

THE CURVES OF JUSTICE: SPATIAL METAPHORS IN THE COURTROOM NOVEL

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I. Spatial Metaphors in the Law.

Back in 1986, Judge Richard A. Posner questioned the first expansive wave of enthusiasm in the law and literature movement. He famously noted "there are better places to learn about law than novels," and the accuracy of the claim is still undeniable if one tries to learn about "the enforcement of a contract that contains a penalty clause" or any other specific legal application.¹ The same view, admittedly in more nuanced form, dominates Posner's book on the subject, *Law and Literature, A Misunderstood Relation* in 1988, and the debate over the relevance of fiction to law has been fierce ever since.²

Without engaging in scholarly quarrels that are now as intricate as they are prolonged, this article raises an ignored manifestation in the debate itself. Imaginative literature, and particularly the courtroom novel, addresses areas of the law that the law itself does not want to talk about, and to do so it begins with spatial metaphors that expose what will remain silent in court.³ These metaphors, almost always part of "thick description" of the opening scene in a courtroom, are easily overlooked, but they shape a reader's perspective on the legal themes at work, and they invariably reach beyond the fiction in question to an understanding of the world at large.⁴

To prove the point we must first recognize how completely the law is dominated by visual and therefore spatial metaphors. Combatants in a courtroom have "standing"; they are seen. The law itself is "a seamless web." Evidence from *evidēns* (that which is apparent) is "presented." Higher courts "review" lower courts. Titles are "searched." Lawyers draw "bright-line distinctions." Constitutional protections emerge from the shadowy realm of "penumbras." A property claim has "color of title." And on and on.⁵ Sight is the most immediately clarifying of the five senses, and it should surprise no one that the law depends upon it for its own compulsive language of clarification. Even so, the reliance of law on the power of the visual only begins in the specificity of descriptive metaphors.

Law in a courtroom involves the *classification* and *resolution* of conflict within a process that is at once frozen and mobile. It is frozen in that all present must see and accept the forum in place as the only legitimate place for conflict to be resolved.⁶ It moves in that a resolution must be reached there.

In order to convey the legitimacy of these elements in action, the law must literally *show itself* at work in both ways, and its favorite metaphors of spatial representation are familiar ones. We speak of “the drama” in a courtroom (a cast of settled characters on stage but also an unfolding *dénouement*). We hear of the geometry in law (design through principle but toward an ongoing proof). We cannot avoid the law as a grid or form (order in structure but also the continuation of procedural integrities).⁷ Above all, we are asked to think in terms of “the balance in justice,” a metaphor that neatly combines the values of stasis (the balanced scale), conflict (the opposing elements that allow the balance), expertise (the skill in achieving it), and practical human control (the implied figure holding the scale).⁸

All of these metaphors are useful, especially in relation to each other. They share a reinforcing base in formation, which is to say that they come together as metaphor on both the physical level of display and the psychological level of discourse.

In physical terms, “the geometry of a courtroom” is all about the balances in play. A judge presides on high and at an equal distance from prosecutorial and defense counsel ranged on either side below. Figuratively, a fair trial is a vertical equilateral triangle in which the exactitude of space between the most active officials suggests the evenhandedness of proceedings taking place there. The same raised platform of this presiding judge reaches down in a series of levels from the bench to the slightly raised jury box and counsel tables ranged in “the well” of a courtroom and on to the rows of carefully arranged, usually banked public benches beyond the court railing. Here is the grid or structure and order that encourages spectatorial recognition. At the same time, every artifact of note in a courtroom—flags, portraits, tables, symbols, even doorways and architectural ornaments—are arranged to convey the balances in justice through proportional placement.

Psychologically, the same spatial metaphors—drama, geometry, grid, and balance—cohere to suggest the certainty that the law requires in the decisions it makes. No decision can appear to be arbitrary, and so legal answers are invariably dominated by “a rhetoric of inevitability” no matter how close the previous conflict has been.⁹ Consciously or unconsciously, judicial language turns to the metaphors in question to secure itself from doubt. *Drama* in the oral delivery of a judicial opinion yields to the satisfaction of a final curtain ringing down on an unhappy event now resolved. *Geometry* lives in the proof offered: *quod erat demonstrandum*. *The grid* finds its place in the fixed generic structure of the judicial opinion as the observable integrity of legal discourse. *The balanced scale* appears everywhere in the act of deliberation as pros and cons are weighed and parsed in a sequential order that leads to the unavoidable decision.

