

University of Colorado Law School

Colorado Law Scholarly Commons

Articles

Colorado Law Faculty Scholarship

2017

The Chow: Depictions of the Criminal Justice System as a Character in Crime Fiction

Marianne Wesson

University of Colorado Law School

Follow this and additional works at: <https://scholar.law.colorado.edu/articles>



Part of the [Criminal Law Commons](#), [Law and Society Commons](#), and the [Legal Writing and Research Commons](#)

Citation Information

Marianne Wesson, *The Chow: Depictions of the Criminal Justice System as a Character in Crime Fiction*, 51 NEW ENG. L. REV. 263 (2017), available at <https://scholar.law.colorado.edu/articles/1247>.

Copyright Statement

Copyright protected. Use of materials from this collection beyond the exceptions provided for in the Fair Use and Educational Use clauses of the U.S. Copyright Law may violate federal law. Permission to publish or reproduce is required.

This Article is brought to you for free and open access by the Colorado Law Faculty Scholarship at Colorado Law Scholarly Commons. It has been accepted for inclusion in Articles by an authorized administrator of Colorado Law Scholarly Commons. For more information, please contact jane.thompson@colorado.edu.

The Chow: Depictions of the Criminal Justice System as a Character in Crime Fiction

MARIANNE WESSON*

INTRODUCTION

I have been asked to contribute to this volume some observations about how writers of crime fiction portray the criminal justice system as a character in their work. It's a provocative assignment, to be sure, and great fun to think about. The most vivid example that comes to mind is Tom Wolfe's depiction of the system as a gigantic hungry beast, in *The Bonfire of the Vanities*.¹ His narrative puts us at one juncture in the company of Larry Kramer, Assistant District Attorney in the Bronx, watching morosely as the vans that carry pretrial detainees from jail to the courthouse where Kramer practices discharge their cargo into the bowels of the building for morning court dates. He mutters to himself at the dismal sight, encapsulating his assessment of the scene in a single mordant noun. "The chow," he says, and his internal monologue pursues and embellishes the metaphor:

Every year forty thousand people, forty thousand incompetents, dimwits, alcoholics, psychopaths, knockabouts, good souls driven to some terrible terminal anger, and people who could only be described as stone evil, were arrested in the Bronx. Seven thousand of them were indicted and arraigned, and then they entered the maw of the criminal justice system—right here—through the gateway into Gibraltar, where the vans were lined up. That was about 150 new cases, 150 more pumping hearts and

* Marianne Wesson, Professor of Law Emerita and President's Teaching Scholar, University of Colorado. I am honored to contribute to this volume in honor of Professor Alafair Burke, a writer of remarkable talent and a scholar of uncommon range and perception, not to mention a friend of extraordinary generosity. The political sentiments expressed herein, of course, are my own and should not be attributed to Professor Burke or to the *New England Law Review*.

¹ See generally TOM WOLFE, *THE BONFIRE OF THE VANITIES* (1987).

morose glares, every week that the courts and the Bronx County District Attorney's Office were open. And to what end? The same stupid, dismal, pathetic, horrifying crimes were committed day in and day out, all the same. *What was accomplished by assistant D.A.'s, by any of them, through all this relentless stirring of the muck? . . . One thing was accomplished for sure. The system was fed, and those vans brought in the chow. Fifty judges, thirty-five law clerks, 245 assistant district attorneys, one D.A. . . . and Christ knew how many criminal lawyers, Legal Aid lawyers, court reporters, court clerks, court officers, correction officers, probation officers, social workers, bail bondsmen, special investigators, case clerks, court psychiatrists—what a vast swarm had to be fed!*²

But then, *The Bonfire* is social satire, not crime fiction. The humor of Wolfe's comical gastronomic description is hard to match in any sort of literature, but it's especially unlikely to be found in crime fiction. Crime writers tend to be less colorful, and less amusing, when they undertake to characterize the system of police, courts, and prisons. It's a bit of a stretch to suggest that their less histrionic descriptions represent a form of character development.

Still, in some instances we might fairly view their depictions through the lens of a character. It is common in instructional works about creative writing to suggest that aspiring writers employ a form of character development that relies less on the authors' description of an individual than on the way other characters respond or react to him or her. Or to *it*, perhaps, if we speak of the criminal justice system. Kramer's description above, for example, tells us much about his professional and personal despair as well as something about criminal justice in the Bronx.³ The advantage of this method for crime fiction is that one can introduce tension among the various versions of the character of interest, by distributing disparate descriptions and reactions to the various other characters. This technique leaves the reader to sort out whose perception is more or less accurate, and what the reactions and descriptions of these characters tell us about themselves, as well as about the character of interest. Such a method of characterization lends itself well to the confusion and mystification that crime fiction seeks to induce in the reader (before, sometimes, clearing it up). So the reader may learn a great deal, or perhaps very little, about the criminal justice system that exists in a writer's world, depending on how this confusion and tension are managed. Like a human character, this institution may be good or evil, or (certainly the most interesting case) complex, conflicted, and resident somewhere in the gray territory between.

² *Id.* at 39–40 (emphasis added).

³ See *supra* note 2 and accompanying text.

Accordingly, I have found this subject a promising one, and it has prompted a few thoughts, which I will convey below.⁴ But before turning to these thoughts I must acknowledge that as I write this essay in December of 2016, I have no very clear conviction that the American criminal justice system will persist in its present form in the wake of this country's remarkable decision to elect as its leader a man whose contempt for the norms of democratic government and for the Constitution seem unlimited. One can hope, and I do, that the signs we see now are misleading; perhaps the pessimism they generate is undue. I hope so, but for now it is hard not to believe that the intricate structures of law and governance on which the very idea of systemic justice depends are scheduled for dismantlement. If they are, crime fiction will be transformed, and (like everything else) not for the better.

More about this prediction later, but first I will turn to the subject as I hoped to write about before our most recent election. This essay rests on a necessarily incomplete, perhaps even cursory, survey of a vast and absorbing body of literature. I can make no claim to evenhandedness or objectivity in choosing certain works to mention, nor certainty in offering them as representative of the trends I suggest.⁵ This is all and only as it seems to me; your mileage, as the bloggers advise us, may vary.

I. Criminal Justice in Crime Fiction Around the Turn of the Last Century

Julian Symons, the great scholar of crime fiction, reminds us that the police force, especially the police detective, represented an innovation of nineteenth-century city life.⁶ It was a development generally welcomed with gratitude by the urban middle classes, who lived with a genuine fear of crime. Charles Dickens, although not known as a crime novelist (for probably this classification did not exist as a category for his readers), created a great many law enforcement officers among his characters, as well as a great many criminals, of course. Apparently he shared with his readers an appreciation for the police: in his journalism he praised the actual police inspectors whom he met in his travels and research, and in *Bleak House*⁷ he introduced us to the fictional Inspector Bucket, a recurring character devoted to duty but (admirably) more loyal to his working class

⁴It also necessitated the very pleasant and occasionally surprising revisitation of some favorite books.

⁵In particular, I must here neglect nearly any work that is not written in English, a limitation that I regret.

⁶JULIAN SYMONS, *BLOODY MURDER: FROM THE DETECTIVE STORY TO THE CRIME NOVEL* 42 (1992).

⁷CHARLES DICKENS, *BLEAK HOUSE* (1853).

origins than awed by the majesty of the wealthy and powerful.⁸ Dickens may also have influenced writers more commonly associated with crime fiction like Wilkie Collins in England and Emile Gaboriau in France: in Collins's *Sergeant Cuff* and Gaboriau's *Monsieur LeCoq* we encounter varieties of the durable figure of the policeman as hero, one who (unlike the stolid Bucket) brings an intellectual brilliance and a talent for observation and deduction to the task.⁹

Although Dickens famously lampooned the civil courts of his country (at least the Chancery division) for their endless and destructive processes, and genuinely concerned himself with the evils of English prisons, none of these three writers is otherwise disposed to interrogate the system of arrest, prosecution, and conviction in which their heroes do their work. In their narratives, the police officer is on a mission to produce justice, and if he is successful in his detections, it will be served. His heroism and resistance to corruption serve to insulate the institutions that surround him from criticism.

Sir Arthur Conan Doyle's Sherlock Holmes stories deviate from this pattern of course. Holmes is a private detective, famously contemptuous of the police and their bumbling, and in this outsiderhood lies a great deal of his originality and misanthropic charm. His brilliance is meant as a contrast to their fecklessness, but he is not necessarily superior to the police in ethics or compliance. Holmes covers up the crime in *The Adventure of Abbey Grange*,¹⁰ and keeps a felony secret in *The Adventure of the Blue Carbuncle*,¹¹ dispensing justice as he perceives it without a qualm. But we assume that when the great detective does disclose his conclusions to the authorities, the dim but honest Inspector LeStrade will deliver the criminal to the clanking Victorian legal process and a just punishment will ensue. Never does Sherlock accuse the police of corruption, only stupidity. And (although Doyle himself would champion a victim of its injustices later in his life) never do the Holmes stories suggest that the criminal justice system deserves the relentless scorn that Sherlock reserves for other institutions.

⁸ Ronald R. Thomas, *Detection in the Victorian Novel*, in *THE CAMBRIDGE COMPANION TO THE VICTORIAN NOVEL* 177 (Deirdre David ed., 2001).

⁹ See T.S. Eliot, *Wilkie Collins and Dickens*, in *SELECTED ESSAYS* 460–70 (London: Faber 1951) (discussing Dickens' influence on Collins, and the similarity of Collins' characters to those of Dickens); see also *Monsieur LeCoq*, *FAMOUS DETECTIVES*, <https://perma.cc/5L9V-PJXD> (last visited Mar. 11, 2018) (discussing traits of Monsieur Lecoq that are similar to those of Dickens' and Collins' detectives).

¹⁰ See 2 SIR ARTHUR CONAN DOYLE, *The Adventure of Abbey Grange*, in *THE NEW ANNOTATED SHERLOCK HOLMES* 1158, 1187–88 (Leslie S. Klinger ed., 2005) (1904).

¹¹ See 1 SIR ARTHUR CONAN DOYLE, *The Adventure of the Blue Carbuncle*, in *THE NEW ANNOTATED SHERLOCK HOLMES* 197–226 (Leslie S. Klinger ed., 2005) (1892).

