Who Owns the Whip?: Chesnutt, Tourgee, and Reconstruction Justice

Bill Hardwig, University of Tennessee - Knoxville

Available at: https://works.bepress.com/bill_hardwig/6/
Who Owns the Whip?: Chesnutt, Tourgée, and Reconstruction Justice

Justice is pictured blind and her daughter, the law, ought at least to be color-blind. (Albion Tourgée, qtd. in Olsen, Thin 90)

Nowhere, in the history of our jurisprudence, has [the] power of the courts been more strongly exerted than in the matter of Negro rights, and nowhere has it been more swayed by prejudice and class interest. (Charles Chesnutt, “Courts” 1)

In many ways, Albion Tourgée’s relationship to turn-of-the-century African American writers is paradoxical. His fiction focusing on the injustices suffered by African Americans in the South, his continuous support of Reconstruction legislation, and his pro bono work on the Plessy v. Ferguson case all demonstrated a profound commitment to changing the racist structures of American society. He was perhaps the most vocal and visible white writer who promoted “radical” Reconstruction. Later, in the 1880s and early 1890s, a time when virtually no white people were harshly criticizing racial injustices, Tourgée wrote a weekly column for the Chicago Inter Ocean (“A Bystander’s Notes”) advocating racial equality (Kull 119). His ideas and writing proved to be instrumental, and at times inspirational, to the work of many emerging black writers. W. E. B. Du Bois claimed he was influenced by Tourgée’s fiction, and in his 1910 article reflecting on Reconstruction, Du Bois cited favorably Tourgée’s journalistic scholarship of twenty years earlier (Olsen, “Tourgée” 23).

Even as he ardently supported the “negro cause,” however, Tourgée expressed attitudes which often appear naïve, lacking insight into the complex situation of Southern race relations. As his quote in the epigraph illustrates, Tourgée’s view of Reconstruction politics seems to be idealistic, depending upon a “color-blind” justice system in which “right reason” will prevail over racist sentiment. Clearly, Tourgée understood that the justice system was not free of racism; he argues, for example, in Plessy v. Ferguson that “the Court has always been the foe of liberty . . . until forced to move on by public opinion” (qtd. in Lofgren 149). Yet even as he recognized these biases and the fact that the Supreme Court was governed by social tides, Tourgée clung devoutly to the notion that the education of both Southern whites and blacks could lead to a color-blind justice system capable of transcending society’s differences and correcting its injustices. Furthermore, his line of reasoning in the Plessy case (which argues, among other things, that the indeterminability of Homer Plessy’s race should nullify segregation legislation) seems to protect the “mulatto elite,” who could theoretically “pass,” rather
than arguing for the equality of African Americans as a whole.¹

Charles Chesnutt undoubtedly understood the ambiguous position that Tourgée held in relation to the African American community. In his now well-known 1880 journal entry, Chesnutt cited Tourgée’s fiction—principally A Fool’s Errand—as the inspiration for his stories of the color line. Many critics have made much of this entry, in which he discusses the immense popularity of Tourgée’s writing and subject matter. Scholars such as Myles Raymond Hurd (“Step”), Julian Mason, Jr., Richard Lewis, Peter Caccavari, and Richard Brodhead (ch. 6) have all given extended attention to the entry, quoting and analyzing it at length. These critics have rightly emphasized Tourgée’s influence on Chesnutt’s career as a writer, as one of the sparks which ignited his literary aspirations. Nevertheless, when we look at both Tourgée’s political career and his literary one in conjunction with Chesnutt’s short stories, we can see that Chesnutt challenges the very tenets upon which Tourgée’s political and literary convictions rest. In this essay, I will argue that in the final story of The Wife of His Youth (1899), “The Web of Circumstance,” Chesnutt questions the plausibility of the seemingly progressive belief in a “blind”—or, in this case, “color-blind”—legal system in which Tourgée so fiercely believed. After I examine Tourgée’s and Chesnutt’s competing views of justice, I will suggest that Tourgée’s color-blind rhetoric remains popular today in a manner that has dangerous effects on modern political discourses.

In imagining a solution to the nation’s racial quandary, both Chesnutt and Tourgée relied on the notion of a transcendent justice capable of overcoming racial differences. But whereas Tourgée’s transcendent justice is achievable/approachable through education and legislation in this world, Chesnutt suggests that such a justice founded on right reason is not possible within the societal milieu of “The Web of Circumstance.” Instead, he looks to a universal and eternal idea of justice that is necessarily detached from the nation’s judicial system. In “The Web of Circumstance,” Chesnutt appeals to Justice (with a capital J) as an eternal truth that trumps the politically and socially biased justice system operating in the post-Reconstruction South. This notion of justice is related to, but not subsumed by, a sense of God’s higher Justice. In his novel The House Behind the Cedars, Chesnutt writes, “The laws of nature are higher and more potent than merely human institutions and upon anything like a fair field are likely to win in the long run” (94). He ends “The Web of Circumstance” with a similar appeal to a higher form of justice that will bring about “another golden age” (322-33). In both examples, he implies that there is anything but a “fair field” in American society. In arguing the impotence of a worldly justice system (particularly in the South) that is incapable of protecting or serving African Americans, Chesnutt simultaneously critiques Tourgée’s faith in color-blind law and Booker T. Washington’s belief that economic opportunity is an adequate means of empowerment for African Americans.

We can further see how these writers conceive differently of the idea of worldly justice by examining how they conceive of justice in their writing, what the terms of exchange are that determine how they define justice and just compensation. In her book Residues of Justice, Wai Chee Dimock argues that

the language of justice is . . . a language of formal universals, one that translates warring particulars into commensurate ratios, that takes stock of the world and assigns due weight to disparate things. Such a language . . . is most graphically expressed by that adjudicative instrument long taken to be its emblem: the scales.

