s Supreme Court on appeal, where the lower court’s ruling was overturned and the constitutionality of the Smith Plan was upheld.
From the origins of Ohio’s anti-lynching campaign in the early 1890s to its testing in the state’s Supreme Court decision, there were nearly a dozen lynchings or near lynchings of African Americans in Ohio, and it was during this time that Chesnutt’s literary career took off. During this time, Chesnutt not only explored lynching as a crucial theme in his writing but closely followed the developments in Tourgeé and Smith’s efforts to pass their bill. In a letter written in 1896, Chesnutt expressed his deep gratitude for the role Tourgeé played in the campaign: “Permit me as a citizen of this State, desirous of social order and good government,” Chesnutt wrote to Tourgeé,

to thank you for your kind collaboration with our Mr. H. C. Smith in securing the passage through the State legislature of the anti-lynching bill. It can do no harm, and if it did no more than simply to express by the mouth of its legislature the condemnation by the State of the abominable practice which has done so much to disgrace the country, it would be worth all the labor that has been spent in promoting its passage.” (Letters 92)

In writing The Marrow of Tradition, Chesnutt extended the principles espoused in the Ohio bill by engaging an anti-lynching politics designed to reach a national audience. As I have argued, he used the novel both to expose the lynching plot as a contrived, ideological narrative that holds all blacks responsible for the actual or alleged deeds of an individual of the race, and to show how lynching law’s rhetoric of legitimation served to absolve whites of responsibility for participating directly or indirectly in mob violence. That Chesnutt saw his novel participating in a broader, potentially national campaign against lynching is evident from the fact that
he had advance copies of the novel sent to Ida B. Wells, Thomas Fortune, and other influential figures in the fight against lynching.\textsuperscript{11} Through the literary form of the “purpose novel,” a genre Chesnutt self-consciously adopted and one his readers would and did associate with Harriet Beecher Stowe’s *Uncle Tom’s Cabin* (and Tourgeé’s *A Fool’s Errand*)\textsuperscript{12} he hoped to reach an audience much greater than that which “the mouth” of the Ohio State Legislature could reach. In short, Chesnutt intended *The Marrow of Tradition*, like Stowe’s novel and Wells’ campaign, to galvanize the nation into action.

But whereas Wells directly attacked lynch law and inscribed her readers in a process of disseminating the facts as she defined them, Chesnutt invested his readers in a literary plot that, while clearly opposing lynching, did not provide a clear solution to the problem. As one contemporary review of the novel put it with some ambivalence: “Whether Mr. Chesnutt has any solution of the [race] problem, this book does not disclose. It leaves it before the reader unrelieved by any intimation of a possible path into the light.”\textsuperscript{13} The immediate referent to this general observation is most likely the novel’s concluding scene. In it, Dr. Miller, the novel’s black protagonist, agrees to attend to the Carterets’ ailing son, even though the race riots—caused primarily by Carteret’s incendiary rhetoric in the *Morning Chronicle*—have just claimed the life of Miller’s own son. When Miller arrives at the Carterets’ home and inquires of their child’s condition, he is greeted with these words: “There’s time enough, but none to spare” (329). On the face of it, this closing scene strikes a note of guarded optimism; it suggests a possible reconciliation among the Carterets and Millers, two families related by blood but divided by race, as a symbolic gesture of
interracial unity. Such an impression, however, is not what Chesnutt originally intended to leave readers with. For in the scrapbook he kept while drafting *The Marrow of Tradition*, Chesnutt projected a decidedly pessimistic ending in outlining the basic structure for his new novel. In a memorandum headed “Plot for Short Story: Race Riot,” Chesnutt detailed the final scene of *The Marrow of Tradition*, save for one crucial exception: “the doctor,” he wrote, “moves away, in spite of nice things said, & moves away in a Jim Crow car” (qtd. in Andrews 125).

Chesnutt’s penchant for resisting closure as a way to burden the reader with the problem of the color-line and racial (in)justice can also be found in a scene oddly resonant with the novel’s conclusion: the scene in which Dr. Miller and Mr. Watson, the black lawyer, attempt to stop the plot to lynch Sandy. Like the novel’s conclusion, this scene stages a race against the clock as the life of an innocent person hangs in the balance. The race to stop Sandy’s lynching not only anticipates the novel’s conclusion but plays off what I identified in Chapter 1 of this study as a conventional formula in death-penalty narratives: the drama and suspense built up around the race to stop the execution of a death sentence scheduled to take place on a certain day and at a certain time. In different ways, such a formula helps to structure works ranging from Scott’s *The Heart of Midlothian* (1818), Cooper’s *The Spy* (1821) and *The Ways of the Hour* (1850), and Eliot’s *Adam Bede* (1859) in the nineteenth century, as well as Dixon’s *The Clansman* (1905), Dreiser’s *An American Tragedy* (1925), Capote’s *In Cold Blood* (1966), and Mailer’s *The Executioner’s Song* (1979) in the twentieth century. Although this formula operates differently in these works, in each it is used to elicit sympathy for the condemned, to heighten the
narrative’s dramatic action, and, in many of these works, to explore questions concerning the scope and legitimacy of capital punishment. But in taking up this plot structure, Chesnutt at least in part parodies it by dramatizing the race to present scheduled, popularly-sanctioned execution which is not only extralegal but expressly prohibited by law in North Carolina, the state in which the novel is set.

That Chesnutt intended Miller and Watson’s failed attempt to prevent Sandy’s lynching as social satire is implicit in the ironic heading, “How Not to Prevent a Lynching,” that frames the chapter within which the scene primarily takes place. While the novel’s dominant form of realism and melodrama draws upon our sympathy for Sandy, Miller, and other blacks victimized by a racist society and political system, the chapter’s pervasive tone of sarcasm and caustic irony sufficiently distances us from an identification with these characters, thus providing a critical perspective from which we can see the absurdity of lynch law’s rhetoric of legitimation. In this respect, *The Marrow of Tradition* takes after one of its chief literary models, *A Fool’s Errand*, Tourgeé’s immensely popular and influential novel organized around its titular “Fool” (a classic example of an obtuse hero) and directed against the colossal failure of Reconstruction. Although the butt of *The Marrow of Tradition*’s satire is not as pronounced as that of *A Fool’s Errand*, the formal structure of satire is more than just an incidental element within the novel’s dominant structure.

If, as Stephen P. Knadler has recently reminded us, *The Marrow of Tradition* is “a hard novel to classify,” one whose complex amalgamation of realism and melodrama reveals a “double artistic consciousness” (429), then I would add another
layer to the work’s complexity by reminding readers, in turn, of its sophisticated use of parody, a key component thus far in my reading of Chesnutt’s anti-lynching politics. To demonstrate the importance of parody in Chesnutt’s politics and aesthetics—two elements intimately entwined in his fiction writing—I want to conclude this chapter with a detailed analysis of Chesnutt’s ironic object lessons in “How Not to Prevent a Lynching.” In doing so, I will further cross-examine Chesnutt’s fiction and the Ohio anti-lynching campaign, using Ida B. Wells’ writing as a point of mediation.

“How Not to Prevent a Lynching”

The sardonic chapter heading from Chapter 22 of The Marrow of Tradition proposes a blatantly ironic proposition: “How Not,” as opposed to “How to,” prevent a barbaric act of lethal, extralegal violence from taking place. Like the title of J. L. Austin’s How To Do Things with Words (or any text whose title places it, sincerely or facetiously, in the “How To” genre), Chesnutt’s “How Not to” statement delineates a policy or course of action to be (or not to be) performed in order to reach its stated goal. Situated, however, within the anti-lynching context of The Marrow of Tradition, the negative construction of this proposition and chapter title serves as a scathing indictment of a society that condones, if not encourages, the cultural institution and practice of lynch law. Step by step, failed appeal to authority after failed appeal, Chesnutt’s ironic depiction of “How Not to Prevent a Lynching” dramatizes the inability or unwillingness of state and local officials, as well as prominent white citizens, to stop the machinery of lynch law once the wheels of so-
called “popular justice” have begun to grind. In this respect, *The Marrow of Tradition* offers an extreme version of “How Not to Do It,” the ironic slogan from Charles Dickens’ *Little Dorrit* that parodies the bureaucracy of the modern State and its inability to administer its affairs efficiently (or even at all).

The same could be said of Ida B. Wells and her anti-lynching campaign. That is, like Chesnutt’s novel, much of Wells’ writing garners its force through an ironic portrayal of “How Not to Do It”—that is, how *not* to stop a lynching. Whereas the literary form of the novel enables Chesnutt to satirize lynch law and its rhetoric of justification through dialogue, free indirect discourse, and the plotting of events, Wells’ innovative journalism draws upon irony, characterization, point of view, and other formal techniques of fiction writing (a form of discourse she experimented with as a young writer).  

Reading Chesnutt in light of Wells is helpful insofar as Wells’ campaign gives a contemporaneous account of the extent to which state authorities attempted to prevent lynchings or lynchings-in-the-making, such as the one dramatized in *The Marrow of Tradition* and the many which threatened the state of Ohio in the late nineteenth and turn-of-the-twentieth centuries.

In fact, Wells directly addresses the issue of prevention in “The Remedy,” the penultimate chapter of *A Red Record*. According to Wells, the number of attempts at prevention or intervention is abysmal. “With all military, legal, and political power in their hands,” Wells writes, “only two of the lynching States have attempted a check by exercising the power which is theirs. Mayor Trout, of Roanoke, Virginia, called out the militia in 1893, to protect a Negro prisoner, and in so doing nine men were killed and a number wounded. Then the mayor and militia withdrew, left the Negro
to his fate and he was promptly lynched” (153). What starts off as an example of "How to Prevent a Lynching" ends up as another example of how not to do it. In further relating an account of this failed intervention, Wells acknowledges that local officials and a number of the mob’s members were indicted for the lynching, but she interprets these indictments as mere formalities—empty gestures on the part of local politicians to create the illusion of law and order so as to restore interest in the community’s businesses.

As a recent historian of the Roanoke lynching has shown, the sergeant and chief of police were both charged with conspiring to deliver Thomas Smith, the black victim, to the lynch mob, while fourteen men from the mob were indicted on lesser charges (Alexander 202). Of the sixteen men indicted, all but three members of the mob were acquitted. Two of these men were found guilty of inciting mob violence and received what Wells, with marked irony, calls “light sentences”: a day’s stay in jail and a one-dollar fine. The third conspirator, James G. Richardson, was fined one hundred dollars and sentenced to thirty days in prison for breaking into a hardware store for the purpose of obtaining firearms (Alexander 204). But on the first day of his sentence, Richardson, in Wells’ words, “was pardoned by the governor of the State” (153). Although not entirely correct in saying that Richardson was “pardoned” (according to recent historian Ann Field Alexander, the judge released him on time served and because of a plea from Richardson’s dying mother), Wells’ claim illustrates an important point: the extreme double standards in both equal protection and punishment under law.15
The second and more "successful" intervention Wells discusses was made in 1894 by William McKinley, then governor of Ohio and soon-to-be President of the United States. Influenced by Ohio’s anti-lynching movement, McKinley deployed the state militia to protect a black rape suspect in what Wells describes as "[t]he only other real attempt made by the authorities to protect a prisoner of the law . . ."

McKinley’s deployment of troops saved the suspect from certain death, but in the process “five men were killed and twenty wounded in maintaining the principal that the law must be upheld” (Wells 154). All those killed in the confrontation were members of the mob who attacked the jail in which the suspect was incarcerated. Colonel A. B. Coit—the regiment’s commanding officer who, after giving due warning, ordered troops to fire as the mob attacked—was indicted for manslaughter and endured a lengthy trial that ended in an acquittal in 1896 (Morgan 136-37), the same year Ohio’s anti-lynching bill was finally passed. Following the acquittal, Governor McKinley spoke out publicly in support of Coit’s actions:

The law was upheld as it should have been, and, as I believe, it always will be in Ohio—but in this case at fearful cost. Much as the destruction of life which took place is deplored by all good citizens, and much as we sympathize with those who suffered in this most unfortunate affair, surely no friend of law and order can justly condemn the National Guard, under the command of Colonel Coit, for having performed its duty fearlessly and faithfully, and in the face of great danger, for the peace and dignity and honor of the State.
Lynching cannot be tolerated in Ohio. The law of the State must be supreme over all, and the agents of the law, acting within the law, must be sustained. (qtd. in Neil 174)

By defining lynching as an act “deplored by all good citizens,” McKinley lays claim to popular support, a central feature of lynching as cultural rhetoric of justification. He does so by declaring the supremacy of “the law of the State”—a declaration implicitly directed against any appeal to popular sovereignty or so-called “higher law” by lynching apologists.

In *The Marrow of Tradition*, Chesnutt appropriates lynching’s legitimation rhetoric in order to make a similar argument. But unlike the straightforward attack put forth in McKinley’s statement, Chesnutt mounts an assault through indirection and irony—two key rhetorical strategies of Wells’ anti-lynching campaign. Moreover, Chesnutt’s criticism is characterized by an ironic, reiterative enactment or performance of lynching’s rhetoric of justification, another technique employed by Wells. Nowhere is this strategy more apparent than in the dialogue Chesnutt stages between Miller and Watson, two of Wellington’s leading black citizens, in Chapter 22, “How Not to Prevent a Lynching.” The chapter begins with a midnight rendezvous at Dr. Miller’s home, during which Watson and the militant Josh Green explain the circumstances surrounding the charges against Sandy. Watson and Green also apprise Miller of the elaborate preparations for the lynching that have already gone into effect. Bringing together the idealist Miller, the realist Watson, and the volatile Green in a discussion of how to prevent a lynching Chesnutt provides a counterpart to Carteret, Belmont, and McBane—the genteel bigot, the glib politician,
and the militant racist respectively—and their example of how to orchestrate a lynching plot.

While the conversation among Miller, Watson, and Green starts off with a general denunciation of lynch law, it quickly turns to a practical consideration of how to prevent this particular lynching from taking place. Miller initiates this discussion by suggesting that they go and see the sheriff in order to “demand that he telegraph the governor to call out the militia” (191). In response, Watson tells Miller that he has already seen the sheriff and that the sheriff “does not dare call out the militia to protect a negro charged with such a brutal crime; — and if he did, the militia are white men, and who can say that their efforts would not be directed to keeping the negroes out of the way, in order that the white devils may do their worst? The whole machinery of the state is in the hands of white men, elected partly by our votes” (191). Like Wells’ frequent assertion of obvious facts concerning lynchings (a strategy I examined at length in Chapter 3), Watson’s reply serves to make readers painfully aware of a situation that apparently needs to be explicitly stated: that the political, legal, and military power—in short, the “whole machinery of the state”—resides in the hands of white men who remain indifferent, if not hostile, to the idea of equal protection for black citizens.

