

**Temporal Horizons:
On The Possibilities of Law and Fatherhood in To Kill A Mockingbird**

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To Kill A Mockingbird, the 1962, Oscar-winning movie based on Harper Lee's novel, is a classic American law film.¹ Set in a southern town during the Depression, its central character, Atticus Finch, an iconic citizen-lawyer, is called on to defend an African-American field hand accused of raping a white woman.² Indeed some claim that Atticus is popular culture's most important embodiment of lawyerly virtue. "No real-life lawyer has done more for the self-image or public perception of the legal profession than the hero of... To Kill a Mockingbird," writes Steven Lubet; "For nearly four decades, the name of Atticus Finch has

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¹To Kill A Mockingbird, dir. Robert Mulligan (Universal Pictures, 1962). In 2008 the American Bar Association polled a panel of experts to identify and rank the 25 greatest law films ever made. While their method was anything but scientific, the result was not a surprise. Ranked first was To Kill a Mockingbird. See Richard Brust, "The 25 Greatest Legal Movies," http://www.abajournal.com/magazine/article/the_25_greatest_legal_movies/ Moreover, the American Film Institute ranked it as #34 in its list of the top 100 films of the last 100 years. <http://www.afi.com/tvevents/100years/movies.aspx>. See also See Mark Holcomb, "To Kill a Mockingbird," 55 Film Quarterly (2002), 34.

²In 2003, the American Film Institute named Atticus Finch the greatest movie hero of the 20th century. Found at <http://connect.afi.com/site/DocServer/handv100.pdf?docID=246>

been invoked to defend and inspire lawyers, to rebut lawyer jokes, and to justify (and fine-tune) the adversary system.”³

Although scholars have criticized Atticus for being too accommodating to the segregated world in which he lived and practiced law,⁴ many nonetheless acknowledge that Atticus is an antidote to much common criticism of law and the legal profession. “Lawyers are greedy. What about Atticus Finch? Lawyers only serve the rich. Not Atticus Finch. Professionalism is a lost ideal. Remember Atticus Finch....Atticus serves as the ultimate lawyer. His potential justifies all of our failings and imperfections. Be not too hard on lawyers, for when we are at our best we can give you an Atticus Finch.”⁵

To Kill a Mockingbird is, however, not just, or primarily, a law story.⁶ Scout’s portrait of Atticus as a *father* is regarded by many critics as the key to the film’s cultural resonance.⁷ Told

³Steven Lubet, “Reconstructing Atticus Finch,” 97 Michigan Law Review (1999), 1339, 1340. As Pierre Schlag puts it “Normative legal thought allows us to pretend that we are preparing our students to become Atticus Finch while we are in fact training people who will enter the meta-insurance adjustment business.” See Pierre Schlag, “Normative and Nowhere to Go,” 43 Stanford Law Review (1990), 167, 189.

⁴See John Jay Osborn, “Atticus Finch-The End of Honor: A Discussion of To Kill a Mockingbird,” 30 University of San Francisco Law Review (1996), 1141. As Osborn argues, “Atticus cannot see beyond his law books. Indeed he seems almost scared to do so, as if it would unleash the real demons in the town. He plays along with the system.” Also, Theresa Godwin Phelps, “Atticus, Thomas, and the Meaning of Justice,” 77 Notre Dame Law Review (2001-2002), 925, and Holcomb, “To Kill a Mockingbird,” 36 and Monroe H. Freedman, “Atticus Finch-Right and Wrong,” 45 Alabama Law Review (1994), 473.

⁵ Lubet, “Reconstructing Atticus Finch,” 1340.

⁶ See, for example, Michael Asimow, “When Lawyers Were Heroes,” 30 University of San Francisco Law Review (1995-1996), 1131, 1136.

as a daughter's memory of her father, her brother, and the town in which she grew up, the film focuses on Scout Finch's childhood exploits. Without a mother (though partially raised by an African-American maid, Calpurnia), Scout, her brother Jem, and their friend Dill have enormous freedom in the small world of Maycomb, Alabama.

