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Justice Deferred: Legal Duplicity and the Scapegoat Mentality in Paul Laurence Dunbar’s Jim Crow America

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Abstract, Although best known as a poet, African-American writer Paul Laurence Dunbar (1872–1906) developed a unique voice in his fiction. This article explores the bifurcation Dunbar discerned between the law as an instrument of justice and as a stabilizer of the segregationist status quo in Jim Crow America. Dunbar creates characters who are systematically scapegoated for crimes they did not commit in order to expose the law’s precarious relationship to justice. His treatment of lynching as a paradigmatic manifestation of the scapegoat mechanism links this practice to a political theory of violence, whereby the innocent are punished for the crimes of the guilty, and society requires their sacrifice in order to redeem its guilt. Without relinquishing his faith in the law, Dunbar used prose narratives to expose the disjuncture between law and justice made manifest by the US Supreme Court’s rationalization of racial discrimination in Plessy v. Ferguson (1896). While considering the light Dunbar’s fictions shed on the relationship between law and justice, I locate these interventions within a longer history of thinking about the role of the writer as a scapegoat who enables society to sin without experiencing guilt.

So, will some one please inform me,
An’ this mystery unroll –
How an angel an’ a devil
Can persess the self-same soul?¹

“For the sake of re-enslaving the Negro, the Constitution has been trampled under feet, the rights of man have been laughed out of court, and the justice of God has been made a jest, and we celebrate.”² The African-American writer Paul

Keywords, scapegoat; lynching; shame; innocence; guilt; violence; justice; honor; sacrifice; lawyers; narrative; pharmakon; pharmakos; African-American literature; Paul Laurence Dunbar

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The African-American writer Paul Dunbar
Laurence Dunbar wrote these words for *The New York Times* on July 10, 1903, to mark Independence Day. In addition to the annual patriotic holiday, Dunbar’s meditation was occasioned by a bloody race riot in the town of Evansville, Indiana, which had claimed dozens of African-American lives. In his piece for *The Times*, Dunbar situates this riot within a longer history of violence against African-Americans, and asks difficult and important questions about patriotism and national belonging. He remarks on an irony: Americans protest to Russia against the Kishinov pogrom while remaining silent amid the slaughter of African-Americans in their own homeland. “Contemplating with placid eyes the destruction of all the Declaration of Independence and the Constitution stood for, we celebrate the thing which our own action proclaims we do not believe in,” Dunbar pointedly insists. With these words, Dunbar exposes the indifference to black lives that made such riots a regular feature of American life.

Among the most notable aspects of Dunbar’s essay is the legally charged nature of his exposé of the unjust violence against African-Americans, and his invocation of legal ideals such as universal rights and equality before the law. When he asserts that “the rights of man have been laughed out of court” and “the justice of God has been made a jest,” Dunbar is developing a critique of the law that is fleshed out even more fully in his fiction. This rights-based critique uses the concept of the scapegoat, and the specific forms of sacrificial violence that this concept entails, to indict American justice. Alongside his vindication of African-American rights in his Independence Day essay, Dunbar devoted an earlier essay, also written in response to a race riot (this time in Wilmington, North Carolina, in 1898), to a careful explanation of why, once acquired, such rights could not, and would never be, relinquished. “Let those suffering people relinquish one single right that has been given them,” Dunbar warned, “and the rapacity of the other race, encouraged by yielding, will ravage them from every privilege that they possess.” Dunbar here displays a keen knowledge not only of world history but also of the political history of nations, which he acquired while preparing to pursue a career as a lawyer before he learned that such a path was closed to African-Americans like himself.

Dunbar appeals to natural rights in his discussion of the barriers facing African-American participation in government. “Rome sated her thirst for blood and called it civilization,” he notes, “France indulged her barbaric fancy and named it religion. America strides through the ashes of burning homes, over the bodies of murdered men, women and children, aloft the banner of progress.” In short, duplicity underwrites the modern world order, and it is hypocritical to expect African-Americans to be satisfied by rights that are in any way inferior to those enjoyed by other peoples. Yet, even as Dunbar extends the legal concept of universal rights to all African-Americans, he recognizes the distance between
this vision and the world that he inhabits. In order to explore – and to expose – this latter world, Dunbar turned to narrative form.

1903, the year of his Independence Day essay, was less than a decade after the landmark ruling of Plessy v. Ferguson (1896), in which the US Supreme Court notoriously interpreted the Fourteen Amendment (1868) of the US Constitution to be consistent with racial segregation. By an overwhelming majority (seven to one), the court declared that:

A statute which implies merely a legal distinction between the white and colored races – a distinction which is founded in the color of the two races and which must always exist so long as white men are distinguished from the other race by color – has no tendency to destroy the legal equality of the two races.6

In thus stripping the concept of legal equality of political significance, the majority opinion that made segregation consistent with the US Constitution taught the 24-year-old Dunbar a great deal about the duplicity of equal rights discourse in Jim Crow America. Yet, it did not, and could not, entirely dispel his faith in the transformative power of the law.

This article explores how Dunbar’s unrealized desire to pursue a career in law was channeled into his prose. His interest in the law is widely documented in the memoirs of those who knew him, as well as in his own writings. Instead of attending Harvard to prepare for a career in law, as he had dreamed of doing, Dunbar was compelled by economic necessity and the restricted social mobility that all African-Americans of the time faced to make a living by navigating the elevators at the Callahan Building in his hometown of Dayton, Ohio. Dunbar kept this job until 1893, five years after the publication of his landmark poetry collection Lyrics of Lowly Life, which included a preface by the literary luminary William Dean Howells.7 Dunbar’s biography tells a poignant story of a gifted poet denied the opportunity to realize his potential due to the racial inequality prevalent within his society.

Notwithstanding the barriers he faced, Dunbar persisted in his quest for learning, and specifically for a legal education. His acquaintances recalled how, even when he was managing the elevator in Dayton, he always had to hand a “pen, notebook, dictionary, and thesaurus, and nearby was a set of lawbooks,” so that he could read when the elevator traffic was low.8 Dunbar’s stories are often set in courts of justice, in law offices, in jails, and in other sites of legal activity. Just as an emergent rights discourse affords a prism through which Dunbar judges American politics and history, so does the legal profession provide the context for Dunbar’s vision of American life.

