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Poetics of Injustice: The Case of Two Mockingbirds[*]

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Introduction

In November 1989, Jeffrey Deskovic[1] was convicted for the rape and murder of his classmate, Angela Correa, in Peekskill, NY. With his conviction justice was served and not served at the same time. Justice was served in the legal, procedural sense because Deskovic was convicted by a jury, which overcame reasonable doubt as to his guilt based on a compelling case made by a prosecutor. And yet, *substantive* justice was not achieved. Deskovic was innocent. At the time of the trial, DNA evidence, which was found in the victim, excluded him as the perpetrator but the prosecutor could explain its probative value away. Deskovic became a suspect because investigators had grown suspicious of him when he was late to school the day after Correa went missing. They also found it suspicious that he went to her wake three times and appeared overly distraught about her death, although he was not close friends with her. It took 16 years for him to be exonerated.

What the verdict of this and many other cases of wrongful convictions shows is the power of narratives, narratives that can be stronger than even the best evidence. These verdicts were based on fictitious narratives lacking any direct evidence incriminating the defendants. Prosecutors could convince juries by developing narratives of guilt based on conjectures, circumstantial evidence, and their imagination.

[*]For debates inspired by this article, please check the *Connotations* website at <http://www.connotations.de/debate/poetic-in-justice-and-the-law/>.

Understanding how imagination and a poetic sense of justice can influence the outcome of a case is one of the tasks this article tries to address. This is particularly relevant since most wrongful convictions have their causes in the early stages of an investigation when unreviewable imagining is possible and even necessary.

Thinking and writing about poetic justice from a legal perspective must appear as a paradoxical endeavour since poetic justice is *poetic* justice after all and thus refers to an aesthetic and ideal concept of justice that is not achievable in "real" life.[2] Poetic justice is not bound by procedural rules and as a concept works within an individual text within a specific time but not as a system[3] because the standards by which we determine good or evil character are not defined or generalized. And yet, poetic justice ultimately refers to a sense of justice preexisting in a reader or an audience. This preexisting (and not legally determined) sense of justice influences everyone, including those who investigate or adjudicate crimes. Many wrongful convictions show that an investigator's early belief of having identified the guilty person was crucial for everything that followed.

Since law cannot regulate intuition nor the way how an investigator assembles evidence, imagination and a feeling for what a just outcome would look like is a necessary element in each case. As Martha Nussbaum argues, the work of the prosecutor, the police officer, the judge, and the lawyer in general is to a great extent "literary art" that calls for "social and narrative imagination, a capacity to envision different versions of the future" (208).[4] It has been argued that, today, the law is more than ever a device that responds to perceived injustices and is hence to ideas of poetic justice.[5] In this regard, the literary and the legal discourse have much in common, which is why Nussbaum calls for a greater awareness of how literature addresses questions of justice. It would be important (especially for judges) to "think of people's lives in the novelist's way" (99), because the "full, precise, and judicious imagining of the human facts […] would possibly make at least some difference to the result" (116). Nussbaum looks primarily at the adjudication process and does not address in detail the poet-

ics that are at play in the earlier stages of a case. Those early poetics will be the focus of this paper.

In what follows, I will contrast two types of justice—poetic and procedural. I will argue that, within the legal, mainly procedural framework, questions of the poetic construction of a narrative[6] are often disregarded, although they are in use when a criminal case develops. This might lead to wrongful convictions. However, literary texts that appear to be poetically just show less awareness of the importance of procedure. Procedure provides many safeguards for the individual defendant and the justice system as a whole. An outcome that satisfies the sense of justice of any audience is not a goal for most justice systems. Even guilty defendants might be acquitted if illegal evidence was used in a trial or if a jury deemed a conviction unjust (this is called jury nullification). I do not attempt to resolve the tension between justice and procedure; what I would like to try and stress is that both disciplines—law and literature—can learn from each other. A judge with an awareness of how narratives are constructed poetically will be better equipped to safeguard against wrongful convictions and gain a better understanding of a case in general. Vice versa, literary critics who learn to recognize the value and legal importance of procedure will expand their understating of a text. So, I will not argue that either concept—poetic or procedural justice—is better or worse than the other but that we need an awareness of both poetic justice and the importance of procedure.

I will develop my argument in three steps. First, I will contrast poetic and legal ideas of justice. I will then discuss in more detail how legal and literary discourses differ, i.e. how justice is narrativized. Then I will demonstrate how poetic and procedural elements affect two exemplary cases, each a wrongful conviction—those of Jeffrey Deskovic and Tom Robinson in Harper Lee's *To Kill a Mockingbird*.

Justice in Poetics and in Law

Different genres contextualize justice differently. This section is meant to clarify ideas of justice as they pertain to the literary and legal genres. For that I will distinguish between substantive, procedural, and poetic justice. Substantive justice is based on the traditional distinction between substantive and procedural law, where substantive law defines rights and duties, such as crimes and punishments, in the criminal law. Substantive justice is achieved when facts and law are in congruence, when the *factually guilty* and blameworthy are convicted. The concept of procedural justice stresses the importance of fair treatment in the administration of justice because only "through the criminal process can the state's most serious sanctions […] be applied" (Feinman 305). Procedure is crucial in providing defendants with fair trials and for upholding constitutional rights. No one should face any penalty, stigma or serious loss by government unless he or she is provided with specific procedures, which involve, for example:

- a hearing by an impartial tribunal;
- a legally-trained, independent judicial officer;
- a right to representation;
- a right to confront witnesses against the detainee;
- a right to an assurance that the evidence presented by the government has been gathered in a properly supervised way;
- a right to present evidence on one's own behalf;
- a right to hear reasons from the tribunal when it reaches its decision, which are responsive to the evidence and arguments presented before it; and
- some right of appeal to a higher tribunal of a similar character. (Waldron 6)

Procedures are a criminal justice system's "philosophic core" (President's Commission 7) and primarily aim at the fair application of laws so that only the *legally guilty*,[7] those whose guilt has been established through proper proceedings, shall be punished, even if it means that a guilty person goes free.[8] It can also mean, however, that a substantively and factually innocent person can be found legally guilty if proce-

dure is followed. Niklas Luhmann sees the importance of procedural justice in the formal equality it provides through the application of rules. Justice is then based on the value of the (formally) equal treatment of individuals, on legal certainty and peace under the law (see Osterkamp 131).