Nothing, it must be said, is wrong with these propensities. The law must do everything it can to legitimize the answers it supplies against the vexed entanglements that come before it. Only in this way will a community accept with equanimity what has happened there. All of this is clear enough, and yet the propensities themselves are misleading and even untrue when it comes to the mechanics at work in actual practice.

The spatial metaphors embedded in courtroom ceremony hide a deeper reality that imaginative literature finds and the law rather deliberately hides. For the hard fact is no one leaves a courtroom enthralled by the ways of the law. Asked to comment on "the one thing Americans still don't know about the law," Dhalia Lithwick, longtime reporter on the Supreme Court for *Slate*, responds "the legal system might be the single worst place to seek 'closure,' whatever closure is. Nobody is ever happy after a trip to court."¹⁰

A moment's reflection will explain the truth of this statement. Why do disputants in law rarely emerge from the courtroom with the sense of resolution that the law proclaims? Consider the situation for what it is. If you have won your case, usually after considerable delay and much expense, you question why it was necessary to go through the process at all. Was it not obvious that you should have won, and did you really need a lawyer to get justice? From the other side, defeat is never pleasant, twice as expensive, terrible for one's reputation, and sometimes precarious for one's freedom. Most losers in court assume that the law failed to get them the justice they deserved.

The law, after all, has to make its decisions on carefully circumscribed procedural terms for both winners and losers, a state of affairs that underscores the frustration often felt on both sides. Faced with everything translated into legal discourse, the disputants have not been able to tell the story the way they experienced it or the way they would like to have told it themselves. The courtroom novel, on the other hand, has the license to delve more deeply into the meaning of things against the rules of hidebound procedure, and while the law is not always the villain in these fictional renderings, it is rarely the full answer either. Against the law's restrictions on standing, the novelist's wider point of view gives a reader knowledge beyond what a court of law can entertain. Most stories of this kind turn, in consequence, on extra-legal solutions—solutions that cause the law to look superficial when it is not actually wrong.

Critics have traced these deeper levels of consideration in the novel. Less apparent, however, are the nuanced descriptions and rhetorical devices by which a novelist leads a reader either to prefer a different answer to the one offered by the law in court or to accept the court's decision in a different way—usually with larger purposes in mind. Courtroom novels naturally build on these tensions, and as such they also encourage a subliminal communal implication. To the extent that courtrooms provide *partial justice*, the courtroom novel makes use of the limited satisfaction litigants obtain in court. The reality in actual practice is that everyone has already lost if they find themselves in court.

II: The Curves of Justice.

A novel from 1960, now obscure but popular in its time, explains how literature operates in this regard, and it is especially useful in its challenge to the constitutive metaphor of balance that so dominates legal thought. C. P. Snow's *The Affair* is the last of a series of academic novels set in a mythical Cambridge College named Oxbridge. The narrator, as in the previous stories, is Lewis Eliot, a barrister who moves back and forth between "the corri-

dors of power" in Whitehall and the petty but more human politics of Oxbridge College.¹¹ Eliot has been called in to help solve a case of scientific fraud that threatens to bring scandal on the college and the British scientific establishment in general—not least because the fraud has been discovered and exposed by a team of American scientists.

Much of the novel need not detain us. The plot turns on a junior research fellow named Donald Howard who has been dismissed for submitting a thesis of fraudulent work that does not hold up to proof and examination. Now, at the last minute and for the first time, Howard seeks a second hearing claiming his innocence and placing blame on his former mentor. Eliot has been retained without fee to be Howard's legal counsel.

The first hearing against the accused, conducted by tenured fellows serving as "a Court of Seniors," has delivered a quick summary judgment condemning Howard before Eliot is on the scene. It has done so in a fruitless attempt to keep the scandal within the college but also to protect the stellar reputation of Howard's mentor, an eminent and wealthy but now deceased scientist named C. J. B. Palairet. A world authority on his subject, Palairet also happens to have left his entire fortune to the college, an act of such generosity that Senior Fellows think of having a building named after him at Oxbridge (27–31).

Fraud there has been, but several possibilities might explain it. *Either* Howard has falsified an experiment and presented it as truth, in which case the issue is closed, *or* he has taken work from the official notebooks of his supervisor Palairet, with or without Palairet's permission, and published the material as his own. If the latter, then the false experiments are actually Palairet's, which at first blush seems implausible to everyone who has known this distinguished scholar and his spotless international reputation. Either way, of course, Howard is *still* at fault for publishing work without adequate attribution and for failing to confirm his findings through his own research, but if that is all, he has been sloppy rather than a fraud, and the Court of Seniors has come to a skewed conclusion on insufficient evidence.