She adds that such a conception of justice grounds itself in a “premise of commensurability.” For Dimock, “The search for justice, in that sense, is very
much an exercise in abstraction, and perhaps an exercise in reduction as well, stripping away apparent differences to reveal an underlying order, an order intelligible, in the long run, perhaps only in quantitative terms” (2).

In this passage, Dimock nicely reminds us that justice depends upon ratios, commensurability, and exchange. We might then consider what the modes and means of exchange are in the justice of both Tourgee and Chesnutt—what their ratios are and how they define commensurability. In other words, how does justice maintain order, correct deviant citizens, or reward injured parties?

Tourgee’s notion of justice tends to rely on the progressive white community’s power to rescue the helpless black community. From this perspective, “real” justice for the black community is defined, meted out, and regulated by the white liberal community in opposition to the conservative white community. But if Tourgee’s texts attempt to resituate the way the white community defines and controls justice, Chesnutt implies that, as long as justice is handled by the white community (be it progressive or not), it will remain connected to white forms of power. For Chesnutt, commensurate compensation for past and present racial policies necessarily involves the dismantling of the current justice system, and its belief in “blind” justice.

Tourgee believed that by embodying right reason in his fiction he could educate public opinion and eliminate prejudice.” But the very texts that Tourgee believed would help eliminate prejudice, Thomas notes, “could not be interpreted free from the history of the prejudice he would alter” (Thomas, “Tragedies” 771). Although in this instance Thomas is speaking of Tourgee’s fiction, this comment applies to his practical political convictions as well. After all, even if he were able to write a text devoid of racial prejudices (which to our post-modern sensibilities seems to be a fool’s errand), Tourgee’s notion of right reason would necessarily be understood and disseminated by a community that would be anything but devoid of prejudice.

By the time Tourgee published his most famous fiction and argued the Plessy case, he had lost some of the idealism he had possessed as a carpet-bagger judge in North Carolina, although he nonetheless seems to have maintained a belief in the ability of the justice systems in the South to render a verdict devoid of all contextual issues, including race. In a 1892 letter to Cornell University professor Jeremiah Whipple Jenks, refuting Jenks’s racist lecture on “the Negro,” Tourgee writes, “Financial mismanagement of public affairs is not held to imply incapacity in the white race, why should it in the colored?” (Olsen, “Tourgee” 25). Admittedly, Tourgee claims that this is the way society should act, not the way it does. Nonetheless, he expresses the belief that society and its judicial system are capable of judging the affairs (financial and otherwise) of black and white people with “color-blind” eyes. The letter also espouses his belief that laws/legal codes can alter society’s racist proclivities. Laws, and the evolution of laws, however, prove more apt to reflect society’s beliefs than to dictate them. As Andrew Kull puts it, “The law can be the instrument, but never the source, of social change; the most momentous

---

My Name Is Everything I Own: Tourgee and the Property of Reputation

Although Tourgee wished to believe otherwise, his faith in the power of right reason influences more than his notion of a theoretically “pure” system of justice. It also colors his actions within the Reconstruction movement. Brook Thomas reminds us that, as “a child of the Enlightenment,
legal judgments only give effect to conclusions that others have already reached” (6).

Tourgée’s line of argumentation in Plessy, its view of the role of the justice system, is complex and bears further analysis. Perhaps the strongest aspect of Tourgee’s defense, and certainly the most discussed today, hinged on the rights of citizenship provided by the Fourteenth Amendment. Tourgee argued that, because citizenship rights derive from federal authority, “the State [was] thereby ousted of all control over citizenship.” Arguing against the claim for “separate but equal” accommodations, Tourgee stated that “the question is not as to the equality of the privileges enjoyed, but the right of the State to label one citizen as white and another as colored in the common enjoyment of a public highway.” In order to make his point about the arbitrariness of these distinctions, Tourgee provided several semi-sarcastic analogies:

Why may [the State] not require all red-headed people to ride in a separate car? Why not require all colored people to walk on one side of the street and the whites on the other? Why may it not require every white man’s house to be painted white and every colored man’s black? Why may it not require every white man’s vehicle to be of one color and compel the colored citizen to use one of different color on the highway? Why not require every white business man to use a white sign and every colored man who solicits custom a black one? One side of the street may be just as good as the other and the dark horses, coaches, clothes and signs may be as good or better than the white ones. (qtd. in Lofgren 156-57)

While such an argumentative tack certainly illustrates the absurdity of the logic of “separate but equal,” it relies on a color-blind interpretation of the Constitution in order to recognize this absurdity. In other words, the law does not make distinctions between races (the Fourteenth Amendment, in fact, protects against them); it recognizes all citizens as citizens.

This strategy fails to argue against what the defense called the “reasonableness” of racial separation. Louisiana Attorney General Milton Cunningham, in his brief supporting his state’s ruling upholding “separate but equal” legislation, argued that the Fourteenth Amendment “required that states not legislate inequalities in right, but consistent with this restriction they could assort individuals by race pursuant to the police power.” In other words, Cunningham appealed to the explosive issue of “race-mixing.” Clearly this case was not settled by legal argument alone; it was not a purely rational exercise. Fear, anxiety, and rhetoric counteract, and at times cancel, right reason. In another brief Alexander Morse flushed out Cunningham’s logic. The imbalances of races in rural areas, Morse explained, created a “danger of friction from too intimate contact” (qtd. in Lofgren 169-71). Separation by race on public conveyances was not restricted by the Fourteenth Amendment, according to Cunningham and Morse, because a state could adopt “reasonable rules” to promote “health, welfare, and morals,” and could use police powers to maintain these rules.