While much of his thinking about literature and life revolves around the law, Dunbar’s writing also, unsurprisingly, bears the traces of his disenchancement
with the law as an instrument of justice. On one occasion, when he was asked by a potential patron whether he still dreamed of pursuing a legal education, Dunbar responded:

I did once want to be a lawyer, but that ambition has long since died out before the all-absorbing desire to be a worthy singer of the songs of God and nature [and] to interpret my own people through song.⁹

Lida Keck Wiggins, the compiler of a volume of Dunbar’s writings published soon after his death, speculates that the poem “The Lawyer’s Ways,” which is “doubtless the fruit of his observations [while he worked as] a page in the Dayton court-house,” explains why Dunbar ultimately gave up on a career in law. The portrayal of the law in this poem focuses on its tenuous relationship to justice, and on the ease with which effective manipulation of legal arguments can affect the outcome of a case. Dunbar records how the selfsame individual was presented one day in court as a criminal and another day as a martyr, depending on which side his lawyer was on. The poem concludes by asking sarcastically: “How an angel an’ a devil / Can persess the self-same soul?”¹⁰

Dunbar’s preoccupation with the relationship between law and justice is also reflected in “The Haunted Oak,” which is among the first poems in African-American literature to deal forthrightly with lynching. This poem is structured into four-line stanzas, each of which is told from the perspective of an oak tree on which a lynched man’s body is mounted. The poem concludes by evoking the specter of a “guiltless man” for the second time:

And never more shall leaves come forth
On the bough that bears the ban;
I am burned with dread, I am dried and dead,
From the curse of a guiltless man.¹¹

The lyric voice of this poem is multilayered and insistent. The repetition of “guiltless” intensifies the sense of something gone wrong. It is enough to indicate the body of a “guiltless man” for the reader to grasp that he has been lynched in an act of racial violence, and that the tree and the ground it stands on will be haunted forever by the shedding of his innocent blood.

Notwithstanding the elusive invocation of justice within his poems, it was in prose that Dunbar most fully interrogated the relationship between law and justice. In his exegesis of the lyric mode as an alternative to the law, or what he terms an “a-nomic” form, literary scholar David Lloyd suggests that the lyric cannot be subsumed by law inasmuch as it “stages the indeterminacy of the sentence
and of the bounds of experience.” By contrast, as legal theorist Robert Cover shows, narrative imposes “a normative force upon a state of affairs” by tying “precepts to experience.” Stated more simply, the lyric traverses the imagination, which is outside space and time, and in this sense differs from prose. While the imagination develops its own concept of justice, this justice exists outside the law. The law cannot wholly inhabit poetry because legal justice must be realized within space and time, if the concept is to have political (in contrast to aesthetic) value. By contrast with the lyric, narrative is better suited to “tie precepts to experience” in the way that a legal concept of justice mandates.

Dunbar’s most powerful critiques of American justice were delivered not through the poetry that made him famous, but in his expository prose. It was here, in the interstices of words and narrative, that Dunbar explored the unfolding of the scapegoat mechanism, chronicled how political actors conceal the foundational violence of their social order, and gleaned from this state of affairs lessons concerning the limitations of legal norms. It was in these texts that Dunbar gave verbal flesh to the hypocrisy and duplicity, as well as the irony, that structures the contingent relationship between law and justice, and which was evident in attenuated form in Jim Crow America, a legal order that enshrined “separate but equal” status to African-Americans as a matter of law. This article examines such moments of critical insight in three of Dunbar’s short stories and in his landmark novel *The Sport of the Gods* (1902). I explore how, in each text, a rights-based discourse premised on legal equality is juxtaposed with the de facto reality of social segregation.

Rather than following a linear chronology in presenting these works, the order has been determined by their movement from the scapegoat theme to the historical reality of lynching. While the transition is nonlinear, and non-chronological, it is conceptually motivated. In moving from texts that literalize the scapegoat to texts that allegorize the scapegoat through the more literal, and more graphic, imagery of lynching, I show how an ancient trope within world literature and political theory is given particular coloring within a legal system that institutionalizes prejudice by legitimizing racial segregation. Broadly, this exposition suggests that Dunbar’s awareness of the law’s failure to address the disjuncture between equality of rights and inequality of opportunity led him to use the medium of fiction to say obliquely through irony and characterization what he chose not to say in his more widely circulated – and less incendiary – verse.

**EQUAL RIGHTS Duplicity**

In one of the last letters of his life, Franz Kafka wrote to his friend Max Brod that “the writer is the scapegoat of mankind. He makes it possible for men to
enjoy sin without guilt, almost without guilt.” Kafka’s hesitant qualification of the writer’s role – “almost without guilt” – suggests a sensibility akin to Dunbar, whose biographer, Addison Gayle, wrote of his subject: “he was despondent not because [his goals] were unattained, but because he had come so close to attaining them.” Both writers saw themselves as marginal figures, like the scapegoats they created in their prose, hovering between normality and deviance, paradoxically upholding the moral order of the universe with their subversive critiques. In the poem “Life’s Tragedy,” Dunbar laments having been kept from the “perfect thing” by a scapegoat mentality that lynches the innocent. Similarly, Kafka’s protagonist Joseph K epitomizes the scapegoat: he does not resist his fate. As a stand in for the writer, and for anyone suspected but not convicted of a crime, Joseph K functions as a tabula rasa onto which society projects its guilt.

Like Kafka, Dunbar understood the political history of nations as a contest between the writer and society. Both authors perceived the writer as a scapegoat who shoulders the sins of humanity, and as a figure locked in a hopeless battle to distract readers from a more pervasive societal injustice. Kafka’s “The Hunger Artist” (1922) is a locus classicus for this vision of the role of the artist in society. For Kafka as for Dunbar, the tension between the writer and society broadly allegorizes the disjuncture between the law and justice. Like Kafka, Dunbar is interested in how sacrifice maintains the social order by executing and punishing the innocent.