To further complicate the picture, the accused in *The Affair* has no redeeming virtues. Donald Howard is a disagreeable lout as well as a narrow careerist who lacks intellectual sparkle or meaningful curiosity about his field. Like many another unpopular defendant, he is unattractive, and it is significant that he remains partially at fault no matter what the verdict. Even his tepid supporters have to admit that Howard's work "wasn't even second-rate, it was tenth-rate" (343). Snow uses these faults cleverly and for larger purposes; they hinder the senior fellows from entertaining the possibility of innocence.

Snow has thus created a story in which *every* character in the novel appears unlikable and partial in some way, and this unpleasantness is reified in a final decision. In the end, the Court of Seniors acts mostly to protect itself. It grudgingly reverses its previous dismissal but without restoring the time lost on Howard's fellowship between the two court hearings. The accused's reinstatement coincides thereby with the end of his fellowship, which the college has no intention of renewing. The court hopes that Howard will go away quietly with

his "half a loaf," and he does (334, 347). It is, nonetheless, a hollow victory. Lost in this decision is a favorite maxim of the law: "Do Justice and Not by Halves."¹²

The Affair wants to convey every facet of what Snow calls "the sarcasms of justice," and his titular parallel to the famous Dreyfus Affair is deliberate (339, 152). The last section of the novel, named "The Curves of Justice" comes to a head in the following words: "one started trying to get a wrong righted; one started, granted the human limits, with clean hands and good will; and one finished with the finite chance of having done a wrong to someone else" (339). Snow's search for "Inner Consistencies" against an absolute uncertainty brings out the worst in everyone (303-14).

Even the narrator becomes noticeably less appealing as the crisis develops. Eliot has prided himself on the belief that "no body of men I knew of would have been more punctilious and fair," but he comes to realize that prejudice, politics, previous investments, and fluctuations in "the stock exchange of college reputations" will control what happens (31, 168). Soon enough he has to acknowledge that his colleagues will accept "a certain amount of individual injustice" in the name of their own comforts and fear of "a much larger amount of damage to us all" (133).

Worse and worse, Eliot uses his fallen knowledge to manipulate the comfort and fear of the group to get his way. In a campaign of nasty insinuation and innuendo, he forces the college's hand. Judgment, when it comes, therefore has intrinsic problems on all sides. Snow means for us to see that even "upright men" are not at their best in wielding judgment:

one was grateful for their passion to be just, but its warmth was all inside themselves. They were not feeling as equals: it was *de haut en bas* [from top to bottom]: and, not only towards those who had perpetrated the injustice, but also, and often more coldly, towards the victim, there was directed this component of contempt. (70)

The element of empathy is missing in these judges. No one examining the accused has the capacity to think "there, but for the grace of God, go I."

These passages from *The Affair* have been worth contemplating at some length because they exhibit "the curves of justice" for what they are. Justice, in effect, is a curve instead of a balance because the receivers of it find themselves anywhere along the long line of its perimeter, either on the down side of considerations, if unfortunate, or on the up side, if fortunate. Much of where one lands depends on the compromises between principle and facts required in the moment. The more conventional idea that an objective balancing act will yield a precise judgment in exact proportion to a known and fully calculated transgression, in the way the law likes to present itself, becomes a myth. The courtroom novel actively disagrees. It finds balance to be a fiction within its fiction.

To summarize, Snow shows us that the reasons for rejecting the constitutive metaphor of balance are several. *First*, in a situation of uncertainty where a decision must be made,

seeming justice to one will often hurt a hidden other; these kinds of decisions have unforeseen consequences. *Second*, "a core with a strong sense of group self-preservation" will naturally distort the search for individual justice when it feels threatened or simply uncomfortable with itself in the search (187). *Third*, those in judgment easily fall prey to a detached superiority that removes them from the field of sympathy and away from the real problems they assign to others. *Fourth*, an unattractive individual caught in the web of law had best beware. The Donald Howards of this world lack the status, character, class, and appeal they need, and they can expect the cost to be high in justice received.

III. The Register of Punishment in Spatial Metaphor.

By thus manipulating the registers of punishment, the courtroom novel exposes what an actual court would hide. Most imaginative depictions of a trial encourage some form of protest over what is done to the accused. Punishment is either too heavy or too light, or wrongly applied, or mistakenly withheld altogether.

