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The Jurisprudence of Investigation in the Detective Fiction of Dashiell Hammett and William Faulkner

Diana Louis Shahinian

A thesis submitted to the Faculty of Arts and Social Sciences at the University of Sydney in fulfillment of the requirements of the degree of Doctor of Philosophy in the Department of English.

I hereby declare that, except where indicated in the notes, this thesis contains only my own original work.

30 August 2013
Authors-at-Law

The Jurisprudence of Investigation in the Detective Fiction of Dashiell Hammett and William Faulkner
For my parents –  
The first hero and heroine  
I ever knew.
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Abstract

The configuration of law and literature has produced a rich field of studies in which, *inter alia*, critics have looked to literary texts in order to gain access to narratives pertaining to justice that do not need to conform to the substantive and procedural norms of the law. The private detective, who traditionally operates outside of and is unrestricted by the law and its exigencies, is an apt personification of the nexus of law and literature: the private detective is commissioned to find clues and weave narratives around a central crime, to understand and subsequently narrativize a criminal landscape. The hardboiled, modern detective of the early twentieth century is a particularly enticing figure: he detects through epistemological uncertainty, and, unlike the formal judicial function of the law, is able to evade conclusiveness and instead appreciate the paradoxical, the local, the ontologically perverse, the emotional, the whimsical, the meaningless and the relative – and the possibility of the formless and arbitrary simultaneity of these conditions.

This thesis will examine the detective stories and novels of Dashiell Hammett and William Faulkner, and argue that both authors, in employing the figure of the private detective, attempt to bring into question and resolve perceived injustices of their time. What explicitly links Hammett and Faulkner is that they present detective-heroes who conform to a classic American jurisprudential model which locates justice not in a specific destination but rather in the activity of interpretation, oratory, and the *pursuit* of meaning. Moreover, in tracing the evolution of Hammett’s detectives – from the Continental Op, to Sam Spade, through to Nick and Nora Charles – alongside the evolution of Faulkner’s Gavin Stevens, this thesis charts the struggle of the private detectives to understand the world around them, even with the extra-legal and extra-systemic freedom the genre affords them – perhaps *because of* it. Ultimately, both Hammett and Faulkner wound up at the same place, with the genre suffering a defeat: the detectives, overcome by cynicism, retire to stasis and abandon their pursuit,
effectively deferring to the law to make sense of the senselessness against which they failed to forge meaning and narrative. For both Hammett and Faulkner, it is not that the law wins – it is still as problematic as ever. Rather, as intimated in Faulkner’s *Sanctuary*, the law triumphs because – in its tenacious search not for truth but for resolution, and not for meaning but simply for consistency and uniformity – it is “in lieu of anything better.”

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Introduction

Hammett’s and Faulkner’s Detectives

It is emphatically the province and duty of the judicial department to say what the law is.

- Chief Justice Marshall, Marbury v Madison

The relationship between Dashiell Hammett and William Faulkner is shrouded in mystery; from a dearth of information the young scholar, tantalized, is forced to play detective. A clue is finally uncovered in an anecdotal aside in Lillian Hellman’s first memoir, An Unfinished Woman, published in 1969. Hellman recalls moving from Los Angeles to New York with Hammett, and settling into a hotel managed by Nathanael West. There Hammett was writing The Thin Man. Hellman and Hammett drank with West, and the visiting William Faulkner, late into one night, Faulkner and Hammett arguing about books and art. Soon after, Hammett got serious about his own book, and Hellman writes,

life changed. The drinking stopped, the parties were over. The locking in time had come and nothing was allowed to disturb it until the book was finished. I had never seen anybody work that way; the care for every word, the pride in the neatness of the typed page itself, the refusal for ten days or two weeks to go out even for a walk for fear something would be lost.2

In the absence of any more information explicitly linking the two, but with the high romance of circumstantial biographical and even physical similitude clouding the young scholar’s mind, she turns her eye to their writing. For beyond the distinguished and prematurely silver hair, moustaches, hard-drinking, and

2 Lillian Hellman, An Unfinished Woman (New York: Bantam, 1979), 236.
even the Hollywood scriptwriting stints, both authors have written novels and short stories that attempt to understand specific American landscapes through a jurisprudential lens, in the examination of crime, and the detection thereof.

Kieran Dolin, who quit legal studies for literary in order to build explanatory bridges between the “mentalities” of jurisprudence and fiction,\(^3\) argues that literature serves “to probe law’s nomos, offering adversarial narratives on behalf of those who are marginalized by the criminal or civilian law. Fiction becomes both a legal test site and an unofficial court of appeal.”\(^4\) Peter Brooks widens the scope a little, suggesting that “narrative is an important tool for individuals and communities who need to tell the concrete particulars of their experience in a way normally excluded by legal reasoning and rule.”\(^5\) Literary narrative is a conduit through which we are able to both understand and make complex the law; through literature we are able to introduce to legal reasoning social, political, geographical and historical considerations. For Brooks it does not matter whether the subject before the law is marginalized or not; what does matter is that literature has unrestrained access to a rich tapestry of language, metaphor, history, and stylistic, diegetic tools, while the language of the law, in formalist approaches and otherwise, is necessarily finite; words are often selected so that a restriction of scope, and clear line of chronology, is explicit. Laws are designed, after all, to facilitate straightforward application. Moreover, the courtroom operates as a space where one narrative is championed above all competing narratives and the case is ‘closed’. The artificial movement towards closure of legal narratives relies on the satisfaction of one of two outcomes: a balance of probabilities, or a version of events that can be said to have occurred beyond reasonable doubt. At its best, literary narrative can reimagine legal questions and problematize unsatisfactory legal outcomes with a more humanistic tilt, freeing the legal issue from the circumscription of precise


language and procedural rules and instead transport it to an imaginary and philosophically fluid space, a space where, for example, contradictions may coexist. In short, if the law necessitates a particular lexicon and must (both figuratively and physically) ‘close’ cases, then reimagining legal questions in a literary space allows for a liberal use of language and an exploration of legal questions that need not necessarily tend toward outcomes of ‘closure’ but rather indeterminacy.

Looking at the fiction of Hammett and Faulkner, I wish to both build upon and diverge from this notion. Hammett and Faulkner imagine legal questions through literary narrative, an alternate legal space that allows a high level of complexity and uncertainty. In their detective stories, Hammett's and Faulkner's detective protagonists often avoid the courthouse and avoid the law, opting instead for the probing of legal questions and the examination of witnesses in alternative, extra-jurisdictional spaces. Yet unlike Dolin and Brooks, whose arguments nevertheless underlie an optimistic vision or approach to the law, Hammett and Faulkner both write from a potentially subversive space – a space of suspicion of the law as an organizational or remedial device.

Both authors write with questions of law and justice in mind, both authors champion protagonists who are, in one way or another, fighting crime. Each author imagines a landscape infected with crime, and then employs a detective figure to attempt to piece together fragments, clues, rearticulating competing narratives so that they form a cohesive story. Their crime narratives are structured around the duality that Tzvetan Todorov argues inheres in generic detective fiction: that one narrative tells the story of the crime, of “‘what really happened,’” while the second story, the story of the investigation, explains ‘how the reader or narrator has come to know about it.’”

Both Hammett’s and Faulkner's detectives straddle these two narrative axes, and, I argue, conjure a third narrative vector that is often inscribed through its absence: the narrative of

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the law. The detective pieces together clues in order to create a plausible “fact situation”. From jurisprudential theory we know that “any fact situation that is brought before the law is unique, and the task of the decision maker is to decide whether the (particular) fact situation attracts the operation of the (general) rule.”7 We see in the fiction of Hammett and Faulkner this trend occurring: the detective attempts to find out what really happened, but the creation of the fact situation is not in order to then deliver it to the authorities, in order to test it against the “general rule.” Rather, the relationship between the detective and the law is often more oblique. All in all, both Hammett’s and Faulkner’s detectives see remedial power in the act of detection itself, and in the creation of narrative itself. While the application of the law to a fact situation in essence stabilizes an unstable matrix of signs, Hammett’s and Faulkner’s detectives relish and in fact rely on the instability, and multiplicity of meaning to paradoxically render meaningful the diegetic events. In their detective stories the impossibility of assigning definite or absolute blame underlines a deep suspicion regarding the reductive and normative agency of the law. The act of information gathering and the interpretative prerogative of the detective hold the ineffable kernel of justice, though the exact nature and location of that kernel is, more often than not, undiscernible.

In both Hammett’s and Faulkner’s work, we routinely see the detective exploit the letter of the law (procedural law), and discard the spirit of the law (substantive law). Hammett’s and Faulkner’s detectives often use legal terminology, allude to legal structures, and their protagonists often mimic legal procedures, but there is always some hostility between the detective and the law, and, in the end, we generally see the protagonist, to varying extents, withhold their privileged information from the law, so as not to dehumanize, reduce or at least stabilize the complex polysemy or historicity that marks the transpired events. I propose both authors do this in order to imaginatively navigate

alternative dispute resolutions that are community-based and site-specific, and that draw on the law’s symbolic power but otherwise do not require the law itself, per se.

Faulkner sets his detective stories in the fictional Yoknapatawpha County in the American South in light of the challenges of reconstruction, and Hammett explores the urban in the light of the closing of the frontier; in each case the effect of these milieux requires of the detective a personalized, extralegal response to, and interpretation of, the law. In locating both crime and potential remedy in the same imperfect landscape, Hammett and Faulkner alike employ the transformative power of detection and storytelling, symbolized in the reified figure of the detective, to argue against discourses of the ablutionary power of the law. Rather than the cold imposition of law from above, the detective, from below, embedded in the landscape, interacts with the people around him and extrapolates social narratives from this interaction, attempting to discern links (which are not necessarily causal) between events. Ultimately, the process of doing this is more important than, and subsumes, the detective’s final results: although, prima facie, the case may often appear to be solved, both authors disallow the reader the satisfaction that comes from knowing that a pre-crime or pre-tort world has been re-established: rather, crime and injury operate epidemiologically in Hammett’s and Faulkner’s detective fictions.

It is, to an extent, helpful in the study of law and literature to conceive of literary and legal narratives as functioning culturally in the same manner: for instance, James Boyd White sees both law and literature consisting of “compositional activities,” where both the law and literature “interpret, legitimate, and even regulate empirical data through narrative descriptions – in the one case a novel or a poem, in the other, a trial transcript or a judicial opinion.” Similarly, both law and literature are, for Ronald Dworkin, likewise both critical and creative

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acts that, to recall the words of Owen Fiss, are “neither a wholly discretionary nor a wholly mechanical activity,” but rather are unstable in their hermeneutic exigencies and therefore require “a dynamic interaction between reader and text.” I would argue, however, that Faulkner and Hammett in fact register a contrary impulse: they continually gesture towards the insurmountable differences in both function and objective between legal and literary narratives. Both Hammett’s and Faulkner’s fiction calls for a separation of legal and literary narratives, their detective stories clearly distinguishing between the modes of social interaction the law requires, and the modes of interaction fiction may imagine. Taking for granted that both law and literature comprise compositional strategies, this thesis is interested in the ways in which these compositional strategies differ: within the worlds of Hammett and Faulkner, wildly different results are yielded when the detectives work outside the law, from when they decide to submit to legal narratives.

To introduce the reader to the detective fictions of the two authors, I will now turn to a story from Hammett, “The Golden Horseshoe” and a story from Faulkner, “Tomorrow.” “The Golden Horseshoe” is narrated by Hammett’s oft-used private detective, the Continental Op, a relentless workhorse of a detective who lives for action rather than legal or moral restitution. At the beginning of the story, the Op is approached by Vance Richmond, a “lean, gray-faced attorney” (45) to find a man who, we are immediately told, is “not a criminal” (45). Richmond is apologetic for this, and the Op assumes this is because Richmond believes that anything less than “gun-play and other forms of rioting” would “put [the Op] to sleep” (45). The quick, rough, immediacy of the Op’s narration is, regardless of content, exciting, and even though an older, wearier Op narrates

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11 Dashiell Hammett, “The Golden Horseshoe,” in The Continental Op (New York: Vintage, 1992), 43-90. All subsequent references to this story will refer to this publication and will be incorporated in the body of this thesis. Originally published 1924.
12 William Faulkner, “Tomorrow,” in Knight’s Gambit (New York: Signet Books, 1950), 59-73. All subsequent references to this story will refer to this publication and will be incorporated in the body of the thesis with the abbreviated “Tom.” where necessary. Originally published 1940.
the story [the Op confesses his “dulled... appetite for the rough stuff” (45)], the narrative is still set up with an implicit promise of impending violence and gutter-crime. Hammett recounts the narrative as the Op hears it. “Here is the story” (46), begins Richmond, as he tells the Op of Norman Ashcraft, a married British architect who disappears after a quarrel with his wife and turns up in the United States. The recount of events is formal and impartial, as a lawyer would recount:

On May 23, 1923, he shot and killed a burglar in his room in a hotel... The Seattle police seem to have suspected that there was something funny about the shooting, but had nothing to hold Ashcraft on. The man killed was undoubtedly a burglar. Then Ashcraft disappeared again... (46)

Richmond then tells the Op that Ashcraft has become a drug-addict, and Mrs. Ashcraft, who wishes her husband would come back to her, has been sending him money in order for him to straighten himself out.

With the background information out of the way, we are then transported into the real-time actions of the Op, but readers are granted only very restricted access to the Op's psyche, or his thought process regarding the way in which he will approach the case. He goes to the post office and speaks to Lusk, the inspector in charge: “I've got a line on a scratcher from up north... who is supposed to be getting his mail at the window. Will you fix it up so I can get a spot on him?” (49). The Op then explains, in a rare bit of exposition, how the game works:

Post Office inspectors are all tied up with rules and regulations to forbid their giving assistance to private detectives except on certain criminal matters. But a friendly inspector doesn't have to put you through the third degree. You lie to him – so that he will have an alibi in case there's a kick-back – and whether he thinks you're lying or not doesn't matter. (49)
The Op, beyond telling the reader the ways in which he is able to circumvent the laws in place that impinge upon his capacity to detect, pays little attention to the law, or, for that matter any social circumstances surrounding his task. At the post office, a unique charade is put into place where the law is both being broken and still perfectly intact and operational: the inspector performs his task, not knowing if the law is being broken or upheld, and his necessary ignorance of this particular detail enables the Op to, in effect, get his work done. This early Op story details a relationship to the law that Hammett will explore in detail throughout his oeuvre, a relationship to the law that is marked by absence – the absence of substance, and the presence of procedure-as-signification: the Op’s ability to perform is contingent on a legal pantomime, a contract of action in lieu of legal knowledge. Underlying truths are destabilized as illusions coruscate the text’s surface. Moreover, the inspector can act as though he is not breaking the law, and in fact he is not breaking the law, but the law is being broken. This initial legal ambiguity beautifully foreshadows the events that will transpire in the story.

The Op is singularly, monomaniacally interested in fulfilling his very specific job description, and it seems immaterial to him on which side of the law he falls while undertaking his work. His ethic seeks honesty in labour, rather than reification of social or legal principles. In “$106,000 Blood Money” Andy, another Continental Operative, perfectly typifies the ethic and demeanour of Hammett’s hero:

Andy MacElroy was a big boulder of a man – not very tall, but thick and hard of head and body. A glum, grim man with no more imagination than an adding machine. I’m not even sure he could read. But I was sure that when Andy was told to do something, he did it and nothing else. He didn’t know enough not to.


While the Op’s actions often coincidentally align with the objectives and guidelines of institutional law enforcement, Hammett ensures that on a textual level this is often made slightly indistinct by way of irony (the best example of this is that “Ashcraft” is in fact a “scratcher”, a forger, an impersonator, and so both the Op and the inspector were, unbeknownst to them, not acting at all when they put on their extralegal performance at the post office). Moreover, when the Op abides by the law it is never brought to the reader’s attention, and so it is for the reader to piece together these actions with their effects, or imbue them with significance other than the immediate outcome of the Op being able to carry out his work. When the Op assists in the task of law enforcement, it is sheer “luck.”

Shortly after the scene in the post office in the story, the Op sends John Ryan, who picks up Ashcraft’s mail and forwards it to him in Tijuana, to the police. He gives two reasons: the first is that although Ryan is helpful and eventually “squawked his head off” (54) upon the threat of a “vag charge” (52), he pulls a “cheap, nickelplated .32” (53) on the Op, which the Op, slightly annoyed, figures “cancels any agreement” (54) they may have. His ethic, though never made clear, is obliquely informed by an unspoken code between men. Secondly, the Op’s work may be affected by Ryan on the loose: “I couldn’t afford to let him run around loose until I got in touch with Ashcraft. He would have been sending a telegram before I was three blocks away, and my quarry would be on his merry way to points north, east, south and west” (54). Of course, then it is a perfect coincidence that Ryan “turned out to be Fred Rooney, alias ’Jamocha,’ a pedlar and smuggler who had crushed out of the Federal Prison at Leavenworth, leaving eight years of a tenner still unserved” (54). The law, the threat of incarceration, is conjured expediently by the Op, a way of threatening men to confess what they know, but when the Op works in service of the law, it is singularly devoid of cognizance, and it is simply that his work, and the work of law enforcement, have serendipitously aligned.
The Op travels to Tijuana to see Ashcraft, who now goes by the name of Ed Bohannon, and, sparking up a friendship with Bohannon, works through a hazy, scotch-soaked couple of days in order to extract information from him. After the drunken orgy with Bohannon and his girl Kewpie, the Op returns to San Francisco and on the train makes “a list of what [he] knew and guessed about Norman Ashcraft, alias Ed Bohannon” (62). The list is brief, and every dot point details an inference that is fairly obvious to the reader. At this stage, the Op and the reader are in line. The Op returns to San Francisco and there encounters the dead body of his client, Mrs. Ashcraft, as well as the bodies of her help, in her house. While the story begins with the lamentation that murder will not be the focus of the Op’s investigation, the very engagement of the Op appears to precipitate the body count. He simultaneously detects in the infected landscape, and contributes to the infection.

We understand that the murders would have occurred while the Op was in Mexico with Ashcraft and Kewpie. Back in Tijuana, the Op espies one ‘Gooseneck’, the Golden Horseshoe’s security guard who is described as “a tall, raw boned man with wide shoulders, out of which a long, skinny yellow neck rose to support a little round head. His eyes were black shoe-buttons stuck close together at the top of a little mashed nose” (72). This description, Hammett’s style, is telling. To recall Christopher T. Raczkowski’s analysis of Hammett’s description of Gutman in The Maltese Falcon, “the narrative vision... has more to do with the physics of surface tension than psychology; characters are living surfaces of so much matter, energy, motion, and force.”15 John Walker correctly identifies a generic mischaracterization when we consider Hammett’s literary style, arguing, “This absurd collage of distorted features and incongruous objects has more in common with dada caricature than realism.”16 Although Hammett writes action in staccato narrative contractions, often in a journalistic style, and his writing

decidedly rejects either critical or poetic reflection on the action that transpires, his descriptions of persons and places are rich, visual, and expressionistic. Walker writes:

How does a detective operate in an epistemologically uncertain universe in which there is no stable truth behind the deceptive illusions on the surface? The Op responds by abandoning the chimerical search for concealed master narratives and instead scrambles signification by inventing falsehoods and projecting them onto phenomena. The Op's most important talent thus becomes his capacity for discursive intervention as a means of generating conflict.¹⁷

Indeed. When the Op gets his hunch that Gooseneck must have been the man who killed Mrs. Ashcraft and her help, most likely on the orders of Bohannon and / or Kewpie, he unleashes an impromptu plan that is dialogue-heavy, that is contingent on the Op's need to keep his "chin going" (80), and that has no particular end-goal beyond a hopeful aftermath of the Op's anarchic plan to "stir things up" (81). This is not a chess game; the Op has not planned his moves ahead. Once again, with a high interest in surface over depth, he engages in a legal pantomime and warns Bohannon of legal ramifications of his actions, legal ramifications that are entirely illegal, and implausible:

‘you and Kewpie ride across the border with me – so that we won't have to fool with extradition papers – and I'll have you locked up. We'll do our fighting in court. I'm not absolutely certain I can tie the killings on either of you, and, if I flop, you'll be free. If I make the grade – as I hope to – you'll swing, of course. 'What's the sense of scooting? Spending the rest of your life dodging bullets? ... You'll maybe save your neck, but what of the money your wife left? That money is what you are in the game for. Stand trial and you've a chance to collect it. Run – and you kiss it good-bye.' (80-1)

¹⁷ Walker, "City Jungles", 131.
Now the law is invoked by the Op as a possible scenario, and invoked so that Bohannon and Kewpie can in fact do the exact opposite of what he suggests. The Op divulges, “my game just now was to persuade Ed and his girl to bolt” (81), given that the odds of the couple actually being tried and convicted for the murders are slim to none. The Op’s plan is contingent on his ability to misrepresent the nature of the law itself, to paint it as a loose, looming threat of capital punishment rather than a stark actuality subject to checks and balances, which the Op admits in an aside:

> And if I could convince a jury that [Gooseneck] was in San Francisco at the time, then I would have to show that he had done the killing. And after that I would have the toughest job ahead of me – to prove that he had done the killing for one of these two, and not on his own account. (81)

Walker notes that the Op characteristically “rarely resorts to physical coercion,”18 rather relying on his ability to casually tell tales, speculate, and spread rumors. Akin to Faulkner’s detective Gavin Stevens, who is a lawyer, but more importantly, a sophisticated rhetorician, the Op too is a surprising master of language, but his language is of a different materiality from Faulkner’s. When Gooseneck is stabbed by Kewpie, he “[tries] to speak” but “couldn’t get the words past the blade” (82). Language in Hammett’s novels is reified, sliced by a blade, as is the villain’s neck. The Op, who speaks in monosyllables, hurls words short and fast around claustrophobic spaces like he would shoot a gun, blindfolded – to then take off the blindfold to see what he hit, the vectors of ricochet. In “House Dick” The Op is confronted with three anomalous murders from which he cannot divine any sense of a motive. Instead, he decides at first to

> [settle] down to the detail-studying, patience-taxing grind of picking up the murderer’s trail. From any crime to its author there is a trail. It may be – as in this case – obscure; but, since matter cannot move without disturbing other matter along its path, there always is – must be – a trail of

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some sort. And finding trails and following such trails is what a detective is paid to do.19

The detective is paid to follow trails, suggesting linearity, causality, proximity, movement through space. Yet in Hammett’s urban chiaroscuro, where fog characteristically hangs low, where the Op is as much an inhabitant of the shadows as his villains, we are denied vision of clear lines of criminality, and the Op, who knows that chasing a motive is fruitless, instead forensically scours epistemologically uncertain “matter”, making bets, and works through the symbolic uncertainty of words, following the logic of trial and error, until something comes into the light, as it eventually must.

At the end of the story, the Op comes clean in a conventional, Sherlockian moment that for the reader comes as a surprise: he has guessed that Ashcraft/Bohannon is not in fact Ashcraft, but an impersonator, who has assumed Ashcraft’s identity. Bohannon tells his tale of stumbling on Ashcraft’s dead body in his hotel, a suicide, and switching clothes with Ashcraft, assuming his identity. Up until this revelation the Op, though he had figured the case, was still shooting in the dark. The final lines in the story herald legal mischief. The Op tells Bohannon: “‘I can't put you up for the murders you engineered in San Francisco; but I can sock you for the one you didn't do in Seattle – so justice won't be cheated. You're going to Seattle, Ed, to hang for Ashcraft's suicide.’ And he did” (90).

The ending is swift, visceral, satisfying: the Op’s genius is elided with his faithfulness to his task, to create a finale in which retributive justice is served on a bed of unuttered, implicit legal ambiguity. Hammett’s final sentence, “and he did”, acts as an injunction on any further inquiry. The story ends because the physical detection has ended, but the reader is left with troubling jurisprudential questions. Justice in this story comes in the form of ‘comeuppance’ to Ashcraft,

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and promises to entail a complex mistrial, another pantomime. Hammett’s expressionism sustains a disregard for proportionality or even commensurability between crime and the punitive response as guilt is essentialized beyond the scope of the crime itself. The it-doesn’t-matter-what-you-hang-for-so-long-as-you-hang logic is primitive and vengeful, and denies further jurisprudential or ontological inquiry. This way, Hammett places the reader in the position of the post office inspector at the beginning of the story, a type of fool who is not wholly privy to when the law is being broken and when it is not, so long as our hero goes through the motions to get his work done. Moreover, methodologically, the Op gets his work done only through befriending Bohannon; this story has offered no real clues to detect. Rather it is only the Op’s embeddedness in the world of crime, his relationship with Bohannon, which elicits a cavalier confession.

In Faulkner’s “Tomorrow”, within his Knight’s Gambit book of stories, Chick Mallison, Faulkner’s oft-used narrator in stories concerning his uncle, the detective/lawyer Gavin Stevens, remembers before a time his uncle was the county attorney, back to when he was a private defender of Bookwright, a “well-to-do farmer, husband and father too... from a section called Frenchman’s Bend in the remote southeastern corner of the county” (59). Bookwright is accused of murdering Buck Thorpe, who, in a description railing against the precise embeddedness of Bookwright, was “kinless, who had appeared overnight from nowhere” (59). Faulkner details a list of crimes that Thorpe has committed, but omits any reference to the crime in question: “a brawler, a gambler, known to be distiller of illicit whisky and caught once on the road to Memphis with a small drove of stolen cattle” (59). The scene that is set has incriminated, and the descriptions have defamed Thorpe enough to make Bookwright’s murder of him justifiable without much more information, which foreshadows the technique Stevens will use in the courtroom: Charles Hannon writes that in instructing the jury to acquit Bookwright on a self-defence charge, Stevens’ “formalist strategy
resides in the fact that it allows the jury to plead self-defence – the defence of the community's core values from this 'outsider's' effort to defile them.  

We soon learn that Bookwright has shot Thorpe for seducing and eloping with Bookwright's daughter. Chick remembers the county's uniform assumption that Bookwright would be acquitted: the district attorney conducts the case through an assistant, and "it did not take an hour to submit all the evidence" (60). Stevens launches into a fairly ridiculous, maudlin speech: one that emotionally binds all the denizens of the county ["the Negroes, the hill people, the rich flatland plantation owners – all understood what he said" (60)] along tangled lines of humanity, fallibility, determinism, fatalism, emotional complexity – any and everything, in fact, except the law. Instead of posturing defences or even the mitigating circumstances, he blazons:

And that's what I'm talking about – not about the dead man and his character and the morality of the act he was engaged in; not about self-defence, whether or not the defendant was justified in forcing the issue to the point of taking life, but about us who are not dead and what we don't know – about all of us, human beings who at bottom want to do right, want not to harm others; human beings with the complexity of human passions and feelings and beliefs, in the accepting or rejecting of which we had no choice, trying to do the best we can with them or despite them – this defendant, another human being, with that same complexity of passions and instincts and beliefs, faced by a problem – the inevitable misery of his child who, with the headstrong folly of youth – again the same complexity which she, too, did not ask to inherit – was capable of her own preservation and solved that problem to the best of his ability and beliefs, asking help of no one, and then abode by his decision and his act. (60-1)

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Stevens draws isobars of empathy with his reiteration of “complexity,” linking members of the jury and their capacity to acquit, to Bookwright’s murder of Thorpe, as well as his daughter’s lust, annealing community values through rhetoric resounding in the courtroom theatre. These community values are more important than the letter of the law: here, the courtroom’s procedural and dialectical structures are retained but re-imagined in a way that again empties them of any substantive thrust. Both the judge and the district attorney’s assistant are on side with Stevens, acknowledging their roles as symbolic rather than adversarial: “the district attorney’s assistant merely rose and bowed to the court and sat down. The jury went out and we didn’t even leave the room. Even the judge didn’t retire” (61).

Despite the case being allegedly clear-cut (to every character in the story, it seems, but not to the reader!), Stevens finds himself with a hung jury. Committing his second deviation from law, he asks Chick to spy on the jury, who are still deliberating, with the justification, “but justice is accomplished lots of times by methods that won’t bear looking at” (61). Once again adhering to a methodology that prizes individual and community values over due process, Chick remembers at this point his uncle’s wisdom: “to be a successful lawyer and politician in our country you did not need a silver tongue nor even an intelligence; you needed only an infallible memory for names” (62). Chick finds out that the man behind the hung jury is Stonewall Jackson Fentry, a man “curiously imperishable… invincible to time” (60). Stevens and Chick drive out to Fentry’s neighbour’s house, the house of Mr. Pruitt and his mother where they listen to Fentry’s story told by “son and mother talking in rotation” (63). It is here that the detection really begins. Son and mother finish one another’s sentences, interrupting one another as though they share a stream of consciousness. The puzzle that Stevens must solve is located in the fluid narrative of Yoknapatawpha County’s denizens; Faulkner embeds truth and justice amid lines of genealogy and geography, in the collective consciousness of Yoknapatawpha’s inveterate dynasties.
The Pruitts tell Chick and Stevens about Fentry, and then Chick and Stevens travel to Frenchman’s Bend Village to Varner’s store, where Isham Quick tells the rest of the tale, of how Fentry married Thorpe’s pregnant mother, and, upon her death in childbirth, raised and loved Buck Thorpe as his own, only to have him snatched away a couple of years later. This is where the real court case seems to take place. After the symbolic and empty posturing in the courthouse that results in only an ambiguous deferral of justice (the hung jury), Stevens cross-examines Quick in a more apt setting, in “the gallery of the locked and deserted store while the cicadas shrilled and rattled in the trees and the lightning bugs blinked and drifted above the dusty road” (68). Chick discerns an asymmetry between the story and its telling, noting that Quick spoke

in a lazy sardonic voice, like he had all night to tell it in and it would take all night to tell it in. but it wasn’t that long. It wasn’t long enough for what was in it. But Uncle Gavin says it don’t take many words to tell the sum of any human experience; that somebody had already done it in eight: he was born, he suffered, and he died. (68)

Faulkner creates a labyrinth of intersecting human complexity and passions, and essentializes, universalizes Fentry’s story with equal force as he does Bookwright’s. The complexity of human experience is entirely de-individuated and condensed into the aphorism “he was born, he suffered, and he died.” Yoknapatawpha County contains a community governed by impregnable aphorisms functioning as common law.

Stevens does not speak throughout Quick’s monologue but for his repeated, insistent, “tell” (68, 69, 70); Stevens places himself in the position of lawyer once again, but out here it is a position he assumes with more fidelity, more gravitas than when he is in the courtroom. Moreover, lawyering outside the courtroom is based more on listening than it is on speaking. Quick finishes his tale, “of course he wasn’t going to vote Bookwright free… it’s dark. Let’s go to supper” (72) with
an ellipsis that yokes together Fentry’s motivations and actions with the quotidiant and ineluctable urges of the earth, which Stevens then cements, with his musing: “the lowly and invincible of the earth – to endure and endure and then endure, tomorrow and tomorrow and tomorrow. Of course he wasn’t going to vote Bookwright free” (72-3). When Chick remains unconvinced, still retaining a morality depicted as archaic Manichaeism [“I would have freed him. Because Buck Thorpe was bad. He –” (73)] Stevens delivers a harsh rebuke:

‘No you wouldn’t,’ Uncle Gavin said. He gripped my knee with one hand... ’it wasn’t Buck Thorpe the adult, the man. He would have shot that man as quick as Bookwright did, if he had been in Bookwright’s place. It was because somewhere in that debased and brutalized flesh which Bookwright slew there still remained, not the spirit maybe, but at least the memory, of that little boy. ... And you wouldn’t have freed him either. Don’t forget that. Never.’ (73)

This tale presents some interesting points in considering Faulkner’s literature and its relationship to the law. By relocating the travails of trial away from the courthouse, and in effect trying a juror instead of a defendant, Faulkner sees the law as an ineffective tool to contain the complex intersections of personal and community history, of love and suffering; Stevens chooses to track infinitely crossing lines of empathy instead of spotlighting one man and his deeds, as the judicial system does. By beginning a story about one man on trial and then moving away from the court and diffusing this very narrative across geographical and genealogical space, allowing it to follow the same logic as nostalgia and its imprecision; Faulkner renders unspecific and inveterate a tale that is, in fact, specific. When Chick says that he would have freed Bookwright, the reader is reminded that Chick’s opening evaluation of the story – “and the story itself was old and unoriginal enough” (59) – provides an unintentional endorsement of Stevens’ “jurisprudence of relations.”

21 Kieran Dolin uses this term to describe Lord Atkin’s judgment in Donoghue v Stevenson (1932), discussed later in this chapter, but I think it is suitable also for Stevens’ own understanding of
specificity of each case, proving that each man’s actions and reaction are infinitely duplicated in other men’s actions and reaction. Michael E. Lahey writes, “in typical Faulknerian cross-purpose and crossfire, Gavin’s rather rambling legal argument for his client speaks simultaneously on behalf of Fentry’s peculiarly personal argument against.” While knowledge of the law is useful, Stevens gives precedence to discovering the patterns and delimiting the laws that govern the heart and mind.

These two stories provide a useful entry point into the detective fiction of Hammett and Faulkner; the legal fissures present here in an embryonic state are developed and problematized in their later works. I will begin this thesis by examining the evolution of American theories of justice, from the moment of the signing of the Declaration of Independence. Derrida’s analysis of the act of signing –the necessary performative dimension of the document –informs my reading of a tradition of American jurisprudence that is predicated on action and performance as symbolism over substance. In my first chapter I will trace the historical relationship between rhetoric and literary narratives and the modes of justice that were part and parcel with the formation of America, and argue that the nation’s mythologization of its origin and purpose was shepherded by the members of the legal profession. Noting that America sought initially to define itself vis-à-vis natural law, privileging de facto over de jure laws, I will also briefly look at authors of the American Romantic canon, including Whitman and Hawthorne, who cemented a tradition of relocating legal questions from the established houses of the law, embedding them instead in the depth of nature, often so as not to impinge on the individualism that Americans prized above all, with constitutional zeal. I will use the landmark 1803 case, Marbury v Madison, which invested the Supreme Court with the power to determine

http://go.galegroup.com/ps/i.do?id=GALE%7CA14696161&v=2.1&u=usyd&it=r&p=EAIM&sw=w
23 5 U.S. 137 (1803)
constitutionality, reinvigorating legal inquiry through the dynamic act of textual interpretation, metonymically: in Hammett's and Faulkner's fictions the bulk of legal inquiry is too invested in the act of interpretation, with answers residing within the dynamism of the process of detection, rather than in the 'clues' that the detection yields.

This chapter will then look at some of the ways in which these traditions of American jurisprudence were challenged by the advent of Modernism. Just as both Hammett's and Faulkner's fictions herald a movement away from the law, in order for legal problems to play out with reference to extra-legal considerations, a similar turn is evident in the jurisprudential evolution that was occurring concomitantly at the turn of the century in response to the rise of industry, the proliferation of cities and automobiles, and the trauma of the Great War. Dolin has written illuminatingly on the chiastic impact of Modernism on the law, and law's impact on the aesthetics of Modernism: given that "capitalism and industrialism are the material forces that bring modernity and its ceaseless changes into being,"24 he carefully poses the question: “the common law, with its medieval roots, its reverence for precedent and its piecemeal reform, was a major bulwark of the system of inherited custom. How would it respond to the ceaseless changes wrought by modernity?”25 One response can be found in the works of Oliver Wendell Holmes, the proverbial father of American jurisprudence, who, in The Common Law (1881), suggests we turn away from scientific considerations of the law operating with mechanical and calculated predictability, writing, “the life of the law has not been logic; it has been experience,”26 embracing, according to Ravit Reichman, the “supple, elusive realm of feeling and intuition”27 in legal reasoning. Hammett's and Faulkner's private detectives personify this movement away from strict legalism.

24 Dolin, A Critical Introduction to Law and Literature, 143.
25 Dolin, A Critical Introduction to Law and Literature, 144.
This thesis will argue that Hammett and Faulkner write their stories with the quintessentially American theories of justice in mind, echoing Rawls’ formidable understanding of justice as fairness and its distribution, and they are also implicitly writing out of the evolution of Anglo-American tort law, which begun in the middle of the nineteenth century. Beginning with *Brown v Kendall*\(^{28}\) and gaining momentum in the early twentieth century, the evolution of torts is routinely spotlighted by law and literature scholars: as new concepts of duty of care, negligence, chains of causation and proximity overrode the simplicity of strict liability, the possibilities of narrative and law emerged. Cardozo’s judgment in the landmark case *Macpherson v Buick Motor Company*\(^{29}\) hints at these possibilities. In this case, in which a car manufacturer was held liable to the ultimate purchaser for an injury caused by a defective wheel, duty was seen to be owed not only from the manufacturer to the dealer, but, all the way down the line to the driver. This case was cited in the foundational House of Lords case *Donoghue v Stevens*\(^{30}\), where Lord Atkin, in his judgment, wrote the famous formulation, which must be quoted at length:

> At present I content myself with pointing out that in English law there must be, and is, some general conception of relations giving rise to a duty of care, of which the particular cases found in the books are but instances. The liability for negligence, whether you style it such or treat it as in other systems as a species of "culpa," is no doubt based upon a general public sentiment of moral wrongdoing for which the offender must pay. But acts or omissions which any moral code would censure cannot, in a practical world, be treated so as to give a right to every person injured by them to demand relief. In this way rules of law arise which limit the range of complainants and the extent of their remedy. The rule that you are to love your neighbour becomes in law, you must not injure your neighbour; and the lawyer’s question, Who is my neighbour? receives a restricted reply. You must take

\(^{28}\) 60 Mass. 292 (1850).
\(^{29}\) 217 N.Y. 382 (1916).
\(^{30}\) [1932] AC 562
reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.31

Dolin writes that Atkin practices a “jurisprudence of relations, placing the conception of a duty of care into a social framework, and then personifying it by invoking the biblical parable of the Good Samaritan.”32 While literary modernism was in full force, judges were also locating and configuring legal concepts within broader narrative matrices, attempting to render meaningful and intelligible the often-bizarre occurrences, mishaps, and collisions heralded by the modern. However, while there is an onus on the law to seek a particular type of clarity, to adequately represent injury and to make sense of it through judgment, literary narratives have the freedom to explore and ultimately both structurally and thematically succumb to the grave aporia inherent in the injustices of the modern.

Peter Brooks, in “Narrativity of the Law” outlines his interest in law and literature’s interdisciplinary benefit in this way:

My own interest in a kind of legal narratology has been directed particularly to the question of narrative transmission and transaction: that is, to stories in the situation of their telling and listening, asking not only how these stories are constructed and told, but also how they are listened to, received, reacted to, how they ask to be acted upon and how they in fact become operative. What matters most in stories at the law is how they are evaluated and implemented by listeners: police, judges, juries.33

31 [1932] AC 562 at 580.
32 Dolin, A Critical Introduction to Law and Literature, 159.
In the narratives of both Faulkner and Hammett, we see a conflation of this interdisciplinary interest: the narrative transmission and transaction performed by the protagonist positions the reader as a pseudo-legal operative: not necessarily as judge or jury, but rather, as a witness to justice / injustice.34 Remembering Todorov’s formulation of detective fiction, both Hammett and Faulkner allow a third level of narrative to inform their fiction, the narrative of (explicit or implied) legal ramification. By having this third narrative vector reside in the reader's evaluative task ahead of them, I argue that both Faulkner and Hammett allow for a very interesting version of detective fiction that, unlike the European tradition,35 makes room for a high level jurisprudential interactivity, and ultimately privileges the pursuit of justice over the formal solution to the puzzle. To put it plainly, while traditional detective fiction creates in the reader an armchair-detective, who seeks to solve the crime alongside her protagonist, hoping she will guess the identity of the culprit ahead of time, before the big reveal, Hammett and Faulkner, I argue, are more interested in creating in the reader the armchair-witness, leaving the reader to ponder the jurisprudential questions that the literary narratives leave deliberately unresolved.

My thesis will then turn to close textual analysis of Hammett’s and Faulkner’s detective stories, where I will seek observable parallels between each author’s representations of the law and the jurisprudential trends in American legal discourse in the first half of the twentieth century. I argue that Hammett’s fiction

34 In this vein, in A Critical Introduction to Law and Literature Dolin argues, regarding the evolution from the "Wordsworthian poet as seer" to the "colloquial and iconoclastic" poetry of Ezra Pound, "in this modernist writing the narrator is positioned as witness, not as a judge," 154.
35 By the European Tradition I refer to the detective fictions, from Poe to Doyle to Christie, characterized by backwards construction with, as Dennis Porter points out, the denouement determining the “order and causality” of the events preceding it. Neil C. Sargent explains: “this implies a particular philosophy of history at work in the text, in which the relationship between past and present is understood in strictly teleological terms,” and goes on to say that the European tradition is based upon “positivist assumptions concerning the neutrality of the observer and the possibility of adopting a standpoint outside the mystery from which to observe.” See Dennis Porter, The Pursuit of Crime: Art and Ideology in Detective Fiction (New Haven, CT: Yale University Press, 1981), 26; and Neil C. Sargent, “Mys-Reading the Past in Detective Fiction and Law,” Law and Literature 22, no. 2 (Summer 2010): 288-306, 289.
paints an expressionistic and grotesque image of an America that has abandoned its frontier imaginings: the rough, laconic American hero is no longer able to traverse linearly the landscape with the promise of enterprise and discovery; the mapping of the continent results in the creation of new, urban, hearts of darkness in which the detective must conduct his investigation. In Red Harvest, Hammett’s location is a veritable wasteland of capitalist forces run amok, in which language is emptied of meaning, and the detective, who cannot piece together a narrative in the face of epistemological uncertainty, abandons the law and instead internalizes the chaos. Much like Faulkner’s “Tomorrow”, in Red Harvest Hammett disguises his legal questions in the activity of the Op, who, having gone “blood-simple,”

espouses a system of justice that is entirely provisional and situational, a puzzle that must be solved by being in the town, and by performing its logic, rather than by being an external observer or appealing to objective legal forces.

My focus will then turn in chapter three to The Maltese Falcon, where Sam Spade, who is considerably more human, and less mechanized than the Op, is embroiled in a failed quest for romance and meaningfulness in a landscape of glittering surfaces that, once punctured, reveal a meaningless sham. In my study of The Maltese Falcon I will look at the ways in which Hammett subverts generic expectations, and the ways in which his detective, Sam Spade postures as judge, recreating a courtroom in his living room, in essence putting on trial each character, and cynically borrowing the symbols and terminology of the judiciary in order to try to comprehend the multiplicity of meaningfulness and meaninglessness that the city and its signs and its denizens contains, because the law cannot. It is futile, Spade knows, to expect the law, tainted by sensationalist media and overrun by celebrity district attorneys, to be able to make sense of the complex plot. I will examine the legal implications of Spade’s actions, and then

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36 Dashiell Hammett, Red Harvest (New York: Vintage, 1992), 154. All subsequent references to this text will be to this edition and will be cited in the body of the thesis. Originally published 1929.
turn my eye to the conventions of courtroom narrative and how they differ from the conventions of literary narrative. I will argue that *The Maltese Falcon* is considerably more pessimistic in its appraisal of both the law's capacity to organize, protect and represent the urban condition, *and* the private detective's capacity to do so, than the Op stories. While the Op is stolid, anonymous, and machine-like, the introduction of Spade in *The Maltese Falcon*, who is real and fallible and mortal and tragic, highlights “the horror” at the heart of the urban design, and marks a turning point in Hammett's approach that comes out in full swing in his final novel, *The Thin Man*. From *The Maltese Falcon* we learn that the private detective's prerogative to detect beyond the strictures of legal procedure and accepted courtroom narratives provides no more meaningful an engagement with the criminal motivations than the law, and Spade, forlorn, finally defers to the law from utter disenchantment.

In my fourth chapter, I will turn to the works of Faulkner that involve Gavin Stevens as a detective more or less chronologically. Through an examination of *Go Down, Moses*, *Intruder in the Dust* and the first five stories in Faulkner's book of detective stories, *Knight's Gambit*, I will argue that these novels and stories present a Gavin Stevens who is endeavouring to come up with a viable jurisprudential paradigm through which the South can both heal and progress after the ignominy of slavery, the civil war, and reconstruction politics, but still retain the site-specific customs that are crucial to its self-definition. I will analyze these texts with reference to Oliver Wendell Holmes' “bad man theory” and explore Stevens', and his nephew Chick's, adoption of philosophies from positivism to legal realism and judicial activism, in an attempt to find an appropriate discursive relationship to history and geography. In this chapter I will examine Faulkner's Hammett-esque depiction of society's, history's, and man's indivisible complexity and paradoxicality: it is in these novels and stories
that Faulkner comes to terms with a foundational impossibility\textsuperscript{37} of justice that both the law and language can only asymptotically approach.

In my fifth chapter, Faulkner’s definitional struggle with law and justice reaches a crescendo. I will examine Faulkner’s play, \textit{Requiem for a Nun}, in which Gavin Stevens, much like in “Tomorrow” and like Spade in \textit{The Maltese Falcon}, eschews the strictures of courtroom narrative and ensures that his interrogation takes place not in a legal space but a private domestic space, where here, the aggrieved can double as the accused. I will argue that in \textit{Requiem} Faulkner uses a theatrical medium to explore the theatrical, symbolic and ritualized nature of the law, while presenting a portrait of Gavin Stevens who stridently believes that the law cannot quell injustice. Rather, injustice can be exorcised by “truth... or love,”\textsuperscript{38} echoing his speech for complexity and human passion in “Tomorrow”. I will read \textit{Requiem} as Faulkner’s response to legal positivism, as well as a musing on the law’s relationship with the dislocations and dispossessions of modernity. I will also interrogate Stevens’ highly problematic definition of justice, and suggest that his understanding of justice ontologizes class and racial difference. Stevens’ understanding of justice is filtered through a social and cultural sensibility that is fundamentally elitist, racist and exclusionary, and his failure, much like the failure of Spade in \textit{Falcon}, is scrutinized in the text. Finally, given that it does not include Gavin Stevens, I will only briefly examine \textit{Requiem}’s back-story in Faulkner’s earlier novel, \textit{Sanctuary}, to assert Faulkner’s complex and contradictory representation of the law, whereby in \textit{Sanctuary} there is both a gross indictment of legal institutions as well as a hint as to why they are necessary.

My concluding chapter will evaluate Hammett’s final novel, \textit{The Thin Man}, and the final, title story of Faulkner’s \textit{Knight’s Gambit}, in which the detectives,

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\begin{itemize}
\item \textsuperscript{38} William Faulkner, \textit{Requiem for a Nun} (London: Chatto & Windus, 1953), 81. All subsequent references to this text will be to this edition and will be cited in the body of the thesis, as \textit{RN} when necessary. Originally published 1951.
\end{itemize}
wealthy New York couple Nick and Nora Charles in *The Thin Man*, and Gavin Stevens in “Knight’s Gambit”, cynically retire from their profession, and are cynically retired by their authors. *The Thin Man* and “Knight’s Gambit” explore the aftermath of the dejection and failure of *The Maltese Falcon’s* Sam Spade and *Requiem for a Nun’s* Gavin Stevens, and provide a troubling summation of their respective authors’ positions vis-à-vis justice, the law, and the place of the private detective.

Ultimately, this thesis wishes to pay critical jurisprudential attention to each author’s use of the generic conventions and resources of detective fiction. Both Hammett and Faulkner wrote detective fiction admittedly for money, but I want to move away from a likewise populist reading of their mystery narratives. Even if these stories were conceived of by their authors as quick and simple cash cows, and even though trends in criticism still have yet to fully appreciate the complex legal mythologies that the authors engage (critics repeatedly identify derivative, unoriginal generic models in *Knight’s Gambit*, for instance, or simplistic, kitsch pulp-vigilantism in Hammett’s fiction) I wish to read Hammett’s and Faulkner’s detective fiction as their literary responses to perceived social and legal injustices.39 Rather than employing the detective in an expedient nod to genre specifications, I believe the figure of the detective in the landscape, and his task of detection – of searching, speaking, listening and interpreting – is central to each author’s understanding of the legal questions they pose and the ways in which these can be answered. Moreover, in a deviation from the classical generic expectations, by privileging the act of *detecting* over the revelation of *uncovering* both authors seek to identify social ailments in a way that avoids the law’s totalizing conclusiveness and comprehension, or its reliance on unifying principles, instead appreciating the paradoxical, the local, the ontologically

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39 To clarify, while the genre of detective fiction in Faulkner’s 1940s had evolved from, Hammett’s 1920s, this thesis is less interested in generic transformations and more interested in the ways in which both authors use the detective as a figural mode through which particular jurisprudential questions are uncovered and navigated. This is especially so for Faulkner, who, if not a detective fiction writer as such, draws on aspects of the genre (and the public appetite for it) to construct his narratives and to explore jurisprudential issues.
pervasive, the passionate, the whimsical, and the relative – and the possibility of
the formless simultaneity of these conditions. Both because of this and in spite of
this, I will not, in this thesis, be examining modernism as a theoretical practice,
though Habermas’ definition of modernity as an “unfinished project”\textsuperscript{40} obliquely
informs my reading of Hammett’s and Faulkner’s jurisprudential poetics.

\textsuperscript{40} See Habermas and the Unfinished Project of Modernity: Critical Essays on the Philosophical
Discourse of Modernity ed. Maurizio Passerin d’Entreves and Seyla Benhabib (Cambridge: Polity
Chapter One

The Spirit of Investigation: Theories of American Justice

Precept by precept, precept by precept, line by line, line by line; here
a little there a little.

- Isaiah 28 10

O beautiful for pilgrim feet,
Whose stern, impassioned stress
A thoroughfare for freedom beat
Across the wilderness!
America! America!
God mend thine every flaw,
Confirm thy soul in self-control,
Thy liberty in law!

- Katherine Lee Bates, America the Beautiful

Reagan knew that an idea was nothing without its front man, and that
a front man required big scenes--hence the grim, disappointed
headshake to Gorbachev on a cold Reykjavik night, or the TV address
that followed the Challenger disaster, with the President's voice
enfolding in a single breath, as only he could do, the homely and the
galactic.

- Anthony Lane, “The Critics: A Critic at Large: The
Method President: Ronald Reagan and the Movies”

The preamble to the Constitution, beginning “we the people of the United States,
in order to form a more perfect union...” adjectivally reified the now inveterate
tenor of the American mythos: never completely superlative, America was a
project comparative, ongoing, contingent, and competitive. Yet the oxymoronic
“more perfect” suggests a special relation between the idea of the nation and
language – in particular rhetorical and literary language – as the medium that
would realize that idea, in every sense. It is both the relationship of nationhood
and law, and the relationship between that law and language, that I would like to explore in this chapter. The intellectual voyage that comprises American legal thought from 1776 will inform my understanding of the jurisprudence of investigation in which Hammett and Faulkner engage.

The new nation’s relationship with rhetoric is never more patent than in the insistent documentation of its legal/juridical initiatives: the Declaration of Independence, the Federalist Papers, the Constitution and the Bill of Rights; it is intimated that the heavy task of drafting the Declaration of Independence fell on Jefferson’s shoulders for aesthetic reasons, because of his “peculiar felicity of expression... a prose style distinguished for its moral earnestness, its felicitous diction, rhythmic cadence, and crisp clarity and precision.”\(^1\) Since the signing of the curiously belletristic Declaration of Independence, the materiality of American law, the documentation of its will, has sought to establish narratives of the nation, and law and lore were very deliberately rendered indistinguishable. Mary Ann Glendon put it best when she argued, “much of America’s uniqueness... lies in the degree to which the law figures in the standard accounts of where we came from, who we are, and where we are going.”\(^2\) The common medium of the word precipitated a mutual subsumption; the imagination and sublime vision that constituted – and was a forerunner to – the American project saw its reification in legal ratification. That American history has always been a story told with justice in mind is undisputable. However, in the beginning, niggly questions about the confluence of law and justice, or the spirit of the law versus the letter of the law, were put aside as the Edenic rhetoric of the new and the absence of history enabled a harmonizing of natural law with the natural landscape (only later in 1849 would Thoreau write in Civil Disobedience “law never made man a whit more just”).\(^3\) The recondite legalism of the English

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tradition was replaced with values perceived as fundamental, human and just to which all could ascribe: remembering the *incipit* of the Declaration, truths are “self-evident”, rights are “inalienable”, and men assume “the powers of the earth... the laws of nature and of nature’s God.” It is easy to see the thoughtful deliberation behind this prose when one juxtaposes the final draft of the declaration with earlier drafts. Deleted are long, sprawling, hysterical passages that indignantly point the finger of blame at an inhuman tyrant:

> He waged a cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating and carrying them into slavery in another hemisphere... this piratical warfare, the opprobrium of INFIDEEL powers, is the warfare of the CHRISTIAN king of Great Britain.⁵

Passages like this are replaced with a comparatively moderate sentiment, universally appealing, sober, drafted in the discourse of legal remedy: “in every stage of these oppressions we have petitioned for redress... our repeated petitions have been answered only by repeated injuries.”

Robert Ferguson writes, “since providence had provided Americans with a continent unspoiled by human history, they could confidently order their new country through a correct, theoretical application of man-made or positive law in harmony with the natural law around them,”⁶ and this dialectic in *Law and Letters* is accurate: the nexus between law and language, which extends to a nexus between law and literary language – and literature – seems an

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epistemological means to attribute form and contour to the mysterious, expansive Wilderness; and strategies of control and ordinance to the new nation’s heterodox exiles. Derrida’s insightful paper on the Declaration, delivered in Charlottesville on the bicentenary of the signing, raises amusing but salient questions on how independence is performed through the dubious act of signing, and the relationship between language and self-invention: “is it that the good people have already freed themselves in fact and are only stating the fact of this emancipation in the Declaration? Or is it rather that they free themselves at the instant of and by the signature of this Declaration?”

Derrida highlights attenuation: the declaration is signed, *ex parte*, by men who are delegates of proxies of “representatives of representatives,” and the act of declaring independence, an artificial act, is naturalized and divinated by the very deliberate obscurity and adumbration of both authority and teleology – Derrida notes “this undecidability between, let’s say, a performative structure and a constitutive structure is *required* in order to produce the sought-after effect.”

