

## Nelle Harper Lee on the Law

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What is law? What is the source of law? What is the purpose of law? What is the relationship of law to justice? When two generations dispute the relationship of law to justice and the moral accommodation this creates, how do they reconcile their differences? These questions seem too large and the speaker's credentials too modest for much of conversation. Even so, those questions were Harper Lee's questions as well, ones with which she wrestled in two important novels. So, I will give it a try.

There are many ways of thinking about law. One analogy is to think of it as the wide and deep Alabama River emptying into the Gulf of Mexico at Mobile, driving its current and contents far out into the Gulf. But another analogy would compare the main river to its headwaters, dozens of creeks and rivers in northern Alabama and northwestern Georgia: the Coosa, Tallapoosa, Cahaba, Black Warrior, and Tombigbee rivers, as well as hundreds of smaller streams, each providing its own unique contents to the mighty river. For the next half hour, I want you to think about a few of the many streams that contributed to our conception of law and Harper Lee's judgment of them.

I. Law is obviously rooted in earliest antiquity. Hammurabi's Code (1754 BC, Mesopotamia), discovered and translated at the beginning of the twentieth century, is one of the oldest deciphered writings of significant length in the history of civilization. Half of its 282 provisions deal with contracts. One-third address household and family relations. Only one provision imposes some obligation on an official. If a judge renders an unfair decision, he should be fined and removed permanently from office. The code is scaled according to social status with rules

for slaves more stringent than those regulating the conduct and rights of free men.

II. Early Theocracies: The Ten Commandments with attendant commentary in Leviticus and Deuteronomy, expanded further in the Mishna, laid out an alternative system for regulating the affairs of mankind.

III. Greek law refined and democratized law. Pericles (495?-429 BC), writing a thousand years after Hammurabi, was Athen's most famous civic leader and official. He ushered in Athen's Golden Age based largely on expanding governance from oligarchies to free citizens. Among his reforms was transferring various judicial powers previously possessed by an administrator chosen for life, to the popular courts. Pericles explained in his famous funeral oration the relationship between constitutional democracy, rule of law, and civil justice: "Our constitution is named a democracy, because it is in the hands not of the few but of the many ...our laws secure equal justice for all in their private disputes. And as we give free play to all in our public life, so we carry the same spirit into our daily relations with one another .... Open and friendly in our private intercourse, in our public acts we keep strictly within the control of law. We acknowledge the restraint of reverence; we are obedient to whomever is set in authority and to the laws, more especially to those which offer protection to the oppressed.

IV. Roman law, of course, created a trans-national imperial order.

V. Obviously, American law owes most to English Common Law (reliance on legal precedent and custom) along with the brilliant four volume commentaries on the laws of England written after 1766 by Sir William Blackstone, English jurist, judge, Tory politician, and Professor of Law at Oxford University. Blackstone's influence on Alexander Hamilton, John Marshall, James Wilson, John Adams, and the entire American revolutionary generation cannot be

exaggerated and bequeathed to us most of our national assumptions about justice and its relationship to law and legal systems.

VI. The vibrant theological discourse spawned by America's religious diversity added its own distinctive influence. Think, for instance, of the abolition movement in the 1850s and 1860s, the Civil Rights Movement a century later, or the abortion debate currently.

Robert Maynard Hutchins, the son and grandson of Calvinist Reform Presbyterian ministers, became one of the nation's most influential secular educational philosophers as dean of the Yale Law School and then as Chancellor of the University of Chicago before World War II. Rooting out many traditional ways of thinking, Hutchins abolished varsity football at the University of Chicago and replaced the undergraduate program with a common great books curriculum for all students, both of which might explain why his university was recently tied with Cambridge for the largest number of Nobel Prize laureates on the faculty of any university in the world. (Please do not repeat this paragraph to anyone outside this room as my academic observations might be misunderstood as reform proposals which could be life-threatening in Alabama.) In his book, Democracy and Human Nature, Hutchins wrote that "Equality and justice, the true great distinguishing characteristics of democracy, follow inevitably from the conception of men, all men, as RATIONAL and SPIRITUAL beings."

VII. The cataclysm of World War II damaged such naive faith in rationalism and religion. And in 1944 Union Theological Seminary professor Reinhold Niebuhr in his book The Children of Light and the Children of Darkness, announced his conversion to a more pessimistic view of humanity and advocated legal restraints needed to constrain evil people (lost souls). "Man's capacity for justice makes democracy possible; but man's inclination to injustice makes

democracy necessary.”