Another of Tourgee’s lines of argumentation in the Plessy case depended on the unreliability of train conductors in determining race. He argues that determination of race was “wholly impossible to be made, equitably and justly by any tribunal, much less by the conductor of a train without evidence,
investigation or responsibility” (153). Because of this impossibility, Tourgée argued, one should have recourse to the law (a trial) to determine if he/she is to be labeled as black. Building on this premise, Tourgée claimed that the arbitrary assignment of seats could severely injure one’s reputation, depriving him/her of property (reputation) without due process. He claims,

How much would it be worth to a young man entering upon the practice of law, to be regarded as a white man rather than a colored one? Six-sevenths of the population are white. Nineteen-twentieths of the property of the country is owned by white people. Ninety-nine hundredths of the business opportunities are in the control of the white people . . . . Indeed, is it [reputation] not the most valuable sort of property, being the master-key that unlocks the golden door of opportunity? (qtd. in Lofgren 154)

This line of reasoning obviously benefits only the “lightest” African Americans, even if it was introduced to undermine racial classification; it does nothing to combat the stigma of blackness (what Tourgée himself called the “terrible afflictions” of “ignorance, poverty, and an ebon skin”). This stigma was the dominant factor that necessitated segregation for the majority of the white population. Furthermore, Tourgée’s notion of property as reputation relies too heavily on the idea of a compensatory justice system that understands property and money as equivalents to equality. In other words, while Tourgée attempts to lean on previous court precedents by defining reputation as property, such a move defines human rights in narrow economic terms. A person who has been denied basic rights and recourse in the justice system, so Tourgée’s logic unfolds, can be compensated with money—rights and property are commensurate—and the only question becomes the appropriate ratio. What is being injured here, according to Tourgée, is the light-skinned African American man’s ability to make money. As several African American writers of the era, notably W. E. B. Du Bois, Chesnutt, and Frances Harper, were quick to point out, property comprises only a fraction of the losses incurred due to segregation, and these losses are not solved by pecuniary means alone.

In short, while Tourgée’s argument about racial indeterminacy seems promising, because it creates a necessary burden of proof of “black blood” that the train company could not possibly fulfill, it opens up a number of problems. First, this argument invokes the specter of race (and the impossibility of defining the boundaries between races), and in so doing, it weakens Tourgée’s concomitant argument that race is irrelevant to the determination of right. Tourgée’s implicit demand for the equitable and just evaluation of race weakens his criticism of a state’s right “to label one citizen as white and another as colored.” In other words, he simultaneously calls for a better method of classifying race and excoriates what he sees as the fundamental injustice of racial classification.

Tourgée attempted to circumvent this problem in part by deflecting attention from race to issues of class. While Tourgée argued vehemently against the discourse of “natural” and absolute racial difference, he relies on this very rhetoric of “natural” difference to build his argument about the illogical premises of Jim Crow segregation. In his brief before the Louisiana Supreme Court, Tourgée introduced the fact that many upper-class white people brought their African American nurses into the “white” train cars, and claimed that this practice led to an unnatural class inversion: Upper-class black passengers were denied entry into these cars, while their “inferior” counterparts, the nurses, were permitted. He used an example of miscegenation to drive his point home. If a white man, his black wife, their children, and their black nurse were to ride a train in Louisiana, the nurse would be allowed to ride with the white man, while his wife and children would be forced to
ride in the “colored” car. “Thus,” states Tourgee, “the bottom rail is on the top; the nurse is admitted to a privilege which the wife herself does not enjoy” (qtd. in Lofgren 50). By invoking the familiar metaphor of misplaced rails, Tourgee sought to illuminate the absurdity of the segregation of trains in a society that is not segregated in other spheres. By using the image of an “eternal” union splintered by an “unnatural” law, he gives credence to (or, at the very least, fails to question) the underlying notion of identifiable fundamental difference.

It was this overwhelming belief in very fundamental and “natural” differences that ultimately decided the case. While Tourgee relies on the indeterminability of race and believes right reason will reward his argument, he does not account for or counteract the prevailing sentiment within the white community about absolute racial difference. In his brief opposing Tourgee’s argument, Cunningham states that “every man must know the difference between a negro and a white man, [and] that the exercise of judgment is not necessary to determine the question” (qtd. in Lofgren 170). While such a claim carries little merit for us today, and seems easily cut down by right reason and unbiased logic, this sentiment carried immense weight at the time, and heavily influenced the courts, whose job it was to administer “color-blind” justice. As Dimock puts it, “Jim Crow laws [and the beliefs that undergirded these laws] were not unreasonable because the community had endowed them with the light of its own reason, a reason the Court adopted as its own” (215).

The lone dissenter in the Plessy case, Justice John Marshall Harlan, echoed Tourgee’s argument, stating that “our Constitution is color-blind and neither knows nor tolerates classes among citizens. . . . The law regards man as man, and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved” (193). It may be possible that the Constitution does not see color, but even a cursory examination of the history of the mixture of race and justice in the United States proves that those who interpreted and upheld the Constitution were anything but color-blind. Tourgee’s line of reasoning in Plessy v. Ferguson itself seems blind to societal prejudices, and assumes that “right reason” will prevail over them. As Thomas states, “Tourgee’s ideal of right reason assumes, so long as it is based on proper assumptions, the logic of an argument will prevail. As we well know, however, arguments are won by rhetoric as well as logic” (780).

“Whipped” into a Panic: Chesnutt and the Rhetoric of Justice

If Tourgee’s legal strategies to help fix the nation’s racism and provide opportunity for African American empowerment rely on a color-blind logic, Chesnutt’s “The Web of Circumstance” explores how the tenuous and conditional ground upon which this empowerment must take place remains very much influenced by color dynamics and racist legal practices. The fact that the story revolves around a denunciation of the nation’s justice system written by a lawyer and court stenographer only heightens this tension. 