Procedures alone are not sufficiently effective tools to provide justice in a broader sense because they do not cater to ideas of higher or natural justice, nor are they able to filter out intrinsic biases in those involved in a case. The idea underlying procedural justice is that a criminal justice system must constantly be demonstrating its legitimacy to the public it serves (see Gold). The more transparent the system with regard to the process that leads to a specific outcome, the easier it is for people to consider the outcome as fair (see Tyler 6). A decision is just because the system follows its own rules. Does that make the decision just in a poetic, natural, or in a substantive sense? Not necessarily. First, because the conviction of an innocent person is legally acceptable if procedures are followed. And, second, because law and procedure themselves can be at odds with ideas of "natural" (poetic) justice, they can be unjust or unfair but still legitimate. Under the Third Reich, for instance, many formally valid laws were enacted that violated (what we now call) human rights. In the aftermath of the Third Reich, German courts tried to resolve the conflict between written ("positive") and higher ("natural") law by stressing that written law becomes void when it *intolerably* violates ideas of justice. The basis for their decisions were the ideas of the legal scholar and politician Gustav Radbruch, who argued that positive law must be followed "even when its content is unjust and fails to benefit the people, unless the conflict between statute and justice reaches such an intolerable degree that the statute, as 'flawed law,' must yield to justice" (7). Most laws that exist and are applied (even unfairly) every day are not so severely "flawed" that they have to be considered void. The flaw has to be significant and of relevance for the whole legal system. This means that it is difficult in individual cases to argue the violation of higher law—or poetic ideas of justice. In that sense, a

criminal trial (and the process in general) is an example of "imperfect procedural justice," because "it seems impossible to design the legal rules so that they always lead to the correct result [and] there is no feasible procedure which is sure to lead to a correct outcome of a trial" (Rawls 85-86).

In the trial of Tom Robinson, the black field worker who was falsely accused of sexually assaulting Mayella Ewell, in Harper Lee's *To Kill a Mockingbird*, all of the procedural requirements were obeyed. Robinson had skilled counsel, had a right to confront witnesses, had the right to an appeal, and, for all we know, was judged by an (in the eyes of the law) impartial jury. Although the reader is aware that the jurors are racially prejudiced, their impartiality is not questioned because, after the jury selection, process jurors are simply assumed to be impartial. When it comes to the influence of race in a case like Tom Robinson's, an attorney would have to prove that the jury based a guilty verdict not on the facts of the case but on their racial prejudice. This has been and still is an almost impossible task. In the end, when fair procedure is afforded, "criminal process will be found lacking only where it offends some principle of justice so rooted in tradition and conscience as to be ranked as fundamental" (Medina v. California 445-46). This is such a high bar that procedural justice usually prevails over substantive justice.

What can be seen in Jeffrey Deskovic's and Tom Robinson's convictions is that procedure is inherently imperfect and limited. Through procedure lawyers try to provide for a balanced discourse, but as important as that is, procedure does not regulate how individual actors in the system construct their narratives. Procedure can address the criminal investigation and lay out the important rules of the game, but it cannot address the imagination of a detective, prosecutor, or juror and their sense of justice. The assembly of the narrative is *poetic* in the sense that it allows for imagination and a form of literariness in the reconstruction of a case. Imaginative freedom permits an investigator to look at all sides of a case and to be careful in presuming someone guilty too early. In wrongful conviction cases, however, the

opposite could be seen—law enforcement was driven by a specific narrative agenda, to tell the story that incriminates the suspect—regardless of actual guilt or innocence.

In his essay *The Tragedies of the Last Age Consider'd* (1678) Thomas Rymer coined the term "poetical justice."[9] Those of good character should be rewarded and the evil and vicious should be punished[10] so that in the end a form of homeostasis is achieved (see Höfler 192). In another representation of poetic justice, George Bernard Shaw (in a critique of Henrik Ibsen) wrote that the audience of a text or play wants

> to be excited, and upset, and made miserable, to have their flesh set creeping, to gloat and quake over scenes of misfortune, injustice, violence, and cruelty, with the discomfiture and punishment of somebody to make the ending "happy." The only sort of horror they dislike is the horror that they cannot fasten on some individual whom they can hate, dread, and finally torture after reveling in his crimes. […] Ibsen […] sends away his audience with their thirst for blood and revenge unsatisfied and their self-complacency deeply wounded. (Shaw 262-63)[11]

Poetic justice, it appears, is dependent on whatever an audience feels is just. Good and evil, right and wrong are subjective and based on the audience's sense of justice (*Rechtsgefühl*).[12] However, a layperson's view of justice is not derived from moral philosophy or a complex value system but rather from "intuitive notions" that people think are "shared by the community of moral individuals" (Robinson and Darley 1). What if the community's values are racist or otherwise biased? The jury's decision in *To Kill a Mockingbird* shows the pitfalls of *Rechtsgefühl*. Our sense of justice is influenced by individual or societal prejudices as they exist at that moment. What we think is good today might be frowned upon tomorrow.[13] It just feels right in that moment. Legal questions often have multiple dimensions and are therefore too complex to be subjected to *Rechtsgefühl*. The lack of a standardized system of right and wrong is one of the weaknesses of the literary discourse, but that weakness is also a strength since, in contrast with the legal discourse, it is more open and does not divide a case, person, or situation into specific simplified requirements.

Literary texts have the potential to explore a character or a question of justice more broadly. How the legal and literary discourses differ with regard to the narrativization of justice will be explored in the following section.

The Legal and the Literary Discourse

The legal or philosophical discourse seeks to formulate actual definitions of justice, whereas the literary is based on metaphors or situational context. Legal narratives are concerned with a (re)construction of a historically true image of reality. Law presents its narratives *as if* they represented reality and assumes that what underlies a verdict is *as if* it had happened, whereas literary fiction does not make the same claim.[14] What strikes many first semester law students is how exclusive law is. As Stanley Fish explains, "the law does not wish to be absorbed by, or declared subordinate to, some other—nonlegal—structure of concern" (141). Law desires that the components of its autonomous existence be self-declaring and not in need of piecing out by some supplementary, non-legal, external, discourse.[15] The legal discourse goes beyond terminology or procedure; it includes a complex set of values, procedures and ethics, which are ultimately defined by the legal system. To maintain its own environment, law depends on a high degree of self-referentiality. Subjecting what is genuinely legal to a literary discourse can even cause harsh reactions from legal professionals.[16]

In a similar vein as Fish, Niklas Luhmann has developed a theory on the self-referentiality of the legal discourse. According to Luhmann, conflicts between a victim and an offender are institutionalized by procedure and the system. Outside influences are shielded because "[l]ike all systems, court procedures constitute themselves by differentiation, by strengthening borders to their environment" (59). In Luhmann's eyes, agents like judges or prosecutors act on behalf of the system and not as individuals that try to understand the nature of the act or the mind and heart of the offender—and often the victim. This

is why "in the criminal trial, an all too friendly tone can lead to bitter disappointment" and dissonances when a judge, who appears to be understanding, makes a decision that does not reflect understanding. The way any system works is that we assume a decision has to be made: "it must be considered as something that already exists but is still unknown" (Luhmann 109; author's translation).