Yet Atticus is a powerful presence in their lives. Scout's memory of him, as she reveals it over the course of the film, is highly idealized, even heroic. As she says of him, "There just didn't seem to be anyone or anything that Atticus couldn't explain."⁸ Her reflective voiceovers invite viewers to accept Scout's idealized perspective and to take a child's perspective on the events portrayed in the film.

Scout's dual position as main child protagonist and post-hoc narrator also alerts us to the complex temporality of the film, both in its narrative vision and in the social landscape of its reception.⁹ That the film, set during the Great Depression, was released in 1962 locates its earliest viewers in the midst of the civil rights struggles of the early 1960s, after Brown v. Board

⁷ See Stella Bruzzi, Bringing Up Daddy: Fatherhood and Masculinity in Postwar Hollywood. London: BFI Publishing, 2005, 85-86. Bruzzi argues from a psychoanalytic perspective that "Atticus Finch...is the perfect fairytale father... The single father of fairytales feeds a tremendous need not to devalue or forget the symbolic father-and implies a residual fear at his imminent loss....Atticus is a benevolent version of Lacan's fearsome father...."

⁸Stella Bruzzi, Bringing Up Daddy argues, it is the film's clear intention to "glorify" Atticus, p. 86.

⁹For an instructive discussion of the temporality of film spectatorship see Marjorie Garber, "Cinema Scopes: Evolution, Media, and the Law," in Law in the Domains of Culture, Austin Sarat and Thomas R. Kearns, eds. Ann Arbor: University of Michigan Press, 1998. As Garber puts it, "Entering a movie theater....an audience brings its own world to match with the screen's fictions." Sarat and Kearns, 143.

of Education but before the 1964 Civil Rights Act. They were and, in a different way, we are situated in the future that the film imagines. In 1962, the conflicts of the 1930s that were represented in the film remained palpable, as did its portrait of the South's hotly contested visions of justice and injustice. Viewed today, close to fifty years after its release,¹⁰ viewers know that Atticus' cause will be substantially, if not completely, vindicated, though with much difficulty and long after the period in which the film is set.¹¹

In contrast to those who interpret To Kill a Mockingbird solely as a lawyer film and those who see it primarily as a fatherhood film, we suggest that it is the *conjunction* of lawyer/father that fuels To Kill a Mockingbird's appeal and importance. Scout's reflections on her father render the two roles – father and lawyer – inseparable, fusing what she represents as almost magical parenting with his deep integrity and sense of justice. Many are the moments in the film when Atticus tries to teach Scout how to live a principled life in ways underwritten by his own ideals, which are equivalent to the ideals of liberal legality itself.¹² He lectures Scout, a tomboy

¹⁰ To Kill a Mockingbird first emerged in novel form two years before the film's release. See Harper Lee, To Kill a Mockingbird (Philadelphia: J.P. Lippincott and Co., 1960).

¹¹ Today, the quest for equal justice under law that Atticus pursued has still other and more complicated resonances. See, for example, Alan David Freeman, "Legitimizing Racial Discrimination Through Antidiscrimination Doctrine: A Critical Review of Supreme Court Doctrine," 62 Minnesota Law Review (1978), 1049.

¹² In one instance, as he tries to convince Scout that she cannot stop going to school he says, "Scout, do you know what a compromise is?" to which Scout responds, "Bending the law?" Atticus corrects her, as if delivering a lesson from a first year, contracts course, "No, Scout, it is an agreement reached by mutual consent. Now, here's the way it works. You concede the necessity of going to school and we'll keep right on reading every night just as we always have. Is that a bargain?"

who relishes fighting, on the need to restrain herself and avoid violence; he enjoins her to respect everyone, even in the Depression-era South's highly stratified society, by imagining living life in another person's shoes; and he offers himself as a role model for those values.¹³