Regardless of Tourgee’s opinion about the North Carolina court over which he presided, there is certainly no “right reason” in the justice and legal systems of Chesnutt’s rustic North Carolina town.

The white community in “The Web of Circumstance” counters every movement that protagonist Ben Davis takes to insure his livelihood. The story begins in Davis’s postbellum blacksmith shop, where “a forge was glowing” (291), an indication that his business is thriving. The story’s representative of the Southern white elite, Colonel Thornton, describes Davis as
“the best blacksmith in the county” (305). Even so, Davis will not be able to continue unimpeded his ascent up the social ladder. As Colonel Thornton’s name portends, he (and the white community as a whole) will be a “ton of thorns” to Davis, simultaneously injuring him and, in the narrator’s eyes, mocking his desire for economic gain. Just as the crown of thorns placed on Jesus’s head mocks his claim for religious legitimacy by satirizing his claim to an alternative power, so too does the white community (represented by Thornton) mock Davis’s attempt to upset the established systems of economic and social power. The Confederate title Colonel attached to Thornton’s name further serves as a reminder of the historical legacy of slavery and its hierarchy of power, a power that remains firmly in place in the postbellum South.

As soon as Chesnutt establishes Davis’s confident attitude, Tom (Davis’s mulatto assistant) frames Davis for stealing a whip, and he is sentenced to five years hard labor in prison. During his difficult imprisonment, the once-proud Davis “become[s] like” the other convicts (317). When he gets out of jail, his wife has left him for Tom; one child has drowned and the other has been lynched; and his property has been sold to pay debts. Mired in this “web of circumstance,” Ben seeks revenge on Colonel Thornton, whom he mistakenly believes to be guilty of framing him. As Davis lurks in the shadows of Thornton’s home, waiting to attack him, he runs into the Colonel’s daughter, whose angelic appearance causes Davis to reconsider his actions and flee. Colonel Thornton then rides up to the house, sees Davis running toward his daughter with a stick, and shoots “the negro.” The narrator closes the story with an appeal to a future “golden age,” one that redeems the lost hope of a failed Reconstruction (323).

In “The Web of Circumstance,” Chesnutt explores in minute detail the repercussions that occur when black people such as Davis begin to accumulate wealth. The white community feels his economic success must be controlled, and Davis’s desire and appreciation for the Colonel’s horse whip suggest how truly dangerous a man like Ben Davis is to this community. As he reshoes the Colonel’s horse, Davis comments, “’Dat’s a mighty fine whip yer got dere, Kunnel. . . . Where kin yer git dem whips?’” The Colonel tersely claims that his brother brought it from New York, adding that “‘you can’t buy them down here’” (292). The Colonel’s response reveals his anxiety about the prospect of Davis’s purchasing such a whip, of obtaining a status symbol equal to his own. Obviously, the whip also functions in this story as a symbol of authority, of established traditions, and specifically invokes the slavery-era power of the “masters” over the slaves. Furthermore, the whip was most often used when the white master believed there was need for punishment or “lessons”—when he feared the ability to control the slave population. In this light, the whip signifies the tenuous power balance of slavery, and acts as a reminder of how weak the mechanism for the maintenance of that power truly was.

Davis’s yearning for the whip signals to the white community a desire for equality, not only in the economic realm (the “handsome” whip as a symbol of purchasing power), but in the realm of power and social autonomy as well. A white bystander’s response only heightens this tension: “‘Pears ter me Ben gittin’ mighty blooded, driving a hoss an’ buggy, an’ wantin’ a whip like Colonel Thornton’s’” (292). This quote reflects the white man’s uneasiness about Davis’s accumulating property, and blooded literally means ‘blue-blooded’ or uppity. However, the term blood resonates differently in the context of a discussion about a whip. Since whips were traditionally used against slaves and the backs of African Americans were traditionally “blooded” by the master’s use of these whips, Davis’s yearning for the whip appears
to the white community as revealing a desire to possess the power traditionally aligned with whiteness.

Davis becomes so enthralled with his goal of economic advancement and the attainment of the symbols that represent this advancement that he remains oblivious to the threat the white people perceive in his actions. In fact, until his conviction, Davis seems to be unaware of the racist divide in the community and his potential transgression of “the color line.” In the first section of the story, Davis constantly berates his fellow African Americans for their lack of productivity: “We colored folks never had no chance ter git nothin’ befo’ the wah, but ef eve’y nigger in dis town had a tuck keer er his money sence the war, like I has, an’ bought as much lan’ as I has, de niggers might’a’ got half de lan’ by dis time” (293).

What most strikes modern readers about the story, apart from the sensational plot, is its narrative awkwardness. Of all the stories in The Wife of His Youth, “The Web of Circumstance” seems the most contrived, with heavy-handed metaphors and melodramatic juxtapositions serving relatively predictable ends. Whereas in much of the collection Chesnutt explores and explodes the concept of racial classification and the mulatto’s place in this classification, in “The Web of Circumstance” the story line unfolds formulaically. While on the one hand Chesnutt seems to criticize Tourgéean rhetoric (and the white power system in general) in a perceptive manner, this story rings with a moralizing and didactic tone absent from much of the rest of the collection.