In contrast to literary texts, in law, questions of guilt and justice are often reduced and simplified to procedural questions. A person's blameworthiness is dependent on a set number of variables with little room for individualization. Despite their differences, both law and literature share certain ideas about justice: only the guilty should be punished, laws should be applied uniformly and equally, procedures should be fair, etc. A deeper understanding of justice—poetic or legal—is dependent on the discourse each concept is part of. According to Dorrit Cohn, the main difference between fiction and other genres is that a work of fiction is non-referential in the sense that it creates the world "to which it refers by referring to it" (13). Fiction does not have a reference to historical reality. That must not be understood as if fiction never refers to the real world outside the text; most literary texts do, but they do not *need* to (see Cohn 15). Referential narratives, such as those which are historical or legal, are subject to judgments of truth and falsehood (15), fictitious texts are immune to that: "The producer of a historical text affirms that the events entextualized did indeed occur before entextualization" (15). That is of particular relevance in the legal context where a police officer or prosecutor, for instance, affirms that the events as entextualized in his or her narrative actually did occur or were very likely to have occurred. During the narrative reconstruction of a case, imagination plays a role when pieces of evidence are connected, when motives are constructed, or when the overall meaning of a specific action is developed. While a scientist or historian is accountable for when he or she fills gaps in a story with assumptions or a hypothesis, the prosecutor is not responsible to the same extent.[17] A case is presented as if there is no other alternative, at least not a likely one. A similar kind of imagi-

nation is needed for, as Cohn calls it, the "inner lives" of characters (16). A reader of a novel written in the third person is aware that the narrator knows "what cannot be known in the real world" (Cohn 16). In the legal discourse, "inner lives" are likewise crucial for the determination of the degree of intent the defendant had. Prosecutors can only speculate about the state of mind of a defendant but have to be assertive when they address the jury. What this shows is that the line between literary and (in the broadest sense) historical representations of (justice) narratives is blurry. The process of the narrative reconstruction of a case is not scientific; it is used by the attorneys to create meaning. Facts, like evidence, do not tell a story on their own, they are just part of, to use Hayden White's historical methodology, a chronicle, an unsorted collection of events, which is then arranged into "a hierarchy of significance by assigning events different functions as story elements in such a way as to disclose the formal coherence of a whole set of events considered as a comprehensible process with a discernible beginning, middle and end" (7). The last step is then to imbue the story with meaning and explain what the events actually signify. Through "emplotment," stories are compared to archetypical or stereotypical stories, such as "romance," "tragedy" and others (White, *Metahistory* 7). This is the point when legal and literary parts overlap and when elements of the case might be, as Dershowitz calls it, "dramatized," which means that (in retrospect) these elements did not bear any relevance or vice versa: "[F]act finders employ the canons of literature and interpretation in the search for truth, generally without any conscious awareness that they are doing so" (Dershowitz 102).

Another difference between the literary and legal discourse is that the latter reduces the complexity of life to elements that are either given or not given. There is little in between. The vagueness and the many facets of the human condition are difficult to account for in law since vagueness is hard to codify or adjudicate.

> [Legal language] operates by reducing what can be said about experience to a series of questions cast in terms of legal conclusions ("legal issues") which

> must be answered simply "yes" or "no"; it maintains a false pretense that it can be used as a language of description or naming, when in fact it calls for a process of complex judgment, to which it seems to give no directions whatever. (White, *Legal Imagination* 112-13)

The question of "Who is this man?" (White, *Legal Imagination* 111) is rarely asked in legal discourse, which in its pursuit of uniformity and clarity "trivializ[es] the human experience" (White, "What's an Opinion For?" 1369). When a judge has to decide whether someone committed a murder, he or she does not have to ponder the philosophical, linguistic or literary connotations of the term "murder." The law defines it, and it also describes what elements need to be proven in order for a specific action to be considered murder or any other crime. In the American criminal justice system, a prosecutor has to prove *actus reus* (human conduct), *mens rea* (the guilty mind, i.e. intent or negligence), concurrence (*actus reus* and *mens rea* have to concur at the same time), causation, and harm. For some crimes (so-called strict liability crimes) *mens rea* does not need to be proven, which means that, for example, in a case of statutory rape, it does not matter if the defendant thought the victim was of age, if they were in love, dating, or if the victim expressed "consent." What might be a complex scenario of intentions, motives, and circumstances is reduced to a few elements which preclude considerations that are relevant outside of the law. For example, whether a pharmacist is killed because he insulted the killer's mother or because the killer does not have the money to buy medication for his very sick wife does not matter for the determination of the crime itself. It might matter during the sentencing process, but unless substantive law explicitly states that certain motives are aggravating or mitigating factors, they do not play a role. Under the law a judge would not even be able to increase complexity and, for example, use the vagueness or incompleteness of a law as recourse: a judge

> cannot be released from exercising his function as a judge, claiming either that the facts of the case are not sufficiently clear to him (factual doubt), or that the norm to be applied in the specific case cannot be determined (judicial doubt), or even that there exists no fixed norm for the determination of

> the case (lacuna in the law). Thus the Code Civil des Français (or Code Napoléon) [The French civil code from 1804; RG] lays down explicitly: "A judge who refuses to decide a case, on the pretext that the law is silent, obscure or insufficient, may be prosecuted as being guilty of denial of justice." (Rabello 1)

This shows that law can be (and perhaps must be) very rigid and, hence, a judge must disregard elements which might be important to the individuals involved but are not part of the discourse. For as long as a specific situation that reduces someone's accountability is not regulated, that situation cannot be assimilated into the discourse.[18] There are reasons why judicial discretion is limited, and the idea expressed in the Code Napoléon exemplifies that law has a preference for procedural justice, achieving fairness in and through procedure (see Friedrichs 76) and, for the purpose of making cases decidable, might be willing to sacrifice truth and substantive justice for it.