These are some of the currents flowing through the curriculum and informal conversations at the University of Alabama Law School in the years just after World War II. Harper Lee dropped out of law school in 1949 (though not necessarily out of disinterest in such questions) and moved to New York City in order to explore the writer’s life she had first experienced on the staffs of the Ramer-Jammer humor magazine and the Crimson-White student newspaper (which she had enjoyed so much more than law school).

In Bright, Precious Days, a 2016 novel set in New York City, author Jay McInerney captured the fantasies that seduced 23-year-old Nelle from law school to the Big Apple: He writes: “Once, not so very long ago, young men and women had come to the city because they loved books, because they wanted to write novels or short stories.” For those who haunted suburban libraries and provincial bookstores, Manhattan was the shining island of letters, New York, New York. It was right there on the title pages – the place from which the books and magazines emanated, home of all the publishers, the address of The New Yorker and The Paris Review, where Hemingway had punched O’Hara and Ginsberg seduced Kerouac, Hellman sued McCarthy and Mailer had punched everyone, where – or so they imagined – earnest editorial assistants and aspiring novelists smoked cigarettes in cafes after reciting Dylan Thomas, who’d taken his last breath in St. Vincent’s Hospital after drinking seventeen whiskeys at the White Horse Tavern, which was still serving drinks to the tourists and young litterateurs who flocked here to raise a glass to the memory of the Welsh bard. These dreamers were people of the book: they loved the sacred New York texts: Gatsby, Breakfast at Tiffany’s, but also all the marginalia, the romance, and the attendant mythology – the affairs and addictions, the feuds and fistfights.

That was Nelle's New York City.

Because Harper Lee dropped out of law school and never wrote much specifically about "the law", my title – "Harper Lee on the Law" – dismissed as a non-title of a non-lecture. As we shall see, that would be a mistake. In addition to growing up in a family headed by a lawyer, A.C. "Coley" Lee, Nelle's beloved sister Alice became one of Alabama's earliest and most successful female attorneys. Her father read law with a local attorney, passed the state bar exam, and became an influential southwest Alabama lawyer/politician. In addition to his law practice (Bugg, Burnett, and Lee), he served as a director of the local bank as state representative from 1926-1938, was prominently mentioned as a potential gubernatorial candidate, owned Monroeville's newspaper, was the most influential member of the Methodist church, and was the town's premier civic leader. As a member of the state house, he was a typical south Alabama conservative States Righter, who nonetheless (like many paternalistic white politicians before the 1950s) tended to be anti-Ku Klux Klan and sympathetic to the plight of local African Americans who suffered gratuitous indignities and were systematically denied equal justice. He reconciled his respect for laws often unjustly administered by devotion to Biblical teachings of justice and righteousness almost always applied fairly, at least according to his understanding of fairness.

Harper Lee's idealized and adoring rendering of Atticus Finch (a fictional version of her father, the most famous American lawyer ever) transformed him into the greatest hero in American literature and cinema. So renowned and universal was Atticus' fame that President Barack Obama paraphrased him in an address to students at the University of Tel Aviv early in his first presidential term (if Jewish students wanted peace and justice, they must learn to climb into the skins of Palestinians and walk around in their shoes). In his January 2017 farewell

address, the President quoted Atticus: "If our democracy is to work in this increasingly diverse nation, each one of us must heed the advice of one of the great characters of American fiction. Atticus Finch: 'You 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.' Between these two public events, a reporter trailing the President on his vacation caught him emerging from a bookstore on Martha's Vineyard with a copy of To Kill a Mockingbird for Malia's birthday.

Harper Lee lent substance to such deification in a 1964 article for Life magazine: "My father is one of the few men I've known who has genuine humility, and it lends him a natural dignity. He has absolutely no ego drive, and so he is one of the most beloved men in this part of the state."

Harper's sister, Alice, left the family newspaper business in April 1937 at age 26 and moved to Birmingham to work in the tax division of the newly established Social Security Administration. Two years later she realized she needed greater knowledge of tax law and enrolled in night classes at Birmingham School of Law. Despite a full day of work at the Social Security office, she completed her law degree in four years, took the bar exam in July 1943, passing on the first try. She returned to Monroeville when one of the partners in her father's law firm died, thereby joining several dozen female attorneys statewide. Congress had passed the first federal income tax law on December 31, 1942, and Monroeville contained no certified public accountant. As a result Alice – professionally educated and practically experienced – became known simply as the "tax lady" who specialized in the practice throughout her 70-year career. After initially dismissing her as a narrow specialist and legal curiosity, male peers began to take her more seriously when they observed her skillfully trying a criminal case. The high

respect extended to her by a number of South Alabama lawyers and judges who were friends of her father helped as well. By religious preference she, like her father, was a devout Methodist and in addition to that one of the most nurturing, ethical, and kindest persons I have ever known. What her sister, Louise Conner, said of their father was equally true of her: she was an “inside Christian,” meaning a person of honor and personal decency, attuned to her religious and civic duties, one who treated all people fairly and with respect, neither self-righteous nor ostentatiously pious, and a generous private philanthropist (mainly using her famous sister’s fortune to educate females for the Methodist ministry and talented young women for the law.