Most noticeable, particularly in light of his criticism of the hierarchy of power, is Chesnutt’s peculiar racial hierarchy at the conclusion of the story, which seems to equate whiteness with purity and blackness with depravity. As Ben Davis approaches Colonel Thornton’s house at the end of the story, apparently to kill him, the sudden appearance of the colonel’s daughter disarms him:

A sweet little child, as beautiful as a cherub escaped from Paradise, was standing over him. . . . Under the lingering spell of his dream, her golden hair, which fell in rippling curls, seemed like a halo of purity and innocence and peace, irradiating the atmosphere around her. It is true the thought occurred to Ben, vaguely, that through harm to her he might inflict the greatest punishment upon her father; but the idea came like a dark shape that faded away and vanished into nothingness. (320-21; emphasis mine)

The redeeming value of a child’s innocence does not present us with a particularly original image. Chesnutt’s description relies on conventional, racially coded identities; the daughter’s “golden hair” proves her angelic goodness. His thoughts of injuring her present themselves as a “dark shape” that invokes images of “lurking black beasts” and the perceived threat of rape and murder, until these thoughts are finally disarmed by her purity and charm, her whiteness. This passage lacks the ironic distance that Chesnutt often displays in his other fiction for such loaded images. In this instance, he does not subvert the dominant symbols; he relies on them to resolve his story. On one level this description seems to undermine Chesnutt’s entire mission. At the very least, the narrator, by adopting such a voice, sets up the reader for the dramatic appeal to a higher, revisionary, and transcendent justice at the end of the story: “God speed the day, and let not the shining thread of hope become so enmeshed in the web of circumstance that we lose sight of it” (323).

This ending has been nothing if not puzzling for critics trying to come to terms with the changing tone and perspective at the story’s conclusion. For the most part, scholars have seen the ending’s awkward narration as principally a problem of genre. Most notably, William Andrews has argued that we need to understand “The Web of Circumstance” in the context of the
turn-of-the-century naturalism of Frank Norris and Theodore Dreiser. He explains,

Told with detached objectivity and an absence of the authorial interruptions which mar the pace of his other socio-economic tales, “The Web of Circumstance” does not pile up the “scientific detail” of a Norris or Dreiser. But as a record of the way in which economic, social, and psychological conditions can unite to throttle human aspirations and quash human dignity, the story stands firmly in the naturalistic tradition. (98-99)

For Andrews, then, the appeal to an unrealized hope at the story’s conclusion stands out as an aberration from Chesnutt’s naturalistic methodology, as an unfortunate foray into melodrama at the expense of a unified naturalist/realist work: “. . . that thread of hope hangs by a rhetorical tack at the conclusion, detracting from the aesthetic integrity of the story as a work of new realism” (99). In short, Andrews sees the narrative inconsistency in the story as a problem of “reconciling the new realist’s method to Chesnutt’s moral aims” and concludes that Chesnutt “balked at the absolute detachment of a ‘scientific’ realist” (100).

Lorne Fienberg similarly understands the ending as Chesnutt’s attempt to overcome the impotency implied in such a bleak story that so relentlessly damns the protagonist. He states, “As a means of overcoming [the] injustice [of Davis’s entrapment in social and economic forces], Chesnutt’s narrator struggles to achieve an affirming voice” (220). Fienberg’s use of the word struggles implies that the ending is at odds with the naturalist ethos of the remainder of the story, that Chesnutt forces an inorganic melodramatic appeal onto the end of his tale. While such an ending may come from reasonable impulses, it contaminates the tale’s artistic integrity.

While Andrews and Fienberg document Chesnutt’s break with realist modes of writing in the conclusion of “The Web of Circumstances” in order to claim an aesthetic discontinuity in the story, other critics have conversely seen the ending as an appropriately sentimental conclusion to a sentimental story. Citing Chesnutt’s “sympathetic understanding of southern negroes,” J. Saunders Redding reads the final appeal to a future justice as “the soul cry of the Negro” (qtd. in Wonham 118). While we could perhaps account for these differences as the result of critical evolutions, and argue that Fienberg and Andrews have adopted a postmodern sensibility that understands the world, and literature’s relation to the world, differently than did Redding in the 1930s, other more contemporary writers have concurred with Redding’s interpretation of the story as melodrama. For example, Charles Duncan, in his 1998 study of Chesnutt, describes “The Web of Circumstance” as “melodramatically depicting the unraveling of the life and career of Ben Davis” (147). Duncan does not see the conclusion as an inappropriate addendum to the story’s purpose; rather, he sees it as a fitting end that emphasizes Chesnutt’s sentimental theme: “Davis sustains his reverence for the concept of family identity; it is no mere ‘circumstance’ that he dies at the feet of a child” (148).

While these critics disagree about how we should understand the story’s narrative shifts, they all agree that these shifts are best examined through the prism of genre and methodology. In other words, what is at issue here, for these critics, is aesthetic pacing and artistic integrity. It seems to me, however, that the narrative inconsistencies have as much to do with the political and social tides behind generic choices as they do with purely literary concerns. Or, to put the matter another way, the racial climate in which Chesnutt was writing and publishing generated very political reasons for problems of genre.

I believe we can begin to explain the troubling narration in “The Web of Circumstance” by examining Chesnutt’s expressed opinions about
his fiction. Always politically active with regard to African American rights, he believed that his political and literary aspirations could be integrated. In an 1880 journal entry he stated that he could bring about "a moral revolution" in his white audience, a revolution that would ultimately lead to "social recognition." Certainly, Chesnutt admitted that he was acutely conscious of his white audience and their reaction to his work. Rather than attacking white racism in a confrontational manner, Chesnutt stated that racism had to be "mined" from underneath. He writes,

\[\ldots\] the subtle almost indefinable feeling of repulsion toward the negro, which is common to most Americans—and easily enough accounted for, cannot be stormed and taken by assault; the garrison will not capitulate: so their position must be mined, and we will find ourselves in their midst before they think it. \ldots

The work is of a twofold character. The negro's part is to prepare himself for social recognition and equality; and it is the province of literature to open the way for him to get it—to accustom the public mind to the idea; and while amusing them to lead them on imperceptibly, unconsciously step by step to the desired state of feeling. (Journals 140)

Edward Ayers, Myles Hurd, and other critics have cited this journal entry in order to support their larger claims about Chesnutt's strategy of subversion, that in his writing Chesnutt "mines" racism in a covert manner. If we follow this interpretation, we can understand how Chesnutt enables himself to explore with less risk the myriad ramifications of racial uplift and "passing." As we have seen with Tourgée’s argument in Plessy v. Ferguson, the phenomenon of "passing" does not necessarily dispute the legitimacy of the line between races. Rather, it contests, among other things, the ability adequately to define or identify this line and to determine where this line should be placed. Surely, Chesnutt understood that his battle in "The Web of Circumstance" (the economic and social equality of African Americans) must be fought on much more tenuous ground, lest, instead of leading his white audience "step by step," he would alienate them. With this in mind, one can see the advantages Chesnutt would have in creating the racist polarities in his text—the golden innocence of whiteness vs. the corruption of blackness—in order to get white readers to accept his fundamental premise, only to "mine" the more pressing matters of the text in a subtler fashion.