Literary texts are less concerned (if at all) with questions of the correct procedure because procedure might be one of the reasons for inequity and injustice (see Corcos 23). One of the most prominent examples is Shakespeare's play *The Merchant of Venice*. Shylock, a rich Jewish moneylender, agrees to lend Antonio three thousand ducats for three months on the condition that, should Antonio default on the loan, Shylock may cut off a pound of Antonio's flesh. Antonio cannot pay Shylock in time, and the case goes to court. Here, Shakespeare does not concern himself with technical questions of the fundamental distinction between criminal and civil procedure (the trial started out as civil and ended with consequences that are usually the result of a criminal verdict).[19] Through Portia, a legal scholar taking the position of the judge, the play seems to openly criticize a positivist, formalist approach towards questions of justice.[20]

Because law has to reduce the complexity of the human condition to binary requirements, it is designed to make specific assumptions that cannot be questioned.[21] The early twentieth-century philosopher Hans Vaihinger described the nature of jurisprudence as being rooted in creating artificial relations:

> Jurisprudence deals with the problem of bringing a single case under some law in order to apply its theory of rewards and punishment. In both instances a relation which cannot be realized is represented as actually realized. Thus the curved line is regarded as straight, the adopted son as the real son. Actually both are absolutely impossible. A curved line is never straight, an adopted son never a real son. To give other examples: […] in jurisprudence the defendant who does not put in an appearance is regarded as if he admitted the charges. (Vaihinger 50-51)

And, so one might continue, an innocent defendant who is tried through proper proceedings and convicted by a proper fact-finder (jury or judge) is regarded as being guilty under the law. Jurisprudence is not bound by mathematical logic and therefore has "an easier task in dealing with its fictions than has mathematics, for its cases are covered by arbitrary ordinances and a transference is easily made. We have only to think of the case *as if it were so*" (Vaihinger 51). That law does not follow a mathematical logic opens the door for poetic considerations. There is no logic that helps law enforcement link a dead body to a suspect or a jury calculate guilt. Much of these processes is guided by intuition, comparisons to internalized stereotypes, or simply hunches. The feeling that is important for recognizing what is poetically just in a literary text might also be responsible for focusing on a specific suspect or finding someone guilty or not guilty. In the following, I will show how ideas of poetic justice affected the case of Jeff Deskovic and then expand on procedural justice in *To Kill a Mockingbird*.

Poetic and Legal Justice in Two Cases:
1. The Wrongful Conviction of Jeffrey Deskovic

Jeffrey Deskovic's case provides insights into how poetical thinking may contribute to a wrongful conviction. It shows that, first, even in the age of DNA, narratives and an underlying idea of poetic justice can be stronger than scientific, exculpatory evidence. Second, the main narrators of a criminal case follow poetic (literary, imaginative) strategies in how they conduct their investigation.

Jeffrey Deskovic became a suspect for the rape and murder of his classmate when police found that he was allegedly absent from school at the time of the victim's estimated death, that he had attended all three wakes for Angela and had seemed distraught and had been crying over her death. They also found Deskovic's own "investigation" into the case and his desire to help the police problematic. Deskovic was interrogated and lied at (which is acceptable under American law) before he succumbed to the pressure and confessed to a crime he did not commit. When the DNA analysis of the semen that was found inside the victim's body came back, it excluded Deskovic, but the prosecution continued regardless. During the trial, the prosecutor suggested that the semen might have originated from the victim's boyfriend (that nobody knew of). The jury convicted Deskovic of second-degree murder and first-degree rape ("Jeff Deskovic"). Legal guilt was thus established. He was sentenced to 15 years to life in prison in 1991. In January 2006, the Innocence Project took on his case and re-examined the DNA, which was then linked to Steven Cunningham, a convicted murderer, who has since pleaded guilty to also murdering Angela Correa. Deskovic's conviction was overturned in 2006 and he was released from prison after serving almost 16 years.

This case presents many similarities between the poetics of law and fiction. In actual cases, a story has to be reconstructed almost in the way a historian would reconstruct history. That process is not objective; it is influenced by individuals who, especially in the early stages of an investigation, think poetically, in the dimension of stories and justice. While they acknowledge procedural rules and the constitutional rights of a defendant, there is also the desire to make an early arrest of the right person—without questioning how "right" that person is. The adversarial process allows for little review of how a story is reconstructed, and there is no audience that leaves the courtroom "unsatisfied and their self-complacency deeply wounded." The audience will not know until years later. The reconstruction of the story is in the hands of the adversaries (prosecutor and defense), and a jury then creates its own narrative based on what it hears from these

adversaries.[22] Comparable to ancient drama with the courtroom being similar to the classical Athenian theater, the American trial rests on the assumption that factual "[t]ruth is best discovered by powerful statements on both sides of the question" (United States v. Cronic 655). Lawyers in adversarial systems are trained to keep the story dimension in mind, and are often more committed to winning the contest than discovering the truth. At this point, the demands of truth and demands of story can collide (see Kaiser 164). Prosecutors look for a narrative that will convince the untrained jurors.[23] The American Prosecutors Research Institute stresses how closely justice and conviction are related: "Most jurors want to reach a fair and just decision. Your job is to help them achieve that goal by finding the defendant guilty" (Gilbert 7). Factual "truth" and accuracy are not prerogatives of adversarial storytelling, at least not to the same degree as they are in more judge-centered (so called inquisitorial) systems (see Grunewald 372). The narrative a jury hears is the product of a reconstruction process that begins with the discovery of the crime. Since police and prosecutors have a specific agenda, they might (consciously and often unconsciously) look for evidence that fits their suspicion and their understanding of the events. This is where they depart from the work of a true historian, at least in the Aristotelian sense, because they need to be creative in order to imagine a potential explanation for the crime.[24] Poetics are at play in the imagination of the case as well as in its construction. Even random and unrelated events can become part of a narrative that in the end incriminates a suspect. In Deskovic's case police did not have any direct evidence. They were looking for potential suspects, and as the prosecutor explains in his opening statements,

> In any case, in a case like this, anyone and everyone becomes a possible suspect. You name it, a suspect. Family members, everyone is interviewed, young and old, and the students. (Tr. 31)

With the need to bring a suspect (i.e. any suspect) to trial, investigators become suspicious of everything. During the trial, investigators stated that they had grown suspicious of Deskovic's behavior. Despite

the negative DNA test, the police agents remained suspicious, and when Deskovic was sent to the polygraph examination, the agents who conducted the examination were instructed to "get the confession" (Morrison 12; Tr. 630)—which they did.