And Alice was phenomenally smart. One anecdote will suffice to prove my point. In her 97<sup>th</sup> year, on April 9, 2008, 6 days before the deadline for filing taxes, Alice left her law office after work and stopped by Meadows assisted living to visit her sister. When she entered the room and saw us, she said: “I knew you were here. I saw your 43 tag in the parking lot.” How did you know 43 was the prefix for Lee County? I inquired. “Because I have insomnia. When I can’t sleep, I begin reciting the presidents in order, then the vice-presidents, and if I don’t fall asleep by then, I begin with Jefferson county and repeat the numbers and counties. I always fall asleep somewhere between Autauga and Washington counties.” We chatted for a while and then I invited her to join us for supper at David’s Catfish restaurant. “I can’t go. A woman brought all her tax records to the office this afternoon, and I have to do them tonight because I am going to watch the masters golf tournament tomorrow.” Nelle was outraged at this inconvenience to her sister and asked, “Who would do such a thing at the last minute?” Mrs. Gaillard. She is a hundred and two years old and she came in by herself carrying her paper sack of records on her walker.” Nelle turned to us and quipped: “You know what they say about Gaillard women in

Monroe County? Never marry a Gaillard woman because they live forever.”

Interruptions to Nelle’s childhood were common given her mother’s health problems, her father’s busy legal practice, and her sister’s departure to work in Birmingham as Nelle approached her teens. Nelle’s own brief matriculation in law school was sufficiently long to acquaint her with the complex origins of law. But her moral upbringing in Methodism and her own reading of the Bible left no doubt in her mind that law, no matter what code it embraces, is not much more than a community or nation allows the law to be. As evidence of the gap between law and justice, consider the apartheid 1901 Alabama Constitution, which despite numerous federal court rulings striking down individual provisions, perpetuates injustice in school funding, criminal justice, tax policy, and mental health treatment to this very hour.

Furthermore, Nelle’s fascination with British literature led her not only to the seminal legal commentaries of William Blackstone but also to the brilliant Christian apologetics of Oxford University classicist/C.S. Lewis. An atheist before his combat experiences during W.W. I, Lewis converted during the 1920s and by the 1940s was perhaps the most influential Christian thinker in the English speaking world. Reading Lewis’s books – Mere Christianity, Screwtape Letters, Surprised by Joy, and the Narnia series – Nelle recognized the arc of his theology from childhood innocence to temptation, sin, alienation from other people and from God, confrontation, repentance, forgiveness, and reconciliation.

From this point forward, you need to remember this moral arc of Lewis’s theological universe because the Anglophile Lee adored his writing and thought him to be the greatest Christian apologist of the twentieth century as well as one of its preeminent intellectuals. She had a thick volume containing his complete works in her apartment at the Meadows in



Monroeville when she died.

The reason this is important to the law is obvious. The twelve Maycomb County white men, good and true, who convicted Tom Robinson of raping Mayella Ewell in TKAM acted within the parameters of the law. So did the judge who sentenced him. So did the prison guards who shot him to death when he tried to escape. Alabama law was applied appropriately in Robinson's 1935 murder trial according to eyewitness testimony, legal precedent, and local custom.

So to find out what went wrong in the Maycomb County courthouse, we have to search elsewhere, beyond "law", to deeper subterranean, non-legal, moral and ethical wisdom literature, to the writings of revered philosophers, theologians, and ethicists, even to the Analects of Confucius, the Indian Upanishads, and for Harper Lee, to the King James Bible.