Before we agree with Ayers too hastily, however, we should remember that this journal entry was written in 1880, nineteen years before The Wife of His Youth was published. By 1899, Chesnutt had received much support and assistance from the white literary elite, and did not seem particularly interested in "mining" this form of support. Perhaps this fact can explain much of the narrative awkwardness of "The Web of Circumstance," as Chesnutt sought to forward his critique of racial relations while simultaneously climbing ever higher in the very system he sought to change.5

While he was undoubtedly wary about publishing stories "of the color line" as a black man in 1899, he had benefitted immensely from the help and interest of much of the white literary elite (Walter Hines Page, W. D. Howells, George Washington Cable, and Tourgée all offered assistance to Chesnutt and his nascent writing career). At this time, Chesnutt believed they agreed with him about the most propitious manner to discuss race relations. Even though he probably realized he needed to walk on eggshells in order to avoid the wrath of the majority of the white reading public, in "The Web of Circumstance" we see Chesnutt forwarding a critique he firmly believes will be accepted by the white publishing community—the inadequacy of the American justice system as it pertains to issues of race. Such a split in his intended white audience, not to mention in his devoted African
American following, contributed to the clumsy and troubling narration that pervades the story, as Chesnutt sought simultaneously to write a story that would appeal to white readers and to critique the most cherished values of these same readers.

If Chesnutt often seemed at a loss about how to fit his literary goals with those of his editors and critics, in the courtroom scene of “Web” he draws upon his legal training and the intimate knowledge of courtroom proceedings that provide him an alternate base of authority. While Chesnutt often seems at a loss when trying to develop the “literary” aspect of his early stories, in the courtroom scene he is in control. In section II of the story, Chesnutt gives nuanced attention to the manner in which legal discourse proves unable to accommodate African Americans into its notion of justice. Here he undoubtedly draws on his experience as a lawyer and court stenographer. At the beginning of this section, Chesnutt distances Davis from the narrative point-of-view: “The case of the State of North Carolina vs. Ben Davis was called” (297). This authorial move signals Davis’s helplessness in a judicial system controlled and operated by the white community. The legal framework of this section as well as the abundance of legal terminology supplants the sympathetic narrator, and Davis is left to writhe in front of a hostile court. Fittingly, in this section Chesnutt labels Davis “the prisoner.” While he was formerly the productive “blacksmith,” he is now a prisoner, a term that connotes a degree of guilt even before the trial begins. By the end of the story, Chesnutt brands Davis as an anonymous “negr,” emphasizing the white society’s negative associations with such a designation, as well as the powerlessness and objectification of Davis which such a label entails.

Perhaps Chesnutt’s most subtle criticism (one that makes the awkward narrative shifts even more noticeable) is his analysis of the competing “rhetorical truths” in the text. In the climactic courtroom scene, the court finds Davis guilty, not on the grounds of indisputable evidence, but by virtue of the prosecutor’s rhetoric. Chesnutt informs us that the lawyer “reserved his eloquence for the closing argument” (304). As the case opens, the “young and zealous” State’s attorney begins building his case with circumstantial evidence, because, as he states, “Men might lie, but circumstances cannot.” He then proceeds to portray Davis as a social agitator who wishes to overthrow white society. He labels Davis “a negro nihilist, a communist, a secret devotee of Tom Paine and Voltaire, a pupil of the anarchist propaganda, which, if not checked by the stern hand of the law, will fasten its insidious fangs on our social system, and drag it down to ruin’” (298). Davis, even though he does not understand the lawyer’s references or the full gravity of the speech, is stunned by the lawyer’s diatribe, “overwhelmed by this flood of eloquence.”

Chesnutt informs us that Davis has never even heard of Tom Paine or Voltaire. He similarly “had no conception of what a nihilist or an anarchist might be, and could not have told the difference between a propaganda and a potato” (299). Furthermore, even if he were familiar with these ideas and people, he would not subscribe to their philosophies; Davis believes in Booker T. Washington’s notion of economic advancement. Whereas Washington emphasizes the immediate value of economic opportunity leading eventually to social gains, Chesnutt presents Paine, Voltaire, and anarchists as defenders of social equality. Chesnutt ironically emphasizes Davis’s belief in economic advancement by having Davis accused of espousing the philosophies of “agitators” for social equality when he clearly remains interested in economic advancement at the expense of broader social rights.6

The lawyer’s “eloquence” sways the court in precisely the manner to which Tourgée is oblivious.7 Although the court mildly warns the prosecutor

WHO OWNS THE WHIP?: CHESNUTT, TOURGÉE, AND RECONSTRUCTION JUSTICE

This content downloaded from 160.36.195.200 on Mon, 2 Dec 2013 13:33:52 PM
All use subject to JSTOR Terms and Conditions
to confine his argument to the facts, his rhetoric has clearly served its purpose. Whereas Tourgée’s “color-blind” justice system would have ignored these slanderous digressions, in Chesnutt’s court they are the determining factors of the trial. The prosecutor has “whipped” the white community into a panic about Davis’s inciting of racial upheaval. Chesnutt’s choice of the word whipped here returns us to the central symbol of the story, the whip, and its connections with power. The prosecutor’s “eloquence” exemplifies the power of the white community as symbolized by Colonel Thornton’s adorned whip. Several white witnesses testify that Davis is indeed an agitator. Once again their inflammatory oratory proves effective, as the judge sentences Davis to five years in prison, citing the fact that his radical beliefs “‘would breed discontent’” among the “‘igno-
rant’” African Americans and would “‘give rise to strained relations’” between the races (310).