The physical artifact, the written inscription, creates both a people, and their will – their deliberation. As Derrida argues, “the signature invents the signer... in a sort of fabulous retroactivity.” This retroactivity creates the signing self – as individuated agent, scribe, as well as an embodiment of a will *en masse*, this trinity producing a “coup de force, which is also a coup of writing, as the right to writing.” This right to write is allegorized by Jefferson later as a means of geographical identification, belonging and ownership, arguing: “we can no longer say there is nothing new under the sun. For this whole chapter in the history of man is new. The great extent of our republic is new. Its sparse habitation is new. The mighty wave of public opinion which has rolled over it is new.” Jefferson emphasized that the introspection that comes with writing and language, in penning his only book, *Notes on the State of Virginia*, demystified the land,

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making him “much better acquainted with my own country than I ever was before.”13 In creating nationhood through a common people, and a common idiom, and their common will, the Declaration of Independence was a first step towards eschewing the traps of strict legality in favour of natural justice, both as a linguistic and performative action. The final paragraph proclaims that the colonies “are and ought to be” independent states, and Derrida notes

The ‘and’ articulates and conjoins here the two discursive modalities, the to be and the ought to be, the constation and the prescription, the fact and the right. And is God: at once creator of nature and judge, supreme judge of what is (the state of the world) and what ought to be (the rectitude of our intentions).14

This is an idiosyncratically American idea of law as an isobar of sorts, linking actuality and projected image – the “are” and the utopian “ought to be”. It is cogently elaborated by Robert Cover in “Nomos and Narrative,” where he writes “a nomos, as a world of law, entails the application of human will to an extant state of affairs as well as toward our visions of alternative futures. A nomos is a present world constituted by a system of tension between reality and vision.”15 To clarify, Cover sees law as an ever-evolving, shifting and innovating tool striving for the “ought.” America, conceptually, follows this normative trend: it begins as concept, judicial and equitable and utopian, the bridging of what is and what could be. Binding together the real and the potential, the structure, function and communication of American law is perfectly conveyed via oratory, which relies on the shared experience and imagination of the audience members, who are united as equals in consideration and distribution of natural justice, as each man may feel he is a sovereign vessel of democracy.16 If the lawyer in

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16 De Tocqueville, in “The Principle of the Sovereignty of the People,” writes, “the people reign in the American political world as the Deity does in the universe. They are the cause and the aim of all things; everything comes from them, and everything is absorbed in them," Democracy in America, 58.
revolutionary America was “at the centre of republican literary activity”\textsuperscript{17} and the courtroom doubled as the “ceremonial forum”\textsuperscript{18}, a Geertzian “active centre of social order,”\textsuperscript{19} then, the oratory of the lawyer, his narrativization of the law, creates the nomos. Brook Thomas goes so far as to argue, “without rhetorical skills, [American citizens] cannot efficiently participate in public debate.”\textsuperscript{20}

However promising this ‘newness’ of America seemed, it was nevertheless jeopardized by the fact that the mythology of the nation itself sprang from Rhetoric – from Winthrop’s “City on a Hill” speech to the earlier and more remote visions of The Tempest and Andrew Marvell’s “Bermudas”, which saw expansive, unalloyed potentiality in the unknown and utopian faraway space. However, a landscape mythologized into action/reality did not entirely instill great confidence in the longevity of the American nationhood, and a discourse of trepidation ensued for almost a century post independence. John Quincy Adams warned that America existed in a state of “perpetual jeopardy,”\textsuperscript{21} then Tocqueville wrote of the “legal fictions”\textsuperscript{22} which buttressed the nation. George Forg\i e writes:

No sooner did Americans create their Union than they began to speculate fretfully about how long it would last... throughout the early part of the nineteenth century it was a common observation that the Union was evanescent. It was characterized by various writers as “metaphysical and theoretical”; as “a sort of forced state... of life”; as a mere linguistic creation that had been “spoken into existence” and that "exists, so to speak, only in the mind."\textsuperscript{23}

\textsuperscript{17} Ferguson, Law and Letters, 9.
\textsuperscript{18} Ferguson, Law and Letters, 9.
\textsuperscript{22} Tocqueville, Democracy in America, 166.
\textsuperscript{23} George Forg\i e, Patricide in the House Divided: A Psychological Interpretation of Lincoln and His Age (New York: W.W. Norton & Company, 1979), 13. Forg\i e cites, in order, Edward Everett in 1826, Rufus Choate in 1850 and Alexis de Tocqueville in 1835.
The power of language to synthesize a vast miscellany into a developed sense of nationhood, to fashion civilization from myth, is legitimated by the mythmakers being almost exclusively from the legal profession. In arguing this, I am not suggesting that there is anything exceptional about America in this respect: both France in the toppling of the ancien regime and the U.K. in the signing of the Magna Carta, for example, could claim a nation bound in the mythological resonances of legal documents. However, the founding of the nation ex-nihilo is certainly unprecedented and provides the basis for an argument claiming that what makes the American model unique is the self-reflexivity with which the nation was being founded in real time. The “legal fictions” on which the nation was founded found materialization in the persons of the nation’s lawyers, the “ex officio natural guardians” of the nation, and “sentinels over the constitutions and liberties of the country.” 24 For the new nation, Ferguson claims, “the role of guardian easily assumed cosmic overtones.” 25 These cosmic overtones, which infused the mysterious and earthy new physical spaces, allowed lawyers to speak a legal rhetoric aligned with the continent’s topography, from, and in response to, the landscape. Lawyers disambiguated and elucidated the rough-hewn Wilderness with an eloquent social order and sublime unity founded on righting the wrongs and artifices of Old World tyranny 26 through a natural law revealed through a lexicon of spontaneity and transcendence, while poets approached the task of nation-building through an abandonment of rhyme and edifice: “Unscrew the locks from the doors! / Unscrew the doors themselves from their jambs!” 27 Yet if Whitman and the American Romantics attempted to embody and project an American voice, one that spoke of justice, nature, and the God-like will of the individual, before they emerged as a literary class to write

26 As per the Declaration of Independence’s charge against King George III’s “long train of abuses and usurpations”.
the great national narrative the early foundations were set and settled by the lawyers and judges of the new Republic, who, while creating representative government, sought to communicate *en masse* a representative voice.

Ferguson laments that the American canon never includes the likes of Daniel Webster, Henry Clay, Francis Parkman, and the letters of Adams and Jefferson, observing that “literary critics tend to skip the eighty years from the Great Awakening to the American Renaissance in their haste to associate colonial religious preoccupations with the romantic inwardsness of the nineteenth century.”

Indeed the lawyer, working from ground zero, in a bid to sever ties to English precedence, relied heavily on literature and classical learning in order to stabilize and create unities within revolutionary America. The earliest American texts were legal manifestos, and the authors were legally trained – twenty-five signers of the Declaration of Independence were lawyers, as were thirty-one members of the Constitutional Convention and thirteen of the first sixteen presidents.

Nature and the Courtroom occupied dual legal spaces, and the lawyer, looking to Cicero, bypassed the nearer English legal tradition for a Roman ideal: in the courtroom as public forum the lawyer/dramatist/orator captivated the masses (and the bench) with his general erudition. William Wirt, in his biography of Revolutionary lawyer Patrick Henry, wrote:

> In the company of men and letters, there is no higher accomplishment than that of readily making an apt quotation from the classics; and before such a body as the Supreme Court these quotations are not only appropriate, but constitute a beautiful aid to argument, they mark the scholar, - which is always agreeable to a bench that is composed of scholars.

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In the absence of a fully formed legal body of knowledge, and in a society where Thoreau would cynically lament that “we love eloquence for its own sake, and not for any truth it may utter, or any heroism it may inspire,” the lawyer and law student would have to, as Chancellor James Kent lectured while at Columbia in 1794, have “all the requisites of Quintilian’s orator,” be “a person of irreproachable virtue and goodness,” and “well read in the whole circle of arts and sciences” to be properly versed in “universal law.” Kent continues to argue that this pursuit ought to be democratized, atomized:

> the art of maintaining social order, and promoting social prosperity, is not with us a mystery fit only for those who may be distinguished by adventitious advantages of birth and fortune. The science of civil government has been here stripped of its delusive refinements.

Ferguson details Jefferson’s ideal curriculum for the young law student, which comprised “virtual bibliographies of the Enlightenment, requiring fourteen hours of reading a day across a five-year period,” and the study sought rote jurisprudential and rhetorical learning through the study of, inter alia, the Bible, Horace, Virgil, Xenophon, Seneca, Cicero, Latin, Greek, French, and English literature, resulting in “a practical omniscience in human knowledge.” Of course, this is commensurate with the omniscience of the literary narrator; Hugh Swinton Legaré, star of the Southern Bar in the Jacksonian era, saw jurisprudence as “glorious,” and “in our land, the way to everything desirable.” This fairytale dialectic clearly enunciates law as a conduit to literary utopias. Again, we are reminded of Robert Cover’s “system of tension, or a bridge” linking

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31 Thoreau, “Civil Disobedience,” 135.
35 Ferguson, Law and Letters, 28.
36 Ferguson, Law and Letters, 29.
37 Cited in Mary S. Legaré, Writings of Hugh Swinton Legaré, 2 vols (Charleston, S.C.: Burges and James, 1845), II, 501.
reality and vision, and, drawing on Claude Levi-Strauss, Brook Thomas would write that the "similarities between legal and literary discourse show how close their functions are to myth."\textsuperscript{38} Thus for Cover law is a series of “interpretive commitments”\textsuperscript{39} – an ethic which connects a concept of reality to an imagined alternative, such that America’s coming-into-being was heralded as a literary event, insistent upon destiny, experience and purpose, with a “thick”\textsuperscript{40} contextuality comprising a rich nomos of present and future will:

no set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning. For every constitution there is an epic... law becomes not merely a system of rules to be observed, but a world in which we live.\textsuperscript{41}

This theory sees American Law transcending the principle of circumscription – authority – for a truly democratic inhabitability: inhabiting and comprising the American space, law is a paradigm for communication, shared experience, and correspondence; a mythological and mythologized marketplace, “law becomes indistinguishable from life.”\textsuperscript{42} One is reminded of the persistence of this theme in modern American political rhetoric. In Frank Capra’s State of the Union (1948), when politician Grant Matthews (Spencer Tracy) is quizzed on who has inhabited the White House, a supremely mythological American space, he answers:

Moses, Buddha, Confucius, Christ, Paul, St. Francis, Thomas Aquinas, Roger Bacon, Joan of Arc, Martin Luther, Plato, Homer, Dante, Shakespeare, Michelangelo, Pasteur, Newton, Galileo, Edison, Franklin, Lincoln, Washington, Jefferson, Crispus Attucks, Lafayette, Garibaldi, Bolivar, Kosciusko; the martyrs, the saints and the poets.

\textsuperscript{39} Cover, “Nomos and Narrative,” 7.
\textsuperscript{40} See Clifford Geertz, The Interpretation of Cultures (London: Fontana, 1993)
\textsuperscript{41} Cover, “Nomos and Narrative,” 4.
Civilizations past and present. Man’s whole history, his evolution from worm to animal to Einstein. His long search for God.

Not only does the rhetorician speak in mythic essences, eschewing temporality for classic erudition, the American politic and landscape is forever a devout, metaphysical configuration of humanism, nature and education, making “learning a servant of pedagogy and pedagogy a manifestation of patriotism.”

What I want to suggest, then, is that the American representation of justice is unique and essentially literary in its medium and scope. In doing so, I cannot go past the landmark 1803 case, *Marbury v Madison*, for establishing a precedent whereby the protean lawyer and judge is invited to tell and retell the story of a nation, and recalling Fisher Ames, *to explain a nation to itself*. In the decision the bench invests itself with the power to interpret constitutionality, rendering the courtroom a place of dynamism and constantly evolving criticism centred on one foundational text: here, in examining the indica of unconstitutionality in respect of social policy considerations, they could argue “vital policy instead of dead-letter law” as textual criticism and legality coalesce in a quest for justice. Justice is bound in the quest, residing not simply in the text proper of the Constitution but dynamically in its interpretation. Paul De Man notes of this peculiarity:

We call a *text* an entity that can be considered from such a double perspective: as a generative, open-ended, non-referential grammatical system and as a figural system closed off by a transcendental signification that subverts the grammatical code to which the text owes its existence. The “definition” of the text also states the impossibility of its existence and prefigures the allegorical narratives of this impossibility… a text is defined by the necessity of

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43 Ferguson, *Law and Letters*, 64.
44 5 U.S. 137 (1803)
considering a statement, at the same time, as performative and constantive.47

This definitional impossibility of “law as text”, its “Janus-facedness”, “provokes the necessity for interpretation, which, despite all attempts at stabilisation, continuously produces new uncertainties.”48 In the interpretive act justice may presuppose itself, emerging as “a force without signification,”49 as a democratic process of competing rhetorical wills: John Quincey Adams, who became Harvard’s first Boylston Professor of Rhetoric, argued that oratory was vital to American laws, with the orator able to both “appal the heart of the tyrant” and “control the wayward dispositions of the people.”50 Oliver Wendell Holmes would later espouse an understanding of justice that necessitated a free “marketplace of ideas,”51 whereby the first amendment right to free speech leads to an understanding of justice that flows from the audibility of multiple competing voices. There is a link between the nation’s understanding of itself and its laws through language, and the American authors throughout America’s literary history that dipped their nibles in this ink of the fraternity of nationhood, law and language. The “multiple voices” of American authors – though I am limiting this thesis to Hammett and Faulkner – write the nation with legal questions in mind, and their language effortlessly takes on legal dimensions. Specifically, in Hammett’s and Faulkner’s detective fictions we see an ethic of interpretation over knowability (which conventionally propelled detective fiction) that is distinctly American.

Historically there has been, however, a tension between an understanding of justice as achieved through action and interpretation – and the reality of this promise negated by the economic and political sanctioning of inequality, the

49 See Agamben on Kant, Homo Sacer, 51.
50 John Quincey Adams, from Lectures on Rhetoric and Oratory, cited in Ferguson, Law and Letters, 79.
perceived constitutionality of slavery. When the Court in *Marbury* triumphantly declared, “The government of the United States has been emphatically a government of laws, and not of men,” it had not yet been tested against the blight of the slave trade. Very little judicial activism actually took place in the early days of the Republic. Lawyers and judges habitually reiterated abstractions of natural law without necessarily challenging whether the law was based in justice. Thoreau quotes Daniel Webster in response to the constitutionality of slavery, which Webster understood to be constitutional: “I have never made an effort,” he says, “and never propose to make an effort; I have never countenanced an effort, and never mean to countenance an effort, to disturb the arrangement as originally made, by which the various states came into the Union.” In response Thoreau writes, “notwithstanding his special acuteness and ability, he is unable to take a fact out of its mere political relations.” It is clear that national stability outweighed the imaginative or inquisitive impulses of man, and gravely mitigated the triumph of humanism in the formation of the Union. Skepticism and hermeneutic inquiry would flourish in the middle of the 19th century, led in part by Frederick Douglass, who writes, on his break from Garrisonian anticonstitutionalism:

Brought directly, when I escaped from slavery, into contact with abolitionists who regarded the Constitution as a slaveholding instrument, and finding their views supported by the united and entire history of every department of the government, it is not strange that I assumed the Constitution to be just what these friends made it seem to be... But for the responsibility of conducting a public journal [in Western New York] and the necessity imposed upon me of meeting opposite views from abolitionists outside of New England, I should in all probability have remained firm in my disunion views. My new circumstances compelled me to re-think the whole subject, and to study with some care not only the just and proper rules of legal interpretation, but the origin, design, nature, rights, power, and duties of civil governments,

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52 See *Marbury* 5 U.S. at 163.
53 Thoreau, “Civil Disobedience,” 134.
54 Thoreau, “Civil Disobedience,” 134.
and also the relations which human beings sustain to it. By such a course of thought and reading I was conducted to the conclusion that the Constitution of the United States inaugurated to “form a more perfect union, establish justice, insure domestic tranquility provide for the common defence, promote the general welfare, and secure the blessings of liberty” – could not well have been designed at the time to maintain and perpetuate a system of rapine and murder like slavery, especially as not one word can be found in the Constitution to authorize such a belief.\textsuperscript{55}

Not only breaking away from the bonds of slavery, Douglass also breaks from the alternative – Garrison’s strident voice of anticonstitutionalism. Cover writes,

> When Frederick Douglass asserted his psychological and political independence from his Boston abolitionist benefactors he chose, in part to... embrace a vision – a vision of an alternative world in which the entire order of American slavery would be without foundation in law.\textsuperscript{56}

In this analysis Cover suggests that the law is built on not only what is real and palpable but also the intangible and desired, it bridges the strictures of the word with the limitlessness of the imagination. Douglass still keeps his visions of change firmly within the American jurisprudential discourse. When ruminating on the meaning of the Declaration of Independence for the Negro, Douglass deftly exploits the American medium of oratory to expose the hypocrisy in the Americanized rhetoric of Natural Law. Beginning with the noticeably dividing, polarizing use of pronouns, he states, “it is the birthday of your National Independence, and of your political freedom,”\textsuperscript{57} a bold departure from the overwhelming, idiomatic, American “we.” Then, once again appropriating the American metaphor of the judicious, fated Wilderness, but from a liminal space, an outsider’s perspective, perhaps bringing to mind Deleuze and Guattari’s

\textsuperscript{55} Frederick Douglass, \textit{Life and Times of Frederick Douglass} (New York: Dover, 2003) 186-7. Italics mine.

\textsuperscript{56} Cover, “Nomos and Narrative,” 38.

minor literature, Douglass forewarns that as America’s destiny is shaped by the landscape,

great streams... may sometimes rise in quiet and stately majesty, and inundate the land... however... it may dry up, and leave nothing behind but the withered branch, and the unsightly rock, to howl in the abyss-sweeping wind, the sad tale of departed glory. As with rivers, so with nations."

And so can the landscape deliver the retribution of the fates, who operate, seemingly, not from the heavens above, but from the tangible and cruel, earthen below: “for it is not light that is needed, but fire; it is not the gentle shower, but thunder. We need the storm, the whirlwind, and the earthquake.” Then comes the crescendo, where Douglass rages,

Let this damning fact be perpetually told. Let it be thundered around the world that in tyrant-killing, king-hating, people-loving, democratic, Christian America the seats of justice are filled with judges who hold their office under an open and palpable bribe, and are bound, in deciding the case of a man’s liberty, to hear only his accusers!

Even in his indictment Douglass is nevertheless faithful to the American legal nomos. It is clear that Douglass is tapping into the power of the Word as a device that legitimizes meaning as it is being conveyed, both valorizing the argument as well as elevating the speaker; he does not say let it be heard, but rather let it be told: justice, in America, is a story to be told, again and again. Justice resides in its telling, and through the theatre of speaking and listening a citizenry is created:

The causes which led to the separation of the colonies from the British crown have never lacked for a tongue. They have all been

taught in your common schools, narrated at your firesides, unfolded from your pulpits, and thundered from your legislative halls, and are as familiar to you as household words. They form the staple of your national poetry and eloquence.\textsuperscript{62}

These sentiments echo throughout literature: from the courtroom scene at the denouement of Cooper's \textit{The Pioneers}, where Natty Bumppo realizes there is nothing to distinguish the judges from the spectators but an affected gravity, to Faulkner's description of the court in \textit{The Hamlet}, about which Charles Hannon writes, "the observers' benches in the county court, curved as in a rounded theatre, no longer imply a reverence for the rule of law but instead suggest a theatre where the audience's response is as crucial a part of the performance as the judge's."\textsuperscript{63}

Robert Ferguson notes that at first, the "subjective imagination, the originality, the fluid emotionalism and spontaneity of romanticism were inappropriate, even dangerous, to the goal of a collective sense of purpose."\textsuperscript{64} He argues that only when a sense of solidarity was achieved, the literary greats emerged to run with and further romanticize the ideas carved out by the lawyers who first shaped the national imagination. Herman Melville in "Billy Budd" extends Douglass' theme of \textit{speaking} justice, namely positing a question that this thesis will address in the analysis of Faulkner's short story "Monk": if justice in American mythology entails a positive linguistic act, then must injustice stem from silence? Similarly, Nathaniel Hawthorne in \textit{The Scarlet Letter}, \textit{The Blithedale Romance} and \textit{The House of Seven Gables}, continues in the tradition of distrusting recondite legalism, embedding deep seeds of doubt and mistrust in the architecture of legality, rather locating justice and integrity in the wild and itinerant outcast. James Fenimore Cooper explains the competition between the naked individual will and social demand, as Natty Bumppo ages throughout the Leatherstocking Tales and sees the landscape change around him, reminding us of Tocqueville's

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\begin{itemize}
  \item \textsuperscript{62} Douglass, "The Meaning of July Fourth for the Negro," 2113.
  \item \textsuperscript{63} Hannon, \textit{Faulkner and the Discourses}, 57.
  \item \textsuperscript{64} Ferguson, \textit{Law and Letters}, 76.
\end{itemize}
“tyranny of the majority” when considering the majestic solemnity of the Wilderness submitting to the machine of progress. These writers created literary worlds in which legal or juridical dilemmas, questions, and tropes could play out in different ways on different land or seascapes, and were singularly persuasive in telling the law (of both what is, what should be, and what could be) to the reader/citizen.

Walt Whitman’s vision of America and law in his poetry is informed by an abiding faith in the metaphysical unity of the classical Greek concept of the *kosmos*, which included the “*physis* of organic being, the *ethos* of personal conduct and social structures, the *nomos* of normative custom and law, and the *logos*, the rational foundation that normatively rules all aspects of cosmic development.”65 In “Song of Myself”, Whitman triumphs the individual, indivisible, whose experiential corporeality synchronized man, nature, will and future, *in toto* – “I am afoot with my vision” (l. 715) – tantamount to equality between speaker and multitudinous hearer:

I speak the password primeval .... I give the sign of democracy,  
By God! I will accept nothing which all cannot have their counterpart of  
on the same terms.

Through me many long dumb voices,  
Voices of the interminable generation of prisoners and slaves,  
Voices of the diseas’d and despairing and of thieves and dwarves, (ll. 507-509)

Whitman echoes the early American rhetoric of man as vessel for the totalities of nature and natural law and will; the complex and itinerant American Man uses verbal language – specifically the act of *naming* – to both order and harness the kinesis of nature and gracefully submit to its wildness.66 An analogy is drawn between the relationship between Man and Nature, and the relationship between

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Nature and Law; both relations are steeped in symmetrical, mystical unities. Oratory is the chief dialectic (the limp structure of "Song of Myself" demands loud verbalization) and Whitman's appellations see Man's reaffirmation of real and cosmic topography to enjoy a thoroughly Emersonian “original relation to the universe.”

R.W.B. Lewis writes of Whitman-cum-Adam “he was the poet par excellence, creating language itself by naming the elements of the scene around him.” It is clear that as the will of the American man enables and incarnates the New World, and his will being democratic and equitable, a mobius-strip-logic can be seen in the naissance and perpetuation of the American myth. Jefferson’s epistolary remark, “the law being the law because it is the will of the nation” obscures both origin and end in traditional temporality for an omnipresent spirit of nature and social contract that is essentially chiastic, and that once again recalls the logic of Derrida’s analysis of the Declaration of Independence – legal precepts are only imbued with authority because they are the will of the nation, and, upon iteration, the will of the nation quickly becomes comprised of the laws imposed upon it. Sacvan Bercovich’s telling insight,

The Puritans’ image of America marks the highpoint of their effort to find a rhetoric adequate to their sense of mission. Their claim to visible sainthood led them to stress the importance of Christology; ....and they combined both modes of identity, personal and historical, through their concept of national election. Having Americanized their rhetoric, they found in America the assurance of their destiny.

espouses a solipsistic movement to mythologize and construct a nation in order to concomitantly be assured by it, to then believe it. It is the locality of the

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rhetoric, its alignment with geography and cartography, that obliterates logic, reason, cause and effect – sequentiality – and gives the American a sense of divine and perpetual immediacy; the wilderness, to the Puritan, had the power to intuit, prompt, and thus authenticate, the rhetoric of Election.

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Just as truths are self-evident, justice is anthropocentric in the classic mythologization of America; the solemn reference for justice inhering in what Thoreau conceived of as man’s internal landscape. While this thesis is focused on the works of two twentieth-century authors and how they reflect twentieth-century legal considerations, I will be arguing that these jurisprudential origins persist in the stories and novels of Hammett and Faulkner: the private detective figures as the champion of justice as per America’s mythologization of its nationhood. But this is not to say that the jurisprudential explorations in the works of Hammett and Faulkner are not of their time. Both writers muse on, and write in response to, the turbulence of their own time: technological and industrial progress, the expansion of railroads, the proliferation of automobiles, war. Legal doctrines and the jurisprudential theories were, as Ravit Reichman writes, “not far behind in responding to the emergence of this increasingly impersonal, mechanically inflected world.”

Reichman and other prominent law and literature critics like Shoshana Felman are interested in the twentieth century shaping a legal account of traumatic injury; indeed, Hannah Arendt wrote that “war and revolution” comprised the physiognomy of the twentieth century. Both scholars deftly interweave the advent of the modern with the evolution of tort law and the experiences of war and trauma. While neither Hammett nor Faulkner write specifically in response to the Great War, Reichman and Felman’s articulation of law’s incapacity to

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render trauma intelligible goes far in explaining the ways in which Hammett and Faulkner engage with legal discourses and represent legal practices. Both Reichman and Felman use Walter Benjamin’s ideas to analyze the trial of Adolf Eichmann in Jerusalem, exploring the ways in which Benjamin’s lamentations in “The Storyteller,” that “the communicability of experience is decreasing,” is redoubled in the courtroom, where “what has to be heard in court is precisely what cannot be articulated in legal language.” While both Hammett and Faulkner were post-war writers, I am interested in the ways in which the modern crises of language and representation that occurred post-war inform their movement away from legal spaces as veritable theatres of justice. Thus I will argue that the inarticulable trauma for Faulkner is the South’s loss of dignity and geographic integrity through Reconstruction, and for Hammett it is the loss of meaning that has resulted from the advent of the city-space and closing of the frontier, the detective’s impulse to action stymied by the loss of destination (and origin).

Reichman writes illuminatingly on the symbiosis between modern law and the advent of literary modernism:

> The relation between legal and literary modernism... runs deeper than analogy or equivalence. Far from being mirror images or replicas of each other, they exist in a contingent relationship, in which the parameters and stakes of ethical life are set out in literature and reified – ever imperfectly – in law. These imperfections, in turn, reenter literature, bodying forth narratives that console, lament and imagine possibilities that remain inexpressible in legal terms. Their connection is thus one of mutual implication and necessary complementarity.

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74 Felman, *The Juridical Unconscious*, 4. This, for Reichman and Feldman, finds apogee in the trauma of the Holocaust.
75 We are again reminded of Benjamin in “The Storyteller,” who writes: “with the (first) world war, a process began to become apparent which has not halted since then. Was it not noticeable at the end of the war that men had returned from the battlefield grown silent – not richer, but poorer in communicable experience,” *Illuminations*, 84.
Reichman reads modernist literature as comprising “narratives of responsibility.”

“symptoms or manifestations of a complex emotional thicket: our innermost hopes, our most inconsolable anguish, and our deepest bewilderment.”

These narratives respond to twentieth-century evolutions in law, whereby the rise of industry created industrial accidents, the widespread use of automobiles begat automobile accidents, and as such, theories of negligence and assigning blame and remedial responsibility were complicated by the phenomenon of anonymity, where “no one appeared to be blameworthy.”

As Dolin muses, “F. Scott Fitzgerald’s tragic romance of the moneyed elites of the American 1920s, The Great Gatsby, finds the perfect metaphor for its vision of defeated idealism in a hit-and-run car accident.”

In law the “ache of modernism” was felt most clearly in the proliferation of tortious claims resulting from unhappy accidents between strangers; as early as 1873 Oliver Wendell Holmes characterized the listlessly modern concept of duty as “of all the world to all the world.”

One such case was Palsgraf v Long Island Railroad, in which the plaintiff, Mrs. Palsgraf, waiting on a train platform, is, through a series of bizarre and highly improbable coincidences involving many different strangers, struck by scales from exploding fireworks that had fallen on the rails. Benjamin Cardozo’s judgment for the defendant acts as a platform for Reichman’s question of “what strangers owe each other in the modern city.”

Reichman uses that question to examine responsibility in modernism’s laws and literary narratives, arguing that literature “uses [its] capacity for narrating subjectivity... to create a responsible vision of how the modern citizen could and

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77 Reichman, The Affective Life of Law, 2.
78 Reichman, The Affective Life of Law, 3.
79 Reichman, The Affective Life of Law, 3.
80 Dolin, A Critical Introduction to Law and Literature, 156.
83 248 N.Y. 339 (1928)
84 Reichman, The Affective Life of Law, 5.
should rebuild a just world."\(^85\) Reichman suggests that literature attempts to broaden and centre categories of responsibility when the law cannot. Cardozo’s judgment in *Palsgraf* shows us that the law must operate a narrow logic of duty and reasonable foreseeability:

The diversity of interests emphasizes the futility of the effort to build the plaintiff’s right upon the basis of a wrong to some one else. The gain is one of emphasis, for a like result would follow if the interests were the same. Even then, the orbit of the danger as disclosed to the eye of reasonable vigilance would be the orbit of the duty. One who jostles one’s neighbor in a crowd does not invade the rights of others standing at the outer fringe when the unintended contact casts a bomb upon the ground. The wrongdoer as to them is the man who carries the bomb, not the one who explodes it without suspicion of the danger. Life will have to be made over, and human nature transformed, before prevision so extravagant can be accepted as the norm of conduct, the customary standard to which behavior must conform.\(^96\)

The law simply cannot award judgment to the plaintiff when it would have been impossible to foresee her injury. While I agree with Reichman that, unlike law, literature can entertain notions of accident, coincidence, crime and injury comprising a normative vision of society, I believe Hammett and Faulkner, instead of offering "a responsible vision of how the modern citizen could and should rebuild a just world,” ultimately find themselves, like Benjamin, at a loss for words in coming to terms with the epistemological impossibility and infinite deferral of justice encoded in the institution of the law. Both authors instead present an epidemiological matrix of criminal and tortious injustices that pivot on a kind of myopia: *foreseeability* is lost, and with it, any Enlightenment pipedreams regarding *reasonability*. In this way both authors dismiss or reinterpret the foundations of Enlightenment thinking. Ultimately, we will see in the detective stories of Hammett and Faulkner a modernist, apocalyptic logic

\(^{96}\) See *Palsgraf* 248 N.Y. at 343.
seen in Felman’s *Juridical Unconscious*: “it is because redemption is impossible that there is a demand for justice and an imperative of justice.” She adds, the “secular redemption” that the law offers but cannot deliver exists because justice, the “real Judgment Day”, is doomed to remain historically, eternally deferred,”87 echoing the dark judicial musings of Kafka in his fable “Before the Law”: although the doorkeeper to the law says that it is “possible” to be admitted before the law, he stridently states and restates, “not at this moment.”88

One could not study modern American law without studying the jurisprudence of Oliver Wendell Holmes, who, in a bid to modernize law, moved away from the prospect of mathematical implementations of justice through formulas, writing, “the life of the law has not been logic but experience.”89 Holmes calls for admission of an experiential relativism, apart from science but apart from morality, into judicial opinion, however, in many ways, it was impossible. While new categories of experience were entering the legal lexicon (the most obvious of which is nervous shock, the admission of forms of psychiatric injury) the law nevertheless routinely failed to render intelligible the injuries and traumas pertaining to modern experience. An illuminating example comes from the Court of Exchequer in *Holmes v Mather.*90 In this case, the defendant’s horses were startled by a barking dog and, despite the defendant’s best efforts to control his horses, the plaintiff, a bystander, was injured. The court ruled in favour of the defendant, who was correctly adjudged as having fulfilled his duty. Faulkner, in *The Hamlet,* details a case that is remarkably similar. In *The Hamlet,* the court finds that Eck Snopes is not responsible for his horses injuring Vernon Tull, because, in this case, he did not own the horses – the transfer of ownership never took place in the eyes of the law. In both the real and fictitious case, the plaintiff is denied remedy: even though the plaintiff is injured because of the defendant (a ‘but for’ test would show in both cases that but for the defendant’s presence, the

90 (1875) LR 10 Ex 261.
plaintiff would not have been injured), the court must nevertheless rule against
the plaintiff. Faulkner savagely imbues his story with an added insult – a poetic
injustice – an equitable legal technicality confers ownership of the very
dangerous horse to the injured plaintiff, a kind of consolation prize. The modern
law can rule in a way that is, according to Reichman, simultaneously “tragic and
commonsensical.”91 Ultimately, Hammett’s and Faulkner’s detectives turn their
backs on the impenetrable and incomprehensible machinations of the law and
attempt to render crime and injury intelligible through their processes of
detection, which adheres, better than the law, to the principle of open justice –
that justice must, according to Lord Hewart’s maxim, be “seen to be done.”92
Perhaps, then, given that the courtroom cannot comprehend the randomness
and plurality to mete out justice proper, the detective’s performative task
renders justice, or its pursuit, suitably transparent.

Throughout American jurisprudence Rawls’ definition of justice as the
distribution of fairness is adhered to,93 and while the modern experience does
not negate this, the writings of Hammett and Faulkner simply replace intellect
with suspicion, logic with accident, articulation with unutterability, and
foreseeability with arbitrariness. We are reminded of Andre Bleikasten’s reading
of Faulkner’s persistent antinomies, which can be said of Hammett, too:
“paradoxes, with Faulkner, insist on remaining paradoxes; they refuse to be
eventually dissolved in the plenitude of the completed text.”94 Encoded in
America’s legal practices, and laced through Hammett’s and Faulkner’s
jurisprudences, is a “fundamental priority of plurality over every – whether
transcendentally or pragmatically constructed – sovereign unity.”95

91 Reichman, Affective Life of Law, 19.
92 Rex v Sussex Justices; Ex parte McCarthy [1924] 1 KB 256 at 259.
94 Andre Bleikasten, The Ink of Melancholy: Faulkner’s Novels from The Sound and the Fury to
Light in August (Bloomington: Indiana University Press, 1990), 356.
95 Augsberg, “Reading Law,” 379.
For the jurisprudences of Hammett and Faulkner I wish to draw on Reichman’s idea that “a modernist revision of justice... originates from a sense of loss.” For Faulkner the loss is of the South’s dignity and geographic integrity, and Hammett grapples with the loss of meaning in the city. I dare not compare these losses to the traumas that Reichman investigates in her scholarship, that of the explicit narratives of trauma that emanated from the battlefields of the Great War and the Holocaust, but simply appropriate loss and trauma on a broad, notional level.

In the following chapters, I will be paying close critical attention to the actions of the detectives with these notions of jurisprudence close at hand: both authors’ detectives enact a quest for justice that is, ultimately, performative, and that is classically American in its privileging of nature and sovereignty in individualism over positivism or strict empiricism; its emphasis on enacting democratic imperatives through speech and oratory; and in that it seeks not necessarily answers, but rather, edification through the process of interpretation. Augsberg argues that rather than “making consensus the guiding principle of the democratic process,” we ought to approach the theory of democracy (especially in the American mythologization of it, I would add) as one that requires “open-endedness”, judged “not by its results, but... an ongoing process that subverts every given result.” Augsberg adds, “communication cannot end in consensus without destroying itself, so the democratic process cannot be linked to the category of “truth” without suffering irreparable harm.” Likewise, Hammett’s and Faulkner’s detectives emphasize the chimerical search for justice as, rather than residing in stable clues, in an ongoing process of diligent action in pursuit of discovery. America too is conceived of as an eternal process, a continent that understood itself, and was understood by thinkers from Winthrop to de Tocqueville, Thomas Paine, and Henry Adams to Jean Baudrillard through futurity and dynamism.

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96 Reichman, Affective Life of Law, 162.
99 See Greil Marcus’ reading of Winthrop’s City on a Hill speech as not necessarily espousing American exceptionalism but rather simply force and dynamism in The Shape of Things to Come: Prophecy and the American Voice (New York: Farrar, Straus and Giroux, 2006); see Thomas Paine,
not lost, only problematized, by the advent of the modern. The pervading nihilism that characterized the modern which is evident in Faulkner and Hammett's literature is nevertheless met by the authors with a robust energy, and prospective vision, that is quintessentially American.

Part I

Dashiell Hammett’s Mean(ingless) Streets
The wicked flee when no man pursueth.

- Proverbs 28:3

We are no longer to remain plain and simple republics of farmers, like the New England colonists or the Dutch settlements on the Hudson. We are fast becoming a great nation, with great commerce, manufacture, population, wealth, luxuries, and, with the vices and miseries that they engender.

- Chancellor James Kent, 1821

At the close of Dashiell Hammett’s final novel, The Thin Man, Nick, a jaded, uninterested ex-PI, after what can only be described as a sub-par ratiocination of the mystery at hand, says to his wife Nora, who is sorely dissatisfied, “when murders are committed by mathematicians, you can solve them by mathematics.”¹ Nick’s summation of the mystery, and what will most likely happen to the accused, includes conjecture based on expediency, hearsay, complete disregard for rules of admissibility of evidence, and a cynical prediction of tabloid sensationalism corrupting the case and effecting a miscarriage of justice. Marking a turning point in the evolution of the detective novel and set in a world where “probably” is “a word you’ve got to use a lot” (221), Hammett’s hardboiled variation of the genre resolves that, because murder is illogical, it must be detected and solved according to an equivalent process of unreason.

It is a grim swan song to the genre; as will be discussed later in this thesis, through much of Hammett’s early work, it is the detective who is concurrently on trial with the various antagonists, thugs, and, worryingly, the whole town – including its police force and the office of the district attorney – but in The Thin Man, it is clearly the genre that is on trial. And we can assume that the genre

¹ Dashiell Hammett, The Thin Man (London: Penguin, 2006), 216. All subsequent references to this novel will be to this edition and will be incorporated in the body of the thesis. Originally published 1934.
suffers defeat, for Hammett wrote no more. In *The Thin Man*, unlike *The Maltese Falcon* and Hammett’s numerous Continental Op stories, Hammett gives his detective an interlocutor, someone to whom he must explain and, at times, justify his actions – not a judge, or any professional member of the community invested with legal authority, for he can too easily be shirked, ducked – but his wife, a chosen cohabitant of the domestic realm. To her, and through her eyes, the customary actions of the hard-boiled detective are revealed to be both jurisprudentially unsound and socially unsustainable, and it is under the weight of this scrutiny that Hammett, it seems, abandons his (anti)hero.

While *The Thin Man* will be critically analyzed in the final chapter of this thesis, I want to begin this chapter, and my investigation of Hammett’s oeuvre with the question: how did it get this way? It is interesting that Hammett’s novelistic oeuvre is book-ended by *Red Harvest* (1929) and *The Thin Man* (1934), two novels that produce especially world-weary detectives. In *Red Harvest*, The Continental Op’s world-weariness drives him “blood-simple,” and the Op uses unmitigated violence and cruel manipulation to structure the corrupt and entropic workings of Personville, or, more accurately – both phonologically and semantically – *Poisonville*. This is in stark contrast to *The Thin Man*’s detective Nick, whose world-weariness drives him to an inanely genteel life of cocktails, crosswords and escargot. In a novel completely devoid of Hammett’s characteristic grit, *The Thin Man* sees a mediocre man solve a mediocre crime, and his wife, in whom “a fundamental suspicion” of the epistemological and interpretive function of law is formalized, “contaminates the whole business of detection and discovery” with her very inconvenient interrogation of his methods.

In this chapter, I will map out the interrelationship between Hammett’s literature and questions of law and justice, to better understand

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2 *The Thin Man* is Hammett’s final, complete novel, and his final detective novel.
contemporaneous and public attitudes towards the law through the sentiment and actions of Hammett’s Private Investigators. In the face of the creation of the modern city and the centralization and institutionalization of the law, Hammett’s Private Investigators attempt to individualize and personalize justice, and invert and highlight the inadequacies of the procedural trends in the law.

But for what purpose, or to what end, does the private investigator – who is so popular among readers, and who, throughout the years, has suffered infinite mutations⁴ – seek to decentralize and disorganize the urban impulses to a fully-formed legal schema? And why does violence form such an integral part of the genre? The hardboiled private detective is, by definition, anti-establishment; in trying to protect, and operate within, the parameters of natural law, he seeks justice that is compelled by a compass atavistic, axiological, personal, moral. The private detective is written into existence, as E.M. Wrong argues, after the establishment of centralized police forces and a systematized understanding of what constitutes proof,⁵ and the genre operates “in the shadow of the law.”⁶ His understanding of justice is born of frustration: frustration at the utterly unpredictable and meaningless interactions, the emptied symbolic efficacy of ethical structures in the rise of capitalism, which the city promotes, and the law’s subsequent incapacity to make adequate sense of the unpredictable and meaningless interactions which result in crime or injury. The subsequent chapters on the fiction of Dashiell Hammett will examine the ways in which the detective accepts and internalizes the chaos of the urban, and seeks justice through this acceptance and internalization, through operating its logic,

⁴ Beyond the European and Hardboiled traditions, a more recent resurgence in the genre has seen female private detectives like Sara Paretsky’s V.I. Warshawski; African-American detectives like Walter Mosley’s Ezekial “Easy” Rawlins; and openly gay detectives like Joseph Hansen’s Dave Brandstetter. For a comprehensive survey on the evolution of the American private detective, see Robert A. Baker and Michael T. Nietzel, One Hundred and One Knights: A Survey of American Detective Fiction, 1922-1984 (Bowling Green, Ohio: Bowling Green State University Popular Press, 1985).


understanding himself as a cog in its machine. In my analyses of *Red Harvest* and *The Maltese Falcon*, I hope to answer the question that most interests me: if Hammett through his literature is investigating alternative forms of justice, and the detective is the personification of an alternative form of justice, then is this alternative preferred? Does Hammett’s characterization of his private detectives suggest that the *privatization* of justice is a viable ethical solution?

The private detective’s use of physical violence, his physical prowess, cuts to the heart of the thrill of reading Hammett, and perhaps answers the aforementioned question: his violence is, as Sean McCann writes, “the expression of liberty and the emblem of a society too various and complex to be submitted to the dreams of moral control.”8 The vision of a private eye clothed in the rhetoric of neovigilantism9 is seductive. It hearkens to a deeply American impulse, the idea that to uphold justice one may break the law – and it is based on a distinction of law and justice as essentially a wicked problem: that is, the institutionalization of justice necessarily dispels the tenets of equity upon which laws are supposed to be based – that is, once justice becomes institutionalized as *law*, it suddenly fails to be representative. Jonathan Kertzer’s differentiation between law and justice, with justice as “an ethical ideal, the virtue of virtues” and law as “a set of practical accommodations” is helpful, and recalls Benjamin’s differentiation

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7 By this I specifically mean relocating the prerogatives of law enforcement in the work of the private detective, and do not wish to confuse the reader with connotations of modern privatization of industry or big versus small government.
9 Richard Maxwell Brown observes that vigilantism was nurtured by the revolutionary ethos of America, and constituted an extralegal enforcement of community mores in the face of the frontier’s lack of effective agencies of the law. Noting that the “philosophy of vigilantism” held three tenets, that of self-preservation, right of revolution, and popular sovereignty, he suggests that this philosophy endured long after the frontier had closed, and neovigilantism grew after the Civil War “largely in response to the problems of an emerging urban, industrial, racially and ethnically diverse America.” For more, see Brown, “The American Vigilante Tradition” in *American Law and The Constitutional Order: Historical Perspectives*, ed. Lawrence M. Friedman and Harry N. Scheiber (Cambridge, Mass.: Harvard University Press, 1988), 173-190.
between two violent social urges “law preserving (restrictive, repressive) and law-making (expansive, revolutionary).”\textsuperscript{10}

I do not wish to suggest, however, that Hammett’s private investigators are the same. His heroes are each very different characters, and their considerations of justice and relationships with the law and their cityscapes – their landscapes of detection – are different. In the following pages I want to track Hammett’s jurisprudential considerations through each of his private detectives – the Op, Sam Spade, and, finally, in my concluding chapter, Nick and Nora Charles. I believe it is difficult to discern a clear and uniform understanding of justice in Hammett’s novels – for, to begin with, it is debatable whether (and I do not want to take it for granted that) all, some, or none of Hammett’s detectives have justice as an ethical imperative. When the travails of each of Hammett’s detectives yield justice (let us assume this entails the detection and detainment of criminals), is it, for each, and to what degree, designed or unwitting? Is what makes each of Hammett’s detectives so enigmatic the possibility that they could cavalierly conform to the signifiers of a heroic role to which they would profess no official allegiance, and are merely fulfilling private motives?

I will argue in the following chapters that Hammett, in his now iconic idiom of the streets, presents three different detectives vying for and representing three very different interpretations of law and three different American myths. There is the peripatetic Op, who roams the continent \textit{ad hoc} on assignments, and is a somewhat mysterious, mechanized laborer, for whom lofty notions of law and justice cannot compete with the rigor with which he approaches his assignments; who, like a chameleon, assimilates to each landscape rife with illegality without sentimentality. Then there is Sam Spade, indigenous to San Francisco with a case that appears in the same narrative discourse as a Romance and quest. He navigates each area of San Francisco as a legally operative space,

attempting to find meaning beneath a veneer of romance and adventure, but, unlike the Op, is a broken man at the end of The Maltese Falcon. Finally we have Nick Charles, who hails from San Francisco but finds action in New York City, who is an ex-detective, and whose foray back into the world of detection leaves him numb, silent and ready for drink.

Of course, to ask questions about Hammett’s detective and his relationship to American Law – the way it shapes and moves him, and vice versa – is to venture towards an interpretive, epistemological and historiographical thicket. In my previous chapter I suggested that, mythologically, “American Law” is a tautology, for, in its understanding of itself, America moved ever-constantly towards a legal ideal, recalling de Tocqueville’s interpretation of the American man’s pursuit of “indefinite perfectibility;” “forever seeking, forever falling to rise again, often disappointed, but not discouraged, he tends unceasingly towards that unmeasured greatness so indistinctly visible at the end of the long track which humanity has yet to tread.” I want to link this definition of American law with the myth of frontier, which too functions as a trope for the American man’s restless pursuit of pursuit. The classic picture of hardship and toil through wilderness enabled and valorized the rhetoric of freedom and rights:

Wherefore, I say, have we left the green and fertile fields, the cottages, or perchance, the old gray halls, where we were born and bred, the churchyards where our forefathers lie buried? Wherefore have we come hither to set up our own tombstones in a wilderness? A howling wilderness it is! The wolf and the bear meet us within halloo of our dwellings. The savage lieth in wait for us in the dismal shadow of the woods. The stubborn roots of the trees break our plowshares, when we would till the earth. Our children cry for bread, and we must dig in the sands of the seashore to satisfy them. Wherefore, I say again, have we sought this country of a rugged soil and wintry sky? Was it not for the enjoyment of our civil rights?

How is this frontier sentiment adapted to a post-frontier America? For Peter Wolfe, “the dissolution of the frontier into the megalopolis” heralds an uncanny and sinister fusion of binaries: “the conjunction of cruelty and kindness, and the infiltration of the macabre by the casual all pulse through Hammett.”\(^{13}\) Richard Slotkin, in *Gunfighter Nation: The Myth of the Frontier in Twentieth Century America*, suggests that the “hardboiled detective is both agent of law and an outlaw who acts outside the structures of legal authority for the sake of a personal definition of justice.”\(^{14}\) Slotkin suggests that the hardboiled detective, like Hammett’s Op, “is no less a recrudescence of the frontier hero than John Carter and Lassiter: an agent of regenerative violence through whom we imaginatively recover the ideological values, if not the material reality, of the mythical frontier.”\(^{15}\) I respectfully disagree. While Slotkin’s study of the frontier myth is illuminating, I believe when he considers the “pulp” writers of the early twentieth century he erroneously lumps Hammett with a series of western authors like Zane Grey and other *Black Mask* authors like John Carroll Daly, who I agree portray agents of “regenerative” violence. What separates the Op from the pack is his reappropriation of this myth – his use of frontier symbolism and rhetoric *without* the recovery of the frontier’s ideological values, and without reference to rights other than the self-reflexive right to work. While the Op may appear to straddle the law and “a personal definition of justice,” it is only gesturally, to show the impossible foundations upon which both are predicated.

In the following pages I want to forcefully extract Hammett from Slotkin’s array of pulp writers, who, in championing a legal-outlaw protagonist, enact a kind of wish-fulfillment poetic justice, where the bad guys predictably get what is coming, not because of the machinations of the law, but the licence of the author, whereby the private investigator intervenes in the chaotic and criminal under-over-world with beguiling, provocative force. Regarding poetic justice, Kertzer

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\(^{15}\) Slotkin, *Gunfighter Nation*, 228.
argues, “it is just, not because it honors an exact system of moral accountability, but because it is true to what is irregular in human experience and unaccountable in the convolutions of thought.”\textsuperscript{16} Hammett most definitely seeks a justice that is true to this irregularity and unaccountability – two principles, of course, inadmissible in the creation and maintenance of law. However I am more interested in a reading which sees Hammett succumb time and time again to poetic injustice, which Kertzer notes is epitomized in \textit{King Lear}. The Duke of Albany feebly espouses a discourse of justice that he has no authority to exercise: “All friends shall taste / the wages of their virtue, and all the foes / the cup of their deservings.”\textsuperscript{17} But Lear and Cordelia die unjustly, and no punishment is commensurate. The play, like Hammett’s prose, is governed, “overwhelmed, by a fiercer, tragic law.”\textsuperscript{18}

Hammett’s fiction presents a picture of post-frontier America, where the Wilderness is not defeated and done with so much as it is forgotten, abandoned in the pursuit of urban growth and monopoly capitalism. The American hero no longer traverses linearly the American mythical landscape; in the face of growing urban hegemony, while the “gunfighter or mountain man can move on to the next territory”, “the hard-boiled dick has no place to go. The settlements have reached the Pacific terminus and have spilled back on themselves.”\textsuperscript{19} In the carrying out of his work he circles the city with a neurotic energy. If each American character and each American industry was on the march Westward, as Frederick Jackson Turner would say, “impelled by an irresistible attraction,”\textsuperscript{20} seeking freedom and right coated in the rhetoric of enterprise, then the growth of urbanity and the centralization of government, culture and industry, meant that, for a people for which “movement has been its dominant fact,”\textsuperscript{21} a new set of definitions were needed to harness and explain the American Man and his

\textsuperscript{16} Kertzer, \textit{Poetic Justice and Legal Fictions}, 15.
\textsuperscript{17} V. iii, 308-310.
\textsuperscript{18} Kertzer, \textit{Poetic Justice and Legal Fictions}, 12.
\textsuperscript{21} Turner, \textit{Significance of Frontier}, 37. Italics mine.
purpose, in a landscape no longer an allegory of his judiciousness and his will. This manifested in what Arthur M. Schlesinger and Dixon Ryan Fox referred to as a “community effort which centered on a new ‘quest for social justice,’”22 where, in the face of the growing complexities of American life which was moving further and further away from the unsystematized individualism that seemed a relic of a now-exhausted rural opportunity, “a Hamiltonian exertion of governmental power had become necessary in order to restore Jeffersonian conditions of equal opportunity.”23

In my analysis of The Maltese Falcon, I will look at the city of San Francisco as a modernist rejoinder to Edgar Allan Poe’s Paris in “Murders in the Rue Morgue.” Poe’s story is set in the great multicultural, multivalent European metropolis. Much like Hammett’s San Francisco, in Poe’s Paris no Archimedean point exists from which one can secure objective insight when there are so many contingencies unreservedly at play, which create an active space for subjectivity, and speculation and testimony. Lawrence Frank writes, “the story itself depicts a culture in which disagreement and discord are everywhere. Men and women of different nationalities and languages are gathered in Paris”24 and cannot agree on the sounds that they heard – be it the words, the language, or even the gender of the culprit – coming from the murder scene. However the detective in “Rue Morgue” is nevertheless able to solve the case by a stroke of brilliance entirely unprecedented. Looking at the stones collected on the ground, Dupin is able to create “a chronological, an associative, and, implicitly, a causal sequence of ideas based on the assumption that law governs not only all natural phenomena, but also the workings of the human mind.”25 So regardless of the seamy city and its motley crew of denizens, Poe’s understanding of the city still insists that logic applies and lurks beneath even the most astonishing turn of events, and,

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23 Faulkner, The Quest for Social Justice, xv.
25 Frank, Victorian Detective Fiction, 32.
furthermore, in “the working of the human mind,” which of course upholds Enlightenment ideas of the natural rationality of man. A Great War and a Great Depression later, the logic that apparently governs the cosmos seems more elusive than ever – impenetrable, and frightening, like death in the fog.

Poe’s story is in line with the narrative trajectories of Arthur Conan Doyle and Agatha Christie, for whom beyond each narrative there exists an underlying foundation of law, which is tested by virtue of the crimes committed, but always remains intact. When Holmes, Dupin, or Poirot, solve the crime, they extinguish and exorcize the criminal from society, which subsequently resumes the status of civilized. We will see that in *The Maltese Falcon* the law’s foundational underpinning is as suspicious as the crime itself. The crime does not reside in Brigid, or Gutman, or Cairo, or Wilmer, but every space and every place of the novel is criminal, including Spade’s quarters; the crime is systemic, architectonic. In the case of classical detective fiction, W.H. Auden writes, “the corpse must shock not only because it is a corpse, but also because, even for a corpse, it is shockingly out of place.”²⁶ In hardboiled urban detective fiction, which “emphasizes place over plot,” the corpse never shocks: “Instead, it is the place that shocks. The body is simply an addendum, a visual accessory to the place, which somehow makes it more complete in its depravity.”²⁷

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²⁷ Sargent, “Murder and Mayhem,” 45.
Chapter Two

*Red Harvest: The Op Goes “Blood-Simple” in a Nightmare Town*

I will show you fear in a handful of dust.


Man is a rope stretched between the animal and the Superman – a rope over an abyss.

- Friedrich Nietzsche, *Thus Spake Zarathustra*

As soon as, on the one hand, labor is held by the whole community to be an honorable necessity of man's condition, and, on the other, as soon as labor is always ostensibly performed, wholly or in part, for the purpose of earning remuneration, the immense interval that separated different callings in aristocratic societies disappears... In America no one is degraded because he works, for everyone about him works also; nor is anyone humiliated by the notion of receiving pay, for the President of the United States also works for pay... In the United States professions are more or less laborious, more or less profitable; but they are never either high or low: every honest calling is honorable.

– Alexis de Tocqueville, *Democracy in America*

The right to follow any of the common occupations in life is an inalienable right. It was formulated as such under the phrase “pursuit of happiness” in the Declaration of Independence.