The exchange between Watson and Miller takes shape explicitly as political satire as the dialogue continues. In response to Watson’s discouraging words, Miller suggests seeking recourse from the federal government: “We might call on the general government,” he says. “Surely the President would intervene.” Again, Watson deflates the naïveté of Miller’s suggestion:
“Such a demand would be of no avail,” returned Watson. “The government can only intervene under certain conditions, of which it must be informed through designated channels. It never sees anything that is not officially called to its attention. The whole negro population of the South might be slaughtered before the necessary red tape could be spun out to inform the President that a state of anarchy prevailed. There’s no hope there.” (192)

Watson’s account here of the bureaucratic “red tape” ensnaring any appeal to a Presidential intervention registers more than just a Dickensian satire of “How Not to Do it,” as I indicated earlier. As documented in Wells’ A Red Record, state executives and local officials rarely provided support to stop potential lynchings or to punish those responsible for lynchings that occurred. Wells makes this point when discussing the exceptional acts of Mayor Trout of Roanoke, Virginia, and Governor McKinley of Ohio. As a counterexample to Trout and McKinley, Wells cites and indicts the actions of Ben Tillman, the notorious Governor of South Carolina (and later state Senator) who allegedly participated in mob violence: “In South Carolina, in April, 1893,” Wells writes, “Gov. Tillman aided the mob by yielding up to be killed, a prisoner of the law, who had voluntarily placed himself under the Governor’s protection” (154).

Governor Tillman and his bad example serve as a major target in Wells’ anti-lynching campaign. For instance, in Southern Horrors Wells identifies state executives like Tillman as causal factors in mob violence, arguing that “[m]en who, like Governor Tillman, start the ball of lynch law rolling for a certain crime, are powerless to stop it when drunken or criminal white toughs feel like hanging an Afro-
American on any pretext” (61). Similarly, in *A Red Record* Wells singles out the role Tillman played in the 1893 lynching for special attention. Wells sketches the example as an historical vignette, replete with a sardonic headline:

**Delivered to the Mob**

**by the Governor of the State**

John Peterson, near Denmark, S.C., was suspected of rape, but escaped, went to Columbia, and placed himself under Gov. Tillman’s protection, declaring he too could prove an alibi by white witnesses. A white reporter hearing his declaration volunteered to find these witnesses, and telegraphed the governor that he would be in Columbia with them on Monday. In the meantime the mob at Denmark, learning Peterson’s whereabouts, went to the governor and demanded the prisoner. Gov. Tillman, who had during his canvass for re-election the year before, declared that he would lead a mob to lynch a Negro that assaulted a white woman, gave Peterson up to the mob. He was taken back to Denmark, and the white girl in the case positively declared that he was not the man. But the verdict of the mob was that “the crime had been committed and somebody had to hang for it, and if he, Peterson, was not guilty of that he was of some other crime,” and he was hung, and his body riddled with 1,000 bullets. (125)

From Peterson’s *voluntary* surrender to the alleged victim’s *positive* declaration that “he [Peterson] was not the man,” this account of mob law and justice provides a powerful example of “How Not to Prevent a Lynching.” Perhaps the most distressing link in the chain of events leading to Peterson’s extralegal execution is the role played
by Governor Tillman, the representative of state (and hence, legal) sovereignty in
South Carolina. Rather than ensuring Peterson’s legal rights to a fair trial and to the
presumption of innocence until proven guilty, Tillman becomes the means by which
Peterson is brought to a brutal death without due process of law. According to Wells,
Tillman aids in the lynch mob as if he were fulfilling a campaign promise—an act
which led more than one contemporary newspaper to dub him the “mob-law
governor” (Kantrowitz 169).

Given the example set by Tillman and others, Watson’s pessimism about state
or federal intervention in The Marrow of Tradition is well founded. In spite of state
laws making lynching a criminal offense and one for which the community would
become financially liable, mob violence continued to be a problem well into the
twentieth century. To this day, there is no federal anti-lynching bill on the books,
even though—as I mentioned in Chapter 3—there were around two hundred
proposals to establish a federal law made in the late nineteenth and well into the
twentieth centuries. In 1894, Senator Henry W. Blair of New Hampshire proposed
the first of these laws by introducing a bill which, among other things, recommended
establishing a committee to investigate alleged sexual assaults over the past ten years;
but the bill failed to pass. Over twenty years later, Representative Leonidas Dyer of
Missouri proposed in 1918 a more direct anti-lynching bill in probably the most well
known example, given the controversy in the Senate surrounding it. The Dyer Bill, as
it came to be known, passed in the House in 1922, but it was stymied by a filibuster in
the Senate. Thus, without recourse to legal protection from the federal government,
and given that hundreds of blacks continued to be lynched in the first two decades of
the twentieth century, Watson’s hyperbolic premonition in *The Marrow of Tradition* that “[t]he whole negro population of the South might be slaughtered before the necessary red tape could be spun out” is not terribly far from the truth.

Watson’s wry commentary on the impossibility of Presidential intervention has striking relevance when situated within the context of Ohio’s anti-lynching campaign and in the wake of the U. S. Supreme Court’s decisions in the *Civil Rights Cases* (1883) and *Plessy v. Ferguson* (1896). Whereas in the *Civil Rights Cases* the Court struck down the 1875 Civil Rights Act and declared that, in the absence of “state action,” the federal government had no jurisdiction or grounds for intervention in cases of racial discrimination, in *Plessy v. Ferguson* the Court upheld a state’s right to establish and enforce separate, but equal laws. If, as Brook Thomas has recently argued, “Chesnutt’s novels can be read as his retroactive attempt to have an effect on *Plessy* that he might have had before the case was decided” (313), then I would argue that Watson’s remarks deserve a central place in that reading. For in 1901 when Chesnutt was finishing *The Marrow of Tradition*, the president of the United States was none other than William McKinley, the former governor of Ohio who, while holding that office, called out the State militia on more than one occasion to prevent a lynching. Moreover, when his novel was published later that year Chesnutt sent copies to the President and his cabinet; but by that time McKinley had already been assassinated and Roosevelt was in office. Imagining how, if at all, McKinley would have responded to Chesnutt’s novel—especially its ironic lessons in “How Not to Prevent a Lynching”—leaves us with a provocative historical question—an intriguing “what if” question that points directly to the complex relationship between federal
and state sovereignty. *The Marrow of Tradition* complicates that relationship by reminding us that law depends not only on bills that legislatures pass but also on the enforcement power of the state and federal governments. If executives, such as Governor Tillman or William McKinley (as Governor or as President), are not willing to enforce a law, then that law will be without effect.

So, too, if local officials and judges are unwilling to uphold a law, then that law is rendered without force. Chesnutt dramatizes such a scenario in the dialogue with which “How Not to Prevent a Lynching” concludes. In an effort to procure any means of preventing Sandy’s lynching, Watson and Miller, leaving behind the “too truculent” Josh Green, disband in order to find “some white men in town who stand for law and order” (192). A half hour later they reconvene at Miller’s house, and the chapter closes with a final exchange between them. Watson begins by relating his efforts: “I called at the mayor’s office and found it locked,” he tells Miller. “He is doubtless afraid on his own account, and would not dream of asserting his authority” (193). With the local executive apparently evading a situation that would call for a decisive act on his part, Watson goes on to see Judge Everton and describes his conversation to Miller:

I then looked up Judge Everton, who has always seemed to be fair. My reception was cold. He admitted that lynching was, as a rule, unjustifiable, but maintained that there were exceptions to all rules, —that laws were made, after all, to express the will of the people in regard to the ordinary administration of justice, but that in an emergency the sovereign people might
assert itself and take the law into its own hands,—the creature was not greater than the creator. (193)

Echoing the *Morning Chronicle*’s appeal to the (white) people’s “inherent sovereignty,” Judge Everton complicates the novel’s exploration of popular rule by invoking the logic of the exception, what Carl Schmidt and more recent political theorists have identified as the defining feature of sovereign authority. For if the people—as opposed to the judge, governor, or even President—embody, as a whole, a sovereign entity “who decides on the exception” (Schmitt 5), then popular sovereignty trumps any positive law, the State law established and enforced through a system designed to represent the people’s will. Everton drives this point home with reference to the state of “emergency” that necessitates the suspension of “the ordinary administration of justice” and defers to “the will of the people” that serves as the force and origin of man-made law. In other words, Everton’s defense of lynch law is nothing less than the necessity defense.

But there is more at stake in the judge’s justification of lynching. For instance, Everton’s glib use of the cliché, “the creature is not greater than the creator,” does more than show the lack of serious consideration he gives to Watson’s petition. The phrase originally comes from scripture (Romans 9:20-21; Isaiah 9:16) and connotes an idea of sovereignty which is based on divine or higher law—again, like the *Morning Chronicle*’s appeal—and within which “the will of the people,” like the will of God, embodies the original cause of law and thus remains superior to the authority of any written statute. Through such details Chesnutt presents a bizarre, nightmarish account of an individual pitted against an absurd, illogical legal
machine—a moment of Kafkaesque estrangement “Before the Law.” In this scene Judge Everton, whose very name connotes the act of “everting” (that is, overthrowing or turning inside out, in this case, the law\textsuperscript{17}), stands in for the impersonal, antagonistic figure of the modern legal system. The judge’s vague, indefinite role as adversary becomes definitive when Watson suggests to Everton the possibility of Sandy’s innocence. “If he is innocent,” the judge responds with a dismissive laugh, “then produce the real criminal. You negroes are standing in your own light when you try to protect such dastardly scoundrels as this Campbell, who is an enemy of society and not fit to live. I shall not move in the matter. If a negro wants the protection of the law, let him obey the law” (193). Everton’s rant here diminishes the integrity of his popular sovereignty argument by violating the most basic rights afforded to any citizen of “the people.” For one thing, it presumes the guilt rather than the innocence of Sandy and shifts the burden of proof upon the accused. Furthermore, the logic of Everton’s statement here places Sandy in the illogical position of earning “the protection of law” only if he demonstrably “obeys the law,” in which case he would not be in need of the law’s protection. Such a comment is doubly ironic given that Sandy, like the sycophantic Jerry Ledlow, is a “good” negro by the standards of Carteret and other white supremacists of Wellington.

Like the hapless Ben Davis about whom Chesnutt wrote in the 1899 short story, “The Web of Circumstances,” Sandy is thus entangled in a “web of circumstances” that implies his guilt and, for Judge Everton, transforms him into just another one of the “dastardly scoundrels” among Wellington’s black population, “an enemy of society,” and someone “not fit to live.” The logic and language of
Everton's argument here slides into a familiar pro-death penalty rhetoric. In this case, Everton claims that "this Campbell" merits death for the crime he committed so as to ensure the protection of society from future acts of violence he may commit. Such an argument eschews the issue of retribution—for many an illegitimate argument for the death penalty—by making it one of permanent incapacitation. This argument takes on an added dimension in lynch law's rhetoric of justification for the simple reason that a conviction for murder in a criminal case does not always result in a death sentence; and, what is more, a death sentence might be commuted or pardoned, or the condemned might even be able to escape incarceration before the execution is carried out. Only the summary judgment of lynch law, so the argument goes, guarantees the immediate protection of society from alleged criminals like Sandy.

Everton's defense of lynching plays a crucial role in Chesnutt's ironic representation of "How Not to Prevent a Lynching" because it comes from the mouth of one whose very responsibility is to uphold the law. Yet the novel's most insidious defense comes from Dr. Price, a private citizen and prominent member of Wellington's white society. When Miller approaches Price, a fellow physician, for help in preventing Sandy's lynching, Price rejects Miller's plea and bluntly appeals to professional dignity and social decorum: "Miller," he says, "this is no affair of mine, or yours. I have too much respect for myself and my profession to interfere in such a matter, and you will accomplish nothing, and only lessen your own influence, by having anything to say" (193). When Miller goes on to suggest that "there is every reason to believe that [Sandy] is innocent," Price shakes "his head pityingly" and replies:
You are self-deceived, Miller; your prejudice has warped your judgment. The proof is overwhelming that he robbed this old lady, laid violent hands upon her, and left her dead. If he did no more, he has violated the written and unwritten law of the Southern States. I could not save him if I would, Miller, and frankly, I would not if I could. If he is innocent, his people can console themselves with the reflection that Mrs. Ochiltree was also innocent, and balance one crime against the other, the white against the black. Of course I shall take no part in whatever may be done, —but it is not my affair, nor yours. Take my advice, Miller, and keep out of it. (193-94)

Price’s advice smacks of all the smug paternalism one might expect of a white Southern professional speaking of class and decorum to a black member of the profession. By having Price’s words ventriloquized through Miller’s reiteration of them, Chesnutt peels away the veneer of respectability and exposes a deep-seated, pernicious racism—a racism encased in the ossified social customs of the South, what the novel’s title figures as “The Marrow of Tradition.” Like Carteret, the novel’s chief spokesperson for politics of white supremacy, Price supports the impending act of mob violence but absolves himself of any responsibility for its perpetration.

At the same time, Price’s statement in support of the lynching resonates with the racial justification that McBane earlier propounded. Whereas McBane proposes holding each black responsible for the misdeeds of every other, Price suggests “balancing one crime against the other, the white against the black.” For Price, then, as for McBane, Sandy’s guilt or innocence is beside the point; what matters is that a black has killed a white. And even if Sandy turns out to be innocent, the execution
would still be justified, Price argues, because “Mrs. Ochiltree was also innocent.” Of course Price takes for granted that Ochiltree was, in the first place, murdered and that her murderer was a black man (two assumptions which turn out to be false). But such a scenario is beyond question given the racist assumptions of the conventional lynching plot and the circumstantial evidence against Sandy. In this respect Price—like Carteret and McBane, as well as Philip A. Bruce and Bruce Cabell—racializes criminal acts that are committed by individuals. Black men assault white women, and white men lynch black men in response; both crimes, the black and the white, cancel each other out. Such a logic is riddled with racial prejudice and especially disappointing coming from a professional such as Dr. Price, whose education should make him open to progressive legislation.

Inasmuch as Dr. Price reflects many of the novel’s racist perspectives and attitudes at this critical junction in the narrative, the “good doctor” becomes a sort of ironic spokesperson for lynch law’s rhetoric of justification. Indeed, it is no accident that Chesnutt returns here to Dr. Price, a minor character who had played the important role of mediator in one of the novel’s opening racial conflicts: the scene in which Dr. Miller is excluded from joining Dr. Burns, the renowned surgeon rushed down from Philadelphia, in an emergency operation to be performed upon the Carterets’ infant son. On the one hand Dr. Burns, who happens to be a friend and mentor of Miller, insists that his former student be allowed to assist in the surgery. On the other hand, Major Carteret, in whose home the operation is to take place, objects to Miller’s presence and his participation in his son’s operation. When Dr. Burns stands his ground and maintains his position as “a matter of principle, which
ought not to give way to a mere prejudice," Price, by way of what the narrator dubs a
"suave rejoinder," equivocates principles and prejudices: "That also states the case for
Major Carteret," Price says. "He has certain principles,—call them prejudices, if you
like,—certain inflexible rules of conduct by which he regulates his life. One of these,
which he shares with us all in some degree, forbids the recognition of the negro as a
social equal" (71-72).