Elsewhere, Gayle calls Dunbar “a victim of his own age” who went too far in internalizing the race prejudices of Jim Crow America. In support of his assertion, Gayle quotes from “Life’s Tragedy,” a poem that Dunbar wrote near the end of his life: “this it is to be accursed indeed / For if we mortals love, or if we sing, / We count our joys not by the things we have, / But by what kept us from the perfect thing.” Whether we agree with Gayle’s assessment of Dunbar as a writer who capitulated to the pressures of his era depends in large measure on whether we discern the irony of Dunbar’s style, as well as the extent of our engagement with his prose. Dunbar’s fatalism did not signify acquiesce to racism; on the contrary, and especially in his fiction, it led him subtly to expose the law’s duplicity in literary form.

When Dunbar exposed injustice through narrative form, his vast readings in world literature came to his aid. By elevating specific applications of the scapegoat mechanism in his immediate milieu into a global parable for injustice, Dunbar universalized African-American experience. As Matthew Wilson has noted, Dunbar was one of the first African-American writers to cross the “color line” by exploring the lives of white people alongside those of blacks. Dunbar performed this feat in his first novel, The Uncalled (1898), which was a commercial and critical failure. In at least one respect, however, The Uncalled proved formative for Dunbar’s subsequent literary production. In naming his protagonist
Hester, Dunbar evoked the heroine of Nathaniel Hawthorne’s *The Scarlet Letter* (1850), a novel that famously makes literary use of a Calvinist understanding of guilt as the transmission of sin. Hawthorne’s narrative of sin and exculpation sets the stage for Dunbar’s exploration of the scapegoat in his fiction.

In “The Scapegoat,” published as the first story in his collection *The Heart of Happy Hollow* (1904), Dunbar yokes together ancient and modern understandings of the scapegoat in order to draw attention to the foundational violence of the modern social order. In this story, which was later selected by Langston Hughes for inclusion in his anthology *The Best Black Stories by Black Writers* (1967), a black barber and aspiring politician named Robinson Asbury is singled out by the community because he is different. After a brief period of unexpected success in his endeavors to become an elected official, Asbury is incriminated by the black community for his refusal to support the political establishment. Asbury is marked as a potential scapegoat due to his low-class origins and the support he enjoys from the impoverished black community of Cadgers. Having “started life as a bootblack,” Asbury then rose to become “porter and messenger in a barbershop.” He is an ambitious man whose talent intimidates government officials. Instead of entering the establishment Asbury wants to revolutionize local politics.

Asbury’s desire for obscurity is put to the test when an influential black lawyer named Silas Bingo offers him “a prominent position” in a procession aiming to garner votes in an upcoming primary election. Asbury quickly replies: “I don’t want it; I don’t want to appear in this at all. [...] You can have all the credit.” Although ambitious in the extreme, Asbury will not settle for a mere semblance of fame. He wants to reshape society in accordance with his egalitarian ideals. Asbury’s vision conflicts with that of both the black and white establishment. Asbury allows himself to be co-opted by the white politicians governing the town who reason that “It would be well to have a man – a shrewd, powerful man [...] who could carry his people’s vote in his vest pocket, and who at any time its delivery might be needed, could hand it over without hesitation.”

The sign displayed in Asbury’s barber shop, emblazoned with the words “Equal Rights Barber-Shop,” is a pointed reference to the stipulation in the Fourteenth Amendment of the US Constitution (1868), that no state shall “deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.” The *Plessy v. Ferguson* ruling influentially interpreted this amendment – which was the closest approximation to a government guarantee of legal equality for African-Americans after the Civil War – as consistent with segregation. According to justice Henry Billings Brown in his majority opinion, the Fourteenth Amendment “could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political, equality, or
a commingling of the two races upon terms unsatisfactory to either.”26 The emancipatory potential of the Fourteenth Amendment – and of law generally – was thereby muted for the entire course of Dunbar’s life.

With respect to his experience of the law as simultaneously an instrument of injustice and a source of hope, Dunbar was not alone. His near-contemporary Ida B. Wells, a pioneering crusader against lynching, expressed a similar relationship to the law in her activism and writing. In the winter of 1886–87, Wells won two lawsuits against a railroad company for assigning seats according to their passengers’ race. The ruling, which had initially been in her favor, was soon overturned by the Tennessee Supreme Court. The outcome of the case, which may be seen as a precedent to *Plessy v. Ferguson*, caused her to lose faith in the law and hardened her “anew to life in a hopelessly segregated society where power came from politics, not the Constitution.”27 As with Dunbar, a modicum of faith in the law remained to Wells even after her defeat in court, and inspired her activism.28 As in Dunbar’s Independence Day essay, Wells responded to the denigration of the law in Jim Crow America by situating rights discourse on a higher historical plane. Whereas for Wells, this higher plane was located in the legal traditions of England, a country she enlisted in her struggle against lynching, Dunbar’s higher historical plane was rooted in the aesthetic realms of world literature.

Asbury’s “Equal Rights Barber-Shop” sign verbally asserts the “equal protection of the laws” guaranteed to all citizens by the Fourteenth Amendment. Situated in a segregated community, the sign highlights the duplicitous interpretation of this amendment that prevailed at the time. It thereby recognizes the tenuous relationship between the law and justice. In rejecting legally sanctioned segregation, Asbury positions himself outside the range of norms that could be countenanced within his community. By demonstrating naïve faith in the Fourteenth Amendment, and arguably testing the scope of its application (just as Wells had done with her lawsuit and Homer Plessy did subsequently), Asbury exposes himself as a scapegoat-in-waiting who threatens the racialist hierarchies of Jim Crow America by rejecting a “separate but equal” legal norm, even as he asserts his commitment to legal equality.