- *Butcher's Union Company v Crescent City Company,*
  per Bradley J

In *Red Harvest*, the Continental Op is in Personville, a town where the police, the lawyers, the industrialists, and the mob are likewise in cahoots and at war. The Op has been in town less than a week, and there have already been sixteen
murders, and, as he predicts, “more coming up.”¹ He has orchestrated a few of the murders, and casually tells Dinah Brand, whore and confidante, that she will be next. Her curious response, after telling him to shush, is “I am silly. I am afraid of the words” (160). Concerning murder, she fears its enunciation but does not engage with its reality. This passage is wonderfully evocative of Hammett’s America: rather than the mere pursuit of realism and grit, as Chandler saw it in “The Simple Art of Murder” (1950),² Hammett creates a world where it is the failure of language, and, more broadly, any and all sign systems, to establish a correlative physical meaning, that has society ailing. Neither euphemism nor metaphor can survive the landscape: when ex-cop McSwain offers to do “things” for the Op, the Op shoots back, uncompromisingly, “You want to stool-pigeon for me?” (95). McSwain laments, “There’s no sense in a man picking out the worst name he can find for everything” (96). Meanwhile, a belligerent brusqueness, “Smoke. Stink. Heat. Noise” (74) belies a mistrust for anything that is, stylistically, more florid or impressionistic than monosyllables in prompt, telegraphic manner. In his nightmarish landscapes, figurative as they are, the language seems less derived from cynicism and, ultimately, realism, as Chandler foresaw, than a certain relish for the grotesquely out-of-control – a nightmare of law-as-

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¹ Dashiell Hammett, Red Harvest, (New York: Vintage Crime/Black Lizard, 1992), 154. All subsequent references to this novel will refer to this edition and will be incorporated in the body of the thesis. Originally published 1929.

² Regarding Hammett’s realism, Chandler wrote in his 1944 essay:

> A world in which gangsters can rule nations and almost rule cities, in which hotels and apartment houses and celebrated restaurants are owned by men who made their money out of brothels, in which a screen star can be the fingerman for a mob, and the nice man down the hall is a boss of the numbers racket; a world where a judge with a cellar full of bootleg liquor can send a man to jail for having a pint in his pocket, where the mayor of your town may have condoned murder as an instrument of moneymaking, where no man can walk down a dark street in safety because law and order are things we talk about but refrain from practicing; a world where you may witness a hold-up in broad daylight and see who did it, but you will fade quickly back into the crowd rather than tell anyone, because the hold-up men may have friends with long guns, or the police may not like your testimony, and in any case the shyster for the defense will be allowed to abuse and vilify you in open court, before a jury of selected morons, without any but the most perfunctory interference from a political judge. It is not a very fragrant world, but it is the world you live in.

social-glue unstuck. Carl Malmgren agrees: "What Hammett’s fiction finally records is not the “real world” but rather the beginning of the fall of language from motivation to nonmotivation, from identity to difference, from presence to absence." In line with his modernist contemporaries, in Red Harvest Hammett imputes that language post World War 1 has been hollowed out, abandoned by meaning. What remains, then, is a hotchpotch of lone, bare signifiers, ciphers – much like the Op himself – stultified, tragic, and incapable of transcendence.

Much has been written about Red Harvest – a strange novel indeed. That the unnamed protagonist, whose rhetorical prowess far outweighs his physical traits (short, fat, ugly), does not exist and has no identity beyond his assignments, nor beyond the words on the page; that he neither represents nor operates within, nor attempts to achieve or realize, an ethical universe – and has no ‘higher purpose’ steeped in morality, as such; that the Op’s methodology as detective is suspect at best; and that the universe, come the dénouement, remains the same, corrupt, stinking mess: violence, while cathartic, cannot be said to be “regenerative.” While the law labours to restore an aggrieved party to the position they were in pre-tort or breach, the inner workings of Personville render this aim impossible. Personville, ‘a world... in which all money is ‘big’ and big money is ‘dirty,’ in which the few rich dominate the many poor, and in which the systems of justice and political representation have been systematically suborned by big money,” is a town where civil-law breaches flourish epidemiologically (the Op is called in, after all, in the aftermath of an industrial dispute) and inspire only criminal solutions.

So how do we evaluate this dystopian, nightmare-town, where only the perpetuity of lawlessness has absolute value, and everything else is in flux? Greil Marcus writes that it is tempting to see the quintessential film noir city, whether in film or crime fiction, as a Manhattan or Los Angeles, but, in reality, “the most

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4 Slotkin, Gunfighter Nation, 222.
emblematic noir location is a small, vaguely mid-Western city,"⁵ an abortive "grimy, striving spot."⁶ Noir historian Eddie Muller goes on to say it is a town “trying to be bigger than it is, in all the wrong ways.”⁷ Personville is just this place: dangerous and striving – the eight-month-long strike at the Personville Mining Corporation which prefigures the novel’s action is, in part, to “put themselves on the map, make labour history” (9), as well as grimy: when Mrs. Wilsson calls it “a dreary place” (4) and then adds “I suppose all mining towns are like this” (5), Hammett adds a blank, anonymous wash of grey to Personville – it could be, is, any mining town.

Personville is indeed a grey place, where the use of the colour grey to wash out and make bland is effective in simultaneously suggesting the mendacious; grey is both aesthetically and morally homogenizing, lending a precarious hermeneutic unreliability to the landscape, and its people. As an ethically in-between area, it suggests a highly indeterminate and unidentifiable morality or moral cohesiveness, and points to the potential deception of man's interpretation and cognition, which explains why, when the Op finally goes native – “This damned burg's getting me. If I don’t get away soon I’ll be going blood-simple like the natives” (154) – his ability to interpret and assess right from wrong is confounded. In the opening pages, we read of Personville as a “smoked” (4) city, whose “grimy sky” (4) and citizens alike are “a faded gray” (51), whose I.W.W. chief is a “gray man” (8) who wears “rumpled gray clothes” (6) and whose “face was grayish too, even the thick lips” (6). The police chief has a face “gray, flabby, damp like fresh putty” (144), and speaks to the Op, with cigar in hand, equivocally, “through smoke” (22). Dinah Brand, the story's lacklustre femme fatale is “gray-stockinged” (84) and lives in a “gray frame cottage” (31).

⁵ Marcus, Shape of Things to Come, 158.
⁶ Marcus, Shape of Things to Come, 158.
⁷ Eddie Muller wrote this in an email to Greil Marcus, cited in Marcus, The Shape of Things to Come, 158.
In his short story “Dead Yellow Women”, Hammett introduces the character Loop Pigatti – a Dirty Harry prototype, if you will – who is “a tough citizen, who runs a tough hole, and who minds his own business, which is making his dive show a profit,” and to whom “everybody looks alike... whether you’re a yegg, stool-pigeon, detective, or a settlement worker, you get an even break out of Loop and nothing else.” To Loop everybody appears the same; he cannot distinguish between station (cop, prostitute, mining magnate) and sees only, to quote Red Harvest, a bleary miasma of “uniform dinginess” (4). Hammett transforms the simmering fear of the modern city growing out of hand – becoming the big machine, Norris’ Octopus, unable to attribute singularity to or among (or even recognize) its denizens – to something which, while menacing, is nonetheless consistently and robustly egalitarian.

Regarding this haze of uninterpretability, where, as aforementioned, Personville is a sign-system that has become anarchic, Sean McCann writes,

> No one has a monopoly on violence and no one can have expectations about where it will cease. It is in this context as well that the city's double name, Personville/ Poisonville, makes most sense. The infection that spreads through Hammett’s city is one that reduces citizens to indistinguishable reflections of each other.⁹

So, the city that renders each man alike and indistinguishable does so via each man's inability to manage or organize or hierarchize or harness the latent violence of his surrounds. Poisonville is a menacingly topsy-turvy town where “frank and open” (59) are the call-cards of criminals. The entrance of a foreign agent – The Op – confronts this uncontrolled and intractable aporia with the threat of an investigative discourse that is linear and dialogic in nature; his putative quest for justice necessarily entails the stitching together of an

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inscrutable criminal space into narrative unity.\textsuperscript{10} This would explain why the anarchic action of the novel is so closely related to the eventual anarchic structure of the Op’s narrative, and, psychologically, the incomprehensible nature of the Op’s motives: as John Walker notes, “the Op internalizes and absorbs the anarchy of the... environment.”\textsuperscript{11} The sprawling action of the novel is hard to follow; very soon after the opening pages the pretense to cause and effect is dispelled as just that – a pretense. This is why it is impossible for the Op to both enact justice in the town and, more broadly, justify his place in it: he struggles with meaning and verisimilitude. When the Op first arrives at Personville, it is simple: he has been engaged by Donald Willsson, who, upon the Op’s arrival sets off the body count. Instead of returning to San Francisco – his client dead – the Op sticks around. But why? The story of revenge against the chief of police – “your fat chief of police tried to assassinate me last night. I don’t like that. I’m just mean enough to want to ruin him for it. Now I’m going to have my fun” (64) – is flimsy at best. Robert Edenbaum notes, “the Op’s own explanation for his motives...is not particularly convincing,”\textsuperscript{12} for the Op to enact vengeance on Noonan in the most circuitous, impersonal way is simply not credible. There is no real reason for him to stick around, it seems more out of professional courtesy to the man that hired him and to round out a case that otherwise would have been without narrative, defunct. I think the impulse to stay becomes part and parcel with the impulse to narrate, to create narrative\textsuperscript{13} as an ontological imperative. And this is what he does. Narrating and detecting/crime-solving, are bound in a beautiful unity by the first-person

\textsuperscript{10} See Julian Murphet’s Jamesonian reading of Raymond Chandler’s detective fictions, where he notes that Phillip Marlowe, the Private Investigator provides a “formal solution to the unique spatial problems of representation furnished by Los Angeles” where “in a city so divided... only the tough P.I. will have the sufficient (professional) cause to stitch its separate parts together in a persuasive narrative unity.” \textit{Literature and Race in Los Angeles} (Cambridge & New York: Cambridge University Press, 2001), 21.


\textsuperscript{13} See Malmgren, “Crime of the Sign,” for a sophisticated account of the metalinguistics of \textit{Red Harvest}. Malmgren writes “Red Harvest is a talky novel, composed in great part of dialogue, much of which is metalinguistic; it talks about itself,” 380.
pronoun, for the Op exists only to conflate (private) eye with I; detecting makes the detective, and, as David Kelly writes, “as he records his adventures in the first person he textualizes his place in this world so that each case for him becomes a biographical trace.”¹⁴ The detective is defined by his detecting, which in turn displays the fatalism of the genre, and so the terse language becomes the stylistic pursuit of this fatalism. The action of the novel, in the face of this nihilism, is internalized, as the Op is changed from the violence, not the corrupt Poisonville, which, he knows, will “go to the dogs again” (203) once it is cleaned up. Mystery spirals out of control and spirals inwards, “a dramatizing of consciousness.”¹⁵ The mystery of the novel is relocated from the ambit of ‘whodunit’ and instead follows the mystery of the Op’s motives – and his very being.

The diegetic story chronicles the Op's movement from order to chaos, and from law to lawlessness. The Op sticks around to elicit stories from the townsfolk, to find out definitive answers to definitive questions: when he first visits Elihu Willsion and tells him about the possibility of his daughter-in-law killing his son, Elihu bellows hysterically, “is she in jail?” and “what the hell are you waiting for?” The Op, level-headedly, replies “For evidence,” (14) baffling his interlocutor. He then tells Elihu another possible explanation for his son's death – a sordid explanation that envelops the whole town in a haze of corruption, with Elihu, the “Czar of Poisonville” (12), responsible for the town’s uncontrollable sleaziness. Elihu, who hired “gunmen, strike-breakers, national guardsmen and even parts of the regular army” (9) to break the eight-month strike, has the city, which he “owned” (8) – just as he “owned a United States senator, a couple of representatives, the governor, the mayor, and most of the state legislature”(8) – swept out from under him. The Op learns that “when the last skull had been cracked, the last rib kicked in,” when “organized labor in Personville was a used firecracker” (9), Elihu's guns for hire decided to keep the city: Elihu may have

won the strike, but he lost his hold on the city and the state. To beat the miners he had to let his hired thugs run wild. When the fight was over he couldn’t get rid of them. He had given his city to them and wasn’t strong enough to take it back. (9)

Elihu, Hammett’s personification of big money (to borrow Slotkin’s phrase) is emblematic of the entropic and irreversible workings of capitalism, from which not even the capitalists are safe. The police are involved, too, in the rivalry for power in Personville: “the buying off of judges, police, and media has ruled out any moral or ideological clash between lawmen and outlaws.”16

Even though Elihu is betrayed by the hired guns who “won the strike for him and took the city for their spoils,” he still “couldn’t openly break with them” because “they had too much on him. He was responsible for all they had done during the strike” (9). Elihu is in a quandary: he cannot now appeal to the law, a set of rules that he has bought and sold. This is why in his conversation with the Op he must stick to the more simplistic, linear and more palatable story of the jilted (French) wife: “That woman killed him” (16). The Op reopens the floor to the nonlinear and noncommittal, responding only with a “Maybe.” He repeats this “maybe”, insisting that the geopolitical also must be “looked into too” (16). At this stage of the narrative, The Op is remarkably optimistic about his abilities to discern guilty from guiltless, right from wrong. He has a simple focus: “learn who killed him. Not who could have or might have, but who did” (35). Investigating but one murder, the Op believes at first that he can deal empirically with data that is readily available for collection and analysis, a possibility that, by the end of the novel, after nearly two-dozen murders, is revealed to be some wayward pipedream. The attainability of knowledge here in the opening of the novel is decidedly Sherlockian. Lawrence M. Friedman, in his historicization of the detective in American literature, sees the detective as a response to a new sense of social mobility and mutability: “both reflect a fluid, restless mobile social

16 Wolfe, Beams Falling, 129.
system, with endless possibilities for false identity, mysterious origins, strange secrets. The detective... cuts through to the hidden core... reveal[ing] the underlying reality."17 The Op moves, however, swiftly to cynicism: the barren landscape of Poisonville, its impenetrable mendacity, brings the Op swiftly from genteel cognizance into the twentieth century modern: reminiscent of Eliot’s Waste Land, Poisonville contains a cemetery of signs, all “evidence”, perhaps, of some defunct and unknowable affair. Where in the beginning The Op refuses to pay Dinah for information, citing the “principle of the thing” (36), after The Op has given his “me versus Poisonville” (69) speech, he employs Dinah as a paid snitch. This is all part of his methodology, or lack thereof, that flies in the face of the traditional search for meaning: the Op relies only on a seemingly random, centrifugal violent energy which he unleashes on the town to “see what would happen” (84).

His disregard for legal procedure and, in a sense, narrative procedure and decorum, becomes most evident in the Op’s refusal to marry crime, culprit, and punishment, where the Op, in numerous stories, sends a criminal to the gallows, but for the wrong crime. This philosophy – it doesn’t matter what you hang for, so long as you hang – suggests a universal, indelible tarnish in committing a crime, and the institutional law’s procedural mechanisms can be shirked to make way for its punitive might, recalling the end of “The Golden Horseshoe”. Thus punishment for a crime, in the Op’s world is neither preventative nor instructive, but merely a swift act comprising partly of vengeance, and partly in the pursuit of society’s protection: it is the extraction of a bad egg from the body politic. Slotkin is correct when he perceives “the justice which the detective achieves affects persons, not classes; it changes situations but does not transform orders.”18 Moreover, his disregard for proper procedure not only reflects but also contributes to the inefficacy of the law, for when criminals are convicted for the wrong crime, importantly, no practical legal precedent is set.

18 Slotkin, Gunfighter Nation, 228.
After the Op – with his motives startlingly unclear – has “uncooked” a prizefight, which results in the brutal stabbing of one of the pugilists, Dinah, despairs: “so that’s the way you scientific detectives work. My god! For a fat, middle aged, hard-boiled, pig-headed guy, you’ve got the vaguest way of doing things I ever heard of.” The Op replies, “Plans are alright sometimes... and sometimes just stirring things up is alright...” (84-5). In “$106,000 Blood Money” when the Op unveils a baffling plan to catch a criminal mastermind, a plan that makes no sense, he explains with a grin, “wheels within wheels.”19 However, in Red Harvest the Op stirs up more than he bargains for: directly after the match, another brawl occurs – this time in Dinah’s home – where she attacks the feeble Rolff in a sickening scene of laudanum-induced frenzy. Violence is seamlessly carried into the domestic realm: in the city of Poisonville, there are no apparent geographical or social barriers to designate a legal schema akin to jurisdiction – a space in which one can, literally, speak the law. And of course the analogy of the boxing ring works beautifully in Hammett’s novel – perhaps it is a microcosm for the inner workings of Poisonville. Boxing, a sport that permits the impermissible, makes temporarily lawful the illicit, is a perfect example of a bound space, like a city, which is governed by a legal fiction – a set of tenets that arbitrarily distinguish conduct from misconduct. However, even within the ring of sanctioned illegality, ironically, the laws cannot hold, as a knife is introduced without a moment’s hesitation. Perhaps it is a nod to the Hobbesian paradox of the necessary state of exception: given that, from the state of nature, the imposition of the law cannot itself be lawful; when the law is suspended in cases of emergency, or, in this case, as it is in boxing matches, there is always the real fear and mistrust that it could not be reinstated and instead become the norm, recalling Agamben. And it isn’t reinstated. After the fight, violence seeps into every pore of the city – a city that cannot adhere to a cohesive legal fiction, it seems, and so a city that spurns narrative. Sean McCann writes of Hammett’s narratives, “rather than restoring justice in a single transformative moment,

violence leaks out of control.” Perhaps this is because traditional concepts of restorative justice rely on black and white, good and evil, a manicheistic landscape – rather unlike the tenebrous, grey Poisonville, which oscillates between resembling a state of nature or a state of exception.

In a city where violence is motivated by some invisible and inscrutable rage, it is the Op’s job to piece together story – as narrator and PI – the corollary of which is to enact some sort of justice based on a chronology of events. His speech acts are self-conscious and theatrical: “I began a sentence:” (16) and “I gave a speech:” (67) introduce his sentences, and speeches. And ultimately, the Op has only meaningless platitudes to offer in exchange for meaningless crimes: when the First National Bank teller, a young nobody named Albury, confesses to killing Donald Willsson, he confesses his anxiety about his lack of conviction, or the lack of meaning, in committing such a serious crime: he says, “I couldn’t – I can’t now – quite understand – fully – why I did what I did. Do you know what I mean? That somehow makes the whole thing – and me – cheap.” The Op, in the rare occasion of being stuck for words, just as Albury was stuck for, perhaps, a meaningful motive, muses, “I couldn’t find anything to say except something meaningless like: ‘Things happen that way” (62). Walker writes that “the Op’s customary reliance on tautological utterances reflects a conscious inability to construct an authentic discursive response,” and it is this inability to find a pattern (narrative, discursive reality) that thwarts the possibility of justice as a veritable outcome of the events. As it stands the “justice” that occurs at the end of the novel is, as Slotkin suggests, merely situational in that, in a way, one awful situation has been cleared for another to blossom.

So in Red Harvest the detective advances to a promised resolution – the solving of the crime – that never comes, or, more accurately, that proves to be a red herring of sorts: the mystery of who killed Donald Willsson is cleared up about a

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20 McCann, “Constructing Race Williams,” 705.
quarter of the way through the novel. Instead, what ensues is the Op acting as an economic and political scourge throughout the town, his path interrupted by digressions (recalling the title of another Op story, “Bodies Pile Up”) which reveal, tauntingly, death without pattern, and greed without justification, suggesting the job of the detective, perhaps, is ultimately useless – needing no inspiration, Sherlockian genius, but only force, energy, and commitment. As the Op admits to his colleagues: “if we can smash things up enough – break the combination – they’ll have their knives in each other’s backs, doing our work for us” (118). Merely another player in a Hobbesian war of each against all, in Red Harvest the Op succumbs to the same orgiastic blood-lust that we witness in “The Big Knockover:"

> it was a swell bag of nails. Swing right, swing left, kick, swing right, swing left, kick. Don’t hesitate, don’t look for targets. God will see that there’s always a mug there for your gun or your blackjack to sock, a belly for your foot.22

Language and narrative are disrupted in this novel by pathological violence that proves to be its own raison d’être, so what kind of justice does it foresee? In Rawls’ esteemed A Theory of Justice, he introduces justice as “the first virtue of social institutions,” just as he analogizes, “truth” as the first virtue “of systems of thought.”23 Now, to take this marriage of justice and truth as commensurate first principles, Red Harvest shows that without an underlying truth, there can be no foundation of justice in either the social institutions of a town or the way these social institutions distribute justice in respect of a fair apportionment of benefit and burden. In this way, the Op rarely solves a case, per se, rather he inserts himself as one of the players. Most critics of the Op have noted that rather than decoding the mystery, piecing together a history of events, clue by clue, the Op instead functions as an encoder, for “Personville is a world of untapped,

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unharnessed energy” and the Op’s modus operandi involves “not the decoding of a discrete series of facts, but rather, an encoding process that activates the surplus energy inherent in the world, not deduction or ratiocination but an attempt at totalizing comprehension.”

He is, in this way, first and foremost, as a PI, a worker. A purely mechanical force, the Op goes about getting his work done. He is an agent in Cecilia Tichi’s mechanical envisioning of modernist America in *Shifting Gears: Technology, Literature and Culture in Modernist America*, where she writes, “post-Civil War America increasingly presented a landscape of machines and structures whose component parts were visible to the naked eye.” Men are personified machines, whose constituent parts can be seen by the naked eye: in “Fly Paper” the Op and antagonist Babe McCloor engage in gunfire. Hammett writes that Babe “snorted like a locomotive” in the middle of a scuffle, and then, “at the first corner he stopped to squirt metal…” Combat and illegality are perfectly mechanised too, a constituent part of a social machine oiled by disorganisation and distortion. The Op, in this light, can be seen as a prototype for Chandler’s Philip Marlowe, who, in *The Little Sister*, despairs self-consciously,

you’re not human tonight, Marlowe. Maybe I never was nor ever will be. Maybe I’m an ectoplasm with a private licence. Maybe we all get like this in the cold half-lit world where always the wrong thing happens and never the right.

In *Red Harvest* the unlawfulness of the law is met by a nonchalant Op who cannot speak the discourse of justice, and so does not meet law with justice, as we

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expect of our hero. The Op’s relation to the law is gestural and perfunctory; it is completely hollowed of judicious pursuit. Immediately the generic expectations are quashed (the journey from error to justice, the road to which is scattered with strategically placed “evidence”), they are misaligned with the mystifying intentions of the protagonist and the pessimism of the author. The Op lives and breathes his work, and this supersedes the dialectic of good and evil. The Op is characterized only by a commitment to action. In James Ellroy’s introduction to The Dain Curse, The Glass Key, and Other Stories, he quotes jurist-critic David T. Bazelon, who wrote of Hammett (not the Op):

He is primarily a job holder. He goes at his job with bloodthirsty determination that proceeds from an unwillingness to go beyond it. This relationship to the job is perhaps typically American. The idea of doing or not doing a job competently has replaced the whole larger issue of good and evil.29

This is starkly reminiscent of Hammett’s Op, and Ellroy goes on to write: “Hammett’s workday men risk peril for trifling remuneration and never question the choice... [they] stand hollowly proud in their constant case conclusions. They are in no way affirmed or redeemed. They have survived.”30 This is most beautifully seen in the exchange between the Op and Princess Zhukovski in “The Gutting of Couffignal”, where the tête-à-tête between Investigator and Culprit is telling. The Princess is cornered by the Op, who has found out that she is responsible for the mayhem on the fictional island of Couffignal. She offers the Op all the island’s wealth in exchange for her liberty. The Op retorts:

“Now I’m a detective because I happen to like the work. It pays me a fair salary, but I could find other jobs that would pay more. Even a hundred dollars more a month would be twelve hundred a year. Say twenty-five or thirty thousand dollars in the years between now and my sixtieth birthday.

Now I pass up about twenty-five or thirty thousand of honest
gain because I like being a detective, like the work. And liking
work makes you want to do it as well as you can. Otherwise
there'd be no sense to it. That's the fix I am in. I don't know
anything else, don't enjoy anything else, don't want to know or
enjoy anything else. You can't weigh that against any sum of
money... in the past eighteen years I've been getting my fun out
of chasing crooks and tackling puzzles, my satisfaction out of
catching crooks and solving riddles. It's the only kind of sport I
know anything about, and I can't imagine a pleasanter future
than twenty-some years more of it. I'm not going to blow that
up!"\textsuperscript{31}

Most interesting in this passage, where the Op tells of his desire for a life
dedicated to repeatedly solving puzzles and catching crooks, is the very finite
discourse within which he operates: the funny repetition of several phrases
indicates that honest language, like honest work, is inescapably circular, as he
autologically describes his actions. Like most of the Op's language when he is
telling the truth, it is devoid of rhetorical flourishes; it is simple, clear – almost
stiltedly so. This quotation has a famous companion piece in \textit{The Maltese Falcon},
where Sam Spade says, “I'm a detective and expecting me to run criminals down
and then let them go free is like asking a dog to catch a rabbit and let it go. It can
be done... but it's not the natural thing."\textsuperscript{32} Dedication to work is the raison d'être
of Hammett's Private Eyes, leading Stephen Marcus to conclude that the role of
the detective is housed in fulfilling neither a social nor an ethical prerogative, but
rather "the realization of an identity."\textsuperscript{33} Identity being indeed a slippery thing for
the Op, who has no name, no social ties, no family as such, and whose wallet
houses many different identities, many different alibis. In “Couffignal,” The
Princess, having exhausted the monetary angle, then attempts to arouse
sympathy with seduction. The Op is strangely unmoved:

\begin{itemize}
\item \textsuperscript{31} Hammett, “The Gutting of Couffignal” \textit{The Big Knockover}, 3-37, 33. Originally published 1925.
\item \textsuperscript{32} Hammett, \textit{The Maltese Falcon}, (New York: Vintage Crime/Black Lizard, 1992), 214. All
subsequent references to this novel will refer to this edition and will be incorporated in the body
\end{itemize}
That was out. I don't know where these women get their ideas. “You're still all twisted up,” I said brusquely, standing now and adjusting my borrowed crutch. “You think I’m a man and you're a woman. That’s wrong. I’m a manhunter and you're something that has been running in front of me. There’s nothing human about it.”34

The Op, crime solving animal-cum-machine35, has been programmed. He is, after all, an “operative,” not a man, and without ego. He will work monomaniacally to achieve his programmed end. He does not respond to The Princess in a moral or sexual register, but rather a pragmatic one: there’s nothing virtuous about his decision; he rejects her because it is his job. Walker writes, “Hammett’s narration reduces the subject to economic function or idiosyncratic trait, and then distorts and magnifies this feature to subsume the entire individual,”36 and The Op himself is the greatest example of this, for his economic function is as clear as it is all-encompassing: the Op is a worker. From here it is easy to see why critics such as Carl Freeman and Christopher Kendrick have interpreted Hammett’s work according to his Communist affiliation – for this speech of the Op’s is something of a panegyric to the benefits of labour.

However Poisonville breaks down the Op’s drive, for, as the narrative becomes interiorized, it is the poison of Poisonville that has the Op breaking “state laws and human bones” (215), “juggling death and destruction” (156), and becoming entirely sinister, breaking even the codes of the Continental Agency. To repeat Marcus, the Op is but a realization of an identity, and even this identity is destabilized by Poisonville. The Op’s fellow detectives who have been sent into Poisonville do not trust him, and the Op himself is disturbed by the workings of his own mind:

35 John Walker, in “City Jungles” notes the easy conflation of the mechanical with the animal, the primitive and the industrial:
   The Op internalizes and replicates the violence of his environment in the manner of a machine, yet his delirium precipitates a regression to animal instincts. This paradoxical conflation of machine and animal serves as the principle of characterization that motivates the inhabitants of the urban pastoral. (126-7)
'Now what did you bring the ice pick in for?'
'To show you how my mind’s running. A couple of days ago if I thought about it at all, it was a good tool to pry off chunks of ice.'
I ran a finger down its half-foot of round steel blade to the needle point. 'Not a bad thing to pin a man to his clothes with. That’s the way I’m begging, on the level. I can’t even see a mechanical cigar lighter without thinking of filling one with nitroglycerine for somebody you don’t like. There’s a piece of copper wire lying in the gutter in front of your house – thin, soft, and just long enough to go around a neck with two ends to hold on.' (157-8)

The Op marvels perversely at his ability to make sinister domestic, inanimate objects as murder weapons, and knows that he has been infected by geography: “it’s this damned town. Poisonville is right. It's poisoned me” (157). And yet he does not leave. He has become an integral component to the machinations of the town. When Dinah asks him to take a few days away from Poisonville, he says,

Can’t sister. Somebody’s got to stay here and count the dead. Besides, the whole program is based on the present combination of people and events. Our going out of town would change that, and the chances are the whole thing would have to be gone over again. (158)

The Op must work to topple the haywire institutions of Poisonville from within, he is a mechanized one-man-revolution, indeed, a warning against capitalism unchecked. Just as Upton Sinclair’s The Jungle “questions the ideology of natural competition that capitalism promotes as a basis for social organization,”37 and, as Dolin details, succeeded insofar as the then-President Theodore Roosevelt ordered an inquiry into Chicago’s meat industry from public outcry post-The Jungle, perhaps Hammett too, in presenting a fiercely Hobbesian view of the monopoly capital that was beginning to be the most dominant form of capital in America, was attempting to raise social and economic awareness. Freeman and Kendrick posit, “since, after all, capitalism ultimately undermines bourgeois

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legality, what could ‘illegitimate’ capitalism be?” This question – how does one ascertain illegitimacy in this capitalist system – finds its answer in the curious trajectory of the Op’s actions. The answer, of course, is that the only thing that is illegitimate in the capitalist system is what interferes with the flow of capital, anything at all which decelerates. The Op acts in this novel as an agent of chaos: he reconfigures the town economically, but he does not improve its functions in any particular way, or with any moral urgency. He is merely an initially disinterested regulator, who, once he becomes interested, wreaks havoc on the unsuspecting town. He comes to operate in a manner befitting Agamben’s Sovereign, a man who toes the threshold of “the point of indistinction between violence and law, the threshold on which violence passes over into law and law passes on into violence,” but with no real method, only with the crude and obliterating brutality of “dynamite” (118).

What method, then, is discernible from this madness? Freeman and Kendrick do note that the Op operates “in alliance with... the letter of bourgeois legality; thus he acts decisively only against those who have placed themselves irrevocably outside the law,” given that he is eventually employed by Elihu Willsson who “ties him to the state.” In this way Freeman and Kendrick conclude that the Op maintains a “fundamental allegiance to the letter of the law.” Is it this recipe of an accidental and still non-committal allegiance or gestural regard to the letter of the law, and utter disregard for the spirit of the law, that makes the Op, according to Slotkin, “a moral free agent?” Slotkin argues that Hammett’s “Continental Op stories idealize the detective agency as a disinterested force for justice.” Does Hammett call for the displacement of institutionalized law from the throne of governance, and the replacement of it with a private agency? Is the Op or his agency idealized? I do not think so. It is one thing to argue that the law in _Red

38 Freeman & Kendrick, “Forms of Labour,” 213.
39 Agamben, _Homo Sacer_, 32.
40 Freeman & Kendrick, “Forms of Labour,” 214.
41 Freeman & Kendrick, “Forms of Labour,” 214.
42 Slotkin, _Gunfighter Nation_, 228.
43 Slotkin, _Gunfighter Nation_, 224.
Harvest is not disinterested, but quite another thing to argue that the Agency is. In Red Harvest, the laws have been suspended: by the middle of the novel, the Op understands that the mob “own the courts, and besides, the courts are too slow for us now... so evidence won’t do” (118) and advises Mickey and Dick, Continental Operatives, “don’t kid yourself that there’s any law in Poisonville except what you make for yourself” (119). The police do not police, but are simply one of the warring factions in Red Harvest: at one stage in the novel, they offer getaway cars. Like the Op, they also only display an allegiance to the letter of the law: they release prisoners temporarily in order for them to commit a midday bank heist, knowing that later the criminals can use their incarceration as an unimpeachable alibi. To megalomaniac Elihu Willsson, the law is simply another market commodity, but one that turns out to be a bad investment: once bought, it quickly plummets in value. By the time he needs it, it is no longer imbued with symbolic force enough to help him.

In The Maltese Falcon, which will be analyzed in the following chapter, we will see Hammett ruminate with more bitterness and less detachment on the ways in which the law cannot be disinterested when its key players are controlled by the political machine. I do not think it is prudent to argue, however, that Hammett believes the private detective agencies provide a better service than the law. Firstly, as I mentioned earlier, his detectives are all very different men – Hammett quite clearly refuses to present a homogenous group of detectives, a legion of extralegal knights-errant. Secondly, while a good deal of Hammett’s short stories rather simply involve the detective doing what he does best, his novels, in which he has room to experiment with the genre, are more interested in the fallibility of the detective, and the inability of the detective to do a better job than the law. It is not as though the law has been corrupted and that the agency remains pure – everything, rather, is subject to the same inescapable rules of entropy. The Op himself, too, is no idealized alternative to a law-enforcer: while Slotkin argues that the Op is “disillusioned... but still capable of believing in
and acting on a traditional concept of honor,” I believe that on a close reading, it appears to be a common misinterpretation. We need only to be reminded of Hammett’s story “Corkscrew”, which perhaps provides a central metaphor for the Op’s understanding of the world around him, and where his talents lie: “You can’t fight worth a damn,” Chick says to the Op, scowling, “All you know is how to hit.” The Op is no idealized law-enforcer, and he has no code. He is merely the personification of sheer force, acceleration, impact (in “Dead Yellow Women” he narrates, in the midst of violent action, “something stopped my foot. Nothing stopped me”): he can hit, but, unable to engage in any bilateral exchange – whether it be of punches or ideas – he is a thoroughly unsuitable candidate for any long-term legal action. My last reason for believing that Hammett makes no case for the private detective being a better preserver of order and distributor of justice than the law derives from the action of Red Harvest. We are reminded that the detectives of the Continental Agency are not burdened with the onus of decontaminating Poisonville, or of solving any of the crimes, which is essential of the law. When Dick, another continental operative, suspects that the Op killed Dinah, the Op exasperatedly says to him, “go back to San Francisco, Dick. I’ve got enough to do without watching you.” The next line, “he put his hat on very carefully and very carefully closed the door behind him when he went out” (189), is very carefully and very measuredly written: Hammett ensures we understand that Dick has no intention of pursuing his suspicion; it is simply not his job. He does not care one way or another, and so he leaves. The law, on the other hand, cannot so luxuriously leave suspicions uninvestigated.

The law seemingly only has determining power in the opening pages of the novel, where the Op still yields to legal recourse, and in the end, where higher powers – the National Guard – are brought in to order the administrative mess. The entire middle section of the novel is marked by moral deracination, and, if not illegality, then alegality, and amorality, and perhaps this can be seen as a

44 Slotkin Gunfighter Nation, 228.
shrewd synecdoche for middle America – that strange, vast space, which houses Personville and countless other towns just like it, towns that “attract a lot of gentlemen who don’t care how they get their money.” It is, as Turner perhaps foresaw, Middle America that gets left behind in the rhetoric and myth of American progress and the dynamism of moving from the East Westward. The final pages of the novel see Reno, the last crook, literally talk himself to death, Poisonville under martial law, and the Op disappear from our pages. We are reminded only of the endemic dissipation of Poisonville, and we are not completely convinced that Poisonville is “developing into a sweet-smelling thornless bed of roses” (216). Natural symbolism in Hammett’s prosaic environment is neither Romantic (suggesting an idealised cohesion or regeneration in its form and scope), yet nor is it Realist (in which familiar, localised, secular actualities are conveyed). Rather, nature in Hammett’s cities is coopted by a distinctly surrealist imagining: it marks a space where only “guns blossom.” Organization in the Op’s understanding of the modern city is only cynical, and subject to paradox and perversion: one of the very problems of Personville, in fact, is that, even when men are allied and attempt to organize, their alliance itself, the bond between them, is an impediment: in the final shoot-out the Op laments,

We did our best, but we were too damned amalgamated for good fighting. You can’t shoot straight holding a man in your lap, another hanging from your shoulder, while a third does his shooting from an inch behind your ear. (198)

The social urge is at best, then, suffocating, and at worst, warring, moblike. The Op is not the most judicious in the city but the man who leads the life most lonesome and peripatetic, and so paradoxically, because of his solitude, most evolved and attuned to the city, most likely to survive. In the story “This King Business” Doctor Semich, “a mild, elderly scholar with no knowledge of worldly

\[47\] Hammett, “Corkscrew,” The Big Knockover, 267.
\[48\] Hammett, “Corkscrew,” The Big Knockover, 265.
affairs” believes that “mankind must learn to live with bacteria as with friends... our bodies must adapt themselves to diseases, so there will be little difference between having tuberculosis, for example, or not having it. That way lies victory.”

This is, perhaps, the key to the Op’s survival, his evolution so as to fit in with, internalize, reflect, and befriend, the irregularity that defines the modern condition.

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49 Hammett, “This King Business,” The Big Knockover, 115-170, 141. Originally published 1928.
Chapter Three

*The Maltese Falcon: The Fall of Sam Spade*

After such knowledge, what forgiveness?

- T.S. Eliot, *Gerontion*

Their justice - it was a lie, it was a lie, a hideous brutal lie, a thing too black and hateful for any world but a world of nightmares.

- Upton Sinclair, *The Jungle*

But Justice turns the balance scales,
sees that we suffer,
and we suffer and we learn.
And we will know the future when it comes.
Greet it too early, weep too soon.

- Aeschylus, *Agamemnon*

In Fritz Lang’s 1931 film, *M*, an elusive child-murderer who has been terrorizing the inhabitants of a German town is, in the end, hunted down and caught by a vigilante group of both citizens and criminals. The police are represented in the film as an incompetent, dithering bunch, and the town’s justice system, once the murderer is found, is denied the right to process the accused; the town’s citizenry opt instead to stage their own unofficial *mock* trial of the criminal. Now what is most striking about this very strange closing scene is the very care and attention that is taken by the townspeople to ensure that their (hysterical and violently impassioned) dispensation of justice to the criminal emulates a real trial: for example, he is made to sit in a makeshift box, and he is given a defence attorney.
This is not the first time in the postwar 20\textsuperscript{th} century that this trope appears, where, while the (substantive) law is suspended, its procedural tenets are retained. In \textit{The Maltese Falcon}, a considerable bulk of the action of the novel appears in dialogue, in Spade’s apartment, which is an adaptable and multipurpose space: just as Spade’s bedroom becomes “a living room now the wall-bed was up…” (61) we soon see that the bedroom-cum-living room is also used as a boardroom, a courtroom, and a prison. Spade, like M’s usurpers of the law, references at first the symbols of the law in order to legitimize his extralegal actions. The apartment is a space where Spade, who has a clear home-court advantage, wears a commensurate number of hats: he is a player, accuser, accused, lawyer, judge, jury, and warden. In this chapter I wish to examine Spade’s methodology as a private detective, especially given that it differs in so many ways from the Op’s. Like the Op, Spade is weary of both the police’s and the court’s capacity to comprehend and render intelligible crime, and so goes it alone. Moreover, Spade feels as though he is better equipped than the law to understand crime, and uncover the criminals: he seems to understand the darkness in human psychology, and is attuned to the rhythm of the city: understanding and incarnating the gruesome paradoxes he detects, Spade is characteristically paradoxical: “the upper part of his face frowned. The lower part smiled” (33). In the opening pages of the novel, Spade promises to deliver a justice based on intimate knowledge and street-level experience of the modern condition, while the legal and judicial apparatuses of the state that feebly “vie for explanatory authority around the genre’s many corpses”\textsuperscript{1} were at the time yet to entertain criminological research and obviously could not yield to the bafflement or express ambivalence regarding the existential crises and epistemological aporias of modernity.

So then, what makes Sam Spade Hammett’s most enduringly loved character, what makes *The Maltese Falcon* “the finest crime novel written in this century”? Why does Hammett refer to Spade as a man with “no original. He is a dream man”? I agree with Peter Wolfe that “more than two generations of readers have made Hammett’s Sam Spade their model of hardboiled private eye [and] enshrined Spade without knowing much about him. What they have overlooked is his heart.” I wish to argue in this chapter that what sets Spade apart from not only the Op but also other contemporaneous detectives (Daly’s “Race Williams”, for example) is just how devastatingly human – frail, fallible, vulnerable – Spade is made to be. Early in the novel, Effie Perrine, Spade’s secretary, voices an anxiety that the reader initially disregards: “you worry me,” she says to Spade seriously, “you always think you know what you’re doing, but you’re too slick for your own good, and some day you’re going to find it out” (29). However, we soon see that, in *The Maltese Falcon*, Hammett will and must check his protagonist’s hubris. Spade must come to terms with all that he does not, and cannot, know.

To first state the obvious, unlike the Op, Spade is not anonymous. His identity, and his awareness of his identity and his place in society, forestalls a strict or pure mechanical relationship to the world around him. Spade is made to understand the necessity for compromise, and politics. Spade’s character is defined by its vitality, and, because he actually has to live in the world (unlike the Op, who investigates to enact self-definition; who somehow materializes from absence when a crime has been committed and he has been employed to solve it), Spade confronts and must come to terms with a certain brand of horror that the Op does not. One of the ways in which Hammett underscores this difference is in the different modes of narration: the Op stories are consistently written in first person and, I believe, can be said to be modernist in form: *Red Harvest* and the short stories are highly stylized; both the action and its rhythmic narration are inextricable, and mutually informing, as the subjectivity of the Op is.

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4 Wolfe, *Beams Falling*, 111.
foregrounded. In *The Maltese Falcon*, as well as in the three stories featuring Spade, “A Man Called Spade”, “Too Many Have Lived,” and “They Can Only Hang You Once,” Hammett writes in third person, and loosely adheres to the tenets of realism: a stage is set, and the drama unfolds before the eyes of the reader. In *The Maltese Falcon* the reader’s relationship with the unfolding drama is cerebral and spectatorial,” whereas in the Op stories it is more visceral and participatory.

In *The Maltese Falcon*, Hammett presents a distinctly nightmarish landscape and his broken protagonist, Sam Spade, traverses a fractured metropolis. Perversions and deceptions abound in post-World War One America where, as we have seen in the Op stories, symbols and language no longer adhere to an historical logic but run maddeningly wayward. The nature of the landscape is perfectly captured by George Grella, who writes that Hammett’s world is of “an urban chaos, devoid of spiritual and moral values, pervaded by viciousness and random savagery.”

However, Spade’s playground is San Francisco, and this urban landscape presents a different set of problems from the Op’s assignments, which span both real and mythological continental America. Peter Wolfe writes that Hammett’s San Francisco “is more of a pioneer outpost than a civilized city: a civilization balances male and female characters, and no such balance obtains in the novel.

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5 Though *The Maltese Falcon* is told in third person and, as David Kelly argues in “Dashiell Hammett,” “drifts imperceptibly into the first with such deceptive ease” such that the story is “conveyed through a central consciousness which we come to recognize as Spade’s,” (112) the nature of the narration still resembles a detached and almost cinematic, voyeuristic descriptiveness:

Spade’s thick fingers made a cigarette with deliberate care, sifting a measured quantity of tan flakes down into curved paper, spreading the flakes so that they lay equal at the ends with a slight depression in the middle, thumbs rolling the paper’s inner edge down and up under the outer edge as forefingers pressed it over, thumbs and fingers sliding to the paper cylinder’s ends to hold it even while tongue licked the flap, left forefinger and thumb pinching their end while right forefinger and thumb smoothed the damp seam, right forefinger and thumb twisting their end and lifting the other to Spade’s mouth. (12)


7 While most of the Op’s adventures are set in San Francisco, “The Gutting of Couffignal,” “Corkscrew,” feature fictional cities like *Red Harvest’s* Personville, and “This King Business” is set in a fictional Balkan nation.
San Francisco oozes violence... money-lust and concupiscence rule the characters." Moreover, Hammett's San Francisco is a space marked by multiplicity of purpose – a succinct versatility: the city doubles as crime-scene, courtroom, and place for the condemned. Spade who, as I mentioned earlier, reflects this versatility, becomes detective, judge, jury, and warden.

Tzvetan Todorov, Neil C. Sargent and many other critics look at the detective fiction of post-World War One America in juxtaposition with the European detection of figures such as Sherlock Holmes, noting the temporal shift in the narrative structures of the two now distinct genres: For Sargent, Holmes’ approach to the past is not “what happened” so much as “why did what happen the way that it did?” This suggests that the past, the already-happened, is a discrete and unchangeable entity. Sargent continues,

To answer this question, the detective has to approach the past on its own terms, to stand outside of history... this attitude towards the past also accounts for the curious immunity accorded to the detective in the analytical detective story. Because the story of the past is already complete, the observer stands outside it and cannot be influenced by it. 

This is in contrast with the hardboiled detective of America, who, Sargent writes, “has no option but to adopt a presentist attitude towards the past,” because the dual narrative structure of the traditional narrative of detection – the narrative of the crime, and the subsequent narrative of the entrance of the detective and the narrative of his detection – has, in the hardboiled story, conflated into the one narrative, on the one axis of presence, contemporaneity. Sargent concludes, “consequently, the detective does not have the luxury of imaginatively reconstructing a past that is already complete, but must deal with the emerging

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8 Wolfe, Beams Falling, 122.
9 Sargent, “Mys-reading the Past in Detective Fiction and Law,” 295.
10 Sargent, “Mys-reading the Past in Detective Fiction and Law,” 295.
consequences of a past that are still being worked out in the present."\textsuperscript{12} In the modernist, hardboiled detective narrative, past and present, and detection and crime are ever evolving, shifting, and mutually-contaminating. This is ruminated upon in “Part 1” of W. H. Auden’s poem \textit{New Year Letter (January 1, 1940)} where Auden uses a motif of detection to express the experience of modernity:

Surrounds us like a baffling crime.  
There lies the body half-undressed,  
We all had reason to detest,  
And all are suspects and involved.\textsuperscript{13}

The legal and cultural crises of modernity are embodied in the “baffling crime,” the presence of a “body half-undressed.” These crises, however, are compounded by the fact that not only is the crime – the body – baffling, but also the detection of it is suspect. Raczkowski writes, “there is no innocent place from which to investigate the crime... and furthermore, the means of investigating may itself be constitutive of the disaster.”\textsuperscript{14} The act of detection, and investigation, moreover, “extends the area of the crime,” for Auden, “until the guilt is everywhere.”\textsuperscript{15} Raczkowski argues that Auden’s detective “is caught in the same double-bind as Hammett’s fictional detective.”\textsuperscript{16} The reorientation of both space and temporality that the modern detective narrative schematizes urges the reader to revise the situational possibilities of criminality, the consequent inquiry and investigation, and the justice dispensed. One of the most obvious examples of this reorientation in \textit{The Maltese Falcon} is the fact that the investigation is not retrospective but prospective, and reflexive: Spade is hired to investigate crimes (inter alia, the murder of Miles Archer, Floyd Thursby, the whereabouts of the bird) before any of these crimes have been committed. While this can be said to occur also in \textit{Red Harvest}, the genre and third-person narration of \textit{The Maltese Falcon} distinctly

\textsuperscript{12} Sargent, “Mys-reading the Past in Detective Fiction and Law,” 295.  
\textsuperscript{14} Raczkowski, “Modernity’s Detection,” 650.  
\textsuperscript{15} Auden, \textit{New Years Letter}, 272.  
\textsuperscript{16} Raszkowski, “Modernity’s Detection,” 651.
formalizes this structure. *The Maltese Falcon*'s world-view is highly cynical: *it anticipates crime.*

We are introduced to this situational contamination early in the novel. In the second chapter, ‘Death in the Fog’, Spade is summoned to the crime scene of his partner, Archer. When Spade arrives on scene, the narrative meanders through the crime scene from different points of view of ghoulish spectators in the fog: “a few yards from where Spade had dismissed the taxicab a small group of men stood looking up an alley. Two women stood with a man on the other side of Bush Street, looking at the alley. There were faces at windows” (12). A rushing car popping out of a tunnel catches Spade's attention, so that then he views the tunnel’s mouth and observes the man hunkered on his heels before a billboard that held advertisements of a moving picture and a gasoline across the front of a gap between two store-buildings. The hunkered man’s head was bent almost to the sidewalk so he could look under the billboard. A hand flat on the paving, a hand clenched on the billboard’s green frame, held him in this grotesque position. Two other men stood awkwardly together at one end of the billboard, peeping through inches of space between it and the building at that end. The building at the other end had a blank grey sidewall that looked down on the lot behind the billboard. Lights flickered on the sidewall, and the shadows of men moving among lights. (13)

This very beautiful passage shows that the interaction between and separation of subject and viewed object in the streets of the city is always interrupted by the claustrophobic and grotesque mechanics of the city; a place replete with narrow alleys and grey lots, the city contains spaces that seem designed to allow men to witness the crimes that occur below, beneath, or through the apertures between the signs. And then, of course, there is the obscuring, enduring fog. McCann in *Gumshoe America* suggests that the shadows the city spins suggest Plato’s cave – but it is Spade who is the chained man who sees only the shadows of real
events. The modernist detective is enthralled by the very chimerical nature of the city, and cannot detect illusion, lies and dust; which, I would argue, is why Spade ensures the bulk of his detective work occurs indoors.

If the two traditional temporal planes in traditional detective fiction are conflated in the hardboiled genre, I believe that a third narrative vector is present in The Maltese Falcon, and also subsumed in the flat, singular contemporaneity of Hammett’s prose. This is the narrative of the law – of trial (interrogation, the presentation of evidence), judgment, and condemnation. Here legal questions are asked and answered not in legal theatres but in Spade’s apartment, and the outcome of the very meticulous staging of this trial threatens to render epistemologically useless the presumed real trial that usually occurs after the detection is complete, and usually gestured towards in the denouement of detective fiction.

Spade’s methodology as a detective does not emphatically involve looking through crime scenes as such for ‘clues’ to solve a mystery. Generally, when he does operate forensically (like when he meticulously searches Brigid’s apartment) there is seldom anything “other than surface to observe.” When riffling through Brigid’s apartment, Spade is the investigator par excellence, his sight, and touch, is keen and searching: he “searched the place from wall to wall. His eyes and thick fingers moved without apparent haste, and without ever lingering or fumbling or going back, from one inch of their fields to the next…” (90). When Spade does in fact attempt to penetrate these surfaces in her room,

he stripped the bed of bedclothes. He looked under rugs... he poked a fork into powder and cream jars, he emptied the garbage can... he opened the top of the flush box in the bathroom, drained the box, and peered down into it (91)

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17 McCann, Gumshoe America, 89.
he is simply confronted with, and confounded by, intricate layers of further surface, more chattel:

he did not find the black bird... The only thing he found that interested him enough to delay his search while he looked at it was a double-handful of rather fine jewelry in a polychrome box in a locked dressing table drawer. (91, italics mine)

Adding to Spade’s lack of interest in traditional modes of detection, when his partner Miles Archer dies Spade does not inspect the crime scene, instead scoffing at the police officer, “You’ve seen him. You’d see everything I could” (15). Thus early in the novel, in Spade refusing to see the body, and insisting on receiving a detailed account of the body and its position from Sergeant Tom Polhaus, the police officer on the scene, the reader is placed in a position of unease and doubt. What seems like crucial information we do not view first-hand but rather, Spade carelessly imagines the scene vicariously from an eyewitness account, which is a deliberately unreliable source.

Detection does not lie in seeing, then (which is problematized by the modern city’s dual displacement of, and sole emphasis on, the sign), but rather, in speaking, and in the harnessing/commandeering of space. To further emphasize this, in “A Man Called Spade”, a “uniformed man”19 proudly uncovers key evidence, a neck-pin and tie; after hours of scouring the streets and trawling through dumpsters. He says proudly, “there I found them, all wadded up in ~ ”, but he is rudely undercut, and “stopped because nobody was paying any attention to him.”20 The man who performs the real nitty-gritty sleuthing is sidelined by Spade (and Hammett), seen as nothing more than a simple foot soldier, who does not get to speak. I wish to look in particular at two key moments in The Maltese Falcon that take place in Spade’s apartment, with all

characters present. These are chapters 7 through to 9 – in which Spade has Cairo and Brigid over to negotiate the terms of the exchange of the Falcon for coin – and 18 through to 20 – in which all the characters meet, the truth is revealed, Brigid is accused, Wilmer is taken for the ‘fall-guy’ and so on. While Spade is synonymous with big-city cool and cynicism, in my analysis I will be commenting more on his romantic and naïve disposition. Spade privileges the speech act over physical detection, because, if objects are not referents to some higher plane of reason or action, then perhaps the slipperiness of language may reveal identity, agenda, and motive. Spade is sorely mistaken. His naïve mode of detection seeks essences, identities, revelatory solutions, but San Francisco offers only contradictions beyond inscrutable surface.

In Chapter 18, “The Fall Guy”, the meeting of the main players of the novel takes place in Spade’s apartment. Spade clearly volunteers his apartment so that he can call the shots: “Get away. You're not going to frisk me” (172), he says to the hotheaded Wilmer, before Gutman, alluding to the formal nature of the proceedings, states “well, let’s be seated” (172). Later, Spade’s apartment becomes an overnight cell, in which each player is imprisoned, all engaged in the mutual act of surveillance. Though Spade runs the show, his home-court advantage is snatched from him as both Wilmer and Cairo have “gigantic” “black pistols” (171) on Spade and Brigid. Just as the outdoors in *The Maltese Falcon* represents a space in which crime is uncontained, and the privileged platform of the private detective is swept up from under him, even indoors, the detective is not in control of his environment – here it is claustrophobic, limiting, and banal: when Spade “look[s] heavenward,” he “groan[s],” for it is only “at the ceiling” (113).

While waiting for the *rara avis* to be delivered by Perrine, Gutman reads *Celebrated Criminal Cases of America* (a favourite prop of Hammett’s, this book
also appears in *The Thin Man*\(^\text{21}\), Cairo “sulk[s] on his end of the sofa” (200), Brigid and Wilmer doze; only Spade is “wide-awake, cheerful, and full of vigor,” and can move freely and constantly around the apartment: “He sat sometimes on an arm of the girl’s chair, on the table corner, on the floor at her feet, on a straight-backed chair” (200). Similarly, when Spade has Brigid in his apartment in Chapter 7, he sits in his armchair, and “without any preliminary, without an introductory remark of any sort” (61), begins telling Brigid the story of Flitcraft. The emphasis on Spade’s mode of storytelling is similar to the manner of discourse of a judge: “he talked in a steady, matter-of-fact voice that was devoid of emphasis or pauses, though now and then he repeated a sentence slightly rearranged, as if it were important that each detail be related exactly as it happened” (61). Further playing on Spade-as-judge, when the examination of Gutman and Cairo concludes, Gutman lavishly tells Spade, not once, but twice, that he is a man of “nice judgment” (204).