Within the discussion of lynching I have presented, it may seem strange—
perhaps even irresponsible—to give special attention to a relatively trivial and
quotidian event as Carteret's refusal to acknowledge Dr. Miller "as a social equal."
After all, Carteret's rebuff does little more than hurt Miller's feelings and is one of
the many acts of prejudice Miller experiences on a daily basis, while lynching
constitutes the most extreme form of racial violence that one person can endure at the
hands of other private individuals acting without legitimate authority. My point,
however, is precisely to conflate the ordinary and the exceptional, the mundane and
the sacred; for lynching at the turn of the century was a daily event, something read
about in the morning papers—and often on the back page next to the most trivial of
stories. Indeed, such a location is where readers of New Orleans' Daily Picayune
would have encountered a syndication of the De Soto Democrat's defense of the
Reeve Smith lynching—the account of lethal mob violence with which I began my
discussion of lynching in Chapter 3.

Lynching, like the death penalty during the late nineteenth and early twentieth
centuries, marked the limits of the law. However frequent it became, lynching was
almost always justified as an exceptional act and by means of the necessity defense. When it constituted a popular response to murder, apologists for lynch law often distinguished lynching from the act of murder it condemned by surrounding it in ritual. The use of ritual to differentiate accepted lethal violence from what would otherwise be defined as murder is precisely the legitimation strategy employed in the lawful administration of the death penalty. Despite their many similarities, what separates lynching from the death penalty is, of course, due process: the legal procedure through which an individual is charged, tried, convicted, sentenced, and executed for a capital offense. Claims to the contrary notwithstanding, an act of mob violence—by definition—lacks legitimate authority. It is for this reason that at least one recent critic of the death penalty and lynching has argued that a legal lynching is “the most brutal form of racial violence” because in it the state plays the role of the mob (Wright 252).

Chesnutt, however, would not have shared this opinion. Like Douglass and Wells, what horrified Chesnutt was not so much the legal infliction of death as it was the condemnation to death without due process. Chesnutt emphatically made this point when, speaking in 1904 to a group of white Ohioans on the race problem, he invoked the horrors of lynching as unlawful and extralegal murder: “What good citizen of Ohio,” Chesnutt asked his audience, “or what white man or woman proud of the race’s achievements, can feel anything but humiliated at the spectacle of five hundred white men engaged in a brutal and unlawful murder? One black murderer—five hundred white murderers, you can figure the ratio yourselves, and to whom it is favorable” (Essays 197).
The overwhelming figure in this ratio provides an obvious answer to the rhetorical question Chesnutt poses, and in essays and speeches like this one Chesnutt continues to campaign against lynching after he gradually retreated from fiction writing following the disappointing sales of The Marrow of Tradition. Indeed, insofar as he is speaking as one citizen of Ohio to other citizens in this 1904 speech entitled “The Race Problem,” one could say that Chesnutt revives the spirit of Ohio’s anti-lynching movement after its subsidence with the passage of the Smith Plan and its subsequent challenges in the State’s higher courts. Moreover, the spectacle of lynching to which Chesnutt refers at this early moment in his speech is not some hypothetical example but a description of a lynching that actually took place. And this lynching occurred not in some distant Southern region but in Springfield, Ohio—and just months before the lecture Chesnutt was giving. Although he does not explicitly identify the lynching by name or geographical location here, he does so near the end of his talk. In fact, he concludes with an extended discussion of the Springfield lynching as “an incident,” as he puts it, “as indeed are all others like it, which might well be considered with no reference to the question of race, were it not for the fact of the many similar things with which it is correlated, and the further fact that they are directed almost entirely against colored men” (202).

Chesnutt undercuts this roundabout way of saying that lynching and like injustices are all about race with the terse observation that immediately follows it: “White criminals are not burned or otherwise lynched” (202). This use of ironic understatement is reminiscent of Wells’ rhetorical strategies. Like much of Wells’ writing, Chesnutt’s appeal here takes shape rhetorically as though it were a closing
statement in the criminal prosecution of a lynch mob. As the passage continues
Chesnutt speaks directly to his audience, saying “your duty here is concerned with
something more important than the matter of race.” This “something” turns out to be
the law, and to push the courtroom analogy further, we might imagine Chesnutt,
perhaps as he imagined himself, as a prosecuting attorney making a case against the
Springfield mob before a jury in a court of law. For he goes on to implore his
audience with these words:

Our laws are defied, our state disgraced, our civilization besmirched. Public
officials have proved recreant to their duty. Our militia has traitorously turned
its back upon its plain duty. Let us not neglect ours, which is equally plain.
We should demand of our Governor and of those who execute the laws that
they punish those who have thus disgraced us and reduced us a long way
toward the level of Alabama or Mississippi. We should make our
condemnation of mob murder so strong that not only will punishment be
meted out to the guilty—and the cowardly sheriff is but little less guilty than
the murderous mob—but we should make our condemnation so emphatic that
any man who again feels tempted to join a mob, may see hanging over his
head the shadow of the gallows. (Essays 202)

In a statement that calls to mind the rhetorical power and command of Frederick
Douglass, Chesnutt holds the state—particularly the militia, governor, and sheriff—
directly responsible for acts of “mob murder,” such as the Springfield lynching. Like
Douglass’ “Lynch Law in the South,” Chesnutt’s indictment musters much of its
rhetorical force through anaphora, parallelism, and other classical rhetorical
techniques. It also comes to a climax in a powerful cry for justice and equal protection before the law, thus employing rational argumentation in contradistinction to the novelistic strategies of irony and indirection my analysis of *The Marrow of Tradition* has privileged. Yet unlike Douglass, whose anti-death penalty politics would prevent him from making such a claim, Chesnutt invokes the specter of capital punishment—"the shadow of the gallows," in his words—and its enforcement in cases of mob violence as a way of deterring the future formation of would-be lynch mobs. In doing so, Chesnutt draws upon a familiar argument in support of the death penalty and one that is also common in lynch law’s cultural rhetoric of justification: "the necessity of an example."

In *The Colonel’s Dream* (1905), the last of his novels published during his lifetime, Chesnutt returns to lynching as a theme and organizing principle. But here as elsewhere in his fiction, Chesnutt chooses not to dramatize the spectacle of lynching but instead to plot its social and political import. The novel’s scene of mob violence takes place off stage and is used at the end of the novel to bring its many plots and subplots to a sort or anticlimax or irresolution as Bud Johnson, an exploited working-class black, is lynched for attempting to murder Bill Fetters, the wealthy and powerful convict-labor lessee whom Bud chiefly (and rightly) holds responsible for his exploitation. Escaping from virtual slavery under Fetters’ convict-labor program, Bud lies in wait for Fetters but fires upon Fetters’ son and a companion by mistake.

For this attempted murder, Bud is summarily lynched. Unlike the planned lynching in *The Marrow of Tradition*, this lynching happens without warning or much preparation. Colonel French, the novel’s white protagonist and carpetbagger who has
returned to uplift his native town, learns about the event after the fact when he comes
down to breakfast the next morning. “They lynched the Negro who was in jail for
shooting young Mr. Fetters and the other man” (277), the colonel’s housekeeper tells
him. To whom “They” refers is no secret, and French learns the identity of the lynch
mob’s principal participants later that morning when he visits his lawyer, Albert
Claxton. But when Claxton begins to describe the lynching itself, French cuts him
short and says: “Spare me the details” (277). At this point, Chesnutt’s narrator
intrudes upon the dialogue and comments: “A rope, a tree—a puff of smoke, a flash
of flame—or a barbaric orgy of fire and blood—what matter which? At the end there
was a lump of clay, and a hundred murderers where there had been one before” (277).
Echoing the large ratio of lynchers to victim he figures in “The Race Problem,”
Chesnutt equates lynchers to murderers in this fragmentary, symbolic image of a
lynching scene.

If The Marrow of Tradition builds much of its suspense around an imminent
scene of mob violence and an ironic discourse on “How Not to Prevent a Lynching,”
The Colonel’s Dream presents a brief and pathetic account of how not to punish a
lynch mob. Clearly the Springfield lynching has affected Chesnutt’s attitude toward
mob violence, and the dialogue between French and Claxton, as well as French’s
subsequent efforts, marks an important shift in Chesnutt’s social vision from writing
The Marrow of Tradition in 1901 to writing The Colonel’s Dream in 1905. The
exchange between French and Claxton concludes with French’s question, “Can we do
anything to punish this crime?,” to which the lawyer replies “We can try” (277). In
the short account that follows, Chesnutt’s narrator describes the colonel’s failure to bring about the mob’s punishment.

French begins his (failed) pursuit of justice by seeing the sheriff, who claims to have “yielded to force” but who openly admits that “he never would have dreamed of shooting to defend a worthless Negro who had maimed a good white man, had nearly killed another, and had declared a vendetta against the white race” (278). The sheriff’s response is telling in that it interprets Bud’s actions not as a personal act of vengeance aimed at Fetters but as a “vendetta against the white race.” Again, the logic of the lynching plot elevates an individual crime to a crime committed against an entire race. The colonel then proceeds to interview “as many prominent men as he could find” in order to learn more about what caused the lynching and who should be held responsible. In trying to reason with these men, French argues that the “town . . . had been disgraced, and should redeem itself by prosecuting the lynchers.” French’s words, however, fall upon deaf ears. As the narrator comments: “He may as well have talked to the empty air” (278).

All the evidence the colonel gathers points to Fetters as the primary agent behind the lynching. But none of the local authorities or prominent citizens French speaks to is willing to support the prosecution of Fetters. Indeed, Fetters’ influence or power over some of these men prevents them from aiding in Colonel French’s efforts, while others “were plainly of the opinion that the Negro got no more than he deserved; such a wretch was not fit to live.” In the latter of these responses we hear the familiar argument of retribution and just deserts, the argument Judge Everton makes in justifying Sandy’s lynching in *The Marrow of Tradition*. The colonel’s
quest for justice comes to a tragically comical conclusion when, following the official inquest into Bud Johnson’s death, the “coroner’s jury returned a verdict of suicide, a grim joke which evoked some laughter” (278). With this travesty of justice, this failure merely to bring forth charges against the man principally responsible for Bud’s lynching, French’s desire to reform the Southern town of his youth comes to a disappointing end—a failed dream or vision, the inevitable conclusion to a fool’s errand. In contrast to the note of optimism on which *The Marrow of Tradition* ends, French’s effort to prosecute the lynch mob in *The Colonel’s Dream* concludes with marked pessimism. As Chesnutt’s narrator sums matters up: “In the effort to punish the lynchers he stood, to all intents and purposes, single-handed and alone; and without the support of public opinion he could do nothing” (279).

The story in *The Colonel’s Dream* of one man’s failed “to punish the lynchers” says a great deal about Chesnutt’s mature vision of the race problem. However, I have focused my analysis of the lynching plot in *The Marrow of Tradition*, a novel in which a lynching is ultimately prevented, for two central reasons. I have done so, first, because Chesnutt was at the height of his literary career at the time he was writing *The Marrow of Tradition* and must have seen himself in a position to use literature to effect social and political change by making a case for the need of Federal anti-lynching legislation. Indeed, he had recently published fiction in distinguished magazines, such as the *Atlantic Monthly*, and had quit his successful business as a legal stenographer in order to devote himself full-time to writing. Moreover, in 1899 he published three books: *Frederick Douglass, The Conjure Woman*, and *The Wife of His Youth and Other Stories of the Color Line*. The
following year, Chesnutt published his first novel, *The House Behind the Cedars*, with Houghton Mifflin, a prestigious publishing house which had also contracted Chesnutt’s next novel, *The Marrow of Tradition*. 1900 also saw the publication of a favorable review of Chesnutt’s work published in the widely-circulating *Atlantic Monthly* and written by the “Dean” of contemporary American letters, William Dean Howells. 19

In short, I have focused on *The Marrow of Tradition* because in writing the novel Chesnutt must have finally and decidedly seen himself in the position to actualize the “high, holy purpose” he articulated in his 1882 journal entry, that is, to write the kind of book we had always wanted to write and, in effect, to make good on his early promise to bring out a “moral revolution” (*Journal* 139-40) among the white people. Like its predecessor, *The Colonel’s Dream* is every bit a “propose novel,” a work written expressly to address the race problem; but following *The Marrow of Tradition*’s poor sales and Howells’ disappointing 1901 review of it in the *North American Review*, *The Colonel’s Dream* lacks the note of optimism as well as the productive (and didactic) criticism of State and Federal law in relation to lynch law that shows Chesnutt’s intent to make a difference.

I have also centered my analysis around *The Marrow of Tradition* (again, a novel in which a lynching ultimately does not occur) precisely because the means by which the lynching is prevented provides the most damning evidence against lynch law. As readers of *The Marrow of Tradition* well know, Sandy’s lynching is prevented only because the strong circumstantial evidence against him is disproved and because a white man of stature swears to Sandy’s innocence. Both the direct and
indirect evidence exonerating Sandy arrive at the eleventh hour. Unable to find any able-bodied white man within town to help stop Sandy’s impending execution, Dr. Miller rushes off from his final meeting with Watson, the lawyer, to the country manor of Old Mr. Delamere, a highly esteemed white man of the Wellington community who also happens to be Sandy’s employer and, formerly, master for the past forty-five years. Upon learning of Sandy’s dire predicament, Delamere hurries off with Miller to the office of the *Morning Chronicle* because, as Delamere tells Carteret when they arrive there, the paper provides the means of diffusing the violence, since its “morning issue practically suggested the mob.” Carteret, however, coolly responds to Delamere’s petition and declaration of Sandy’s innocence by informing him that the only way to prevent the lynching is “to produce the real criminal, or to prove an alibi” (212).

Delamere, as readers know, goes on to produce both these forms of evidence in the final hours before Sandy is to be lynched. To begin with, in light of recent revelations regarding his grandson’s dissolute character and gambling debts, Delamere returns quickly to home, searches Tom’s rooms and gathers further evidence concerning Tom’s dissipated habits, his motive for robbery, and his whereabouts the night of the robbery. Delamere then returns to the *Morning Chronicle* and presents to Carteret overwhelming circumstantial evidence that Tom, his own grandson, committed the crime and framed Sandy for it. Carteret is convinced by the evidence that Delamere provides, but he also realizes that, “in the eyes of the mob,” as Carteret says, such evidence will be less than wholly satisfactory. To this end, Delamare is made to swear (falsely) before the mob that
Sandy was in his presence the entire previous evening and therefore could not have committed the crime. It is, then, only through both direct and indirect evidence presented by a white man of stature that the lynching is prevented, whereas a black man was about to by summarily lynched and, presumably, tortured to death merely because circumstantial evidence pointed to his guilt.

In dramatizing the prevention of Sandy’s execution at the eleventh hour, Chesnutt’s point is, of course, to expose the double standards which black suspects face when accused of committing serious crimes against whites. Chesnutt gives an even clearer example of how race directly shapes and influences questions of evidentiary value in the scene in which Dr. Miller first apprises Delamere of the case against Sandy. At first dismissing the preposterous allegations of robbery and murder committed by a man he has always known to be truthful and honorable, Delamere offers Miller a simple solution to the problem: “Just tell them I say Sandy is innocent, and it will be all right.” Miller, however, knows otherwise, and an instructive dialogue ensues between the two men: “I’m afraid, sir,” the young doctor tells this Southern gentleman of the old school,

“that you don’t quite appreciate the situation. I believe Sandy innocent; you believe him innocent; but there are suspicious circumstances which do not explain themselves, and the white people of the city believe him guilty, and are going to lynch him before he has a chance to clear himself.”