To Kill a Mockingbird shares with many mid- to late-twentieth century films an interest in exploring the law/fatherhood conjunction, offering viewers a chance to consider what fatherhood can reveal about law and law about fatherhood.¹⁴ Analysis of this canonical film provides an opportunity to explore the role that fathers and fatherhood play in cultural imaginings of law and in exemplifying the various faces of law's power. Atticus Finch is a father/lawyer committed to a particular vision of fatherhood and law, one in which both can transcend, if not transform, the context in which they exist, one in which orienting oneself to the future takes precedence over controlling the present, one in which the temporal horizon of law and fatherhood is kept firmly in view. Through Atticus, To Kill a Mockingbird suggests that law and fatherhood are powerful and yet limited in their power, that both exist in the present but are

¹³ This fusion of father and lawyer is perhaps most explicitly made after Scout has been caught fighting with children who accused her father of being a "nigger lover," Atticus "sits her down on the front steps and teaches her white liberal ideology: how she should substitute 'Negro' for 'nigger' and how he 'couldn't hold my head up in this town. *I couldn't even tell you and Jem not to do something again*' if he did not defend Robinson." ⁸Bruzzi, Bringing Up Daddy, 88. (emphasis added). See also, David Ray Papke, "Law, Cinema, and Ideology: Hollywood Legal Films of the 1950s," 48 UCLA Law Review (2001), 1473, and Holcomb, "To Kill a Mockingbird," 36.

¹⁴ For a fuller exploration of the law/fatherhood conjunction in contemporary films about law see Austin Sarat, "Imagining the Law of the Father: Loss, Dread, and Mourning in The Sweet Hereafter," 34 Law & Society Review (2000), 3.

oriented toward an as yet unrealized future. This essay examines the temporal dynamics that mark the law/fatherhood dyad as they are played out in To Kill a Mockingbird.

The invitation to imagine law as a father – and a very particular kind of father – in To Kill a Mockingbird resonates with, and yet departs from, a cultural tradition in Judeo-Christian history that, historically, has aroused desire and anxiety. The Abraham and Isaac story is, of course, a paradigmatic exemplification of law’s claims and its powers, of the presentation of law as the Father but also the father as law.¹⁵ It is also a story of fatherly failure before the law, of the abandonment of a child, of a father’s failure to protect an innocent in the face of an arbitrary and unjust threat.¹⁶ As Jacques Derrida notes, “Abraham is...at the same time the most moral and the most immoral, the most responsible and the most irresponsible of men, absolutely irresponsible because he is absolutely responsible, absolutely irresponsible in the face of men and his family, and in the face of the ethical, because he responds absolutely to absolute duty....”¹⁷ The law we encounter in Genesis, rather than rescuing us from danger, is its source; rather than preventing loss, threatens to impose it; rather than allying itself with fatherhood, exposes the weakness and

¹⁵“The drama of the Akedah takes place in the narrowest arena, between father and son, father and father, solitary and God. The call that starts it all remains a haunting fact: and where obedience seems to be purest it is also most questionable. A voice out of nowhere commands a murder it calls a sacrifice....” Geoffrey Hartman, “The Blind Side of the Akedah,” 16 Raritan (1996), 28, 35.

¹⁶Lippman Bodoff, “The Real Test of the Akedah: Blind Obedience Versus Moral Choice,” 42 Judaism (1993), 71.

¹⁷Jacques Derrida, The Gift of Death. David Wills, trans. Chicago: University of Chicago Press, 1995, 72.

vulnerability of all fathers; and rather than providing a structure within which to order and reorder the world, is itself a profoundly disordering force.¹⁸

In a different vein legal scholars, following Freud,¹⁹ regularly have called attention to the complex psychological associations of paternity and legality.²⁰ They have portrayed law as the focal point for a deep-seated longing for paternal authority. Jerome Frank, in Law and the Modern Mind, suggests that law, like religion, is a projection of a widely shared human need for certainty and security in a world of danger, and invites us to think of law as the father or, more precisely, as the father-substitute.²¹ “To the child,” Frank argues, “the father is the Infallible Judge, the Maker of definite rules of conduct. He knows precisely what is right and what is wrong and...sits in judgment and punishes misdeeds. The Law....inevitably becomes a partial

¹⁸By becoming law to Isaac, Abraham may be said to become a father. Yet Abraham is, in one sense, not present to Isaac at all. He appears before Isaac as a servant of a law that is not his own. He is present only to God. His fatherhood fails before a law that models itself the Father. “To meet the God of whom it was said not once but several times that ‘He is gracious and merciful, slow to anger, and of great kindness....’, commanding His favorite to offer up as sacrifice that one’s beloved son, is sure to produce...fear and trembling....” See Judah Goldin, “Introduction,” in Shalom Spiegel, The Last Trial: On the Legends and Lore of the Command to Abraham to Offer Isaac as a Sacrifice: The Akedah. New York: Schocken Books, 1969, x.