Spade clearly wants to take the prosecutory monopoly away from the state; and in his courtroom, there is no longer volition or freedom of movement to be exercised by his guests. Regarding Brigid’s demeanor, “the appearance of

\(^{21}\) In *Celebrated Cases*, published in 1910, Thomas Duke, the Captain of Police in San Francisco, compiles a list of sensational San Francisco murder cases, and seems to relish the very extraordinary and savage irony that Hammett sought to portray. The *Celebrated cases* include “John Byrne, Who Killed a Man for an Imitation Diamond” and “History of Charles Becker, Prince of Forgers” and are written with ebullient flair and a keen lay-interest in psychological patterns. In “History of WM. Henry Theodore Durrant, Murderer of Blanche Lamont and Minnie Williams”, a coda suggests that Duke is attempting to understand behavioral patterns that a criminal landscape attracts, and the perverse pathologies that contaminate the crime scene and the following court proceedings:

> In nearly all cases when a celebrated criminal is captured, a certain class of women take advantage of the opportunity to leap into the lime-light by showering him with attentions, and the more atrocious and depraved the criminal, the more these women appear in evidence. This case was no exception to the rule, and as soon as the trial began a young woman of prepossessing appearance became a constant attendant and almost daily presented Durrant with testimonials of her sympathy in the shape of small bunches of sweet peas, which accounted for her being known as the “Sweet Pea Girl.” Durrant did not know the girl, but with characteristic mendacity, he claimed that she was a friend who had positive knowledge of his innocence, but he was too “chivalrous” to divulge her identity. It subsequently transpired that she was Mrs. Rosalind Bowers, and was even then neglecting her young husband to worship at the shrine of this degenerate.” (121-2)

Gutman and his companions seemed to have robbed her of that freedom of personal movement and emotion that is animal, leaving her alive, conscious, but quiescent as a plant” (173). However, Spade at times allows for the action to take place between the two parties, taking the role of mediator and judge: “Spade, propped on an elbow on the sofa, looked at and listened to them impartially. In the comfortable slackness of his body, in the easy stillness of his features, there was no indication of either curiosity or impatience” (68). Later still, Spade asserts dominance and presides over the case; once he delivers his hypothesis-verdict, he threatens to enforce it: “I know what I’m talking about.’ He said in a low, consciously patient tone. ‘This is my city and my game’” (177). Moreover, Spade must assert this authority because he is a San Francisco inhabitant and worker: “You birds’ll be in New York or Constantinople or some place else. I’m in business here” (177).

Many critics have noted the intimate relationship between modes of authority / authorship (i.e. of Hammett), and modes of detection (i.e. of Spade). Both are, after all (like lawyers, too) attempting to piece together and render meaningful previously unconnected phenomena in a way that is beautifully considered by Paul Auster in his metafictional detective novel, City of Glass:

The detective is the one who looks, who listens, who moves through this morass of objects and events in search of the thought, the idea that will pull all of these things together and make sense of them. In effect, the writer and the detective are interchangeable. The reader sees the world through the detective’s eyes, experiencing the proliferation of its details as if for the first time.22

There are similarities between the author and the detective, in that they both are attempting to string together disparate characters and events into a cohesive and understandable narrative that accelerates inevitably towards revelation. That Hammett deprives Spade and the law of a clear, omniscient eye through which he

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could understand the criminal landscape suggests that Hammett himself was perhaps similarly dismayed by modernity’s crisis of representation, such that he felt it necessary to break arguably all of S. S. Van Dine’s rules for the genre of detective fiction. I will state here the most pertinent: that “all clues must be plainly stated and described”; that “there must be no love interest. The business in hand is to bring a criminal to the bar of justice, not to bring a lovelorn couple to the hymeneal altar”; that “the culprit must be determined by logical deductions — not by accident or coincidence or unmotivated confession... such an author is no better than a practical joker”; that “there must be but one culprit, no matter how many murders are committed”; that “the method of murder, and the means of detecting it, must be rational and scientific”; that “the truth of the problem must at all times be apparent — provided the reader is shrewd enough to see it”; that “a detective novel should contain no long descriptive passages, no literary dallying with side-issues... no ‘atmospheric’ preoccupations.”

23 Hammett deliberately breaks these rules, knowing, perhaps, from his Pinkerton days, that what is worth exploring by the author is that the accidental, indeterminate and savage universe that governs man’s actions, and delimits man’s capacity to scientifically engage with matter, underpins every crime, and is redoubled in any investigation of that crime. Spade knows that investigating the city streets from afar, and with a detached or scientific methodology, is fruitless, just as murders are not committed from afar and with detached or scientific methodology. Unlike Holmes, who can take a step back to gain some critical distance on the crime scene, Spade’s crime scene is a city of signs emptied of coherent meaning, and, in a modernist sense, coming to grips with the failure of the Enlightenment. Spade’s detection attempts to follow this very logic of the city, a place of no profundity beyond atmospheric preoccupations, and perhaps the logic of love – the emotional mischief that belies reasonable explanations.

This brings us to the story of Flitcraft. It seems in *The Maltese Falcon* more than any other of Hammett’s novels (perhaps because it is a love story) that the private detective is able to solve the crime where the police cannot because the detective becomes intimate with his suspects, whereas in classic, Sherlockian detective fiction the rigmarole of the law “can never shake the detective’s conviction in the rightness of his own conclusions”24 because they’re steeped securely in empirical data, no such empirical data exists in Hammett’s world of the Falcon. In the much written about story within the story, Spade tells Brigid the tale of Mr. Flitcraft, a happily married real estate agent living in Tacoma with his wife and two sons. One day he ups and leaves, and never returns. Five years later he is spotted in Spokane, now named Charlie, with a successful automobile business and a new wife and child. When, upon discovery, Flitcraft ‘attempt[s] to make its reasonableness explicit,’ (63) Spade understands ‘all right’ the logic, whereas Flitcraft’s wife (and Brigid, who receives the story with great blandness) does not. This is what happened to Flitcraft:

> going to lunch he passed an office building that was being put up – just the skeleton. A beam or something fell eight or ten stories down and smacked the sidewalk alongside him. It brushed pretty close to him, but did not touch him. (63)

Flitcraft is scared, but “more shocked than really frightened” (63) and, most importantly, cannot shake the great profundity of what occurred to him, as a result of which he “felt like somebody had taken the lid off life and let him look at the works” (63). And of course the “works” involve the haphazard and unjust and arbitrary succession of accidents that constitute a man’s life, even though man is in the constant struggle to combat arbitrariness with reveries of order and regularity. Flitcraft ups and leaves, therefore, in an attempt to live “into step” (64) with the arbitrariness of life. But here’s the part that Spade likes best: Flitcraft, after a few years of drifting and living a life that mirrors Fortune’s whim, settles back into married domestic life without even realizing: “he

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24 Sargent, ”Mys-reading the Past,” 300.
adjusted himself to beams falling, and then no more of them fell, and he adjusted himself to them not falling” (64).

The world of Flitcraft serves as a microcosm of the world of Hammett, a world, according to Stephen Marcus, marked by “ethical unintelligibility:”25 the city wreaks havoc on the individual, and the mindful individual, seeking symmetry and knowledge, attempts to live “into step” with this havoc. Hammett roots the “outlandish in the believable” to “give the reader a disarming sense of the fundamental wrongness of things. The most reliable and relied-upon structures seem about to dislodge a beam or two and send them hurtling down to us.”26 This is why objectivity and distance are not required in Hammett’s detective – no picture of logic materializes from any specific vantage point. The detective must be in among the players to understand their actions, and the only way he could understand their actions is through an interrogative register: Spade speaks – he simply asks his suspects and villains to explain their actions, for their actions, without words, are inexplicable. Of this, Sargent writes,

> There is no obvious cause-effect relationship between the falling beam and Flitcraft’s disappearance that could be forensically reconstructed by an analytical detective. There is no intelligent design behind the mystery. 27

Against this background, the only way Spade might get at a possible truth of the matter in *Falcon* is from knowing and loving Brigid.28

So with Spade’s activities “into step” with the logic of beams falling, he conducts a trial in his room that can admit this wayward mechanism of the universe, as

27 Sargent, “Mys-Reading the Past,” 300.
28 Of course Spade could not adopt a critical standpoint even if he wanted to. In “$106,000 Blood Money,” the Op also finds a way to benefit from his embeddedness in the events of the narrative. He finally puts together the plausible chain of events from his relationship with Miss Newhall. As she stares at him with “fixity,” he narrates: “She didn’t tell me all of it. She told me very little of it in… words. But that is the story I got by combining her words, her manner of telling them, her facial expressions, with what I already knew and what I could guess.” 439.
Hammett can in his writing: like Faulkner, Hammett is, after all, a master of paradox and savage irony.\textsuperscript{29} Even in stating explicitly “what I try to do is to write a story about a detective rather than a detective story,” and referring to the structural tools – the generic expectation – of suspense and revelation as “a good trick” but nothing more (“I can’t attach more than secondary importance to it”), Hammett admits that the “puzzle” is insignificant beyond being the catalyst for our examination of the detective’s behaviour.\textsuperscript{30} What makes the private detective interesting, for Hammett, is that he must detect through a thoroughly modernist disavowal of empirical reality:

the harvest of Red Harvest is a bloodletting, a denial or negation of fruitfulness; the Dain Curse refers to a legacy that either doesn’t exist or exists in an unexpected form; the Maltese Falcon is a fake; the glass key appears in a dream; and the title character of Thin Man died two or three months before the novel begins.\textsuperscript{31}

Let us turn our eye, then, to Spade’s behaviour, and compare what he does and what he is trying to achieve with the action and intention of the judicial system. Shoshana Felman notes that, prima facie, the novel and the trial are both in search of truth. However, theoretically, criminal proceedings do not hearken to philosophical inquiries into Truth, or what really happened, or even meaning, but rather they adhere to a very specific discourse; its search is not for truth but for finality – it is decisive, it seeks a decision. In law, as Kertzer beautifully writes, to ensure that justice is dispensed fairly and without arbitrariness, the “truth must yield to propriety.”\textsuperscript{32} That is, the procedure and decorum of law, such as precedent, rules of evidence, and warranted searches of property, are of supreme importance, even over truth, and must be applied consistently, even

\textsuperscript{29} In “From the Memoirs of a Private Detective” we see early glimpses in his one-liners: “I was once falsely accused of perjury and had to perjure myself to escape arrest;” “I know a forger who left his wife because she had learned to smoke cigarettes while he was serving a term in prison.” Cited in Richard Layman, Shadow Man: The Life of Dashiell Hammett (New York: Harcourt Brace Jovanovich, 1981), 32.
\textsuperscript{30} Dashiell Hammett, Interview with Helen Herbert Foster in “The Brooklyn Eagle Magazine (A Magazine of Personalities)” The Brooklyn Daily Eagle, 1929.
\textsuperscript{31} Wolfe, Beams Falling, 30.
\textsuperscript{32} Kertzer, Poetic Justice, 15.
often unfairly, to arrive at a legally satisfying solution. The trajectory of the courtroom narrative is generally a going through the motions of procedural rules. These motions invariably involve hearing a version of the story; the presentation of evidence; hearing another version of the story; the presentation of evidence for it; closing remarks; and a final decision. The final decision ends the discourse, unless, of course, an appeal is successfully lodged, which only serves to repeat the finite cycle in an attempt for a different outcome.

Literature on the other hand, clearly does not necessitate finality, but rather, traditionally searches for meaning, “for expression, for heightened significance and for symbolic understanding.” Literature gives full play to all the loose ends, equivocations, ambiguities, and obscurities of life – the falling beams. Spade, for all of his outward cynicism, perhaps still in some way desires Truth in the same way he desires Brigid’s love; even though he knows that it cannot be ascertained, he nevertheless seems to believe that the pursuit of it is worthwhile. Spade is the subject of a very theatrical mode of detection, and his interrogation of his suspects is reminiscent of a morality play. To imbue himself with authority he recreates a judicial space, but one that allows for a good deal of evidence to be admitted without reference to law’s rules, and one that allows him to extract evidence through any possible means – means that in a real court would constitute duress. Spade seeks truths, and desperately seeks to, rather romantically, essentialize guilt and crime (as a "blond satan" (3) would) so as to penetrate the surface and find meaning in an ever-spreading, ever-diffusing crime scene, a scene where “the mute contingency of the object,” that is the corpse, “generates structural demands” – that of a “satisfactory explanatory narrative”34 from the author and the detective. However the corpse’s demand for a satisfactory narrative in The Maltese Falcon is especially watered-down: the initial murder is of Miles Archer, a man who Spade disliked, and whose murder Spade must, only for decency’s sake, investigate. Raczkowski writes that

33 Kertzer, Poetic Justice, 15.
Hammett’s “representational strategy is to yield to the contingency of the object through an aesthetic vision privileging exteriority and the production of solutions that are expressly contingent,” and cites Brigid, and the figure of the *femme fatale*, much like the elusive falcon itself, as the symbol for a painful state of perpetual unknowability:

neither the exact details of the murder, Brigid’s motivations, nor her desires are made visible by the activities of the detective or the narrative... the investigation reveals no hidden depth, discovers no secret essence or identity.”

There are no discernible patterns of movement, and, to recall Cover, “the very patterns of meaning that give rise to effective or ineffective social control are to be left to the domain of Babel.”

When Spade recreates the courtroom in his apartment, he commandeers the situation through oratory. Spade speaks, and, in turns, allows each member in the room to speak when asked a question. Just as neither the city nor the crime allow for clear spaces where one may observe and be observed, Spade attempts to contain his detective work in his own, cordoned-off apartment, where he can control the environment and try to detect. There is a clear and cacophonous threat of uncontainability when the narrative ventures outdoors onto the streets of San Francisco. At least in the beginning, in Spade’s apartment, he attempts to get at the truth of the matter, given that physical detection does not work. We learn quickly, in the world of *Falcon*, that there is a Babel, too, in Spade’s apartment. Every utterance and gesture contains a paradox: when Spade’s voice is “tender” his eyes are “angry” (25), when he smiles “wolfishly with his lips” it is “not at all with his eyes” (208). It is in this spirit that we encounter the paradox

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37 Cover, “Nomos and Narrative,” 17. Like Cover, I use the term “Babel” advisedly: I wish to suggest not incoherence but rather a multitude of coherent systems which we confront with a problem of intelligibility.
of the criminal, also speaking in the language of the law: when the flabby, excessive Gutman attempts to bargain with Spade, he acts rashly and hysterically and yet speaks in contractual terms, “I must tell you what I know, but you will not tell me what you know. That is hardly equitable, sir. No, no, I do not think we can do business along those lines” (109). In Spade’s courtroom he attempts to work at the truth of the matter, but, once the rhetorical nature of the conversation and of negotiation turns physical, and Gutman crudely pierces the illusory conversation with physical, material money, and an amount of money that does not correspond with the agreed upon amount in speech, another level of artifice is created. Verisimilitude is lost; in Spade’s world we cannot trust what we see, and we cannot trust language either. Gutman gloats, “this is actual money, genuine coin of the realm, sir. With a dollar of this you can buy more than with ten dollars of talk” (174). Spade is disillusioned. Once the functional underpinning of his dream, the romance of detection, is threatened, he sets about dismantling the vision upon which he had hitherto been endeavouring. He readily abandons his search for truth, and, in a twist that perhaps alludes to Hammett’s changing attitudes towards the law and legal narratives, is suddenly, for the remainder of the novel, only interested in the necessary and expedient fulfillment of a legal narrative. He is, thus, Hammett’s detective who gives in to the law, and a simple version of events because he is utterly burnt out. As Spade grows wearier and wearier, he delivers a curt and direct plea for finality, over truth or meaning: “the police have got to have a victim – somebody they can stick for those three murders” (175). The initial search for the murderer and truth becomes the cynical and desperate search for the fall guy, a clear manifestation of the crisis of the modern. Spade, of course, suggests Gutman’s pathetic lackey, Wilmer, who is “made to order for the part” (177). Gutman, who likes to think himself a father figure to Wilmer, recoils from the distasteful prospect, “frowned without comprehension” (175). Spade is suddenly more ruthless than the criminals. Gutman is still not convinced that this last resort is the only resort and Spade becomes irritable:
I know what I’m talking about. I’ve been through it all before and expect to go through it again. At one time or another I’ve had to tell everybody from the Supreme Court down to go to hell, and I’ve got away with it. I got away with it because I never let myself forget that when the day of reckoning comes I want to be all set to march into headquarters pushing a victim in front of me, saying: ‘Here, you chumps, is your criminal!’ As long as I can do that I can put my thumb to my nose and wriggle my fingers at all the laws in the book. The first time I can’t do it my name’s Mud. There hasn’t been a first time yet. This isn’t going to be. That’s flat. (176)

From a romantic quest that has exposed the world for the sham it is, Spade, no longer seduced by truth, or the bird, suddenly sees that perhaps the law is the best way to create order from disorder: order, in Hammett’s crime-riddled city, it seems, is not contingent on unearthing truths but perhaps relies solely on an official narrative of untruths. Spade’s new method takes into account the seductiveness of procedural justice, and the clear absence of morality; a fall-guy quenches the social thirst for the appearance of justice being served without reference to the substantive dimensions of culpability and commensurability of criminal to crime to punishment. He asks only the questions the law would ask so as to finalize the matter: “Let’s get the details fixed. Why did he shoot Thursby? And why and where did he shoot Jacobi?” (189). This is Hammett at his most vehement in full particularization of social and institutional ills. The celebrity status of the D.A. and other symbols of justice forms a thematic framework in many of Hammett’s novels: in The Maltese Falcon District Attorney Bryan’s “latent power” is undermined by bureaucracy and the necessity for celebrity status:

Bryan is like most district attorneys. He’s more interested in how his record will look on paper than anything else. He’d rather drop a case than try it and have it go against him. I don’t know that he ever deliberately framed anybody he believed innocent, but I can’t imagine him letting himself believe them innocent if he could scrape up, or twist into shape, proof of their guilt. To be sure of convicting one man he’ll let half a dozen equally guilty
accomplices go free – if trying to convict them all might confuse his case. (180)

Hammett inverts Blackstone’s famous formulation, “better that ten guilty persons escape than one innocent suffer,” upon which the Anglo-American legal imagination is firmly grounded and he drives it to its logical conclusion, where, in fact, a dozen guilty persons are set free – but, it is, perhaps, for no higher purpose, because there are no innocents. Instead, the dozen are set free so that one person (a scapegoat, who is shaped or twisted to appear guilty) is convicted.

We are reminded of Van Dine’s proclamation that there should be one culprit in detective fiction: in Hammett’s world there are many. Given that Hammett paints the law as appealing to the lowest common denominator, that it must simplify events so as to best function, Blackstone is sacrificed to keep at bay the dreaded possibility of a confused jury. Hammett is interested in dissecting, thus, the essentially fallacious myths upon which the law is founded, and, through the disguising of these myths, the law derives its power. Recalling the philosophies of Vaihinger, Kertzer writes of the fallacy of justice, which is that all knowledge is analogical: justice is

articated only in ‘juristic fictions,’ all based on the fundamental principle, known to be false but too valuable to reject, that individual cases can adequately be subsumed by general categories. He insists that this artifice of reasoning is not only erroneous but unjust – incapable of rendering justice to specific cases – yet without it justice is impossible. Here’s a pretty mess. 39

So the inherently ludicrous, unstable, utterly unproven, apocryphal, conditional, narrative (how could a narrative that follows a bird from continent to continent,

39 Kertzer Poetic Justice, 142.
from era to era, from the Crusades to swashbuckling pirates to emperors to the orient ever be considered anything but excessively, intentionally fanciful?) is swept aside; in order to satisfy the law and its need to keep up appearances, the most astonishing turn of events must be condensed, for easily ingestible (perhaps almost pulp-like) story:

That’s the choice we’ll give him and he’ll gobble it up. He wouldn’t want to know anything about the falcon... I can show him that if he starts fooling around trying to gather up everybody he’s going to have a tangled case that no jury will be able to make heads or tails of, while if he sticks to the punk he can get a conviction standing on his head. (180)

Moreover, the story needs to be bland to keep institutional law at bay: in Chapter 4 Spade tells Brigid “We ought to be able to fake a story that will rock [the police] to sleep” (34). Hammett delivers an almost imperceptible shift in character: Gutman and Cairo, the slimy, corrupt antagonists in the novel, still perceive handing Wilmer over to the police as a heavy dilemma, and Spade’s reaction is comedic as well as morally telling. It is easy to assume it fits with Spade’s effortless and cavalier cynicism that is apparent from the opening pages of the novel, but I do believe a shift in character has, in fact, taken place. He cries “Jesus God! Is this the first thing you guys ever stole? You’re a fine lot of lollipops! What are you going to do next – get down and pray?” (188) Pretending he is immune to the interior doubts that corruption often invokes, and ridiculing the criminals as first-timers, Spade is unaware at this stage, as is the reader, that he will have to do the same thing with Brigid. In the Flitcraft story we see that, even though Flitcraft tries to maintain a life that is lived in accordance with beams falling, it is unsustainable, and he inevitably slips back into the feigned order and the synthetic institutions around which society is organized and at which he initially baulked. In Spade’s story, however, we see the real and devastating results of this slip.
The following pages of the novel are written in a clearly unilateral, interrogative mode, with Spade cross-examining Gutman, eliciting from him a cohesive testimony. Spade goes through these motions not as a means of epistemological fact-finding, but rather, with an end of telling a tale of expedience to the police. A great deal of the action of the novel is told here, in past tense, in Gutman’s testimony, and it is delivered in a strangely measured and non-dramatic way: “Mr. Cairo and Wilmer and I went to call on Captain Jacobi and were fortunate to arrive while Ms. O’Shaughnessy was there. In many ways it was a difficult conference... we then left the boat and set out for my hotel...” (192). It is no longer relevant whether Gutman is telling the truth, and it is no longer fascinating; what results in this novel’s narratological structure is a noticeable disengagement of the reader, such that the reader, like Spade, is removed (or, perhaps, removes herself) as witness to the novel’s events. No longer interested in the back-story of the eponymous bird that never appeared to be more than incidental to the novel’s plot, and functioned only as an overarching metaphor40, the reader is only interested in the outcome of Spade’s romance with Brigid, and what he will do next. To recall Wolfe, “the novel’s riveting moral issue has not been Brigid’s guilt, but rather, Spade’s inability to act on it.”41

Prefiguring the weariness of Nick and Nora in The Thin Man, but without the self-reflexivity, Spade finds nothing satisfying in the resolution of this case besides, now, its promise of finality. His utter disenchantment means that he turns his back on the investigative, interpretive openness that he is supposed to champion. There have been no clear-cut answers, villains, or truths. In the end,

40 Peter Wolfe writes that the falcon represents the “failure of religion to carry into and cleanse” the city, arguing, “originally a token of love and religious devotion, the bird has found its way aboard a pirate’s ship, into the gutters of Paris, and, most recently, into a private home in Constantinople, Turkey, land of the infidel.” Beams Falling, 23. Compared with Red Harvest, in which there is a stark absence of religious terminology or allusion bar one symbolic scene where the Op, seeking darkness in a hotel room, reaches for a “Gideon Bible, and chucked it” (66) to smash the light bulb, Ilana Shiloh details the plenitude of religious allusion in The Maltese Falcon, arguing that Sam Spade is a projection of both “Christ – in his ascetic renunciation of desire – and Judas” in The Double, The Labyrinth and the Locked Room: Metaphors of Paradox in Crime Fiction and Film (New York: Peter Lang, 2011), 44.

41 Wolfe, Beams Falling, 123.
there is only a story to feed the law. This is perhaps why, in the final showdown in Spade’s apartment, his ritual strip-searching of Brigid is so crucial to Spade’s awareness not of the *truth*, not of whether she stole that thousand-dollar bill, but of how he will deal with the very difficult decision he must make. Brigid warns Spade that he will be “killing something” (196) if he strip-searches her, and she is right, though it is certainly not, as the reader first assumes, her modesty or even the romance between them. After he strip-searches her, Spade says, “now I know” (196). It is really the only definitive statement of knowledge in the novel, one that does not include Hammett’s usual arsenal of hedging words [*if, maybe, I think, I wonder* riddle Spade’s dialogue, and, even at the end of the novel where Brigid ‘confesses’ to a version of events recounted by Spade that reveal her to be the murderer of Miles Archer, she replies “not exactly,” to which Spade retorts, “exact *enough*” (210)]. Spade’s “now I know,” in an otherwise unorthodox novel, comprises the climactic double entendre that encompasses two realizations: on the surface, he now knows that Brigid did not pocket Gutman’s one thousand dollar bill, and, more importantly, Spade now knows he can turn her in without hesitation – he will be able to go through with it. In Spade’s acquiescence from truth to law, and from multiplicity and meaninglessness to a falsely unified vision of normativity, Spade yields love to patriarchal impulse: Wolfe argues that “having reduced her to a visual object, he can now throw her to the police,” and “seeing her naked and feeling no sexual arousal marks the first victory of his reason over his gut.”\(^{42}\) Though, unlike Wolfe, I would argue that Spade’s reason is no more meaningful or moral a barometer than his gut, which is what constitutes the real tragedy of the novel. Spade simply yields to the conservative normative impulses of the city because he must participate in it. When Gutman gurgles chirpily, “I must say that you passed the test with flying colours, sir. It never occurred to me that you’d hit on such a simple and direct way of getting at the truth” (197), it is painfully obvious that no real truth has been uncovered – the only truth Spade can dig at, to render truthful his moniker, is the truth of his own ethic: what he is willing, and not willing, to do.

\(^{42}\) Wolfe, *Beams Falling*, 123.
For the characters in the novel seeking the falcon, following the grail, it is the search that animates them: it is only in reference to the falcon, or criminal activity, that the vitality of the novel's characters is spotlighted. When the falcon is delivered to Spade's apartment, Gutman's eyes are “moist” (201); Cairo "licked his red lips" (201); and Brigid bites on her lip and breathes heavily. From their previous dormancy they are once again animated, physicalized, made fleshy. When the falcon is revealed to be a fake, however, Spade becomes "somber" (202), but Cairo and Gutman do not. While they are initially shocked – with Cairo blubbering tears, and Gutman's jaw sagging, it is only for a moment of shock: Gutman's eyes once again “twinkled” (203) and Cairo's “bulged” as he “giggled” (202-3), for they have no plans of stopping their search for the falcon. Spade's dismay at the falcon being a fake intimates a very melancholy inability to believe, to lose his self-consciousness in a quest, to allow his ego, perhaps, to be consumed in the desire of some perpetual elusion. Gutman and Cairo, on the other hand, could be said to be relieved when the falcon is revealed to be a counterfeit: Gutman's fat hands clap, as his throat purrs, “‘shall we shed tears and call each other names? Or shall we’ – he paused and his smile was a cherub’s – ‘go to Constantinople?’” (202). Of course this is understandable. No man, after all, wants possession of the grail. Possessory interest in the bird may be the motive for the quest, but it is not the reason for the quest. The quest, and the self-actualization implicit, is the reason for the quest. For Spade, however, such romance is out of the question: the bird, to him, is “dingus” (160), and its exposure as a sham exposes too the demolition of the American ideal: Hammett's bitterness with urban society resides in the unquenchable lust for power and wealth that lures men to commit acts deliberately antisocial. Peter Wolfe likewise notices that death and desire in the novel go hand in hand: “Miles Archer dies in a dark, clammy alley during the night hours, the time of romance. Like Floyd Thursby, who gets four bullets in the back because of Brigid, Archer... dies blinded by desire.” Moreover, when Archer dies, Spade notes that his gun remains undrawn, on his hip, and Thursby's lies in his shoulder holster when he
is killed: “in each case the undrawn pistol symbolizes helplessness,” both men are beguiled “to the point of inaction.” Desire, thus, paradoxically both animates and paralyses men; perhaps because the object of desire, be it woman or grail, in \textit{The Maltese Falcon}, is

the symbol of epistemological emptiness... the priceless artifact of historical significance that motivates a global pursuit... inspires a murderous determination in all those attempting to take it into possession. At the conclusion of the novel, the falcon turns out to be a counterfeit: an empty projection of the fiction imposed on it by the imagination.\footnote{44}

It is not the Falcon that is central to the novel, for it is merely the excuse for the quest that ensues, and it is this lust, unfulfilled desire, that simmers beneath Gutman's incredible shifting of loyalties: “Well, Wilmer, I'm sorry indeed to lose you, and I want you to know that I couldn't be any fonder of you if you were my own son; but – well, by Gad! – if you lose a son it's possible to get another – and there's only one Maltese falcon” (194). The sacrifice of Wilmer to Spade, in exchange for the freedom to keep hunting the bird, illustrates the absolute demolition of family values, for Hammett the unrecoverable relationships between human beings are lost in the accelerative and deracinating thrust of capitalism. At a time when America was defining itself through a fundamental criminality,\footnote{45} Hammett is interested in presenting the American Dream, like the bird, as a torment, and a sham. Acutely aware of the rise of the \textit{laissez-faire}, Hammett in Gutman dramatizes the necessity for the proper economic functioning of the state for individuals to be allowed to pursue and realize private interests unimpeded by neither legal nor cultural mechanisms of the state.\footnote{46} To this effect, Sean McCann, discussing race and urbanity in the novel,
argues, “commerce and self-interest dissolve... ethnic boundaries,” noting that, during the global pursuit of the bird, the pursuit of capital across cultures, cities and nations, “when race is summoned, it tends to be a cover for the profit motive.” With this demolition comes Spade’s disavowal of the dream of domestic happiness. The unending pursuit that characterizes the American Dream, the American Hero, and justice in classic American jurisprudence is darkly relocated in *The Maltese Falcon* in the impulses of the amoral, criminal capitalists.

After Cairo and Gutman leave, and with Wilmer having escaped for the time being, Spade and Brigid are left in the apartment. With the exit of the grail-seekers, Brigid believes that she will now be able to reengage Spade on a personal, intimate register, but that has been obliterated in the previous scene. With Wilmer escaped and Gutman and Cairo likely to accuse Spade and Brigid, Spade interrogates Brigid in much the same way that he did Gutman and Cairo – not to uncover the truth of what happened, but for something clear and linear that will hold up in court. Brigid tells her story – again it involves the back-story of the global search for the bird, about which the novel’s main plot orbits – in a kind of muddled, and often perjurious testimony of past events. Spade, the law incarnate, adopts an omniscient, judge-like attitude, and coolly discerns lie – not from truth – but from a less *believable* lie. He exposes Brigid as killer of Miles Archer to herself, and, in the process of telling, Spade too succumbs to the

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interest not only to the South but also the industrial northern states given its interpretation of the ‘due process’ provision, which contributed to the culture of laissez-faire capitalism which underlies Hammett’s criminal environments. In *Lochner*, the court determined that the state law, which restricted the number of hours employees could work in a bakery, was in contravention of the fourteenth amendment. The court’s ratiocination is especially significant for Hammett, in that the court determined that it would otherwise infringe upon the employer and employee’s liberty to contract, their liberty to work unfettered by laws. Feldman argues,

Supposedly to promote individual liberty or freedom of choice, the Court sought to protect the economic marketplace from undue government regulation or interference. During this era of laissez-faire constitutionalism and substantive due process, the *Lochner* Court invalidated case after case of social welfare legislation that ostensibly interfered with the free operation of the marketplace. (101)

There is clearly a political tension, in Hammett’s fiction, between his Marxist indictment of the machinations of free market capital, and Spade and the Op’s desire to work.  

47 McCann, “Constructing Race Williams,” 702.
fleshiness that marked Cairo and Gutman: “he ran his tongue over the inside of his lips...” (208). He becomes characteristically lupine, and is both seduced and obliterated by the thought of turning her over to the police: it is not a fulfillment of justice, but a matter of self-conservation, it is out of fear of being hanged himself, and fear, of course, as he repeats obsessively, of “playing the sap” (213). Sinda Gregory writes here that there is a more complex motivation at work in Spade’s decision:

Spade’s refusal to be a “sap” – a self-consciously hard-boiled, simplistic avowal – is actually a distillation of a complex view of man’s position in the universe and of the options available to him in order to survive.48

He tells her “the pair of us are sitting under the gallows” (209), and, reminiscent of his suggestion that Wilmer be the fall guy, he is deadly practical when he says to Brigid, “don’t be silly. You’re taking the fall. One of us has got to take it, after the talking those birds will do. They’d hang me for sure. You’re likely to get a better break” (211). Spade is clearly saving himself, though, in the process, killing any part of himself that exists on a plane higher than the physical. Spade becomes characteristically sick and pale and wolfish and sardonic, a manifestation of bodiliness, soothing Brigid with words soft and condemning: “you angel! Well, if you get a good break you’ll be out of San Quentin in twenty years and you can come back to me then”; “I hope to Christ they don’t hang you, precious, by that sweet neck”; “you’re an angel. I’ll wait for you” (211).

In The Maltese Falcon sin is systemic, and – in the individualization that the forces of the city and the forces of capital represent, emblematized in the bird – there is no longer a collective consciousness binding society, of which the detective may be the representation. What seems to be the only binding social force in Hammett’s novels is crime, or criminality itself, for, by the end of the novel, we know it cannot be love, and nor can it be the figure of the private

detective as the “agent of the collective consciousness of the community, since the community no longer has a collective consciousness.” It is Spade’s love for Brigid that makes the novel such an enduring tragedy, the bitterness with which he loves her, the brokenness depicted in the novel’s closing lines. Spade is physically altered by his love for Brigid and the necessity of betraying her – his hands shake and jerk, his eyes are damp, yellow. Brigid finally seeks legal recourse, and, after speaking throughout the novel in a register of stylized feminine frailty, is willing to exploit the rhetoric of legal melodrama: “‘this is not just’ she cried. Tears came to her eyes. ‘it’s unfair. It’s contemptible...’” (212) but Spade, heartbroken, is now beyond the power-play, and intimates, if only faintly, at his own ethic. Reminiscent of his speech to Cairo and Gutman, where he tells them that he has to live in San Francisco and so his actions are somewhat curtailed by decorum, he tells Brigid he must be expedient: he expounds the “when a man’s partner is killed he’s supposed to do something about it...” (213) speech, which suggests that he is doing what is seen as animalistically natural, but it is in fact, for him, counterintuitive: “I’m a detective and expecting me to run criminals down and then let them go is like asking a dog to catch a rabbit and let it go... it’s not the natural thing” (214). No longer the master of his own heart, Spade is only interested in how his actions will be perceived by the city and its denizens: “when one in your organization gets killed it’s bad for business to let the killer get away with it” (214). This way, Peter Wolfe notes that in losing Brigid, Spade loses "key hopes and opportunities" which “matter. Since Spade stands as Hammett’s ace prototype of the private eye, his loss conveys the frustration and self-denial intrinsic to his job.” In the same vein, Spade intimates that he pretends to be hard and corrupt because it is “good [for] business – bringing in high-priced jobs and making it easier to deal with the enemy” (215). Brigid attempts to raise the conversation to a metaphysical plane, once again, of love, and justice, and truth: “you called me a liar... now you are lying. You’re lying if you say you don’t know down in your heart that, in spite of

49 Sargent, “Murder and Mayhem,” 49.
50 Wolfe, Beams Falling, 119.
anything I’ve done, I love you” (214). Spade, however, in the meaningless and deceitfulness of everything around him, is unable to ascribe meaningfulness or self-actualization to love; and after telling Brigid he loves her, he says, “but I don’t know what that amounts to. Does anybody ever?” (214). After the seven reasons Spade gives for why he should hand her over to the police, Spade then given the one reason why he should not, and it is the most devastating line of the novel: “All we’ve got is the fact that maybe you love me and maybe I love you” (214). Self-preservation must triumph over the self-actualization that love promises. Contra Robert Edenbaum’s reading of Spade as a man “free of sentiment, of the fear of death, of the temptations of money and sex… he is capable of any action,”51 Spade’s facial expressions and gestures show a “battlefield of moral and romantic impulses”52 that Spade is made to feel, and made to push aside. It is important to note that when Spade is ironic, in the novel, as he often is, it is not light or humorous or cavalier and macho, but simply the necessary register for surviving the city. Wolf correctly argues that Spade is no “angry avenger.”53

Though Spade is repeatedly described, with flattery, by the players in the novel as being “wild and unpredictable” (86), he is not at all. He is no Flitcraft, and cannot live in step with the chaotic and unpredictable and arbitrary universe if he wishes to live and work and function in it. In turning in Brigid, Spade is confronted with the horror of the modern condition; whereby the detective cannot ethically participate in any quest for meaning, and can only search for technical finality – a perverse championing of reason over emotion, and a clear movement away from the Op’s happy internalization of arbitrary disorder. George J. Thompson is right when he perceives “the depth of Spade’s emotional

52 Wolfe, Beams Falling, 117.
53 Wolfe, Beams Falling, 117.
strain”\(^5\) in this sacrifice. In doing so, the detective must sacrifice his already tenuous link to any conceptual or emotional realm beyond the material. Even earlier in the novel, when Spade is aware of Brigid’s duplicitousness, but is still groping to protect her, Hammett ensures that the detective is neither in a position of heroic privilege nor effete subjection vis-à-vis Brigid, rather, mirroring the interactions of the big city, their power play is based on mutual deceit, and mutual love. They are, in this way, “well-suited.”\(^5\) The narrative trajectory in *The Maltese Falcon* ensures that the involvement of the detective in the criminal actions of the plot only serves to further complicate, and further destabilize, discernible patterns of power and movement. Spade cannot act “without being aware that his actions are likely to elicit a response in others, and that their responses are, in turn, likely to affect the way in which he defines the nature of the investigation.”\(^5\) Brigid’s theatricality encompasses Spade as her audience, in order to elicit a specific set of responses from him: Sam’s gaze at multiple points in the novel renders Brigid “young and oppressed” (34); she freely gives him power, and appeals to his manliness [“she squirmed on her end of the settee and her eyes wavered between heavy lashes, as if trying and failing to free their gaze from his” (34)]; she “flushed slightly under the frankness of his scrutiny” (55); she calls him “strong, resourceful, and brave” (35), followed only pages later by her own self-assessment, “hopeless, and useless, I suppose” (39), while “stammering and blushing and all that” (55). Spade, too, is enchanted by Brigid, and is breathless by her act: “Spade, who had held his breath through much of this speech, now emptied his lungs with a long sighing exhalation between pursed lips and said... ‘you’re good. You’re very good’” (34). There is similarly a kind of convoluted reciprocity and interconnectedness at work in the machinations of the novel, just as Spade suggests that violence in the novel follows a pattern of oscillation between men: “by God, I do hate being hit without hitting back” (82).

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\(^5\) Sargent, “Mys-Reading the Past,” 297.
To conclude, it is necessary to address the considerable pool of criticism interpreting Brigid’s admission of guilt; that it is done under both mental and physical duress. When Spade elicits his confession from Brigid, it is, as touched on earlier, once again analogical: she never does tell Spade, or the reader, definitively what happened. Spade guesses, and she half agrees, though says “not exactly.” During this time, Spade has seized her wrists, and she has been held, against her will, in his apartment for perhaps a day. Hammett deliberately ambiguates, and de-essentializes both Brigid’s guilt and Spade’s heroism by calling into question the evidentiary validity of Brigid’s statement. Where, at all other times in the scene, Spade is consistently working in service of a legally tenable outcome, in dropping his search for truth and instead searching for a narrative that would convince beyond reasonable doubt, that ties up loose ends, here, he is uncharacteristically careless in respect of legal rules. Neil C. Sargent suggests that this may be intentional:

The hard-boiled detective story thus provides a form of literary challenge to the evidentiary conventions governing the narrative construction of “proof” within the criminal trial process, and allows us to ask questions of law in a radically different manner than is normally permissible within the analytical detective story.57

Perhaps this is the discourse in which Hammett is engaging: Spade’s violence is key in assessing his relationship to the law in the novel, for it is in his extralegal, violent means of eliciting information from his suspects (for example, his strip-search of Brigid), that proves to be the most surefire test, not in finding proof of a villain’s villainy, but of finding conviction in his actions. Brigid's confession, elicited under duress, could not possibly condemn her in the eyes of the arriving police officers in the closing pages of the novel. Duress aside, Hammett deliberately breaks another cardinal rule of detective fiction: confessional speech is usually regarded by critics of the detective novel with great skepticism. It has a

57 Sargent, “Mys-reading the Past,” 290.
“limited nature in narrative, only being admitted into evidence following the
denouement, when the detective has already laid his or her proofs to the
reader.”58 In The Maltese Falcon, absent the possibility of proofs, confessional
speech, duress, and extralegal searches provide movement and narrative form to
a series of events that would otherwise remain inexplicable and enigmatic.

Spade is Hammett’s detective that must, in the end, yield to the narrative of the
law, because in a city that provides “no semblance of normative cohesion,”59
there is no other possibility of making sense of man’s actions. Hammett’s
intention is, as always, to show that life is too complex, too contradictory, too
confused, to be ‘solved,’ and the trajectory of The Maltese Falcon follows Spade’s
realization that, in order to live, work and survive in San Francisco, he must stop
trying, and accept that the law’s imperfect explication of the crimes that
underpin the city is the best alternative. He does not view the law as moral, or
even good, but rather, in line with Oliver Wendell Holmes’ realist definition of
law (“the prophecies of what the courts will do in fact, and nothing more
pretentious, are what I mean by the law”)60 whereby he accepts the law as the
code by which one acts so that one does not get in trouble, rather than a system
upon which moral codes are perched and organized. If detective fiction
generically imagines “a fantasy of extra-systemic freedom,”61 then Spade’s
decision to abandon the extralegal search for truth and instead settle within the
bounds of the legal system presents Hammett’s most important review of the
genre. Edward Margolies is correct in viewing the final pages of The Maltese
Falcon as grimly paralyzing: “in order to withstand an engulfing sense of horror”
Spade manages to “anaesthetise [his] feelings. The price of survival for the
individual who constantly confronts crime, it seems, is emotional atrophy.”62

58 Sargent, “Mys-reading the Past,” 293.
59 Sargent, “Murder and Mayhem,” 49.
61 Edward Margolies, Which Way Did He Go?: The Private Eye in Dashiel1 Hammett, Raymond
62 Margolies, Which Way Did He Go?, 5.
In Spade ultimately seeking grimly comfortable *narrative cohesion* instead of *truth* from the tremendous proliferation of empty signs, Hammett regards the detective's work as – recalling Cover's definition of law as *nomos* – dramatically toeing the line between what is, and what ought to be. Spade's loss of love and his sacrifice of the possible sense of the meaningfulness that love promises allows him to, in a sense, look to the law, as imperfect as it may be, to "imbue action with significance." In Spade's *nomos* we get to the heart, then, of Cover's legal promise:

> our visions hold our reality up to us as unredeemed. By themselves the alternative world of our visions – the lion lying down with the lamb... dictate no particular set of transformations or efforts at transformation. But law gives a vision depth of field. 

I am not entirely convinced, however, that in his turn to law's *nomos*, and in recoiling from modernity's *nomos*, Spade has any such hopes for the future or belief in the law as a real source of justice. Peter Wolfe suggests that Hammett's "fuguelike orderings" link not the *is* and the *ought to be* but instead, more unsettlingly, the *bizarre* and the *believable*; and Hammett himself argued that his fiction depends on "the reader's believing that certain things cannot happen and on the writer's making him feel – if not actually believe – that they can but should not happen."

Spade has concluded his case, but the final lines of the novel are not optimistic, and promise circularity rather than linearity. After Effie recoils from Spade's touch, he grows "pale as his collar"(217), and Effie announces that Iva, the widow of Archer, is waiting. He shivers, and says, "Well, send her in" (217). Spade will function, and function cheerily, and with wit, and with incisiveness,

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63 Cover, "Nomos and Narrative," 8.
64 Cover, "Nomos and Narrative," 9.
but his detection will no longer search for meaningful patterns. He has come face to face with the meaninglessness of his victory, and the extraordinary sacrifice it compelled. Peter Wolfe laments,

although we share his loss, we approve of his action. But our approval is both grudging and detached. Life shimmers and pulses less without Brigid. A tragedy of lost hopes and chances, *The Maltese Falcon* shows life sustaining itself both at a reduced level and at a great cost.67

Moreover, in his novels after *The Maltese Falcon*, Hammett no longer adheres to the self-assured triumphalism that goes hand in hand with the genre. *The Maltese Falcon* is more of a “psychological novel with almost no psychology.”68 Sinda Gregory writes,

at the novel’s conclusion – when we expect to be assured and illuminated – we are left with an indecipherable mystery that has grown larger, more pervasive, and more impenetrable as the book has developed.69

For Gregory, Spade, more than the falcon, is the “most mysterious factor in the case;”70 the only real mystery that is solved, however unsatisfactorily, is what Spade did next. In an observation which brings me neatly to my next chapter, Peter Wolfe notes that Hammett is transposing into the West Coast megalopolis the “art of the grotesque”, and psychological ruminations thereof, an approach which is more commonly associated with “a southern tradition including Faulkner, Carson McCullers, and Flannery O’Connor.”71

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67 Wolfe, *Beams Falling*, 121.
Part II

Gavin Stevens: Faulkner's Lawyer-Detective
Like a single-bed blanket on a double bed and three folks in the bed and a cold night. There ain’t ever enough blanket to cover the case … The law is always too short and too tight for growing humankind. The best you can do is do something and then make up some law to fit and by the time that law gets on the books you would have done something different.

- Robert Penn Warren, *All the King’s Men*

The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation. But the most difficult labour will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results, depend very much upon its past…

- Oliver Wendell Homes, Jr., *The Common Law*

In *Dred Scott*, Chief Justice Roger B. Taney formulated the following question to be answered by the Court:

The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the Constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, granted by that instrument to the citizen?\(^1\)

\(^1\) Dred Scott v Sanford, 60 U.S. 393 (1857) at 403.
Of course he (and the majority of the Court) answered this question, as the annals of history decry, with a strident No. There has been a great deal of literature looking at Faulkner’s *Light in August, Go Down, Moses* and *Intruder in the Dust* in respect of the relationship between race, law and social change, and critics such as Thadious M. Davis convincingly argue the extent to which Faulkner as an author was haunted by the laws of the nation, even after they were repealed, and of Mississippi locally, in his representation and examination of race in his literary oeuvre. I wish to examine specifically, in this chapter, how the investigative and courtroom techniques of lawyer/detective Gavin Stevens in the aforementioned two novels, as well as in the *Knight’s Gambit* stories, are used to institute legal change via social streams rather than administrative avenues.

In the years Faulkner penned *Light in August, Go Down, Moses, Intruder in the Dust, Knight’s Gambit* and *Requiem for a Nun*, his explicitly pensive legal tales, we see him endeavoring to come up with a viable jurisprudential model or paradigm through which the South can not only progress, but also keep intact its site-specific customs. The *Knight’s Gambit* stories most explicitly align justice with the Faulknerian trinity of soil, site-specific custom, and speech, and in each of the five stories the lawbreakers are at odds with at least one of the three: the lawbreakers of “Smoke” include Anse Holland, an outlander who marries into a landowning family, inherits the land and then neglects it; the lawbreaker in “An Error in Chemistry” reveals his guilt and identity when, in a gaffe that betrays his refusal to assimilate into or embrace Southern custom, he attempts to make a “Toddy” by dissolving sugar in whisky, instead of, as any Southerner would know, dissolving sugar in water, and then adding it to the whisky. The eponymous lawbreaker in “Monk” is denied justice because of his acute inability to speak; and in “Hand Upon the Waters” Lonnie Grinnup, emblematic of the old South - a humble fisherman, charitable, hospitable, happy to live off a few square feet of land – is killed by brothers Tyler and Boyd Ballenbaugh, emblematic of the
new South – “acquisitive, violent, controlling,” who, in a repudiation of family, turn on one another at the end of the story.

From the *Knight’s Gambit* anthology this chapter will focus on “Monk” in detail, for speech is the most complex of Faulkner’s trinity, and most explicitly linked to law and justice. In “the colloquial environment of Yoknapatawpha County,” rhetorical posturing – echoing the love of and emphasis on oratory upon which American jurisprudence and legal mythology was founded – is a conduit to just and meaningful resolutions of legal problems. It is important to note, however, that in his literature, Faulkner consistently ruminates on speech as an *act or omission*. I am interested in the ways in which Faulkner explores the obverse of this romantic rendering of rhetoric – that is, the ways in which silence insidiously thwarts justice, and intimates the persistence of injustice. Just as Stevens often uses speech to enact justice and to literally solve crimes (dialogue is his primary tool of detection), his silence, or his oftentimes incapacity to speak bespeaks an injustice that he finds irremediable and incomprehensible – an injustice before which he, as a representative of the law, must confront his own futility. In this way, Stevens’ silence *speaks to* Faulkner’s other silenced characters – his negroes in *Go Down, Moses, Intruder in the Dust, Light in August* and *Requiem for a Nun* – the marginalized characters that are, in one way or another, denied access to the dialogic community of Yoknapatawpha, and are most often the victims of the injustice. Faulkner clearly struggles with Stevens’ character: his inconsistencies and shortcomings render him a painfully realistic rendering of an – albeit idealized – character. He is often a wonderful force of

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3 Jay Watson, *Forensic Fictions: The Lawyer Figure in Faulkner* (Athens, GA: University of Georgia Press, 1993), 146.
4 To this end, Richard H. Weisberg writes,

One thing can be said for William Faulkner’s choice of a lawyer in his novels: he remained faithful to that choice over many years of hardship, ambiguity, embarrassment, and even public displeasure. Few real-life lawyers could ask for a more faithful client... So it was with Faulkner and his favourite fictional lawyer, Gavin Stevens.

justice in Faulkner’s novels and stories, a learned everyman who is “intellectually different from, but fundamentally committed to his countryfolk.” However what makes his character so important to Faulkner scholarship, so enduring and enigmatic, is his fatal flaw: Stevens possesses a heavy-handed, often complex, often astute and often incoherent understanding of the South’s relationship to both history and law through which, throughout the novels and stories, Faulkner encodes the legal impasse facing the South. Stevens’ problematic espousal of gradualism in *Intruder in the Dust*, for example, and his simplistic and fallacious analysis of what is fundamentally unknowable – the emotional and psychological vicissitudes of Joe Christmas in *Light in August* – reaches its zenith in *Requiem for a Nun*, where, prima facie representing Nancy Mannigoe, a black woman facing the gallows for murder, he ignores her, lets her hang, and instead focuses his attention on the white, middle-class Temple Drake, the murdered infant’s mother. Stevens’ potentially laudable act of representing Nancy and his putative claim to integrate her into the community of Yoknapatawpha, we find, is ultimately baseless, and filtered through a social and cultural sensibility that fundamentally excludes Nancy and people like her from such integration.

Faulkner was passionate about the South creating its own laws, and instigating its own social reform. In a speech at the University of Virginia in 1958, he warns that otherwise, the North would *enforce equality* with “bayonets.” Throughout his speeches and his literature there lies a threat that if laws are not created from the ground up – coming from a certain place, through the discourse of its

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6 Robert A. Ferguson notes that in constantly comparing Stevens to Cincinnatus, Faulkner lends his lawyer-detective a variety of personas and functions: “planter, intellectual, overseer, classicist, lawyer, politician, and not least, gentleman of leisure.” Importantly, the two code words in these descriptions of the Southern lawyer are ‘gentleman’ and ‘planter,’ the first signifying the Southern aristocrat’s code of honour, and the second, his involvement in slavery and, after the Civil War, his acceptance of a conspiracy of racial discrimination that continued to bar a third of the South’s population from the legal rights of effective citizenship.
7 Cited in Frederick L. Gwynn and Joseph Blotner, *Faulkner in the University* (Charlottesville, VA: University of Virginia Press, 1995), 226.
inhabitants, for that certain place – then they will simply be imposed from above, effectively forcing the South to act peaceably and forcing equality through duress, rather than volition. The aforementioned novels and stories are written pre-

*Brown v Board of Education*, in the prime and problematic wane of Jim Crow. Eric J. Sundquist writes that the Mississippi of the time was

> a closed society still fierce in its isolation within the often closed society of the South itself, which for over four years in reality and well over a hundred years in its own imagination remained a nation socially and psychologically outside the nation that enclosed it legally and physically.

Sundquist highlights the significance of a region’s created mythology: how it imagines itself and subsequently projects that image by way of grassroots praxis, *de facto* custom, which can defy or override the imposition of *de jure* laws, especially for a space historically cloistered and defiant like Mississippi. Often in Faulkner’s oeuvre, *de facto* and *de jure* practices in the South are placed in direct conflict with one another, the tension perhaps to draw attention to the need for the correlation between the two. The unbridgeable gap, however, between the practices of Southerners, and the laws to which they were subject, mirrors the very chasm, silent and horrific, between what Sundquist interprets as *imagination* and *empathy* in respect of the tragedy of the South, that it “*includes but... it can never literally embodiment the tragedy of the Negro,*” Faulkner sought to express

> what can only be imagined or felt but never truly lived; and it is in the simultaneous rhythms of repulsion and union, of hatred and embrace, so vividly carried to their extremities of contact and failed resolution in Faulkner’s

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10 Sundquist, *The House Divided*, 64.
style, that his most visceral understanding of this tragedy is realized.\textsuperscript{11}

I wish to argue that Faulkner uses crime and the detection thereof, and is interested in what Ferguson called "the configuration of law and literature,"\textsuperscript{12} as an apparatus through which to understand this gap that seemed so flagrant in the postbellum South between action, intention, and understanding. I will argue in the following chapters that this gap is at times somewhat impressively bridged by Stevens’ understanding of the close-knit community and history of Jefferson, most evident in the method of colloquial detection\textsuperscript{13} adopted in the \textit{Knight’s Gambit} stories. By respecting and understanding history and custom, Stevens’ fulfillment of his civic duty results in the promise of the South’s redemption. At other times, Faulkner uses Stevens as his vehicle to emphasize the abyss, most famously in Stevens’ awkward and atypically inarticulate management of the return of Butch Beauchamp’s body for burial in \textit{Go Down, Moses}, where the complexity and mystery surrounding Yoknapatawpha’s black community bankrupts language, and the hope for justice therein.