Excessive punishment is the prevalent recourse. Shylock in Shakespeare's *The Merchant of Venice* (1596–97) must be disciplined for planning to kill the merchant Antonio by insisting on a pound of flesh from Antonio's chest in forfeiture of his bond, but can it be just to force the man of Jewish faith to lose all identity through enforced conversion to Christianity? In the same vein, Herman Melville's beautiful sailor deserves punishment for striking and accidentally killing his false accuser, John Claggart, aboard the *Bellipotent* in the author's unfinished novella from 1891, *Billy Budd, Sailor (An Inside Narrative)*, but what reader wouldn't prefer a limited prison term for manslaughter to Billy's summary execution the next day?

From the other sides of punishment, a murderer goes free in Robert Traver's *Anatomy of a Murderer* (1958), and again no one is punished for an even more obvious murder in Scott Turow's novel *Presumed Innocent* (1987). Of greater concern, an entirely innocent man is convicted and killed in Harper Lee's *To Kill A Mockingbird* (1960). In each case, the distortion in punishment is the reader's key to interpretation, but the important point, for present purposes, is more subtle: in every instance the outcome of the case is already predetermined by the author's knowing manipulation of the geometry of the courtroom. An imbalance in spatial form (or an exaggerated balance in form) tells us what will happen if not exactly how it will happen.

We know, for example, that Shylock will lose in *The Merchant of Venice* well before Portia appears in disguise as a lawyer to challenge him. Clever Portia is the means but not the source of judgment in the trial scene of Act Four, Scene One. The Duke, as presiding judge and stolid symbol of absolute authority in Venice, distorts the equilateral triangle of justice from the outset by pulling it upward. "I am sorry for thee," he commiserates with Antonio in the act of condemning Shylock as "an inhuman wretch, / Uncapable of pity, void and empty / From any dram of mercy." The Duke then threatens from on high with a warning that is also a sneer, "We all expect a gentle answer, Jew."¹³ Established power will not allow this pariah to kill his social better no matter what the law says. Shylock's literal interpreta-

tion and investment in law is part of the poignancy of his situation. He mistakenly thinks that the law will protect him from disapproving authority.

We realize just as quickly that Billy Budd is doomed when Captain Edward Fairfax Vere, against all procedural form, fills every conflicting official role in Billy's trial—first as witness, then as defense counsel, then as prosecutor, and finally as "co-adjutor." All sense of spatial integrity collapses as Vere contemplates this final seizure of the seat of judgment, while ruminating "in one of his absent fits," "gazing out from a sashed porthole to windward upon the monotonous blank of the twilight sea."¹⁴ Indeed, this "monotonous blank" of natural space in the otherwise cramped quarters of the courtroom is typological. Melville dwells upon the utter separation of divine law, natural law, and human law—levels that previously cohered in American understandings.

Curiously, the balances are altogether too perfect in *Anatomy of a Murder*. The moment the agreeable and evenly matched attorneys in conflict agree that the judge is a "Nice old guy" and "a real lawyer" who will "give both sides a fair shake," we know that things are working too well for a courtroom novel. Judge Harlan Weaver is, in fact, an extremely likable "real judge." He regards the world "thoughtfully with his calm blue eyes," and it is telling that he first identifies the hidden imbalance in the courtroom.¹⁵ "Real judges," which is to say good ones, are major sources of authorial claims in courtroom novels. They notice and in some way rectify the distortions in the legal process around them.

What does Judge Weaver see in *Anatomy of a Murder*? Paul Biegler is a former prosecutor who wins his case as defense counsel by blaming the victim instead of the murderer. Against the facts, Biegler convinces a jury that the victim, one Barney Quill, raped Laura Manion in a crime that drives her husband, Lieutenant Frederic Manion, into a state of "temporary insanity" when he pumps five shots into Quill before witnesses. Manion actually has killed in a jealous rage, and Judge Weaver is the shrewd observer who casually informs the gullible Biegler of what really happened. "Congratulations on winning one of the strangest and most oddly brilliant criminal prosecutions I've ever witnessed," Judge Weaver tells Biegler, ". . . this is the first time in my legal career that I've seen a dead man successfully prosecuted for rape. . . . you're just an old unreconstructed D.A. at heart."¹⁶

Just as wise judges see the imbalances, so unwise judges are part of them. In Stephen Crane's short story "An Eloquence of Grief," nothing will turn out well after we learn that spectators in the courtroom "could not always see the judge, although they were able to estimate his location by the tall stands surmounted by white globes that were at either hand of him."¹⁷ Similarly, in Scott Turow's *Presumed Innocent* the equilateral triangle is flattened again, this time by a corrupt judge who throws the case against the defendant out of court when threatened with exposure by defense counsel.¹⁸