When the DNA results came back and police learned that it did not match Deskovic's, they contended that it was likely from a prior consensual sexual partner of the victim's (see Morrison 15; Tr. 1089). The story the State tried to prove was based on the assumption that Deskovic raped and murdered the victim in a jealous rage because she was romantically interested in another person, Freddie Claxton, a classmate, who was dating another woman (see Morrison 16; Tr. 1088). This alleged motive was based exclusively on a note that began with "Dear Freddie" found at the crime scene and Deskovic's statement to the police that he had found the victim attractive. There was no evidence that he had any romantic feelings for the victim, or had ever expressed jealousy of her relationship with Claxton or any other young man (see Tr. 1126 where in his closing argument the prosecutor only asks but does not answer, "Is there a hint of jealousy here?"). Surprisingly, Claxton was never ordered to give a DNA sample.

One crucial point in the development of the narrative of the "jealous rage" was during the interrogation of a detective by the prosecutor. The interrogation was about a note written by the victim, stating in part, "Dear Freddie, those eyes, they kill me." It was found under the victim's body. Later police determined that the intended recipient was Freddie Claxton. But how is that note related to Deskovic, and how could it possibly incriminate him?

The note was brought up during the cross examination of one of the detectives. The prosecutor asked: "[W]hat, if anything, can you tell us about Freddie Claxton's eyes?" (Tr. 903 [499]). The defense attorney objected, and the judge summoned a side bar, a *sotto voce* discussion out of the hearing of the jury between the trial judge and the competing trial lawyers in which the conflicting claims of narrative and legal procedure were argued and adjudicated (see Malcolm 106).[25] After a brief conversation about how special Freddie Claxton's eyes were, the

prosecutor stated, "the arguable relationship of who this particular victim had a crush on was Freddie Claxton, and perhaps she had known him before and perhaps done certain things before" (Tr. 905 [501]). The defense pointed to the speculative nature of that claim but the judge now understood and explained, "[W]hat I'm beginning to see now, he's trying to tie in to Claxton and jealousy" (Tr. 906 [502]). This was the moment when the note was emplotted, when archetypical meaning was created and a potential motive developed.[26] With that motive in place, even the DNA evidence found in the victim could be explained away.

The detectives in Deskovic's case convinced themselves that they had found the right person, that they did the right thing, and that they would punish vice. In order to achieve substantive justice, they created facts (coercing a confession) and ignored pieces that contradicted their theory (DNA evidence). Out of their desire to serve justice, random events (like being late for school, being overly distraught, etc.) were given significant meaning. Deskovic became a character in their plot, and the jury was now empowered "to choose the most satisfying resolution to the tale" (Kaiser 166). This most satisfying resolution is a poetic but not necessarily a truthful one. Put very generally, rules of criminal procedure are meant to provide a fair investigation and trial to every suspect, but (at least in adversarial systems) they promote substantive truth to a lesser extent. I do not argue that every wrongful conviction is the result of a biased and partial investigation or that every police officer follows his or her own desire for justice regardless of the evidence. However, many wrongful convictions have arisen from one-sided police investigations that result in coerced or false confessions and unreliable identification evidence, suppression of exculpatory evidence, and an inadequate screening of the decision to charge (see Griffin 1245). Deskovic's case exemplifies many of these elements and also the lack of awareness for the poetic construction of justice on all levels. Criminal procedure with all its protections against coercion and all the rights for those who are subjected to a trial does not effectively safeguard how the

state crafts its narrative. That does not render procedure useless, it simply shows its limitations. The next section addresses the role of procedure in a literary text. As was noted earlier, literary texts do not always concern themselves with questions of procedure. Although procedure can fail and disregard how narratives are created, it is crucial to the fair application of law and promotes a specific type of justice.

2. The Wrongful Conviction of Tom Robinson

One of the best known texts that centers on an innocent defendant is Harper Lee's *To Kill a Mockingbird*. The novel lends itself to discussing questions of procedural and poetic justice mainly through the protagonist, Atticus Finch. Finch has become the epitome of the ethical lawyer in America's perception, and he might even be the most famous lawyer in literature (see Knake 44). What makes Finch so outstanding is that he applies his belief in the rule of law and due process not only to his work but also his private life. Despite his strong conviction in law and procedure, he abandons due process at the end of the novel, and it is the purpose of this section to contrast his sense of procedural and poetic justice.

Central to the understanding of the novel are the allegations against Tom Robinson and his trial. Tom Robinson, the black field worker, is falsely accused of having raped Mayella Ewell, a young, white woman living with her abusive father, Bob Ewell, and her siblings. Despite only circumstantial evidence, Mayella's accusations—the accusation of a white woman against a black defendant in the racist Jim Crow era—are sufficient for an indictment and a conviction to death by an all-white jury. When Robinson attempts to escape from prison he is shot dead. At the end of the novel, Mayella's father tries to kill Finch's children but the reclusive Boo Radley comes to help and kills the attacker in self-defense.

Although very skilled, Atticus Finch, who is the assigned counsel for Tom Robinson, cannot sway the jury. Early in the novel, Finch

expresses that he never actually thought he could win the case. Racism was so prevalent in his community that he could not expect the jurors to acquit the black defendant. When Tom helped Mayella Ewell one particular afternoon, and when she made advances towards him, Tom got into a "predicament" (Lee 260): "[Tom] would not have dared strike a white woman under any circumstances and expect to live long, so he took the first opportunity to run—a sure sign of guilt" (260-61).