II. The American Criminal Justice System in the “Golden Age” of Crime Fiction

Crossing the pond and navigating the turn of the century (and neglecting in passing the immortal and unclassifiable E.A. Poe), we might remember that in the early decades of the 1900s American crime fiction strove for a sort of thematic simplicity. On the whole, crime novelists presented the reader with nothing more or less than a puzzle to be solved, a conundrum about who has committed a crime. Stalwarts of the genre included S.S. Van Dine, Ellery Queen, John Dickson Carr, and of course Agatha Christie; but there were many others, as the demand for this kind of book was great. And following the template of the Holmes stories, the protagonist is nearly always a private detective.

In the nature of this sort of literary enterprise, the solution to the puzzle must form the climax of the reader’s experience. Accordingly, there is no room in the narrative for any events that ensue after the revelation of the solution—that is, no space for any messy, unpredictable, illogical or otherwise unsatisfying aftermath to the perpetrator’s arrest. No room, in brief, for the legal process. As in the Sherlock Holmes stories, the eventual imposition of the just and correct legal consequences to the crime is assumed, an unstated epilogue: the criminal will be tried and convicted, and sentenced to an appropriate punishment.

Not that the crime fiction of this era was devoid of rule-oriented constraints. Symons observes that among the members of the writing guild during the Golden Age of detective fiction (roughly the 1920s and 1930s), well-understood conventions purported to ensure that books “played fair” with the reader by offering her a chance—if she were to be very attentive, clever, and retentive of memory—to arrive at the solution before it was revealed by the author.¹² Critics of the genre were enthusiastic in calling out infractions of these laws, and no author who flouted them could be generally praised or honored. Symons catalogues the regulations that the “legislators” of propriety in detective fiction enforced:

- The detective must be intellectually gifted and eccentric, and must solve the crime using his intellect;
- The crime must be a serious one, preferably murder (rather than the sort of fraud or financial crime that often featured in the short stories that predominated earlier in the century);
- The criminal must be introduced early in the narrative, not a character who appears halfway through, and he

¹² See SYMONS, *supra* note 6, at 106–08.

may not be the official detective assigned to crack the case;

- The criminal must be a “decidedly worth-while person” (this stricture was interpreted to exclude servants; that is, the butler didn’t do it);
- The perpetrator may not be a professional criminal;
- All motives for the crime must be personal, and in context rational;
- Unexplained scientific devices are not allowed, nor are undiscovered poisons or supernatural solutions (secret passages were also deplored).

Other conventions seemed less about fairness to the reader than about general political and cultural conservatism:

- Sexual and romantic entanglements on the part of the detective were thought to detract from the unity of focus appropriate to the quest;
- For the same reason, external events like economic depression, labor unrest, or the rise of dictatorships were to be resolutely ignored.¹³

All of these boundaries reinforced the essential efficiency, if not infallibility, of the assumed background system of criminal justice. Occasionally in this genre an innocent has been accused of a crime, perhaps even convicted and sentenced (almost certainly to death if the crime was murder), but the righting of this wrong is accomplished through the working of the plot, and the detective’s heroism in preventing a grave injustice is not generally an occasion to indict the system that produced it.

This absence of social critique was not the only shortcoming that led eventually to the end of the Golden Age. Symons remarks that in their quest for creating the perfect puzzle, Golden Age writers “sacrificed almost everything else,” and “pandered to readers who wanted every character de-gutted so there should be nothing even faintly disturbing about the fate of victims of murderers.”¹⁴ This strategy became outdated eventually; readers drawn to detective fiction during the post-WWI period (especially during the lawless Prohibition years) came to understand that violence, organized crime, and corruption were likelier to affect their lives than clever criminals who frequented clubs and drawing rooms. They looked

¹³ *Id.*

¹⁴ *Id.* at 137–38.

for something else to read—something that addressed the anxieties and excitements of a world where the old rules no longer seemed to apply.

III. Hard-boiled: Hammett, Chandler, and Macdonald

It is a truth universally acknowledged that between the wars, the polite conventions of the Golden Age gave way gradually (and then suddenly) to a new style of crime fiction: hardboiled. In this genre, the protagonist is always a private detective, although he may once have been a police officer or a soldier in the last war. He is certainly a white man, and more given to action than to ratiocination. Violence is frequent and often brutal in hardboiled fiction; the protagonist suffers it, and does not hesitate to deal it out as well. Romantic entanglements are frequent and sometimes passionate, but they do not end well. Relations with official law enforcement authorities range from complicated to aloof. Characters of this description appeared in the short stories of various authors published in pulp crime magazines like *Black Mask*¹⁵ during the 1920s, but most scholars believe that the prototype for the hardboiled detective is the narrator and protagonist of Dashiell Hammett's 1929 novel *Red Harvest*,¹⁶ the Continental Op.

A. Hammett

The Op, who had appeared in short stories in *Black Mask* starting in 1923, is a veteran with a background in military intelligence employed by a respectable detective agency in San Francisco.¹⁷ In *Red Harvest*, the head of the agency, known only by the somewhat Freudian title The Old Man, gives the Op an assignment to travel to a blighted and polluted industrial city called Personville (universally known as Poisonville) at the request of the newspaper publisher there, who says he has some work for a detective. The Op travels to the town but the newspaperman is murdered before the two men can even meet. His client is dead, but the detective has already taken a powerful dislike to the town and (revulsion being often a form of irresistible attraction in hardboiled) he arranges to stay and investigate the murder in the employ of the dead man's father.

If the town's informal name were not enough of a clue, it becomes immediately clear to the reader that Personville is not a model of municipal excellence. The Op advises us that his new client Elihu Willsson owns the

¹⁵ BLACK MASK MAG., <https://perma.cc/8TA7-8EQJ> (last visited Mar. 11, 2018).

¹⁶ DASHIELL HAMMETT, *RED HARVEST* (1972). The novel actually appeared earlier, in four shorter installments in *Black Mask*. Chris Morris, *Samurai, Cowboys, and Gangsters: The Hidden, Violent Movie History of Dashiell Hammett's "Red Harvest"*, NIGHT FLIGHT (Dec. 28, 2015), <https://perma.cc/E75U-XD9V>.

¹⁷ His actual name is never revealed.

city “heart, soul, and guts,” as he is the President of the local mining company and the biggest bank, owner of both the city’s newspapers, and part-owner of nearly every other business in town.¹⁸ “Along with these pieces of property,” we are informed, “he owned a United States Senator, a couple of representatives, the governor, the mayor, and most of the state legislature.”¹⁹

One cannot expect that the criminal justice system is going to function admirably in this environment, and of course it does not. When the Op first arrives in town, he describes his observations of the police officers he encounters.

The first policeman I saw needed a shave. The second had a couple of buttons off his shabby uniform. The third stood in the center of the city’s main intersection—Broadway and Union Street—directing traffic, with a cigar in one corner of his mouth. After that I stopped checking them up.²⁰

Indeed, the Op discovers that the entire town is the turf for a trio of vicious gangs, with members drawn from the remnants of the gunsels and strikebreakers his client Elihu Willsson had hired some years before to defeat the IWW and drive union influence out of the town forever. Now (the police force being effectively just a fourth gang) the aging kingmaker needs the Op to help him rid his town of the gangs. The irony of his client’s predicament does not preoccupy the Op; he goes about his assignment industriously, sowing suspicion among the gangs and contriving an annihilating process of warfare. His contempt for the police department extends to the courts as well; when he is joined by other operatives from his agency, he advises them that “there’s no use taking anybody into court, no matter what you’ve got on them. They own the courts, and besides, the courts are too slow for us now.”²¹ Indeed, in Poisonville we never meet a politician, a cop, or a businessman who is not corrupt.

Nevertheless, the Continental Op succeeds in the end, in the manner of those military campaigns that destroy the village in order to save it. He persuades the Governor to declare martial law, and returns the city to the “leadership” of Elihu Willsson. This is emphatically not the Golden Age, and this detective is no hero; he leaves the town knowing that it is only a matter of time before what he calls the “mail-order troops” are recalled and, as he predicts to Willsson, the town “goes to the dogs again.”²²

Nearly every scholar of *Red Harvest*, and there have been many, notes

¹⁸ HAMMETT, *supra* note 16, at 8.

¹⁹ *Id.*

²⁰ *Id.* at 4.

²¹ *Id.* at 110.

²² *Id.* at 187.

that Personville, despite its spectacularly ugly qualities, is intended not as a singular dystopia but as a microcosm of the United States.²³ (When I first encountered this idea as a college student it seemed fanciful to me; now, not so much.) The corruption and greed, the worship of money and power, the hypocrisy of its citizenry and even the bad taste of its gaudy builders reinforce a bilious vision of America that would have been familiar to the nineteenth-century Populist Party. Criminal justice is only a subordinate part of a larger political and cultural system, and it is not an institution that can be counted on to right the wrongs that greed and indifference have wrought. Nor does the story's narrator and protagonist offer himself as an agent of justice—only as a competent gun for hire.

There is no room here to provide similar plot summaries of Hammett's other four novels,²⁴ but I will propose that the Op's characteristic vocationalism, nihilism, and contempt for most institutions (always excepting his own agency and The Old Man) persist in his later works. Hammett invents other detectives as well, of course: Sam Spade and later the cosmopolitan Nick Charles.²⁵ They are not altogether the same as the Op, but none of them could be characterized as a crusader for justice. What motivates them? David Lehman, in an analysis of hardboiled crime fiction, suggests that its heroes are caught between a weary contempt for the legal process and a recognition that lawlessness would be even worse.²⁶ They choose neither one nor the other: their loyalty is only to the quest (which they know to be a quixotic one) for the truth.²⁷

To be sure, it is a grave error to confuse a character with his creator, but it is perhaps of interest that Dashiell Hammett himself had a colorful and contradictory relationship to politics. Before embarking on his writing career, Hammett had worked as a Pinkerton detective, the Pinkertons being the agency of choice for industrialists looking to put down strikes, violently if necessary.²⁸ Yet during the McCarthy period, after he had published nearly all of his creative work, he was named as a Communist sympathizer, and went to jail for refusing to reveal the names of contributors to a left-leaning bail bond fund.²⁹ Certainly he had a stubborn

²³ See, e.g., Christopher Bentley, *Radical Angler: Hammett's Red Harvest*, in *AMERICAN CRIME FICTION* 67 (B. Docherty ed., 1988).