“Why doesn’t he explain the suspicious circumstances?” asked Mr. Delamere. “Sandy is truthful and can be believed. I would take Sandy’s word as quickly as another man’s oath.”
“He has no chance to explain,” said Miller. “The case is prejudged. A crime has been committed. Sandy is charged with it. He is black, and therefore he is guilty. No colored lawyer would be allowed in the jail, if one should dare to go there. No white lawyer will intervene. He'll be lynched to-night, without judge, jury, or preacher, unless we can stave the thing off for a day or two.” (199)

Like the legal predicament facing the young Clifford Pyncheon in The House of the Seven Gables, the case against Sandy is one founded upon “suspicious circumstances,” a phrase Miller repeatedly uses here in his explanation to Delamere. As we have seen, Sandy’s alleged guilt, like Clifford’s, is a product of manufactured evidence: “suspicious circumstances” that frame him for a crime he did not commit. Unlike Hawthorne, however, the important point for Chesnutt is that questions of evidentiary value are inextricably linked to race. Miller makes this plainly evident when he breaks down the logic of evidence indicating Sandy’s guilt: “The case is prejudged. A crime has been committed. Sandy is charged with it. He is black, and therefore he is guilty.”

Once again, Chesnutt’s novel suggests that the only way to prevent the lynching of a suspected black criminal is not only “to produce the real criminal,” as Carteret says, but to have a white man of stature provide direct evidence clearing him of suspicion. But even more is at stake in The Marrow of Tradition’s near lynching. As I noted early, the displaced frustration of a thwarted lynching precipitates the out-and-out race riots with which the novel concludes. More than the lynching of a single African American, the novel ends with mass murder—a scene of mayhem and
pandemonium in which scores of blacks are killed by an uncontrollable white mob. If my account of the lynching plot is accurate—that individual guilt for a criminal act is transferred to the entire black race—such mass violence is its logical outcome. The question *The Marrow of Tradition* poses, then, is not just how to prevent a lynching, but how to prevent this sort of mass violence that the lynching plot also helps to legitimate.

A primary goal of this chapter and the preceding one has been to show the extent to which lynch law’s cultural rhetoric of legitimation draws from the social logic of capital punishment. In the next and final chapter of this study I will examine, among other things, the extent to which the lawful administration of the death penalty takes on the characteristics of a lynch mob. To address that question, I will focus on Theodore Dreiser’s *An American Tragedy*, the first major work of American literature to offer a sustained meditation upon the institution of the death penalty. The chapter begins, however, with a brief analysis of “Nigger Jeff,” a short story Dreiser wrote in 1901, the year *The Marrow of Tradition* was published, about a lynching he covered as a young reporter for a local paper in St. Louis, Missouri.


2 This quotation is from Chesnutt’s speech, “Why I Am a Republican,” 98. For other speeches or essays that deal with lynching, see “Recent Outrages in the South” (1892); “Liberty and the Franchise” (1899); “Literature and Its Relation to Life” (1899); “A Plea for the Negro People” (1900); “The White and Black” (1901); “The Disenfranchisement” (1903); “The Race Problem” (1904), and “Age of Problems” (1906). Each of these essays or speeches are collected in Chesnutt, *Essays and Speeches*.

3 See “Discourse in the Novel” in Bakhtin’s *The Dialogic Imagination*. 
See, for example, Gates’ *Figures in Black and White* and *The Signifying Monkey* and Baker’s *Workings of the Spirit*. For critics who attend to “double voiced” discourse specifically in relation to Chesnutt, see Sundquist’s *To Wake the Nation: Race in the Making of American Literature* and Werner’s “The Framing of Charles W. Chesnutt: Practical Deconstruction in the Afro-American Tradition.”

The relationship between *The Marrow of Tradition* and the 1901 Wilmington race riot has been well documented in secondary criticism, and Chesnutt himself made the novel’s connection to the Wilmington riots explicit in setting the novel in the fictional town of Wellington, North Carolina. The Wilmington race riot has been called a coup, massacre, and revolution. The actual number of the riot’s victims is unknown: “Nobody knows how many African Americans died in Wilmington,” write the editors of *Democracy Betrayed: The Wilmington Race Riot in 1898 and its Legacy*. “The most conservative estimate is seven; the most readily confirmed is fourteen; the leader of the white mob said ‘about twenty.’ Hugh MacRae, the textile mill owner and pioneering industrialist who also helped lead the mobs, boasted of ninety dead. Echoing the stories of their great-grandparents, many Wilmington blacks believe that the death toll exceeded 300” (5). For selected essays that deal with the relationship between *The Marrow of Tradition* and the Wilmington riot see, Sundquist, *To Wake the Nation*; Yarborough, “Violence, Manhood, and Black Heroism: the Wilmington Race Riot and Two Turn-of-the-Century African American Novels”; Gleason, “Voices from the Nadir: Charles Chesnutt and David Bryant Fulton”; Wagner, “Charles Chesnutt and the Epistemology of Racial Violence”; Roe, “Keeping an ‘Old Wound’ Alive: *The Marrow of Tradition* and the Legacy of Wilmington”; McCoy, *Riot: Episodes of Racialized Violence in African American Culture*; and Pettis, “The Literary Imagination and the Historic Event: Chesnutt’s Use of History in *The Marrow of Tradition*.”

My understanding of the Ohio anti-lynching campaign draws from and is indebted to Philip A Gerber’s study, *Black Ohio and the Color Line*, and especially his essay, “Lynching and Law and Order: Origins and Passage of the Ohio Anti-Lynching Law of 1896.” My understanding of the history of lynching in Ohio is also indebted to Marilyn Kaye Howard’s dissertation, *Black Lynching in the Promised Land: Mob Violence in Ohio*. More generally, my discussion of anti-lynching legislation at the state level is indebted to Walter White’s classic study, *Rope and Faggot: A Biography of Judge*
Lynch. For a detailed analysis of the (failed) movement for a federal anti-lynching bill, see Claudine L. Ferrell’s *Nightmare and Dream: Antilynching in Congress, 1917-1922*.

7 Urbana *Citizen and Gazette*, June 10, 1897. Writing about the same lynching, Urbana’s *Champaign Democrat* adopted a similar line of argument: “The people of Urbana,” an editorial asserted, “have no apology to make for the lynching of the negro brute.” The *Champaign Democrat* then went on to approve of the people’s action and promised “to visit the same righteous punishment upon every such vile monster who invades their homes and assaults their mothers, wives, and daughters” (June, 10, 1897). See Gerber, “Lynch Law and Law and Order,” for a discussion of these responses to the Mitchell lynching.

8 While Smith and Tourgeé became the central figures in the campaign, William H. Clifford and Samuel B. Hill, black state legislators of Cleveland and Cincinnati respectively, were also leaders in the campaign in its early stages. See Gerber, “Lynch and Law and Order,” 43.

9 The letter Tourgeé wrote to Governor McKinley was reprinted in the Cleveland *Gazette*, March 3, 1894.

10 For a detailed discussion of the lynchings and near lynchings in Ohio from 1876 to 1916, see Howard, *Black Lynching in the Promised Land: Mob Violence in Ohio*.


12 Whether favorable or unfavorable, most reviewers of *The Marrow of Tradition* likened the novel to *Uncle Tom’s Cabin*, a comparison encouraged in the advertisements sent out by Chesnutt’s publishers, Houghton, Mifflin & Company. For instance, a review entitled “A New Uncle Tom’s Cabin” in the *St. Paul Dispatch* of December 14, 1901 began: “For once the publisher’s puff which adorns the cover is right in its estimate of a book. ‘The Marrow of Tradition’ is to the negro problem of today what ‘Uncle Tom’s Cabin’ was to the negro problem of ante-bellum days” (5). Similarly a review on January 26, 1902 in the *Sunday Morning World Herald* began: “IN THEIR advertisement of Charles W. Chestnut’s ‘Marrow of Tradition’ the publishers state that it will recall ‘Uncle Tom’s Cabin,’ so great is the dramatic intensity, and so strong its appeal to popular sympathies. Mr. Chestnut has taken up the cause


15 “James G. Richardson, a Botetourt County farmer, whom witnesses identified as the mob leader and who admitted to being drunk that night, was convicted of breaking into a hardware store to obtain firearms. He was fined $100 and sentenced to thirty days in jail. On the day he was incarcerated, [Governor] O’Ferrell, in a move oddly at variance with his antilynching stance, commuted his sentence from thirty days to twenty-four hours. His reason? Richardson had ‘hitherto borne a good character,’ and his mother, ‘a lady eighty years of age, is deeply grieved over his conviction, and it is feared she will die if sentence should be carried out’” (Alexander 204).

The *OED* defines *evert* as “1. *trans.* To turn upside down, upset. *lit.* and *fig.* *Obs.* rare. . . . b. *fig.* To overthrow (an empire, government); to upset (a judgement, argument, doctrine, law, etc.); to frustrate (a purpose); rarely, to overthrow (a person) in argument. *Obs.* or *arch.*”

Here, of course, I am suggesting a parallel between Colonel French’s reform efforts in *The Colonel’s Dream* and Colonel Servosse’s reform efforts in Tourgé’s *A Fool’s Errand*—a work which, as I noted earlier, served as a chief literary model for Chesnutt. For the influence of *A Fool’s Errand* on Chesnutt’s writing, see Andrew, *The Literary Career of Charles W. Chesnutt*; Brodhead, *Cultures of Letters*; and Thomas, “The Legal Arguments of Charles W. Chesnutt’s Novels.”

See McElrath’s two essays, “Why Charles Chesnutt is not a Realist” and “W. D. Howells and Race: Charles W. Chesnutt’s Disappointment of the Dean.”
Chapter 5

An American Travesty: Capital Punishment and the Criminal Justice System in Theodore Dreiser’s An American Tragedy

Next time you read in the papers that an execution is about to take place I invite you to try to picture exactly what is going on behind the walls of that prison. To put yourself in the place of the man who, after weeks of the mental strain of appeals, petitions, and farewell visits, is now assured that there is no hope; then put yourself in the place of the warders who have to take out the man who has been their constant companion for weeks and see him killed in cold blood; of the governor who has to tell the prisoner that a reprieve has been refused; of the chaplain and the doctor whose functions are degraded by having to assist at this barbarous ceremony; of the man who is paid by the State to do the very thing for which his victim is hanged and to devote the latest applications of science to make death as certain and swift as it can be made; of the Home Secretary who has had the duty of deciding whether a fellow creature is fit to live; having done all this ask yourselves if you are surprised that a coroner should have denounced the proceedings as a relic of barbarism.

—J. W. Hall, Common Sense and Capital Punishment (1924)

One of Theodore Dreiser’s earliest works, “Nigger Jeff” (written 1901) tells of a smug urban journalist sent to witness the impending lynching of a black man who has allegedly sexually assaulted a white woman. The story culminates with what Dreiser’s narrator calls “mob justice” (85), a brutal scene in which the people of a rural community wrest the black suspect from the sheriff’s custody and summarily hang him from a nearby tree. As a “hired spectator” (82), the journalist does nothing to stop the lynch mob and later watches—“wide-mouthed and silent” (105)—as the hanging takes place. Unlike the speechless journalist, however, the narrator intrudes upon the scene of execution in order to question the people’s course of action: “Why couldn’t the people of Baldwin or elsewhere have bestirred themselves on the side of the law before this, just let it take its course? . . . . Still, also, custom seemed to
require death in this way for this. It was like some axiomatic, mathematic law—hard but custom” (103).

The narrator’s intrusion into this climactic scene epitomizes the irresolvable tension between popular and legal conceptions of justice in Dreiser’s short story. Indeed, by first posing and then answering the question about justice, the narrator opposes what might be called the law of “custom” to the juridical law of the state, the positive law to which the people of Baldwin (and “elsewhere”) are bound as citizens of the unspecified state in which the lynching occurs. While at first condemning “the people” for being on the wrong side of the law and failing to let it take its course, the narrator goes on to acknowledge the legitimate place of “custom.” But custom here overtly flies in the face of legal justice. For it is only a black man for whom “the people” (unquestionably an ironic term in the story) “require death in this way for this”; and it is a lynch mob—not the state and its supposedly disinterested wheels of justice—that exacts the penalty of death. In fact, the lynch mob itself is governed by the “axiomatic, mathematical law” of custom. As the narrator immediately goes on to say in the passage previously cited: “The silent company, an articulated, mechanical and therefore terrible thing, moved on. It also was axiomatic, mathematic” (103). Albeit an outraged mob hell-bent on vengeance, the people paradoxically personify the law of custom by virtue of being impersonal: a “terrible thing” whose actions are not only “silent” but “articulated” and “mechanical” as well.

This chapter concludes my study of U.S. literature and capital punishment by focusing on the death penalty itself and its administration in the American criminal
justice system. I began (above) with the scene of “mob justice” from “Nigger Jeff,”
because it produces a stark contrast when juxtaposed to the representation of legal
justice and the elaborate scene of capital punishment in An American Tragedy (1925),
Dreiser’s classic novel published twenty-four years later. In fact, a sustained
comparison of these works would illustrate that An American Tragedy reverses the
stakes and consequences which inform the scene of execution, thereby denoting a
shift in where Dreiser locates sovereign agency and social responsibility. Whereas
the short story, for instance, centers on a virtually anonymous black man whom “the
people” of Baldwin execute outside and against the law, Dreiser’s elephantine novel
deals with a young white male who is executed within and by the law of the state in
which he is incarcerated. Moreover, whereas responsibility for the execution in
“Nigger Jeff” can be limited to the participants in the lynch mob and does not
necessarily extend to spectators such as the journalist (as well as future readers of his
article), responsibility for the execution in An American Tragedy, by virtue of being a
state-sanctioned act, extends to every citizen of the state in which it occurs. As Philip
Gerber puts it in an essay tellingly entitled “Society Should Ask Forgiveness”:

[In An American Tragedy,] the structure of American society was attacked;
the book’s readers would find themselves disclosed as participants in a tragic
situation of immense proportions; they would soon discover themselves
responsible for a hero who was a murderer. Dreiser was calculatedly and
openly set on a bold attempt to exonerate the boy, lifting the responsibility off
his shoulders and placing it squarely upon the inhabitants of every city and
hamlet in the nation. (148)
In short, Dreiser’s novel (as opposed to his lynching story) complicates the scene of execution—its participants, protocol, and drama—by redefining the sovereign will of the people and broadening the pale of responsibility. My purpose in this chapter, however, is not to flesh out a comparative analysis of “Nigger Jeff” and An American Tragedy. For one thing, a more interesting comparison could be made by contrasting the relationship between state sovereignty and the death penalty in An American Tragedy with the appeal to an “inherent sovereignty” of the people and the Southern practice (or “custom”) of lynching in The Marrow of Tradition, Chesnutt’s 1901 novel which I examined closely in Chapter 4. Instead, one of my objectives here is precisely to question the opposition between mob and legal justice as I turn to a discussion of Dreiser’s major novel and its participation in early twentieth-century debates about the death penalty. For as a critical and popular success, An American Tragedy registers contemporaneous concerns about the death penalty and has shaped public opinion about the state’s ultimate power (as opposed to right) to execute its citizens.