Faulkner's legal oeuvre is important to the scholar of law and literature for its exploration of the law’s complexity; its unwillingness to understand the relationship between the history of the South, and the law, as anything other than multifarious and highly problematic. Often in the Stevens stories and novels the law appears as a mischief-making application that is imposed \textit{de jure} but not embraced \textit{de facto} by the people, given that it is attempting to deny the South its distinct heritage: in “The Tall Men,”\textsuperscript{14} for example, the “state draft investigator” (45) who enters Jefferson in order to apprehend two brothers who have not put their name down on a selective service list is repudiated by the blood (both real

\begin{footnotes}
\item[13] Watson notes in \textit{Forensic Fictions} that in \textit{Knight’s Gambit}, Stevens’ lawyering pursues “the links among storytelling, forensic work, responsible citizenship and detection.” 140.
\item[14] Faulkner, “The Tall Men,” \textit{Collected Stories} (New York: Vintage, 1995), 45-62. All subsequent references to this story will refer to this publication and will be incorporated in the body of the thesis. Originally published 1941.
\end{footnotes}
and figural – relating to kinship) ties of the community. He speaks only of warrants and laws, compared to the circumlocutory and idiomatic parlance of the natives, and is told that he has been “fogged up with rules and regulations” (59) and that the law in Jefferson is “honor and pride and discipline that make a man worth preserving, make him of any value” (60). When, baffled, he asks whether he is being threatened, the marshal, who is a Jefferson-native and held in stark contrast with the outlander, says, “Ain’t anybody paying any attention to you at all” (53). The tale is a metaphor for Government interference on multiple levels - also in the rambling story is unease regarding Federal interference with Southern agriculture – the raising, ginning and selling of cotton: “stabilizing the price, using up the surplus, they called it, giving a man advice and help, whether he wanted it or not” (55, italics mine). In each Gavin Stevens tale there is an examination of Southern idiosyncrasy, with which Faulkner has an uneasy relationship. It is the idiosyncrasy of the South that is being threatened by federal laws, however the South's idiosyncrasy (slavery, the loss of the Civil War, the persistent post-war discrimination) is also the South's most grotesque shame. This tension haunts Faulkner's literature, and it is clearest in Stevens' idealistic but flawed methods of detection where, confronted with the issues facing the South – industrial modernization, and race relations, for example – he is a crusader for, but also an abject symbol of the impossibility of, what Faulkner would perceive to be a just outcome. Faulkner's detective fiction, ultimately, like Hammett's, crusades against but succumbs to Dennis Porter's logic of “the spreading stain.” Porter writes of the hardboiled genre, “the initial crime often turns out to be a relatively superficial symptom of an evil whose magnitude and ubiquity are only progressively disclosed during the course of the investigation.”15 In Faulkner's characterization of Stevens we see some surprising similarities to Hammett's Sam Spade: Stevens is a character who is attempting to uncover illegal activity in a criminal and tortious landscape in

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which he is part of the problem, and from which he cannot extract himself and his prejudices and his thwarted desires.

There is also a tension in these novels and stories, much more clearly articulated than in Hammett’s novels, between the law as a distinctly dehumanizing tool, incapable of understanding grief, love, and community, and also a welcome tool in the imposition of order, given that it is law’s very incapacity to recognize the passions of humanity that renders the law able and proficient to deny and estop those baser passions that result in the formation of lynch mobs. In Intruder in the Dust, Chick Mallison marvels at how his uncle Gavin can traffic “not in facts but long since beyond dry statistics into something far more moving because it was truth; which moved the heart and had nothing whatever to do with what mere provable information said.”¹⁶ This is highly ironic: if we are invited to draw a line between “truth” and law (presumably the “dry statistics” represent the principle of stare decisis), then it is Stevens’ indulgence of “truth” (which could either refer to natural law, or, more attuned to the modern condition – could encompass instinct, conscience, subjectivity, the fallible faculties) rather than strict adherence to legal procedure and empirical data that threatens to convict or lynch Lucas Beauchamp, the innocent Negro caught in the middle of a fratricidal feud. Lucas benefits from the law, rather than truth because the law has at least sworn to protect him, regardless of the de facto actions of the characters: on his first conference with Stevens, Beauchamp asks “what are you going to do with me?” (58) Stevens, settling into a structure of hegemony that assumes, with safety and surety, antebellum racial stereotypes [He’s just a nigger after all for his high nose and his stiff neck and his gold watch-chain and refusing to mean mister to anybody when he says it. Only a nigger could kill a man (57)], responds “Nothing. My name aint Gowrie. It aint even Beat Four.” To which Beauchamp, considering only the legal ramifications of his arrest, replies, “I’ll worry about that when they walks in here… I mean the law. Aint you the county lawyer?”

¹⁶ Faulkner, Intruder in the Dust (New York: Vintage, 1991), 49. All subsequent references to this novel will refer to this publication and will be incorporated in the body of the thesis, and will be cited as ID when necessary. Originally published 1948.
Stevens, still not appreciating his potential role in the matter, responds with “It’s the District Attorney that’ll hang you... not me.” (58)

An ambivalence towards the law is evident in Intruder as it is the instrument to which men such as Stevens, the lawyer, or the police officers and the jailor, or Percy Grimm in Light in August can pledge allegiance and then are made to simply, mechanically obey, as little more than an expedient set of rules, despite their private desires or prejudices. For some characters, at least, de jure stipulations successfully subsume desires to act unjustly – the desire to indict Beauchamp for being a “Negro.” The Negro is pondered by Chick in Intruder to be “a condition: a belief: an acceptance” (11) and abstracted by Quentin Compson in The Sound and the Fury as “not a person so much as a form of behaviour; a sort of obverse reflection of the white people he lives among.”17 Obeying the letter of the law or being an instrument of the law is therefore to be progressive and humane, for the law seeks loftily to protect indiscriminately each and every citizen (albeit in a ‘separate but equal’ fashion), whereas seeking truth or morality without reference to the law but rather with reference to the human heart, the passions of man, often entails the indulgence of prejudice and parochialism.

In this way, Faulkner is very much in line with, and influenced by, the postbellum legal positivism that had swept American jurisprudential theory and had its exponent in Christopher Columbus Langdell, the first dean of Harvard Law School. Langdellian positivism argued for an unflagging commitment to logic divorced from moral principle or public policy considerations (which is a clear precursor to Oliver Wendell Holmes’ ‘bad man’ theory, which I will discuss in greater detail later in this chapter). John Austin, an English jurisprudent and one of the progenitors of this new analytical model of jurisprudence, famously defied the Blackstonian principles that were so influential in 19th Century American thought:

Sir William Blackstone... says in his *Commentaries* that the laws of God are superior in obligation to all other laws; that no human laws should be suffered to contradict them; that human laws are of no validity if contrary to them... Now, to say that human laws which conflict with the Divine law are not binding... is to talk stark nonsense. The most pernicious laws, and therefore those which are most opposed to the will of God, have been and are continually enforced as laws by judicial tribunals.18

According to Austin, and Langdell, law is merely to be understood as “a command which obliges a person or persons to a course of conduct.”19 I believe that this jurisprudential model, that found popularity in postbellum America and continued for many years to be the paradigm *du jour* adopted in legal reasoning and education20 is adopted and, to an extent, endorsed by Faulkner in his Gavin Stevens stories, where the law is understood by the characters of Yoknapatawpha as a set of rules that govern a society and to which social creatures are subject, and little more. There was too a self-reflexivity in the way the American critic figured law, and Langdellian positivists viewed seemingly ‘natural’ laws as merely human laws that have developed and been made to appear normative over time. The anguished reasoning of the jailor in *Intruder in the Dust*, provides a perfect example. His job as a jailor means protecting Lucas Beauchamp, a Negro, accused of murder, from the clutches of the lynch mob outside the jailhouse. He says to Stevens,

‘Don’t mind me. I’m going to do the best I can; I taken an oath of office too.’ His voice rose a little, still calm, just louder: ‘but don’t think nobody’s going to make me admit I like it. I got a wife and two children: what good am I going to be to them if I get myself killed protecting a goddamn stinking nigger?’ His voice rose again; it was not calm now: ‘and how am I going to live with myself if I let a passel of nogood sonsabitches take a prisoner away from me?’ now

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he stopped and turned on the step above them, higher than both, his face once more harried and frantic, his voice frantic and outraged: 'Better for everybody if them folks had took him as soon as they laid hands on him yesterday –' (53)

The jailer will uphold the law because it is his job, and simply because he has taken an oath to do so. It does not correspond with how he feels about the situation, and he acknowledges that could be risking his life upholding his oath. There is clearly virtue in this. When he acknowledges this, unable to accept that he is putting his life on the line for a “goddamn stinking nigger”, he is quick to reformulate the public perception of his actions, making it seem as though it stems from pride rather than morality or higher laws; that he is simply not a man who will suffer bullies. Regardless of the complex psychological and social implications of his actions, by understanding himself as a law-enforcing automaton, a lynching crisis is averted.

And yet Faulkner’s approach to the law is complex; it is obvious that legal positivism proves too limiting; it is simply incompatible with the contemporary political climate. Intruder in the Dust, for example, deftly juxtaposes a positivist reading of the law as a structural necessity to order and control and distribute justice evenly, and to necessarily suppress the passions and prejudices of man, with the very obvious need in the South for actual legal reform. Thus Chick, Stevens’ protégé and the real force of detection in Intruder, in many ways represents the next generation of both legal reasoning and social ideology – perhaps the movement of legal realism that chronologically followed positivism, which was deeply skeptical of a rule of law that purported to exist without reference to the contingencies of human history and language and that simply, syllogistically worked in accordance with existing rules. I will read Intruder in the Dust as Faulkner’s novel that explores how adherence to the law may not be enough, if it is merely men begrudgingly or blindly following the law because they have made some sort of oath. The detective work – the investigation proper – that is recounted in Intruder, after all, requires an enormous amount of effort
and creativity that, for a black client accused of murder, necessitates an overcoming of prejudice and a willingness to work beyond the scope of the law and the law's delineation of roles. The conversations between Stevens and Chick in *Intruder* show that while adhering to the law like the jailor does is enough to temporarily keep peace, in order to enact justice one must transgress one's role and uncover, through layers of dust and sediment and prejudice and history, the truth regarding how we relate to one another. The need for legal reform is made commensurate with the need for reform of the South's collective consciousness. There must be an overhaul in Southern policy, Southern custom, and the Southern way of thinking. The gap between *de jure* and *de facto* laws need bridging once and for all. In this way, Faulkner differs vastly from Hammett: Hammett sees the Op working as a self-fulfilling prophecy, and the Op's nobility lies in his capacity to work (the justice rendered in solving of the crime, is, at least to the Op, incidental), whereas Faulkner suggests that *work*, and one's commitment to one's job is beneficial (without it both Lucas Beauchamp and Joe Christmas would have been lynched for sure) but still it is not enough; the work must be in service of social change – a change in attitudes. In having his detective a lawyer, a representative of the state, a 'public' detective, if you will, Faulkner endows him with a social responsibility that Hammett has excised from his detectives: Stevens has an agenda, and a stake, in seeing social change as the fruit of his labour – though this satisfaction consistently eludes him. The detective is the statesman who instigates social change. Furthermore, Stevens as a lawyer alerts the reader to the chicken-and-egg nature of the law's relationship to the community: the community and its discourses must reform to allow for legal reform, and yet we see in Faulkner's prose a suggestion that legal reform must occur so that social practices may reflect it. This way, I will read Faulkner's legal oeuvre as attempting to reconcile the South's troubled legal landscape with the "idealist constitutional strain" through which the American legal lexicon consistently strove to assert and define its objectives and parameters.

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21 Weisberg, "Quest for Silence," 199.
They all talked at once, their voices insistent and contradictory and impatient, making of unreality a possibility, then a probability, then an incontrovertible fact, as people will when their desires become words.

- William Faulkner, *The Sound and the Fury*

It is easy to see why speech is so important to an American conception of justice, the first amendment’s protection of free speech is widely considered to be “America’s greatest legal, political and cultural achievement”¹ that, according to Robert Tsai, “became synonymous with social progress” “as more Americans came to accept the virtues of *expressive* liberty in the twentieth century.”² Tsai’s understanding of the twentieth century as having created a “first amendment culture” springs from a figuration of justice that can only be achieved through a commitment to Holmes’ vision of the “marketplace of ideas.”³ The modernist condition of the multiplicity of meaning, coupled with the right of each person to speak an opinion, elides the pursuit of justice with active hermeneusis. In his exploration of *silence*, Faulkner debunks the totalizing myth of free speech;⁴ his literature dwells on characters who do not or cannot speak, suggesting that “not all speakers are equally able to get themselves heard, that without commitment

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⁴ For a cogent exploration of the concept of free speech in American law and culture, see Stanley Fish, *There’s No Such Thing as Free Speech… and It’s a Good Thing Too* (New York: Oxford University Press, 1994).
to equal freedom some voices will be heard and others drowned out.”

Moreover, Faulkner's own self-reflexive struggle and inability to express the Negro experience, for example, finds thematic resonance in Stevens' inability to effect justice within his novels. Injustice comes to the fore when not everyone can speak – when each and every character, as citizen, is not a part of the marketplace of ideas – within Yoknapatawpha’s dialogic community. Faulkner's literature, however, being both structurally and thematically modernist, uses these ideas as a platform upon which to imagine a certain kind of horror: in the instances of an historical or cultural trauma, regardless of the intention or position of the interlocutor, the inability to give full expression to experience renders injustice a persistent reality. It is hard to tell whether Stevens' investigative speech in Faulkner's tales – his “garrulous and facile” chatter – signifies the necessity to attempt to effect justice even in the face of hopeless ineffability – to talk towards justice – or whether Faulkner is simply emphasizing the impossibility of justice in Stevens' inane talking around it.

In the final and title chapter of Go Down, Moses, the relationship between language (spoken and, to a lesser extent, written) and law are keenly explored. Richard Moreland writes that Faulkner, in Absalom, Absalom!, represents what “Conrad and Eliot called ‘the horror’ and what Joyce called the ‘nightmare’ of history” in “the repeatedly repressed and excluded voice of human suffering, desire, and grief heard only in the safely inarticulate, undifferentiated sound of the black idiot Jim Bond's howl.”

I wish to read “Go Down, Moses” with particular attention to this understanding of silence as something safe: a means of evading the full expression of horror, the abyss, which we naturally attempt to understand through language. When Moreland writes that Jim Bond's howl is safely inarticulate, he gestures towards Faulkner's use of nonverbal utterances

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5 Sarat, recalling Owen Fiss' Liberalism Divided: Freedom of Speech and the Many Uses of State Power in Speech and Silence, 4-5.
6 Faulkner, “Knight's Gambit,” Knight's Gambit (New York: Signet, 1950), 90-168, 94. All subsequent references to this story will refer to this publication and will be incorporated in the body of the thesis. Originally published 1949.
and meaningless articulation to express the abyssal interstices that punctuate the confluence of empathy, identity and the law.

“Go Down, Moses” opens with a census-taker jotting down the final details of Samuel Worsham Beauchamp, a negro who is due to be executed, and, in typical Faulknerian style, is immediately described vis-à-vis his place of origin: he is introduced as a foreigner, or an exile: he wears foreign clothes, dons a foreign coiffure, and speaks “in a voice which was anything under the sun but a southern voice” (351). He is as aloof and as much an outlander as the federal investigator of “The Tall Men”, though we learn that he is, in fact, originally from Jefferson. Even though he is from Jefferson, he sees the homecoming of his body, for burial, as unimportant: the census taker says to Beauchamp, regarding his living family, “if they don’t know who you are here, how will they know – how do you expect to get home?” Beauchamp replies, indifferently, “What will that matter to me?” (352). He is the wayward son, who, biblically, has repudiated his home, soil, and people.

At the same time, we are introduced to Gavin Stevens in Jefferson. The usual, economical list of credentials follows his name [“Gavin Stevens, Phi Beta Kappa, Harvard, Ph.D., Heidelberg” (353)] and he is, as always, toiling away at translating the Old Testament back to classical Greek. Mollie Beauchamp, Samuel’s grandmother, enters his office, and immediately, and motionlessly, begins to chant: “Roth Edmonds sold my Benjamin. Sold him in Egypt. Pharaoh got him –” (353). Mollie Beauchamp immediately speaks to the lawyer, with his Western credentials still clear in the reader’s mind, in spiritual, biblical language, and Stevens realizes that he will have to rely on non-traditional faculties, and modes of communication, in order to create a dialogue with Mollie. At first he is rational, “If you don’t know where your grandson is, how do you know he’s in trouble? Do you mean that Mr. Edwards has refused to help you find him?” (353),

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8 Faulkner, “Go Down, Moses,” Go Down, Moses (New York: Vintage, 1990), 349-365. All subsequent references to this chapter will refer to this publication and will be incorporated in the body of the thesis. Originally published 1941.
but Mollie is undeterred, and continues to speak to Gavin in allegory, “I just knows the Pharaoh got him. And you the law. I wants to find my boy” (354). Stevens realizes that, beyond language, he will have to rely on other more nebulous faculties, but he does not know what they are, and contemplates only the serendipitous “mesh and click” of “memory, recollection” (353).

When it comes to the black population of Jefferson, Stevens must communicate beyond language, and so his consideration of memory, recollection, and “instinct” gestures towards useless cliché: “he did not doubt for one moment the old Negress’ instinct. If she had been able to divine where the boy was and what his trouble was, he would not have been surprised” (355). Stevens is, however, easily able to use the professional channels of white hegemony to conduct his investigation and locate Beauchamp, and finds his answers in congress with the local county newspaper editor – another white man of letters. We learn subsequently that Stevens, through his legal connections, even attempts to prevent Beauchamp’s execution: “I talked to the Warden at Joliet, and to the District Attorney in Chicago. He had a fair trial, a good lawyer – of that sort. He had money” (357). Finding no evidence of malfeasance, or miscarriage of justice, Stevens is satisfied that Beauchamp has gone through the judicial process without fear or favour, and says to Miss Worsham, equating courtroom findings with fact, and essentializing guilt, “He is a murderer, Miss Worsham. He shot that police-man in the back. A bad son of a bad father” (357). Keeping to the official conduits through which he can safely travel, and over which he has some sway, Stevens reassures Miss Worsham, Mollie’s lifelong friend, that, for Mollie Beauchamp’s benefit, he spoke to the editor of the county newspaper, who “has agreed not to print anything” (357). Stevens continues,

I will telephone the Memphis paper, but it’s probably too late for that... if we could just persuade her to go on back home this afternoon, before the Memphis paper... Out there, where the only white person she ever sees is Mr. Edmonds, and I will telephone him. (357)
Stevens can, to an extent, exert control over the print media, and relies too on the illiteracy of Yoknapatawpha’s black community in a paternalistic bid to restrict the flow of linguistic capital. He then off-handedly suggests that he would, in “two or three months,” tell Mollie Beauchamp what happened, after her grandson is “dead and buried somewhere in the North” (358) and the trauma associated with immediacy – proximity – has subsided.

While he is able to take control of the official tasks, he does not foresee the complicating effects of any emotional dimension. “Go Down, Moses” is the final installment, after all, in a long and winding and fragmented history of injustice through slavery, land ownership and stewardship, grief, inheritance, the disappearing wilderness, and family relations from antebellum to contemporary times. When Gavin Stevens appears at the end of the novel and takes on the task of locating Beauchamp for a nominal fee, the relatively straightforward task is complicated by the ghosts of injustice that haunt Yoknapatawpha County. Ultimately, we see these emotional complications stultify and vanquish Stevens, and the clearest evidence of this is in his language:

‘She will want to take him back with her,’ she said.
‘Him?’ Stevens said. ‘The body?’ She watched him. The expression was neither shocked nor disapproving. It merely embodied some old, timeless, female affinity for blood and grief. Stevens thought: She has walked to town in this heat. Unless Hamp brought her in the buggy he peddles eggs and vegetables from.
‘He is the only child of her oldest daughter, her own dead first child. He must come home.’
‘He must come home,’ Stevens says quietly. (358)

This marks a shift in the story, where Stevens’ linguistic capacity is reduced to mimicry, and nothing more. While Stevens’ linguistic talents are on show in
Faulkner’s other tales, we see in “Go Down, Moses” that Mollie Beauchamp’s profound grief, which defies description, and resists figuration, and which Stevens cannot grasp, relocates language (as a meaning-making tool) to the realm of phonology. Later when Miss Worsham says “Not just a box, Mr. Stevens”, Gavin replies, “Not just a box”, and “he said it in exactly the same tone in which he said He Must Come Home” (358-9). By means of such repetition, Faulkner further emphasizes the role of repeating in successfully keeping trauma at bay. Stevens is still able to travel the normative channels of power, and so fundraises to pay for the homecoming and burial of Butch Beauchamp’s body. He passes from “store to store and office to office about the square – merchant and clerk, proprietor and employee, doctor dentist lawyer and barber”, and now once again he can speak with “set and rapid speech.” (360)

But it is in the face of the otherness (racial and gendered), and grief, that he loses his language. At Miss Worsham’s house he sits, so that “the four of them - himself, Miss Worsham, the old Negress and her brother – made a circle about the brick hearth on which the ancient symbol of human coherence and solidarity smoldered” (361). Sadly ironizing and reappropriating the hearth as “ancient symbol,” Mollie does not even look at Stevens, and the gulf between them, of miscommunication, misunderstanding, and misinterpretation, is exaggerated. When a questioner stated his preference for the more mature, responsible and likeable Stevens of Knight’s Gambit, over the Gavin Stevens of The Town, Faulkner replied:

Well, he had got out of his depth. He had got into the real world... That is, he knew a good deal less about people than he knew about the law and about the ways of evidence and drawing the right conclusions from what he saw with his legal mind. When he had to deal with people, he was an amateur... [and] at times he had a good deal less judgment than his nephew did.10

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9 The Stevens of the first five Knight’s Gambit stories is accurately described by Weisberg as “the purely clever, somewhat tricky and manipulating courtroom investigator... [an] alert and aggressive professional “winner” in “The Quest for Silence,” 203.

10 Cited in Gwynn & Blotner, Faulkner in the University, 140.
This can easily be applied to the Stevens of *Go Down, Moses* and *Intruder in the Dust* too, and it is interesting that Faulkner himself juxtaposes Stevens’ deft manipulation of the law with his clumsy social posturing. Miss Worsham and Mollie begin chanting in, once again, biblical language; the black gospel song “Go Down, Moses,” allegorizing the slave experience and identifying African-Americans with the chosen people, the biblical Israelites. Stevens, however, simply believes the women have lost touch with reality – he interjects with awkward, factual statements regarding protocol, procedure, social arrangement: “I telephoned Mr. Edmonds ... He will have everything ready when you get there” (362). Miss Worsham and Mollie chant in a way that does not worry about purpose, but rather, is in itself a kind of outlet, respiratory, incantatory; song and allegory that is purposefully directionless, hopeless, inculcating, repetitive, that belies strict interpretation, is used by the women to express the inexpressible, their personal grief. Although their grief is expressed through *language*, it is the heightened language of allegory, of vivid exemplification rather than bald definition. It belies language's versatility, multivalence, and poetically gestures towards its limits, its disintegration, its capacity for only staccato prayer in the face of real trauma.

“Sold him in Egypt and now he dead.”
“Oh yes lord. Sold him in Egypt.”
“Sold him in Egypt.”
“And now he dead.”
“Sold him to Pharaoh.”
“And now he dead.” (362)

H. Colin Messer correctly differentiates between Mollie’s “hollowed out” language and Stevens’:

Stevens’ loss is that of his dearest possession, his language. However, unlike Mollie, Stevens has no oral tradition, no scriptural metaphor, on which to draw in the midst of his
loss. [Mollie’s] biblical chant is... a viable form of catharsis.\textsuperscript{11}

The reader cannot but link the women’s hijacking or arrogation of biblical mythology and language, upon which Puritan America was born, to Stevens’ life’s work of translating the Old Testament back to Ancient Greek: in the face of an experience which he cannot understand and to which he cannot relate, we see Stevens’ hapless and obsessive desire to sequester language back to a priestly or aristocratic dialect, to limit language to the educated classes. When the women speak, they speak of an experience that he, and the South, cannot endure.

Sitting among these chanting women, Stevens immediately panics: “He rose quickly. Miss Worsham rose too, but he did not wait for her to precede him. He went down the hall fast, almost running... \textit{Soon I will be outside}, he thought. \textit{There will be air, space, breath}” (362). The women continue to chant, oblivious to Stevens’ extreme anxiety. Once again, belying his famed ability to connect with all his townspeople, Stevens can only interpret the chanting of the women academically, as theatrical and measured, “strophe and antistrophe” (363), as though it were the structure of tragedy he were witnessing, rather than the opposite – the disintegration of structure, and movement, the absenting of the performative self. Stevens realizes this when Miss Worsham clearly delineates possessiveness (and therefore exclusivity/exclusion) – “it’s our grief” (363) – showing Stevens that the language that he believed he possessed in order to structure and navigate a community is utterly arbitrary to these women who are, for starters, outside the social order.\textsuperscript{12} In fact, H. Collin Messer argues that Mollie’s use of chant and repetition is a direct result of her exclusion from the dialogic community of Yoknapatawpha County,\textsuperscript{13} while Michael Millgate notes

\textsuperscript{12} The statement of Miss Worsham echoes Steven’s statement to Chick in \textit{Intruder} regarding post-slavery reparation of the South: “I only say that the injustice is ours, the South’s.” Ownership, with its legal echoes, rather than acceptance, of grief, of injustice, is tantamount to the agency needed for reparation.
\textsuperscript{13} See “Exhausted Voices,” 1-15.
that “nowhere in Faulkner’s work is there a more persuasive dramatization of
the gulf dividing the white man’s mind from the Negro’s.” Their understanding
and use of language is perhaps more versatile, and more feeling, than Stevens’,
for their allegorical speech and incomprehensible moans point to a
verisimilitude that, for the intellectual Stevens, exists seemingly only to
emphasize the gulf between language and reality, the signifier and signified.

This is tragically made even more salient when, in a mildly ‘twist’ ending, Mollie
asks the editor of the newspaper to publish the story of her grandson’s body’s
homecoming, rejecting Stevens’ earlier paternalism. The newspaper editor, like
Stevens, is dumbfounded, and cannot understand firstly why the publication of
Beauchamp’s execution and burial would comfort Mollie, and secondly, given her
illiteracy, what purpose it could serve. Stevens’ moment of epiphany, the final
lines of the novel, when he finally understands Mollie’s motives, is a moment
where Stevens, “the designated paladin of justice and truth and right, the
Heidelberg Ph.D.” (364), eschews his usual trajectory of logos-ethos-pathos in
order to attempt to understand something that is designed to be confounding –
the human heart and its most aching desires, despair. He is placed in this
position of understanding or empathy beyond the official language of white
patriarchy when he inhabits the spaces of Yoknapatawpha County that are not
official or public. He is confounded by Mollie and Miss Worsham in their home,
and secondly gains insight into Mollie’s mind when he drives beyond “the metal
sign which said Jefferson. Corporate Limit. and the pavement vanished” (364).
Beyond Jefferson’s square, through which Stevens traverses with ease and status
“from store to store and office to office” (360) and where language is Stevens’
primary tool of both persuasion and detection, he is given a glimpse into
alternative discourses to white male hegemony, and also confronts his
powerlessness to either persuade or interpret Mollie and Miss Worsham, and, as
such, degenerates to mimicry, and then finally, silence.

The closing lines of the story and novel sees Stevens’ quiet acceptance of the impasse between himself and Jefferson's black community, and his acceptance of his place in Yoknapatawpha (and, conversely, where he is not welcome): “Let’s go back to town. I haven’t seen my desk in two days” (365). He has learned that language is not simply a tool, *instrumental* for his self-appointed socio-legal tasks, but rather, he himself, and his ever-shifting position in Jefferson, is governed by language. He has seen the abyss between himself and the black community, expressed by Faulkner through their inability to speak with one another; they are, as Messer writes, “at a loss for shared words.”\(^{15}\) In returning to the town square, and to his desk, his delusion of agency is recaptured, and the status quo awkwardly restored. He may once again exert control over language as a powerful white male in a way that allows him to be at ease with history, memory, and culture. Thadious M. Davis, at the end of her mostly positive analysis of Faulkner’s treatment of race in the final chapter of *Go Down, Moses*, concludes that the best Stevens can hope for is an armistice of sorts between two groups simultaneously alienated from one another, yet inextricably bound, given that “conflict” is, in Yoknapatawpha, a “pervasive condition.”\(^{16}\) This armistice is characterized by Stevens’ resignation of language, his stunned, horrified silence when confronted with black experience that uses the very same words over which he thought he had exclusive mastery, uncomfortably linking him to a history of trauma. This silence is further explored in Davis’ “Crying in the Wilderness: Legal, Racial and Moral Codes in *Go Down, Moses*”, where she argues, although complex legal and racial codes are employed by Faulkner to “determine and modify thought as well as behaviour” (thereby creating what Brook Thomas would deem good governance and ethical citizenry,\(^{17}\) a desired outcome of the nexus between law and literature), that ultimately, recalling Slotkin’s analysis of the denouement of *Red Harvest*,

\(^{15}\) Messer, “Exhausted Voices,” 10.
only personal change occurs within the novel, because dynamic realignment of values, attitudes, practices, and beliefs necessary for reformation in a static society takes place only as potential within a few isolated experiences.”

“Go Down, Moses” is also important because it shows the limits of the law, especially when, prima facie, the law operates in accordance with the way in which it was intended, designed, and when the law is, furthermore, to the extent that it can be, kind or compassionate, evident in Stevens personally fundraising in order to properly bury Beauchamp. It is easy to point out the flaw when the law gets it wrong, but Faulkner is more interested in the more nihilistic devastation of injustice that flows from when the law gets it right. I say this because although Beauchamp is convicted and executed according to procedure for a crime he did commit, Faulkner ensures through the novel’s rambling, loose structure, and its circular thematics that we cannot read “Go Down, Moses” without an awareness of the irrepressible history – the genealogy of abuse – that created Beauchamp and his habitus. We learn, as Davis writes, that “the law is partly to blame for the condition of an “anti-social” black, such as Butch Beauchamp.” She goes on to write,

It shows that the dynamics of speech and silence in Yoknapatawpha County go beyond admissions of guilt and classical legal persuasion; they also symbolize the law’s limits, its inability to represent the social conditions and motivations of citizens across racial lines, even when the law (Stevens) attempts to listen and

construe Mollie’s grief, and her internalization of the events. As Davis points out, the spiritual “Go Down, Moses” evokes “the right of challenging… legal authority on the grounds of divine law and morality,” and, in a sense, the relationship between the white Miss Worsham and the Negro Mollie (“Mollie’s parents belonged to my grandfather… we grew up as sisters”) is the closest Faulkner will come, by the end of Go Down, Moses, to revitalize and modernize “a society still enmeshed in the old ways.” As always in Faulkner’s literature, it is women and children who hold the key to empathy and identification. For all of Stevens’ learning, his bafflement at the women and their language – an arrogation of his language, from which he derives his social standing – leads him back from the grotesque expansiveness of nature to the safety of his office, and back to translating the bible back to Ancient Greek – a reclaiming and delimiting of language for the learned. John T. Mathews reads “Go Down, Moses” as equally problematic: a “massive charade that is at once heartfelt and perfunctory, eloquent and incomprehensible.” In the face of Faulkner’s “movement beyond comprehension,” we are left to conjecture, perhaps, on Faulkner’s views on the law and its efficacy, especially given its envelopment within the limits of language. H. Colin Messer poses the question, “what hope is there for dialogue in Yoknapatawpha… particularly when characters and their roles are so powerfully circumscribed by history and culture?”

The answer lies somewhere in Faulkner’s duality between sound and silence, and how Stevens, who detects through an ethic of talking and listening, is able at times to bridge with language and segregate with silence, but also segregate with language, and accept with silence, the segregated body politic of Yoknapatawpha. Joseph Blotner has written extensively on the puzzle of Faulkner’s optimism, and concluded that the extent of Faulkner’s optimism was his suggesting “the

20 Davis, “Crying in the Wilderness,” 313.
21 Davis, “Crying in the Wilderness,” 315.
possibility for the amelioration of some aspects of the human condition.”

Blotner later wrote in “William Faulkner: Author-at-Law” that Faulkner’s “tragicomic – Shakespearian, if you will – view of the human condition” is that “the law, if it does not, as it is practiced, represent something of man’s greatest achievements, does represent something of his highest aspirations,” echoing, of course, Cover’s legal nomos and Faulkner’s description of the courthouse in Requiem for a Nun: “above all, the courthouse: the focus, the hub... musing, brooding, symbolic and ponderable, tall as a cloud, solid as a rock, dominating all. Protector of the weak, judiccate and curb of the passions and lusts, repository and guardian of... aspirations and... hopes” (RN, 42) Faulkner writes in respect of the law because in reality it bespeaks the disturbingly neat narrativization of a history that defies narrative – it points to an abyss in representation and identification, but metaphorically, it represents how sophisticated, how equitable, we wish our social contract were, and how clear and communicable we wish our language were. What animates Faulkner’s prose is the law as both the modernist referent of impossibility, and the persistent striving (however hopeless) towards possibility.

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In Intruder in the Dust, Watson argues, “the law seems to assume a purely punitive institutional valence.” He writes convincingly that throughout the novel very little lawyerly work is canvassed by Stevens, beyond accepting a “case” (238) from Beauchamp and accepting two dollars from him at the end of the novel for “expenses” (239) incurred. Though a public lawyer, he really works as a private detective. Noel Polk’s architectonic reading of Faulkner’s stories and novels that are situated in Jefferson sees a clear thematic focus along the axis of

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27 Watson, Forensic Fictions, 112.
the jailhouse/ courthouse. Watson proffers a reading of Intruder along this axis, and notes, "while every major character in the novel at some time or another visits the jail, not a single scene in Intruder takes place at the courthouse." He goes on to write that throughout the long sequence of events in which Lucas Beauchamp is “accused of murder, apprehended, incarcerated, and eventually, exonerated and released” the courthouse and courtroom is “bypasse[d]... entirely. Indeed, it is barely even noted as a geographical landmark.” While Requiem gives the back-story of the courthouse, Intruder focuses its attention on the jail, which evokes a definition of justice as punitive, and the law as repressive. Oliver Wendell Holmes, who espoused a theory of law that focused rather pragmatically on its might derived from its special or reserved ability to punish, wrote, “sovereignty is a form of power and the will of the sovereign is law, because he has the power to compel obedience or to punish disobedience, and for no other reason.” He later built upon this idea with his ‘bad man’ theory, which I believe is particularly useful in understanding the legal quandaries in Intruder in the Dust. He writes:

Take the fundamental question, What constitutes the law? You will find some text writers telling you that it is something different from what is decided by the courts of Massachusetts or England, that it is a system of reason, that it is a deduction from principles or ethics or admitted axioms or what not, which may or may not coincide with the decisions. But if we take the view of our friend the bad man we shall find that he does not care two straws for the axioms or deductions, but that he does want to know what the Massachusetts or English courts are likely to do in fact. I am much of his mind. The prophecies of what the courts will do in fact, and nothing more pretentious, are what I mean by the law.  

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29 Watson, Forensic Fictions, 112.
30 Watson, Forensic Fictions, 112.
Holmes suggests that to discriminate between law as a set of principles, and law as *stare decisis* is unhelpful in any definitional approach, because the “bad man” only heeds the law prophetically, and seeks to avoid actions that might place him in peril. Stephen M Feldman summarizes: “the bad man concerns himself only with knowing when the courts will inflict punishment; he remains indifferent to logical consistency and abstract principles.”33 The law, thus, should not be approached vis-à-vis principles of right or wrong, but simply in that it states what is punishable and what is acceptable. This behavioral approach to the law (which in fact is a direct inversion of Horace’s dictum that *jus* comes not from *formidine poenae* but *virtutis amore*)34 is a far cry from the English tradition, where a good deal of common law principles were based not on how a ‘bad man’ would conduct himself, but rather, how a ‘reasonable man’, an ordinary man, personified in English law as the “man on the Clapham Omnibus”35 would view questions of duty, liability, breach, negligence and, to an extent, criminality. By reasoning from the perspective of the bad man, modern legal reasoning rather bleakly centered on criminality, punishment (and the avoidance thereof), expedience and malice. Morality was very obviously missing, perhaps because it was too closely linked with earlier ideas of natural law,36 which, among other things, were invoked to justify slavery, and were sharply rebuked after the Civil War. Holmes wrote, regarding contract law: “the duty to keep a contract at

34 “From fear of punishment” than “by love of virtue” from Horace’s *Epistles* 1.16.52-53.
35 See Greer LJ in *Hail v Brooklands Auto Racing Club* [1933] 1 KB 205.
36 In *American Legal Thought from Premodernism to Postmodernism*, Feldman notes that Natural law vis-à-vis constitutionality played a part in both the upholding of slavery and the arguments against it. John C. Calhoun, former Vice President and long-time senator from South Carolina, famously declared that “nothing can be more unfounded and false” than that “all men are born free and equal.” He threatened, rather, that bestowing freedom on people unworthy of, or incompatible with freedom, will be “instead of a blessing, a curse” and that slaves held their appropriate, natural position in society, rejecting Lockean liberalism and egalitarianism for Aristotelian civic republicanism. On the other hand, in 1850, William H. Seward, New York Senator famously gave a three-hour speech against slavery creeping into the federal territories, and in his speech declared “there is a higher law than the Constitution”; William Lloyd Garrison called the Constitution a pro-slavery “covenant with death and agreement with hell”; and Charles Sumner, Massachusetts senator, argued that the *Fugitive Slave Act* 1850 was “against the divine law,” and that it should be expressly disobeyed, again suggesting slavery’s incompatibility with Natural Law. See *American Legal Thought*, 87-90.
common law means a prediction that you must pay damages if you do not keep it – and nothing else.” It was only “the confusion between legal and moral ideas”\(^{37}\) that led people to believe that to break a contract was in some way wrong.

This excision of morality from the formulation of legal/jurisprudential thought is particularly well suited to the detective fictions especially of Hammett, where the method of detection and the reasons for the monomaniacal pursuit of the criminal, are always carefully divorced from any ethical or moral concerns of the detective. We only need to look back to Hammett’s “This King Business”, where the Op unquestioningly and obediently helps to undermine a fragile Baltic republic in order to save the playboy son of his affluent client. Similarly, “The Gutting of Couffignal” ends with the Op explaining to the malevolent princess, “you think I’m a man and you’re a woman. That’s wrong. I’m a manhunter and you’re something that has been running in front of me.”\(^{38}\) When she is confident that she is able to walk away, and get away with orchestrating the robbery, that the Op would not shoot her, he does. He makes it clear in the closing lines of the story that he will do whatever it takes, no more, and no less, to get his job done. He does not confuse his work with the softer yolk of philosophical morality. Moreover, the “bad man” theory is particularly well suited to the way in which Hammett views the unshakable malaise and depravity pervading the urban megalopolis, and beyond.

In *Intruder in the Dust*, however, Faulkner presents a complex social and geographical space. It is not black and white; he does not entirely damn Yoknapatawpha County as a nightmarish landscape populated according to the binary code by which Hammett’s crooks generally abide. For Hammett’s characters “everyone in the world is either a fellow crook or a prospective victim;”\(^{39}\) and “everybody is trying to slit everybody else’s throat.”\(^{40}\) However, in


Intruder, although appearing at least at first to be homogeneous, the townsfolk, seen through the eyes of young Chick Mallison, are all very different, and part of his learning experience in this detective novel (in which he is the primary detective, in many ways, and not simply his uncle’s apprentice) is understanding the multivalent paradoxes and contradictions that exist not only within the town of Jefferson and its geographical and imagined axes of both prejudice and equity, but also within each man. Lorie Fulton writes:

Lucas, while held in the very heart of that dusty jail, the lone cell, convinces Chick to violate Vinson Gowrie’s grave and obtain the evidence that will prove his innocence. In doing so, Chick unearthed something far more disturbing than a dead body; he discovers the depth of Jefferson’s ingrained racial prejudices and realizes the lengths to which its citizens will go to maintain their self-serving ideology of white supremacy.41

Following on from Fulton’s subject of detection and discovery to not only solve a crime but also do it for didactic purposes, Intruder in the Dust shows that the Southern detective must not only uncover the truth of what really happened, but also, amid the layers of dust and dirt that Faulkner enumerates in the novel, in order to approach justice they must also expose the racial prejudices and spectres of the past that persistently haunt Faulkner’s Southern landscape.

The novel reintroduces the reader to the black Lucas Beauchamp, who appears in Go Down, Moses, published six years earlier. Lucas has been arrested for the murder of a local hayseed Vinson Gowrie, and, in line with his defiant character, demands an advocate. Gavin Stevens attends the jailhouse to confer with his client, but the conference is entirely one sided; in fact, Stevens’ presence as a lawyer is even acknowledged as rather unhelpful by Beauchamp:

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‘Hire somebody?’ His uncle said. ‘You’ve got a lawyer. I had already taken your case before I came in here. I’m going to tell you what to do as soon as you have told me what happened.’

‘No.’ Lucas said. ‘I wants to hire somebody. It don’t have to be a lawyer.’ (59)

Beauchamp requires somebody who will work for him, but does not believe a lawyer will help him, even though he is in trouble with the law. His suspicion towards Stevens (his suspicion is, we must discriminate, towards the lawyer but not the law) is entirely founded: although in the Knight’s Gambit stories we will see Stevens practicing what Weisberg calls “professional ethical relativism,” in that he is “fiercely loyal to his clients’ interests” and thus “may not always appear to act with as keen an eye towards the strictures of ethical legal behaviour,”42 in Intruder he will not voyage beyond the minimum requirements of the law in order to help the negro Beauchamp. Beauchamp, we learn, requires the assistance of a man to dig up the grave of Vinson Gowrie, the man he allegedly shot, so as to find the evidence in the gravesite that will exonerate him. Stevens, however, is not at all interested in acting as a detective to discover forensic or empirical data; Stevens is not even interested in Beauchamp’s story. He repeats to Beauchamp “Now I’m going to tell you what to do” (59, 60) and, beyond Beauchamp’s unheeded protestations, he is unable to get a word in edgeways as Stevens simply dictates to Beauchamp his own story: “‘You went into the store,’ his uncle said, ‘only you happened to find Vinson Gowrie first and followed him into the woods... and you shot him in the back –” (62). Stevens eschews dialogue for monologue, and in this way stands in the way of Beauchamp receiving justice. If conversation, bilateral by nature, is a harbinger for justice, then Stevens’ initial exchange with Beauchamp presages the obstruction of justice. This theme echoes too for Nancy Mannigoe, for whom the law is also defamiliarized, abstracted, remote.

42 Weisberg, “The Quest for Silence,” 201.
Faulkner continuously paints a picture of law that, in the words of Kieran Dolin, categorically “excludes its supplicants.”\textsuperscript{43} This being said, there is some truth in H Colin Messer’s insight, “the conversations between even Faulkner’s most prolific interlocutors (Mr. Compson and Quentin, for example) certainly leave us with little sense that they really understand one another any more as a result of their dialogue.”\textsuperscript{44} Given that law exists wholly within language, and even the widest vocabulary falls short of conveying certain experiences, we understand concomitantly that the law can only take Beauchamp so far: he receives only the bare minimum of legal protection and rights. Stevens, procedural and platitudinous, reduces and glosses over a complex situation with the simplicity of a plea bargain:

\begin{quote}
Now you listen to me. You'll go before the grand jury tomorrow. They'll indict you... then you'll plead guilty; I'll persuade the District Attorney to let you do that because you're an old man... then they wont hang you. (63)
\end{quote}

In this scene, and in fact throughout most of the novel, Stevens is not painted in a particularly favourable light. Jay Watson describes in detail Stevens’ “failed attempt to harangue the accused,”\textsuperscript{45} and notes that the conversation ends comically, with Stevens being ousted from the jail by Beauchamp, who jokes “if you stay here you'll talk till morning” (63). The “serious subtext”\textsuperscript{46} that underpins this comic moment is not lost on our narrator Chick, who understands immediately that justice cannot be done while Gavin’s powers of speech are intact, but his capacity to listen seldom employed.

Thus it is Chick who listens to Beauchamp – who lets him speak, and who exhumes the body of Vinson Gowrie to collect the evidence that saves Beauchamp's life. It is through engaging in dialogue with Beauchamp, rather than Stevens’ monologue, that the action of the novel – the detection undertaken – is

\textsuperscript{43} Dolin, \textit{A Critical Introduction to Law and Literature}, 161.
\textsuperscript{44} Messer, “Exhausted Voices,” 1.
\textsuperscript{45} Watson, \textit{Forensic Fictions}, 114.
\textsuperscript{46} Watson, \textit{Forensic Fictions}, 114.
begun. The action necessary for justice, we see, comes from free-flowing interlocution that transcends race, gender, and generational lines. Stevens’ legal understanding of the situation proves only to be limiting, and renders him incapable of interpretation beyond the fulfillment and execution of legally scripted interaction, and therefore, incapable of action. He cannot understand Beauchamp’s silence, and says to Chick, “he never denied having fired [the gun]; in fact he refused to make any statement at all, even to me, his lawyer” (79). But Beauchamp was not silent due to his guilt, as Stevens presumes, he is only rendered speechless by Stevens, who cannot view the interaction beyond the parameters of lawyer-client privilege, and who cannot interpret the speech act beyond the making of a formal statement. Much like the trial of Nancy Mannigoe in Requiem, and recalling Herman Melville’s Billy Budd, Stevens is the personification of the law that manipulates language to assert control over the nonverbal accused. For Stevens, silence clearly denotes guilt, which, to an extent, sees to Monk’s demise in “Monk” and – to anticipate – is the problematic logic that sees Lee Goodwin wrongly convicted in Sanctuary. This is precisely the hubristic logic that Chick transcends in Intruder, and he understands that his uncle’s lack of understanding is rooted in the inveterate Southern values that have shaped him in his time. Miss Habersham says to Chick,

Lucas knew it would take a child – or an old woman like me: someone not concerned with probability, with evidence. Men like your uncle and Mr. Hampton have had to be men too long, busy too long. (88)

For transactions of “truth,” Faulkner intimates, only women and children, outside the Southern economic and legal marketplace, are able to act, are dynamic, and are galvanized to action, and thus can take on the real detective work. Women and Children – Miss Habersham and Chick – are not concerned with legal ideas of probability and evidence, they are, in Faulkner’s world, intuitive witnesses to truth, and act accordingly because they are outside the system. Chick is reminded later in the novel of this sentiment again, spoken to him, in another recess of memory:
if you got something outside the common run that’s got to be done and can’t wait, don’t waste your time on the menfolks; they work on what your uncle calls the rules and the cases. Get the womens and the children at it; they work on the circumstances. (110-111)

Once again, Faulkner defines as both gendered and generational the willingness to act to work towards justice, and sees within women and children the necessary seeds for social tumult and reform. The juxtaposition of “the rules and the cases” with “the circumstances” is a clear reference to Oliver Wendell Holmes, who famously denounced law as rules and cases and argued for a historical and contingent interpretation of law: “the life of the law is not logic but experience.”

Furthermore, “the truth” Holmes writes,

is that the law is always approaching, and never reaching, consistency. It is forever adopting new principles from life at one end, and it always retains old ones from history at the other, which have not yet been absorbed or sloughed off.47

This is perfectly in line with the new generation, emblematized in Chick Mallison, and the willingness to go beyond mere logic and understand law as an evolving mechanism vis-à-vis geography, and contingent on trial and error and history. Holmes argued that rules cannot simply be imposed logically on a people without first contemplating history and experience and the special circumstances of place. Of course this is what Stevens is trying to get at in his lengthy monologues towards the end of *Intruder*, but he excuses himself from acting upon his very ideas. Weisberg writes, “Gavin’s long narrations about social institutions and justice... seem to mask a basic passivity; if a potentially innocent

black man is to be exonerated, *others must do the leg work.*”\(^{48}\) To put it simply, even if Stevens has the right idea in mind on the future of the South when he speaks of the South expiating and abolishing injustice through gradually coming to a place where white man and black man are equal, he expressly says that the onus is on others to ratify his proposed vision. This way Stevens simply conforms to what Roscoe Pound called disparagingly, the “mechanical jurisprudence”\(^{49}\) of the positivists. Pound, who too became Dean of Harvard Law School, along with Benjamin Cardozo, argued against positivism and suggested that for the administration of justice, common law judges must *make* law for the good of society.

The idea that judges should make law was terribly new and controversial at the time where constructionism prevailed among legal scholars, and Stevens’ monologues show just how the American South was, according to Faulkner (he echoes this sentiment in his letters and speeches) in desperate need for this kind of reform. Stevens’ speeches have been interpreted in a wide variety of ways, most often disparagingly, by critics. Elizabeth Hardwick details the “frantic bad taste” of Gavin’s “absurd, strident lectures”, while James A. Snead, more recently, saw the Gavin Stevens of *Intruder* as a “self-caricature,” suggesting that his rhetorical excesses “constitute one of Faulkner’s least convincing tonalities and verge on the ridiculous.”\(^{50}\) Irving Howe refers to Stevens as “the greatest windbag in American literature.”\(^{51}\) Jay Watson, on the other hand, has a more even-tempered approach. He identifies the three monologues towards the end of the novel as thus: the Sambo speech, the homogeneity speech, and the outlander speech. In the Sambo speech, Stevens lauds the resilience, survival, of the black race, “they can stand anything” (146); in the homogeneity speech Stevens contrasts the homogeneity of the people of the United States with the “coastal

\(^{48}\) Weisberg, “The Quest for Silence,” 203.
\(^{50}\) Cited in Watson, *Forensic Fictions*, 111.
spew of Europe” (150); and in the outlander speech Stevens attempts to prudently defend the South’s resistance to legislated social change.

Many critics have noted the speeches’ inconsistency with Stevens’ rhetorical prowess in the courtroom. In this respect I agree with Weisberg, who makes an important differential: “Gavin’s admitted tendentiousness... descends not on his clients or juries but on his nephew and protégé, Chick Mallison. It serves a pedagogical, not practical, function.”

Watson argues that given that the novel is based in Chick’s consciousness, and it is obvious that Chick, while the protégé of his uncle, nevertheless makes up his own mind in respect of the speeches, we see his growth as a character when he repudiates his uncle in favour of a more nuanced approach to race relations. I agree, and would further this by saying that the difference between what Chick does take on board from his uncle and what he ignores is fairly obvious in the novel. The speeches, too, are only speeches in Chick’s consciousness, perhaps conflated in his mind, gleaned from conversations spanning years, in a way recalling bricolage. The fact that they appear in the novel, and in Chick’s consciousness, in the form of incessant diatribe perhaps points to Chick’s resistance to that form of interaction or learning. To lecture is to impose ideology, which, especially in the South, is unacceptable, and Southerners are defined by defiance: they are “fed from... mother’s milk... to defy” (149) the imposition of anything – especially the laws of the North: “we must resist the North” (151). It is obvious, especially for the contemporary reader, where Stevens is deliberately archaic [”we – he and us – should confederate: swap him the rest of the economic privileges which are his right, for the reversion of his capacity to wait and endure and survive” (153)] to perhaps separate him from the more nuanced, modern and empathetic mind of Chick.

I will thus disregard the more baffling moments of Stevens’ speeches to concentrate on what I think are the most important passages:

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52 Weisberg, “The Quest for Silence,” 205.
That’s why we must resist the North: not just to preserve ourselves nor even the two of us as one to remain one nation because that will be the inescapable by-product of what we will preserve: which is the very thing that three generations ago we lost a bloody war in our own back yards so that it remain intact: the postulate that Sambo is a human being living in a free country and hence must be free. That’s what we are really defending: the privilege of setting him free ourselves: which we will have to do for the reason that nobody else can since going on a century now the North tried it and have been admitting for seventy-five years now that they failed. So it will have to be us. (151)

Expressly in reference to the branch of humanistic thought that believes, as Ariela Gross writes, that “the law can reform the past through reparations to injured communities,” Stevens argues that reparation for wrong, when either legislated, or approached tortiously (i.e. attempting to place the plaintiff in a pre-injury position through damages or somesuch), is an erroneous and insensitive approach to a complex cultural issue. Something as complex as freedom and equality for African Americans cannot simply be effected through de jure laws when de facto practices do not reflect it. Moreover, a Southern injustice must find a Southern solution. He goes on to say, however, in the most important (and most succinctly stated) part of an otherwise rather rambling speech that

Someday Lucas Beauchamp can shoot a white man in the back with the same impunity to lynch-rope or gasoline as a white man; in time he will vote anywhen and anywhere a white man can and send his children to the same school... But it won’t be next Tuesday. Yet people in the North believe it can be compelled even into next Monday by the simple ratification by votes of a printed paragraph. Who have forgotten that although a long quarter-century ago Lucas Beauchamp’s freedom was made an article in our constitution and Lucas Beauchamp’s master was not only beaten to his knees but trampled for ten years on his face in the dust to make him swallow it, yet only three short

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In these densely packed musings a few important things are asserted: firstly, change for the South must come from the South. This is because otherwise, it has not and will not work, and is distinctly undemocratic. As Ticien Marie Sassoubre argues,

in its insistence that justice must come from within the community, *Intruder in the Dust* proposes an alternative to federal intervention in the problem of race relations that restores the values on which Faulkner believed Southern identity and community depended.\(^\text{54}\)

Secondly it is inevitable that there will be racial equality in the United States, but it will not happen now, and must happen gradually, once again, when instigated and followed through by the community of the South. This is why Stevens is happy to be passive, and to assume the change will be generational. Thirdly, and most importantly, the reason that the North failed at the task is because institutionalizing equality through legal process is inorganic, and a dangerous paradox. Interestingly, this has historically been understood across party lines; the conservative as well as liberal and progressive thinkers knew it. In *Plessy v Ferguson*\(^\text{55}\) the majority of the Supreme Court admitted that “legislation is powerless to eradicate racial instincts,”\(^\text{56}\) while William Graham Sumner’s famous formulation, “stateways” cannot change “folkways”\(^\text{57}\) lamented the impossibility for legally mandated reform on a people and a history resistant to change. Moreover, in this speech, Gavin Stevens uses the Constitution as a wonderful example of how something that is reified and ratified as

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\(^{55}\) 163 U.S. 537 (1896).