This is why "in the secret courts of men's hearts Atticus had no case. Tom was a dead man the minute Mayella Ewell opened her mouth and screamed" (323). And yet, Finch takes the case because of his conviction that it would be right to "see it through no matter what" (149). Finch's arguments in court unravel how much people in the community are prejudiced against blacks and how that racism thwarts the workings of justice—procedure is pointless if the narrative is fixed, but Finch's belief in the court system is stronger than his conviction that he will lose. All of Finch's arguments, including the ones that illustrate how difficult, if not impossible, it would have been for Tom to cause Mayella's bruises, do not convince the jury. Even when he reminds the jurors of their role as the "great levelers," the ones who make the poorest equal to the richest, they would not overcome their prejudice. When the guilty verdict is delivered Finch takes some consolation in the fact that it took longer for the jury to deliberate than he expected. In that alone, that maybe one juror was not as biased as the rest, he is able to see a "shadow of a beginning" (297). Finch thought he had a "good chance" (293) to win on an appeal, where he might be able to argue that the weight of the evidence does not support the verdict. However, arguing that the jury was racially biased (in the way it was constituted and how bias might have guided its decision) has up to this day been almost as difficult to prove.[27] Tom Robinson's death is eventually avenged when Bob Ewell is killed by Boo Radley in the defense of Jem and Scout. Through that death, poetic justice is achieved.[28] In the words of Sheriff Tate, "There's a black boy dead for no reason, and the man responsible for it's [sic]

dead" (Lee 369). Although Finch sees both Bob and Mayella Ewell responsible for the trial and in the end Tom's death,[29] it troubles Finch to "let the dead bury the dead" (369), to let things stand as they are. Others, like Gladwell (*The Courthouse Ring*), have criticized Finch for not "brimming with rage" after the guilty verdict and being more concerned about accommodation than reform, but Finch is not a reformer or rebel; he is a proceduralist, someone who does his best within the existing legal framework by using available instruments and by trying to teach these values.[30] He accepts the law and does not even consider initiating a legal reform that would give judges the power of fixing the penalty in capital cases.[31] Finch does not "have any quarrel with the rape statute […] but he did have deep misgivings when the state asked for and the jury gave a death penalty on purely circumstantial evidence" (Lee 294). More generally, *To Kill a Mockingbird* is not an illustration of laws that preserve the white power structure in the Deep South[32]; to me, Finch stands out because he is concerned about procedural fairness and procedural justice even in times of racial unfairness. His conviction about procedure goes so far as to even (potentially) put his children on trial. Finch initially thinks his son Jem is responsible for Bob Ewell's death so he wants to see his son in court rather than letting him, as the sheriff suggests, get away uncharged. Finch does not "want to start anything like that" (Lee 365), meaning "hushing this up" (365). He is concerned about his children's future and wants the case to be out in the open, in the community he lives in. He also believes that his children might lose their trust in him and the way he taught them:

> I don't want my boy starting out with something like this over his head. Best way to clear the air is to have it all out in the open. [...] I don't want him growing up with a whisper about him, I don't want anybody saying, 'Jem Finch… his daddy paid a mint to get him out of that.' Sooner we get this over with the better. (366)

Throughout the book Finch communicates the importance of the rule of law—both at home and in town.[33] One of the most prominent examples is a conversation between Finch and Scout, where he ex-

plains that "[y]ou never really understand a person until you consider things from his point of view […] until you climb into his skin and walk around in it" (Lee 39). That idea (*audiatur et altera pars* / "listen to the other side as well") is crucial in legal procedure and has been followed since antiquity to promote impartiality. The adversarial system incorporates that concept through cross-examination and zealous advocacy on each side. In practice, though, it is excessive adversarialness, overzealous representation that turns a trial into a contest and not a forum for understanding. Finch strongly believes in the court system and its leveling function: "In our courts all men are created equal" (Lee 274). Substantive justice is dispersed in courts, because courts act in disregard of class and race and gender. He realizes that "a court is no better than each [juror] sitting before me on this jury. A court is only as sound as its jury, and a jury is only as sound as the men who make it up." (274). In the end, equal justice is safeguarded institutionally by the court and personally by the people who make it up. But Finch is not an idealist and is aware that people in Maycomb, including the jurors, are racist.[34] Change, in his eyes, can only happen through changed people, and he represents that possibility of change.[35]

However, despite Finch's strong belief in due process, he sacrifices his values and his belief at least partly by not insisting on having Boo Radley tried. Bob Ewell does not carry much sympathy, and his death is portrayed as just. But who represents his side, who tries to understand him, who walks in his skin? Should it not be the "great levelers" who make a decision about whether his death was justified? The risks for Boo Radley to be unfairly judged and convicted would have been comparatively low. Regardless, Sheriff Tate is adamant about not charging Boo Radley. He signals that, if Finch does not see it his way, "there's not much you can do about it. If you wanta try, I'll call you a liar to your face" (369). Tate stresses that it would be just to not charge Boo Radley, that he "never heard tell that it's against the law for a citizen to do his utmost to prevent a crime from being committed" (369). But even such a case should be brought before court. Malcolm

Gladwell's sarcastic comment that Finch and Tate obstruct justice "in the name of saving their beloved neighbour the burden of angel-food cake" has a point: while poetic justice might have been achieved, procedural, legal justice is harmed. Although Finch does not explicitly and verbally endorse a "legally subversive conspiracy" (Markey 22) between him and Tate—Tate leaves without a word of agreement or disagreement from Finch— Finch does in fact accept Tate's decision.[36] This becomes clear again in the following conversation with his daughter. He asks her what appears as a rhetorical question, "Scout," he said, "Mr. Ewell fell on his knife. Can you possibly understand?" (Lee 370). When Scout answers that she in fact does understand and that Tate was right, he is surprised and asks what she means. Finch's fear that his children would catch his inconsistency is alleviated by Scout's response in which she brings back the mockingbird paradigm. Tate is right because bringing the case into the open would be "sort of like shootin' a mockingbird, wouldn't it?" (370). Positive law would require Boo Radley to stand trial for the killing of Bob Ewell. Finch choses pragmatism over procedural justice.[37] To argue that "[i]f real justice is thwarted by following the law, then the law has failed, and reason mandates that the law be ignored" (Markey 179) relativizes Finch's upright nature and his belief in law and due process. Taking the law or its enforcement into his own hands would be (and is in fact) out of Finch's character.

Conclusion

All convictions begin with the imagination of a probable story of guilt. An initial suspicion is turned into a narrative of incrimination, which is then presented in court and finally turned into a narrative of guilt by the fact finder (the judge or jury). The imaginative parts of the narratives are difficult to review later on because the law does not provide narratological safety valves for a potentially misguided or erroneous narrative. Questions of the correct procedure are reviewable but only occasionally does a judge question the integrity of a

narrative. Therefore, increased poetic and narrative awareness among police officers, prosecutors, judges, and jurors can be a first step to a better understanding of how we incriminate individuals and find them guilty or not.