²⁴ DASHIELL HAMMETT, *THE DAIN CURSE* (1929); DASHIELL HAMMETT, *THE GLASS KEY* (1931); DASHIELL HAMMETT, *THE MALTESE FALCON* (1930); DASHIELL HAMMETT, *THE THIN MAN* (1934).

²⁵ See generally DASHIELL HAMMETT, *THE MALTESE FALCON* (1929).

²⁶ See DAVID LEHMAN, *THE PERFECT MURDER: A STUDY IN DETECTION* 164–65 (1989).

²⁷ *Id.*

²⁸ *About Dashiell Hammett*, PBS (Dec. 30, 2003), <https://perma.cc/8C22-LFS8>.

²⁹ Bentley, *supra* note 23 (suggesting that he did not even have the information that he refused to turn over, but thought it important to refuse to cooperate rather than simply to say so).

streak. On the eve of his incarceration he wrote to his friend Lillian Hellman that he would have given his life, if necessary, to defend democracy; but he also averred that he would not “let cops or judges tell me what I think democracy is.”³⁰

B. Chandler

Raymond Chandler published his first novel, *The Big Sleep*, in 1939, one decade after the appearance of *Red Harvest*.³¹ Chandler began a literary career late in life, after being laid off from his work for an oil company.³² *The Big Sleep*'s protagonist, Philip Marlowe, appeared again in six later novels published during Chandler's lifetime, culminating in 1958's *Playback*.³³

Marlowe's solitariness, his indifference to physical danger, and his distaste for the pretensions of the wealthy resemble The Continental Op's, but in other ways Marlowe is an altogether different man. In a famous essay about his view of crime fiction, Chandler described his protagonist in humble-hero terms:

Down these mean streets a man must go who is not himself mean, who is neither tarnished nor afraid. . . . He must be a complete man and a common man and yet an unusual man. He must be, to use a rather weathered phrase, a man of honor, by instinct, by inevitability, without thought of it, and certainly without saying it. He must be the best man in his world, and a good enough man for any world. . . . If there were enough like him, I think the world would be a very safe place to live in, and yet not be too dull to be worth living in.³⁴

Marlowe sounds like a hell of a fellow here, an idealistic and refreshing antidote to the jaded Continental Op. But a careful reading of the Marlowe novels reveals him to be somewhat less impressive, at least as far as moral stature is concerned, than his creator maintains here.

In particular, one should not read the Marlowe books looking for a protest against police corruption or brutality. Marlowe is sometimes victimized by crooked cops, but nearly as often rescued by honest ones; he

³⁰ Lillian Hellman, *Introduction in DASHIELL HAMMETT, THE BIG KNOCKOVER: SELECTED STORIES AND SHORT NOVELS* at xi (1972).

³¹ Compare RAYMOND CHANDLER, *THE BIG SLEEP* (1939), with DASHIELL HAMMETT, *RED HARVEST* (1929).

³² *Raymond Chandler*, BIOGRAPHY.COM, <https://perma.cc/C283-DW93> (last visited Mar. 11, 2018).

³³ See RAYMOND CHANDLER, *PLAYBACK* (1958). There was also a novel in progress at the time of Chandler's death, later completed by Robert Parker and published in 1989. See RAYMOND CHANDLER & ROBERT PARKER, *POODLE SPRINGS* (1989).

³⁴ RAYMOND CHANDLER, *THE SIMPLE ART OF MURDER* 18 (1950).

seems to take each sort as a necessary and acceptable feature of the world. Police of whatever stripe seem to arouse his ire less than the sinister doctors who appear in the books with curious frequency, drugging Marlowe up and incarcerating him in their clinics. And as one scholar of the books has remarked, one can read all of them without encountering a crooked judge, lawyer, bureaucrat, or journalist.³⁵ “So much,” this critic says, “for the fearless exposure of corruption that Chandler himself implied he gave.”³⁶

Not that Marlowe has any illusions. He tells a cop in *The High Window*, more or less, that he has to do his work because they don’t always do theirs well:

Until you guys can be trusted every time and always, in all times and conditions, to seek the truth out and find it and let the chips fall where they may—until that time comes, I have a right to listen to my conscience, and protect my client the best way I can.³⁷

This is Marlowe as a professional, a counterweight (like a defense lawyer) to the power of official institutions and their representatives. But the untrustworthiness of the criminal justice system does not arouse his indignation; it is simply the background to his choice of profession.

Marlowe finds the greatest and most interesting evil in personal betrayal, often the discovery that an individual (usually a woman) who has presented herself as a victim or an ally is in fact at the origin of the crimes he is investigating. His issues are those of personal anxiety and flawed judgment, not social critique. Like the classic detectives of the early century, Marlowe lives and works in a universe where the processes of criminal justice are barely visible, and they are not of great concern to him. Indeed, it does not appear to be altogether necessary in this universe that a legal process for the identification and punishment of wrongdoers should be available. Criminals usually do come to a bad end, but it is not because they have been apprehended, tried, and punished according to some orderly course of affairs. Death by homicide and suicide are the preferred and most frequent fates of villains in Marlowe’s adventures.

C. Macdonald

Ross Macdonald published four novels before 1949,³⁸ but it is *The*

³⁵ Stephen Knight, *A Hard Cheerfulness: An Introduction to Raymond Chandler*, in *AMERICAN CRIME FICTION: STUDIES IN THE GENRE* 79 (Brian Docherty ed., 1988).

³⁶ *Id.* at 71, 79.

³⁷ RAYMOND CHANDLER, *THE HIGH WINDOW* 120 (1942).

³⁸ ROSS MACDONALD, *THE DARK TUNNEL* (1944); ROSS MACDONALD, *TROUBLE FOLLOWS ME* (1946); ROSS MACDONALD, *BLUE CITY* (1947); ROSS MACDONALD, *THE THREE ROADS* (1948).

Moving Target in which his troubled hero Lew Archer is introduced.³⁹ Archer reappears in eighteen books, the last published in 1976, so the sagas reach across nearly three decades of American life.⁴⁰ Archer is a private detective, like Marlowe and the Op, and like them he is Californian, solitary, uncompromising, indifferent to money and inured to violence (in the early books, the reader can count on Archer sustaining gruesome injuries in the course of the tale). He can talk the language of the streets as well as understand, if not admire, the chatter at a literary cocktail party. In *The Chill*, he exchanges banter with an English professor, who asks him whether he is waiting for Lefty or Godot.⁴¹ “Lefty Godot,” he replies. “The pitcher.”⁴² In all of this he seems the quintessential American loner, although the attentive reader can occasionally spot language (chesterfield for sofa, post for mail, parcel for package)⁴³ that marks the author as the Canadian he was by birth. Macdonald’s career brought him many prizes and recognition of his work as genuine literature, not confined to genre. He was hailed as the heir to Hammett and Chandler.

Like Philip Marlowe, Lew Archer may walk mean streets with a pure heart, but he is even less interested in challenging authority than his predecessor. His territory is family secrets and the damage they wreak over the years. The plots of Archer’s adventures are so rife with repeating motifs centered on this theme—mistaken identity, the belated discovery that two apparently unrelated individuals are in fact relatives by blood or adoption or sexual connection, the presentation of oneself as another—that he was sometimes accused of writing the same book over and over. Most readers, however, found more than adequate compensation for the repetition in his gorgeous but unpretentious language, his vivid California settings, and his uncanny ear for the speech of his characters.

Archer’s methods are different from the Op’s and Marlowe’s as well. His weapon is not rational deduction, but attention to the psychological subtext of what he is told or overhears. Epistolary clues, for example, appear to Archer with some frequency, but it is the emotional content of the letters rather than the (often false or misleading) explicit information they contain that Archer most often finds enlightening.

³⁹ ROSS MACDONALD, *THE MOVING TARGET* (1949).

⁴⁰ There were a few non-Archer volumes as well; Macdonald’s output vastly exceeded that of Hammett or Chandler. See generally ROSS MACDONALD, *THE FERGUSON AFFAIR* (1960) (one of Macdonald’s novels that does not include Lew Archer).

⁴¹ ROSS MACDONALD, *The Chill*, in ROSS MACDONALD: *THREE NOVELS OF THE EARLY 1960S*, at 253, 285–86 (Tom Nolan ed., 2016).

⁴² *Id.*

⁴³ I am indebted for these examples and other insights to PETER WOLFE, *DREAMERS WHO LIVE THEIR DREAMS: THE WORLD OF ROSS MACDONALD’S NOVELS* 6 (1976).

This turn toward the family as the source of drama may have suited the times during the 1950s; large numbers of newly middle-class white Americans were eager to leave wartime memories of global evil and darkness behind them, though still hungry for tales with a *frisson* of danger and intrigue. But Macdonald was not merely reacting to the temper of the times; he maintained his focus on the mysteries of our most intimate relationships throughout the turbulent years of the later 1960s and into the '70s. Archer lives to see surfers, hippies, would-be revolutionaries, but he is largely aloof from these cultural trends. Even when the country had immersed itself in political turmoil, tragedy on a more intimate scale remained Ross Macdonald's *métier*: it was his life's work to excavate these sites of meaning. Macdonald did have a devotion to environmental causes, and in his later books wove his concerns about the destruction of the physical earth into his dark investigations of the harm we do our fathers and mothers, sisters and brothers, and especially our children.⁴⁴

Unsurprisingly, then, Archer devotes little of his time to exposing corruption or brutality in police departments, courts, or prisons. Indeed, he works comfortably with the police, cooperating with them from beginning to end in some of the books (like *The Galton Case*⁴⁵ and *The Far Side of the Dollar*⁴⁶), and often finding much to admire about the police officers he encounters. He wouldn't be comfortable as a cop himself: he tells us in *The Way Some People Die* that he once worked for the Long Beach police force, and was fired for insubordination.⁴⁷ But he usually advises the troubled individual who comes to him for help to go to the police first (of course they will not, or cannot). There is one evil cop in the canon, Sheriff Ostervelt in *The Doomsters*.⁴⁸ But, as one of Macdonald's biographers notes, there are no more crooked policemen in his books than there are crooked doctors or lawyers.⁴⁹ He knows the legal system is fallen, but this knowledge does not preoccupy him.