Presumed Innocent is about imbalances run wild. Rusty Sabich, the defendant as protagonist, is also an assistant district attorney, so he not only sees all sides of the case, but he also gives the main theme when he says "I have the feeling things were bent well out of

shape." Well, yes, they have been. The actual murderer, Barbara Sabich, turns out to be the defendant's jealous wife, and she goes scot free despite her husband's knowledge of her crime. Of course, a clever reader will already have solved the ending in a generally misogynistic puzzle by listening to the name: "Barbara's a bitch."¹⁹

Good judges make better courtroom novels because a corrupt judge is the cheap way to create an imbalance in justice. *To Kill A Mockingbird* is such a classic because we have a good judge on the bench, though not everyone realizes it. Judge Taylor "looks like a sleepy old shark" on the bench, but he is actually total vigilance. "The impression of dozing" is "dispelled forever when a lawyer once deliberately pushed a pile of books to the floor in a desperate effort to wake him up," and is instantly threatened with contempt of court. Be that as it may, justice *does* sleep in this courtroom, and the imbalance is again an obvious one from the moment the courtroom is described.²⁰

Everyone remembers the name of the defense counsel who fails to get a racist jury to find the black defendant Tom Robinson not guilty of raping the white girl Mayella Ewell even though all of the facts suggest his innocence. Atticus Finch is an exemplum far beyond law and literature. Oddly though, very few can come up with the name of the prosecutor in *To Kill A Mockingbird* or anything about him. Is it just because the man is so nondescript? Mr. Gilmer appears as "a balding, smooth-faced man" with "a slight cast in one of his eyes" that makes him seem "to be looking at a person when actually he was actually doing nothing of the kind."²¹

No one remembers Gilmer because we don't need that part of the official triangle except for the distortion it bespeaks in geometric terms. The whole town prosecutes Tom Robinson. Gilmer's "cast eye" sees in every direction because it is the racist gaze that the town brings to the trial. We don't receive Gilmer's extended statements. All we require is his racist cross examination of the defendant, which bothers no one except a small child too young to have caught the town's "usual disease." Another imbalance in the same opening moment in court tells us that the defense has no real case in this courtroom. The prosecutor's table is filled with books and papers; "Atticus's was bare."²²

For good and bad reasons, the geometry of this courtroom is askew, and Harper Lee carefully gives us both dimensions. Atticus Finch overwhelms the rest of officialdom as the town's intellectual leader, but he is rhetorically magnified as the tragic loser of a case that should be won. Never fully developed, Judge Taylor quietly overrules Gilmer when he can, and just as quietly helps Atticus Finch when he can but in a losing cause that everyone knows is lost except children who bring their more literal sense of fairness into the courtroom. Defense counsel is the only angle in the triangle of this process that we really see. As town leader, Atticus Finch represents "the handful of people in this town who say that fair play is not marked." Even so, it is as the losing lawyer that he is important: "he's the only man in these parts who can keep a jury out for so long in a case like that."²³

IV. The Exception that Proves the Rule.

We have seen that imbalance against the assumption of symmetry controls storytelling in the courtroom novel. Most writers rely on a slow build-up to the first moment in court and turn that moment into a primal scene. Conventional legal imagery is familiar and readily available for these purposes.²⁴ Even minimal distortion through thick description will clue a reader into the narrative momentum of the story to be told.

Consider a last typical example from Bernard Schlink's novel *The Reader*, an allegory of the plight of the second generation in postwar Germany dealing with knowledge of the holocaust. Through deadpan narrative, Schlink's youthful protagonist, a law student, describes the opening scene of defendants accused of helping to exterminate the Jews in Nazi Germany and discovers that one of them is his former female lover, a much older woman. Schlink tells us that "the prosecutors sat in front of the windows, and against the bright spring and summer daylight they were no more than black silhouettes." Across the room sit "so many" defendants they stretch "into the middle of the room in front of the public seats."²⁵ The prosecutors are "no more than black silhouettes" because the whole world is prosecuting. The defendants stretch to the public seats to indicate the complicity of the German people.