True to his ironic literary voice, Dunbar mocks Asbury’s pretensions to democracy: “the legend was quite unnecessary,” the narrator states with reference to the “Equal Rights Barber-Shop” sign, “because there was only one race about, to patronize the place.”29 In an all-black neighborhood, the insistence on “equal rights” is tautological at best and mere provocation at worst. The narrator underscores the irony of Asbury’s sign when he adds that “it was a delicate sop to people’s vanity, and it served its purpose.”30 Although he belongs to the race that is discriminated against and which therefore stands to benefit from an “equal rights” narrative, Dunbar satirizes rather than celebrates Asbury’s faith in the
rule of law. He points out that there was never any chance of a white person coming anywhere near Asbury’s barber shop, vacating the appeal to equal rights of any political content. With this seemingly minor detail, Dunbar educates his readers in the law’s precarious relationship to justice that the segregationist regime had made manifest.

Asbury’s commitment to equality is presented as anomalous throughout the story. On Emancipation Day, Asbury stages his own parade. He is cheered on by the lowest dregs of society. Cynical as always, the narrator insinuates: “He did not have the best people. Indeed among his cohorts there were a good many of the pronounced ragtag and bobtail.” Silas Bingo congratulates him on having the larger turnout for the event, but is quick to follow up his praise by reinforcing the hierarchy among the black establishment: “I confess that I haven’t always thought you were doing the wisest thing in living down here and catering to this class of people when you might, with your ability, be much more to the better class.” Consistently refusing to acknowledge the distance between the ideal of the Fourteenth Amendment and the segregationist reality of Jim Crow, Asbury follows up with a direct question, all the more forceful for its seemingly naïve rejection of class difference: “What do they base their claims of being better on?”

These examples show how, by interpreting the law literally, Asbury promotes an understanding of equality that rejects the distinction between “legal” and “political” enshrined into Plessy v. Ferguson. By insisting that legal equality means equal access at the barber shop, Asbury renders himself an outcast to a society that profits from injustice. He becomes an outsider in the process of demanding equality for all. Asbury’s influence within the community plays as much of a role in constituting him as a scapegoat as do his low-class origins and his race. As John Wakefield observes of this story, “Asbury realizes that competing with the white man is but half the game. A talented black in a hostile society is a peculiarly vulnerable man.” Asbury is a master of diplomacy, as we see when he leads his rival to expect a parade different from the one he received. The narrator for once expresses admiration for the protagonist; “the generalship,” he states, “that had engineered the thing was perfect” endowing the protagonist with an authority that would generally be denied to someone of his social class.

When a reporter pays homage to his victory in the primary elections, Asbury demurs with the words: “I am not in politics, sir.” Like Bartleby the Scrivener in Herman Melville’s eponymous story, Asbury functions as the naïve consciousness through which the narrative is filtered. Also like Bartleby, Asbury’s guilelessness haunts the text. Even when his presence recedes from the text, Asbury is busy orchestrating the citywide elections, winning votes for his favorite candidates, changing the world in his own small way, and bringing it closer to justice.
Master of his constricted domain, Asbury keeps his power well concealed. Yet he ultimately fails in his goal, due to the intransigence of the scapegoat mechanism. “The Scapegoat” is a cynical parable of the contradictions intrinsic to the segregationist legal regime. Dunbar matches the ancient scapegoat motif with a tone so cynical and sarcastic that it calls into question nearly every statement made in the guise of an “objective” third-person voice. On the surface, “The Scapegoat” tells a tale of small-town corruption, and obscure failure. “There is a fable extant of a man who tried to please everybody, and his failure is a matter of record,” the narrator harshly intones, evoking echoes with Dunbar’s own merciless self-evaluation in his poetry, “Robinson Asbury was not more successful.”

On another level, “The Scapegoat” is an indictment of society’s preference for the letter of the law over justice, composed by an author who has given up on a career as a lawyer within Jim Crow America, but who has also not relinquished his hope of finding justice in poetry.

If “The Scapegoat” has a moral, it is that those who are committed to political equality will find this commitment undermined by social conditions even when the law posits a nominal commitment to justice. To paraphrase Kafka, the figure of the scapegoat embodies this tension, enabling society to persist in injustice, all the while evading the fruits of its hypocrisy, thanks to the authority and coercive force of the law. Dunbar recognizes the thin line between the effort to please and the burden to appease that all scapegoats – including himself and his protagonist – are saddled with. Poems such as “We Wear the Mask” (1895) and “The Poet” (1903) powerfully render the conflict between the social order’s nominal recognition of justice and Dunbar’s capacious awareness of legal duplicity. His acute consciousness of the rift between legal and political equality positioned Dunbar well to document the precarity of the law’s relationship to justice.

After they have been caught cheating on the vote count, Cadgers’ “better class” decides to sacrifice a member of the lower class to keep its grip on power. As a man with low-class origins who has risen above his station at birth, Asbury is a perfect candidate. Dunbar’s rendering of the process through which Asbury is judged guilty of rigging the elections and sentenced to a year in prison is striking for its sacralizing language, given that it describes a political process in a secular society. “They must purify themselves,” the narrator writes:

They must give the people some tangible evidence of their own yearnings after purity. They looked around them for a sacrifice to lay upon the altar of municipal reform [...] there must be a scapegoat.

The god from the Machine commanded them to slay him.

Casual references to sacred symbolism – God, altar, purity, and scapegoat – are reinforced by the fact that the decision to scapegoat is a response to a threat
from ministers who “bade their hearers rise and throw off the yoke of a corrupt municipal government” to their pulpits. As discussed below, Dunbar’s invocation of the sacred in a secular context evokes the pharmakon (scapegoat) of antiquity. The repeated use of the word “machine” to denote the voting process that brings about Asbury’s exclusion underscores the mechanistic fatalism informing the operation, which is interestingly juxtaposed to the supernatural aura of its directives. In this passage, the narrative’s object of indictment extends well beyond one corrupt regime. The author is transfixed by the metaphysical and political logic of scapegoating itself.

THE POLITICAL THEOLOGY OF SACRIFICE

For political theologian René Girard, scapegoating is a mechanism developed to assuage collective guilt. It violates the modern ideal of equality before the law enshrined in the Fourteenth Amendment. The “true nature and real function” of scapegoating eludes us because, according to Girard, “the source of evil is the community” that engages in the scapegoating. Girard describes in detail how, rather than own up to its crimes, the ruling class systematically projects its own complicity onto society’s most vulnerable members. For Girard, scapegoating arises from the need to expel a poison intrinsic to the body politic. The expulsion can only take place by sacrificing the innocent. When an innocent victim is needed to expiate guilt, suffering of itself is not enough. Successful scapegoating requires one very specific form of injustice: the punishment of the innocent. To fulfill this function, the scapegoat must be innocent.