Judges and courtrooms play almost no role in the Archer stories, and the justice that ensues (such as it is) usually arrives like that in Hammett's books, in the form of extrajudicial violence. In his emphasis on the hidden, often unconscious roots of crime, the lies we tell even ourselves about our histories, the motivations that can lead even good people to make terrible

⁴⁴ See Ross Macdonald *American Literature Analysis*, ENOTES (2006), <https://perma.cc/RB6L-7R9S>.

⁴⁵ ROSS MACDONALD, *THE GALTON CASE* (1959).

⁴⁶ ROSS MACDONALD, *THE FAR SIDE OF THE DOLLAR* (1965).

⁴⁷ ROSS MACDONALD, *THE WAY SOME PEOPLE DIE* 152 (2011).

⁴⁸ ROSS MACDONALD, *THE DOOMSTERS* (1958).

⁴⁹ MARY S. WEINKAUF, *HARD-BOILED HERETIC: THE LEW ARCHER NOVELS OF ROSS MACDONALD* 14 (1994).

mistakes, and in his insistence that the solutions to most present mysteries lie deep in the past, Macdonald anticipated such later writers as Scott Turow, of whom I will have more to say shortly.⁵⁰ Archer believed that the sources of violence and sorrow lie not in our institutions, but in ourselves.

IV. Another Perspective on Postwar America: Walter Mosley

Of course, Lew Archer could afford a certain indifference to the injustices perpetrated by the institutions of criminal justice; his insubordination might get him into occasional trouble with the authorities, but as a white male he was immune from racial and gender discrimination and the ugly ways they permeated the halls of justice. The same is not true of Walter Mosley's protagonist Ezekiel (Easy) Rawlins, an African-American private detective with many of the same qualities as Lew Archer—war veteran, a willingness to suffer and if necessary to inflict violence, an insecure economic life, and (until some of the later books) no family to anchor or succor him.⁵¹ It is easy to imagine an intertextual meeting between Rawlins and Archer. Although *Devil in a Blue Dress*,⁵² Mosley's first book about Easy, did not appear until 1990, long after Macdonald penned the last Archer novel, the fictional detectives share a place and time. Each series gives us a protagonist who lives and works as a private detective in Los Angeles beginning in the immediate postwar years, continuing through the 1960s and into the 1970s.

Yet for all the similarities between the two men, things that are for Archer a matter of choice—to become a private detective, for example, or to resign from a decently-paying job—have a different character for Easy. He becomes a detective from necessity, for at the beginning of *Devil in a Blue Dress* he has been fired from his good factory job, and needs to make a mortgage payment or he will lose his house.⁵³ The house, in fact, represents another difference between Easy and his hardboiled predecessors; their lifestyles are characterized by minimalist living in underfurnished apartments, but Easy clings tenaciously to his suburban house through recurring financial difficulties as well as numerous home invasions that threaten its security in the course of the series. In *Rose Gold*, he has just sold it and moved to a larger and nicer place, and we see him enjoy the spacious rooms and consider how he will furnish them.⁵⁴ His house is his ticket to

⁵⁰ See *infra* Part V.B.

⁵¹ See *Easy Rawlins*, THE THRILLING DETECTIVE, <https://perma.cc/WF7L-JJUY> (last visited Mar. 11, 2018) (providing background of Easy Rawlins).

⁵² See generally WALTER MOSLEY, DEVIL IN A BLUE DRESS (1990) (introducing the character Easy Rawlins).

⁵³ *Id.* at 36.

⁵⁴ WALTER MOSLEY, ROSE GOLD: AN EASY RAWLINS MYSTERY 1–5 (2014).

the middle class, and he cherishes this accomplishment in a manner that Archer, Marlowe, and the Op no doubt would view with a certain contempt. His attachment to his home, and later to the children he takes in and raises, robs him of the insouciance that his white counterparts bring to their work. Easy Rawlins is a man who has something to lose, and he knows it. "I was my own man," he tells us, "but that man owed his soul to the company store."⁵⁵ Sometimes he is not able to earn enough to survive and support his adopted kids with his detective work, and he turns to other occupations, including serving as the custodian at an elementary school—a choice we cannot imagine Lew Archer making.⁵⁶

Easy is a reluctant detective at first, but proves to have a talent for the profession. His clients are usually black, and his familiarity with black life in Los Angeles allows him access and insights that would be unavailable to a white man. Soon he is by way of becoming a local hero in the black community, but even his adventures in the segregated 1950s bring him into frequent contact with the police—all white men during that period, of course. In the early books, their contemptuous treatment of Easy mirrors the disrespect he encounters among other white people, exacerbated by their license to use violence and their conviction that it is an appropriate response to an uppity black man even if he poses no threat to them. Rawlins knows, like others of his color, that it's best to have as little truck with law enforcement as possible, and never to trust its agents. Speaking of the late 1940s, he says that "back in those days there wasn't one Negro in a hundred who'd talk to the police. And those that did were just as likely to lie as anything else."⁵⁷ Later on in the series, Easy does acquire one white friend on the police force, Melvin Suggs; Easy tells Suggs at one point that he is famous among the brothers because he's the only white cop they know who doesn't call them nigger.⁵⁸ But Suggs is surly and insubordinate in the Lew Archer manner, and he's usually in some professional trouble of his own. He's a loyal friend to Easy, but susceptible to distraction by attractive women and needful of reciprocal rescue from time to time.

Despite his knowledge that contact with law enforcement is hazardous to him, Easy cannot avoid for very long the necessity of some transaction or other with the police, and in fact his growing reputation is such that officers, including from the FBI and CIA, sometimes come to him to request (or extort) his assistance—not as an informant, but as an investigator, or so they present the matter. He usually agrees, because he has no choice, or needs the money on offer, or sees an opportunity to

⁵⁵ *Id.* at 24.

⁵⁶ *See id.* at 225.

⁵⁷ MOSLEY, *supra* note 52, at 157.

⁵⁸ MOSLEY, *supra* note 54, at 51.

prevent an injustice, but Easy has no illusions about the system he works for. The police nearly always prove to be using him and lying to him, and when he displays independence or resists their demands they turn on him as quickly as they would on an untrustworthy informant. “You can go,” one of his erstwhile colleagues tells Easy after a daylong interrogation has failed to induce him to tell them all he knows about a man’s death, “[b]ut we’re going to get you again. We’re going to bring you down for something, Ezekiel, you can bank on that.”⁵⁹

Easy understands that this is no idle threat, that the police can contrive a case against a black man and make it stick with little difficulty—or do worse. He persuades a mother, whose missing son is in trouble with the police, to cooperate with him by explaining, “You and I both know that if the cops find Bob they will shoot first. They will kill your son. If he’s innocent I’ll try to prove it. If he’s guilty I’ll try to make sure that he doesn’t get gunned down like a dog. The words I spoke fully encompassed the world we lived in; she knew that.”⁶⁰ These words are uttered not in 1948, but in 1967; some things are very slow to change in Easy’s universe.

Rawlins is careful and vigilant, knowing he is always at risk, but detective work is not just a source of income to him. He aspires to be an agent of justice, when he can be. Still, he cannot afford to be sentimental about the institutions that are supposed to produce it. At one point, he explains why he can say that he didn’t care about the death of a white man who was entangled in a case he was investigating:

It’s not that I had no feelings for the murdered man. I thought it was wrong for a man to be murdered and, in a more perfect world, I felt the killer should be brought to justice. But I didn’t believe that there was justice for Negroes. I thought there might be more justice for a black man if he had money to grease it. Money isn’t a sure bet, but it’s the closest to God that I’ve ever seen in this world.⁶¹

Courtrooms and judges are no more a visible part of Easy’s world than they are of the Op’s or Marlowe’s or Archer’s; like his predecessors, he trusts that the justice system will take the part of the cops when they bring it a case, and prosecute it successfully. Still, the unseen agencies of judgment cast their shadows on life in the streets, and on Easy’s neighborhood and home. For one thing, the knowledge that police enjoy that the law will take their side enables much of their corruption and bias. But the effects of these far-ends of the justice system permeate Easy’s world in other ways as well. Easy’s circle of acquaintance includes a number of

⁵⁹ *Id.* at 158.

⁶⁰ *Id.* at 109.

⁶¹ MOSLEY, *supra* note 52, at 120.

men who have done time in jail and prison, including his explosive and unhinged friend Mouse, who shows up from time to time to upend Easy's more settled life (and sometimes to save him from trouble by resorting to methods that Easy's conscience would not allow him to employ himself). Prison is a part of black life in Easy's world, and although Easy does not suggest that every conviction is unjust or every sentence unduly harsh, it is clear that black men stand always in the shadow of arrest and imprisonment, and that luck and skill are all that stand between an honest but defiant soul like Easy's and a prison cell. He is living in the world of what some have called the New Jim Crow (or perhaps, in the early books, still the original Jim Crow); no storyteller brings this realm more vividly to life than Walter Mosley.

V. The Courtroom Novel: Gardner and Turow

A. Gardner

No author we have considered thus far has found the courtroom to be a worthy setting for any substantial portion of his stories. At most, judges and lawyers lurk in the background, usually ready to ratify the acts of the police by convicting the suspects they have arrested and charged (justly in the case of most of the them, often unjustly in the world of Easy Rawlins). But not all popular writers of the midcentury period left the judicial process so far in the shadows. There was at work, during many of the years we have been surveying, a great practitioner of the courtroom drama, Erle Stanley Gardner. Gardner, like Hammett and Chandler, began publishing short stories in the pulp magazines of the 1920s and 30s;⁶² his astonishingly prolific career concluded with the posthumous publication of his last book in 1973, three years after his death.⁶³ He wrote several series, and a number of stand-alone short stories and books; he was so afraid of diluting the demand for his work with his extreme output that he published under several aliases.⁶⁴ He is best-known for the series written under his own name featuring California lawyer Perry Mason (which became the basis for an extremely popular television series in the 1950s and 1960s).⁶⁵ The first of

⁶² See John Olsen, *Perry Mason: Novels #27 and #28*, THE PULP (Jan. 13, 2017), <https://perma.cc/7J6D-K4NT>.