\(^{56}\) 163 U.S. 537 (1896) at 551.

‘constitutional’ even in the United States, with its great emphasis on constitutionality and the rhetoric of rights, can be ignored or shirked if it is not also sanctioned in the daily exigencies of community and its values and discourses.

_Intruder in the Dust_ is told primarily from Chick’s point of view, and this is important because it is Chick who is the hero of the novel, both in his winning philosophical ruminations and his impulse to action. Gavin’s speeches are thus recounted to us through Chick’s consciousness, and, as Watson elaborates,

> we must bear in mind, however, that our scrutiny (of Gavin’s speeches) only exists as a direct function of Chick’s scrutiny – that, according to the narrative logic that drives _Intruder_, the speeches stand out in the text because they stand out in his mind.\(^\text{58}\)

Thus there is a clear gap between Stevens’ ideas in this novel and Chick’s interpretation and absorption thereof. Faulkner creates a marked shift in ideology that is generational and historical, and it is quite clearly in line with the shift in jurisprudential theory sweeping the states at the time. Stevens’ speeches and the way they _stand out_, as Watson puts it, suggest Faulkner’s ambivalence towards the law; they are an example of the very complex and dynamic changes in jurisprudential theory whereby Stevens, while progressive and humane, and open to change, is still very much a positivist, whereas Chick is the legal realist.

On top of this, both Stevens and Chick operate outside of the legal establishment, as the action of the novel is distanced from the legal institutions that loom or preside over the action in some way or another, but never directly come into contact with the characters or their paths. This way, Faulkner finds a way to comment on the law and society and yet places the onus for legal reform outside

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\(^\text{58}\) Watson, _Forensic Fictions_, 118.
the legal world, for clearly, and especially for the South, social change must precede legal change. We only have to remember that though the enfranchisement of African-Americans after the Civil War happened on paper, it did not happen in the hearts and minds of the people of the Southern states. Lawrence M. Friedman, in his detailed history of American law, notes that in Mississippi, for example,

> prospective voters had to be able to read sections of federal and state constitutions, and also give a ‘reasonable’ interpretation of what they had read. No blacks ever seemed to pass these tests; whites sailed through routinely (or were not even asked).59

This is a recurring theme in Faulkner's work, and we only have to be reminded of his characterization of legal figures in the *Go Down, Moses'* "The Fire and the Hearth" and the way in which it is done according to geographical lines, where Faulkner is writing in direct response to New Deal legislation. The Deputy Marshall and District Attorney, who are both outsiders (the Marshall “read a Memphis newspaper”),60 are juxtaposed with the Judge in the story, who is Jefferson-born and bred. When the foreign District Attorney attempts to build on his case in the courtroom scene, the judge, who does not listen, and who knows the plaintiff and defendant on a social level, dismisses the case as nonsense and instead inquires paternalistically about Nat's marriage. The judge (who is the representative of the law par excellence) drops the issue because it is a private one, and official adjudication (as opposed to offering helpful and personalized guidelines through which grievances could be solved) is seen as a distinct threat: the interference and imposition of external rules on a group of people that have their own unique rules and codes for self-governance. Sassoubre writes of the two court cases in the story,

59 Lawrence M Friedman, American Law in the Twentieth Century (New Haven: Yale University Press, 2002), 114.
60 Faulkner, “The Fire and the Hearth,” Go Down, Moses, 70.
local legal authorities with deep personal ties to the community are unwilling to subject disputes that would traditionally have been resolved through the private authority of white owners to the increasingly formal, indifferent authority of the law.61

As I mentioned earlier, in “The Tall Men” the efforts of a federal investigator who comes to a small town with a warrant on two McCallum boys who failed to register for the draft are frustrated by the townspeople, including the Marshall, who, the narrator is quick to mention, “had been born in and lived in the county all his life” (45). When the federal investigator questions his allegiance to his country, “have you forgotten that you are under a bond?” (45) (reminiscent of the oath of office that the jailor in *Intruder* takes so seriously) he soon discovers that while an oath of office overrides the prejudices of the heart, it cannot override the allegiance the Southerner has for his hometown: “‘These people’, he said. *But this doddering, tobacco-chewing old man is one of them too, despite the honor and pride of his office, which should have made him different’* (46). When the investigator begins to understand that citing law and following procedure does not invest him with the authority it promises, he begins to feel threatened and outnumbered: He blusters, “I’m sorry about this whole business. But it’s out of my hands now. This charge, failure to register according to law, has been made and the warrant issued. It cannot be evaded” (53). Then he realizes just how it *can* be evaded, not via strict repudiation but indifference. The Marshall says to the investigator, infantilizing him, “Ain’t you found out yet that me or you neither aint going nowhere for a while?” When the investigator – shocked – cries, “Am I being threatened?” to which the Marshall responds, biting, “Ain’t anybody paying any attention to you at all” (53), we learn that indifference to the law is the law’s most menacing enemy. To the investigator of ‘The Tall Men’, it threatens lawlessness – chaos – however, for the South, it merely indicates other, often more appropriate forums for redress. In most of Faulkner’s stories, local legal authorities preference their place in the community over the strict letter of the law, and they are seen to be often successful in their attempts at integrative,

cooperative dispute resolution that does not bother with the formalities of the adversarial system.

Furthermore, at the end of *Intruder*, even when the real criminal, Crawford Gowrie, is exposed, a trial is still viewed as not in the best interest of the community, and Stevens says, “we’re after just a murderer, not a lawyer” (216). The murder – specifically, fratricide, with its roots in *Genesis* – is seen as a private matter, and is best dealt with behind closed doors. If the law can answer to simple “precepts” like “thou shalt not kill” (196), in Yoknapatawpha it has no dominion over “thou shalt not kill thy mother’s child” (196). The law (even for Stevens, who is a lawyer) metonymically represents the encroachment of the public into the private and the foreign into the local, resembling a binary system mimicking yet relocating the signs of the sacred and profane: the law – secular, profane – should occupy a different realm to the traditional (sacred) ways in which the community conducts itself.

Faulkner takes this idea one step further in *Intruder*, given that he not only views with hostility legally mandated change, but he also understands the need for reform and, importantly, places the onus of legal/social reform in the hands of those who the law has in some way silenced – women, children, and blacks. The implication is that the South cannot progress beyond the ignominy of Reconstruction (and the New Deal and Jim Crow) without first kindling a social dialogue with those to whom the law merely speaks, but to whom it will not listen (as we will see in the fates of Nancy Mannigoe of *Requiem* and Lee Goodwin of *Sanctuary*). Lucas Beauchamp is one of these marginalized characters, and while Chick, also marginalized (for youth) listens to Lucas, it takes a good deal more time and effort for Stevens to listen to either character, and to decide to embark upon the investigation that leads to the discovery of Lucas’ innocence.

It is in defiance of his uncle that Chick listens to Beauchamp, and yet it is through the knowledge that his uncle has passed onto him, in a marriage of maieutics and
mnemonics, that Chick is able to solve the mystery and save Beauchamp’s life. Against everybody’s wishes he exhumes the body of Vinson Gowrie and, noticing a switch, identifies the body as Jake Montgomery, a “shoestring timber buyer from over in Crossman County” (104). Chick is able to put together genealogies of the Gowries and even families beyond the jurisdiction of Jefferson based solely on the anecdotes of his uncle: not only has Stevens’ storytelling been beneficial for Chick’s growth and his sense of rootedness, his appreciation of place, it also serves a social and legal/forensic function. Watson believes that Stevens is the “hidden oracle” behind Chick’s panoramic imagining of Jefferson and its inhabitants through space-time:

As raconteur, Stevens literally and almost single-handedly creates Yoknapatawpha County for his nephew – its history, legend, folklore, genealogy, landscape, local colour, population, politics and sociology – and this legacy is necessary, if not sufficient, capital against which Chick draws in his struggle to embrace the peculiar virtues of his native region and to reject its provincial vices.\(^{62}\)

Chick uses story and dialogue, rather than law, to resolve a legal issue, and in doing so, is able to humanely address the real problems in society rather than simply sweep them under the rug (as per federal laws) and without resorting to the equally unhelpful “sledgehammer didacticism”\(^{63}\) that characterizes Stevens’ speeches. This is ultimately affirmed by Faulkner as the most sensitive, appropriately site-specific mode of action given that the nuanced local apocrypha that Stevens passes onto Chick does in itself contain its own latent ethos.

Thus in *Intruder in the Dust* Faulkner appears to be searching for a viable jurisprudential model through which the South can both mend and progress. In championing Chick Mallison as the hero of the novel on the strength of his willingness to act beyond mere legal doctrine, and see to justice *personally*,

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\(^{62}\) Watson, *Forensic Fictions*, 126.

\(^{63}\) Watson, *Forensic Fictions*, 121.
Faulkner not only creatively charts the evolution from positivism to realism, but also problematizes, and points out the flaws in, the argument for gradualism that Gavin Stevens (and Faulkner himself, in various speeches and letters) espouses. In this way the novel attempts to tackle issues that really are too complex to be solved neatly and cleanly and so it does not leave the reader with definite answers – but the end certainly is hopeful. When we finally learn what really happened between the Gowrie brothers that led to the murder, it is through the heavy dialogue of Chick and Beauchamp; the confederation of white child and black man leads to investigative activity beyond the mandate of the law, and leads to a dialogue in which Beauchamp speaks as much as Chick does. Furthermore, the final exchange in the novel is a financial one, in which Beauchamp pays Stevens for his work. When Stevens finally says “Now what? What are you waiting for now?” Beauchamp boldly replies, “my receipt” (241), the synthesis of linguistic and financial autonomy is a good sign of Beauchamp’s improving position in society.

Sassoubre argues that Intruder equates gradualism, in respect of race relations – “a rejection of federal legislation in favour of the South developing its own culturally and economically appropriate legal protection of liberty and equality,”64 – with legal regionalism; and yet it is because of gradualism – a sleepy though good-natured belief that equality will happen over time – that Lucas Beauchamp remains in jeopardy throughout the novel. Van Dover and Jebb argue “the war that set the slaves free only engendered a system with nominal legal freedom, not actual freedom.”65 That is, the chasm between the codification of law and its subsequent public acceptance – its ratification in the ambit of the social, the quotidian – means that the argument for gradualism fails to “serve people such as Lucas, who need immediate help and cannot wait for a popular embrace of proper legal procedures.”66 Van Dover and Jebb argue that this is the main flaw in Stevens’ character in Intruder: it is not in his speeches but

64 Sassoubre, “Avoiding Adjudication,” 199-200.
65 Van Dover & Jebb, Isn’t Justice Always Unfair?, 164-5.
66 Van Dover & Jebb, Isn’t Justice Always Unfair?, 166.
his lack of tenacity, action, the fact that he “sees the ideal” but “sees no way to achieve it here and now.” that separates Stevens from Chick, and shows that the promise of gradualism is also the refuge of the idle. Mary Montgomery Dunlap argues,

[Stevens] can see the need to recognize the Negro as a person, the need to free the Negro from racial inequalities, and the necessity for the South to correct its regional problem, but he is restrained from acting by an earlier heritage.

The ever-looming threat of the lynch mob sits uneasily with Stevens’ support for gradualism because of the immediacy, the unpredictable and noiseless tendency to combustion by which the lynch mob is defined and through which it generates menace. This, combined with the immediacy of action needed to henceforth dismantle the lynch mob and protect its target suggests that the theory of gradualism is dangerously flawed. In “Dry September,” local black man Will Mayes is thought to have attacked Miss Minnie Cooper, a white woman. A barber in a barbershop witnesses the conversation (or lack thereof) necessary for the formation of a lynch mob. One man asks, “did it really happen?” to which another responds, “happen? What the hell difference does it make? Are you going to let the black sons get away with it until one really does it?” (171-2). Vigilantism is acceptable, and, in a clear eschewal of empirical reality, maintaining law and order for the vigilantes is predicated on punishment as a deterrent, a disincentive, rather than a response to a particular, discrete circumstance. The conversation in the barbershop is quickly hushed, however: “Here, here” a fourth said. “Not so loud. Don’t talk so loud’” and is then done away with entirely: “Sure,” McLendon said; “no talking necessary at all. I’ve done my talking. Who’s with me?” (172). It is painfully clear that a lynching is

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67 Van Dover & Jebb, Isn't Justice Always Unfair?, 166.
69 Faulkner, “Dry September,” Collected Stories, 169-184, 171. All subsequent references to this story will refer to this publication and will be incorporated in the body of the thesis. Originally published 1931.
imminent simply because of lack of speech; there is a suggestion that the more that we strive to utter the inarticulable – the more tenacious we are in speaking and being heard – the closer we are to justice. In “Dry September” silence is pernicious, and sense and reason are only brought to light through insistent speech and language. Only the barber repeatedly names Will Mayes, “Boys, don’t do that. Will Mayes never done it. I know” (173) and the repetition, the inculcation of the name of the “nigger” (169) is an attempt, though a failed one, to humanize the target, to ascribe him an identity and personality. “Dry September” shows that silence conspires with bloodlust, but that it also damns the guilty. The story ends uncomfortably in the domestic realm, with McLendon going home, feeling judged by his wife [“haven’t I told you about sitting up like this, waiting to see when I come in?” (182)]. He strikes her, and then he sits in the silence and heat and stillness of his bedroom, utterly oppressed: “there was no movement no sound, not even an insect. The dark world seemed to lie stricken beneath the cold moon and the lidless stars” (183). We get a glimpse into the symbiotic and vicious nature of horror and silence to which the natural world is coldly indifferent: not only are we incapable of meaningfully speaking aloud horrific circumstances, but also silence flings us headlong into the abyss.

Even when faced with the baffling nature of human experience, Intruder in the Dust shows us that we have to speak regardless of language’s potential meaninglessness – we have to speak trauma, atrocity, bigotry, no matter how uncomfortable, and no matter how awkwardly, in order to asymptotically approach justice. A great deal of Chick’s moral growth occurs in Intruder as he struggles to come to terms with, and refuses to remain silent about, the idea of, and the formation of, the lynch mob out for Lucas Beauchamp’s blood. Sassoubre provocatively suggests that Go Down, Moses and Intruder in the Dust “unexpectedly…associate lynching with the impact of federal legal change on the South in the 1930s and ’40s and imagine a mediation of this impact through the avoidance of adjudication through local, nonviolent, community based dispute
resolution.” Sassoubre’s imagined forms of dispute resolution, however, are stymied by the silence of the mob, and their unwillingness to enter into a spoken contract regarding their actions. It is clear that Faulkner sees the solution to the South’s lynching problem in the South’s repudiation of – the South’s speaking out – the silence of the mob. Chick first notes how the mob somehow materialize “suddenly and quietly” from nowhere, and he can hear, if he listens carefully, the thickness of the silence and emptiness of the streets: “an emptiness you could call emptiness provided you called vacant and empty the silent and lifeless terrain in front of a mobilized army” (208-9). The silence is poised, it is the sound of the elision of the very nature of time itself, and the lynch mob is formed so seamlessly and so seemingly volitionlessly that it was “simply the continuation of the one when the bullet struck Vinson Gowrie and there had been no time between and so for all purposes Lucas was already dead” (209). The violence is borne from silence, because “in the absolute the utter the complete silence... the town was not dead nor even abandoned but only withdrawn giving room to do what homely thing must be done in its own homely way” (209-10) Suddenly the homely way to do things – the Southern way, is rendered sinister, is problematized as “one inviolable confraternity of namelessness.” (198)

The linguistic paucity of the mob, and its reliance on its local homeliness, is the very glue that binds it, and the catalyst for its eruption, suggesting to Chick, perhaps, that to speak is to ensure the protection of Lucas Beuchamp, and to institute social change. Once again, to speak is specifically and directly aligned with the pursuit of justice. Chick is struck by the cowardice of the mob, and the cowardice through which the self-effacing nature of the mob is conducted. Silence is part of the masking of identity, and the unwillingness to stand up, and stand out. Chick is struck by not only the silence of the mob, then, but also the eradication of identity it achieves: “the faces myriad yet curiously identical in their lack of individual identity, their complete relinquishment of individual identity in one We” (135). Watson agrees, noting that Chick Mallison, Aleck

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70 Sassoubre, “Avoiding Adjudication,” 186.
Sander and Miss Habersham, the three characters in the novel characterized by their, as Van Dover and Jebb say, “willingness to work for the ideal,” all speak aloud the notion of fratricide, and so “Intruder’s modicum of social change thus rests upon a series of speech acts.” Watson goes on to say that this is done in a way that “challenges the invidious distinctions between language and action.”

This may be the case for Chick, who is vocal and active, but for Stevens, especially the Stevens of Intruder, this is not so clear-cut. While the Gavin Stevens of the Knight’s Gambit stories synthesizes speech and action (especially when we read him as a detective not unlike Hammett’s Op) insofar as he gleans information and outs the perpetrator from conversation, the Stevens of Intruder is clearly a man who can speak but will not act. In this respect I would agree with Weisberg, who instead argues that the Stevens of Intruder “tests our tolerance of [his] personal passivity, a tendency to inaction which colours most negatively the now obtrusive verbal gift.” When speech is not in the active pursuit of justice it can thwart it. I believe that Stevens in Intruder shows just how damaging speech can be when it willfully stymies action, even the action for which it is purporting to be advocating. Ultimately, the latent violence in Faulkner’s imagined geography of Yoknapatawpha County is mirrored in the destructiveness that is an effect of the vicissitudes of Stevens’, and Chick’s psychological states. Faulkner, in his characteristically voluptuous way, juxtaposes the violence of the Gowries, and the violence of the always-ready-to-erupt lynch mob, with the uncomfortable, and all-too-human inconsistencies of Stevens’ trains of thought, as narrativized by (and embedded, and re-embedded within) his nephew, Chick. The conflation of Chick’s and Stevens’ narratives, and the necessity for their separation, provides for Faulkner a creative, structural outlet for a critique on inherited forms of culture, historicizing the South’s sign systems, across generations, and also, more generally, pre- and post Civil War. Sassoubre writes that

71 Van Dover & Jebb, Isn’t Justice Always Unfair, 155.
72 Watson, Forensic Fictions, 132.
73 Watson, Forensic Fictions, 132.
the town is the location of the translation of the old South, where, on Faulkner’s account, men worked together “doing the base jobs and the splendid ones not for pay or politics but to shape the land for posterity”, into something foreign (“the amphitheatric stores”) and anarchic (the lynch mob). Stevens’ conclusion, as he arrives, that “no man can cause more grief than that one clinging blindly to the vices of his ancestors”, is only half of Faulkner’s point. By the end of the novel it is just as clear that one’s ancestors’ virtues are worth struggling to preserve.75

This problematizes the latent sign systems of Yoknapatawpha, especially in respect of Chick’s decision of what he should inherit, and the symbols that he should dismiss or at least inscribe with new meaning. The South as a melting pot of old and new, orthodox and progressive, and indigenous and foreign is also configured politically by Sassoubre, who suggests that it is of utmost importance that Faulkner ultimately settles on populating Beauchamp’s would-be lynch mob with “wage labourers and petty criminals… creatures of the federally willed transformation of the South”76 rather than farmers. This way, he finds a way to vindicate the indigenous Gowries, who “represent the old South” and who “ultimately – and unexpectedly – participate in Lucas’ vindication while the mob still waits in the square.”77 This would, of course, colour Chick’s inability to comprehend the mob, for not only are they acting reprehensibly, they are decidedly alien.

Remembering that Lucas asks Chick to exhume the body of the alleged victim, and Chick does it because he is still haunted by the day in his youth when Lucas saved his life and would not receive compensation for it, Sassoubre argues that Faulkner intends the relationship between Lucas and Chick “to provide a model for a new regime of race relations in the South: continued mutual interdependence, with whites acknowledging their debt to black labor instead of

75 Sassoubre, “Avoiding Adjudication,” 201.
76 Sassoubre, “Avoiding Adjudication,” 201.
77 Sassoubre, “Avoiding Adjudication,” 201.
denying it. And personally seeing justice done.”78 I agree with this reading, and this form of bridging the gap between Yoknapatawpha's black and white communities, and black and white idioms, in order to see laws enacted and justice performed that is inclusive. To this I would add that the relationship between Chick and Lucas is predicated on the limits of the relationship between Chick and his uncle. Stevens is a “realistically fallible”79 character in Intruder, and even though what “redeems Stevens... is his storytelling... the lifetime of local apocrypha he passes onto his nephew, in the form of story, legend, and anecdote,”80 what redeems Chick and prompts his moral awakening is what he is “unable to bear” (201) – where he deviates from his uncle’s hermeneutics.

The landscape's role in Chick's moral growth cannot be underestimated, as again, the South, this time geographically, is responsible for, and has agency in, the humanization of its denizens, and the evolution (we can surmise, in a public policy way) of its law. When Chick watches the mob gather in Intruder, Faulkner writes, “something like a skim or a veil like that which crosses a chicken's eye and which he [Chick] had not even known was there went flick! From his own [eye] and he saw them [the townspeople] for the first time” (134). As Chick adjusts his vision, Yoknapatawpha County appears to him in a way previously undetected: “his whole native land, his home – the dirt, the earth which had bred his bones and those of his fathers for six generations” (148), appears to him, panoramically, “unfolding beneath him like a map” (148). Chick reflects that the landscape, in which the synthesis of “man’s passions and aspirations and beliefs” reside, also “integrated into him whatever it was that compelled him to stop and listen to a damned highnosed impudent Negro” (148); its vastness lends him his love of justice, his pursuit of truth. We are reminded of Stevens’ trip to the top of Seminary Hill in The Town, just before he goes to visit Eula Varner Snopes for their third and final conversation, a place that affords him an almost aerial view of Jefferson and the surrounding countryside. Stevens finally sees

79 Van Dover & Jebb, Isn’t Justice Always Unfair?, 179.
80 Watson, Forensic Fictions, 141.
Man’s passions and hopes and disasters – ambition and fear and lust and courage and abnegation and pity and honour and sin and pride – all bound, precarious and ramshackle, held together by the web, the iron-thin warp and woof of his rapacity but withal dedicated to his dreams. They are all here, supine beneath you, stratified and superimposed, osseous and durable with the frail dust of the phantoms. –

Regarding this illuminating moment, Noel Polk suggests “what [Stevens] describes is a complex world bound together by the inextricable strands of man’s belief in progress and of his simple, inevitable rapacity” (echoing again the aforementioned idealized nature of the courthouse in Requiem). Polk continues,

the law, then, in spite of its many and obvious defects, not just because it holds anarchy at bay, but because it declares that man can be better than he is, holds out the possibility that the ideal might in fact be made actual one day, and provides the means to make the ideal real.

Nothing demonstrates this more clearly than the relationship between Chick and his uncle, and the points across Faulkner’s oeuvre in which they diverge (Chick’s relationship with Beauchamp). We only have to remember that in Intruder Chick recognizes as a child that “you don’t have to not be a nigger in order to grieve” (25), again reshaping our knowledge both of him and of his uncle’s awkwardly outmoded Jim Crow rendering of grief in Go Down, Moses. Chick’s maturation is ultimately symbolized by Faulkner’s marrying of his knowledge and respect of his hometown, his belief in an ideal, and his willingness to act, bridging the “is” and the “ought to be,” suggesting an optimism, at least for the future of the South, that Blotner, in his assessment of Faulkner’s cheerless view of the human condition, has perhaps overlooked.

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82 Polk, “I taken an oath of office too,” 178.
83 Polk, “I taken an oath of office too,” 178.
Law, considered as a science, consists of certain principles or doctrines. To have such mastery of these as to be able to apply them with constant facility and certainty to the ever-tangled skein of human affairs is what constitutes a true lawyer.

- Christopher Columbus Langdell

Knight’s Gambit comprises six detective stories involving Gavin Stevens in Yoknapatawpha County. The stories still are not received particularly well by Faulkner scholars, and perhaps it is because of the absence of black characters across the anthology, which allows Faulkner to consider questions of justice that have not been complicated by race. For this reason I think it is important to examine this anthology separately, as a kind of companion piece to his more complex, and more horrific novels. I believe these stories exemplify Faulkner’s great achievement of linking law, language and land in a way that is both lyrical, and, perhaps masked in this lyricism, ambitiously Blackstonian. Blackstone asserted that proper structure in language could create a sense of country even in difficult times and over the most insignificant terrains. In his Commentaries he called his work “a general map of the law marking out the shape of the country,” ascribing “longitude and latitude to every inconsiderable hamlet.” 2 Ferguson notes, “In the still evolving US, this belief in law as the shaper of countries gave

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structure to the states, meaning to the uncertain territories, and possibility to the unchartered wilderness beyond both.”

In each of the *Knight’s Gambit* stories, Stevens indeed uses the law cartographically, in order to both jurisdictionally and morally demarcate the South, and more specifically Yoknapatawpha County. Faulkner, as we well know, expresses this demarcation of land not only with geographical signposts but also through story, history, creating a mythology from Southern signs that is supple and somehow ageless yet relativistic. The feeling of belonging, then, to this landscape, and the subsequent proper/moral/lawful use of that land, is the organizing principle governing *Knight’s Gambit*. The law is used by Stevens (quite clearly, and quite unambiguously) throughout the anthology to protect those who respect the South and its traditions (and, by extension, given Stevens’ penchant for storytelling, to preserve those customs, signs, fables for posterity) and to punish or expel those who disrespect Southern land and custom.

The Gavin Stevens of *Knight’s Gambit*, certainly more than when he initially appears in *Intruder in the Dust*, operates and figures himself as a detective first, and lawyer second. Seeking answers, understanding motives, and solving historical and causal puzzles is his primary concern. Litigation is decidedly incidental; it is often a function of plot rather than thematic. This pattern is seen also in *Light in August*, where Stevens is really more of a social commentator than a lawyer. In *Light in August*, although Stevens makes an appearance late in the novel ostensibly to see to the protection of Christmas’ body in preparation for the funeral that Mrs. Hines, Christmas’ grandmother, wishes to organize (unmistakably a precursor to his role in “Go Down, Moses”), he is really there to proffer his own “theory” as to the psychological composition of Christmas that would have set off the chain of events resulting in his death at the hands of Percy Grimm. Thus, as a lawyer, but for his razzle-dazzle courtroom showmanship in

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“Smoke” (which, too, as will be discussed, comes with its own set of problems of procedural legality), Stevens is more often than not put in the unique social position of not really lawyering at all, but rather, as a respected member of the community, investigating the actions of men, and then narrativizing his theories for his changing audience. In *Knight's Gambit* it is Stevens’ knowledge of the law that *informs* his capacity to investigate (rather than detracts from it, as we have seen in *Intruder*), and, given the necessarily literary nature of the law, enhances his capacity to recount his findings. As the "raconteur"[^4] *par excellence*, as Watson dubs him, Stevens imbues his theories with legal authority and as such lends his version of events an *ex cathedra* gravity; and, fittingly, in many of the *Knight’s Gambit* stories Stevens conflates the search for truth with the assembly of evidence into a coherent narrative that is designed to convince beyond reasonable doubt. J.K. Van Dover and John F. Jebb argue that given that courtroom evidence can only be “gathered, approximated, investigated” but truth “never known absolutely”, Faulkner’s works in *Knight’s Gambit*, “tend to be short on facts but long on testimony.”[^5] By using the tripartite technique of investigation-narrativization-historicization[^6] but, more often than not, *outside* the theatre of the courtroom, Faulkner shows that there are many ways to institute change in society and change the minds and actions of community members that can then organically lead to legal reform. Moreover, what scholars have perhaps overlooked is that by continuously working outside the courtroom system, Stevens insulates Yoknapatawpha County from external influences, creating an internal mechanism through which the county can govern itself without needing to call upon federal or judicial laws or protocols. I think across Faulkner’s entire oeuvre, we get the strongest sense of this from John Sartoris who, in *The Unvanquished*, tells his son to become a lawyer to protect and unite a people in the face of whirlwind change and trivialization:

[^6]: Which does in effect mirror courtroom oratory, whereby the lawyer will first explain what happened, then what it means in court, and then finally, what should be done about it in the future through punishment, reparation or rectification and the preparation of precedent.
the land and the time too are changing” he says, and “what will follow will be a matter of consolidation, of pettifogging and doubtless chicanery in which I would be a babe in arms but in which you, trained in the law, can hold your own – our own.7

A fragmentation of purpose is sensed, then, as Stevens appears to be a public investigator rather than a private investigator. As Watson has observed, Stevens has two masters to whom he is obliged: “the law he has sworn to uphold, and the people who have elected him”8 (and by extension, the land and custom those people wish to protect and of which they themselves are representatives). While all of Stevens’ work in Intruder is also performed outside of the courtroom, we see in Knight’s Gambit most clearly the tension between Stevens’ two obligations, and how Stevens uses the investigation – narrativization - historicization method to serve both masters: he investigates to maintain order and preserve justice in his community (and his investigation involves conversation with townsfolk, in their idiom, which is a social act); then his narrativization of the course of events renders the crime or tort actionable, and appeases the legal requirements to secure a conviction; and finally, Stevens locates the event within a historical narrative in order to imbue it with meaning, in a way that is distinctly forward-looking, creating both legal and moral precedents. Unlike Hammett’s private detectives, who operate without regard to the legal and evidentiary rules in place that are necessary for a conviction (and as such often tamper with evidence, and seek answers through entrapment and duress), Faulkner’s public detective seeks the answers, and, though he is certainly skeptical of the law’s capacity to repair the deeply troubled South, he does not underestimate the law’s pedagogical potential.

Given that Knight’s Gambit is specifically a collection of detective stories, I think it is important to examine it with Hammett’s canon in mind. A thorough reading of these stories cannot be done without seeing in what ways they conform to,

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8 Watson, Forensic Fictions, 147-8.
and in which ways they deviate from, the genre as it stood and was evolving at that time in the United States.\(^9\) Hammett’s detectives seek clues and solve crimes with a signature laconic, lone wolf style, with tight lips and chatty fists (Hammett takes this model to its extreme with the Op, who is faceless, nameless, and homeless – insofar as Hammett does not divulge these details). He is friendless, and he is outside the law; a sometime-vigilante whose job it is to detect in accordance with terms discussed in a private arrangement with his client. In hardboiled detective fiction we are characteristically compelled by the ongoing impulse of narrative, which is propelled by an inexorable tide of vitriolic anger and indictment because, as always, the small task for which the private eye is hired becomes but a microcosm that points to a macrocosm of institutionalized corruption that it is well-nigh impossible to quell. And, where in San Francisco and across continental America the detective is an often-violent cipher of action, Faulkner’s Southern lawyer-detective chats idly. Legwork rarely goes beyond conversation. In each of the *Knight’s Gambit* stories, the truth of what actually happened – the reconstruction of agency, motive and action – is brought to the surface through (collaborative and nontraditional) dialogues that work through conjecture, mythology and gossip – reminding us of Holmes’ marketplace of ideas. While critics have traditionally derided *Knight’s Gambit* for its implausibility, where luck and facility and happy accidents reign, a regional approach ascribes a different valence to the conversational nature of the otherwise comparatively static detective: the speech/action dichotomy is collapsed. Historiographer Hayden White’s dictum “we do not live stories”\(^{10}\) comes to mind, where he argues that reality in its purest form does not come in narrative form, rather narrative is subsequently draped over events by the historian thereby creating history. The conflation of speech and action shows that the detective’s task of entering into a dialogue with the townspeople can lead to the historicization of raw, discrete events: when events are spoken of

\(^9\) Though Faulkner wrote the *Knight’s Gambit* stories between 1932 and 1949, I believe that the consistency of tone, character and structure among the stories allows me to consider them a unified example of Faulkner’s experiments with the genre and form of the sleuthing short story.

from different perspectives and pieced together and placed in a narrative, the detective's (and the lawyer's) task is achieved. As Watson writes,

It is not “only in literature” but in litigation as well that inconsistencies must be bridged, that supposition, inference, and invention must be employed to “make something out of” the inexplicable material of the past, and that “anecdotes in the history of a human heart” are annealed into verisimilar stories. And just as rhetorical ability is perhaps the essential measure of courtroom competence ... it may be that forensic experience can in turn make one a better storyteller. \(^{11}\)

*Knight's Gambit* provides an interesting mutation of the sleuthing form. Faulkner demonstrates that in the South, and in Southern Fiction (which I like to think of as two sides of the same coin, for the South inside and outside of fiction seems to be involved in a perpetual self-aestheticization and historicization)\(^{12}\) a new economy of action, of legal methodology and ratiocination, emerges: the hero investigator is a lawyer, anonymity does not feature, and he is no outsider. He gains his power, his insight, and solves the crime via his very *embeddedness*; he is community-minded, and exploits the tight bonds of township and the Southern desperation of citizenship when extracting information from the townsfolk. As a lawyer he is a rhetorician, and his ability to speak and weave narratives ensures his access to a justice that may or may not be commensurate with the law, which, as I have mentioned earlier, is at times insensitive to the integrity of Southern custom. Most importantly, Stevens operates the law as *lore*; legality is maneuvered in a way to historicize and narrativize the land, the community, mortality, and myth; law becomes the vernacular through which man both governs himself and his town; imposing integrity and verisimilitude upon a most haphazard and despairing landscape. Faulkner, throughout his history of Yoknapatawpha County, ultimately uses Gavin Stevens to teach the South about

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\(^{11}\) Watson, *Forensic Fictions*, 150.

the South in a way that poses more questions than answers about how the South can approach justice.

Following on from my interest in speech and silence in Faulkner's writings, I wish now to examine in detail the story “Monk,” which reworks Melville’s *Billy Budd* topos. This time, however, the action of the story is not on the lawless, habitually ungovernable seas: rather, it is relocated to Yoknapatawpha county, and cannot be read without harking back to the manifold repercussions of silence in *Intruder*. In “Monk”, Faulkner distills and makes most potent the implications of silence in the South, and connects it with the law and a very specific plot of terra firma. We learn from “Monk” that legality, and more importantly justice, are inextricably bound with rhetorical ability, not only as cultural capital, but also as one’s means of survival, and of navigating the wild, meta-historical, haunted jurisdiction that delineates the landscape. In Melville’s *Billy Budd*, when the absence of *terra firma* warrants a primal law, the speech act becomes crucial to self-preservation. When out at sea, Billy Budd kills another man. Notwithstanding the panoply of mitigating circumstances, his speech impediment seals his doomed fate, and he is sent unjustly to the gallows. While this is crude and simplistic, this makeshift law on the high seas swiftly serves the purpose of preserving order. In transposing this narrative to the post-bellum South, Faulkner is able to showcase the problems of the South while mythologizing, eternalizing the space: ultimately, it is jurisdictionally and jurisprudentially as turbulent as Melville’s nebulous and encyclopaedic oceans.

In “Monk” Faulkner seems most free to write about the landscape which he loved so, in a way that, perhaps because of the restraints of the short story, was clearly self-reflexive, metafictional. We learn that the terrain of Yoknapatawpha is alive, and an unwilling narrative medium: while it embraces indigenous oral tradition, it pains to submit to the imposition of an external, architectonic narrative and

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history; it is “something of bitter pride and indomitable undefeat”\(^\text{14}\) that will “outlast any corruption and injustice” (45). Faulkner’s leitmotif is clear: while narrative can grow from soil, be germane to, germinate from, that soil, Faulkner suggests that the imposition of an external/exogamous narrative onto a location (whether it be man or landscape) is untenable. The roots will not \textit{clutch}, to borrow a verb from Eliot. In “Monk” it is Monk’s body, and psyche, that is a battleground for different stories of selfhood and history told by various townspeople in the form of hearsay, that facilitates his demise in this tragic story.

In the story a “moron, perhaps even a cretin” (31) named Monk comes to Jefferson from, in true Faulknerian style, a mysterious past, and a murky, indistinct genealogy. He “emerged” from the eastern part of the county, where, but for \textit{progress} in the guise of geographic federalization [“good roads and automobiles” (32)] the area would have remained “uncultivated and populated by a clannish people who owned allegiance to no one and no thing and whom outsiders never saw” (32). Faulkner mentions that Monk has “no people, no money, and not even a lawyer” (31), and reconfirms, a couple of pages, later, that Monk has “neither friends, money, nor lawyer” (34); the inclusion of a lawyer in this trinity is telling: a legal advocate, much like wealth and connections, is necessary for the enfranchisement of the Southern individual. Lacking in this trinity, Monk is convicted for a murder he did not commit. His powers of speech fail him [“it was almost as though he were trying to make a speech” (31)] and, in political twist reminiscent of Goodwin’s unjust conviction in \textit{Sanctuary}, Monk is represented by a “court-appointed lawyer… a young man just admitted to the bar, who probably knew but little more about the practical functioning of criminal law than Monk did”, and was opposed by a “young District Attorney who had his eye on Congress” (31). He is sent to prison. Much like in “Smoke” where the sleepy description of the sage old Judge Dukinfield involves a definition of “justice” and “probity” as “fifty per cent legal knowledge, fifty per

\(^{14}\) Faulkner, “Monk,” \textit{Knight’s Gambit}, 31-45, 36. All subsequent references to this story will refer to this publication and will be incorporated in the body of the thesis. Originally published 1937.
cent unhaste and confidence in himself and in God,” Faulkner makes the distinction clear between gnosis and praxis: the practical functioning of law that one gains from experience (that involves the highly abstract “confidence” and “unhaste”), against the legal education the young lawyer initially receives.

Monk’s inability to acculturate to the town of Jefferson is configured with direct reference to his rhetorical inability: Watson writes, “in the colloquial environment of Yoknapatawpha, silence aggressively advertises difference, thereby engendering a profound, visceral suspicion.” Monk’s inability to speak is juxtaposed with the narrator’s volubility [who also makes constant reference to his own narrative voice with the constant parenthetic interjections of “as I said,” “as I also said” (35)], and speech is configured by the narrator as Monk’s would-be “contact with the old, fecund, ponderable, travailing earth which he wanted but had not been able to tell about” (35). Five years later, a man on his deathbed confesses to the crime for which Monk received his life sentence, and Gavin Stevens goes to the governor to obtain a pardon for Monk’s release. As usual, in detailing Stevens’ actions, Chick creates a kind of legal, official checklist: “My Uncle Gavin got the pardon, wrote the petition, got the signatures, went to the capitol and got it signed and executed by the Governor, and took it himself to the penitentiary and told Monk that he was free” (36). Stevens, is, as ever, immersed in the system, and takes the entire task upon himself; he acts out of interest rather than obligation [“nobody except my Uncle Gavin seemed to be concerned about Monk” (36)], and offers his voice to the voiceless Monk. Monk, however, does not want to leave prison, for he has grown comfortable there, and has made fast friends with the warden, whom he serves with a “doglike fidelity and devotion” (38). Then, unexpectedly, while in prison, Monk apparently leads an attempted jailbreak and kills the warden, this time irrefutably, in the presence of fifty or so witnesses. On the scaffold, the until-then rhetorically challenged

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16 Faulkner, “Smoke,” *Knight’s Gambit*, 7-30, 12-13. All subsequent references to this story will refer to this publication and will be incorporated in the body of the thesis. Originally published 1932.

17 Watson, *Forensic Fictions*, 146.
Monk delivers a speech as profound as it is puzzling. He says “And now, I am going out into the free world, and farm” (38). Our narrator Chick is puzzled, and, ever the logician (and ever his uncle’s nephew) he cannot understand the non sequitur: “It just does not add up... He could have known but little more about farming than about Stonewall Jackson; certainly he had never done any of it” (38). Much like in Intruder, Chick displays a tenacity to understand and investigate and empathize with his fellow man that Stevens, bogged down in his laws and procedures, does not. Stevens simply characterizes as unknown and unknowable the motives of men, especially the men who do not partake in Stevens’ dialogic community. He says to his nephew, “it all adds up alright,” “we just haven’t got the right ciphers yet” (39). Stevens does not discount the actions of Monk as utterly chaotic, unpredictable; rather he locates a pattern, but admits that he does not have the tools to decode the pattern: “it adds up... somewhere, somehow. It has to. After all, that’s too much buffooning even for circumstances, let alone a mere flesh-and-blood imbecile” (39). In “Monk” and all the Knight’s Gambit stories, there is a fundamental faith in language; in the actions of men resulting in a legible composition of signs to be read, interpreted, that is characteristic of Stevens’ relationship with his hometown, and that informs his legal endeavours. It is only when confronted by the black population that Faulkner tests Stevens’ cocksure faith, which we will see taken to its logical extreme in Requiem for a Nun.

Years later, by chance, due to the machinations of the corrupt Governor seeking to buy votes, Stevens witnesses Bill Terrell, up for pardon, deliver a speech that verbatim echoes Monk’s then-anomalous gallows speech. Terrell says, “Your Honour, and honourable gentlemen, we have done sinned against God and man but now we have done paid it with our suffering. And now we want to go out into the free world, and farm” (40). This cue, clue, leads Stevens to the understanding that Terrell had somehow manipulated Monk to lead the jailbreak, and had somehow spoken through him during his scaffold speech.
The story is narrated by Chick Mallison, Gavin Stevens’ nephew-cum-protégé, whose narration itself is flummoxed by his subject matter. The opening lines are telling: “I will have to try to tell about Monk. I mean, actually try – a deliberate attempt to bridge the inconsistencies in his brief and sordid and unoriginal history” (31). As he narrates he is attempting to juxtapose and anneal “the paradoxical and even mutually negating anecdotes of the history of the human heart… into verisimilitude and credibility” (31). He defines the tools of narration as just as “nebulous” as his enigmatic subject matter. What Faulkner emphasizes, however, is Chick’s unswerving effort; an allegory for the function of law in society, it is also the lawyer’s role to bridge epistemological gaps using both forensic and conjectural narrative techniques. It is for this reason that Stevens figures himself, and Chick as his protégé, as a Yoknapatawpha everyman – he needs to understand as many colloquialisms, dialects, of his community as possible in order to weave authoritative narratives.

In “Tomorrow”, Stevens is introduced as linguistically protean; posturing a oneness with the diverse land through the deft dramatization of regional idioms for his corresponding audiences. He attempts to speak, as I mentioned in my introduction, “so that all the people in the country – the Negroes, the hill people, the rich plantation owners” (60) alike understand him. Though this ultimately presents a simplified view of Stevens that Faulkner tragically undercuts in “Go Down, Moses,” Intruder in the Dust and Requiem for a Nun, most emphatically, it is nonetheless useful in understanding perhaps how Faulkner wished to use Stevens as his protagonist. While I am skeptical of critics who view Stevens as Faulkner’s mouthpiece (Watson calls him Faulkner’s “authorial surrogate”18), I do believe that in Knight’s Gambit Faulkner deliberately suggests that legal rhetoric is inherent in the project of writing the South – as a story to be passed on, law as legacy. Watson describes Stevens as:

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18 Watson, Forensic Fictions, 5.
raconteur and rhetorician; polemicist and demagogue; narrator, historian, genealogist, and detective; actor and director, teacher, mentor and student; advocate of the voiceless, adversary of the voiceless, and Socratic midwife to the voiceless, champion of resistance to the symbolic order, and public representative and principal defender of the symbolic order, and mediator between the individual and symbolic order... abstractionist and disciplined empiricist...19

Rather than the lawyer simply working from his chambers and in the hermetically sealed Courtroom, Gavin Stevens’ practice sprawls across the terrains of Yoknapatawpha County, and as a lawyer he does not speak legalese to intimidate or retreat from society, but rather to enter it, and to demarcate its bounds.

He is a chief defender of the land. In “Smoke” – the first story of the anthology, it is an act of desecration to the land that provides the basis for, and perhaps a justification, for murder. Anselm Holland, a “crass outlander” (7), commits an act of “unpardonable outrage” (7): he marries into acreage but does not till the land, and begins exhuming the corpses of the land’s previous owners – his wife and her ancestors. What is doubly horrific, Faulkner neglects to mention Holland’s motive for doing this – no meaning is offered – instead he foregrounds the wrath and retribution that must follow. The landscape is fertile with corpses, stories and ancestry alike (this is never more present than in Absalom, Absalom!), and it is personified, an agent in the story: Faulkner quite deliberately notes that the “mistreated land” (16), frequently the subject of sentences, returns to its rightful owners, never do the rightful owners regain possession of the land. An act of desecration against the land threatens the community and the perceived cartographic reality of the south with fragmentation, and the “lawyer-citizen,”20 to quote Jay Watson, acts as the unifying, cohesive agent; the hero is a storyteller who assuages the ever-present threat to the South of “the foreigner, the

19 Watson, Forensic Fictions, 4-5.
20 Watson, Forensic Fictions, 139.
outlander, the Yankee.”21 When Stevens solves the case in “Smoke” and the land is returned to Virginius, Stevens repeats to him, twice, “you just treat it right.” (29)

In all of the Knight’s Gambit stories, Stevens solves the murder by idly chatting with the townsfolk. In “Smoke”, even though he is in a courtroom presenting a case at the inquest of Judge Dukinfield, he doesn’t really have one, and, in the tradition of a filibuster, he simply tells stories and relates anecdotes until Granby Dodge, the murderer, driven to frenzy, confesses. Granby, however, is neither on trial, nor is he in the witness box; in fact, he is not even a formal suspect. Nor is he an interlocutor in Stevens’ relentless, meandering dialogue; Stevens is in dialogue with no fixed interlocutor – he speaks to judge, jury, audience and himself alike [“to no one in particular, speaking in an easy, anecdotal tone” (15)], collapsing the strict design of the courtroom into something more fluid, ahistoric. Which of course is why Faulkner writes that justice is “fifty percent knowledge, fifty percent unhaste” (13). Echoing the gradualism espoused in Intruder in the Dust though this time divorced from the question of race, Stevens successfully in “Smoke” stalls long enough and operates languorously enough such that the injustice is organically brought to the surface: in the final ruse by Stevens that luckily forces Granby Dodge’s confessional movements, the narrative is described in a mesmeric slow motion: “we did not move. We just sat there and heard the man’s urgent stumbling feet on the floor, and then we saw him strike the box from Stevens’ hand.” (28)

Speech and trickery (and the trickery in speech – pun, paradox, wordplay) bring about justice in “Smoke” in a way that reminds us again of Oliver Wendell Holmes, who famously said “lawyers spend a great deal of their time shoveling smoke.”22 Although Stevens’ bluff with the brass box containing the purported

21 Faulkner, “An Error in Chemistry,” Knight’s Gambit, 74-89, 74. All subsequent references to this story will refer to this publication and will be incorporated in the body of the thesis, as “Error” when necessary. Originally published 1946.
original cigarette smoke of the killer is unethical (Stevens fabricated the evidence himself on the off chance his theory was correct), the narrative focuses instead on Stevens’ engagement with the law divorced of ethics that revitalizes language and vision, which, in turn revitalizes the landscape of Yoknapatawpha.23 In “Monk”, Monk’s psyche is imagined by Chick, and the townspeople, to be some kind of blank slate, a space of silence, on which to impose language, and hence, purpose, activity and duty. Terrell says to Stevens,

I told him [Monk]. I said here we were, pore ignorant country folk that hadn’t had no chance. That God had made to live outdoors and farm His land for Him; only we were pore and ignorant and didn’t know it, and the rich folks wouldn’t tell us until it was too late. (44)

Here, linguistic and economic capital is aligned with agrarian purposefulness, and the poor and uneducated must be given instruction, allocated a discourse (by this I mean Yoknapatawpha’s poor, uneducated white population) through which to enact their sense of individual liberty. Incapable of original action or thought, Monk is a character who, while living with the bootlegger Fraser, “was said to be able to make Fraser’s whisky as well as Fraser could” (33). He is not a man of imagination, but a mimicker, and it is his silence and pantomimic relationship to the world around him that seals his fate.

On a narrative level also, Monk has little identity independent of Chick’s narrativization of him (and the townsfolk who gossip platitudes regarding his story); in fact Watson describes Monk as “the principal victim of a narrative

23 Michael E. Lahey cogently discusses the legal quandaries that persist in “Smoke,” and notes that Faulkner’s esteemed biographer, Joseph Blotner, points out that Stevens’ actions in “Smoke” constitutes entrapment “but offers nothing further on its legal or social implications.” Faulkner, too, does not dwell on legal and social implications: in “Smoke,” Faulkner uses the courtroom simply as an apparatus through which Stevens is able to speak aloud a Southern myth, and so, the fact that his speech is bizarrely described as simultaneously “just, specious and frank” (15) is denied reflection.


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tyranny that pervades”\textsuperscript{24} the story. So importantly, every avenue through which we know Monk - that is, conjecture, hearsay, supposition and gossip – is a collaborative and dialogic historiographical method created by social mediation. He is a pastiche, and he is sent to the gallows because Terrell’s discourse that is imposed upon him is able to dominate, and drown out the other competing discourses. Monk himself is perhaps an allegory for the American South: his psyche is a space for the conflict and unity of competing discourses. Much like Faulkner’s literary style, which does not venture to construct immediate experience, Monk presents an inverted site where a series of stories are intentionally mediated by local authorities that, in turn, derive their very authority from their connectedness with the land, and their capacity for speech.

This is why Monk cannot speak:

They could not keep him from affirming or even reiterating it, in fact. He was neither confessing nor boasting. It was almost as though he were trying to make a speech, to the people who held him beside the body until the deputy got there, to the deputy and to the jailor and to the other prisoners – the casual niggers picked up for gambling or vagrancy or for selling whisky in alleys – and to the J.P. who arraigned him and the lawyer appointed by the Court, and to the Court and the jury. (31)

Prefiguring Faulkner’s Negro, for the man who cannot verbally participate in the South, whose life is a battleground for a series of competing discourses, justice is withheld, and the law is relegated to the usual impersonal process – the deputy, the jailor, the J.P., the lawyer, the court, the jury. People only “tell” Monk his story. The real killer, who confesses on his deathbed, explains that he “fired the shot and thrust the pistol into Monk’s hand, telling Monk to look at what he had done” (36). Subject to ultimately an oppressive narrative coercion, Monk lives a fruitless life and dies an unjust death as a direct result of his social situation disallowing him to speak or think originally, or meaningfully.

\textsuperscript{24} Watson, \textit{Forensic Fictions}, 154.
Similarly, in “Smoke”, the “ethical compromise” undertaken by Stevens is entirely upstaged by the magical effect of his rambling in the courtroom, which sees that the men of the Grand Jury and the audience in the gallery alike are impregnated with a dreamlike, visionary knowingness, something intangible that transcends empathy. Stevens’ speech and his application of the law is their ticket in to a moment of sublime shared experience, where they are all able to ominously see through Anselm’s eyes:

For some time after that we who watched and listened dwelt in anticlimax, in a dreamlike state in which we seemed to know beforehand what was going to happen aware at the same time that it didn’t matter because we should soon wake. It was as though we were outside of time, watching events from the outside; still outside and beyond time since that first instant when we looked again at Anselm as though we had never seen him before. There was a sound, a slow, sighing sound, not loud; maybe of relief – or something. Perhaps we were all thinking how Anse’s nightmare must really be over at last; it was as though we too had rushed suddenly back to where he lay as a child in his bed and the mother who they said was partial to him, whose heritage had been lost to him, and even the very resting place of her tragic and long quiet dust outraged, coming in to look at him for a moment before going away again. Far back down time that was, straight though it be … and the man at whom we looked we looked at across that irrevocable chasm (20)

Abstraction, apocrypha and positivism meld brilliantly; hindsight and evidentiary material magically become mutually legitimating in the micro-histories of communal experiences and yarns in Yoknapatawpha County. This is perhaps what led W.E. Schlepper to argue that “perfect justice” is enacted in “Smoke” whereby the story presents “a close-knit community whose members

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http://go.galegroup.com/ps/i.do?id=GALE%7CA14696161&v=2.1&u=usyd&it=r&p=EAIM&sw=w
agree on all important issues.” Michael Lahey, however, sees an unsettling foundationlessness of law in Stevens’ actions, writing “the legal space in “Smoke” creates itself as it goes along because of no other way to proceed.” Indeed, Stevens’ rambling is permitted by the foreman, who allows him to “conjecture” and keep the jury “confused” (23), suggesting that it is his speech act itself that binds the community, and brings it, apparently beyond the limits of the law and into the realm of justice: restoration of the community is heralded as the protection of land and the tillage of the land by the right people. Lahey suggests the “postmodern” credentials of the story: in Stevens’ “artful presentation of what is absent,” and noting that his “procedural and legal deferrals until evidence produces itself, rather than is produced, and to which procedure and law can then properly apply themselves, can justify themselves in retrospect only.”

Though retrospection and the law make ill bedfellows, Faulkner distinguishes in “Smoke” between law and justice and suggests that, for justice (timeless, stolid) to prevail, the legal system may “collapse in on itself to achieve its ends, to produce itself in order to produce its by-products;” the theatricality that is a necessary part of courtroom procedure may subsume entirely the law in order to achieve a just end. It is this fantasy that is put on trial in Requiem, as will be discussed in the following chapter.