Schlink wields the device in the usual fashion, but the greatest American courtroom novel—even Judge Posner calls it "a minor classic"—eschews the device altogether.²⁶ James Gould Cozzens writes *The Just and The Unjust* (1942) as the *Bildungsroman* of a young lawyer who struggles to learn the balances that define his profession. Nor is that all. For once the protagonist is a prosecutor, one who actually loses the big case. Cozzens wants no part of the more conventional story where defense counsel struggles against impossible odds to win through breathtaking eloquence in a closing statement.²⁷

Cozzens writes as a realist, and he is trying to get it right instead of festooning the law in melodrama. The story opens in court but with no build-up at all. Cozzens begins with dry docket entries and an opening statement too mundane to be recorded. *The Just and the Unjust* follows a young assistant district attorney in a small New England town from 10:40 a.m. on a Tuesday morning (the opening statement) to just after midnight on Friday night. During that time Abner Coates, the son and grandson of judges, makes some mistakes, handles a host of smaller problems, decides to run for district attorney, and asks his girlfriend to marry him. He also loses his case, though he thinks he might have won it if left to his own devices instead of those of his coldly efficient boss, District Attorney Martin Bunting.

The Just and The Unjust is a classic because, in the words of one of its earliest and most distinguished reviewers, Harvard Law Professor Zechariah Chafee, Jr., it is "one of the best accounts I know of the daily life of ordinary lawyers."²⁸ This much is true, but the novel succeeds beyond its time and despite its frumpiness on sex and gender issues because Cozzens works through the balances that make the law what it is in a world where justice is an uncertain struggle. Along the way, Cozzens gives us the most sophisticated understand-

ing we are likely to receive in fiction of how the balances in law do indeed reflect “the curves in justice” rather than a paradigmatic final balance.

The judges in the novel are invariably decent, usually wise, full of integrity, but troubled by minor human flaws (illness, a temper, nameless anxiety). The best of them, Head Judge Horace Irwin, epitomizes what judges should try to do: “with his great resources of knowledge and experience he assayed new explanations of the inexplicable; patiently, unwilling to despair, he argued the world around him back to some degree of reason.” Reminds another, “there are disappointments [in the law]; there are things that seem stupid, or not right. But they don’t matter much. It’s the stronghold of what reason men ever get around to using.”²⁹ Primary auditor of these views that are half sardonic and half optimistic, Abner Coates must learn to use them in tempering theory with practice, law with politics, and idealism with the need to get things done.

As part of these balances, Abner and his opposite number, defense counsel Harry Wurts, are evenly matched. They are the same age at thirty-one, from the same town, with the same exact schooling all of the way through law school. They differ, however, in Cozzens’s understanding of how the law defines their assigned roles as defense counsel and prosecutor. Harry is mercurial, funny, pugnacious, litigious, verbose, and devious. Abner is earnest, direct, sincere, somewhat plodding, and stolid. They symbolize the contrast in advocacy often expressed through the adage from antiquity of the Greek poet Archilochus: the fox knows many tricks, the hedgehog only one; a good one.³⁰ Abner must tell one very believable story well to convict. Harry tells many stories; he uses as many tricks and alternatives as he can to create a reasonable doubt in the story the Prosecution is trying to tell.³¹

This is exactly what happens. Harry Wurts (the name rhymes with worst) convinces a runaway jury to disobey the law by appealing to their resentment of those in authority (341–46). Again, however, the balances in the courtroom remain in place. The twelve jurors don’t want to send even two gangsters to the chair on a felony murder charge where neither of them pulled the trigger (411). They accept that second-degree murder—twenty years in prison!—will suffice in this case, a decision that bothers few readers. For those whom it might bother, one of the judges steps in to remind us that the balances are still in place. “A jury has its uses,” he says quietly. “. . . It’s like a cylinder head gasket . . . you have to have something that does give a little, something to seal the law to the facts.” “Justice is an inexact science. As a matter of fact, a judge is so greatly in a jury’s debt, he shouldn’t begrudge them the little things they help themselves to” (427).

Embedded within these procedural balances are two philosophical ones that explain the ultimate but very different triumph of balance in legal thought. Yes, justice takes place on a curve instead of a balance. The defendants in this case could just as easily have been sentenced to death but through good luck find themselves elsewhere on the curve with just prison time. Nevertheless, balance is the key to another kind of legitimacy.

On a dialectical level, Cozzens's sense of the balance comes through his title, *The Just and The Unjust*, based on the biblical passage from the Sermon on the Mount: "[God] maketh his sun to rise on the evil and on the good and sendeth rain on the just and on the unjust."³² In context, Harry Wurts worries after the fact that he may have stepped over the line in his closing statement to the jury and after the verdict argues defensively in the attorneys' room to get both the judge and district attorney in the case to accept what he has done. Harry's words lead Abner to speculate that the unjust always have "a great hankering for the approval of the just" (420). A balance exists against misconduct. There are rules, and even those who bend them seek the approval of those who enforce them.