This paper attempted to create that awareness and contrast two types of justice, poetic and procedural. The former is more prevalent in literary texts; the latter dominates legal discourse. The legal discourse, with its aim to provide a voice to every participant, to ensure that the process is fair, that individual rights are observed and that everyone plays by the rules, lacks awareness of poetic elements on (at least) two levels. On one level, law, with its tendency to reduce the complexity of life and people to subsumable elements, misses what might be behind a crime or the person committing it. The literary imagination, however, is an "essential ingredient of an ethical stance that asks us to concern ourselves with the good of other people whose lives are distant from our own" (Nussbaum xv). Therefore, thinking poetically is necessary to be "fully rational," so "judges must […] be capable of fancy and sympathy. They must educate not only their technical capacities but also their capacity for humanity" (Nussbaum 121). At the same time, poetic thinking might corrupt justice. If an officer has an understanding of a poetically just outcome of a case and thinks he or she has the right person and the imagination to tell that story, then justice is not served. I used the case of Jeff Deskovic as an example in which the police crafted a story of a "jealous rage" based on only circumstantial evidence in order to incriminate an innocent person. The legal discourse allows that kind of imagination, and as a matter of fact, law needs imagination. And yet, there is no instance that would review whether this particular imagination was the only possible. Police and prosecutors follow narrative agendas which guide their imagination and influence their understanding of justice. Admittedly, wrongful convictions are the exceptions to the rule that only the guilty will be convicted. Most cases (as far as we know) are based on a solid factual foundation. That does not mean these cases are not imagined to some degree, it just means there is more direct

evidence. Many factors influence why an innocent person may be falsely convicted, and most of them have been discussed extensively in the legal literature. My goal in this article was to look at the role of poetic justice as it can influence participants in the legal discourse.

Literary texts are not bound by the strict rules of procedure and do not necessarily need to adhere to questions of venue, the exclusionary rule, jurisdiction, etc. A reader is satisfied for as long as the result of a trial or process feels just and homeostasis is achieved. Literature can confront us with aspects of the legal world that are usually not addressed in the legal discourse. I used Atticus Finch as an example of someone believing that procedure is crucial for justice. And yet, Finch finally gives in to an idea of poetic justice, something exceptional to his character as a lawyer. Our *Rechtsgefühl* is satisfied when we see that Boo Radley does not have to stand trial, but from a legal perspective procedural justice suffers because things that, according to Finch, ought to be out in the open are resolved by individuals and their sense of justice.

I have criticized procedure for not being aware enough of poetic elements that can have a crucial impact on a case, and I have also criticized literary texts for missing aspects of procedural justice. The idea behind this seeming inconsistency was to raise awareness of the procedural dimension of a case, even if it is a literary one, and also to stress the importance of a poetic awareness in lawyers and those who work in the legal field. Within the legal profession there is a certain degree of discomfort with resting arguments and decisions on points of rhetoric or poetics (see Brooks 9). It would be a mistake, however, to disregard the literariness of legal cases. Poetic strategies are at play in both disciplines, and nothing will further law's understanding of justice more than this kind of a mutual discourse.

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NOTES

[1]In this article, I will occasionally refer to transcripts of Deskovic's Trial (The People of the State of New York v. Jeffrey Deskovic; quoted as "Tr. page number"; referring to the numbering inserted by the Innocence Project). The transcript is made available through the Innocence Project. The opinions, findings, and conclusions or recommendations expressed in this paper are those of the author and do not reflect the views of the Innocence Project or of the law firm Winston and Strawn, who provided case documentation.

[2]This is also why a clear distinction between different meanings of "poetic" is difficult. In *poetic justice* it alludes to an idealized concept of justice whereas *poetic* generally understood refers to an exercise of imagination or intuition. What will be pointed out with more clarity below is that the construction of crime narratives is imaginative in nature and that this imagination is or can be guided by a sense of idealized justice. The concept of imagination itself has received "surprisingly scant attention in philosophical discussions" (Kind and Kung 1). It would go beyond the scope of this article to map out the various facets of imagination in different disciplines. Imagination as a concept will be used in a more general way referring to the human capacity to form new ideas, images, and stories without direct input from the senses.

[3]In his overview, Zach (28) summarizes the various facets of poetic justice and notes that most definitions stress the rewards-punishment paradigm; others, however, focus on the importance of punishments.

[4]See also Bruner: "[C]ases are decided not only on their legal merits but on the artfulness of an attorney's narrative. So if literary fiction treats the familiar with reverence in order to achieve verisimilitude, law stories need to honor the devices of great fiction if they are to get their full measure from judge and jury" (13).

[5]Bernhard Schlink speaks of the permeation of ideas of justice into society and societal processes. He uses the term "Vergerechtlichung" (literally "justization") to explain that society has developed a strong expectation of justice, and that the law is the instrument through which these expectations ought to be realized (11).

[6]I will work with the common distinction between events and their representation. A narrative is the representation of events, consisting of story and narrative discourse. A story is an event or sequence of events (the action); and narrative discourse is those events as represented (Abbott 19). A story is always mediated and not seen directly, so that what is called the story is something we construct; we put it together from what we read or see, often by inference (Abbott 20). This distinction is of particular relevance in the legal context. A crime or any legally relevant event does not present itself on its own, it must always be mediated and reconstructed. That process is complex and vulnerable to all kinds of interference like biases or presumptions.

[7]"[A]rriving at the truth is a fundamental goal of our legal system" (United States v. Havens 626) but that goal is not as protected as procedural rights.

[8]Mistakes during procedure (the wrong venue, the wrong judge, a missing warrant for the only piece of evidence that proves the guilt of the defendant, etc.) can lead to an acquittal because the defendant cannot be found legally guilty. This might be one of the reasons why to most laypersons procedural aspects of the legal system lead to inequity and injustice (see Corcos 548). "Ever since the 1960s, the right has argued that criminal procedure frees too many of the guilty" (Stuntz 5).

[9]The concept of poetic justice itself is at least as old as Aristotle; see Curzer 245; and Zirker.

[10]Comedy is seen as the genre that best expresses this ideal by "depicting the rectification of error as a triumph of love over injustice" (Kertzer 51); see also Fishelov and Niederhoff. But, as Höfler (191) argues, themes of poetic justice permeate all genres.

[11]See Zach (385), who provides more context for Shaw's criticism of the "old conventions of right and wrong" under the poetic justice paradigm.

[12]Höfler (199) considers a person's sense of justice (*Rechtsgefühl*) as a "Wertorgan" (an organ that enables us to recognize values that are hidden from the rational discourse), which contains implicit knowledge of what is right and wrong.

[13]See how, for example, Richard Posner changed his opinion on Portia in Shakespeare's *The Merchant of Venice*. In the second edition of his *Law and Literature*, Posner describes Portia as personifying "the spirit of equity." In the third edition, he becomes critical of the "people's justice" (168), and describes her as a trickster and being "unscrupulous" (149). He concedes that his former assessment "as a comment on Portia's character […] is not correct" (149).