In Knight’s Gambit, simple narrative reconstruction and, at this stage, Stevens’ hitherto untested rhetorical aptitude coupled with forensic and legal prowess unofficializes the history of the South, insofar as it distances the South from the grand narratives of slavery and the Civil War and defeat and national statutory imposition, quaintly returning the narrative to the miscellany and people of the land, the “group of sworn court officials, jury members, and witnesses

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and...private residents, neighbours, family, employers and employees, and individuals experienced in love, pain, hope and defeat.” If language, unstable and slippery at best, provides a basis for the justice dealt and community identity, then this creates a beautiful metaphor for the eternal shiftiness of the South (of which the South is author). In “Knight's Gambit”, Stevens’ voice is described as “a garrulous and facile voice so garrulous and facile that it seemed to have no connection with reality at all and present hearing it was like listening not even to fiction but to literature” (94). Law in the South is both fictive and literary: Stevens’ actions as a lawyer locates the common law within the imagined community of Yoknapatawpha, and defines justice as residing in Belles Lettres – in the aesthetic examination of human nature which is separate from empirical “truth.” In “An Error in Chemistry,” a distinction is made whereby it is the Sherriff’s job to seek truth and Stevens’ job to seek “justice and human beings.” (75)

In my following chapter, I will argue that in Requiem for a Nun Faulkner puts Stevens’ complacence to the test when he defends Nancy Mannigoe, a black woman; his motivations, and his ideas of gradualism, justice, human nature and truth are exposed as highly problematic and hypocritical. In Requiem, Faulkner critiques his own representation of justice as something that must be dialogized by characterizing Nancy as silent and inscrutable. In the first five Knight's Gambit stories, however, it is only in “Smoke” that the one black character hints at something being awry with the configuration of justice in Yoknapatawpha County. Judge Dukinfield's old Negro companion, Uncle Job, is narrated thus:

Now and then we would stop and talk to him, to hear his voice roll in rich mispronunciation of the orotund and meaningless legal phraseology which he had picked up unawares, as he might have disease germs, and which he reproduced with an ex-cathedra profundity that caused more than one of us to listen... with affectionate

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amusement. But for all that he was old; he forgot our names at times and confused us with one another; and, confusing our faces and our generations too, he waked sometimes from his light slumber to challenge callers who were not there, who had been dead for many years. (14-15)

While Faulkner rather tenderly describes Uncle Job in the courthouse as having learnt legal dicta via an osmosis that flies in the face of the normal parameters of space and time, death and life, that follows laws of generation and proximity, rather than precedent, herein lurks a threat. Lahey writes of the sleepy and unhurried Judge Dukinfield, who has “the sort of probity and honour which has never had time to become confused and self-doubting with too much learning in the law” (12-13), that “law mediated through personality in this instant is patient, avuncular, asleep, secure, and supposedly securing in the confidence of its own unquestioned position.” From this personification of the law (and of the law's highest capacity), comes the character of the judge’s servant, who, like Monk, absorbs the discourses of more powerful men around him. Picking up legalese unawares, Uncle Job, according to Lahey, suggests that “the discourse of the law... seems altogether comic, easily mimed, but underneath also contagious, possibly incapacitating.” He continues, “both unsettling and absurd, Uncle Job suggests law as its language only, automatic, free-form, and misfiring.” It has a sensuality that flies in the face of reason, that bespeaks an idiotic voluptuousness – the listening to and mouthing of sounds – upon which law is based and to which it can be reduced, reminding us of Stevens’ rumination: “even the psychologists have not yet told us just where seeing stops and smelling begins, or hearing stops and seeing begins. Any lawyer can tell you that.” (23)

In Knight’s Gambit Faulkner inverts a common cliché: speech is golden – and so silence is pernicious. Silence is the domain of the lynch mobs in Intruder, and

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http://go.galegroup.com/ps/i.do?id=GALE%7CA14696161&v=2.1&u=usyd&it=r&p=EAIM&sw=w
silence catalyzes the downfall of Monk in “Monk.” There can be no justice without man speaking with, to and through his fellow men. Stevens’ methods of detection involve the opening of dialogue, and it is through the dialogue that he is not only able to solve a crime, but he is able to better understand human nature. The idealized Stevens in Knight’s Gambit as lawyer-citizen, a “bucolic Cincinnatus” (RN, 50) as we will see, is ripped to shreds in Requiem, where the rhetoric and theatricality through which justice is successfully refracted in “Smoke,” “Monk” and “Tomorrow,” is problematized when it collides with race. In Requiem, we will see, even though Stevens is once again a “champion not so much of truth as of justice,” Faulkner adds the troubling coda, which darkly humanizes Stevens, much like in the creation of Spade Hammett humanized the Op: “or of justice as he sees it” (RN, 50). The final lines of “An Error in Chemistry,” the penultimate story in the anthology, hint at an uncomfortable confrontation with self, and awareness of self, that Stevens will meet head-on in Requiem. The sheriff says to Stevens, beratingly,

The Book says it somewhere, Know thyself. Ain’t there another book somewhere that says, Man, fear thyself, thine arrogance and vanity and pride? You ought to know; you claim to be a book man. Didn’t you tell me that’s what’s that luck-charm on your watch chain means? What book is that in? (89)

Stevens’ “luck-charm”, his Phi Beta Kappa Harvard key ring, signifies an allegiance to an elite education that has hitherto shielded him from the Conradian self-awareness that comes from contact with and interiorization of the racial other.
Chapter Six

Requiem for a Nun: Faulkner’s Trials

I do feel this is a bit of a verdict without a trial.

- John Fowles, Mantissa

Zeus has led us on to know,
the Helmsman lays it down as law
that we must suffer, suffer into truth.

- Aeschylus, Agamemnon

That is the substance of remembering – sense, sight, smell: the muscles
which we see and hear and feel – not mind, not thought: there is no such
thing as memory: the brain recalls just what the muscles grope for: no
more, no less: and its resultant sum is usually incorrect and false and
worthy only of the name of dream.

- William Faulkner, Absalom, Absalom!

In Requiem for A Nun, Faulkner’s experimental novel / play, Faulkner resumes
the story of the infamous, wealthy, and vapid Temple Drake of Sanctuary, and
relentlessly subjects her to the cross-examination and scrutiny that she escaped
in the perfunctory and unjust trial of Lee Goodwin in Sanctuary. In Sanctuary,
Temple was tantalizingly complicit, not only in her own capture and debasement
by the villain, Popeye, but, more troublingly, in the wrongful conviction and
execution of Goodwin. In Requiem, Temple is once again complicit in a crime, but
this time, it is in the murder of her infant daughter by her black maid, Nancy
Mannigoe. The narrative of Requiem centres on the interrogation of Temple by

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1 For the sake of facility but also in service of my argument, I will be referring to the text as a play,
given that I believe Faulkner explicitly uses the stage as a metaphor for legal theatre. See Hugh
Ruppersburg, “The Narrative Structure of Faulkner’s Requiem for a Nun,” Mississippi Quarterly 31,
no. 3 (Summer, 1978): 387-406.
Gavin Stevens (who is both Nancy’s lawyer and Temple’s uncle-in-law), and the ways in which he uses a legal framework and legal rhetoric, and imbues himself with legal authority, to elicit information from Temple. However, the interrogation of Temple is not on the witness stand in court, but rather in private quarters – Temple’s living room – once Nancy Mannigoe has been tried, convicted, and her sentence handed down. Stevens, it seems, is more at home doing his lawyering away from the court. The play interrogates the place of the law in Yoknapatawpha County, and it destabilizes the law’s putatively correlative relationship to justice. The play stages Stevens’ search for “justice” and this chapter will focus on what justice means for the three main players: for Stevens, justice is found through rhetoric (the narrativization of social events and relationships around the criminal act); for Temple, it is utilitarian (that is, the enactment of vengeance); and for Nancy, who is excluded from the community that creates the law, it is uninterpretable. Faulkner bases the play around a court case that we never see – that we only experience interstitially – and in this chapter I will argue that he draws an analogy between this absence of event, and the absence of Nancy as an unrecognized, voiceless object in both the community and the court case that decides her fate.

Underpinning Faulkner’s oeuvre is a *topos* of consistent disenchantment regarding the law and its ability to impact meaningfully and justly on the daily lives of the denizens of the community. The relocation of legal action to private quarters in *Requiem* represents the South’s uneasy relationship with legal institutions. Faulkner’s literature displays the discomfort, the uneasiness in respect of the *imposition* of law (especially in the context of federal legislative changes) and its ceremonies on what Faulkner perceives as the South’s indomitably hermetic and inveterate sense of community values. In the face of the *post-bellum* “imposition of exogamous law, indifferently and artificially generated by a bureaucratic state, on historically specific and distinct

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2 In *Requiem* Gavin Stevens is Gowan Stevens’ uncle, however in *The Town* Gowan is described as Gavin’s cousin.
communities,” Faulkner, in both *Requiem for a Nun* and *Sanctuary*, is once again searching for extra-legal alternatives to the established legal courses of action to justly and locally assuage the “lusts and greeds and bickering and bitterness” of the men and women of Yoknapatawpha County. We are reminded of the ruminations of V. K. Ratcliff in *The Town*: “federal folks were not interested in whether it worked or not, all they were interested in was that you did it exactly like their rules said to do it.”

The play generates more questions than answers: where was Stevens’ investigatory spirit during the trial of Nancy? For what possible reason could Temple’s interrogation take place, if not to free Nancy Mannigoe? In considering these questions, I will study the role and method of Gavin Stevens in the action of the play. In the first (and only) description of his character he is described as a “champion not so much of truth as of justice” (50). However, as the play progresses we learn that Stevens is very much concerned with truth before justice insofar as, in *Requiem*, he believes, rather uncharacteristically, that speaking the truth necessarily results in justice. Like Sam Spade, Stevens understands that this elusive “truth” underpinning the mystery of *what really happened* is not a totalizing metaphysical force, but relative and unstable, as well as fractured and refracted through the medium of memory. Unlike Spade,

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3 Sassoubre, “Avoiding Adjudication” 185.
4 Faulkner, *Sanctuary* (New York: Vintage, 1993), 194. All subsequent references to this novel will refer to this edition and will be incorporated in the body of the thesis. Originally published 1931.
6 I say it is uncharacteristic even in light of the highly unstable characterization of and chronology regarding Gavin Stevens in Faulkner’s literature, where even the inconstant mentioning of the “six” or “eight” years that elapse between the events of *Sanctuary* and *Requiem for a Nun* colours the possibility of ascertaining truth. Stevens appears in “Hair” and “The Tall Men”, the stories of *Knight’s Gambit, Go Down, Moses, Requiem for a Nun, Intruder in the Dust, Light in August, The Town*, and, finally, *The Mansion*, and, though highly flawed, he is never so naïve as he is here in *Requiem*. In “An Error in Chemistry,” for example, he thoroughly separates truth from justice and sees no causal link between the two: “In my time I have seen truth that was anything under the sun but just, and I have seen justice using tools and instruments I wouldn’t want to touch with a ten-foot fence rail” (75). For Faulkner’s highly unstable characters we get a kind of apologia in the opening inscription of *The Mansion*, where Faulkner writes that, as *The Mansion* is “the final chapter and summation of... thirty-four year... chronicle” the “contradictions and discrepancies” the discerning reader will note throughout his literary career are “due to the fact that the author has learned, he believes, more about the human heart and its dilemma than he knew thirty-four years ago.”
however, Stevens’ actions and beliefs attest to an understanding of justice that can be delivered simply through a dramatic speaking aloud one’s silent inner discourse of consciousness. What transpires, however, problematizes his notion, as the primacy afforded to hearing Temple speak the truth renders impossible the procurement of a just outcome. One reason for this lies in Stevens’ rejection of the courthouse and the legal system as the necessary or official space for the discovery and establishment of justice and truth, favouring a closed-door “private trial”7, as Noel Polk argues. Sassoubre, in “Avoiding Adjudication,” argues compellingly that Faulkner’s prose searches for alternative dispute resolutions that are “local, non-violent, [and] community-based.”8 To this effect, Richard Moreland, when reading the story “Barn Burning”, saw Faulkner musing on ways to settle disputes out of court and without recourse to the law, suggesting that the law is only seen as a “cultural alternative for resolution of social differences when the old plantation magic fails.”9 This is a good springboard for Faulkner’s jurisdictional revision of Yoknapatawpha County. Though he obsessively details the history and architecture of the courthouse and situates it in the centre of Jefferson, as we will see in his richly detailed prologues that precede each act, what generates an image of community and town from a mere geographical reality is not the law but, as we have seen in Knight’s Gambit,

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8 Sassoubre, “Avoiding Adjudication,” 186.
9 Moreland, Faulkner and Modernism, 15. While there is a distinction to be made between the inevitable murder trial in Requiem and the class warfare at the heart of the civil dispute in “Barn Burning,” nevertheless Faulkner is interested in foregrounding alternative sites for discourse and remedy across both civil and criminal disputes. In Intruder, after all, the murder of Vinson Gowrie still does not make it to the courthouse. In The Mansion, Mink Snopes’ act of murdering Jack Houston blurs the lines between civil and criminal jurisdictions: Mink’s crime is made inextricable from, and is an instantiation of Houston’s tort; both exist simultaneously in the same act:

He simply could not wait any longer – and that too was one more injury which Jack Houston in the very act of dying had done him: compelled him, Mink, to kill him at a time when the only person who had the power to save him and would have had to save him whether he wanted to or not because of the ancient immutable laws of simple blood kinship, was a thousand miles away; and this time it was an irreparable injury because in the very act of committing it, Houston had escaped forever all retribution for it. (673)
the myths, stories, histories and genealogies which connect a people to one another and to a land.

The study of Requiem For a Nun brings to mind James Boyd White's seminal text on the merits of interdisciplinary legal studies, The Legal Imagination, which argues that the study of literature is necessary to lend integrity to legal scholarship because literature creates the bonds of empathy and humanity and psychological intimacy with people whose experiences and contexts are vastly different from our own. Furthermore, Austin Sarat, Matthew Anderson and Catherine O. Frank, in Law and the Humanities: An Introduction, write that

the capacity to cultivate sympathy opens the possibility for literature to have a salutary counter-hegemonic effect; it can raise consciousness about the effects of power and historical patterns of oppression, exploitation and marginalization.

In Requiem, I will argue that Faulkner surveys the possibilities but more importantly the limits of humanistic interaction in lieu of legal theatre for the airing and rectifying of legal grievances, in respect of both Nancy and Temple. Moreover, by refiguring the arena of the enactment of justice from a murder-trial (a crime tried by the state) to an interior, psychological space – the privacy of Temple's grief, guilt, and conscience, “tried” by a family member – Faulkner effectively removes the legal narrative from the custody of the state and the realm of the courtroom to a (to use a dramatic analogy) behind-the-scenes, backstage space – a domestic and psychological space. However, to return to Sassoubre’s reading of Faulkner as searching for alternative spaces in which to locate and enact justice, I will argue that we must look beyond the simple answer of “community,” which glitters in chimerical form in Faulkner scholarship: I believe in Requiem Faulkner's movement away from the law is not only to find justice along the mythological and historical lines of Yoknapatawpha county, but

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10 See James Boyd White, The Legal Imagination (Chicago: University of Chicago Press, 1985)
11 Sarat, Anderson & Frank, Law and the Humanities, 7.
to interrogate those very mythological and historical lines that forge “community” that remain uninterrogated in Knight’s Gambit. I will argue, rather, that the very domestic and discreet, mannered affect of Stevens and Temple’s dialogue suggests that underlying Stevens’ actions and private motivations is a definition of justice that ontologizes class and race difference. Thus, in Stevens’ putatively humanistic relocation of justice to a community space in order to be free of the constrictions of legal theatre, Faulkner dramatizes the very kernel of injustice that also inheres in the community, which is found along class and colour lines.

Moreover, the stage itself, as both physical setting and metaphor in the play, triggers a reading of law and justice through staged action. My reading of the play interrogates the stage with a view to bringing to light what is unseen, and unheard by the reader: in showing what is staged, Faulkner encourages the reader to consider what is not staged. Ultimately, Faulkner’s experimentation with the novel/play genre intimates a dual plane of experience: if the law is theatrical and staged and must be, according to the axiom, seen to be done, then the very staginess of the law generates the necessity for a backstage space, where we must assume an illegality and/or injustice is taking place. We are reminded again of the highly symbolic exchange – the metaphor of the open secret – in Hammett’s “The Golden Horseshoe,” examined in my introduction, between the Op and the Post Master, whereby a legal charade can not only mask but also subsume a potentially illegal practice, so long as the players are blissfully unaware of the way in which their actions are playing out backstage, in that extralegal space of alterity.

To begin with, it must be made clear that the narrative of Requiem is not, as Jay Watson correctly describes, concerned with the guilt of Nancy Mannigoe, as

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12 Given that the play is designed to be read (it has been described by Thomas L. McHaney as an “historical narrative and closet-drama”) I am content to use reader instead of viewer. See McHaney, “Faulkner’s Genre Experiments” in Richard Moreland, ed. A Companion to William Faulkner (Malden, MA: Blackwell, 2007), 322.
befitting a murder trial. He writes, “Motive rather than agency is the crucial element of mystery.”

At the beginning of the play we are told explicitly by the author that Nancy has in fact smothered Temple and Gowan’s infant daughter, and hence satisfies, at least preliminarily, one of the components necessary for a murder conviction, actus reus: “She is – or was until recently, nurse to two white children, the second of whom, an infant, she smothered in its cradle five months ago, for which act she is now on trial for her life” (51). It is less clear whether mens rea, the mental component involving motive, intention and volition, is satisfied, especially in light of Stevens’ unwillingness to enter an insanity plea as a defence, and Temple’s desperate supplications to that effect. It is clear, however, that Nancy smothers the child as a last resort after repeated entreaties to Temple to be a good mother, who, prior to the infanticide, was preparing to run away with her lover and abandon her children. Nancy moves reasonably from regret, “maybe I was wrong to think that just hiding that money and diamonds was going to stop you...” (160-1) to resignation: “I’ve tried. I’ve tried everything I know. You can see that” (165). In a final bid to ensure that she and Temple are in agreement, and speaking the same language, she forces Temple to repeat her words verbatim, and to state without circumlocution, her intentions of abandoning her family:

TEMPLE
You heard me. I’m going to do it.

NANCY
Money or no money.

TEMPLE
Money or no money.

NANCY
Children or no children.
[...]
If you can do it, you can say it.

13 Watson, Forensic Fictions, 181.
So we can see that a defence of insanity or automatism would have failed, and Stevens was quite right in not recommending it. Nancy acts with premeditation and desperation in direct response to a particular situation: only after having made Temple admit, aloud that she is intent on abandoning her children, does she smother the baby in the crib. But, as Faulkner would be well aware, it is not quite so simple. As I stated earlier, while all the elements are there for a murder conviction, surely, for justice to operate to its full effect, and for the reader to be convinced beyond reasonable doubt, the court (which includes the reader, operating perhaps as a juror, or as a member of the gallery, as Watson would have it) must hear all the circumstances of and leading up to the crime – personal narratives, conversations: what would be described as the mitigating factors. And yet Faulkner’s rendition of the law does not, or will not, admit anything beyond the inveterate rituals of procedure and the terse, authoritative language of the court: “Let the prisoner stand” (50), “Have you anything to say before the sentence of the court is pronounced upon you?” (51), “Order! Order in the court! Order!” Nancy does not speak but for her acceptance of her sentence: “Yes, Lord”, which is “quite loud in the silence, to no one, quite calm.” (52)

I wish to read Faulkner’s portrayal of the law’s refusal to hear mitigating circumstances as his writing against the dehumanizing effect of legal positivism that was creeping into the American jurisprudential landscape once again as the popularity of realism was beginning to wane. To understand the full extent of the dehumanizing nature of positivism, one cannot look past Langdell’s adherent,

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James Barr Ames, who, in his famed “case study” approach to the configuration of contract law, preferred depersonalized, hypothetical situations from which to elicit principles. Cases, he thought, distracted the legal scholar with factual complications and contingencies, as may be seen in the following example:

A promises C to pay him what B owes C, for C’s promise to release B. If B had a defense against C, and so was not liable to him, A by the terms of his promise is not liable to C. If, on the other hand, B had no defense against C, but A had a defense against B, A must pay C. For C having given up his claim against B for A’s promise to him, must be entitled to enforce it free from any equities in favour of A.  

In Stevens’ situating truth and justice outside of the formalist strictures of the law and the jurisprudential discourses thereof, and instead pairing justice with “human beings” as he does in “An Error in Chemistry,” Faulkner explores the possibilities of justice as mediated through the personality and social embeddedness of Gavin Stevens.

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Requiem is structured to highlight and reflect upon the very staginess the adversarial system adopts to promote the image of a just outcome having been achieved. The stage directions emphasize the law’s reliance on “symbolism” in order to construct its own authority:

The curtain rises, symbolizing the rising of the prisoner in the dock, and revealing a section of the courtroom. It does not occupy the whole stage, but only the upper left half, leaving the other half and the bottom of the stage in darkness, so that the visible scene is not only spotlighted but elevated slightly too… the symbolism of the elevated tribunal of justice. (50)

The very stage directions see Faulkner interpreting his own metaphor. Furthermore, capitalizing on the dimensions of the stage, Faulkner shows how courtrooms are designed and built to project legal authority and the authority of the judge and lawyers. The play, in short, draws our attention to the artifice of the courtroom. If we compare this description of the stage to an early description of the courthouse in the first narrative prologue entitled “The Courthouse (A Name for the City),” where it is prosaically depicted as “simple and square, floored and roofed and windowed, with a central hallway and the four offices” (45) and with “a cupola with a four-faced clock and a bell to strike the hours and ring alarms” (48), we see that the prologues offer a kind of intrusion into the constructed and mannered potency of the courtroom as a theatrical space. Robert A. Ferguson discusses in The Trial in American Life the “aesthetic element of control in legal procedure,”16 which Faulkner touches upon, especially in the clearly gendered courtroom, where only unnamed men speak.17 Various legal scholars have remarked on the necessity of symbolism and theatrics in the courtroom: Lindsay Farmer writes of the modern Anglo-American adversarial system, “trials take the form of a publicly staged contest” and “in an important sense [they] have been designed to do just this.” This is because

the staging of a trial, from the language used to the legal rituals to the symbols of justice and the architecture of the courtroom, seeks to represent the law in a certain way, to legitimize the exercise of state power and present a certain image of the community of law.18

Requiem links this staginess to a certain institutional stringency that will not permit the vicissitudes of history and memory. For it is clearly the absence of the mitigating factors, the narration of Nancy’s story in the courtroom (which would have no doubt led to the humanization of Nancy in the courtroom scene), which

constitutes another, unmentioned injustice in the play. This is the failure of Gavin Stevens, for Temple mocks, “what else are we talking about except saving a condemned client whose trained lawyer has already admitted that he has failed?” (79). By expressly denying Nancy her right to a fair trial, which would involve admitting evidence and testimony based on her relationship with Temple, and Temple’s past and present relationships, and by denying Nancy her right to an advocate who is willing to do his job, Faulkner portrays a legal system that is, first, deaf or unwilling to hear Nancy’s story, and second, unwilling to show or display its real machinations, evading the dictum that justice must be seen to be done.

The presence of the stage, thus, also ushers the reader to consider what Faulkner does not show on stage (neither Nancy’s trial nor the act of smothering itself) and why. Given that Nancy is first introduced to the audience in the stage directions, where Faulkner matter-of-factly states that Nancy did in fact smother Gowan and Temple’s daughter, the reader’s understanding of her character is detached, removed, unengaged: we do not view the trial, which is important because it means that we do not see Nancy engage in dialogue: in a play, which by definition is marked by movement, she is marked by stasis. We do not get a sense of Nancy’s character first-hand; instead, her characterization is relegated to a couple of lines of descriptive stage directions. However, this description of Nancy as criminal includes the codicil that she is not rigidly defined by her relationship to the law – she is not just a transgressor of the law: “but she has probably done many things else – chopped cotton, cooked for working gangs – any sort of manual labour within her capacities, or rather, limitations in time and availability” (51). A distinction must be drawn: where the law cannot, and where Gavin Stevens will not, breathe life into Nancy’s character, Faulkner himself will, and does. The play itself is not racist, or classist; rather, it meditates on institutional racism and classism in the South.

19 Contemporaneous with Requiem was of course Jerome Frank’s seminal text on the shortcomings of the courtroom process and its uneasy relationship with the truth, Courts on Trial: Myth and Reality in American Justice (Princeton: Princeton University Press, 1949).
Faulkner in his descriptions immediately humanizes Nancy; by defining her as child smotherer as well as cotton-chopper, cook and labourer, as adjunct also to her reputation, as tramp and prostitute, the shame of a criminal conviction is not permitted to subsume or reduce her character to caricaturish villain. While Faulkner wants to impress the reader in the prologues with the hegemonic potential of the courthouse and the law, when it comes to the real individuals that populate his fictional township, *Requiem* makes the point that the courthouse is not equipped, and has not yet evolved enough to understand the old verities, as he put it – *love and honour and pity and pride and compassion and sacrifice* – of the human spirit that transcends the colour line. The stage directions are vague on Nancy’s personal history, she is “probably married” and even her name is only “so she calls it” (50), suggesting that the court has not heard, or does not even know (or care about) the identity of the accused which, in all other respects, it seems so quick to alienate and objectify: “There is a dead silence in the room while everybody watches her” (50). Watson argues that herein lies another injustice, and one of the more heinous miscarriages of justice – the misuse of the legal forum for its original purpose:

> Here we see an institution that evolved specifically in order to affirm, in moments of particular social and moral stress, the individual’s membership in her community and to provide a forum for her stories ironically accomplishing the exact opposite effect, for it could not be clearer that the Yoknapatawpha County Courtroom is a place of silencing and alienation. It is easy, of course, to understand why this is the case: an object, after all, is easier to dismiss as alien, anomalous, mad, inhuman – and easier to kill – than a person is.\(^2\)

Watson correctly reasons that Nancy’s alienation and objectification leads to the death sentence. However, he does not consider *why* the case is never heard to


\(^2\) *Watson, Forensic Fictions*, 181-2.
begin with, arguing only that *Requiem* is concerned with the “maieutic forensics”\(^\text{22}\) of our detective, Gavin Stevens, as he sometimes gently, sometimes cruelly, elicits information from Temple in a bid to exorcise her of her own demons. The idea is that Temple *speaking* the truth will lead, perhaps, to justice. But justice for whom? Is it for Stevens, Temple, Gowan, Nancy, or the State of Mississippi? And what does justice mean in the context of the play? Is Stevens, as Polk argues, a lawyer set out to “crucify” Temple forming a one-man lynch mob?\(^\text{23}\) I do not think so. Though I am indebted to the scholarship of both Watson and Polk in the inexhaustible field of Faulkner studies, I think their analyses of *Requiem* sidestep a fundamental question that needs answering before we can look at Stevens’ interaction with Temple: What is Stevens’ definition of justice? The very cryptic play does not define justice, and instead focuses on Stevens’ monomaniacal desire to quell the perceived injustice. In answering this question it is helpful, I think, to consider why – to what philosophical end –Faulkner has deliberately left this question open-ended.

My reading of Stevens’ understanding of and desire for justice in *Requiem* follows from my examination of classic American jurisprudence in Chapter 1: Stevens can only comprehend justice, optimistically yet asymptotically, as a *striving*: in the face of the limitations of the court, which yields a unifying and absolutist prism through which putative “justice” is rendered, Stevens decides to focus his energy on the interpretive commitment to working through justice outside of the court, its oftentimes contradictory and paradoxical plenitude. Though the law locates justice firmly within its walls, Stevens’ understanding of it is more complex, such that it travels the crosscurrents of myth and history that unite and segregate a community. Faulkner details the impossibility of a finite interval of justice, and the necessity for justice to be a continuous process of *becoming*.\(^\text{24}\)

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\(^{22}\) Watson, *Forensic Fictions*, 175.


\(^{24}\) For a rumination on Faulkner’s modernist representation of time as a forever unfolding, simultaneous past present and future, in which time cannot conform to discrete intervals, see
Moreover, the “justice” of the stage play must necessarily be positioned alongside the past, present and future justices of the narrative prologues, which I will analyze later in this chapter. In my rather controversial reading of this play, I will argue that, while Faulkner sees potential in Stevens’ striving, he also wishes to point out the tragic limits in Stevens’ scope, given that the community which underpins Stevens’ rendition of justice is as flawed as the court. In the end, Stevens’ idea of justice is just as exclusionary as the Law’s. We will see that Nancy’s simple acceptance of the court’s ruling, “Yes, Lord,” bespeaks a position of subjugation and alienation that is afforded her not only by the court, but also in Stevens’ relocation of justice: if justice is in the labour involved in the striving towards it, in a Socratic dialogue (Olga W. Vickery calls Stevens “the Socratic midwife”\(^25\)), then Nancy’s exclusion from not only the dialogue of both court and community yields one of the multiple injustices the play stages.

The fact that the investigative thrust in the play is relocated from Nancy’s body to Temple’s psyche, suggests that it is Temple’s pain and grief that the dialogues hope to alleviate. Stevens’ unusual assumption is that “injustice” can be banished by the acceptance – not in the open court but in camera, in the private chambers of the heart – of truth, love, and, he elaborates, “pity... or courage. Or simple honour, honesty, or a simple desire for the right to sleep at night.” That this definition of justice so cavalierly panders to middle-class sentimentality – injustice is nothing more than a niggling feeling – creates another crosscurrent of injustice in the play that must be examined. Stevens wants to make Temple feel less guilty for her part in the tragedy of her daughter’s death, by speaking – “breath[ing] aloud, into words, sound” (83) – the truth of her desires, perversities, and her shortcomings. Watson reads this as a “Socratic activity of

teaching to speak,” in effect, a “talking cure.” Michael Millgate similarly refers to Stevens as “the grand inquisitor of Faulkner’s particular brand of humanism, at once leading and forcing Temple along the road towards what he believes to be her salvation.” Given that Barbara Ladd concludes that Stevens is a “kind of moral superman,” does a kernel of justice reside in this exchange?

In considering this question, let us look at a jurisprudential puzzle. The problem of rendering justice through the law, as meditated upon in Requiem, is the central argument against positivist theories of the law: that it is just not possible to simply apply a rule to a situation which itself is “incapable of reduction to a perspicuous form of words.” The impossibility of law, which itself is expressed through language, to render justice is extended by Faulkner as he dramatizes the difficulty of language to render justice, even when it is not bound by the law’s specific jargon. Faulkner draws a parallel between the closed, hermetic system of the law, and the closed, hermetic system of language; both are structures seeking to organize unorganizable and unstructurable discrete experience. In Fiction’s Inexhaustible Voice, Stephen M. Ross provides a rich analysis of the transformation of presumed “mental content” into communicable speech, noting that Faulkner’s use of stream-of-consciousness “enhances the reader’s sense that certain discourse” – I would say for the purposes of this thesis, a true, or just discourse – “emanates unspoken and unarticulated from a character’s private consciousness,” and simply cannot adequately be verbalized. In Absalom, Absalom!, Faulkner calls this “notlanguage.” In Requiem, the strained way in which Stevens endeavours to render meaningful Temple’s past, through her

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26 Watson, Forensic Fictions, 177.
attempted verbalization of it, suggests that the **efficacy** of language, like justice, is defined by effort, labour. Truth, for Faulkner, is striven towards in the interpretive movements involved in attributing narrative form to what is formless, disintegrated, unmediated: “the human heart and its dilemma.”

The merit of language comes through, or is derived from, the struggle for definition, rather than definition itself. Stevens’ efforts with Temple suggest that justice resides in the movements of narrativization, rather than the finished narrative, and the performance of the law rather than the specific verdict.

Temple believes that she is labouring to save Nancy, when in fact Stevens, assuming a presumptuous paternalistic role, is helping her help herself. While Stevens is interested in Temple’s consciousness, Temple is more interested in the physical, material outcome of the case, saving Nancy’s life. She repeatedly says to Stevens that she will do “anything, anything” (81) to reverse the verdict, but it is, as Stevens retorts mystically, any thing “except one” (82), and that is to tell the truth. Temple once again makes tangible the legal dimension of the conversation, and suggests legal theatrics: “what you will need will be facts, papers, documents, sworn to, incontrovertible, that no other lawyer trained or untrained either can punch holes in, find any flaw in” (83). If “justice” is a lofty abstraction that is denied Nancy Mannigoe, then the law, in its impersonal, blanket application, is the only conduit through which Nancy can be saved. The law itself negates meaningful engagement with it beyond simple, mechanical terminology – affidavits and judgments and loopholes and defences. Plumbing the depths of the law, for Temple, creates a detour away from the metaphysical – “truth” and “justice” – which requires an onerous remembering and dialogue of her complicity in the events that transpired on September 13, the date of the crime. Temple wants to move towards neat, legal narratives, once again reminiscent of Spade’s vision of the law in *The Maltese Falcon*. This way, the legal narrative is the reductive narrative, the version of events that does not *need* to correspond with the truth underpinning the motives, memories and emotions of

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32 Faulkner, inscription to *The Mansion.*
the players, but is the necessary narrative through which Nancy's liberty may be secured.

However Stevens, who, remembering “Smoke,” does employ legal theatrics when necessary, for this very reason finds it useless in the present case. This is because “what we are trying to deal with here,” he says to Temple, “is an injustice. Only truth can cope with that. Or love” (82, italics mine). Stevens then distinguishes the injustice, something intangible, felt, an impression, sensory, from Nancy's death sentence: “that’s nothing: any handful of petty facts and sworn documents can cope with that. That’s finished now; we can forget it” (82). Injustice is explained simply as the lingering dissatisfaction felt by Temple and Gowan, the way that they find themselves unable to be free of the sense that something unutterable has occurred. This can be seen in the cross-continental, listless travel undertaken by Temple and Gowan immediately after Nancy’s conviction [“We leave from the Memphis airport at midnight... Then California tomorrow morning; maybe we’ll even go to Hawaii... Canada” (56)], and the repeated, awkwardly periphrastic dialogues between Temple and Gavin about how much Temple will have to divulge, about how far the truth can be bent in legal testimony. For a play about a trial, we see a lot of talking about a trial that never takes place in the text. A frenetic Temple also seemingly imprisons Stevens in her apartment in order to discuss the case and its implications. This definition of “injustice,” the feeling of unease, the agitation, is wholly separated from the desire to remedy the physical outcome of the case, Nancy’s death, which is described not bodily but rather, administratively – emblematized in a series of senseless documents.

Why is Stevens, Nancy's lawyer, not interested in Nancy's fate? Does his disregard for Nancy constitute professional negligence, or has he simply turned from Nancy to Temple because he feels as though the law has operated as it should? Stevens’ relationship (or lack thereof) with Nancy and his bizarre and blinkered approach to justice is perhaps Faulkner’s dramatization of the
selective way in which justice is apportioned. If, as the saying goes, *the long arm of the law reaches* and encompasses Nancy Mannigoe (as *bona fide* enfranchised citizen protected by the fourteenth amendment), is Faulkner attempting to put on trial, expose on stage, the *short arm of justice*? If justice is based on the rich dialogues of a community, then this community is not all-inclusive, and not everyone is allowed to speak: it leaves Nancy Mannigoe behind.

Watson reads the play along the lines of Stevens’ understanding of justice as easing the guilt of the bratty Temple; as Temple’s confessor Stevens can lead her to expiation. And yet Watson’s explanation of Stevens’ role in the play and his motives is deeply troubling, in that it still does not take into consideration Nancy’s role in the correction of the “injustice.” Even a rigorous counter-reading of the play, in which Stevens’ cure for injustice is putting Temple on trial, and making her “suffer” (120), still conforms to a white, middle-class view of justice, where the “injustice” is not Nancy’s death sentence. As the narrative progresses, and Temple’s past trauma is revealed, Stevens’ desire to allay Temple’s great frustration is perhaps undercut by a more sadistic element in his conversation with her. Perhaps the justice that Gavin seeks after all is the indictment and trial of Temple, that, once again, the law cannot enact. Just as Nancy murders Temple’s child after Temple speaks aloud, Stevens also ensures that Temple *says*, admits, that she has long forfeited her “right to sleep at night” (82). Is Stevens’ cure for injustice, then, seeing Temple suffer? However way we read the play, we cannot escape the vision of Stevens forgoing his duty to his client to instead focus on solving the puzzle of Temple. Justice for his client, Nancy, cannot reside within Stevens’ paternalistic dialogue with or vengeful indictment of Temple.

Temple’s idea of justice greatly differs, and is more openly damning of the legal system, which, as she believes, through its very measured and indifferent procedures and protocols, also denies her basic thirst for justice. The play is primarily concerned with Temple’s reaction to, and part in, the death of her daughter. When Faulkner writes of her husband Gowan’s face – “something has
happened to it – tragedy, something, against which it had no warning, and to cope with which (as it discovered) no equipment” (54) – this can be extended to Temple: she has endured a great tragedy, for which she has no equipment to deal or manage. The law is not the “equipment”, and so Stevens turns to free-flowing dialogue. Stevens sees justice in Temple’s suffering, and sees this suffering as a conduit to the movement beyond trauma. His justice seeks the overcoming of the hurdle to allow them to move forward, move on (there is in fact a Godot-esque quality to the stasis felt by the characters) to move beyond trauma and find peace (but not necessarily meaning) amid the modernist pangs of great meaninglessness. This is all done without recourse to the legal apparatus, suggesting a contemporary suspicion of the efficacy of judicial structures. Richard Moreland interprets this vis-à-vis modernism, too, and suggests, “something tragic happened” in the play, which lacks “any higher order, authority or vision either to give that tragedy meaning or to be confirmed in spite of the tragedy.”33 In Stevens' understanding of justice, Faulkner shows the limits of the law in explaining and giving meaning to the vicissitudes of human experience, the “ever-tangled skein of human affairs.”34 A legal apparatus is helpful in imposing order, but the creation of existential meaning is very different from legal meaning, which is created to merely satisfy legal criteria. For Moreland, beyond this lies madness, the unrepresentable:

Something has shaken the web, but there is absolutely no accounting for it: beyond these borders and outside these systems seems to lie only an unrepresentable, unthinkable madness or a blankly incomprehensible death, realms signaled in these economies only in the frustrated intensities of a self-conscious, self-protective irony, or, here, especially by a controlled hysteria.35

33 Richard Moreland, Faulkner and Modernism, 212.
35 Moreland, Faulkner and Modernism, 212.
At first Temple, in her “repressed, controlled, hysteria” (54), addresses the verdict (and Nancy's reaction to it) of the unseen trial: "Yes God. Guilty, God. Thank you, God. If that's your attitude towards being hung, what else can you expect from a judge and jury except to accommodate you?” (54). Playing the role of the “bereaved mother” (76), Temple cannot see justice adequately performed upon a subject that wills her own judgment, and her own execution: Nancy's acceptance of the verdict is an “unheard of violation of procedure” (52). It is natural for the victims of crime to view justice in a way that is vengeful and punitive, and Temple is unnerved by Nancy's imperviousness to the verdict of the Court, the Court's potential for oppression, and the seriousness of the death sentence. For Temple, Nancy's perceived refusal to plead not guilty is tantamount to the

    disrupting and confounding and dispersing and flinging back two thousand years, the whole edifice of corpus juris and the rules of evidence we have been working to make stand up by itself ever since Caesar. (176)

Temple finds egregious Nancy's apparent waiving of her right to an adversarial fight, her apparent refusal to submit to the inevitable narrative of the law, not understanding that Nancy is condemned to be written into the narrative of the law. Temple wishes for Nancy to plead not guilty “so then the jury could tell her [Nancy] she lied and everything was all correct again and, as everybody thought, even safe, since now she wouldn’t be asked to say anything at all any more” (176). Temple’s erroneous perception is of Nancy’s subversion of the narrative of the trial; that in refusing to plead innocence, and hysterically plead for mercy (the courtroom ‘script’), she is subverting its capacity to vindicate the aggrieved.
I am reminded of the abolition of the English Bloody Code, of which Lindsay Farmer writes,

    critics of the English Bloody Code were concerned not only that the use of capital punishment was ineffective in deterring crime, but also that the public display of authority involved in the spectacle of the scaffold was too
easily subverted, as the condemned refused to display the necessary contrition...  

Temple believes that Nancy chooses silence as a right, and in doing so, has taken away the court’s power to prove her guilt and to impress it through an active decision. I believe that Temple’s fundamental misunderstanding of the law and Nancy’s place in it is telling. Temple can only see the law functioning, in a rather draconian way, in the capacity of having the power to silence. A suitable narrative would be that Nancy would plead *not guilty*, which would then be refuted by the law, proved wrong, so that Nancy be officially silenced henceforth. What she does not understand is that Nancy’s position is not by virtue of her agency but the opposite: Faulkner’s very structuring of the play around a trial that never happens regarding an accused who does not speak suggests that Nancy has been excluded from the dialogue of justice *a priori*. Temple believes that the law’s ability to provoke fear in the hearts of the townspeople has been thwarted by the self-assuredness and defiance of Nancy, who, throughout the trial, wears a “calm impenetrable almost bemused face” (51). Her figuring of Nancy represents a very white, and limited understanding of the constitutional rights afforded the entire American population, black and white, since the Reconstruction Amendments. In accepting that Nancy is a citizen recognized by the same Constitution that provides her own freedoms, Temple’s position coaxes the reader/viewer to see what is not being enacted: a black population, recognized by law, but still unrecognized by the theories of justice underpinning both the law and the community.

Temple, too, tacitly blames Stevens for representing the accused, in direct opposition to his kith and kin: “Gavin won’t have to stay. After all, all he wants to do is say good-bye and send me a postcard” (55). However this tension merely bubbles uneasily beneath the surface of the text, never to emerge or explode. We

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37 Though it was not until 1966 that *Miranda v Arizona* 384 U.S. 436 popularized the “right” to silence, the Fifth Amendment, protecting citizens against self-incrimination, made silence, or the omission of speech, as a legal act.
never know why Stevens represents Nancy, or why he does not seem to mourn for his great-niece. We are only told that he often acts contrarily to his office of District Attorney, “constantly involving himself”, for no material gain, in the “affairs of equity and passion and even crime too among his people” (50). From this we can infer that Stevens’ role as Yoknapatawpha County’s most preeminent lawyer is defined by his ability to listen to, tell, weave and compose the stories and histories of the people of his community, as archivist and then as raconteur, retelling what he hears in a legal and socially acceptable register. The line also intimates Stevens’ private motives, and the law in Jefferson as mediated through pride of personality. Temple, then, attempts to oust Stevens from this role by excluding him from the circle of family and community. She says, bitterly, “let me be bereaved and vindicated, but at least let me do it in privacy” (55), followed by “if what you came for is to see me weep, I doubt if you’ll even get that” (57). Stevens, usually known as a community member and constantly involved with “his people,” is now the outcast, for defying not only family but the colour of small-town justice: when Temple asks Gowan to take Gavin’s coat, Gowan vituperatively retorts, “That won’t be necessary. If he can raise his arm in a white courtroom defending a murdering nigger, he can certainly bend it in nothing but a wool overcoat” (59). The stage play, moreover, literally allows Temple and Gowan to do this: just as the trial and the murder of their baby is hidden from sight, so too does Stevens disappear when he leaves the stage, later only heard through the telephone.

It is easy to read against this dialogue: Stevens’ falsely perceived audacity in his chosen clientele forbids him gentlemanly interactions, even though, as Watson writes, his concern for “his people” “signifies participation in and guardianship of the community.” What Temple and Gowan fail to realize is that Stevens’ representation of Nancy in court is at best, tokenistic given her fundamental exclusion from the dialogue. Stevens is not, by any means, a bad character – far from it. I only wish to make the point that, in Requiem, Faulkner finally

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38 Watson, Forensic Fictions, 180-1.
problematizes the ideal of the lawyer who follows his conscience, rather than the law, per se: while Stevens’ desire to forge narrative that is not necessarily strictly legal narrative (but rather a narrative in which complex and paradoxical and contradictory and enigmatic histories and motives are equally admissible) is admirable, and has many strengths that Faulkner foregrounds in the Knight’s Gambit stories, in Requiem this idea is made untenable when filtered through Stevens’ own sense of self – his prejudices and personal shortcomings. In Requiem the law operates so impersonally and there is such a disregard for the ‘human element’ in the annals housed by the courthouse and jail, that it denies social interconnectedness, meaning, and thus, a sense of security or rootedness. Stevens is not necessarily wrong in moving outside the law and towards the community, and towards dialogue in an attempt to uncover what actually happened.

Stevens’ practices suggest to the reader the uneasy but important question: if law, as Gerald Wetlaufer claims, echoing White, is “the very profession of rhetoric,” then what happens when the necessary and indeed welcome rhetorical element of the law entirely subsumes its legal efficacy, its legal dimension? The lengthy discourse needed to right a wrong, and to rectify an injustice, and to relieve the aftereffects of trauma, is rhetoric that need have no legal valence whatsoever: the justice is in the labour, the to-and-fro, of dialogue, Faulkner’s consistent championing of “question-answer, assertion-denial, challenge-response,” which are in contradistinction to the prose preambles. Stevens’ idea of justice as achieved through the valorization of memory through the spontaneous generality of spoken word (personal, local, sacred), rather than through specific legal charade (impersonal, pervasive, profane), has real merit. I

41 Ross, Fiction’s Inexhaustible Voice, 81. Ross further argues here that often in Faulkner’s prose “the dialogic scenes emerge with striking clarity out of the turgid monologic discourse.”
only wish to contend that Faulkner’s great irony is that Stevens’ client, Nancy, is not part of the community over which he claims guardianship, exposing his pretensions towards fairness and justice. The law may, on paper, protect Nancy, but the power of the lived experience of the community far outweighs the legal fictions of the reconstruction amendments. Once again, if the long arm of the law reaches Nancy, the shorter arm of justice leaves her out in the cold. Stevens is right that one must speak in order to perceive a problem, but the communities of the South, like their laws, contain a vocabulary too narrow to attain such perception. Faulkner’s writings incorporate the said as well as the unsaid, the subject as well as the other, in order to raise public awareness of patterns of oppression and marginalization of the South’s black citizens in a way that the law cannot.\footnote{A clear example of this is in \textit{Light in August} (London: Penguin, 1960) where Joe Christmas inheres both black and white anxieties of speech and silence and belonging and alienation:}

\begin{quote}
He went on, not fast, away from the square. The street, a quiet one at all times, was deserted at this hour. It led down through the negro section, Freedman Tower, to the station. At seven o’clock he would have passed people, white and black, going towards the square and the picture show; at half past nine they would have been going back home. But the picture show had not turned out yet, and he now had the street to himself. He went on, passing still between homes of white people, from street lamp to street lamp, the heavy shadows of oak and maple leaves sliding like scraps of black velvet across his white shirt. Nothing can look quite as lonely as a big man going along an empty street. Yet though he was not large, not tall, he contrived somehow to look more lonely than a lone telephone pole in the middle of a desert. In the wide, empty, shadowbrooded street he looked like a phantom, a spirit, strayed out of its own world, and lost. (87)
\end{quote}

\footnote{Originally published 1932.}


The bucolic ideal of legal rhetoric forging community, then, is exposed as highly problematic. Even though Faulkner is interested in showing how language and law are deeply inextricable, Stevens’ emphasis on the rhetorical dimension and staging of the law encourages the reader to consider the real, unstaged element of power. While the law uses language, it is for its own sanction as the command of the sovereign,\footnote{43} rather than to, as figurative language can, weave connections, histories, to create ties of kinship and social cohesion. By highlighting this rift...
between language and law, and by concentrating on the impersonality of the law, Faulkner exposes the way we as individuals put stock in a system that has the power of denying us interconnectedness and meaning, that is potentially alienating. This way, Gowan believes that the process of law and the theatre of the courtroom forbids his very humanity – his grief: “in the eyes of the law, men are not supposed to suffer: they are merely appellants or appellees. The law is tender only of women and children... particularly particular of nigger dope fiend whores who murder children” (59-60). The law permits only mechanical silence from the persons before it, and this is a part he is – understandably – struggling to play. As he is ignored by the law, his linguistic capacity is also curtailed, and Gowan is doomed to utter repetitive and sensational nonsense: he and Temple repeat “nigger dope fiend whore” countless times during the play, as though their inability to escape the meaningless, circular language is directly linked to their inability to make legal or moral sense of the transpired events. For Gowan to think that the law has treated Nancy tenderly is a product of the law's inability to admit emotion or humanity or the values of the community into its machinations – even the emotions of the aggrieved parents of the deceased. Of course the law has not treated Nancy tenderly at all. For the white players, Temple, Gowan, and Stevens, the law is alienating, but private conversation and the airings of private grief can be helpful in the movement towards justice. Both, I contend, exclude Nancy, and occlude her voice.

It is also important to note that, though the public setting is grating, Temple can play into and play along with the theatre of the judicial system, and consider herself an actor in it in a way that Nancy cannot. She turns up every day of the trial playing the part of the “bereaved mamma” (63) and is able to see herself and refer to herself in the third person as “watching the accomplishment of her revenge, the tigress over the body of her slain cub” (76). Stevens finds Temple's histrionics unconscionable, and to him she “should have been too immersed in grief to have thought of revenge – to have borne the very sight of her child’s murderer” (76). Kelly Lynch Reames considers Temple to be already a legend by
the time we read *Requiem*, “already a text that is interpreted.” Lynch Reames sees the law in *Requiem* as a “repressive cultural narrative” weighing on the lives of the primary female players, forcing them into stock public narratives. This explains Temple’s “having split her identity into Mrs. Gowan Stevens and Temple Drake, having created her tendency to speak of both in the third person.” Perhaps Temple's participation in the rote procedures of the law, her allowing the law to create a representation of herself, reflects not necessarily total disenfranchisement, but *Requiem*’s conflicted views towards the law: while it does alienate, and can be prohibitive (like forbidding Gowan’s grief) it can also, for the white players, inform them of their place in society. Faulkner repeatedly displays an interest in the way in which the law is able to paradigmatically inform the white characters’ understanding of themselves, to see themselves as a constituent part of a larger mechanism. Austin Sarat and Thomas R. Kearns write,

> we come, in uncertain and contingent ways, to see ourselves as the law sees us; we participate in the construction of law’s ‘meanings’ and its representation of us even as we internalize them, so much that our own purposes and understandings can no longer be extracted from those meanings.

This explains Temple's reliance on the signs and symbols of the law to subsume the possibility of meaning beyond it. Nancy, too, follows this model, but to a very different end: given that the law cannot see her, she cannot see herself. This is why she exists interstitially in the text, and on/off the stage. Temple, however, constantly urges Stevens to exploit the language of the law, and its reliance on precedent, beyond any such commensurate value:

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45 Lynch Reames, “All That Matters is that I Wrote the Letters,” 31.
46 Lynch Reames, “All That Matters is that I Wrote the Letters,” 33.
what do such affidavits have in them, need to have in them, to make them work, make them sure to work? Don’t you have samples in your law books – reports whatever you call them – that you can copy and have me swear to? (80-1)

and later,

when you go before the – what do you call this next collection of trained lawyers? supreme court? – what you will need will be facts, papers, documents, sworn to, incontrovertible. (82-3)

Temple shows that while the law, and its relationship with the people of Yoknapatawpha County, may at time be at odds, its very alien, imposing nature can be employed and exploited to effect a desired outcome (even though we are still made unsure as to whether this outcome is just or not).

Sarat, Anderson and Frank argue that when one is confronted with “law’s fragmentariness, inconsistencies, incommensurabilities, and attendant uncertainties”, then

the temptation is great to shirk the burden of judgment and displace the locus of responsibility onto the language of law itself, to empty law of its meaning and conceive of legal judgment as the impersonal, methodological enactment of a linguistic form, a mere procedure.\(^48\)

In a similar way, Temple and Gavin have very different reasons and motives to remedy the injustice without recourse to the law. For Temple it is the possibility of escaping the substance of the events which took place, and locating them within a procedural matrix, and for Gavin it is quite the opposite: he believes that only out of court, without having to conform to a rigid legal narrative through procedural restraints, unadulterated truth may, from the coaxing of memory and the possibilities of language, be drawn forth. Both ignore Nancy. The relationship

between the people and the law exposes the law as a human construct, so much so that it is often at odds with physical reality. At one point in the play, Stevens says, regarding the (at that stage very much alive) accused: “in the eyes of the law she’s already dead – Nancy Mannigoe doesn’t even exist” (77). What Stevens does not understand, but what Faulkner is intent on showing us, is that Nancy never really existed. There is an analogy to be drawn between the absence of the court case in the structure of the play, and the absence of Nancy in the diegesis. Much like the black prisoners at the end of the play, who do not “grip the bars” like the white prisoners but “just [lie] there among the interstices” (173) Nancy exists only in a space absented by a “Progress,” perhaps represented by Stevens that, in the final prologue, Faulkner describes as “a pierceless front of middle class morality.” (199)

So Stevens’ urgency in going to the Governor’s office at two in the morning on the eve of Nancy’s execution is not at all about freeing Nancy, but rather, as Temple fears, it is “just to give Temple Drake a good fair honest chance to suffer” (120). The selection of the words, “good fair honest”, immediately conjures an image of legal decorum, that there may be a force of law behind Temple’s “suffering,” that she suffers in good faith. Noel Polk believes that in the end Nancy, through her faith, is able to receive some kind of “salvation through suffering”49 which, on the surface, Temple cannot, though she heartily tries to extract or borrow meaning for herself from Nancy’s understanding of the world and her place in it. I think this is an understandable misinterpretation of the ending: Nancy’s faith, like her silent acceptance of the law, is a product of her very lack of agency: she has the capability neither to accept nor reject the law and her fate – she just is. Just as the court does not hear her, she does not listen to the court. In the chaos that proceeds from her sentencing, Nancy is dead still, and Faulkner writes, “the judge bangs his gavel, the bailiff springs up, the curtain starts hurriedly and jerkily down as if the judge, the officers, the court itself were jerking frantically as if to hide this disgraceful business” (52). Furthermore, the curtains “descend

rapidly, hiding the scene” (52). Amid the frantic movements of the white, middle-class, educated men of the court, Nancy cannot move, cannot hear, and cannot see, nor can she be seen. The very exposure of this injustice precipitates a closed curtain, a law that must hide itself.

Nancy can neither accept nor object to the law; for her the law operates as a set of mechanisms through which humankind is simply able to regulate misery. She has no cognizance of avenues of appeal, and her role in the play is to suffer under the aegis of the law. For Nancy, the lower-class black maid, suffering renders justice a spiritual abstraction, sublimation, through which she can represent all men in a communal act of expiation: her opening two words, “Yes, Lord”, confuse Law and God. Faulkner complicates the plot by virtue of Temple’s checkered past, and her identification with Nancy – the only woman who can speak Temple’s language. When we see the back-story enacted in Act II, we learn why Temple, an

all-Mississippi-debutante, descendent of long lines of statesmen and soldiers high and proud in the high proud annals of our sovereign state, couldn’t find anybody except a nigger dope fiend whore that could speak her language.

(109-10)

What is ironic, however, is that it is really the other way around. Temple can speak Nancy’s language, insofar as she can play whore, but Nancy has no access to Temple’s world. When, in the final act, Nancy is visited by Temple and Stevens, they speak past one another: Nancy only speaks in baffling riddles: “all you have to do, is just believe,” she tells a frantic Temple, while Stevens interjects, “believe what?” (239). For Nancy, who exists inside the law but outside justice, justice is not relativistic nor is it complex: for Nancy, justice for one suggests justice for all. Justice has been done because she exists under God, and Law is God. That the white characters feel alienated from Nancy’s simplistic envisioning of her fate and her understanding of justice cuts to the heart of its speciousness; Stevens suggests that justice cannot flow from mere acceptance of the law’s tyranny, but
must come from free-flowing dialogic motion. When Stevens, at the end of the play, visits Nancy, the lawyer, repeatedly described as a “garrulous and facile” rhetorician, is speechless. Messer writes:

the garrulous and enlightened patrician never makes a single definitive statement... the lawyer turned inquisitor turned priest, who has so confidently orchestrated and controlled so much of Requiem’s dramatic dialogue in an effort to redeem and save Temple, appears helpless in the end to discern what he must do to save himself.50

Much like the curtain that must close on an injustice that cannot be conceived of, Stevens’ silence at the end of the play signals that he has failed to even locate the injustice, let alone remedy it. Moreover, at the end of the play, Temple is outraged that Nancy will simply go to the gallows, and then cease to be, whereas Temple must endure “tomorrow, and tomorrow, and still tomorrow” (242). Echoing the story, “Tomorrow,” analyzed in my introduction, as well as both The Sound and the Fury and Macbeth, Faulkner savagely ironizes the difficulties faced by Southerners in the face of the exclusion of its black citizens. Even Nancy’s death, in Requiem, is determined through the middle-class, existentialist sensibility of Temple.