⁶³ Compare Erle Stanley Gardner, BIO.COM (Apr. 2, 2014), <https://perma.cc/QRF2-PKE9> (showing that Gardner passed away in 1970), with ERLE STANLEY GARDNER, *THE CASE OF THE POSTPONED MURDER* (1973) (published in 1973, three years after Gardner's death in 1970).

⁶⁴ Erle Stanley Gardner, ENCYCLOPEDIA OF WORLD BIOGRAPHY (2004), <https://perma.cc/F4NM-UMRY> ("Gardner began to write . . . under the pseudonyms of A.A. Fair, Carleton Kendrake, and Charles J. Kenny.").

⁶⁵ See J. DENNIS BOUNDS, *PERRY MASON: THE AUTHORSHIP AND REPRODUCTION OF A POPULAR HERO* 1–3 (1996).

the series, *The Case of the Velvet Claws*, appeared in 1933;⁶⁶ the last, *The Case of the Postponed Murder*, in 1973.⁶⁷ The number of Perry Mason books Gardner wrote is tallied variously, but all agree it is somewhere north of eighty.⁶⁸

Fans of psychologically-rich crime fiction, like that of Ross Macdonald, sometimes complain that the Mason books are too plot-driven and the characters cartoonish.⁶⁹ It is true that they have a nearly unbreakable formula. One critic claimed that (putting aside some of the earliest books), they were nearly as formally rigid as Japanese Noh drama, consisting of six elements: the case is presented (by a new client, or sometimes otherwise); Perry Mason investigates; Mason's client is accused of a crime; further investigations are undertaken; the legal proceedings begin; and Mason solves the case in the course of the trial or hearing, often by eliciting a confession from the actual criminal.⁷⁰ The trial portion of the book generally occupies the last half to third of the book, and consists largely of verbatim dialogue, almost like a transcript (with the boring parts eliminated, of course). Still, the amount of variety and ingenuity with which Gardner infuses this formula is impressive.

Perry Mason is a hero, both self-righteous and complex. He skirts the rules of the legal profession with daring and apparent pleasure, just as willing as the Op and Marlowe to defy the legal conventions. Sometimes Mason explains his decisions (often to his infatuated secretary Della Street) as a matter of the requirements of the Constitution, and sometimes as an aspect of his own personality. In *The Case of the Howling Dog*,⁷¹ for example, the fourth book in the Mason series, the lawyer engages in a variety of conduct that would today be regarded as shockingly improper, from false imprisonment and bribery of a witness to conflict of interest to concealment of evidence. Even his friends and allies express their concern that he is "skating on thin ice," as they put it, but Mason is unrepentant.⁷² "A lawyer," said Perry Mason slowly, "who wouldn't skate on thin ice for

⁶⁶ 2 AMERICAN POP: POPULAR CULTURE DECADE BY DECADE 1930–1959, at 34 (Bob Batchelor ed., 2008).

⁶⁷ ERLE STANLEY GARDNER, *THE CASE OF THE POSTPONED MURDER* (1973).

⁶⁸ J. DENNIS BOUNDS, *PERRY MASON: THE AUTHORSHIP AND REPRODUCTION OF A POPULAR HERO* 3 (1996); *Perry Mason: Fictional Character*, *ENCYCLOPEDIA BRITANNICA*, <https://perma.cc/6TC3-TU4M> (last visited Mar. 11, 2018).

⁶⁹ *But see*, J. DENNIS BOUNDS, *PERRY MASON: THE AUTHORSHIP AND REPRODUCTION OF A POPULAR HERO* 35–36, 39, 42, 45, 47 (1996) (describing Gardner's fiction as driven by plot device and carefully drafted narratives as a function of the genre).

⁷⁰ RUSSELL B. NYE, *THE UNEMBARASSED MUSE: THE POPULAR ARTS IN AMERICA* 255 (Harold M. Hyman & Leonard W. Levy eds., 1970).

⁷¹ ERLE STANLEY GARDNER, *THE CASE OF THE HOWLING DOG* (Penguin Books 1961).

⁷² *Id.* at 133.

a client ain't worth a damn."⁷³ In his most clever cases, Mason's unconventional methods are designed not just to solve the crime, but to create an indelible spectacle for the jury (and the public, for he does not neglect the importance of the public's attention to dramatic criminal trials). He defends his style as one required by the expectations of citizens and jurors:

"We're a dramatic people," Perry Mason said slowly. "We're not like the English. The English want dignity and order. We want the dramatic and the spectacular. It's a national craving. We're geared to a rapid rate of thought. We want to have things move in a spectacular manner."⁷⁴

He even schools his admiring (but occasionally dubious) law clerk in his philosophy of trial advocacy:

There's the slow, tedious way, indulged in by lawyers who haven't any particular plan of campaign, other than to walk into court and snarl over objections, haggle over technicalities, and drag the facts out so interminably that no one knows just what it's all about. Then there's the dramatic method of trying a lawsuit. That's the method I try to follow.⁷⁵

At other times Mason's speeches incorporate the sort of Constitution-speak that we still hear and use today to explain the sorts of wily defense tactics that too many citizens resent. Such people, Mason complains,

overlook the fact that the district attorney is as clever a lawyer as the state can find. And the lawyer for the defense has to counteract the vigor of the prosecution by putting up as shrewd and plausible defense as he can find. That's the theory under which our constitutional rights are given to the people.⁷⁶

It is worth remembering that most of the Perry Mason books were written at a time when the Supreme Court had not recognized that state authorities were required to observe the guarantees of the Fourth, Fifth, and Sixth Amendments. Nearly all of those protections were "incorporated" into the Due Process Clause during the 1960s (if they were at all). California, where Perry Mason practiced, may have afforded some rights as a matter of state law, but the parsimonious protections that criminal defendants could claim no doubt influenced Mason's sometimes

⁷³ *Id.* at 134. In this essay I will allow this book to serve as an example for the scores of others, even though it contains some unusual features; there's not room for a more general survey, and the books have so many features in common that most of my general observations could be made about any of the others as well.

⁷⁴ *Id.* at 250.

⁷⁵ *Id.* at 253–54.

⁷⁶ *Id.* at 181–82.

bombastic defenses of his own behavior, and may on occasion have produced the need for his ploys. In *The Case of the Howling Dog*, for example, even before his client has been arrested Mason scripts and directs an elaborate dramatic production involving an actress, a purloined handkerchief, a bottle of expensive perfume, and several other elements, in order to create ammunition he can later employ in court to discredit a taxi driver's identification of his client as the person whom the taxi delivered to a murder scene. Against the protests of some of his co-workers, Mason explains the necessity of these measures: by the time of trial, the police and DA will have coached the taxi driver witness by exposing him over and over again to Mason's client, telling him that she is the one they have identified as the perpetrator, until the witness has grown unjustifiably confident in an identification of her as his fare. Thirty-five or so years later, a criminal lawyer could have challenged and perhaps excluded the witness's in-court identification in such circumstances, but there would have been no law supporting such an opportunity at the time the book was written. (The circumstance that, as we learn much later, the driver's identification of his client was probably quite accurate, and Mason knew it, adds another layer of complexity to our consideration of Mason's professional ethics.)

What should we conclude about the criminal justice system as inhabited by Perry Mason and his clients? In the cases he takes and defends, it actually works quite well. His clients are never compelled to plead guilty because they can't afford to pay for a complete defense; each and every one gets a trial. Never is one of his clients unjustly convicted, and rarely—the *Howling Dog* case is a bit of an anomaly here—is one mistakenly acquitted. (The latter is true because Mason's clients almost inevitably turn out to be innocent; he is in this regard astonishingly fortunate in his client base.) The prosecutors whom Mason opposes are not villains, nor ordinarily even unscrupulous seekers of political success; but they are merely workaday lawyers who happen not to be as perspicacious and tireless as Perry Mason, and accordingly are given to pursuing, charging, and prosecuting the wrong suspects. Their sin is an unearned pride in their work, not avarice or corruption; in Holmesian terms, they are more Lestrade than Moriarty. The judges before whom Mason practices are generally well-versed in the law and willing to sustain proper objections, even if they rest on what some would call "technicalities."⁷⁷ For Perry

⁷⁷ See generally GARDNER, *supra* note 71, at 181–82. Not that judges always rule in Mason's favor. The judge in *The Case of the Howling Dog* matter unaccountably sustains the prosecutor's Best Evidence objection to a witness's attempt to describe of a letter, even though the prosecutor admits that he is in possession of the letter. Perhaps the Best Evidence Rule was quite different in California in 1934, but ordinarily the opponent's sole possession of the

Mason and his clients, the system works.

But what of the others, the “chow,” the great mass of suspects whose lawyers will not be as talented or daring as Perry Mason (or who, in those pre-*Gideon v. Wainwright*⁷⁸ days, may not even have lawyers)? We don’t ever meet them, or hear about them, in the Mason books. But if we accept Perry Mason’s descriptions of the police and prosecutors—feckless and given to charging the innocent with crimes—we would have to expect that unjust conviction is quite a common feature in his jurisdiction. To once again invoke the possibility of intertextuality, we can imagine Easy Rawlins and his friends inhabiting the same Los Angeles legal universe as Perry Mason and his clients, during the 1950s and 1960s. Only they would never meet, and Perry Mason would not be available to represent Easy if matters for him should turn as dire as they often threaten to do. The criminal justice system, as represented by the courts, is an admirable institution for the well-heeled who can afford the best criminal lawyer in town, or those who otherwise come to Perry Mason’s attention in a manner that engages his pugnacious instincts. For everyone else, it is as indiscriminate a machine as the one Kramer describes in *The Bonfire of the Vanities*.⁷⁹

B. Turow

The lawyers and judges and occasional law enforcement officers who populate Scott Turow’s legal thrillers are almost nothing like Perry Mason. They may be brilliant, or not, but they are all excruciatingly human, and distinctly and variously flawed. They suffer from self-doubt, writer’s block, romantic obsession and disappointment, professional conflicts, family imbroglios, infertility, sexually transmitted diseases, and nearly every other variety of what we sometimes call “first-world problems.” These challenges resist confinement to the characters’ personal lives; invariably, they overflow into and influence their performance in the law enforcement and judicial arenas.