The Bible usually conjoins righteousness and justice into a single concept. Righteous means without sin, it means doing what is right according to the law but also according to one's moral conscience. Justice – that is, uprightness and fair treatment – is a close synonym of righteousness, words which are used interchangeably in the Bible. The Bible contains references occasionally attributing justice to rulers – notably to Kings David and Solomon – but more frequently exclusively to deity. Psalm 9:81: "The Lord shall judge the world in righteousness, he shall minister judgment to the people in uprightness." Psalm 89:14: "Justice and judgment are the habitation of the throne. Psalm 146:3: "Put not your trust in princes ... in whom there is no help.... The Lord looseth the prisoners: The Lord raiseth them that are bowed down. The Lord loveth the righteous; The Lord preserveth the strangers; he relieveth the fatherless and the widow." This passage from Psalm 146 is the precursor of Matthew 25:33f.

When we arrive for judgment, Jesus teaches his disciples, the final exam question will be: "Did you do these things: feed the hungry, care for widows and orphans, visit prisoners, welcome strangers in the land? If so, enter the Kingdom of God prepared for you from creation; if not, descend into perdition for your unrighteousness and injustice condemns you whatever your beliefs may be. Isaiah 11:5-9: "He will not judge by what he sees with his eyes, or decide by what he hears with his ears, but with righteousness he will judge the needy, with justice he will give decisions for the poor of the earth." Amos 5:24: "But let justice run down as waters, and righteousness as a mighty stream". and Micah 6: "He hath shewed thee, O man, what is good; and what doth the Lord require of thee, but to do justly, and to love mercy, and to walk humbly with God." These passages are a mere sample of hundreds that Harper Lee read or heard while growing up, extolling what justice means as part of the Christian pilgrimage. That understanding of "law" permeated the Lee family.

I think it is a fair historical judgment that despite the fact that some political systems are more just than others, no political system renders anything more than proximate justice, a fact well documented by Bryan Stevenson's phenomenal work on behalf of equal justice in America.

Harper Lee was only too aware of this and toward the end of her "new" novel, Go Set a Watchman, puts these words in the mouth of Jean Louise Finch's uncle Jack: "Every man's island, Jean Louise, every man's watchmen, is his conscience." Note: Not "the law," but a man's conscience.

Lee's literary struggle with the reality of injustice residing inside the law, not outside it, is the theme of To Kill a Mockingbird and has generated lawyerly skirmishes ever since. If Atticus Finch knows unjust law will prevail in a Maycomb courtroom, why did he take a case he knew

he would lose? Why not defer to the NAACP Legal Defense Fund and let them handle Tom Robinson's defense? Thurgood Marshall and other attorneys succeeded in saving the Scottsboro boys with timely help from Alabama's Judge James Horton. And Atticus's condescension toward blacks makes him an imperfect role model anyway.

On the other hand, publication of To Kill a Mockingbird in 1960 in the middle of the modern American struggle over civil rights obscured lots of other themes in the novel just as important as race and perhaps more enduring. Lee brilliantly depicts class divisions in America using the prevailing dichotomy between the poor but deserving Cunninghams and the poor but undeserving Ewells, a classic American social distinction in our national history. She pleads for tolerance and understanding toward people unlike ourselves, the necessity to get inside their skin and walk around in their shoes before judging them. Lee ridicules white evangelical triumphalism, arrogance, and hypocrisy. The novel also served an essential role in defining values education in state, private, and parochial schools. During a period of American history when parents wanted teachers to teach values but could not agree about what values should be taught, frustrated teachers simply assigned To Kill a Mockingbird and encouraged spirited student debate about the ethical and moral implications of the novel. For all these reasons, and based upon lots of polling data, I have long argued that TKAM and the movie based on it made this particular piece of literature the most unifying cultural icon in American life. Although Americans disagree about the values, meaning, and nobility of the characters, I never have to summarize the plot. People know it already.

With To Kill a Mockingbird safely installed by ordinary readers as a classic within the pantheon of English literature, I held my breath during the runup to publication of Go Set a

Watchman. Knowing that neither Nelle's agent, Maurice Craine, nor her editor at Lippincott, Tay Hohoff, liked the manuscript, and nervous that neither of them had worked on it after 1956, I knew that it could not have been the product of meticulous revision and rigorous word smithing. The original manuscript was set in 1956 during the Montgomery Bus Boycott, not in 1932-1935 as was TKAM, when blacks "knew their place" and where well meaning conservative, traditional white elites could sometimes take their side without negative consequences. By 1956 White Citizens Councils flourished in Alabama, exerting enormous community pressure on prominent people, especially lawyers and politicians, to either conform to apartheid or suffer the consequences. I also knew that threading the racial needle of law, custom, ethics, and justice in the mid 1950s would be far more challenging than her task in TKAM. But I never dreamed that her near perfect fictional father would fall victim to accommodation, situational ethics, and betrayal of his conscience.