On the internal level, Abner Coates has changed across the pages of *The Just and The Unjust*, and the explanation comes through his growth in professionalism. Tentatively but then decisively he has entered the seamier world of politics where compromises must be made as he decides to run for district attorney. Early on, he agonizes over what others think about him and makes awkward mistakes. Later on, he realizes that he must trust to the compass that professional ethics give him. He has learned it is enough when he knows he has acted ethically. Instead of worrying about what others think, he rests in the expertise that those who question him do not have.

The way Cozzens puts this proof of growth gives us the internal balance that every good professional must have. "It was not possible to be above the reasonable calumny of a suspicious man's suspicions," Abner decides as he is questioned by the local newspaperman. But how should he handle the problem? The answer comes once again from the remembered wisdom of his elders, the judges in the novel. They have told him "You know whether it's a bargain or not. You know what you take and what you give" (396).

Against the pernicious aspects of the curve in justice, the standard of what one will do must come from within as well as without. Not the least lesson imbibed by Abner Coates in this novel has been to see all sides and to then place himself in the sometimes small and precarious area in the middle where integrity lies. He has new skill in managing to steady himself within the incessant conflicts of the law. He has learned to trust the courage of his own convictions through the experience and professional knowledge that the law requires of him. Here, if anywhere, the balance meets the curve in justice.

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NOTES

¹ Richard A. Posner, "Law and Literature: A Relation Reargued," *Virginia Law Review*, 72 (November 1986), 1356-57.

² See Posner, *Law and Literature, A Misunderstood Relation* (Cambridge: Harvard University Press, 1988), 15, 353, 355. Judge Posner indicates here, among other things, "law as depicted in literature is often just a metaphor for something else that is the primary concern of author and reader," "the lawyer

has no greater comparative advantage in studying literature that is about law in a metaphoric sense than a military historian or tactician has in studying literature that is about war in the same sense," and "literature more directly 'about law' . . . [has] rather little to say about law that will strike a lawyer as relevant to his professional concerns." For one of the first of many attacks on Posner's positions, see David Ray Papke, "Problems with an Uninvited Guest: Richard A. Posner and the Law and Literature Movement (Review of *Land and Literature: A Misunderstood Relation*), *Boston University Law Review*, 69 (November 1989), 1067–1088.

³ I accept Aristotle's standard definition of metaphor, which connects two or more levels of implication in the same phraseology by giving the thing a name that connects to something else, "the transference of a name from the object to which it has a natural application . . . from genus to species or species to genus or species to species or by analogy." Metaphor connects different levels of reality to enhance vividness, complexity, or breadth of implication. See Leon Golden, trans. *Aristotle's Poetics: A Translation and Commentary for Students of Literature* (Englewood Cliffs, N.J.: Prentice-Hall, Inc., 1968), 37 [Ch. 21: 1457b]. For perhaps the best modern succinct debate on the subject of metaphor, see Alexander Preminger, ed., *Princeton Encyclopediate of Poetry and Poetics*, enlarged edition (Princeton: Princeton University Press, 1974), 490–95. From this source, I accept further that "the resonance of a metaphor [its power] is a function both of the setting (which may be extensive) and of the nature of the elements brought into relation." The setting of the courtroom is fixed; its borrowed significance from other levels of meaning will be the crucial elements in the analysis that follows.

⁴ Thick description asks about the rendered import of actions taken from close observation of the actions themselves. It recognizes the words that give explanation to actions taken. I borrow the concept from Clifford Geertz, "Thick Description: Toward an Interpretive Theory of Culture," *The Interpretation of Cultures* (New York: Basic Books, 1973), 4–30. Geertz argues that "it is through the flow of behavior—or more precisely social action—that cultural forms find articulation" (17). In the present context, variations in courtroom ritual give us "the underlying structures" that explain the meaning of behavior. Each novelist uses a thick description of courtroom ritual to tell us what justice has become there.

⁵ See Bernard J. Hibbitts, "Making Sense of Metaphors: Visuality, Aurality, and the Reconfiguration of American Legal Discourse," *Cardozo Law Review*, 16 (December 1994), 230–31.

⁶ As early as Achilles's shield in book eighteen of *The Iliad*, legal decisions are made within a carefully distinct "sacred circle" that gives legitimacy to decisions reached. Richmond Lattimore, ed., *The Iliad of Homer* (Chicago: University of Chicago Press, 1961), 388.