As shown in his Kindle County series,⁸⁰ nine books beginning with 1987’s *Presumed Innocent*,⁸¹ Turow’s acquaintance with the intricacies of investigative and judicial procedure and legal culture is extraordinary; he is as much at home in a cramped and noisome interrogation room as at a

document is an exception to the application of the Best Evidence Rule.

⁷⁸ See *Gideon v. Wainwright*, 372 U.S. 335, 338–39 (1963) (reviewing the problem of state courts not honoring a defendant’s federal rights to counsel).

⁷⁹ WOLFE, *supra* note 1.

⁸⁰ *Order of Kindle County Books*, ORDEROFBOOKS.COM, <https://perma.cc/789Q-S3AX> (last visited Mar. 11, 2018) (listing the nine books that compose the Kindle County Series).

⁸¹ SCOTT TUROW, *PRESUMED INNOCENT* (1987).

pretentious bar association dinner. In all of these locations, and especially in the courtroom, the proceedings are dripping with subtext, usually related to the irresistible tendency of the point of view character to interpret, and often misinterpret, events according to the character's fears, desires, and biases. Turow's books are set apart from nearly all others of the genre by the terrific plausibility and complexity with which these emotional predicaments are rendered. In one book, the perspective (or one of them) is that of a competent and generally scrupulous judge who has unwillingly been drawn into sitting on a case, without a jury, in which the defendant, one of the defense lawyers, and the reporter covering the trial are all old acquaintances (and in the case of one, a current lover).⁸² In another the narrator is a successful prosecutor, living with a number of secrets that he cannot disclose, who finds himself accused of a crime, an accusation that he comes to suspect originates in office politics and nefarious conspiracies (although the solution may lie closer to home). Turow's oeuvre is weighty, if not as numerous as Gardner's or Macdonald's. As before, I'll offer some more detailed observations about only one of his works, but one I would maintain to be a good example of his use of the criminal justice system as a character.

In *Reversible Errors*,⁸³ Turow deploys his knowledge of the baffling intricacies of post-conviction proceedings in death penalty cases to give us an absorbing account of the twists and reversals, the triumphs and disappointments, of a *habeas corpus* case in which a man's life is at stake. Apart from the condemned man, Rommy Gandolph, those drawn into the matter include Larry Starczek, the detective who was lead investigator in the triple murder for which Gandolph was convicted and sentenced to death; Muriel Wynn, who prosecuted the case; Gillian Sullivan, a disgraced former judge, now serving out parole after a prison term, who presided over Gandolph's trial; and his newly appointed post-conviction lawyer Arthur Raven.⁸⁴ Those familiar with Turow plot devices will be unsurprised that the last four characters represent two couples in the throes of romantic entanglements that are, given their roles in the case of Rommy Gandolph, at least complicated and at worst agonizing.

The trial and conviction are backstory at the time the narrative opens with Arthur Raven, a socially awkward former prosecutor turned corporate litigator, driving out to prison to meet the man he has been (to his dismay) appointed to represent in federal *habeas corpus* proceedings.

⁸² SCOTT TUROW, *THE LAWS OF OUR FATHERS* (1996).

⁸³ SCOTT TUROW, *REVERSIBLE ERRORS* (2002).

⁸⁴ Peter Guttridge, *Scott Turow Stays at the Top of His Game with his Latest Courtroom Thriller, Reversible Errors*, *THE GUARDIAN* (Nov. 24, 2002), <https://perma.cc/E2B2-R9UT> (reviewing the characters described herein).

Lawyers who have trodden that ground will recognize the insane procedural Byzantium this assignment represents (not only for Arthur, but also for Muriel and Larry, and for more than one federal judge); they will also appreciate Turow's insights concerning the estrangement between the questions that are of interest to the legal system in such an action and those that might reasonably be thought to pertain to a just outcome.

Post-trial capital punishment cases in the United States represent the most dramatic instance of an enduring tension between two important and admirable goals of the criminal justice system: accuracy and finality. Prosecutors pursue finality by seeking to limit the number of opportunities defense counsel have to challenge the propriety of a death sentence once a trial has resulted in that judgment; defense counsel (if competent, which cannot always be assumed) exercise every scrap of their skill and ingenuity to ensure that the system comes to terms with the possibility that it may be pushing toward execution of an individual who should not suffer that fate. "Should not" can here have various meanings: the reasons for a post-trial defense argument against execution may include errors in the course of the trial, or the ineffectiveness of trial counsel, or the failure of the prosecution to comply with its obligations to the defendant (like turning over possibly exculpatory evidence)—the sorts of claims that are standard fare in criminal defense. The dogged litigation of such claims can, if procedural rules allow it, result in extraordinary delays in carrying out a sentence of death—delays that many prosecutors will resist on the ground that they hinder the administration of justice and prevent closure for the survivors and family members of the victim.

Although such contests between swift justice and outcome accuracy can be painful in any criminal matter, the most dramatic and troubling cases are those in which reasons arise, even after trial and appeal have concluded, to doubt the actual guilt of a defendant who has been sentenced to death. In cases where this doubt appears but cannot be engrafted onto one of the standard grounds for reversal of a verdict, the defendant's argument amounts to an insistence that he has a right to relief from his sentence when this remedy ordinarily would not be available. And yet, the prospect of executing an innocent is so potent a horror that the justice system seems compelled to afford some process for allowing an innocent death row inmate to assert his claims of innocence, no matter how long after a final judgment. Instead of denying this opportunity altogether past a certain point of finality, the law seeks instead to cabin it in various ways, and to prevent its exploitation by advocates who seek to promote delay as much as accuracy.⁸⁵

⁸⁵ The justice system's efforts to balance the competing virtues of efficiency and accuracy have not been very successful at promoting either goal. In 2013, the last year for which data is

On the national level, the efforts to square this circle have included the Antiterrorism and Effective Death Penalty Act of 1996,⁸⁶ which (among other provisions) limited the sorts of claims that a federal court can consider in reviewing a state prisoner's claims in a *habeas corpus* action. It is uncommonly confusing legislation; Justices of the United States Supreme Court have taken an assortment of views on how these provisions ought to be enforced, and in particular have divergent opinions about the cognizance that a judge in a federal *habeas corpus* suit may take of a state prisoner's claim of actual innocence, when plausibly coupled or not with some other less fact-bound basis for relief.⁸⁷ The complexities in this area of law are nearly indescribable, and few lawyers who are not specialists venture into its forbidding terrain.

Of course capital punishment is ready-made for drama, and the inmate wrongly convicted and sentenced is a familiar and spectacular figure in crime fiction; some legal thrillers capitalize on the drama of an impending execution by invoking the possibility of a last-minute reprieve and oversimplifying the availability of this remedy. By contrast, the cold and technical intricacies of post-conviction legal proceedings, if characterized faithfully and accurately, would seem an unpromising framework for a novel. Yet in *Reversible Errors*,⁸⁸ Turow, while remaining remarkably true to the tedious nuances of the law, puts aching mortal flesh onto its cold bureaucratic bones. In the decisions and acts the narrative creates for its characters—especially Arthur, Gillian, Muriel, and Larry—it honors both the majesty and the preposterousness of the criminal justice system, its noble aspirations and its compromises with expediency, and above all its complete inability to tame the corrupting influence of the human desire to win a contest.

Arthur Raven, for example, although a reluctant conscripted advocate for Rommy Gandolph, begins to find in his pursuit of Rommy's case moments of clarity and meaning that have over the years drained out of his work. Yet during much of the narrative he cannot really believe that his

available, the median length of time between the imposition of a death sentence and its execution in the United States was over fifteen years—and this is counting only prisoners who actually were executed. See Tracy L. Snell, *Capital Punishment, 2013—Statistical Tables*, at 14 T.10, U.S. BUREAU JUST. STAT. (revised Dec. 19, 2014), <https://perma.cc/VC46-857P>. Yet each year produces more evidence that innocent persons have been put to death, and since 1973, 156 persons who were once under sentence of death have been exonerated. See *Innocence and the Death Penalty*, DEATH PENALTY INFO. CTR., <https://perma.cc/5KP8-LBFY> (Mar. 11, 2018).

⁸⁶ Antiterrorism and Effective Death Penalty Act, Pub. L. No. 104-132, 100 Stat. 1214, 1217 (1996).

⁸⁷ See, e.g., *Duncan v. Walker* 121 S. Ct. 2120, 2124–29 (2001); *Yarborough v. Alvarado*, 124 S. Ct. 2140, 2147–50 (2004); *Holland v. Florida*, 130 S. Ct. 2549, 2560–62 (2010).

⁸⁸ TUROW, *supra* note 83.

client is innocent, despite the fact that another prisoner has, on his deathbed, confessed to the crime. Arthur's skepticism grows in part out of the circumstance that Rommy has himself confessed to the murder, and more than once. Still, Arthur's professional pride, coupled with the dissatisfactions of his personal life, spur him to the fashioning of ever-more ingenious arguments for further delays and proceedings, even as they blind him to the perils his decisions pose to his professional status, and to the well-being of Gillian, a woman he is growing to love. Gillian, in turn, finds herself drawn back into the web of the legal process, an arena she long before left in disgrace after revelations that she had taken bribes while on the bench; her legal expertise and her knowledge of the matter slowly converge to make it impossible for her to stay away from Arthur's investigation once she has formed a friendship with him, and she begins to play a role in his strategizing. Gillian believes that she has already lost everything of consequence to her professional life, but the quirks of post-conviction law lead to lines of investigation that undo the austere security of her hard-won second life and threaten to force Arthur to choose between her and his client.