¹⁹Sigmund Freud, Totem and Taboo, James Strachey trans. New York: Norton, 1950.

²⁰As Althusser puts it “...any reduction of childhood traumas to a balance of ‘biological frustrations’ alone is in principle erroneous, since the Law that covers them, as a Law, abstracts from all contents...and the infant submits to this rule and receives it from his first breath. This is the beginning, and has always been the beginning, even when there is no living Father (who is Law), of the Order of the human signifier, i.e. of the Law of Culture.” Louis Althusser, “Freud and Lacan,” in Lenin and Philosophy and Other Essays, trans. Ben Brewster. London: Monthly Review Press, 1971, 212.

²¹Jerome Frank, Courts on Trial: Myth and Reality in American Justice, Princeton: Princeton University Press, 1949, 196-197.

substitute for the Father-as-Infallible-Judge....”²² Exploring similar themes, Peter Goodrich recently noted that “Freud and those who follow him depict a law that is modeled upon the power of the father. They elaborate a symbolic order that is patriarchal in its norms and methods. To some extent that account of the legal order reflects an institution embedded in a history of homosocial power and continuing male privilege.”²³

To Kill a Mockingbird offers, we argue, a view of law and fatherhood quite different from the model of father/law as command or father/law as infallible judge. In this film, fatherhood and law conjure a normative world of becoming more than being, one concerned with legitimate authority rather than raw power. Like Moses leading the Jews out of Egypt, Atticus believes in a “promised land” which he himself may never enter or attain, and he acts, in his role as father/lawyer, as a bridge between the past and the future.²⁴ The entailments²⁵ of a racist past

²²Id., 18. “Despite advancing years,” Frank argues, “most men are at times, the victims of the childish desire for complete serenity and the childish fear of irreducible chance. They then will to believe that they live in a world in which chance is only appearance, not reality....” p. 19. “Driven by fear of the vagueness, the chanciness of life,” he continues, man “has need of rest. Finding life distracting, unsettling, fatiguing he tries to run away from unknown hazards....” p. 196

²³Peter Goodrich, “Maladies of the Legal Soul: Psychoanalysis and Interpretation in Law,” 54 Washington & Lee Law Review (1997), 1035, 1047.

²⁴ For this view of Moses see Michael Walzer, Exodus and Revolution. New York: Basic Books, 1986.

²⁵ An entailment at common law is “an interference with and curtailment of the ordinary rules pertaining to devolution by inheritance; a limitation and direction by which property is to descend different from the course which it would take if the creator of the entailment, grantor, or testator, had been content that the estate should devolve in regular and general succession to

are legacies against which Atticus sets himself. He resists the norms and customs of racism and race privilege and of violence that were so deeply intertwined in the mid-twentieth century American south. In attempting to undo those legacies, Atticus offers his children an example, a different way of being in the world, a model of adult values and sensibilities that foreshadow and also constitute the ideals of liberal legality.

To Kill a Mockingbird dramatizes the aspirations of mid- twentieth century manhood – its benign paternalism and willed repression of violence – as well as what Kaja Silverman calls “the vulnerability of conventional masculinity....”²⁶ in Atticus’s incapacity to impose his will on the world around him. Yet the film suggests that sacrificing the present for a better future is one key constituent element of a father’s duty to his children and of law’s commitment to justice. The film’s temporal flux – the nostalgia of its narrative voice intertwined with its imagined trajectory toward a new world of racial equality – exposes a complex structure of desire and anxiety that attaches law to fatherhood.²⁷ In To Kill a Mockingbird, Scout and Jem embody the hope that, through the relation between a lawyer/father and his children, law will reach forward toward justice rather than be mired in a restrictive and unjust past. At the same time, we see the

heirs at law in the statutory order of preference and sequence.” Black’s Law Dictionary, 4th ed., revised, St. Paul, MN: West Publishing Co., 1968.