⁷ For the law as drama, see Milner S. Ball, "The Play's The Thing: An Unscientific Reflection on Courts under the Rubric of Theater," *Stanford Law Review* 28 (November 1975), 81ff; for the geometry of the law and its long history in legal discourse, see Boris Kozolchik, "On the State of Commercial Law at the End of the 20th Century," *Arizona Journal of International and Comparative Law* 8.1 (1991), 4–5; for the law as a grid, see Pierre Schlag, "The Aesthetics of American Law," *Harvard Law Review* 115 (February 2001), 1955–1066 ["The Aesthetic of the Grid"].

⁸ Dennis E. Curtis and Judith Resnik, "Images of Justice," *The Yale Law Journal* 96 (July 1987), 1727–72.

⁹ Robert A. Ferguson, "The Judicial Opinion as Literary Genre," *Yale Journal of Law & the Humanities* 2 (Winter 1990), 201–19.

¹⁰ Dahlia Lithwick, "Up Front," *New York Times Book Review* (February 14, 2010), 4.

¹¹ C. P. Snow, *The Affair* (1960; rpt. Cornwall: Stratus Books, 2000), 102. Subsequent references to the novel are given parenthetically in the text.

¹² William Mack, ed. *Cyclopedia of Law and Procedure* 16 (New York: The American Law Book Co.: 1901–1905), 134.

¹³ William Shakespeare, *The Merchant of Venice* (New York: Penguin Books, 1970), 93–94 [IV:I: 3–34].

- ¹⁴ Herman Melville, *Billy Budd, Sailor (An Inside Narrative)*, eds. Harrison Hayford and Merton M. Sealts, Jr. (Chicago: University of Chicago Press, 1962), 105–9 [Ch. 21].
- ¹⁵ Robert Traver, *Anatomy of a Murder* (New York: St. Martin's Press, 1958), 193–94, 197, 195–99, 88, 239, 218 [Chs. 19, 9, 24, 22].
- ¹⁶ *Anatomy of a Murder*, 431.
- ¹⁷ Fredson Bowers, ed., "An Eloquence of Grief," in *The Works of Stephen Crane*, 10 vols. (Charlottesville: University of Virginia Press, 1969–1975), 8: 382–84.
- ¹⁸ Scott Turow, *Presumed Innocent* (New York: Farrar Straus Giroux, 1987), 374–75, 384–89.
- ¹⁹ *Presumed Innocent*, 387–89, 410–11.
- ²⁰ Harper Lee, *To Kill A Mockingbird* (1960; rpt. New York: Warner books, 1982), 167 [Ch. 16].
- ²¹ *To Kill A Mockingbird*, 167–69 [Chs. 16, 17].
- ²² *To Kill A Mockingbird*, 195–99, 88 [Chs. 19, 9].
- ²³ *To Kill A Mockingbird*, 239, 218 [Chs. 24, 22].
- ²⁴ For a full discussion of legal images and their place in the ritualized conventions of the law, see Costas Douzinas and Lynda Nead, eds., *Law and the Image* (Chicago: University of Chicago Press, 1999).
- ²⁵ Bernard Schlink, *The Reader*, trans. Carol Brown Janeway (New York: Pantheon Books, 1997), 95.
- ²⁶ Posner, *Law and Literature, A Misunderstood Relation*, 79.
- ²⁷ For perhaps the most popular examples of the stock courtroom thriller where the defense lawyer does triumph in just such fashion, see Mark Twain, *The Tragedy of Pudd'nhead Wilson* (1894; rpt. New York: Oxford University Press, 1996); John Grisham, *A Time to Kill* (New York: Dell Publishing, 1989); and the movie *The Verdict* (1982), starring Paul Newman, Charlotte Rampling, Jack Warden, and James Mason.
- ²⁸ Zechariah Chafee, Jr., "Book Review," *Harvard Law Review* 56 (March 1943), 833.
- ²⁹ James Gould Cozzens, *The Just and The Unjust* (New York: Harcourt, Brace and Co., 1942), 262, 109. Subsequent references to the novel are given parenthetically in the text.
- ³⁰ Richmond Lattimore, ed., *Greek Lyrics*, 2nd ed. (Chicago: University of Chicago Press, 1960), 4.
- ³¹ For details, see Robert A. Ferguson, *The Trial in American Life* (Chicago: University of Chicago Press, 2007), 15, 39–47.
- ³² The Gospel According to Saint Matthew 5:45.

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