An American Tragedy’s “Double Indictment”

Written at a time when the legal administration of death was becoming increasingly bureaucratized, An American Tragedy reflects the political tension surrounding the movement toward the centralization of the death penalty under state authority. As historians of the death penalty have noted, the first state-imposed execution took place in Vermont and not until 1864. The death penalty, of course, had been lawfully administered thousands of times before then and done so ever since the
inception of the United States. But prior to January 20, 1864 these executions were carried out at the local level and by officials of the county in which the trial and conviction occurred. Between 1864 and 1889, only eight legal executions were enacted through state authority and in state penal institutions; the vast majority of them were performed by local officials and in county facilities or in public (Bower 49-50), if the execution took place in one of the many Southern or Western states which still sanctioned public hangings. The movement to centralize the death penalty gained momentum in the 1890s as nine states moved from local to state-imposed executions, and the shift steadily continued up through the mid 1920s, at which time only a handful of states still performed executions at the local level (Bower 51, 54-56; Paternoster 7).

As a literary work that explicitly addresses questions about capital punishment, *An American Tragedy* calls attention to the bureaucratization of the death penalty under state authority, giving special attention to its cruel, thoughtless procedures as well as its relics of barbarism. The novel also implicates readers within a process that, should they live in a state with capital statutes in its books, is carried out in their names. In articulating his anti-capital punishment politics, Dreiser paints a detailed picture of state barbarism and cruelty akin to what J. W. Hall invites readers to imagine in *Common Sense and Capital Punishment*, the 1924 pamphlet I have cited as an epigraph to this chapter.

The boldest strokes Dreiser gives to his portrait of despotism occur in his depiction of the “death house” (758), the state facility within which condemned subjects in his novel (and in New York) are housed while awaiting execution.
Among the many features which contribute to the death house’s cruel design, Dreiser describes how inmates live under a perpetual glare of incandescent lights and how these lights dim and flicker each time the electric chair is put to use—“an idiotic or thoughtless result of having one electric system to supply the death voltage and the incandescence of this and all other rooms” (773). At least one contemporary reader found this aspect of Dreiser’s attack upon the death penalty and its administration in modern America particularly horrifying: “The crowning torment of all,” wrote V. L. O. Chittick in a 1926 review of An American Tragedy, “arose from the fact that these same remorseless lights were three times momentarily dimmed on the occasion of all executions, which were not infrequent.”3 After citing Dreiser’s depiction of this “idiotic” electrical system, Chittick asks: “Can the limits of modern ingenuity in the infliction of legal torture be extended farther [sic] in the direction of diabolism?” In response to this question, Chittick goes on to write: “Mr. Dreiser has spared no effort to make his double indictment complete” (qtd. in Salzman 461). To explore Dreiser’s “double indictment” of capital punishment and the criminal justice system, I want to start with a brief description of the novel’s overall structure.

Books One and Two of An American Tragedy chronicle the rise from pecuniary obscurity to social prominence of Clyde Griffiths, a typical if not representative American of the post-World War I era. Each of these books explores the external forces and the internal characteristics which shape Clyde’s identity, and Book Two culminates with the death (probable murder) of Roberta Alden, the attractive yet poor “factory girl” who is pregnant with Clyde’s child. Book Three, however, marks a
major shift in both narrative and dramatic perspective. Adopting a mode of narration which more than one critic has called “documentary,” Book Three detaches readers from their sympathetic involvement with Clyde as it recounts in painstaking detail the pursuit, capture, trial, and execution of Clyde for murder in the first degree. Book Three thus transforms Clyde into a subject of the law. Legal definitions of agency and responsibility generate the central conflict of the book, and in it the diffuse body of the criminal justice system displaces Clyde as the novel’s privileged center of consciousness. To put it crudely, if Books One and Two tell “an American tragedy,” the pathetic story of a youth driven to murder, then Book Three dramatizes what we might call “an American travesty,” an ironic critique of a judicial system that assumes absolute sovereignty over its condemned citizens (like Clyde) while endlessly deferring responsibility for that act of supreme authority.

Dreiser’s social critique of capital punishment and the criminal justice system lies primarily in his subversion of the jury system as well as in his attention to the close yet anxious relationship between sovereignty and responsibility as embodied in two of the novel’s high-ranking state officials: the District Attorney of Cataraqui County and the Governor of New York. While the judge, jury, district attorney, and governor all contribute to the legal decision that brings about Clyde’s death, responsibility for that decision is diffused throughout the judicial system and, by extension, the social body it supposedly serves and protects. An American Tragedy thus problematizes the relationship between popular sovereignty and social responsibility, two concepts which presuppose one another but which are by no means mutually dependent. For even though popular or state sovereignty implies a

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collective yet autonomous entity fully responsible to itself, the modern state—like the
monarchical state out of which it emerges and to which it bears some resemblance—
certainly can act irresponsibly. In fact, the vexed relation between sovereignty and
responsibility received particular attention from Harold J. Laski, the influential
socialist and legal thinker who, just before Dreiser began writing *An American
Tragedy*, argued that popular sovereignty was coextensive with what he called “state-
responsibility.” 6

Since D.A. Orville Mason leads the prosecution of Clyde and is the first agent
of the state to seek the death penalty, I begin my discussion of *An American Tragedy*
with him. Throughout the trial, Mason personifies not only the state’s power over
Clyde but also the avenging will of the people. Whereas law and custom represent
two opposing principles of justice in “Nigger Jeff” (as well as in Chesnutt’s *The
Marrow of Tradition*) they come together in the depiction of Mason as the malicious
state prosecutor in the supposedly neutral space of the courtroom. During Clyde’s
trial, Dreiser’s narrator repeatedly undercut Mason’s prosecutorial strategies by
calling attention to their theatricality and ulterior motives. When Mason delivers his
opening statement, for example, the narrator provides parenthetical commentary in
order to accentuate the way in which Mason self-consciously evokes an atmosphere
of drama: “‘The people of the state of New York *charge,*’ (and he hung upon this one
word as though he desired to give it the value of rolling thunder), ‘that the crime of
murder in the first degree has been committed by the prisoner at the bar—Clyde
Griffiths’” (640). Mason’s voice here thunders like the avenging voice of the people
or the wrathful voice of the Old Testament God, and his emphasis on the word
“charge,” italicized here and throughout these opening remarks, reverberates with the hateful anticipation of the lethal “charge” of electricity inevitably to fill Clyde’s body. For what underwrites Mason’s authority is his figurative association with the electric chair. This association becomes clearer when we consider the anticipation of Mason’s opening statement from the perspective of Clyde and his defense attorneys, Belknap and Jephson:

And Clyde, as well as Belknap and Jephson, now gazing at [the jury] and wondering what the impression of Mason’s opening charge was likely to be. For a more dynamic and electric prosecutor under these particular circumstances was not to be found. This was his opportunity. Were not the eyes of all the citizens of the United States upon him? He believed so. It was as if some one had suddenly exclaimed: “Lights! Camera!” (639, emphasis mine)

Like the ultimate instrument of the state’s legal power against its citizens, Mason is figured as an “electric prosecutor.” Here and elsewhere in the novel the district attorney exudes electricity, the very force by which death is legally administered in the state of New York. Dreiser sustains this comparison between Mason and the electric chair by repeatedly describing the district attorney as “blazing with this desire to undo [Clyde]” (702, 735). But unlike the cold impersonality of the chair and the lethal violence it inflicts in governmental secrecy, Mason expresses the people’s hostility toward Clyde in a personal, vindictive display of power that is publicly performed. By doubling the figures of the district attorney and the electric chair, Dreiser creates an image of Mason as an embodiment of what Austin Sarat calls “the
specter of law’s own violence,” that is, a representation of lawful violence in capital trials that is allegedly different from the physical violence that takes place “beyond law’s boundaries.”

Moreover, the explicit invocation of cinematography (“Lights! Camera!”) and the reference to the trial as Mason’s “opportunity” show that Mason is not a disinterested agent of the state. On the contrary, he turns the courtroom into a melodramatic spectacle to achieve political gain and, consequently, blurs the distinction between mob rule and legal justice. By prosecuting Clyde maliciously, Mason will increase his popularity and hence stand a stronger chance of attaining a coveted judgeship in the upcoming elections. To this end, he presents a distorted narrative of the evidence and circumstances surrounding Roberta’s death—an interpretation which not only plays to the jury’s moral attitude about premarital sex but also points unequivocally to Clyde as “a murderer of the coldest and blackest type” (735). As Sally Day Trigg points out, Mason even goes so far as to submit irrelevant but prejudicial evidence before the judge and jury (Trigg 433). For instance, he brings in a trunkful of Roberta’s personal belongings for the sole purpose of having her grieving father identify them. The judge strikes this testimony from the record, but, as the narrator informs us, “its pathetic significance by that time was deeply impressed on the minds and hearts of the jurors” (An American Tragedy 650). And even before Mason’s opening statement, “the jury,” the narrator remarks, “were all convinced of Clyde’s guilt before they even sat down” (738-39).

This insistence on the jury’s prejudice subverts the popular notion of a jury as an arbitrator of natural justice and common sense as well as further collapses the
distinction between mob and legal forms of justice. "Instead of a group of inspired truth-finders," as Trigg argues, "a jury is just a collection of normal people who reflect the biases and prejudices of the community from which they are drawn, in Clyde's case a rural town of fundamentalist religion" (Trigg 433). In a capital case such as Clyde's, the duty of the jury is to determine objectively the facts of the crime and decide if these facts fit the statute for the death penalty (Trigg 433). More often than not, however, a jury fits a person—rather than a criminal act—to a corresponding punishment. One such example occurs during jury selection for Clyde's trial. When asked if he believes in capital punishment, a prospective jurist responds: "I certainly do—for some people" (634). This statement is revealing not only because it says what the accepted jurists all think, but also because it conflates or confuses the person with the crime. And it is precisely this conflation or confusion of person and deed—often two discrete entities—that underlies the logic of personal accountability in criminal law. For what enables the jury to render a guilty verdict and what leads to Clyde's death sentence is the indissociable image of Clyde and/in the act of murder.

Meir Dan-Cohen has recently challenged such an essentialist view of criminal responsibility by drawing a distinction between "a momentary and a total self": the former consisting of a "snapshot" while the latter providing a "motion picture" of the self (966). This distinction complicates Mason's depiction of Clyde as a stable, autonomous subject who acts with deliberation and can therefore be held wholly accountable for his actions. In his essay on legal responsibility, Cohen rejects the paradigm of free will and the notion of the self as a "fixed entity defined prior to and
independent of social relationships” (961). Instead, he posits a “contingent self,” an understanding of the self that is largely shaped by social and environmental factors, as well as contingencies arising at a particular moment. Cohen’s theory of a “contingent self,” however, does not just provide a late twentieth-century framework within which to situate a discussion of the extent to which Clyde bears (legal) responsibility for Roberta’s death. It also echoes a distinction in criminal psychology that was articulated by Clarence Darrow, without question the most famous trial lawyer and death-penalty opponent of Dreiser’s time. “What was the state of mind when the homicide was committed?,” Darrow asked rhetorically during a debate on capital punishment. “The state of mind,” he went on to answer, “is one thing when a homicide is committed and another thing weeks or months afterward, when every reason for committing it is gone. There is no comparison between [them]. There never can be any comparison between [them].” (Debate Resolved 32)

Darrow’s attention to the discrepancy between these two states of mind undermines the indissociable image of a defendant/murderer often evoked by prosecutors in capital murder trials such as Clyde’s, and the cultural context in which this argument is made provides an important insight into An American Tragedy’s participation in debates about the death penalty. Indeed, cross-examining Darrow and Dreiser in terms of death-penalty politics will help me highlight the disjunction between sovereign authority and social responsibility in the legal and literary realisms developed in their complementary analyses of capital punishment.
Darrow/Dreiser: The Politics of Legal and Literary Realisms

Darrow made the point cited above about the criminal mind in a well-publicized (and subsequently published) debate while Dreiser was writing *An American Tragedy* in 1924. The debate was sponsored by the League for Public Discussion and addressed the question, “Is Capital Punishment a Wise Policy?” Darrow took the negative position and debated Alfred J. Talley, a New York City Judge outraged by the views on criminology and capital punishment which Darrow had expressed about a month earlier in his defense of Leopold and Loeb, an infamous case of first-degree murder which Dreiser followed closely⁹ and to which I shall return shortly.

Talley begins his position in favor of capital punishment by rationalizing the right and necessity of the State (with a capital “S”) to impose the maximum penalty upon its convicted murderers. For instance, he claims that the universal declaration, “Thou shall not kill,” is inscribed in the “statute books of every civilized country” and offers fair warning to any would-be killer that the penalty for committing murder shall be death. Such a declaration, Talley goes on to argue, is not savage or unusual but based on rational principles that insure the very existence of State. “Is there anything barbaric or unnatural about a sovereign State making that declaration to its citizens?,” he asks. “We must have not merely a declaration of a law, but we must have a sanction to that law if any State can hope to endure” (19). After making this point, Talley elaborates his claim about the State’s “right” to kill by drawing an analogy between the State and an individual whose life is being threatened: “Now if I, as an individual, have that right to kill in self-defense, why has not the State, which is nothing more than an aggregation of individuals, the same right to defend itself
against unjust aggression and unjust attack?" (21) In his rebuttal to Talley's argument, Darrow concedes the State's right to kill but then collapses the distinction between "right" and "power":

We might ask why people kill. I don't want to dispute with [Judge Talley] about the right of the State to kill people. Of course, they have got a right to kill them. That is about all we do. The great industry of the world for four long years was killing. They have got a right to kill, of course, that is, they have got the power. And you have got a right to do what you get away with. The words power and right, so far as this is concerned, mean exactly the same thing. So nobody who has any knowledge of philosophy would pretend to say that the State had not the right to kill. (32)

For Darrow, centering an argument on the State's "right" to kill is as silly as asking why people kill in the first place. Darrow thus attacks Talley's position by ridiculing the very idea of broaching the topic of legal rights by way of such an analogy. While his ironic allusion to World War I undercuts the moral premise of Talley's position, the pressure that Darrow applies to the concept of "right" plays off the morally relativistic slogan, "might makes right." For on one hand, Darrow appropriates the pragmatic argument that, since the State has the power, of course it can claim to have the "right." On the other hand, he implies that such a right is not morally or ethically "right." Indeed, to say that the State has the "right" to kill does not, for Darrow, make state-sanctioned executions "right" on moral or ethical grounds. From this position, Darrow later directs the debate back to the question of morality by challenging the propriety of Talley's analogy between the State and an individual
who kills: “Now, why am I opposed to capital punishment?,” Darrow asks. “It is too horrible a thing for a State to undertake. We are told by my friend, ‘Oh, the killer does it; why shouldn’t the State?’ I would hate to live in a State that I didn’t think was better than a murderer” (39). By paraphrasing Talley’s argument in his own terms, Darrow offers another way of looking at the underlying logic informing the death penalty: should the State abide by the moral code of a murderer? For Darrow, the answer is a resolute “no.” He argues, instead, that the State ought to be held to a higher standard of ethics and morality.