Ritual sacrifice seeks to bring about “a total clearance of the ills that have been infesting a people.” In the words of Girard, the pharmakos is marked for sacrifice for the good of the community: “Whenever some calamity threatened – plague, famine, foreign invasion, or internal dissension – there was always a pharmakos at the disposal of the community.” The scapegoat mechanism is maintained through a cycle of violence: every attempt to suppress violence uses violence as a means to this end. As a mode of collective violence, scapegoating “wipes out all memory of the past,” but only by repeating the violence it seeks to suppress. Girard conceives of the scapegoat as a “receptacle of human passions” constituted by the “hostilities that all the members of the community feel for one another.” Mutual hostility makes scapegoating transmissible and maximally generative.

The Girardian scapegoat possesses a subversive power that subjugates ordinary mortals. Girard presents the scapegoat as “a woebegone figure […] a butt for all sorts of gibes, insults, and outbursts of violence” who is simultaneously “surrounded by a quasi-religious aura of veneration […] a sort of cult object.” The (always male) scapegoat can also mirror an authority figure, and once in a
while is even an authority figure himself. Greek tragedy is rife with such doubling. Girard plunders Greek literature for examples to support his thesis, particularly Sophocles' Oedipus trilogy. He points out that Oedipus is both a king and an outcast of the pharmakos class, and argues that this duality typifies a scapegoat society. The king resembles the pharmakos in that both are “responsible for the collective salvation of the group.” Here, scapegoat and savior merge in Girard’s argument.

Carried to its logical conclusion, the modern ideal of legal equality ought to have been the death-knell to the pharmakos, given its constitutive rejection of legal equality, and its insistence on making the innocent suffer for the crimes of the guilty. Yet, the view that modern legal systems are incompatible with sacrificial violence overlooks the tension between law and justice, in particular the reinterpretation of modern legal ideals to accommodate older forms of prejudice, often best discerned by writers from communities that have known discrimination. Law is further severed from justice in the justification of lynching given by the American historian Hubert Howe Bancroft (d. 1918), whose library formed the basis for the library at the University of California Berkeley, which bears his name. Bancroft traced the practice of lynching to the will of the people in his argument for the legitimacy of this extra-judicial act. “Law is the voice of the people,” Bancroft remarked, it is “the will of the community as a whole.”

In line with such retrospective rationalizations of injustice, the scapegoat mentality permeates modern social institutions. It is epitomized inter alia in capital punishment, a practice that Harding and others view as a form of ritualized sacrifice. With its implicit belief in the transferability of guilt, which can only be atoned through violence, the scapegoat mechanism continues to structure contemporary law and culture. Among modern social theorists, Durkheim perceived the relevance of scapegoating to modern criminal justice systems long ago.

In exposing the law’s distance from justice through the persistence of the scapegoat myth (in lynching and other forms of violence against African-Americans), Dunbar goes beyond unmasking a mentality that was putatively superseded centuries ago by the Christian revelation. He wages literary war on intimately held notions of social propriety and our double standards in relating the common welfare to the individual good. By exploring lynching, along with less brutal forms of violence, as a site where the law parts ways with justice, Dunbar reveals how the scapegoat mechanism structures Jim Crow America. The remainder of this article explores even more violent betrayals of justice than those that structure “The Scapegoat.” Having discussed a text in which the scapegoat motif is explicitly named yet with nonlethal consequences, I now turn to texts that allegorize the scapegoat mechanism, with more drastic and sometimes fatal consequences.
Dunbar’s forth and greatest novel, *The Sport of the Gods* (1902) is dominated by the scapegoat mechanism. Berry Hamilton is accused of stealing from his white employer. The plot insinuates that Berry was framed for this crime, although we only learn much later in the story that this framing was done by the employer’s brother. Ten years after Berry was sent to prison for a crime he did not commit, the employer’s brother who had earlier framed him tries belatedly to clear Berry of the charges, while refusing to acknowledge that he is himself the actual thief.

Dunbar’s plot affirms the basic elements of Girard’s interpretation of the scapegoat mechanism, whereby redemption extracts a cost and an innocent being must atone for the sins of the guilty. The scapegoat is simultaneously privileged and cursed, included in and excluded from the social order; he is doomed by virtue of his innocence. Someone must be seen as guilty, and since the guilty cannot be blamed, the innocent must assume this role. Faced with such arbitrary justice, the scapegoater reasons: it cannot be me, so it must be him. (Or as a white character in another Dunbar’s story states: “Somebody’s got to suffer fur that house-burnin’, an’ it might ez well be them [for example, negroes] ez anybody else.”)

As Girard puts it, “the mimetic character of violence is so intense that once violence is installed in a community, it cannot burn itself out.”

*The Sport of the Gods* exhibits Dunbar’s fatalism in full. The narrator predicts a dismal fate for Berry’s son within the first few chapters, even before his father is sent to prison. “Something rose within him that had it been given play might have made a man of him,” we read, “but, being crushed, died and rotted, and in the compost it made all the evil of his nature flourish.” Soon afterwards, Berry is charged, falsely, with theft. Whereas the young man entered the text as a dynamic character, once his father is sentenced, his agency evaporates. The son’s inability to reconcile himself to his limited opportunities is a case study in the effects of the racist hypocrisy of Jim Crow America on African-American morale. In cutting short the son’s development, Dunbar reveals how economic insecurity and emotional isolation work together to limit the potential of young African-Americans. As in the naturalist narratives of Theodore Dreiser, which heavily influenced Dunbar’s literary sensibility, a determinist aesthetic suffuses this narrative.

As the novel progresses, Berry’s employer becomes ever more deeply mired in obstructing justice. The shame that drives the slaveholding culture of the American South plays an ever-increasing role in preventing Berry from securing his freedom. As the employer responsible for Berry’s incarceration tells his wife when he learns that Berry did not steal from him: “What is Berry to [my brother]? What is that nigger to my brother? What are his sufferings to the honor of my family and name?” Even when he learns that his brother has falsely
framed Berry, allowing him to be blamed for his own crime, the employer will not risk his family’s honor to protect an innocent black man.