Until his conviction, Davis remains oblivious to the effect his accumulation of wealth has had on the white public. In giving Davis a belief in “self-mak-
ing” and economic equality while his road to prosperity becomes a dead end, Chesnutt sets Davis up as an ideologi-
cal fall-guy, a character who proves the deficiencies of Washington’s economic ethos. As Davis spouts his slightly
conceited speech about his recent gains as a blacksmith, Chesnutt ironically reveals the short-sightedness of his atti-
date. Davis quips, “‘I tell yer dere ain’ nothin’ like propputy ter make a pus-
son feel like a man’” (294). His ensuing imprisonment at the hands of an an-
xious white community ultimately robs Davis of his “manhood” and economic opportunity (Tom “steals” his wife,
and Davis loses his business while serving time in prison). Finally, the white people gain control of Davis’s property, his tangible sign of independ-
ent prosperity: “‘Hit wuz sol’ fer mortgage, er de taxes, er de lawyer, er sump’n—I don’ know w’at. A w’ite
man got it’” (316; emphasis mine).

Chesnutt comes down on Davis so hard and the story conspires against him so firmly for two principal rea-
sons. The first is fairly obvious: Chesnutt wants to emphasize the in jus-
tice of the national legal system and the racist beliefs that undergird this system in order to create empathy for those oppressed by this injustice. Secondly, for Chesnutt the securing of rights for African Americans represents much more than purchasing power (the ability to own a whip and a horse and buggy); it represents the society’s recognition of their fundamental humanity. Discussing the relationship between this recognition and legal rights, Patricia Williams states,

For the historically disempowered, the conferring of rights is symbolic of all the denied aspects of their humanity: rights imply a respect that places one in the referential range of self and others, that elevates one’s status from human body to social being. For blacks, then, the attainment of rights signifies the respectful behavior, the collective responsibility, properly owed by a society to one of its own.

While in this quotation Williams addresses the current debate in Critical Legal Studies about whether the legal champions of the dispossessed should abandon a rights rhetoric in favor of a needs rhetoric, she nonetheless speaks to the central tension in Chesnutt’s story. Williams states that “the attainment of rights signifies [what is] properly owed” to the African American community. Such language brings us back to Dimock’s premise of commensurability, the law’s exercise in abstrac-
tions that “assigns due weight to disparate things” (2). Williams, and I would argue Chesnutt as well, per-
ceives rights as so crucial because they force the dominant society to interact with the oppressed community as peo-
pole (or at least legally recognize their humanity). For Chesnutt, then, financial gain and economic empowerment can never be adequate forms of compen-
sation, can never balance the scales, because social rights signal change in a
static society and enable the black community to live in this community with a sense of hope for betterment, a hope that money simply cannot buy.

As the title and conclusion of the story suggest, "The Web of Circumstance" is all about the inescapable legal quagmire of African Americans who attempt to assert these rights. Throughout the story, the word *circumstance* appears repeatedly. During the trial scene alone, the narrator mentions the "circumstances" of the missing whip, for which "suspicion naturally fell upon the prisoner" (299). There are the "circumstances under which the whip was found" (301), further incriminating Davis. The prosecuting lawyer builds his case around a plethora of "circumstantial evidence" (304). The judge cites the "circumstances" of the case, which call for a severe penalty (310). Finally, there are the "circumstances of [Davis's] unfortunate race," which provide the judge a large amount of discretion when sentencing Davis. In this specific case, the judge claims that, since Davis has "borne a good reputation in the community"—since he is in comfortable circumstances—he must be punished severely as a lesson to other African Americans (312).

Indeed, every conceivable "circumstance" that arises during Davis's trial only serves to condemn him further. The only time Chesnutt invokes the word with beneficial results is when a white man is convicted of murder. The court only sentences this man to one year in prison because his murder "was done in the heat of passion, under circumstances of great provocation" (309; emphasis mine). Chesnutt juxtaposes the hopeless circumstances that inevitably damn his client, Davis, with a transcendental justice that does not yet exist in the world, the "shining threat of hope" that will one day appear to redress the wrongs committed by a bigoted legal system.

A "Hope" for a Better Day: Color-Blindness Today

Just as Chesnutt turns our attention at the conclusion of his story to an as-of-yet unfulfilled hope, Patricia Williams comments on the role that hope plays in African Americans' striving for a just society:

To say that blacks never fully believed in rights is true. Yet it is also true that blacks believed in them so much and so hard that we gave them life where there was none before; we held onto them, put the hope of them into our wombs, mothered them and not the notion of them. And this was not the dry process of reification, from which life is drained and reality fades as the cement of conceptual determinism hardens round—but its opposite. This was the resurrection of life from ashes four hundred years old.... [Rights] is the magic wand of visibility and invisibility, of inclusion and exclusion, of power and no power. The concept of rights, both positive and negative, is the marker of our citizenship, our relation to others. (163-64)

So, in both Chesnutt's story written at the end of the nineteenth century and Williams's book written at the conclusion of the twentieth, hope and rights become inextricably linked markers of progress for the African American community. Or, rather, rights become the hope for the future that nourishes and focuses these two writers struggling a century apart for racial equality. But, if rights become compensation for past injustices, the quantitative means of exchange that puts a number on the abstract value of oppression, we are still left with the issue of "commensurate balance." This appears to me to be the key issue in the debates about race in the past century, especially in modern debates about programs and judicial rulings (such as Affirmative Action and school vouchers) that deal with past discrimination and the legacies of oppression.