Given that Nancy did in fact commit the murder that underpins the narrative, and did it, arguably, with volition and a sound mind, does the outcome of the play ensure a just turn of events for her? This constitutes one of the deep philosophical problems in the play, given that Nancy’s fate is decided entirely by the law, and she does not engage in the discursive and mnemonic culture in which Stevens and Temple are engaged throughout the entirety of the play. In Robin West’s “Communities, Texts, and Law: Reflections on the Law and Literature Movement”, she writes, “a law can affect the subjectivity of the lives of many creatures – human and otherwise – who will never produce, participate in,

or criticize its textual meaning."\textsuperscript{51} West writes that while literary texts may "reflect," "constitute," and "convey" moral and cultural traditions, their reach is not as extensive or pervasive as a particular law, which actually shapes, dictates and delineates how we as humans interact or can interact with one another. Understood in terms of praxis rather than as a discursive or rhetorical foundation of a community, West suggests that the law impacts on the very subjectivity of even those who are exiled from the discursive bonds of the community. West cites Dred Scott as an obvious example, showing how one legal decision can function on several planes of meaning – the moral respect for property, as well as making property of slaves. In the case of Nancy Mannigoe, the law operates exactly as it should – there was a trial, we must assume it ran smoothly, and there were no real miscarriages of justice insofar as Nancy pleads truthfully and receives her verdict truthfully.

Faulkner's characterization of Nancy, then, embraces the paradox that underpins my argument: given that law is contingent on the community that is forged by rhetorical and dialogic bonds, both textual and imagined, these threads of signification are emptied of meaning or value when they are applied to the men and women of the community who cannot contribute to the discourse to which the law conforms. While the law operates smoothly, it cannot be said to have operated justly or fairly for Nancy, for she did not partake in the nuances of language and community to which the law is putatively indebted; she understands it simply as an inexorable force of Old-Testament fury. She has received her enfranchisement, it seems, without any real rights. As Sarat, Anderson and Frank deduce from West’s article, the question that West is attempting to answer involves the tenuous link between law and justice, and, "those points at which the theoretical merits of law run up against the real, potential travesties of its impact in human experience.” They conclude, “justice

might be better gauged by law’s effects on people, even where that seems to contradict the central texts of law.”

Many of Faulkner’s works both celebrate and critique the local and personal and sacred myths that create township and kinship and identity, and Faulkner in *Requiem* seems undecided as to whether to eschew or uphold the law as the organizational force *par excellence* of Yoknapatawpha, creating the identity and formulating the narratives of its adherents, especially when community and memory prove to be just as artificial, prejudicial and limiting. David W. Bight writes, “memory... is often treated as a sacred set of potentially absolute meanings and stories, possessed as the heritage or identity of a community.” However, by using the courtroom to deal with an injustice, historians including Henry Rousso and Ariela Gross, in discussing the Nazi trials, argue that, in “judicializing” the past, courts run the risk of affirming “an illusion that the verdict delivered will take the place of history.” The law could be “a bad alternative – to historiography, attempting to render a verdict on the past.” This is what Stevens is gesturing towards when he says that he wants “truth” and “love” to combat the perceived injustice: by settling the matter out of court, and through dipping liberally into the pools of memory, Stevens does not have to reduce Temple’s very private grief, and private tale, to a stock legal narrative that seeks only to convince beyond reasonable doubt. Though calcifying her story through spoken word – dramatic utterance – is also problematic, Stevens is nevertheless able to dissolve the absolutist appearance of consensus and

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In this respect, we can also look at *Cubillo v Commonwealth* (2000) 103 FCR 1, an Australian case where two Aboriginal plaintiffs claimed damages for loss of cultural and other aspects of Aboriginal life and loss of rights under the *Aboriginal Land Rights (Northern Territory) Act 1976* when they were forcibly removed from their families and communities as children. The court determined that the plaintiffs could not show that they had suffered a wrong. The Australian court, thus however well intentioned, shows the impossibility of bridging the gap between its language – the dominant language, the language of the colonizer – and that of the colonized. We can see this same predicament in *Requiem for a Nun*: what happens on stage in the dominant white discourse of the law points to the comparative silence, and absence, of Nancy Mannigoe.


coherence the law achieves through its delivery of a verdict, and reorganize justice along the intersecting and fragmentary lines of memory and an incoherent subjectivity. However, if, as Lawrence Douglas argues, “the procedural norms that govern a criminal trial render it a flawed tool for comprehending a traumatic history,” then \textit{Requiem} shows that the South must also reimagine its collective consciousness so as to include the \textit{memory} of black subjugation, slavery, abuse.

While \textit{Requiem} contains nuanced and exploratory musings on the ways in which the inhabitants of Yoknapatawpha County are defined and affected by the law as both a mythological and institutional presence, in \textit{Sanctuary} Faulkner makes a more strident spectacle of legal failure reminiscent of Hammett’s “The Golden Horseshoe”: “while [Popeye] was on his way home that summer they arrested him for killing a man in one town and at an hour when he was in another town killing somebody else.” It is perhaps no wonder that by the time the events of \textit{Requiem} take place, Gavin Stevens, who is certainly more jaded than \textit{Sanctuary}'s lawyer Horace Benbow, deliberately sidesteps the Courthouse as a genuine space for legal theatre. He has perhaps learned from Benbow’s great disillusionment, who “learns when he loses a murder case due to perjured testimony... [that] justice is not an inexorable force in a morally ordered universe.” From \textit{Sanctuary} we as readers learn the valuable lesson that, rather than being natural, one must \textit{labor} for justice, and it must be elicited. Nor does Stevens suffer from what Weisberg calls “the fundamental Benbowish failure”, which is his “fatal inability to see the darker side of his adversaries.” We can learn from Faulkner that naivety and legal success seldom go hand in hand.

\begin{flushright}
57 Faulkner, \textit{Sanctuary}, (London: Vintage, 2011), 213. All subsequent references to this novel will refer to this publication and will be incorporated in the body of the thesis. Originally published 1931.
\end{flushright}
Watson writes that Stevens is “a lawyer in search of a story”\textsuperscript{60}, and what Stevens does with this story is attempt to connect the people of Yoknapatawpha through his own imaginings of justice. Stevens’ cynicism towards legal institutions is perhaps in response to the great hopelessness of Horace Benbow and his great defeat in \textit{Sanctuary}. In \textit{Sanctuary}, Horace is convinced in the justness of the course of justice, and constantly assures the incarcerated, black Goodwin that he will be let off, because, quite simply, he did not commit the crime of murder. He says to Goodwin, “you may know more about making whisky or love than I do, but I know more about criminal procedure than you, remember” (186). Goodwin, too, has faith in the legal system, especially in the distribution of the burden of proof, which operates in his favour: “I aint going say what I think. I didn’t do it. They’ve got to hang it on me first. Let them do that. I’m clear. But if I talk, if I say what I think or believe, I won’t be clear.” And again, “I don’t have to clear myself, it’s up to them to hang it on me” (76). Horace is astonished at Goodwin’s reliance on procedural justice, and retorts, “then what do you want with a lawyer?”, whose job it is to speak, and “what do you want me to do?” (76). As the accused, Goodwin is allowed to be silent – he is confident in his innocence, and the legal onus rests on the prosecution to prove that he did something that he did not do. Like Nancy, Goodwin does not understand the system because he is outside it, and can only understand it theoretically: he believes that innocence is a fact, a state of reality, affirmed by silence and potentially complicated by speech. What we end up witnessing, though, is the very opposite of this idea, a chilling notion that Faulkner revisits in his story, “Monk”, that, even though speech is problematic, silence is even more so, and potentially incriminating, leading innocent men to the gallows. This narrative past contextualizes for the reader Stevens’ love of rhetoric; the prolix rhetorician could have manipulated his way out of the quandary in which Goodwin, and Monk, are placed.

Horace starts out with gusto in \textit{Sanctuary}, defending Goodwin even in the face of community outrage – his sister Narcissa, his greatest critic, says to him, “these

\textsuperscript{60} Watson, \textit{Forensic Fictions}, 176.
people are not our people. Why must you do such things?” (78). The law is seen at first to have the radical strength of bridging the gap between divisive racial and social groups. Horace answers triumphantly, “I cannot stand idly by and see injustice” (79). He believes that Goodwin has not only “the law” on his side, but also the intrinsic forces from which the law must have stemmed: “justice, civilization” (88). What ends up being Horace and Goodwin’s downfall, however, is this blind conflation of law with justice and civilization that transcends colour lines and cultural context. When Horace says presciently to Goodwin that “you’re not being tried by common sense... you’re being tried by a jury” (88), he is on the right path to understanding that the law operates according to its own set of principles, which are often unassimilated with lay principles. However he does not yet understand that juries are comprised of men who are often found to follow neither legal principles nor lay principles. As Graham, the district attorney in the case, says, “well, the first principle of law is, God alone knows what the jury will do” (181), revealing the ultimate paradox: that the inclusion of the jury system in the systematic patterns of the law lends the law the very inconstancy of the human heart that the Court cannot, in its operation, understand or properly receive.

By the end of the narrative Horace, so aggrieved by the shocking turn of fate, relates to the law in a way that is testament to its impotence; Horace rambles: “Summer nights are hard on [old people]. Something should be done about it. A law” (206). He is now as tragic and demented as the law that wrongfully convicted both Goodwin and Popeye. This is referenced again in the novel when Clarence Snopes, the despicable senator, says that “there ought to be a law” to protect him against “Memphis Jew lawyers” (183), and Popeye, in all seriousness, says, during the era of prohibition, that “there ought to be a law” (64) to prevent people from making and drinking whisky! The idea of meaningful legislative change is utterly ridiculed in Sanctuary. In Sanctuary, the law is, as Polk very pessimistically argues, a “foul and pestilent system that allows no room for justice and mercy”, which “always does exactly what it should not do. It protects
the guilty and punishes the innocent.” It is in response to this that Temple and Gowan dream of, at one stage, avoiding the law courts altogether and enacting a physical, violent, retributive justice: Gowan says, “Eight years. Eight years on the wagon – and this is what I got for it: my child murdered by a dope-fiend nigger whore that wouldn’t even run so that a cop or somebody could have shot her down like the mad-dog – you see?” \(RN, 67\). The violent fantasy of justice eschews both lawyers and dialogue altogether. Because Faulkner’s lawyers are always portrayed as slow, rhetorical detectives with ‘dialogic imaginations’, who are interpretive rather than active, a dangerous alternative is envisioned by Gowan, resembling the seductive imagery of the lynch mob that seeks immediate, explosive action – catharsis as release through dramatic action.

In \textit{Requiem}, the three acts of the play are each preceded by a long prose prologue, in which the history of the Courthouse and the Jail of Yoknapatawpha County is recounted. Faulkner is never more suspicious of the inherent sacrosanctity of the law than in \textit{Requiem}, where he exposes the origins of Yoknapatawpha’s venerable legal system and architecture as having constructed – in a sometimes sublime, sometimes puerile way – its own myth of inveteracy and necessity and infallibility. The apocryphal lore of the origins and establishment of city and community, together with the \textit{ex post facto} mock trial of Temple and the conspicuous absence of Nancy’s trial, informs the way in which the reader interprets the justice, or lack thereof, dispensed by the Court in the trial of Nancy Mannigoe. It also ushers the reader to consider the centrality/marginality of the Court in the creation and compilation of the narratives of the community.

So many of Faulkner’s Yoknapatawpha novels are framed by the courthouse as both an architectural as well as a psychical figure. The \textit{sine qua non} of the prologues is clearly that it was the erection of the Courthouse, which transformed a ‘settlement’ to a bustling ‘town’ seemingly ‘overnight, without having been a village’ (10), that gave the town a name as well as delineated the

\footnotesize{61 Noel Polk, “I Taken an Oath of Office Too,” 170, 171.}
boundaries and nomenclature between citizen and criminal. On first reading *Requiem* one supposes that the prologues function as a *voir dire* of sorts, preparing the reader for the impending trial, however we do not witness, as juror or otherwise, the trial. Instead, we serve as Faulkner’s jury as he puts on trial the community of Yoknapatawpha, the law it creates, and its enfranchised inhabitants.

The prologues, then, in tracing the history of the courthouse and the jail, function to de-essentialize the position of the law (and deviation thereof) in the community. In the prologues, Faulkner traces brilliantly the materialization of town, jail and law from bare geographical terrain, and shows the law to be, as Drucilla Cornell argues, echoing Derrida, a “machine” in commission to “erase the mystical foundations of its own authority.” In the first prologue, entitled “The Courthouse (A Name for the City)” Faulkner premises a few things: firstly, that the “courthouse is less old than the town”; secondly, that it held records, and thirdly, that, by coincidence of a jailbreak, “by simple fortuity” (10) the courthouse as it stands today, for the hearing of legal disputes, was born. Faulkner is interested in drawing parallels between the coming-to-be of the courthouse with the onslaught of progress and dynamism that has been imagined consistently by American authors before him. In a sense the law serves the necessary function of delineating social spaces where cartography fails to encompass the multiple landscapes of America and how they have been changed and politicized through history. Faulkner writes self-reflexively, though, and through a very modernist lens, sees a nation seized by “a delirium in which it would confound forever seething with motion and motion with progress” (10). That the mythologization of America, and the imposition of this mythology on the reticent South, would distort the definitional boundaries between *seething, motion* and *progress* is reflected in the establishment of legal institution and procedure which, too, is precariously perched on etymological elisions. The men

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create the courthouse, “the courthouse that they didn’t need, that they didn’t even lack” in order “not to own it, possess it... but to be able to obliterate it, efface it the sooner” (36). Obsessed with the ceaseless movement created by America’s will to civilize and modernize, the courthouse, too, becomes a space that is ever-changing and evolving, though without a definite purpose or end in mind, perhaps wasteful, definitely myopic, like the impulse to “changing the face of the earth, felling a tree which took two hundred years to grow, in order to extract from it a bear or a capful of wild honey.” (94)

With time comes the displacement of an historical phase by another seemingly fated historical phase. Moreland writes,

> Its own disposessions are made to seem as undeviating, as inevitable, and thus as natural as any other of the indistinguishable wave after wave of disposessions preceding it here. Each new wave of disposessions comes in the name of a more regularized profit, with the promise of a new security from those very disposessions and profiteerings by which each has thrived. However, now that the modern world is in place (is everywhere), as symbolized by the statehouse’s preeminent silently governing golden dome, the once tumultuous waves of history seem only a rhythmic ebb and flow, in a system without outside or even a past or future except those created in its own image.63

The prose in the final prologue, entitled “The Jail (Nor Even Yet Quite Relinquish),” finally incorporates the medium of theatre into the thematic concern of the narrative, and Faulkner extends the metaphor of the stage to account for the thrill of movement and action in the pages of American history. He writes,

> The very hustle of property men setting up for the next scene and act before the curtain had even had time to fall... commencing the new act and scene right in the midst of

63 Moreland, *Faulkner and Modernism*, 220.
the phantoms, the fading wraiths of that old time which had been exhausted, used up, to be no more and never return. (195)

This way we see that, in the play, the bustling preparation backstage, the scriptlessness, is also part of the on-stage act, and Faulkner shows that the South cannot simply close the curtain on an historical reality in order to replace it with another fabricated reality. Ghosts remain, puncturing the purported “pierceless front of middle-class morality” (199). Nancy is one of those ghosts. Progress is seen as mere “vain and glittering ephemerae” (221) and all that remains are the baffling questions – “whose suffering?” “believe what?” (242, 248) with which Requiem unsettlingly closes its curtains.

Faulkner suggests that the creation of law and order creates a workable taxonomy of citizen and criminal: in the early stages of Yoknapatawpha’s history, the citizen and criminal were defined by space: who is in the jail and who is outside it. However in the very humorous demolition of the jail’s door/wall by the escaping vigilantes in the first prologue, Faulkner draws attention to the permeability of these altogether linguistic categories. Faulkner shows that crime, though by definition anti-social, creates both the categories of citizen and outlaw, as well as paradoxically, the glue of community that sees both citizen and outlaw through the same lens of humanity and connectedness through suffering. Watson argues that the position of the jail in the County, how the outlaw and citizen actually share the same social space, signals ‘a deeper connectedness between them.’ The fundamental tragedy of the play resides, then, in Faulkner’s creation of a third category: neither criminal nor citizen, Nancy’s “nun”-like silence, and her dehumanization is the source of Faulkner’s “requiem”; she is the embodiment of the South’s shame, the embodiment of Moreland’s “madness” – the “unrepresentable” beyond the law.

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In *Requiem for a Nun* Faulkner dramatizes the shortcomings of the public/private detective, who searches outside of the courtroom for truth and justice and locates it instead in private discourse. *Requiem* shows that even though the law may have its own structural and procedural limitations, Stevens’ purportedly liberating discourse is similarly not depoliticized, and is limited by his own prejudices. Striving within the legal system – searching for mitigating circumstances, and discussing Temple’s past in court – could have led to both Temple’s salvation and a more suitable sentence for Nancy. By *Requiem* we see that the law, an institution forging stability, as it is intimated in *Intruder*, may be the best weapon against the prejudices and vices of man. At the end of *Sanctuary*, the threat of a lynch mob thematically emerges. A lingering drummer incites the crowd, repeating the most salacious and outrageous parts of the testimonies that were heard in court: “with that corn cob? What kind of folks do you have here? What does it take to make you folks mad?” A second says, “he wouldn’t a never got to a trial, in my town” (202). That the threat of lynching and lawlessness springs from two out-of-towners implies that the root of law and peace comes from within the jurisdictional boundaries of the town, and the law, with its “certain clumsy stability” is there because it is “in lieu of anything better” (194). It is still the best weapon against the threat of lynching. Its formalist nature, the “legal business” which is metonymized in the county office’s “battered table and dogeared faded papers” is perhaps the best way to structure, historicize and represent the otherwise amorphous “needs and passions” (*ID*, 29) that result in the formation of lynch mobs and render Stevens the troubling figure for justice that he is. It is in light of Stevens’ failure in *Requiem* that I wish to conclude by looking at Stevens’ turn to legal formalism in “Knight’s Gambit.”
Part III

An Untenable Genre
Chapter Seven

Not a Game for Knights: *The Thin Man*, “Knight’s Gambit” and the End of Investigation

The moving finger writes; and, having writ, Moves on.

- Omar Khayyam, *Rubaiyat*

I’m a two-fisted loafer. I can loaf longer and better than anybody I know. I did not acquire this genius. I was born with it. I quit school when I was thirteen because I wanted to loaf. I sold newspapers for a while, loafed, became a stevedore, loafed, worked in a machine shop, loafed, became a stock broker, loafed, went into the advertising business, loafed, tried hoboing in earnest, loafed, became a Pinkerton detective for seven years and went into the army. I was a sergeant during the war, but – please get this straight – not in the war. The war and my service in the army were contemporary, that’s all you can say about it....

Hobbies? Let’s see. I drink a lot. Also play poker. That’s all. I had a dog once, but he died. Summers I live down at Port Washington; Winters here in Manhattan. I’m married; two children.

- Dashiell Hammett in the *New York Evening Journal*, summer 1934.

In 1944, Faulkner started working on the screenplay for *The Big Sleep*, Howard Hawks’ 1946 adaptation of Raymond Chandler’s novel. In the novel, Philip Marlowe, private detective and occasional knight-errant, always keeps a chessboard with a problem laid out on it in his apartment. When Carmen Sternwood, nymphomaniac femme fatale, tries to seduce him in his apartment, Marlowe sees the problem on the chessboard: “there was a problem laid out on the board, a six-mover. I couldn’t solve it, like a lot of my problems. I reached
down and moved a knight.”¹ Later, he reflects, “I looked down at the chessboard. The move with the knight was all wrong. I put it back where I had moved it from. Knights had no meaning in this game. It wasn’t a game for knights.”² Faulkner tried to incorporate the chess metaphor into his screenplay. In an early script, Carmen (played by Martha Vickers) sucks on the white queen from Marlowe’s (Humphrey Bogart) chessmen, and Faulkner delivers these astounding directions:

He turns and crosses the room rapidly to the bath while she still beats on the door, and washes his hand savagely with soap and water, his face now actually beaded with sweat. The KNOCKING CONTINUES. He examines his hand, is still not satisfied, jerks open shaving cabinet, looks at the innocuous bottles of mouthwash, etc., […] goes to the kitchen […] jerks savagely from the shelf his last bottle of whiskey. It is about half full. He jerks the stopper out, flings it away and pours a dollar’s worth of expensive Scotch over his hand, flings the bottle away, returns to the living room […] and while the KNOCKING CONTINUES, he kneels at the hearth, lays the delicate chess piece on it and with a heavy fire-dog hammers the chess-piece into dust, still beating even after the piece has vanished, his blows at last drowning out the SOUND of the knocking on the door.³

Unfortunately, this scene did not make it to the final shooting script. But we can only assume the image stuck with Faulkner – that of the fast talking, facetious private detective, the traditional representative of discipline and ratiocination, who is obliterated by the criminal landscape that denies old codes of heroism and chivalry, and, in turn, obliterates the chess piece on the hearth, the symbol of calm and security. In Hammett’s final completed novel, The Thin Man, and Faulkner’s novella written shortly after the screenplay for The Big Sleep, “Knight’s Gambit”, the authors explore the ethic of their investigator beyond the granted generic convention of a morally ambiguous hero. In this final chapter I

² Chandler, The Big Sleep, 170.
intend to look at these two pieces of fiction concurrently, because there is a symmetry in both Hammett’s and Faulkner’s detective-fiction careers that finally converges in the study of these two texts. I will be closing my thesis with “Knight’s Gambit” as the companion piece to Hammett’s The Thin Man, instead of the final novels in which Stevens appears – The Town and The Mansion, or indeed with Requiem for a Nun, which was published only two years after Knight’s Gambit. This is because, quite plainly, the final two novels in the Snopes Trilogy – The Town and The Mansion – involve no detection whatsoever, and I believe that Knight’s Gambit, which follows Gavin Stevens from Courtroom showmanship and bravura in “Smoke” to the cynical, washed up, openly self-serving man of “Knight’s Gambit” more fittingly mirrors the trajectory of Hammett’s detectives from the tough automaton of the Continental Op, through to the sad and savage Sam Spade, and finally the cynical, washed up alcoholics, Nick and Nora Charles.

In “Knight’s Gambit,” a story of “passion and love” (118), Stevens and Chick are playing a game of chess when the Harriss siblings storm in, interrupt the game, and ask to retain Stevens’ services in deporting the Argentine Captain Gualdres, their mother’s lover: “our so-called house guest. We want him out of our house and out of Jefferson too” (91). The siblings each, we will learn, have different motives for wanting Gualdres out of the picture. The boy, Max Harriss, is frustrated that Gualdres, whom he initially describes as a “fortune-hunting Spick” (92), is a better horse-rider than he is, that Gualdres “always beat him. At everything... beat him on Max’s own horses” (123). Kevin Slattum is right in identifying “oedipal currents”4 in the story between Max and Gualdres, who duel at horse-riding, fencing, and women, both seeking mastery of the house, though they are technically not father and son. The unnamed daughter is in love with Gualdres, and wants him for herself, but, as Max explains, “He was engaged to marry my sister. When he found out the money would still be our mother’s as long as she lived” (92) he focused his attention on the mother. Stevens does

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involve himself in the affair, and – as we only realize at the very end of the long story – has a motive of his own: he was once engaged to be married to the mother, Melisandre Backus Harriss, and wants her for his own.

Stevens’ methods for getting justice done are once again “methods that won’t bear looking at” (“Tom.” 80) and the justice, according to Lorie Fulton, “certainly prevails for Stevens, but those he manipulates to achieve it hardly fare so well.”

The action of the story centres on the prevention of a crime rather than the solution of one. Chick discovers that Max Harriss has purchased Rafe McCullum’s infamously ferocious horse – a stallion “unrideable and unmanageable even for breeding. It was said to have killed two men who just happened to get on the same side of a fence with it” (136) – so as to switch it with Gualdres’ favourite tame, blind mare. Stevens convinces Gualdres to take a rigged bet: “you bet him the girl. That he didn’t want to cross that lot and open the stable door. And he lost” (149), and marries him off to the daughter against his wishes: “In my country... there is a saying: Married: Dead” (155). Max is also conveniently shooed away from the glorious Southern mansion in which Stevens’ prize awaits in a cold move that is described by Stevens only in mercantile terms: “I’ve been doing a lot of trading lately” (153). When Stevens learns of his plan to kill Gualdres with the horse-swap, Stevens forces Max, on the eve of World War II, to “enlist, or else” (153). After we read of Stevens’ experiences in World War I, it appears tantamount to a death sentence:

that spring of 1919 like a garden at the end of a four-year tunnel of blood and excrement and fear in which the whole generation of the world’s young men lived like frantic ants, each one alone against the instant when he too must enter the faceless anonymity behind the blood and the filth, each one alone. (158)

Fulton disagrees with critics like John T. Irwin, who argues that Stevens, the story’s knight-errant, “in one move was able to carry out his public duty by

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5 Fulton, “Justice As He Saw It,” 41.
preventing a murder and at the same time accomplish the most personal of his
goals, the winning of a wife,” and W. E. Schlepper, who argues that equal
portions of luck and foresight make for a happy ending. Fulton insists instead
that the scholar should not “gloss... over the legal ramifications of Stevens’
manipulations.” The teenagers approach Stevens with the belief that he is a
disinterested professional – Max states, “You're the law here, aren’t you?” – and
what they get is the reckless and paternalistic meddling of the knight who
has designs on being king. Van Dover and Jebb summarize:

In resolving the crisis, Gavin deliberately places himself in
the position of a father. He marries off the Harriss girl to
Gualdres... he packs off Max to the military. Gavin thereby
clears the field so that he can claim Mrs. Harriss for himself
and become the unchallenged male authority figure in her
kingdom.

When Stevens lectures Chick, “a knight can move two squares at once and even
in two directions at once, but he can’t move twice” (119), Stevens finds himself
achieving the impossible, getting a second chance at Melisandre. The chess game
that Chick and Stevens play early on in the story “telegraphs the story's plot” such that Stevens is both the romantic knight and interrogative player, playing
each piece against one another, approaching the affair, much like he does in
Requiem, like a game, with a contempt for all humans that we do not get from the
avuncular and humane Stevens of the earlier stories. In “Hand Upon the Waters”,
for instance, Stevens does not hand over to the police the deaf and dumb boy, Joe,
that Lonnie Grinnup raised, who, in avenging the murder of his friend, shoots the
corrupt brothers, saving Stevens’ life. By “Knight’s Gambit,” however, Stevens
returns to his translation into Ancient Greek of the bible and shuts himself up in
his office with the task when “things happened to displease or affront him”

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8 Fulton, “Justice As He Saw It,” 41.
9 Van Dover & Jebb, Isn't Justice Always Unfair?, 139.
10 Van Dover & Jebb, Isn't Justice Always Unfair?, 139.
(141): it is his escape from all that is abhorrently human – “he seemed to want to avoid the human race” (139). Stevens involves himself in the case and essentially brings to life his chess game [“nothing by which all human passion and hope and folly can be mirrored and then proved, was ever just a game” (130)] in order to, finally, retreat from the world.

A clue to his changed character in this story lies in Faulkner’s descriptions of his love interest, Melisandre Harriss. She is a figure locked in time, while Faulkner documents a whirlwind of change around her – her house is “a kind of mausoleum of electric wires and water pipes and automatic cooking and washing machines and synthetic pictures and furniture” (103), a grotesque modernist parody, a “Southern mansion in the moving picture” (104), “a once simple country house transmogrified now into... a Before-the-War Hollywood set” (90), “a freshly whitewashed circus tent” (162) – she remains the “cloistered” (97) and “impervious” (109) child, unresponsive to time, writing

letters constant in sentiment and expression and uncertain spelling, written in the hand of a girl of sixteen and still talking not only of the old homely things but in the old unchanged provincial terms. (107)

She is Stevens’ ultimate prize, because, as Edmond L. Volpe writes,

the real world is corrupt and sordid, but she is not tainted by it, because she is an image, an imaginative creation, projected out of an intense desire for an untroubled, unsullied, perfect world.”

Van Dover and Jebb concur: “when Gavin takes her at the end, he finally deals with her as his equal and as the woman he loves; he also gains possession of the Southern myth.”

With Gualdres keen on turning the old manor house into a

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12 Van Dover & Jebb, Isn’t Justice Always Unfair?, 142.
horse-jumping course, and with Harriss’ father, “the old stoic” (102) who read Ovid and Horace and Catullus on his porch in his home-made chair with his toddy now dead (and the South dead with him) Stevens becomes the champion of the perseverance of the bucolic Southern myth.

While Stevens is largely itinerant in the earlier Knight’s Gambit stories, moving from precinct to precinct in order to solve crimes and speak each space’s idiom, in “Knight’s Gambit,” Faulkner returns to the formalism of classic detective stories of the European tradition: “Stevens remains in his office nearly the whole time,” Hannon observes, “relying upon deduction and syllogistic reasoning,” similar to that advocated by legal formalists. For a detective story no real detection is done: the one piece of information crucial to the prevention of a crime Chick comes across by accident. Instead, the story gains momentum and is given direction through Chick’s understanding of the history of Yoknapatawphians. Melisandre remains a “wraithlike” (109) enigma to Chick but for the stories, a complex matrix of “apocryphal’s apocrypha” of her family he had learned “by the town’s and the county’s postulation” (96), the “spinster aunts of Yoknapatawpha” which Stevens describes as “the backbone of the South’s social and political and economic solidarity” (99). Absent any real lawyer/detective practice, the Stevens of “Knight’s Gambit” is marred by a retrograde, cynical reliance not, as earlier, “establishing for himself what ‘counts’ as legal information” but rather “he becomes content, like the formalists of a previous era, to rely upon an established set of rules and principles to guide his actions and determine his conclusions.”

Hannon links this to a broader shift in society, politics and judicial history during and after World War II, whereby, as Wilfred Rumble noted, amid increasing hysteria regarding socialism and communism on American soil, the legal realism

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13 Hannon, Faulkner and the Discourses, 67.
14 Hannon, Faulkner and the Discourses, 67.
movement "tended to lose its dynamic force." Hannon writes, "the formalists’ emphasis upon precedent and basic legal principles was reasserted." This can be seen in Stevens’ willingness to punish the foreigner Gualdres, and his “conservatism is posited as the recuperation of a lost relation, and contrasted to a ‘polluted’ modernist” landscape that threatens to change it. If Requiem ultimately promotes a secularized jurisprudence found within the institution of law as preferential to Stevens’ previous dialogic invocations based on revelation, then the focus on law and law only (state and federal) in “Knight’s Gambit” finds footing with the post World War II "commitment to procedures or processes and the belief in an American social consensus." 

It is useful to look at the etymology at play in this story. Lorie Fulton has pointed out that “gambit” derives from the word, “gambretto,” which is literally the act of tripping up. In chess, a gambit is the opening move that involves the sacrificing a minor piece in order to gain a better position. There is, however, no such thing as a knight’s gambit. While on a romantic level, as medieval knight, Stevens plays the part, wins the girl and keeps his vision of the Old South intact, as an investigator and lawyer, he represents the knight’s gambit: he is absent, and, moreover, self-effacing. As county attorney, Stevens “relinquishes his role as one who decides for himself what will count as ‘legal’ information and defers instead to a powerful (but absent) state or federal body of which he is only a representative.” In his first interview with Max Harriss, his first response to Max’s entreaties is “I’m on the draft board here... I don’t remember your name in the registration” (91). Unlike the Stevens of the previous Knight’s Gambit stories, who uses rhetorical talent and local know-how to solve individual legal problems in a languorous ad hoc manner, representing a vision of the law in the South as a

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16 Hannon, Faulkner and the Discourses, 68.
17 Hannon, Faulkner and the Discourses, 69.
18 Feldman, American Legal Theory from Premodernism to Postmodernism, 117.
19 See Fulton, “Justice As He Sees It,” 46.
20 Hannon, Faulkner and the Discourses, 73.
series of localized instantiations, in "Knight's Gambit" he “shifts the real force of law away from himself, onto a distributed legal system.” In absenting his self – and his sense of self – from legal problems, and in assuming “a modified rhetoric of legal formalism” whereby, beyond romantic self-interest, he sees legal problems as beyond his control as a “disseminator of a recuperated formalist paradigm of legal discourse,” Faulkner leaves us with a Stevens that has both won, and lost. He moves from legal plasticity to stasis. He has become an inversion of himself – once the perennial bachelor who lived for his work, Stevens by the end of “Knight's Gambit” has become domestically present but professionally absent. The final lines of the story, “I have improved” (168) gloss over the rigged game that he has played, the lives he has changed for the worse, in order to maintain an image of the South into which he may retire that is now a fully-fledged anachronism. And ironically, it is this very image of the South that, as a neoformalist, a mere representative of Federal and State laws, he must relinquish in order to uphold the letter of Reconstruction laws. In the end, the self-effacing Stevens recalls the apocryphal image of Bogart/Marlowe, on the hearth, smashing the knight piece and in so doing, smashing his self.

In Hammett’s The Thin Man too, the detective has foregone his virility, his capacity to investigate, for a life of domestic inanity. The classic American hero, perennial bachelor, moving unfettered through the landscape, has, it seems, settled down. Nick Charles is married, on vacation in New York over Christmas, and has retired from private eye work. He is perpetually drunk, perpetually hungry, and is constantly undermined by his sardonic wife Nora: when, in the opening pages, he is shot during a scuffle with a thug, his wife opines “if he knew anything he’d cure his own snuffles” (35), and his dog Asta, about whom he must constantly “explain to... people that she was a Schnauzer and not a cross between a Scottie and an Irish terrier” (9), licks his face. He has no pretenses to toughness, and mostly wants to be left alone with his beloved scotch. When the case of the

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21 Hannon, Faulkner and the Discourses, 73.
22 Hannon, Faulkner and the Discourses, 74.
missing Clyde Wynant, an old friend and client of his, casually comes to his attention, Nick rather lazily solves the crime the way that the reader does – as an armchair detective: “unlike Hammett’s previous novels in which the detective went hunting evidence, in The Thin Man the evidence comes to Nick Charles.”23

Much like Faulkner’s Knight’s Gambit stories, The Thin Man was widely ill-received: Dorothy Parker calls it “far and away Hammett’s weakest effort,”24 and much like with Knight’s Gambit, the criticism fails to comprehend the authors’ elegiac and self-reflexive tones through which they farewell what is ultimately an unworkable genre.

In The Thin Man, young and gorgeous Dorothy Wynant comes to Nick and tells him that her father is missing, which is not unusual for the eccentric inventor. After his assistant and lover is found murdered in her apartment, and with the arrival on the scene of Wynant’s ex wife, Mimi, whom Nick describes as “poison” (15), her gold-digging new husband, Chris Jorgensen, and Clyde Wynant’s shady lawyer, Herbert Macaulay, the scene is set for a classic whodunit. What is lacking, however, is Nick’s interest in the case: he does not care a whit and does not actively participate in the romanticization of the genre. When Nora wants him to take on the case and go back to sleuthing, he responds, despairingly, “listen, darling, tomorrow I’ll buy you a whole lot of detective stories, but don’t you worry your pretty little head over mysteries tonight” (19). This is reminiscent of “Knight’s Gambit,” which separates from reality the dusty volumes on the manor shelves, in which

women were always ladies and men were always brave, moving in a sort of immortal moonlight without anguish and with no pain from birth without foulment to death without carrion, so that you could weep with them without having to suffer or to grieve, exult with them without having to conquer or to triumph. (95)

*The Thin Man* is also concerned with driving a wedge between reality and the romance and nostalgia of literature. Its claim to realism, I believe, can be seen in its ramshackle slew of characters – most of whom do not figure in the murder at all. Layman provides a detailed inventory:

Among the humans there are Dorothy Wynant, who competes with her mother for Nick Charles’ affection; Dorothy’s brother, Gilbert, a precocious, sneaking, would-be-detective... the Harrisson Quinns, he a lecherous old drunk groveling after Dorothy’s attentions, she a distraught wife embittered over her husband’s intemperance... Levi Oscant, a gossiping piano player... Larry Crowley, Nora’s companion when Nick is busy; Margot Innes, a friend of the Charles’; the Edges, boring party givers; Art Nunheim, a pitiful crook who attempts to blackmail Macaulay...25

And so on: in dividing the characters between main characters, characters who do not participate in the murder plot, faceless characters, thugs, and several police officers, Layman concludes that “they are an intriguing gallery – rich, poor, smart, stupid, law-abiding, and crooked; but they are not brought together convincingly.”26 Lillian Hellman confirmed to John Brady, editor of *Writer’s Digest*, that the two thousand-word quote from Duke’s *Celebrated Criminal Cases* in the middle of the novel, which as Brady politely noted, does not “contribute appreciatively to the book’s outcome,”27 was probably just a way to fill pages. Wolfe observes, “it is hard to make sense of the novel’s structure: the sophisticated comedy doesn’t join hands with the murder case, and the undertones get lost in the wisecracks and cocktails.”28 I strongly disagree, however, that this need be the case: the loose structure of the plot, its informal, detached narration, its tangential and deliberately unfocalized style, and the

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26 Layman, *Shadow Man*, 146.
motley crew of characters that populate it, resemble the very messy asymmetry and unpoetic nature of both life and crime, the arbitrary inseparability of comedy and tragedy, that Nick and Nora discuss in detail at the novel’s denouement. In this vein, I believe there is some merit in A. Alvarez’s claim that the novel functions more as a social critique: “the main interest is in its view of New York just after the crash, with its nervy, slanderous parties, sporadically violent speakeasies, disintegrating boozing, and permanent hangovers.” Peter Wolfe concurs: “the novel’s steadiest presence being its aura of cosmopolitan glamour.”

When at the end of the novel, Nick tells Nora his hypothesis – that Clyde Wynant had been dead all along, that Macaulay killed him and, exercising power of attorney, has been spending his money, and that the decomposing thin man, buried beneath the floor boards in Wynant’s workshop in a fat man’s clothes is actually Wynant – it remains just that: a hypothesis. It is based on a combination of guesswork, hearsay and instinct, and Nora is initially dissatisfied: “That may be good enough for a detective, but it’s not convincing enough for me. Listen, why don’t we make a list of all the suspects and all the motives and clues –” (164). Nick, who is “too old and too tired” for the “riddles” and “lies” to be “any fun” (163), simply goes to bed. Nora keeps questioning Nick the following day, “but did he commit them?” “then you don’t know positively he [Macaulay] was robbing Wynant?” to which Nick offhandedly, repeatedly replies, “sure” (214). When she finally corners him, “Then you’re not sure he –” Nick attempts to be authoritative: “Now don’t say we’re not sure. It doesn’t make sense otherwise... Can I stop to take a swallow of whiskey?” His desire to close the case and keep drinking, as opposed to Nora, who persists, “But this is just a theory, isn’t it,” (215), not only represents Hammett’s own disappointment with investigation as a means to getting at the truth, as a means to uncovering something more than

30 Wolfe, Beams Falling, 149.
simply a version of the story: “Call it any name you like. It’s good enough for me” (216), but also represents Hammett’s final disengagement with private investigation as a veritable conduit to justice. Nick’s disillusionment perhaps mirrored Hammett’s, who would have learned in his years as a Pinkerton that the law, much like Nick, trades too in hearsay, guesswork, and, more disturbingly, goes hand-in-hand with the newspapers and the image to weave fact out of fiction:

You find the guy you think did the murder and you slam him in the can and let everybody know you think he’s guilty and put his picture all over the newspapers, and the District Attorney builds up the best theory he can on what information you’ve got and meanwhile you pick up additional details here and there and people who recognize his picture in the paper – as well as people who’d think he was innocent if you hadn’t arrested him – come in and tell you things about him and presently you’ve got him sitting on the electric chair. (216)

This cold, hard run down of how the system really works from a jaded ex-insider (perhaps Spade, post-retirement), echoes Hammett’s own desire to expose the genre, and put the genre on trial. The courts operate on the same contingencies of panic, celebrity, ill scrutiny and misinformation as tabloid newspapers – and it is as “loose” and “unsatisfactory” (223) as Nora fears it is. The private detective, originally heralded as separate from, and insulated from, the machinations of the law and the media, too operates according to the same overarching logic of the law and media of expedient and salacious narrative approximation.

In having his detective hand over his facts to his wife, rather than a police officer or even the culprit, as often occurs in hardboiled detective fiction, Nick subjects his methods of investigation to the behind-closed-doors scrutiny of his domestic partner, an equal in wit that was modeled on Hellman. Nora is after truth and does not care about narrative, and it is through her that Hammett allows us to see the legal system for what it is. The bulk of the novel follows the dialogue of
Nick and Nora; when the novel was published in London, *The Times Literary Supplement*’s review opined in 1934, “This American detective story is told largely in dialogue, of which the object is to amuse with the smart phrase than to advance the movement. In fact there is little movement in it, if we deduct what goes to the getting of drinks...” In fact, in the denouement, while Nick and Nora discuss with verve the narrative – how the court will receive it, and whether the truth can ever really be known – the actual summation of the plot occurs as an aside, in dull language, and in parentheses: When Nick tells Nora how the case will most likely run, Hammett then gives us the facts: “(Two days later a woman in Brooklyn identified Macaulay as a George Foley who for the past three months had been renting an apartment from her.)” (216). Wolfe notes, “Nick’s parenthetical remarks, consisting of facts discovered later about the case, give the investigation a neatness that Nora can’t find. Thus the parentheses both remove our doubts and preserves Nora’s.” What Wolfe overlooks, however, is that the very parenthetic “facts” are contingent on the unstable and unsatisfactory system that could see the wrong man led to the chair. After all, the woman who identifies Macaulay has done so from the incriminating and defaming newspaper articles and pictures that turn innocent men into guilty celebrities in the minds of the masses. These facts are not facts at all.

In the final pages, when Nora laments that Nick’s ratiocination is “not very neat,” he responds, “It’s neat enough to send him to the chair... and that’s all that counts. It takes care of all the angles and I can’t think of any other theory that would” (222). Nick, moreover, proffers his “best theory” approach instead of the truth because having to detect more than is necessary (“I always thought detectives waited until they had every little detail fixed”) will result in no conviction at all: “And then wonder why the suspect had time to get to the farthest country that has no extradition treaty?” (223). Although Nora laughs, “all right, all right,” Hammett reminds us, as he detailed in *The Maltese Falcon*, that,

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31 Cited in Layman, *Shadow Man*, 149.
32 Wolfe, *Beams Falling*, 156.
for the law to operate fully and successfully and authoritatively, the conviction of
a wrong man still looks better than no conviction at all. Although the newspapers
and the legal system seek to publicize crime, essentialize criminality and, much
like hardboiled pulp novels, explore the seedy milieu of the American urban
underworld, the reality of human life in New York (and San Francisco) is
unromantic and makeshift – improvised, arbitrary and meaningless – inert and
domestic: when Nora, still bent on mythologization, wonders “what do you think
will happen to Mimi and Dorothy and Gilbert now?” Nick quips back, “Nothing
new: They’ll go on being Mimi and Dorothy and Gilbert just as you and I will go
on being us and the Quinns will go on being the Quinns. Murder doesn’t round
out anybody’s life except the murdered’s and sometimes the murderer’s” (223).
Thus what separates Nick from Spade is his inability to believe in the potential
for justice through his activity. There is no magic left in either the crime or the
criminal, or the detection, and everybody just keeps on living. This is why I
contend that the novel is unflinchingly realist. It is in this vein that the novel too,
with its open but indifferent references to sex, destroys the sanctity of the family
unit but in a wholly amoral, unfocalized and cavalier way: Nick gets an erection
while wrestling Mimi to the couch, lending sexual undercurrents to “those couple
of afternoons [they] killed” (24) earlier together; Nick “wander[s] off with” an
unnamed redhead at a party who “wanted to show [him] some etchings” (3);
Nora has a cool and entirely unemphasized affair with Larry Crowley; Dorothy is
in love with Nick, Gilbert craves his sister, and Dorothy mentions she needs a gun
she bought in a speak-easy to keep her step-father away from her. The Thin Man
presents a world of uncontainable, messy, and inane crosscurrents of human
desire, a world where, importantly, neither psychology nor sentimentality holds
much weight. When Nick presses Dorothy to tell him where she bought her gun,
she stalls: “Can – can I tell you something that happened to me when I was a little
child? … It’ll help you understand why –”, but Nick cuts her off, uninterested: “Not
now… where’d you get the gun?” (39).
And so I am drawn, once again, to the figure of the self-effacing knight, exhausted with the world; Wolfe notes that the novel is one that “primes us for sorrow.”\textsuperscript{33} The title character, the thin man, who has been dead from the beginning, sounds shockingly like Hammett himself: “tall – over six feet – and one of the thinnest men I’ve ever seen. He must be about fifty now, and his hair was almost white when I knew him. Usually needs a haircut, ragged brindle moustache, bites his fingernails” (8). \textit{The Thin Man’s} fascination with cannibalism – about which the excerpt from \textit{Celebrated Criminal Cases} focuses\textsuperscript{34} – perhaps has another significance beyond being an expedient page-filler for the jaded author: the corpse upon which the novel ruminates, and feeds, is Hammett’s own. After their conversation about the case, Nick and the dissatisfied Nora realize that the “excitement [of the case] has put [them] behind in [their] drink” (223). The self-immolating need for inebriation has overtaken the protagonists, as they once again detach themselves from the stark reality of imperfect investigation and a legal system that concomitantly thrives on imperfection. It is fitting that both Faulkner and Hammett use a married (or more correctly, in Faulkner’s case, a would-be married) protagonist as a metaphor for the end: in departing the active and self-assertive realm of interpretation, investigation, and itinerancy, and retiring to the domestic, both Hammett and Faulkner, in their swan-songs to a genre they perhaps found increasingly untenable, flag the end of the pursuit for justice. Given that justice, in their novels, resided in the unflagging pursuit by the protagonist, giving their protagonists a destination, an \textit{end}, marks a grim acceptance by both authors that the vision of a perpetual chase toward an ever-receding horizon enacted by the American everyman is a literary sham – American jurisprudential rhetoric at its most devastatingly hollow.

Both authors abandon the ethos of Thomas Jefferson’s “perpetual revolution”, as well as the promise encapsulated in \textit{Marbury v Madison} – that we can arrive at

\textsuperscript{33} Wolfe, \textit{Beams Falling}, 156.

\textsuperscript{34} On pages 74-80 Gilbert reads the entire story of “Albert G. Packer. The ‘Maneater,’ who murdered his five companions in the mountains of Colorado, ate their bodies and stole their money.” (74).
justice by way of vigorous interpretation. This abandonment is not, however, due to any aesthetic crisis concerning modernity: the detectives certainly strive to master what cannot be controlled, and though they are thoroughly aware of the inexplicable and uncontainable world in which they operate, it is not from this struggle that the authors decide to quit the detective genre. After all, both the detectives and their authors knew from the very beginning the epistemological uncertainty through which and against which they performed their meaning-making task: the justice for which the detectives strove was not attained through the formal solving of the puzzle and the capture of the culprit but through that very effort, that struggle, through the incommensurable subjectivity they represented. What propelled these detectives was what Roberto Unger called “the sense of being surrounded by injustice without knowing where justice lies.”\footnote{Roberto Mangabeira Unger, 	extit{Law in Modern Society: Towards a Criticism of Social Theory} (London: Collier Macmillan, 1976), 175.} Rather, the end that “Knight’s Gambit” and 	extit{The Thin Man} both herald is the end of the private detective: the private detective, who was free from the strictures of legal narrative and legal procedure to incorporate the very inarticulable energy of the modern experience in the interpretation of clues and the creation of narrative, becomes increasingly broken by this very freedom. What links Hammett and Faulkner, in the end, is the fact that their private detectives come to the same conclusion: that of relinquishment of subjectivity and deferral to the law and its flawed but finite, formalist strategies.

Both Hammett and Faulkner used the figure of the private detective and the investigative discourse of the mystery narrative to work through and seek possible remedies to perceived injustices – injustices so arbitrary and so invisible that the law routinely failed to comprehend them. The private detective, working outside of the law and not always subject to its procedures, rules and strict definition, could meet injustices with a vision wide and deep enough to admit the complexity, paradoxicality, shiftiness, and sheer meaninglessness of life. Moreover, unlike their aristocratic or socially anomalous colleagues in the
European tradition (Lord Peter Wimsey, Hercule Poirot, Sherlock Holmes, and so on), Hammett’s and Faulkner’s private detectives were embedded in and part of the criminal landscape in which they detected – they knew their jurisdictions, and derived a special sense of agency from this intimate knowledge. In the Continental Op stories and novels, Hammett presents an idealized picture of the private detective: the Op is a mechanized, anonymous automaton who gets his job done. Similarly, in the first five Knight’s Gambit stories, Stevens operates with bravura as his unflagging belief in justice as located in community, history and dialogue is not yet tested by the question of race.

As they further explored the genre, however, both authors appear to have come to understand that if the detective is a complex man of the people, and just as real and flawed as the landscape in which he detects, then an ethical compromise must be made so as to exist in and belong to that landscape. In Intruder we see this as Stevens’ flawed espousal of gradualism and his initial unwillingness to help Beauchamp renders him the disturbingly authentic voice for white middle-class rationality. In The Maltese Falcon, Spade’s human desires suddenly become part of the crime he is trying to solve, and he finally defers to the law because his own lusts, hopes and disenchantment render him incapable of attributing any helpful discourse to the hopelessly knotty world of the novel, much like Stevens in Requiem. By the time of The Thin Man, Hammett was writing against the backdrop of the perceived failure of democracy through the collapse of the capitalist system that had emerged around it (and of which he had always been suspicious); while in his later writings, Faulkner was struggling to cast off a self-confessed myth of the old South. This way, both authors convey the sense of a disillusioning loss of values – the chivalric code – necessary to sustain a belief in justice.

And so the novelists who turned to a genre that exposed an inadequate legal system and sought the revitalization of justice in the electric figure of the private detective ultimately retire their private detectives, though they emphatically do
not champion the law in doing so. Rather, Hammett and Faulkner both display a world-weariness as they indifferently return the chalice of justice to the law, as intimated in *Sanctuary*, “in lieu of anything better” (194). The private detectives, who encapsulated the classic American jurisprudential rhetoric of justice through rigorous investigation, interpretation and discourse independent of strict legalism, their authority to do so emanating from their sense of belonging in their landscape, are ultimately let down by their own subjectivity, their own human nature. Perhaps by being so close to it, they have become a part of that landscape of socially fractured economic inequality in the city and bitterly divisive racial inequality in the rural South; perhaps, like Chandler’s Marlowe in *The Big Sleep*, they too come to reflect: “I was part of that nastiness now.”

Disillusioned by the fundamental inability to understand the mystery that lurks in each novel and story beyond the solving of a crime, by their weakness in the face of widespread corruption, both detectives and authors look to the law, not for its objectivity and empiricism, but simply its omnipotent structural constancy, as the detectives retire to the domestic realm. It is, perhaps, the inevitable inclination of thoughtful proponents of the genre: In Raymond Chandler’s final novel, *Playback*, published in 1958, Marlowe too gives the game away to settle down with a romantic interest from his past. In Hammett’s unfinished final novel *Tulip*, said to be autobiographical, we get to the heart of this world-weariness with the genre. The narrator says to his friend:

> if you’re getting ready to launch into one of those dull speeches about the future of the human race and mankind’s unused possibilities and potentialities I’m going to bed. Maybe you’re not to old to talk that way, but I’m too old to listen to it.  

“Too old,” perhaps, even for justice. In the final chapter of *The Mansion*, which concludes the Yoknapatawpha chronicle, Gavin Stevens also gives his

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summation, “there aren’t any morals, people just do the best they can.” The final lines of Tulip’s incomplete manuscript bring us home: Hammett writes: “if you are tired you ought to rest, I think, and not try to fool yourself or your customers with coloured bubbles.” And so he did. Mark McGurl attributes these final words to “a fundamental, indeed theological, disappointment with his craft.” The coloured bubbles, the morals, the possibilities and potentialities and the future of the human race, if not in the law, may reside in the more youthful author's pen. As for the law, while it may not be able to admit all the exigencies the author may ponder, it can look to literature to determine the values and cultures of society. William Faulkner would have been delighted, I am sure, to learn that in a 1984 case regarding “headlighting” deer, Pharr v Mississippi Justin Robertson looked explicitly to Go Down, Moses, to illustrate the “ethics of the hunt.” From a close reading of “The Bear,” the court concludes, “the thrill of the chase, the fair and honourable pursuit and not the kill undergirds the ethics of the hunter.” In creating a specific Mississippian discourse, Robertson states, headlighting is unlawful in this state whether its victim be buck, doe or fawn. Variously denominated ‘spotlighting,’ ‘jacklighting,’ ‘shining deer,’ or simply ‘headlighting,’ this conduct calls for more powerful words. Minnesota uses the term ‘nefarious.’... The New Mexico legislature has employed the descriptive ‘despicable.’... In this state, ‘Snopesean’ seems somehow appropriate.

The marriage of legal institution and site-specific discourse for which Stevens awkwardly strived reaches apotheosis in Pharr, suggesting, perhaps, that even if the genre of detective fiction is untenable, the works of Hammett and Faulkner that explore the law and justice have importance beyond literary merit. The law, Holmes wrote, “is the witness and external deposit of our moral life. Its history

39 Hammett, “Tulip,” The Big Knockover, 347.
41 Pharr 465 So. 2 294 (1984)
42 Pharr 465 So. 2 294 (1984) at 298
is the history of the moral development of the race," and through the nexus of law and literature we may, after all, tap into a sense of justice that is representative of our moral life.

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