Colonel Saunders, the most benevolent white man in the novel, shares the employer’s view that the unlawful framing of innocent African-Americans is best kept secret when the revelation of such practices would impugn the honor of the white South. He considers whether the truth about Berry’s innocence should be brought to light and decides: “no one would think of doing that. It would be sure to hurt Oakley’s feelings, and he is one of our best families.”

Reputation and the preservation of face outweigh the law’s commitment to justice on this view, which reinforces the scapegoat mentality’s exclusionary politics. Earlier, when Berry was first accused of stealing, the employer asked his well-to-do friends a question that reverberates throughout Dunbar’s chronicles of lynching: “Do you think there’s any doubt of the darky’s guilt?” The tendency by white America to turn their prejudice into a conviction concerning African-American guilt also typifies the scapegoat mentality.

As in any scapegoating scenario, the preservation of the moral–symbolic order prevails over all other considerations.Appearances weigh heavier than does the mandate to deliver justice. Indeed, justice itself becomes a legalistic affair, pertaining to the transmission of sin rather than liberation from the effects of a crime. Although The Sport of the Gods begins as a chronicle of a “frame-up,” it culminates as an object lesson in the power of shame—a key component of the scapegoat mentality—to limit the law’s capacity to deliver justice.

For benevolent whites such as Colonel Saunders, shame holds the social order together. It gives the guilty community a reason to invest in the scapegoat. Shame captures the real logic of power, while other political virtues, such as sympathy for the underdog, equality before the law, and due process, are treated as supererogatory. In the words of legal philosopher Gregory Mellema, in the process of scapegoating, “shame is transferred to the scapegoat; though the person being scapegoated is not necessarily regarded as more guilty.” Mellema follows many scholars in treating the distinction between shame and guilt as foundational to the scapegoat mentality. Shame is socially generated through awareness of others’ opinions. Guilt, by contrast, is rooted in the individual and is at least notionally linked to the commission of a crime. A person can be shamed without feeling guilt, and can experience guilt without feeling shame. Mellema notes that he does not intend “to imply that the scapegoat becomes more shameful [in an intrinsic sense], for the transference of shame is undeserved. [...] In the eyes of others, the scapegoat appears more shameful, but the scapegoat is not in fact more shameful.”

Arguably, the bifurcation between the body politic and individual consciousness that is constitutive of modern literature stands at the origins of the novel as a genre. When we encounter scapegoat morality in a novel—the genre that, as
noted by Bakhtin, constructs an “image of man in the process of becoming” – our investment in the concept of justice before the law and, its corollary, legal equality, predisposes us to reject scapegoat morality. *The Sport of the Gods* makes use of this readerly bias in favor of justice and against the scapegoat mentality, while also exposing how this ideal undermines the moral and political order that structures the story. Structurally and substantively, Dunbar reveals how the law masks injustice by conferring legitimacy on political dynamics favorable to those in power, which in this context is white America.

Dunbar’s insight into the law’s precarious relationship to justice is conveyed most powerfully in chapter 5, tellingly entitled “The Justice of Men.” The narrative conveys the hatred of members of the white community towards its racial others. “It seems a strange irony,” the narrator muses, “that this man, who had never even been suspected of wrong-doing, should find so few who even at the first telling doubted the story of his guilt.” Berry’s innocence reminds the white community of its guilt, and qualifies him as an ideal scapegoat. He therefore must be punished because he reminds the white community members of their complicity in society’s injustice. The only way of atoning for their guilt that is acceptable to them is by denying and suppressing it through the scapegoat mechanism. As seen in the discussion of “The Scapegoat,” communal scapegoating is not limited to the white population. This story narrates a metaphorical scapegoat ritual performed within a black community, wherein African-Americans are both victims and perpetrators.

Once the news of Berry’s (falsely imputed) guilt begins to spread, the black church, “of which he had been an active and honest member” suddenly “disavow[s] sympathy with him and […] purge[s] itself of contamination by turning him out.” Instead of respecting the legal equality enshrined in the constitution (if imperfectly applied), church members fear being contaminated by the (innocent) scapegoat. Dunbar sums up the attitude of both the black and white community towards Berry in the following words: “the man was down, it was time to strike.” These details conform to the scapegoat paradigm outlined by Girard and Mellema: the ideal *pharmakos* is one who has been rendered defenseless. In Jim Crow America, the scapegoat mentality infiltrates even black community members who hope to appease the white community by accepting their transference of guilt. Ironically, the black accusers have suffered from the very injustices they are perpetuating on others. Like a lynched man, Berry Hamilton is a *pharmakos* marked for destruction before he is even accused of a crime. In Dunbar’s oeuvre, as in Girard’s ethics, communal guilt becomes detached from the crime in which it originates as it infiltrates all layers of society.

Dunbar was keenly attuned to the broader social effects of diminished legal norms. “A colored man has no business with ideals,” despairs a barber in the short story “One Man’s Fortunes.” For the idealistic protagonist of this story,
who is a foil to the cynical barber, “bitter experience had not yet taught him how
not to dream. He was not yet old enough for that.” The fatalism of this passage
makes it seem almost inevitable that the idealist will soon come to view matters
as cynically as the barber, and indeed as the author/narrator. Yet, for all his tal-
ent at exposing the duplicity of the law and its dubious relationship to justice,
Dunbar premised most of his writing on faith in its values, including basic prin-
ciples of human rights and equality before the law. Dunbar's cynicism presupposed
faith in legal norms. It might even be claimed that Dunbar held the law to a
higher standard of justice – not least by refusing to separate legal equality from
political equality – than did the US Supreme Court justices who supported the
majority ruling in *Plessy v. Ferguson*.