About a month and a half earlier, Darrow had developed this line of argument at length in his highly-publicized defense of Leopold and Loeb, two boys from wealthy families who confessed to the crimes of premeditated kidnapping and murder. He used the trial to showcase his views on capital punishment, and his basic strategy in arguing the case was twofold: first, to avoid any potential jury that would surely be “poisoned” (Attorney for the Damned 25), as he put it, by popular prejudice against his clients; and second, to avoid the diffusion of responsibility within the justice system for the decision of his clients’ fate by ascribing final authority in the judge presiding over the case. To this end, Darrow pled the young killers guilty so that he could present mitigating evidence and a plea for mercy directly before the presiding judge.

In his closing remarks during the penalty phase of the trial, Darrow begins his argument by foregrounding the difficulty of assigning legal responsibility in this case—a point which he emphasizes repeatedly by examining psychological and environmental factors which had diminished the boys’ appreciation for the
consequences of their actions. Unlike the "malice aforethought" and the act of "cold-blooded" murder for which Mason both holds Clyde fully responsible and demands "exact justice" (An American Tragedy 639-640), Darrow claims that there are two theories of "man's responsibility." He subscribes to a modern understanding of criminology which sees "every human being [as] the product of the endless hereditary back of him and the infinite environment around him" and rejects "the old theory that if a man does something it is because he willfully, purposely, maliciously, and with a malignant heart sees fit to do it." This antiquated theory, he adds, "goes back to the possession of man by devils" (Attorney for the Damned 56). At the same time, Darrow holds the State to a higher level of responsibility. In fact, he wryly inverts the language of intent-to-kill murder and applies it to the presiding judge, calling attention to the sovereign authority as well as the indivisible burden of responsibility invested in him: "Your Honor," Darrow tells the judge, "if these boys hang, you must do it. There can be no division of responsibility here. You can never explain that the rest overpowered you. It must be by your deliberate, cool, premeditated act, without a chance to shift responsibility" (24). By reminding the judge of his power and the extraordinary consequences of his decision in this particular case, Darrow conjoins sovereignty and responsibility—the two concepts between which there is a demonstrable rift in An American Tragedy.

Of course, the concentration of power in a single individual (such as a judge) can be a dangerous thing, and the distribution of authority in the criminal justice system is designed precisely to prevent one agent from acting tyrannically, that is, without responsibility for his or her actions. An American Tragedy thus warns against
the underside of this system by exposing the severance of sovereignty and responsibility that begins with the jury’s verdict of “guilty.” But the jury’s decision certainly does not in itself bring about Clyde’s death. It only recommends the death penalty, thereby authorizing the judge in the case to determine Clyde’s fate and utter, as he does, the juridical performative par excellence: “you are hereby sentenced to the punishment of death . . .” (753). The passive construction of this speech act is telling. Rather than declaring “I hereby sentence you to death”—what J. L. Austin would call an explicit performative insofar as it locates the authority of the utterance in the first-person “I,” the judge, who names the act he performs or brings into being— the death sentence pronounced by Judge Oberwaltzer in An American Tragedy diffuses the agent or sovereign responsible for sanctioning Clyde’s death. In other words, there is no “I,” no indivisible source of authority, from whom this pronouncement is delivered.

Indeed, a closer look at this death sentence illustrates the diffusion of sovereignty among the agents responsible for authorizing Clyde’s death. “Clyde Griffiths,” Judge Oberwaltzer declares,

the judgment of the Court is that you, Clyde Griffiths, for the murder in the first degree of one, Roberta Alden, whereof you are convicted, be, and you are hereby sentenced to the punishment of death; and it is ordered that, within ten days after this day’s session of Court, the Sheriff of this county of Catarraqu deliver you, together with the warrant of this Court, to the Agent and Warden of the State Prison of the State of New York at Auburn, . . . and upon some day within the week so appointed, the said Agent and Warden of the State
Prison of the State of New York at Auburn is commended to do execution upon you, Clyde Griffiths, in the mode and manner prescribed by the laws of the State of New York.” (753)

Hardly the terse performative, “I sentence you to be hanged by the neck until dead,” which Sandy Petrey uses to differentiate illocutionary and perlocutionary force in his book on speech-act theory, the death sentence given to Clyde, with its “whereof,” “said,” and repetitious phrases, offers a Dickensian parody of legal language and “HOW NOT TO DO IT.” For no individual or single authority authorizes Clyde’s death sentence or will later enforce his execution, and a series of passive constructions (e.g. “you are,” “it is,” “is commended”) link one statement to another in this single sentence whose linguistic verbosity mirrors the opaque structure of the judicial system on whose behalf it speaks.

Within this system, decisions are made by the state and persons are put to death; but responsibility for those acts is endlessly deferred through a hierarchical chain of command. Although the lack of financial support in Clyde’s case precludes elaborate motions and appeals made on his behalf, his case does go to the Court of Appeals and then to the governor, the final authority in this diffuse chain of state sovereignty. As it turns out, however, the governor is merely a figurehead, a nominal chief of state who claims that his hands are tied by the jury’s verdict and the subsequent decision to uphold that finding in the Court of Appeals. Dreiser’s narrator describes this scenario from Governor David Waltham’s perspective when Clyde’s mother, whom the narrator had earlier dubbed an “American witness to the rule of
God upon earth” (742), begs for the governor’s mercy and a commutation of her son’s sentence:

Like the pardon clerk before him, he had read all the evidence submitted to the Court of Appeals, as well as the latest briefs submitted by Belknap and Jephson. But on what grounds could he—David Waltham, and without any new or varying data or any kind—just a re-interpretation of the evidence as already passed upon—venture to change Clyde’s death sentence to life imprisonment? Had not a jury, as well as the Court of Appeals, already said he should die? (802)

As the state’s chief executive, Governor Waltham certainly has the power to commute Clyde’s sentence. He is unable or unwilling to perform that act, however, not because of a conviction in Clyde’s guilt or a firm belief in the institution of capital punishment itself, but because of his deference to the two previous decisions—especially the jury’s verdict, which bespeaks the popular opinion. In addition, since most of the people of New York support the death penalty, and since Waltham’s position (like Mason’s) depends on the popular vote, the governor feels compelled merely to repeat the decisions already handed down. The fact that Waltham believes that no “re-interpretation” can be made undermines his position as the sovereign of the state of New York. For as the German jurist Carl Schmitt was to argue at the time Dreiser had begun writing An American Tragedy, the “[s]overeign is he who decides on the exception” (5). So just as Mason had distorted justice to gain popular support for an upcoming election, and just as a prejudiced jury of “the people” had come to a verdict of “guilty” without considering Clyde’s defense, Waltham’s failure to act
decisively in the appeal process marks another instance in which mob rule operates under the guise of state authority.

Thus, the decision to execute Clyde comes to the governor as an (always) already decided event, a death warrant recommended by the district attorney and sanctioned by the jury to which the governor merely rubber stamps his signature. The final exchange between Governor Waltham and Clyde’s mother clarifies this point: “Oh, my dear Governor,” Mrs. Griffiths pleads, “how can the sacrifice of my son’s life now . . . repay the state for the loss of that poor, dear girl’s life . . . ? Cannot the millions of people of the state of New York be merciful? Cannot you as their representative exercise the mercy that they may feel?” (802) Mrs. Griffiths’s argument does not just appeal to the governor’s sympathy; it also questions the eye-for-an-eye logic which underlies any theory in support of the death penalty. For her, it makes no sense for the state to demand repayment in kind for murder for the very reason that human life cannot be situated within such an exchange or economy. Although touched by her emotional plea, the governor fails to address the reasoning behind her argument. Instead, he appeals to a reified notion of the law as a mechanized system that operates apart from his influence or intervention: “I am very sorry,” the governor tells Mrs. Griffiths. “But if the law is to be respected its decision can never be altered except for reasons that in themselves are full of legal merit. I wish I could decide differently” (803). According to the governor, the question of mercy is not his to adjudicate. That judgment, he argues, lies solely in the hands of the law. For him, the law is self-generating; and its authority comes from within—despite the fact that the conditions for the possibility of a gubernatorial pardon or
commutation necessarily place the governor outside the law when considering such matters. Governor Waltham allows space here for an exception to the rule of law, but only for reasons that are "in themselves" legal. This double bind thus places him in the ironic position of not being able to grant a wish that entirely lies in his power: the "wish," as he puts it, to "decide differently."

Yet the governor's wish to decide differently is not just an infelicitous phrase or malapropism. It also foregrounds the moment of the decision, a thematic concept explicitly invoked over one hundred times in Book Three alone of An American Tragedy.15 Again and again in Book Three, the inexorable question of Clyde's guilt confronts each authority within the criminal justice system as he decides where to locate responsibility for Roberta's death. Whereas the ending of Book Two hinges upon the irresolvable question of guilt from Clyde's point of view—the undecidable question that Shawn St. Jean has recently used to exemplify the Derridean aporia of "différence"16—Book Three culminates with a response to this question from the perspective of legal justice which, as we have already seen, finally comes before Governor Waltham, himself a former district attorney and judge. "To be just," as Jacques Derrida puts it, "the decision of a judge, for example, must not only follow a rule of law or a general law but must also assume it, approve it, confirm its value, by a reinstituting act of interpretation, as if ultimately nothing previously existed of the law, as if the judge himself invented the law in every case" (961). According to this definition, the governor fails to offer a "just" decision about Clyde's guilt: he neither supports nor rejects the earlier verdicts through what Derrida calls a "restituting act of interpretation" or what Waltham himself considers "just a re-interpretation";
instead, Waltham lets these previous decisions stand as immutable decrees. The governor, then, is not a free and responsible agent but, in Derrida’s words, merely a “calculating machine” (961). And he acts precisely in such a mechanical, preprogrammed manner when, just two days before Clyde’s execution, he receives a last-minute appeal from Mrs. Griffiths and has his secretary wire her back an evasive reply: “Governor Waltham does not think himself justified in interfering with the decision of the Court of Appeals” (809).

Ironically, the governor’s decision not to decide constitutes a decision to evade responsibility for Clyde’s death. For by deciding not to decide, the governor avoids acting as sovereign and assuming the responsibility that entails a sovereign act such as reaffirming or commuting Clyde’s death sentence. But what epitomizes the disjunction between sovereignty and responsibility in An American Tragedy is not any one state representative but the institution of capital punishment itself. The novel captures this structure of deferral and deference in the figure of the “death house,” the prison within which Clyde is housed along with other condemned subjects until execution:

The “death house” in this particular prison was one of those crass erections and maintenances of human insensitiveness and stupidity principally for which no one primarily was really responsible. Indeed, its total plan and procedure were the results of a series of primary legislative enactments, followed by decisions and compulsions as devised by the temperament and seeming necessities of various wardens, until at last—by degrees and without anything worthy of the name of thinking on any one’s part—there had been
gathered and was now being enforced all that could possibly be imagined in
the way of unnecessary and really unauthorized cruelty or stupid and
destructive torture. And to the end that a man, once condemned by a jury,
would be compelled to suffer not alone the death for which his sentence
called, but a thousand others before that. For the very room by its
arrangement, as well as the rules governing the lives and actions of the
inmates, was sufficient to bring about this torture, willy-nilly. (758-59 my
emphasis)
The "death house," ironized by quotation marks, serves as an emblem for the
contradictory logic of the justice system's assertion of sovereignty over the lives of its
condemned subjects without accepting responsibility for these acts of supreme
authority. Like the ideology informing the institution of capital punishment, this
death house is a structure "for which no one primarily was really responsible" and
whose overall "arrangement" of cells and "governing" rules inscribe the condemned
as a participant in the process of his own destruction. The death house stands,
moreover, as a symbol of an institution based not on human rights and judicial
wisdom but on "human insensitiveness and stupidity." It is a system that operates
independent of human control and exists as much because of "compulsions" as it does
because of "decisions," two causes of action which have disparate motivating factors.
For while "compulsions" result from irresistible or irrational impulses, "decisions"
are supposed to be arrived at after careful consideration.

The final lines in this description of the "death house" raise a familiar
argument against capital punishment during the early decades of the twentieth
century: that the death penalty constitutes cruel and unusual punishment by inducing both physical and psychological torture. In making such an argument, An American Tragedy participates in the abolitionist movement that had flourished earlier in the century when ten states had abolished the death penalty and there was greater social awareness as well as a more scientific view of criminals and prisons. Yet while such Eighth-Amendment arguments were frequently made in public forums, debates, periodicals, and other forms of popular discourse in the early twentieth century, they did not reach the nation’s highest legal forum until the 1972 Supreme Court decision in Furman v. Georgia.

In addition to voicing specific opposition to the cruelty of capital punishment, Dreiser’s novel registers a broader anxiety about the movement toward state-sponsored executions during the first quarter of the twentieth century. For when Dreiser wrote “Nigger Jeff” in 1901, death sentences for capital crimes were most often carried out by local officials rather than state authorities. As I mentioned at the outset of this chapter, the first state-supervised execution in the United States did not take place until 1864, and legal executions continued to be performed at the local level through the mid 1920s. By the time Dreiser published An American Tragedy in 1925, however, the administration of capital punishment across the nation had come almost entirely under the authority of state officials. That the publication of An American Tragedy coincides with the centralization of capital punishment under state control makes the novel a curious reflection of the tension surrounding the concept of state sovereignty during this transformative period in the history of the death penalty in America.
“A Beautiful Legal Problem”

But *An American Tragedy* does not just reflect concerns about the centralization of capital punishment and its bureaucratic administration under state authority. As a popular and critical success, it also helped to shape debates about the institution of capital punishment after its initial publication. While the novel’s participation in abolitionist discourse went virtually unnoticed in volumes of early reviews, its influence was most evident in the national essay contest that Dreiser’s publishers sponsored in 1926 on the topic, “Was Clyde Griffiths Guilty of Murder in the First Degree?” The winner of the contest and its prize of $500 (a considerable sum for its day) was Albert Lévitt, professor of Law at Washington and Lee University who, in a letter one year earlier to Dreiser, had praised *An American Tragedy* as the finest “description of criminal procedure” available in Anglo-American literature. In the letter, Lévitt also told Dreiser that he planned to design a final exam question about Clyde’s legal responsibility for his class in criminal law. “It will test their knowledge of the law,” he wrote, “as no other question I can think of. It is a beautiful legal problem” (qtd. in Gerber, “Beautiful” 218). Lévitt’s own response to this question, the one published a year later, explored the novel’s complexities by examining four competing answers: “1. The answer given by the law governing murder in the first degree. 2. An answer based upon a system of Christian ethics. 3. An answer based upon the facts as the jury saw them. 4. An answer based upon the societal conditions under which Clyde Griffiths lived” (222).
To articulate answers from each of these perspectives, Lévitt divides his essay into four corresponding sections, each with a series of organizing questions. His most extensive analysis takes place in the essay’s final section, “The Social Background.” He begins that section by asking “was the social organization of which Clyde Griffiths was a part to blame for the death of Roberta Alden?” (233), a question which, after discussing the defensive “No” that organized society gives, he goes on to answer in the affirmative: “I believe that the state (the social organization, the groups that are in control of the governmental machinery, the individuals who actually make the laws what they are) in spite of a theory of democratic control of human conduct, is to blame for the death of Roberta and the weakness of Clyde” (233). For Lévitt, the “weakness” of criminal subjects like Clyde is largely the result of the agents and institutions which make up organized society. Lévitt suggests, in other words, that the state is not a passive referee that judges the guilt of the Clyde Griffithses of the world but rather a contributing factor in criminal activity. Thus, in ascribing primary responsibility to the “state,” instead of Clyde, Lévitt rejects nineteenth-century assumptions of free will and intentional murder as they inform the criminal statutes of his day and are embodied by Mason in An American Tragedy. And by opposing his answer to the state’s “theory of democratic control of human conduct,” he sets up an explanatory framework for exploring criminal acts such as murder that problematizes the simple ascription of responsibility onto a free, autonomous subject.