On the law enforcement side, the web of law, procedure, and relationships is perhaps even more tangled. Muriel and Larry are longtime lovers; indeed, the backstory finds them in bed together on the day Larry is summoned to the scene of the crime for which Rommy will be convicted. Their episodic but long-lasting affair rests on many varieties of attraction, but one of their chief bonds is work, and the forms of dedication and skill that each brings to the enterprise of identifying, prosecuting, and convicting criminals. Both have general reputations as skilled and admirable professionals, but each knows that nobody is really in a position to appreciate what he or she has accomplished as well as the other. And so it is that the thorny investigation of the triple murder that rouses the lovers from their bed that day becomes, over time and with the eventual conviction and death sentence pronounced (by Gillian) on Rommy Gandolph, and over the passage of ten years during which the law grinds its meal exceedingly fine, one of the shared accomplishments that each regards as a marker of his or her enduring contribution to justice. Their shared victory also serves as a powerful link that connects them emotionally through marriages to others and various other life convolutions. To add to the complications, it is also a large item in Muriel's resumé as she prepares, when Turow's narrative opens, to run for State's Attorney in the coming election.

Turow shows us how this heady mix of love, pride, ambition, and complicity compel Muriel and Larry to defend Rommy Gandolph's death sentence with the same relentless skill they brought to obtaining it. And yet the potency of their bond cannot quite overcome the fissures that grow out

of their disparate temperaments and different professions. Each, for example, participated in obtaining Rommy's confession, and almost until the end each is convinced of its truth and believes it was obtained properly. Yet, Larry knows things that Muriel does not about the persuasions he employed on Rommy before she arrived at the interrogation, and knows that the ferocity of her advocacy might be lessened if she understood them; this he cannot allow, so their intimacy and affection rest on the withholding of crucial information. Tensions flare between them when a witness offers some confirmation of the competing confession, which if believed would exonerate Rommy of any role in the murders. The corroboration is equivocal and suspicious, but Muriel's professional ethics require her to be punctilious in furnishing Arthur with any evidence they come across that could be used to argue for Rommy's innocence. Larry, however, appreciates the assistance that this information will offer Arthur's efforts to undo their work; his unshakeable conviction that Rommy is guilty of a brutal triple murder renders the gift of this information an act of surrender bordering on evil. Muriel has some empathy for Larry's position, and is also clear on her own:

Cops always hated it when the attorneys made the decisions. To the lawyers, the job was all words—the words they spoke in court, or wrote in briefs, or read in police reports. But for the coppers, it was life. They did their jobs with a gun on their hips and sweat dripping down to their shorts from beneath their bulletproof vests. The witnesses who appeared neatened up in the courtroom to answer the prosecutors' questions had been pulled out of rank shooting galleries by officers who didn't know if they should worry more about a bullet or HIV. The police lived in a rough world and they played rough if they had to. For a prosecutor, giving in, even to somebody as good as Larry, only encouraged recalcitrance.⁸⁹

She also suggests to Larry that it is possible they made a mistake, that Rommy really is innocent. But it is characteristic of Turow that the men are often far more fragile emotionally than the women, and so it is here. For Larry, the proposition that they should consider the possibility of Rommy's innocence is poison, and the decision whether to hand Arthur a new weapon to use against them has much more emotional content for him than for Muriel:

Look, I worked this case. On my own. The whole Force hit the pause button once the headlines faded. I'm the one who kept pressing. I made this case. *And I made it with you. And for you, if you want to know the truth.* So don't say it's any frigging mistake.⁹⁰

⁸⁹ *Id.* at 240.

⁹⁰ *Id.* at 241 (emphasis added).

In the end, the shadows of these irreconcilable commitments will haunt Muriel and Larry—and show the reader more clearly than any lecture could how the jeweled promises of the law will be kept or broken for reasons that owe far less to rules than to human skill, shortcomings, determination, frailty, and all of their permutations.

Not that the law lacks power: love and life will be lost or saved by its edicts. But not predictably, not in the way we might imagine after reading Golden Age crime fiction—or in the manner we may have envisaged before becoming lawyers. Turow shows us that just as the law is burdened and distorted by the acts of humans, we are shaped and made and sometimes broken by the law, even by its tiniest details, and even though these effects sometimes have nothing to do with the purposes of the law. The law is less a relentless machine and more in the way of a powerful fictional character, one whose acts ought in theory to be explicable by an account of all of the motivating influences brought to bear on him or her, but who nevertheless retains a mystery and unpredictability that insist that the reader remember, and puzzle, and struggle to understand even after the last page is turned. Of the writers I have discussed thus far, Turow comes closest to giving the criminal justice system this coursing of blood in the veins.

VI. Good Police, Bad Police: Tana French and Michael Connelly

Harry Bosch, the protagonist of twenty-two police procedural novels by Michael Connelly, has the proper traditional gender and race credentials for a police officer: male and white. Yet even such a fortunate son will find himself in perpetual trouble if he proves to have what police culture deems an insufficient tolerance for incompetence or corruption among his co-workers.⁹¹ The brotherhood of cops, and the pledge to protect fellow officers that it exacts (if implicitly) from its members, provides a certain protection and comfort for individuals in a challenging profession that sometimes calls on its members to make quick and highly consequential judgments. It also, too often, protects those who are indifferent to the rule of law and considers that they, once they have proved themselves as “good police,” ought to be free from external constraints.

We can catch in Turow’s *Reversible Errors* a glimpse of the strategy employed by a decent cop with scruples, but also a talent for self-protection and no taste for the grief that reporting another cop’s misfeasance will bring him. In one scene, Larry Starczek has discovered that a cop who arrested Rommy Gandolph stole a locket from the items

⁹¹ *Order of Harry Bosch Books*, ORDEROFBOOKS.COM, <https://perma.cc/8R97-YKUZ> (last visited Mar. 11, 2018) (listing the twenty-two Michael Connelly books featuring Harry Bosch).

that were inventoried from Rommy's pocket at the time of arrest. Rommy's possession of the locket would tie him to the triple murder that Larry is investigating, and Larry is irate when he discovers what the other cop has done. The other cop responds to Larry's scolding with indignation, asking what is the harm, now that he has returned the locket to the evidence container. He is not impressed by Larry's concerns about the locket's chain of custody: "Everybody here knows how to testify," he assures him.⁹² The thieving cop even suggests to Larry that if Rommy is convicted of the murder, he should share some credit for the collar. Larry is disgusted but considers the matter to be resolved once the locket finds its way back to the container; to go further with it would be, in his instantaneous and unconflicted judgment, a waste of time. "You couldn't talk to a guy like that," he reflects.⁹³ He has given a fellow officer a pass on theft, and agreed in advance to perjury if it should be necessary; he reserves his serious antipathy for the guy's clumsy effort to take credit for his terrible police work as though it were praiseworthy.

Connelly's Harry Bosch often finds himself in similar situations in the Los Angeles Police Department, and although perhaps more troubled than Larry Starczek by corrupt cops when he encounters them, he exercises much the same judgment. He knows that a fastidious police officer who has more loyalty to the written rules of policing than to its powerful cultural norms will soon be the object of so much hostility from his co-workers that he cannot be effective. Moreover, Harry has been known to overlook a few of the rules himself, in the interest of a larger justice. Harry Bosch is meant to be an exemplar of the cop who can be trusted to know when the rules must be observed and when they can be disregarded, because he is guided by a firm and ultimately faultless moral compass.

In Connelly's *The Crossing*,⁹⁴ Harry Bosch is thus the perfect knight to do battle with a pair of spectacularly corrupt cops whom seem to enjoy the protection of some of their superiors in the police department. As the narrative opens Bosch has, after many years of service, retired, when his half-brother, a defense lawyer, asks for his help investigating a murder for which one of his clients has been arrested. Even in retirement, and even though he likes and admires the lawyer, Bosch struggles with the idea of working for the defense; the code of the department regards this change in loyalty as a betrayal. Bosch thinks:

"[O]f all the guys before him who retired and the next thing you know they were working for defense lawyers or even the Public Defender's Office. He had dropped relationships with those guys

⁹² TUROW, *supra* note 83, at 88.

⁹³ *Id.*

⁹⁴ MICHAEL CONNELLY, *THE CROSSING* (2015).

as though they were criminals themselves. The moment he heard someone had crossed, Bosch considered him *persona non grata*.”⁹⁵

Despite his reservations, however (and because he is frankly at loose ends without the sort of work to which he devoted himself for so long), Bosch allows himself to be recruited to the defense of the accused man. He is not above asking some of his old departmental acquaintances to bend the rules, either, to get him access to evidence and information that he deems important. The trail leads back to bad cops and to others, less corrupt but in thrall to the blue brotherhood, who will try to protect the crooked ones, if necessary by attacking Harry.

Harry suffers from time to time with his loyalties, and Connelly is proficient at maintaining the suspense about whether he will manage to expose the criminals before being killed or imprisoned himself. But Harry always knows who his friends are; unlike Philip Marlowe’s, his judgments of others are sound. Furthermore, it’s the nature of this beloved and popular repeating series that there is never any serious doubt that Bosch will do the right thing, the department will come around when it realizes how very evil the bad cops were, and a certain order will be restored to the universe. In this way *The Crossing*, although far more sophisticated in its characterization and plotting, resembles a sort of a Golden Age detective novel (only with violence and sex, and police).

One of the former co-workers that Harry Bosch asks for a few small favors—of the sort that could get her into trouble if detected—is Lucia Soto, a young detective who has enjoyed a rapid ascent in the department, joining an elite squad after a brief career in patrol and a spectacular moment of glory in a deadly shootout. She’s referred to as Lucky Lucy,⁹⁶ not always admiringly—half of her colleagues don’t think she belongs in the elite unit, or has earned her place there. In these ways, Lucia resembles many women, persons of color, and sexual minorities who wear the uniform. The politics of affirmative action are especially fraught in police departments, where for many years family and tribal affiliations were important to recruitment, and women were regarded as incapable of the rigors of the work. Lucia’s willingness to repay Harry’s former mentorship even though he can no longer do anything for her, and the skill she brings to the performance of the favors he asks, mark her as exceptional both personally and professionally.

Lucia deserves a novel of her own, one that gives shape to the predicament that a hierarchical workplace with a culture of fierce internal loyalty can pose for any newcomer without the protection of family and

⁹⁵ *Id.* at 53–54.