Dunbar's fatalism surfaces powerfully in the conclusion to *The Sport of the
Gods*. There, it is revealed that Berry was framed because his employer needed
money to woo his mistress in Paris. The novel's plot grafts a quasi-metaphysical
scapegoat mechanism onto the mundane political economy of employer interests.
While the employer's motives are economic, his persecution of his black employee
is a form of symbolic violence with metaphysical undertones. In contrast to cer-
tain manifestations of the scapegoat mentality in Greek antiquity, the perpetrator of scapegoating in Jim Crow America does not seek to redeem the
social order. Rather, he testifies to its degradation. This transformation in the
scapegoat mentality is related to the law's alienation from justice, as well as
the segregationist regime's separation of formal legal equality from political equality.

While *The Sport of the Gods* offers a powerful case study in the banalization of
an arbitrary scapegoat mechanism within a segregationist social order, Dunbar's
most powerful illustration of the scapegoat mechanism reached a yet higher pitch
of drama in two short stories that explicitly depict lynching. Having discussed a lit-
eralized treatment of the scapegoat mechanism along with a more allegorical ren-
dering of the scapegoat mentality, the following section turns to two texts that
bring these themes together, in which Dunbar evokes the metaphor of the scape-
goat to narrate a literal human sacrifice, in the form of lynching. As among the clos-
est modern counterparts to the ancient practice of human sacrifice, lynching is
central to any exploration of Dunbar's engagement with the scapegoat mentality as
a prism through which to understand the relationship between the law and justice.

**LYNCHING AS PHARMAKON**

During the course of her investigative journalism, Wells complained that:

Lynch Law has become so common in the United States, that the
finding of the dead body of a Negro, suspended between heaven
and earth to the limb of a tree, is of so slight importance that
neither the civil authorities nor press agencies consider the matter worth investigating.66

Dunbar explores the dynamics of lynching documented by Wells with chilling effect in two short stories: “The Tragedy at Three Forks” (1899) and “The Lynching of Jube Benson” (1904). Whereas the first deploys a dispassionate third-person narrative voice, the second narrates a lynching from the perspective of one of its perpetrators. I discuss here the third-person account follow by the first-person.

Like Dunbar, Wells recognized that lynching transpired independently of any link between the punishment and the crime. The lynched Negro was the target of symbolic violence by virtue of being in the wrong place at the wrong time. His innocence was relevant only to the extent that it paradoxically strengthened the case for his extrajudicial execution, inasmuch as the purpose of this form of ritual killing was to expiate another’s crime, including in many cases that of white women who had engaged in consensual sexual affairs with black men. The lynched pharmakos is a bystander to the violence perpetrated in and through his body.

When lynching first appears in “The Lynching of Jube Benson” as a discussion topic among a group of white strangers gathered – as so frequently in Dunbar’s stories – in a barbershop, the subject is introduced in broadly legal terms, as a prompt for discussing “the matter of punishment without trial.” This indicates that Dunbar is keenly attuned to lynching as a (extra)legal form, whereby mob justice replaces due process. Typically of Dunbar’s narrative prose style (and somewhat in contrast to his verse), the author refrains from judging. He uses a first-person narrative voice to develop the self-incriminating “confession” of a racist, whose prejudice resulted in the sacrifice of an innocent black life. When his employee Jube Benson is suspected of having raped his fiancée, the lyncher recollects the incident years later in a barbershop:

I saw his black face glooming there in the half light, and I could only think of him as a monster. It’s tradition. At first I was told that the black man would catch me, and when I got over that, they taught me that the devil was black, and when I had recovered from the sickness of that belief, here were Jube and his fellows with faces of menacing blackness. There was only one conclusion: This black man stood for all the powers of evil.67

While the narrator recognizes the roots of his prejudice in “a false education,” in the absence of evidence to implicate Jube Benson in the crime, the very structure of this story places racist violence beyond redemption. The narrator’s tone is more of passive regret for the murder in which he has been implicated than outrage over the injustice he has perpetrated.
In an earlier story, published in 1899, entitled “The Tragedy at Three Forks,” Dunbar offers an even more detailed account of a lynching that engages extensively with the legal implications of this form of sacrificial violence. Dunbar’s essays such as “The Fourth of July and Race Outrages” and “The Race Question Discussed” reflect on the violence of lynching from African-American perspectives. His poems reflect on this violence from the perspective of inanimate witnesses. His stories by contrast deploy the voice of putatively white narrators, whose identities are either neutral or implicated in the persecution. This point of view enables the narrator to adopt a semi-omniscient tone that is in conformity with a forensic legal modality of critique. Hence, when the narrator pronounces judgment on his characters, he commands a tone of authority. This tone is evident in the narrator’s response to the racist headlines in local newspapers that stir up hatred of the black community and position them as guilty in popular consciousness. “Notwithstanding the utter falsity of [the newspaper’s] statements,” the narrator states, “it did not take long for [...] the article to become a prophecy fulfilled, and soon, excited, inflamed and misguided parties of men and boys were scouring the woods and roads in search of strange ‘niggers.’” The narrator is only able to speak in this idiom, and to dismiss the statements as “utterly false,” once he has been distanced from his African-American author, and can present himself as “race-free” or as generically white.

Yet, its deracialization aside, Dunbar’s narrative is enriched by this omniscient perspective. It enables the narrator to describe a racist headline in a local newspaper as “a prophecy fulfilled” and thereby to invert customary understandings of legal causality (whereby criminality determines punishment) in terms specific to scapegoating’s peculiar logic of violence, whereby punishment is extracted from an innocent victim, who functions as a vector of society’s guilt. A journalistic account of such racial violence, barred as it would be by its commitment to verisimilitude from exploring the implications of lynching’s association with symbolic violence, would be unable to capture the sleights of hand that structure lynching as the paradigmatic mode of human sacrifice. In this regard, Dunbar’s fictional accounts of lynching complement Wells’ documentary accounts, elevating these incidents to another historical plane, and expanding their relevance beyond their immediate context.