[14]"[N]ovels present us with a semblance or illusion (Schein) of reality that we don't take in a conditional sense, but what we accept as a reality so long as we remain absorbed in it"; Käte Hamburger in Cohn (6).

[15]See Fish 141. Brooks explains that the "legal discourse wishes to see itself as complete, autonomous, and hermetic." Expertise foreign to itself has to "pass through the narrow gate watched over by the judge—at trial, and then at the appellate level—who is supposed to know the judicial from the extra-judicial" (20).

[16]A current example is Thomas Fischer's biting criticism of Ferdinand von Schirach's play "Terror." Fischer, a German Federal Judge, attests von Schirach incompetence and legal ignorance and critizes how the play asks the audience to participate in the verdict. That is a "insufferable manipulation of the public," which is not equipped to judge the complex legal and ethical questions of the case.

[17]Rules of professional conduct require that a lawyer may never knowingly make a false statement of fact to a tribunal or third party (Kaiser 165). At the same time, however, in wrongful conviction cases law enforcement and prosecutors repeatedly lie or mislead jurors about their observations, make misleading argu-

ments, allow untruthful witnesses to testify, etc. What, if not the desire to construct a narrative of guilt, would be the motivation for that?

[18]An example is the battered woman defense. Women who killed their spouses after a long period of having been abused could not claim self-defense before courts developed a specific defense.

[19]According to Posner, from a procedural and legal perspective the play appears as "absurd" (142) and lacking realism (145). That criticism does not diminish the literary qualities of the play; it simply illustrates how differently justice can be contextualized.

[20]Contrary to how the term "justice" is commonly used, in *The Merchant of Venice* it represents positive law more than ideals of equity and fairness. For instance, Shylock asks the Duke grant him "justice"—by which he means the letter of the contract including the promise of the pound of flesh. In her "quality of mercy" speech, Portia suggests that Shylock's plea for justice must be "seasoned" with mercy, meaning that law must be considered within a frame of equity. When Shylock refuses that demand, Portia explains, "For, as thou urgest justice, be assured / Thou shalt have justice more than thou desir'st" (4.1.314-315). Portia beats Shylock by applying the law in a formal sense, disregarding anything (like Shylock and his position) but the law.

[21]One such assumption is, for instance, free will. In United States v. Lyons (995), the Court decided that "historically, our substantive criminal law is based on a theory of punishing the viscious [sic!] will. It postulates a free agent confronted with a choice between doing right and wrong, and choosing freely to do wrong."

[22]In "The Narrative of Innocence," I argue that the narratives of the wrongfully convicted are exemplary for the narrative blueprint of adversarial trials.

[23]The American Prosecutors Research Institute suggests that prosecutors choose "a theme that resonates with the average person. Whenever possible, choose a theme that motivates your jury to convict. Create a catch phrase that captures your theme that you can use throughout the trial" (Gilbert 3).

[24]Aristotle in his *Poetics* (9.2-4) argues that "[t]he true difference (between history and poetry) is that one relates what has happened, the other what may happen." In a criminal case (and potentially even in general), the reconstruction has to consider what may have happened as well.

[25]From a discourse perspective, the side-bar is interesting in that it safeguards the jury's suspension of disbelief by making the shelter soundproof. Malcolm compares attorneys to "actors sitting around the dressing room putting cold cream on their faces and arguing points of craft and turning to the director to decide who was right. […] The juror, no less than the reader of a novel, needs to be protected from disbelief. Law signals its acknowledgement to the power of imagination" (108).

[26]Deskovic's story was transformed into an "archetypical journey," which is a tool every legal writer is encouraged to use (see Kaiser 167).

[27]The Civil Rights Act of 1875 includes a provision outlawing race-based discrimination in jury service. But to this day illegal exclusions of racial minorities from juries persist (Stevenson).

[28]Poetic justice has an element of irony here. Ewell was killed with his own knife, he, who accused wrongly, died through his own hands. This dramatic irony "emphasiz[es] the gap between real justice and ideal justice"; see Corcos 602.

[29]Technically, it was the prison guard who killed Tom and not Mayella or her father. One could even argue that Tom provoked his own death, knowing that he would be shot at if he tried to escape. But an all too technical analysis leads away from the actual ethical responsibility of Mayella and Bob Ewell, who brought Tom into this situation in the first place.

[30]Gladwell criticizes Finch for being a "good Jim Crow liberal," "looking for racial salvation through hearts and minds." As of today there is no law that eliminates racism or any other kind of bias. Gladwell does not make clear what alternatives there are to changing racism where it begins: in people.

[31]"You'd be surprised how hard that'd be. I won't live to see the law changed, and if you live to see it you'll be an old man" (Lee 295).

[32]Markey (164) makes that point. The historical background of *To Kill a Mockingbird* is the Jim Crow South but the Jim Crow laws themselves are not addressed directly. Not a single time does Finch claim that Tom Robinson has been subjected to institutional, legal racism. Mr. Underwood in his editorial wrote that "Tom had been given due process of law to the day of his death; he had been tried openly and convicted by twelve good men and true"; Scout, who is reading the editorial, realizes that there is distinction between the law and the people who execute it. The jurors had lost their innocence, "something had come between them and reason" (Lee 295). But that something is not the law, it is racism, and "resentments [that people carry] right into a jury box" (Lee 295).

[33]"I can't live one way in town and another way in my home" (Lee 367); see also Johnson (499).

[34]"'If you had been on that jury, son, and eleven other boys like you, Tom would be a free man,' said Atticus. 'So far nothing in your life has interfered with your reasoning process. Those are twelve reasonable men in everyday life, Tom's jury, but you saw something come between them and reason'" (Lee 295).

[35][I]f I didn't [defend Tom] I couldn't hold up my head in town, I couldn't represent this county in the legislature, I couldn't even tell you or Jem not to do something again" (Lee 100).

[36]"[Atticus Finch] abrogates the law and obstructs justice when he is complicit in the lie about the death of Bob Ewell" (Markey 195).

[37]Markey (178) juxtaposes the two kinds of justice that are evident in that scene: "Finch colludes with Sheriff Tate, not to obstruct justice, but to make sure that justice is achieved, by preventing the creation of any more victims of the racist society in which he and the sheriff live." The justice that is obstructed is procedural justice and the justice achieved by not prosecuting Boo Radley is poetic.

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