⁹⁶ *Id.* at 119.

tribe. This is not Connelly's wheelhouse, but fortunately this theme has been explored by a number of other novelists in recent series featuring female, gay, or racial minority police officers. One fine example is *The Trespasser*,⁹⁷ the sixth novel in a series by Irish novelist Tana French that features the investigators of the Dublin Homicide Squad. French, trained as an actress, makes brilliant use of dialogue in her books, and her talent, like Scott Turow's, lends itself to narratives rich with insight into the interior lives of its protagonists.⁹⁸ Her police detectives have lives as tangled as anyone else's—fraught with family and financial worries as well as self-doubt. But we see them chiefly on the job, and French is unusual in portraying the criminal justice system as, above all, a workplace—always exacting, often exasperating, and infrequently rewarding.

The protagonist of *The Trespasser*, Homicide Squad Detective Antoinette Conway, was introduced to French's faithful readers as a secondary character in the previous volume of the series, *The Secret Place*.⁹⁹ This method of promoting a character from minor to central is a recurring technique of French's (as of Turow's), and here it works to make us reconsider, or at least recontextualize, our earlier judgment as we read the second book. Conway was not the point of view character in *The Secret Place*—readers saw her through the perceptions of another detective, Steve Moran, who was not a member of the Murder Squad. Steve meets Antoinette in that earlier story when she is sent to work with him after a killing at a snooty girls' school. She is mouthy and combative; she tells him that the Murder Squad is a lot like the school:

“Murder's a bubble. . . . a lot like here. The difference is, I'm there for good.” I thought about asking if that meant she was planning on making friends on the squad. Decided I had better sense. Conway said, like she'd heard me anyway, “And I'm still not gonna get all buddy-buddy with the squad lads. I don't want to belong. I want to do my fucking job.”¹⁰⁰

Another cop might write Antoinette off as a bitchy broad with a chip on her shoulder, but Moran has a little insight into her situation on the Murder Squad.

Equality is paper-deep, peel it away with a fingernail. The grapevine says Conway got the gig by shagging someone, says

⁹⁷ TANA FRENCH, *THE TRESPASSER* (2016).

⁹⁸ See Tana French *Digs Inside the Mind of Killers and Teenage Girls*, *THE HERALD* (Aug. 22, 2014), <https://perma.cc/MN3S-V47M>.

⁹⁹ TANA FRENCH, *THE SECRET PLACE* (2014); see Janet Maslin, *Murder Clues in Teenage Slang: Tana French's 'The Secret Place' Involves a Girls' School*, *N.Y. TIMES* (Aug. 25, 2014), <https://perma.cc/XC5B-A4DQ>.

¹⁰⁰ FRENCH, *supra* note 99, at 267.

she got it by ticking the token boxes—something extra in there, something that's not pasty potato-face Irish: sallow skin, strong sweeps to her nose and her cheekbones, blue-black shine on her hair. Shame she's not in a wheelchair, the grapevine says, or she'd be commissioner by now. . . . A lot of guys buzzed round Conway, her first week: just trying to help her settle in, nice to be friendly, nice to be nice, just coincidence that the girls who didn't look the same didn't get the same. Whatever she said to the boys, after the first week they stopped giving her come-ons. They gave her shite instead.¹⁰¹

At the beginning of *The Trespasser*, Steve has joined Antoinette on the Homicide Squad, and they are partners (although never romantically involved). The passage of time has not improved her relationships on the Squad; her partnership with Steve is more or less all that keeps her on the job. She is a victim of constant harassment by other members of the Squad, pranks that seem minor but make it difficult for her to do her job well and signal to her that nobody will have her back should she run into trouble. The former is maddening; in police work, as she appreciates, the latter can be deadly.

Antoinette, who narrates the *The Trespasser*, yearns for an opening that she and Steve can use to escape from the tedious domestic violence cases where she feels they are marooned. Her commitment to the work is beginning to fray under the tension of navigating the hostility she cannot escape in the unit, and she is considering resigning in favor of a job in high-end corporate security. She is thus particularly exasperated one night when she and Steve are required to go to work on a case that comes in at the very end of their shift, the death of a young woman in which all of the signs point to a boyfriend as the perpetrator. Her mood is not improved by the unusual command that the pair keep a more experienced officer informed of any discoveries they make or new avenues of investigation they undertake—an instruction Antoinette characteristically disregards.

Steve and Antoinette's progress toward a solution to the young woman's murder is narrated in very satisfying police-procedural fashion, but it is the drama inside Antoinette's head that forms the most suspenseful aspect of her account of the case. Like Harry Bosch's in *The Crossing*,¹⁰² Antoinette's investigative journey moves her toward greater and greater certainty that the obvious suspect is not the perpetrator, that other police officers are deeply implicated in the crime, and that they enjoy the protection of authorities far above her pay grade.

As information points one way and then another, the reader becomes unsettled too: is Antoinette a reliable narrator, or has her bitterness ripened

¹⁰¹ *Id.* at 13.

¹⁰² CONNELLY, *supra* note 94.

into a paranoia so toxic that her confirmation bias is distorting the evidence? Is there a conspiracy among the other officers, and if so how far in the hierarchy does it go? Is Steve really the loyal companion and gifted detective he appears to be or is he (as Antoinette perceives in occasional flashes) too eager to please, to fit into the Squad? Could he be pursuing his own scheme to encourage her to go too far, to discredit herself so irreparably that she would have to leave the Squad, allowing him to remain without the burden of partnering with a woman who seems to cherish her outcast status?

The effects of workplace harassment have seldom been limned with such vividness and subtlety. Its consequences threaten not only the welfare of its victim, but the integrity of the organization's mission. The criminal justice system appears in *The Trespasser* as a pyramid, very little of which can be discerned even by those who work there confined to its bottom layers; is it sound, or damaged but redeemable, or so compromised that it cannot be defended? The reader longs for an answer to this mystery even more than for the solution to the crime, for (despite the distance from Dublin to Chicago), on it our faith in our entire system of government must rest.

CONCLUSION: IN WHICH THE FUTURE OF CRIME FICTION IS ADDRESSED

These reflections bring me back to the reservations with which I began this essay. If I am right, as I hope I am not, about what awaits our country in the months and years to come, what will the crime fiction of that future look like? Crime fiction is realist literature, and its creators, as various as are their styles and audiences, are nearly united in cherishing the ambition to depict the world in a realistic, if not strictly factual, manner. However much we may admire and enjoy other forms of narrative, most of us see a clear distinction between what we write and science fiction, or speculative or fantasy fiction. We write from within a framework of lawful social processes. The rules that govern policing, prosecution, defense, and judging surround the actors in crime fiction, whether their role is implicit or central to plot and characterization. Of course, perfect predictability is not to be expected of the rules, nor perfect compliance with them of the characters. Much of the best crime fiction lives in the territory between the formal rules and the actors who evade, distort, reinterpret, ignore, or in spectacular fashion break them. Moreover, the crime writer need not admire the rules, or think them just or defensible. But norms and rules are the skeleton on which a work of crime fiction is made real, and with rare exceptions every violation of the rules that comes to light is an occasion for some sort of consequence (although in the more noirish precincts of the

lawful universe the consequence may be the compounding of the wrongdoing, rather than the punishment of the wrongdoer).

But suppose reality becomes a universe in which laws and rules are written, enacted, and announced, perhaps enforced against the ordinary citizen, only to be broken when the powerful find it convenient or profitable to do so—and suppose no consequences ensue. In that event, can this form of literature survive? The entire genre runs the risk of being rendered irrelevant. There may be only one writer who can really do justice to this predicament, Franz Kafka. But (Borgesian imaginings aside) *The Trial*¹⁰³ can only be written once, and cannot really be improved on. Revisiting that nightmare is a journey in a vehicle that will not accommodate many present-day authors of crime fiction.

To be sure, the Kafkaesque is not the only literary alternative to the crime fiction we know. Worthy and brilliant works of literature have shown us vividly the evil sort of world I describe: books based on slave narratives like *Beloved*¹⁰⁴ and *The Underground Railroad*¹⁰⁵ furnish us with tales of resistance to a cruel, unjust, and unaccountable authority, and have the sorrowful advantage of being based in historical fact. Solzhenitsyn's *A Day in the Life of Ivan Denisovich*¹⁰⁶ allows us to sample the vile taste of harsh and unjust imprisonment; Elie Wiesel's *Night*¹⁰⁷ forces us to gaze on the consequences of evil unconstrained by law. The nightmares of future-oriented dystopias offer another possibility: Orwell's *1984*¹⁰⁸ is frequently and appropriately invoked, and *The Handmaid's Tale*¹⁰⁹ provides another fine example of a tale of oppression and defiance. Though the Gilead of Offred the handmaid has not come to pass (for those of us in the formerly somewhat-democratic United States of America), it seems closer today than at any point in my lifetime. The moment in her account when Offred tells us when matters took their sinister turn chills me far more today than when I first read it:

That was when they suspended the Constitution. They said it would be temporary. There wasn't even any rioting in the streets. People stayed at home, watching television, looking for some direction. There wasn't even an enemy you could put your finger on Newspapers were censored and some closed down, for security reasons they said. The roadblocks began to appear, and Identipasses. Everyone approved of that, since it

¹⁰³ FRANZ KAFKA, *THE TRIAL* (1925).

¹⁰⁴ TONI MORRISON, *BELLOVED* (1987).

¹⁰⁵ COLSON WHITEHEAD, *THE UNDERGROUND RAILROAD* (2016).

¹⁰⁶ ALEKSANDR ISAYEVICH SOLZHENITSYN, *ONE DAY IN THE LIFE OF IVAN DENISOVICH* (1962).

¹⁰⁷ ELIE WIESEL, *NIGHT* (1958).

¹⁰⁸ GEORGE ORWELL, *1984* (1949).

¹⁰⁹ MARGARET ATWOOD, *THE HANDMAID'S TALE* (1986).

was obvious you couldn't be too careful. . . . The thing to do, they said, was carry on as usual.¹¹⁰

Writers of crime fiction may perforce turn to these forms of narrative, if I am right about what the future holds for us, and perhaps we should. But this is not crime fiction. The crumbling of the rule of law may someday inspire great literature, but after the walls have fallen there will not be much room in what is left for the sorts of books I have written about in this essay. And this loss will be very far from the worst consequence.

¹¹⁰ *Id.* at 174.