Coming decades after her idealized portrait of blacks, neighbors, sheriff, judge, and father in TKAM, the Maycomb she depicts in Go Set a Watchman seems to have gone haywire, to have completely lost its moorings. In the new (old) novel, readers encounter a mostly familiar cast of characters but a far more believable world of law and justice. Jean Louise's boyfriend, now Atticus' law partner, and her father, are members of the White Citizens Council. Their rhetoric, though still hostile to the Klan, is less racist only in its rejection of violence. Beloved housekeeper Calpurnia watches while injustice toward her son and cynically dismisses the good intentions of all whites, even Finches for whom she worked so long and so faithfully.

Jean Louise's profane, long (way too long) diatribe against her father and her Uncle Jack finally becomes self-righteous and tedious to many readers. I wanted to weigh in myself and

offer Jean Louise some advice: Easy for you to leave Monroeville at age 23 in 1949, read in the New York Times about all the injustice and racism in your home state, and return to give everyone a piece of your mind before catching the next train back to Manhattan. But your father was a 72-year-old lawyer who knew only the world of Maycomb County. His choices ranged from some kind of accommodation and rationalization of racism to moving in with you in your tiny Manhattan apartment. The novel reminds me of Oscar Wilde's famous observation: "Children begin by loving their parents; after a time they judge them. Rarely if ever do they forgive them."

After reading Wilde's insight, I began to think of Go Set a Watchman differently. There is law. There is justice. They may or may not be synonymous. There is also the historical reality in which people must live who reverence law and seek justice. In order to maintain influence within their society, they sometimes compromise their ideals, conform to community standards, even tell their consciences to get lost for a while. These are tough calls, and honorable people decide them differently. Southern readers of Go Set a Watchman often dislike it because of young Jean Louise's self-righteous diatribe about her father's accommodations. Some southern readers no doubt had heard similar sermons from their own children. Why after all these years of depicting Atticus Finch as one of literature's greatest, purest, best fictional lawyers and heroes must Lee now betray him and proceed to tear the scabs off all the old wounds of racial division? Liberal northern readers often dislike the novel because in the end Jean Louise forgave and reconciled with her father and uncle without conceding their racism, an act that required her to elevate family relationships above racial ideology. No room for that in absolutist twenty-first century moral discourse.

I thought back to the day I spotted the massive tome entitled The Complete Works of C.S. Lewis in Nelle's apartment and our discussions of his theology. And I thought about the 19<sup>th</sup> century Wesley brothers, founders of Methodism, whose growing abolitionism and success converting the British working class to that vision of justice perhaps had as much to do with keeping Britain from siding with the Confederacy as did U.S. diplomacy. Lewis' moral universe of innocense, temptation, sin, alienation, confrontation, repentance, forgiveness, reconciliation is the perfect framework for viewing Go Set a Watchman. The self-righteousness of the young is always surprised to discover the moral accommodation of the old. The old try to explain. The young prefer not to listen. They judge their parents as their parents had once judged them – by an absolutist moral conscience selectively deployed. Alienation follows. Happily, sometimes (though not as often as we would like) forgiveness and reconciliation occur. Can we expect reconciliation between Jean Louise and Atticus in American fiction any more than we can expect reconciliation of Americans after the 2016 presidential election? In this sense is the new novel any less relevant to our times, any less universal than the old one? Harper Lee selected the Bible (Blackstone's commentaries), specifically Isaiah 21, for her apocalyptic vision which is arguably as relevant to 2017 as it was in 1956: "A grievous vision is declared unto me; the treacherous leader leadeth treacherously, and the spoiler, spoiled .... Therefore my loins filled with pain .... My heart panted, fearfulness affrightened me; the night of my pleasure hath he turned into fear .... Prepare the table, watch in the watchtower; eat, drink; arise, ye princes, and anoint the shield. For thus hath the Lord said unto me, Go, set a watchman, let him declare what he sees. And he saw a chariot with a couple of horsemen ... and he cried .... 'Babylon is fallen' .... The watchman said, 'the morning cometh, but also the night ... within a year ... all the glory of Kedar shall fail.'"

Dear Billy,

My typist finally reemerged from caring for her alcoholic husband and quickly corrected the mss. of "Harper Lee on the Law." Here it is, probably too late for the magazine, but I did want you to have a copy. Let me know if the ABA is interested in me doing this in Vancouver. Invitations to book festivals and signings are pouring in now, and because of Dartie's health, I have to be quite selective.

Sincerely,  
Wayne