In his fiction, Dunbar develops a temporal sequence that looks beyond the causal logic of documentary prose. He condenses space and time, deploys irony as a narrative device, and populates his narratives of sacrificial violence with recurring tropes. One of his most memorable comparisons is with the Salem Witch trials, which the narrator evokes in the conclusion to “The Tragedy at Three Forks” to cast a shadow over his entire text. Like the racist headlines that provide the impetus for the lynching, the narrative incorporates newspaper reports concerning the lynching. The text differs strikingly from the racist headlines that justify the violence retrospectively in the mainstream newspaper. The newspaper that
offers the most searing indictment of the lynching’s sacrificial violence is described by the narrator as a “little obscure sheet” that is presumably read by few. What it lacks in reputation it compensates for through its ability to trans- pose these events to another historical plane: “There was Salem and its witch- craft; there is the south and its lynching. When the blind frenzy of a people condemn a man as soon as he is accused, his enemies need not look far for a pre- text!” Through the concluding words in this “obscure sheet,” Dunbar incorporates the history of violence against African-Americans, and lynching in particular, into mainstream American literature.

The narrative structure of the text, which presents the African-American experience of oppression as a broadly American issue, contradicts the attempt to present lynching as a “natural” response for which the only solution is for negroes “to quit [committing] the crimes of which they so often stood accused.” In this text, as throughout Dunbar’s short stories, the delivery of justice is infinitely deferred, but never entirely dismissed. Dunbar does not intervene to remind us that the victim of a lynching is not merely sometimes or potentially, but necessarily innocent. He does not challenge the logic of the scapegoat mentality, except indirectly through his plot sequencing and his use of irony. Yet, as it turns out, these literary methods were among the most effective in his repertoire, because they enabled Dunbar to intervene in African-American literary history, and to expose in fictional form the circuitous logic underwriting \textit{Plessy v. Ferguson} and the segregationist legislation it validated.

\textbf{PROSAIC JUSTICE}

With the “The Scapegoat,” “The Tragedy at Three Forks,” “The Lynching of Jube Benson,” and \textit{The Sport of the Gods}, Dunbar achieves what he never accomplished in his poetry, for which he nonetheless received wider acclaim. Deftly manipulating an ironic narrative voice, Dunbar exposes the bifurcation between legal and political equality that was formalized by the US Supreme Court in 1896. Along the way, he undermines Girard’s insistence that scapegoating has become obsolete since the Christian dispensation. Dunbar reveals how a paradigmatic example of human sacrifice-lynching-proliferated after the passage of the Fourteenth Amendment, with little resistance from the legal order that was supposed to guarantee equal rights for all. Indeed, the US legal system functioned in Jim Crow America to instantiate oppression in the name of legal fidelity, rather than to guarantee legal equality. It is noteworthy that lynching has to this day never been outlawed by Congress, notwithstanding countless efforts to do so from the 1920s to the 1940s.

Dunbar’s fictions consistently focus on African-Americans accused of crimes they did not commit, as if to suggest that social inequality generates legal inequality, notwithstanding the letter of the law. By revealing the workings of the
scapegoat mentality in the context of African-American history and by linking these
dynamics to a longer lineage of world-historical injustice, Dunbar opened up new
frontiers within African-American literature. He realized in his prose the vision of
justice that eluded the version of the law that he knew in his life. Yet, like Wells,
Dunbar also kept faith with another vision of the law’s relationship to justice. While
distant in Jim Crow America, this dream never entirely faded from his horizon.

Perhaps because he was acclaimed for his poetry while his prose went rela-
tively ignored, Dunbar was able to write fiction with a greater degree of free-
dom and less self-censorship than he could command in his verse. Dunbar’s
rage at racial discrimination reaches a higher political pitch in his prose, and
draws on more levels of irony, than does his poetry. It is only as a fiction writer
that Dunbar felt liberated to expose the depth of the foundational violence that
comprised the social order. It was only in prose that he could call *Plessy v.
Ferguson* and related legal rationalizations of segregation out for their deferral of
justice. Among the deepest ironies in Dunbar’s short literary life is that his white
audience lavished praise on a poet who would “praise a jingle in a broken tongue,”
while ignoring his more challenging prose. A century after the first flush of his
career, Dunbar’s prosaic exposure of the legal duplicity of Jim Crow America is
even more politically prescient than his less political, but more popular, verse.

The saturation of Dunbar’s sarcasm by sincerity means that treating “The
Lawyer’s Ways” – the poem quoted at the beginning of this article, taken by critics
of the time to mark the end of his ambition to join the legal profession – as a simple
dismissal of the law on the grounds of its duplicity would be to miss the depth of
Dunbar’s critique of the legal form. It is more accurate to recognize how Dunbar was
transfixed by the law’s duality, as an instrument of justice and oppression, as a
means of compelling the innocent to suffer and, simultaneously, of liberating the
enslaved (through the Fourteenth Amendment). It may well be that Dunbar decided
to pursue the path of the poet rather than the lawyer due to his perception of the
law as a treacherous instrument that could not be relied on to deliver justice in Jim
Crow America. But it is also evident that Dunbar’s insights into the workings of the
law centrally informed his fiction, and endowed his prose with a sense of justice that,
as scholars have recently argued, narrative form is uniquely positioned to deliver.

Shortly before his untimely death, Robert Cover argued that “Narratives are mod-
els through which we study and experience transformations that result when a given
simplified state of affairs is made to pass through the force field of a similarly simpli-
fied set of norms.” With these words, Cover pinpointed the relevance of both law and
literature for Dunbar. Reshaping the world in normative terms is a lawyer’s ambition
and a writer’s prerogative. While law offered Dunbar a normative ideal through which
justice could be contemplated, narrative provided him with the tools to expose law’s
duplicity in practice, and to articulate a vision for another understanding of justice,
that could not be realized within his historical horizons, yet which resonates more powerfully than ever in the present.

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36. Ibid., 31.


41. Ibid., 16.


44. Girard, Violence and the Sacred, 94.

45. Ibid., 82.

46. Ibid., 99.

47. Ibid., 95.

48. Ibid., 108.


52. Paul Laurence Dunbar, “The Tragedy at Three Forks,” in The Strength of Gideon and Other Stories (New York: Dodd, Mead & Co., 1900), 278 (cf. n. 61). This story is analyzed more closely below from the point of view of its treatment of lynching.


55. Ibid., 196 (emphasis added).

56. Ibid., 227.
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