Lévitt’s critique of social responsibility, as opposed to individual responsibility, continues in this liberal fashion up until the final question he poses in the essay: “Does capital punishment deserve a place in modern criminology?” (240)
His answer to this question swings dramatically to the other side of the political spectrum as he locates total responsibility for the act of murder upon the individual who commits it. This shift in the ascription of responsibility reveals an interesting source of tension in Lévitt’s argument—one which perhaps lies at the bottom of An American Tragedy as well—and I wish to look closely at how he responds to the question of capital punishment’s “place in modern criminology” as a way of concluding this chapter. To address this question, Lévitt divides his response into two points. The first answers the question in general terms:

1. Speaking generally, I think it does. The modern state has no high regard for human life. One need but to recur to the present industrial situation within which thousands of innocent lives are destroyed yearly, by swift or slow means, and to the maintenance of war as a legal institution to prove this. I cannot get excited about the execution of weaklings or evil-doers. There are times when human beings act so that they become unendurable menaces to organized society. There is no reason why they should be conserved. I have no hesitancy about shooting a mad dog or killing a rattlesnake. Some men are as dangerous as both of these. I see no reason why they should be permitted to exist. (240-41)

Rather than identifying the exploitation under industrial capitalism and the recent world war as reprehensible violations of human rights, Lévitt begins his answer by justifying the institution of capital punishment precisely because of these other violations. He invokes the war, as Darrow does, to epitomize the social climate of the times and the modern state’s disregard for human life, but he uses that example to
support the use of the death penalty. Lévitt then dismisses any sense of social responsibility in connection with “the execution of weaklings and evil doers,” a claim which explicitly contradicts his opening premise that the state bears most of the blame for the “weakness of Clyde” (233). Indeed, whereas he had earlier implicated the state in the construction of criminal susceptibilities, Lévitt now falls back on outmoded assumptions about deliberate, premeditated murder as well as individual responsibility and autonomy. Finally, by dehumanizing the criminal subject, Lévitt reduces the complexities that his essay had earlier raised about social complicity in homicidal acts to a simple solution of permanent incapacitation of the murderer: “I have no hesitancy about shooting a mad dog or killing a rattlesnake,” Lévitt asseverates. “Some men are as dangerous as both of these. I see no reason why they should be permitted to exist.” The simplicity of these statements, in contrast to the complications raised in An American Tragedy, reduces the scene of capital punishment to a situation in which a single authority, an “I,” functions as judge, jury, and executioner.

Lévitt’s second point addresses the question concerning capital punishment as it directly pertains to An American Tragedy:

2. Speaking specifically, I cannot see any reason why Clyde should have been permitted to live. He was a spiritual weakling with criminal susceptibilities. . . . [S]o far as I can see Clyde was a noxious weed. I see no reason why he should not be destroyed. Technically he was not guilty of the death of Roberta. Morally, socially, he was guilty of her death and of other offenses against the law. He managed to escape detection for the other
offenses, at the time they were committed. . . . It is immaterial, to my mind, how the law got him. Once the law had him, it was justified in ridding the world of him, so far as death can rid the world of any species of life. He was a bit of poison ivy. There is no reason, so far as I can see, for letting him continue to grow in the field of human life, or on a prison wall. (241)

Again, whereas Lévitt had spent so much of his argument demonstrating the large extent to which “the state,” as he earlier put it, “is to blame for the death of Roberta and the weakness of Clyde” (233), he suddenly shifts responsibility to Clyde. Previously he saw Clyde as a product of his environment; he now explains away Clyde’s criminal activity as a biological outgrowth of his innate being, figuring him as a “noxious weed” and “a bit of poison ivy.” Such botanical metaphors, with their genetic explanation of criminal behavior, are antithetical to the broader context of environmental determinism within which Lévitt frames his discussion of Clyde’s limited responsibility for Roberta’s death. From this essentialist position, Lévitt proceeds to justify the legality of Clyde’s execution for reasons that, in themselves, are not legal. For even though he determines that Clyde was not “technically” (i.e. legally) guilty of murder, Lévitt has no problem with the law executing him for what he deems are social and moral offences. As he glibly puts it: “It is immaterial, to my mind, how the law got him. Once the law had him, it was justified in ridding the world of him, so far as death can rid the world of any species of life.” The malicious finality with which Lévitt speaks of the law’s destruction of Clyde not only echoes Mason’s contempt for Clyde as a depraved murderer but also belies the air of level-headed objectivity that Lévitt strives to sustain throughout his essay. And yet after
justifying Clyde’s legally endorsed execution on moral and social grounds, Lévitt goes on, in the very next and final paragraph of the essay, to conclude: “The state is primarily to blame for the death of Roberta, Clyde and their unborn child” (241).

If the “state is primarily to blame” for this American tragedy, these three deaths around which An American Tragedy is organized, then why should Clyde assume absolute responsibility for them and have his life taken by the very agent that Lévitt himself principally holds accountable? This discrepancy in Lévitt’s thought helps to foreground the tension in his argument about the status of Clyde’s guilt. On one hand, when Lévitt applies a Freudian social theory to Dreiser’s realistic portrayal of Clyde’s act of murder, he determines that Clyde is not alone responsible for Roberta’s death but that her death is the result of a complicated web of events implicating an entire society. On the other hand, the moral horror of Clyde’s crime leads Lévitt to condemn him unequivocally, which means placing complete responsibility on Clyde. Lévitt’s argument is, to say the least, contradictory. But rather than conclusively demonstrating the weakness of arguments for the death penalty, Lévitt’s conflicting position actually raises the possibility that some arguments against the death penalty succumb to a similar contradiction. For instance, in having Clyde accept complete responsibility for Roberta’s murder and suffer death, Lévitt justifies Clyde’s death sentence just as Mrs. Griffiths—from a corresponding yet opposing moral perspective within the novel—places total responsibility for Clyde’s death on the putative sovereign of New York, Governor Waltham. As she wires the governor two days prior to Clyde’s execution: “Can you say before God that you have no doubt of Clyde’s guilt? . . . If you cannot, then his blood will be upon
your head” (809). What Mrs. Griffiths’s moral response shares with Lévitt’s is a
desire to stop the deferral of responsibility by holding one individual accountable.
But if we apply the same realistic portrayal to the state as we applied to Clyde’s act of
murder, then we are forced to conclude that no one authority can ultimately be held
responsible. After all, if we want one person (e.g. the judge, district attorney, or
governor) wielding state authority to accept responsibility for Clyde’s death, then
why cannot we ask the same of Clyde and hold him responsible for Roberta’s death?

In the final analysis, then, the issue is not simply one of locating a (sovereign)
agent responsible for an act. Rather, the issue involves the judgment of a specific
kind of act: the killing of a human being. The question informing that act of
judgment, as Darrow had put it, is whether or not the state should adopt the same
moral code as a murderer. Darrow’s answer is an emphatic “No.” Nonetheless, such
a response does not absolve the murderer of his guilt. In fact it admits the guilt of the
murderer, an admission that raises important questions about the dominant narrative
strand of An American Tragedy, the “realistic” one which I have been tracing that
endlessly defers responsibility for murder by showing how such an act is caught up in
a casual web. But that narrative strand is not the only one within An American
Tragedy. Dreiser’s novel complicates even Darrow’s moral stand by refusing to
privilege its realistic narrative over what we can call its moral one—a refusal that, in
turn, makes it even more difficult to judge any one individual wielding state
authority. That is, Dreiser gives us not only a realistic account of the process by
which the state defers authority in sentencing someone to die (so that no one person
can be held individually accountable); he also appeals to the reader to locate a point
in that web of responsibility at which one person or agent can be held morally
culpable for the act. This double thrust in *An American Tragedy*, this dialectical
process by which the novel’s moral imperatives confront the dominant structure of
realistic narration and description, is similar to the narrative form of *Sister Carrie*, in
which, as Sandy Petrey points out, the predominant mode of realistic narration is off
set by intrusive passages of authorial moralizing. 23 Whereas these conflicting
registers (i.e. realistic and moral) are much less obvious in *An American Tragedy*,
they are still there. Perhaps the power of Dreiser’s novel is not that it avoids
contradictions by adopting a simple anti-death penalty position, one with which good
liberals can all agree, but that it dramatizes the conflict between moral and realistic
perspectives that one faces when deciding upon this difficult issue.

As a literary work that engages legal discourse, we can liken the confrontation
between moral and realistic perspectives in *An American Tragedy* and its popular
reception to what Robert Cover has called the “moral-formal dilemma” of the judicial
decision, 24 the predicament that judges face when they must rule on a law with which
they personally disagree. As Cover reminds us, a judicial decision in theory should
never simply reflect the moral stance of a particular judge. Instead, it ought to take
into account a number of formal principals which govern and constrain a judge in
terms of precedence, statutes, and Constitution as well as his or her specific place vis-
à-vis other lawmaking bodies and within the hierarchical structure of the judicial
system more broadly. Cover’s attention to these formal principals which regulate if
not constitute the judicial decision helps to qualify the Derridean concept of the “just”
(and judicial) decision I used earlier to critique the sovereign authority of Governor
Waltham. For what enables the performative force of a judicial decision is precisely the socio-juridical context as well as the conventions and rules of law which authorize this speech act in the first place. Indeed, without this supportive context and these governing rules, a judicial decision would always run the risk of becoming judge-made law—a legislative rather than a judicial act that would usurp the authority of the legislative branch of government.25 Like the moral-formal dilemma that a judge may face when formulating a decision, the reader of An American Tragedy is placed before the loaded and perennial question, as stated in the Darrow-Talley debate, “Is Capital Punishment a Wise Policy?” While the answer provided by Dreiser’s realism is an immediate “of course not,” the moral indignation directed at murder throughout the novel calls into question the integrity of that initial response.

But my attention here to the moral overtones in An American Tragedy contradicts the author’s expressed intentions in writing the novel. For Dreiser in no way intended to write his novel from a moralistic point of view. As he stated in a letter the same year that Lévitt’s prize-winning essay was published: “My purpose [in writing An American Tragedy] was not to moralize—God forbid—but to give, if possible, a background and a psychology of reality which would somehow explain, if not condone, how such murders happen—and they have happened with surprising frequency in America as long as I can remember” (qtd. in Elias 458). Indeed, whereas Mrs. Griffiths, D. A. Mason, and even, at times, the narrator as well as readers of the novel like Lévitt all presume the existence of a universal morality and pontificate about ethical imperatives, the realistic thrust of An American Tragedy persistently opens up the moral arguments by which a killer is judged in order to
investigate the social and psychic causes of murder. In this respect, we might conclude that Dreiser’s novel offers a critique of the criminal justice system à la legal realism, the progressive movement in American law between the two world wars that strove to discredit and displace the classical legal theory that had constituted the dominant legal ideology of the nineteenth century. In fact, John P. McWilliams Jr. explicitly links the aims of Dreiser’s literary realism to those of legal realism by emphasizing how the plot of Dreiser’s novel challenges basic premises of nineteenth-century criminal law:

First-degree murder, for which Clyde is tried and convicted, assumes both malice aforethought and deliberate intent. Clyde had wished Roberta obliterated but had not been able to bring himself to deliberate commission of the act. The crucial issue at stake here is the very premise of nineteenth-century American criminal justice—the belief in the freedom of the will. The deterministic way in which Clyde’s entire life has been recreated convinces us that such concepts as “will,” “intent,” “malice,” and “aforethought,” are too crude to be applied to twentieth-century conditioning of human life. (92)

What I hope my reading of An American Tragedy adds to McWilliams’s list are the larger rubrics under which these “crude” concepts fall: “sovereignty” and “responsibility,” two categories around which it is equally important to place quotation marks in any discussion of criminal law and the problem of murder in this novel.

Yet in spite of his realistic portrayal of legal procedures as well as his compelling arguments for the abolition of capital punishment, Dreiser fails to
confront the moral-formal dilemma of the death penalty in its starkest terms. Rather
than representing a clear case of first-degree murder—as was the 1906 case of New
York v. Gillette on which he based the novel—Dreiser equivocates the extent to
which Clyde bears responsibility for administering the “unconscious” and
“unintentional” blow that precipitates Roberta’s death (492-93). In this respect, An
American Tragedy exemplifies what Amy Kaplan has identified as one of the major
reversals in recent debates about the political status of American literary realism:
“From a progressive force exposing the conditions of industrial society, realism has
turned into a conservative force whose very act of exposure reveals its complicity
with structures of power” (1). By centering his novel on a travesty or miscarriage of
justice, Dreiser tacitly accepts the institutional role of capital punishment in the
criminal justice system. It is, after all, much easier to condemn a system that
condemns to death a possibly innocent man than it is to attack the underlying
principles according to which that system operates.

No study can reveal all of the principles underlying that system, but in this
dissertation I have tried to give a sense of the narrative and rhetorical deployments of
“death sentences” and their unyielding finality and irreversibility.

Notes

1 Although the location of the story is never mentioned, Dreiser based “Nigger Jeff” on a lynching in
Missouri that he covered as a young reporter for the St. Louis Republic. See Lingeman, Theodore
Dreiser: At the Gates of the City, 1871-1907, 218.