Indeed, it is within this context of Affirmative Action that Tourgée's notion of color-blind justice is rearing...
its head again. In their article “Race Talk and the Bell Curve Debate,” Henry Giroux and Susan Searles define what they call “the new racism”: “...the new racism offers a two-pronged argumentation that, on the one hand, refuses to acknowledge that the issue of race is at the heart of its policymaking (as in welfare cutbacks, tougher crime bills, and anti-immigration legislation) and, on the other hand, offers rationales for policy changes that claim to be color blind (as in the call to end affirmative action and racial gerrymandering)” (7; emphasis mine). Patricia Williams sees a similar “new rhetoric of racism,” and in her collection of essays Seeing a Color-Blind Future, she asks, “How precisely does the issue of color remain sopowerfully determinative of everything from life circumstances to manner of death, in a world that is, by and large, officially ‘color-blind?’” (15).

Giroux and Searles’s proclamation and Williams’s poignant question both raise the vexed nature of the notion of a color-blind society. If Tourgée understood a color-blind logic as a means to fight racism and ossified racial classification, today’s conservative policymakers invoke a color-blind rhetoric to reestablish racist practices that demarcate and exclude along race lines by claiming that race no longer matters. In other words, claims of a “color-blind” justice system and “the fiction of race,” initially introduced to explain the social construction of racial difference and the contingent economic divide, have been co-opted by conservatives and used to repeal Affirmative Action, head-start programs, and welfare benefits in the name of racial progressivism. “There is no such thing as race,” so the line of (right) reasoning goes. “And we have successfully defeated the problems of race, so Affirmative Action initiatives are no longer necessary. We as a society have transcended this problem. We no longer see things in black and white.” This essay has attempted to demonstrate the shortcomings of the rhetoric of “color-blind” justice when applied with the best of intentions. Today’s revitalized color-blind rhetoric ought to make us worried about how destructive it may be when applied with the worst.

Notes

1. For a discussion of Tourgée’s line of reasoning, and its strengths and weaknesses, see Lofgren chs. 2 and 4. See also Sundquist ch. 3 (particularly pp. 233-49).
2. Tourgée served as a superior court judge in North Carolina from 1869 to 1879. His fictionalization of his experiences there, A Fool’s Errand, was published in 1879.
3. This letter is published in its entirety (with an introduction) in Olsen, “Tourgée.”
4. Chesnutt passed the Ohio bar exam with the highest grade in the state in 1887 and “thrived as a legal stenographer with a national reputation” (Brodehead 189).
5. The narrative tension and awkwardness so prevalent in “The Web of Circumstance” largely dissipate by the publication of The Marrow of Tradition (1901). By this time Chesnutt had become disillusioned with the publishing community and saw the substantial limitations of its “support.” As a result, he was much more likely to write what he believed, rather than pander to the interests of the publishing community that, at the time The Wife of His Youth was published, controlled/determined Chesnutt’s future as a writer.
6. In 1908, Kelly Miller wrote about the slogan “social equality” and its far-reaching implications, stating that “social and ‘equality’ are two excellent words, but ‘social equality’ must not be pronounced in good society, like two harmless chemical elements uniting to make a dangerous compound” (123-24).
7. While Chesnutt presents legal eloquence as a dangerous courtroom variable that tends to work against black defendants, in his most famous novel, A Fool’s Errand, Tourgée’s white protagonist, Colonel Servosse, uses his own “eloquence” to disarm the racist white community and convince them of the legality of reconstruction initiatives. Once again, we see Chesnutt and Tourgée in agreement about the threats to the African American community, but disagreeing vehemently about the best way to resist these threats.

AFRICAN AMERICAN REVIEW
8. David Leverenz has brought to my attention the resonances of this name, suggesting the possibility that Chesnutt's naming invokes the legacy of Ben Franklin and Jefferson Davis. This invocation would fit well with my analysis here. After all, Davis adapts a Franklinesque sense of economic progress through self-discipline and a belief in the moral value of hard work, and Davis's alignment with Booker T. Washington's notion of compromise ties him (in Chesnutt's mind) to a past time of Confederate control over African American social status in a way that makes him oblivious to the fact that his Franklinesque virtues will not be rewarded by society. Lorne Fienberg has also commented on Davis's name, noting that "Ben Davis's given name invokes images of Franklin, of the accumulation of wealth through virtuous enterprise, and also of the goal of civic participation and responsibility" (220).


---

**William Sanders Scarborough Prize**

*Competition in 2002 for Books Published from 1997 to 2001*

The Committee on Honors and Awards of the Modern Language Association is pleased to invite authors, members and non-members alike, to compete for the first William Sanders Scarborough Prize. A distinguished man of letters and former university president, William Sanders Scarborough was the first African American member of the Modern Language Association. He exemplified the life of the mind combined with community service. Established in 2001, the prize will be awarded annually for an outstanding scholarly study of black American literature or culture. Books that are primarily translations will not be considered. The inaugural Scarborough Prize, which consists of $1,000 and a certificate, will be presented to the winning author at the Association's annual convention in December 2002.

To enter a book into the competition, send four copies and a letter identifying the work to:

William Sanders Scarborough Prize  
Modern Language Association  
26 Broadway, 3rd Floor  
New York, NY 10004-1789  
tel: 646/576-5141  
awards@mla.org

Entries may be sent at any time but must be received by 1 May 2002. Publishers may enter more than one title, but no book may compete for more than one MLA prize.

---

AFRICAN AMERICAN REVIEW