2 “Local authorities maintained control over the executions of condemned offenders until the early part
of the twentieth century. The first execution to take place under state authority occurred in Vermont,
and not until January 20, 1864 . . . Although the centralization of capital punishment under state
control came slowly, it had (except in the South) replaced local authority by the 1920s. In the 1890s, 86 percent of all executions were performed under local authority, but by the 1920s almost eight out of every ten executions were conducted under state authority" (7). See Raymond Paternoster, Capital Punishment in America (New York: Lexington Books, 1991). For a similar account of the centralization of capital punishment, see William J. Bower’s chapter, “The Movement to State-Imposed Executions,” in Legal Homicide: Death as Punishment in America, 1864-1982 (Boston: Northeastern University Press, 1984). For instance, Bower writes: “In the 1900s the balance shifted to state-imposed executions, and locally imposed executions outnumbered those under state authority by more than three to one. In the 1910s executions under state authority became more common than either those under local authority or those outside the law. By the 1920s the majority of all executions were state imposed, and the proportion under state authority continued to increase each decade thereafter. . . . In fact, in light of the foregoing analysis, the increasing number of state-imposed executions during this period should be understood not so much as “growth” but as a “transfer” or executions from one locus of authority to another” (57).


5 My play on “tragedy” and “travesty” owes much to Sally Day Trigg, who writes about An American Tragedy as a “travesty” of justice. “The trial [Dreiser] describes,” she concludes, “is a travesty. The men who direct the proceedings are adversaries focused more on victory and political prizes than on truth. The jury, primed by sensational press accounts, is the epitome of partiality, basing their judgments on biases, emotions, and public opinion. And the defendant is a mechanism, construed by the forces of society and by his own nature and lacking the free will assumed by the law” (438). See Trigg, “Theodore Dreiser and the Criminal Justice System in An American Tragedy.”
See Laski's trilogy on this subject: Studies in the Problem of Sovereignty, Authority in the Modern State, and Foundations of Sovereignty and Other Essays. In particular, see "Responsibility of the State in England" in Foundations, which elaborates the concept of "state-responsibility." This article first appeared in the Harvard Law Review (vol. 32, No. 5). In the context of international politics, it is interesting to note that the Brookings Institute in Washington D.C. has recently drawn an explicit link between sovereignty and responsibility in its study, Sovereignty as Responsibility: Crises Management in Africa.

Sarat, "Narratives of Violence in Capital Trials” in Law & Society Review, 23. My point here differs slightly from the discussion of legal violence in Sarat's essay. Sarat "focuses on the representation of violence in capital trials and the ways lawyers use linguistic structures to represent different kinds of violence." In particular, he argues that legal violence, like violence outside the law, "must be put into language, and it must be put into language in a way that reassures us that law's violence is different from and preferable to the violence it is used to punish and deter" (23).

My use of these terms is suggestive rather than restrictive. Dan-Cohen himself acknowledges that these "analogies are imprecise," especially the comparison of a "total self" to a "motion picture." He writes: "If the analogy between the total self and a motion picture were accurate, a total self would be simply the series of momentary selves put together sequentially. This is not quite what I have in mind, however. Instead, think of the total self as a single composite picture that incorporates all the momentary selves" (966). See Dan-Cohen, "Responsibility and the Boundaries of the Self."

As Dreiser's most recent biographer notes: "Dreiser had followed the Leopold-Loeb trial closely in 1924 while he was writing the Tragedy, though he was more interested in the psychology of the murderers than in Darrow's tactics" (Lingeman, 288). For a recent discussion that examines the extent to which Dreiser was influenced by Darrow's rhetorical strategies in arguing the Leopold and Loeb case, see David Guest, "Theodore Dreiser's An American Tragedy: Resistance, Normalization, and Deterrence" in Sentenced to Death: The American Novel and Capital Punishment.

It is interesting to note here that Darrow's attention to individual responsibility located in the judge as a legal agent stands in direct opposition to Captain Vere's argument that, as merely a legal agent, he is in no way responsible for the death sentence he sanctions in Billy Budd, Melville's classic legal
novella that was first published in 1924, the same year that Darrow was defending Leopold and Loeb. In defending his decision before an unconvincing body of subordinate officers serving as a makeshift jury, Vere argues that authorizing the execution of Billy Budd would simply be carrying out the law. "Would it be so much we ourselves that would condemn as it would be martial law operating through us?" Vere asks the assembled officers. "For that law and the rigor of it," he continues, "we are not responsible. Our vowed responsibility is in this: That however pitilessly that law may operate in any instances, we nevertheless adhere to it and administer it" (362). See Billy Budd and Other Stories.

11 See Lecture III in Austin, How to Do Things with Words.

12 "Death," Petrey writes, "the ultimate non-conventional event, eradicates all possibility of participation in collective procedures. Again, however, it isn't obvious that we should demarcate certain deaths from a jury's classically performative "We find the defendant guilty" and a judge's equally classic "I sentence you to be hanged by the neck until dead." Such utterances possess their illocutionary force solely through the conventions codified in Rule A. 1 [of Austin's How to Do Things with Words], but it's still silly to cut them off from the non-conventional death that follows them. Like war, death is such an overpowering physical reality that it seems obscene to compare it to the conventional reality underlying speech-act theory. Yet like a declaration of war, a condemnation to death is a speech act that can't be convincingly separated from the events it authorizes. Illocutionary force, a purely conventional creation, is not a reality if we oppose that real and the conventional. Yet illocutionary force is eminently a force; the conventional creations of collective interaction dominate the lived experience of every one of the interaction's participants" (18-19). See Petrey, Speech Acts and Literary Theory.

13 "HOW NOT TO DO IT" refers, as I mentioned in Chapter 4, to Dickens's famous parody of the Circumlocution Office in Little Dorrit, 145-165. The fact that Dickens initially planned to title the novel Nobody's Fault suggests an affinity with Dreiser's deferral of responsibility in the institutional structures of society. And as J. Hillis Miller has argued regarding the novel's working title, to say that something is nobody's fault "is another way of saying it is everybody's fault, that the sad state of the world is the result of a collective human crime or selfishness, hypocrisy, weakness of will or sham" (160). See J. Hillis Miller, "Dickens's Darkest Novel" in Dickens: Dombey and Son and Little Dorrit.
My comparison of Dreiser to Dickens in this regard, however, is merely suggestive. For unlike Dickens, Dreiser’s parody does not so much exaggerate legal language as it appropriates its official voice and style by situating it within the (ironizing) discourse of the novel. Compare, for instance, the passive construction of the death sentence pronounced upon Clyde to the one given to Nicola Sacco and Bartolomeo Vanzetti in the famous capital trial of 1927: “Nicola Sacco . . . Bartolomeo Vanzetti, it is ordered by the court that you suffer the punishment of death by the passage of a current of electricity through your body within the week beginning on Sunday, the tenth day of July, in the year of Our Lord, one thousand nine hundred and twenty-seven. This is the sentence of the law” (613). Cited in Howard Florance, “Shall the State Take Human Life,” The American Review of Reviews (June, 1927). pp. 613-616.

14 While Clyde’s affluent relatives ultimately refuse to provide financial assistance beyond the defense at the trial, the narrator alludes to the influential role money plays—or would play, in Clyde’s case—from the perspective of Samuel and Gilbert Griffiths. Clyde’s wealthy uncle and cousin: “For as Mr. Griffiths and his son well knew . . . there were criminal lawyers deeply versed in the abstrusities and tricks of the criminal law. And any of them—no doubt—for a sufficient retainer, and irrespective of the primary look of a situation of this kind, might be induced to undertake such a defense. And, no doubt, via change of venue, motions, appeals, etc., they might and no doubt would be able to delay and eventually effect an ultimate verdict of something less than death, if such were the wishes of the head of this very important family” (588-89). For a discussion that focuses on the influential role of money in Clyde’s trial, see Guest’s “Theodore Dreiser’s An American Tragedy: Resistance, Normalization, and Deterrence” in Sentenced to Death: The American Novel and Capital Punishment.

15 My point here is that the “decision,” a concept at the heart of any meditation on the death penalty, pervades Dreiser’s novel at a structural level. Taken together, the words “decide,” “decidedly,” and “decision” are used 102 times in Book Three of An American Tragedy, statistically, once every three pages.

16 “Clyde himself doubts whether he is responsible: ‘And the thought that, after all, he had not really killed her. No, no. Thank God for that. He had not. And yet (stepping up on the near-by bank and shaking the water from his clothes) had he? Or had he not?’ (AT, 494). Clyde’s own wonder is a
linguistic expression of irresolvable tension, of *différence*, and yet the overwhelming question obstructs itself: is he guilty? This is precisely the question that Book III concerns itself with: a massive search for the ‘truth’ which leads to the trial and the jury’s verdict” (13). See Shawn St. Jean, “Social Deconstruction and *An American Tragedy.*”

17 What Dreiser’s representation adds to this familiar argument is a systemic image of the “death house” as a veritable torture chamber, a structure whose overall design—its arrangement of cells so that they all face one another—ensures that each inmate vicariously experiences the deaths of those executed before him. “Presumably an improvement over an older and worse death house,” the narrator tells us, “[this one] was divided lengthwise by a broad passage, along which, on the ground floor, were twelve cells, six on a side and eight by ten each and facing each other” (759). The parallel arrangement of the cells so that each one faces others inverts the model of the Panopticon that Michel Foucault employs as the crowning example of his theory of power relations in modern society. That is, instead of preventing prisoners from seeing one another in order to force them to internalize the gaze of authority, the structure of the “death house” enables each prisoner to see, hear, and witness the suffering of others, as well as a condemned man’s final procession toward the door at the center of the structure which leads directly to the execution room. And even the hidden or invisible moment of execution is made *visible* to others on death row by the dimming of the prison lights, what the narrator calls “an idiotic or thoughtless result of having one electric system” (773).

18 As one might expect, a full list of articles and books invoking Eighth-Amendment arguments against capital punishment during the early twentieth century would be an article in itself. For this reason, I list here only three examples that echo quite closely Dreiser’s point about the “thousand” deaths the condemned is to endure before suffering his own. In “State Manslaughter” (published in *Harper’s Weekly*, 1904), William Dean Howells argued: “State homicide seems more barbarous and abominable than any but that most exceptional private murder, since it adds the anguish of foreknowledge to the victims doom” and that those condemned die “a thousand deaths in view of the death they are doomed to” (154-55). In a 1921 article ironically titled “Making Death Easy,” a journalist for *Overland* claimed: “The ante-mortem fears of the condemned will prove to be as bad as a thousand deaths before the final and physical termination” (31). And in her 1927 article, “Our Jungle Passions” (published in
Collier’s), popular novelist Kathleen Norris suggested that “often the condemned man fluctuates between the decrees of life and death for years. His hopes are raised and dashed, and raised and dashed with a measure of cruelty that sickens even the most casual reader . . . “ (185). For Howells’s and Norris’s articles, see Voices Against Death: American Opposition to Capital Punishment 1789-1975, 150-55; 180-189. For “Making Death Easy,” see Laurentine Figura, Overland 77 (April, 1921): pp. 30-33.

19 For a comprehensive discussion of the Eighth Amendment in legal discourse on the death penalty, see Barry Latzer, Death Penalty Cases: Leading U.S. Supreme Court Cases on Capital Punishment.

20 In the thirty-one reviews of An American Tragedy collected in Jack Salzman’s Theodore Dreiser: The Critical Reception, including one by Clarence Darrow, only V. L. O. Chittick’s review (which I discuss earlier in the body of this chapter) identified the novel as abolitionist in orientation.


22 My point, however, is not simply to criticize the contradictory logic of Lévitt’s position. Instead, I want to suggest that the conflicting perspectives embedded in his argument, if not in Dreiser’s novel as well, are indicative of the competing theories of social complicity and criminal responsibility that preoccupied late nineteenth- and early twentieth-century American writers. “The Blue Hotel” (1898), Stephen Crane’s tale of frontier violence and murder, perhaps best illustrates such competing attitudes in the dialogue with which the story concludes. Several months after the “Swede,” the immigrant traveler from New York, is killed in a bar-room altercation by a local gambler of the Nebraskan community in which the Swede as well as the Easterner and cowboy are lodging, the narrative closes with the following exchange about their collective responsibility in the Swede’s death: “We are all in it!,” the Easterner exclaims to the cowboy.

“This poor gambler isn’t even a noun. He is a kind of adverb. Every sin is the result of a collaboration. We, five of us, have collaborated in the murder of this Swede. Usually there are from a dozen to forty women really involved in every murder, but in this case it seems to be only five men—you, I, Johnie, old Scully; and that fool of an unfortunate gambler came merely as a culmination, the apex of human movement, and gets all the punishment.”
The cowboy, injured and rebellious, cried out blindly into this fog of mysterious theory: “Well, I didn’t do anythin’, did I?” (354).

By ending the story on this note, Crane plays the Easterner’s progressive notion of social complicity off the cowboy’s uncertain denial of his own involvement in the events that led to the Swede’s murder. For a discussion that pursues the question of social complicity more broadly in the realism of William Dean Howells, see the final section of my essay, “Howells’s Rhetoric of Realism: The Economy of Pain(t) in *The Rise of Silas Lapham* and Social Complicity in *The Minister’s Charge*.”

23 “*Sister Carrie,*” Petrey argues, “juxtaposes two irreconcilable styles, intersperses a series of oleaginous moral meditations among passages of straightforward prose narration with no perceptible moral content. Analyzing the stylistic qualities which distinguish the two forms from each other consistently reveals the same hierarchy. Narration’s unpretentious dignity exposes philosophizing as the verbiage of nullity. The basic hypothesis of this essay is that the text of *Sister Carrie* is so structured that its moral passages stand as formal parodies of the language of sentimentality” (102). See “The Language of Realism, The Language of False Consciousness: A Reading of *Sister Carrie*” in *Novel.*

24 See Cover, *Justice Accused.*

25 My juxtaposition of Cover and Derrida perhaps requires further qualification. While acknowledging the legal constraints governing a judicial decision, Derrida in “Force of Law” is more concerned with a concept of “justice” which is above or outside human law. For this reason, Derrida speaks of the situation of a judge who, in order to decide justly must not simply apply the law mechanically (which may be lawful but not just), but must determine just what the law means (i.e. “reinterpret” it) and then decide whether the unique case in question can justly be judged according to the letter of the law, which necessarily is expressed in generalities (e.g. “one should never cross through a red light” or “murder is always a capital offense”). For Derrida, rendering such a judgment can be a difficult and perhaps interminable task. Whereas Derrida focuses on the incommensurability between the generality of the law and the singularity of an individual case, Cover concentrates on the moral-formal dilemma a judge may encounter when ruling on a law with which he or she personally (i.e. morally) disagrees.
Although Dreiser based *An American Tragedy* on several actual murder cases, his central reliance on *New York vs. Gillette* is well documented. For instance, see Pizer, *The Novels of Theodore Dreiser* and Algeo, *The Court Room as Forum*. Unlike *An American Tragedy* in which Roberta's drowning is precipitated when Clyde "accidentally" and "unconsciously" strikes Roberta with a camera, Chester Gillette repeatedly (and supposedly intentionally) struck Billie Brown, an 18-year-old secretary whom he had impregnated, with a tennis racket before she fell unconsciously into the water. By emphasizing Clyde's state of mind and substituting a camera (a likely object to have on the boating excursion) for a tennis racket as the murder weapon, Dreiser equivocates Clyde's moral responsibility.
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