²⁶ Kaja Silverman, Male Subjectivity at the Margins. New York: Routledge, 1992, 38.

²⁷“The psychoanalytic foundational fiction of the origin of the law and civilization is tormented by the dilemma of positing simultaneously that its myth ‘really happened’ and that its ‘memory’ is instituted by an unconscious explanation of unnatural restraints on individual will.” See Jonathan Buyarin, “Another Abraham: Jewishness and the Law of the Father,” 9 Yale Journal of Law & the Humanities (1997), 345, 350.

vulnerability of those figures of hope as well as the incapacity of the father fully to protect them from the dangers of the present.

“What Kind of Man Are You?”

To Kill a Mockingbird, in fact, is a film about two fathers, Atticus Finch and Robert E. Lee (Bob) Ewell. Both are single parents. Ewell’s daughter Mayella is the victim of the alleged rape whose perpetrator, Tom Robinson, Atticus defends. And if Atticus is a fairytale father, Ewell is a fatherly nightmare, crude and abusive with a demonic look.²⁸ In bold and subtle ways the film marks and highlights contrasts between them: while Atticus is soft spoken, polite, and generally unflappable, Ewell is loud, profane, and threatening; while Atticus is always dressed impeccably in a suit and hat (which he removes as southern custom and good manners dictate), Ewell wears overalls and is generally disheveled; while Atticus eschews violent confrontation, Ewell seems to crave it.²⁹ In cultural terms, Ewell represents the Old South – honor, violence, racism – and Atticus the emerging order of the New South – respect, restraint, racial equality.

Two scenes in particular highlight the contrast between these two fathers. The first occurs early in the film after a preliminary hearing in Tom Robinson’s case when Ewell, exiting the courtroom, confronts Atticus. This confrontation, staged within the space of law, is about racial solidarity in the segregated south and about what fatherhood means in that context. Ewell leaves

²⁸See Bruzzi, Bringing Up Daddy, 86.

²⁹On this contrast see Osborn, “Atticus Finch-The End of Honor:...” 1140.

the courtroom with his hat cocked on his head, defying what propriety demands, while Atticus, holding his hat in his hand, talks to another man. As Atticus turns to go, Ewell blocks his way and immediately displays his violent disposition: “Captain, I’m real sorry they picked you to defend that nigger who raped my Mayella. I don’t know why I didn’t kill him myself instead of going to the sheriff. It would have saved you and the sheriff and the taxpayers a lot of trouble....”

While he spits these words out with venom, “I don’t know why I did not kill him myself...” is a question not just for Ewell, but also for this film’s viewers. Perhaps, the question suggests, in spite of his constant aggressiveness and threatening demeanor, Ewell is capable of actual violence only against children and the weak. While he is the kind of man who pokes an index finger into Atticus’ chest with his thumb pointing upward, as if to mimic a gun during their conversation, he may not be one who could pull an actual trigger.³⁰

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Caption: Bob Ewell and Atticus Fich

Ewell’s menacing but flaccid and cowardly display of violence is a metaphor for the structure of violence underpinning the era’s white supremacist values. Those values depend on a kind of racial solidarity that evacuates the promises of liberalism: on racial loyalty over factual truth, on caste status over individual merit, and on violence over reason. In their courthouse exchange, even as he notes Atticus’s superior status (“Hey Captain”) Ewell calls Atticus to

³⁰ Atticus, on the other hand, seldom shows anger and never aggressiveness; but when he’s called on by the sheriff to shoot a rabid dog, we (and his children) discover that he is the best shot in the county.

account in response to an accusation of racial betrayal, casting his question as an issue of alliance: “Hey Captain, someone told me just now that they thought you believed Tom Robinson’s story again our’n. You know what I said. I said you are wrong man, you are dead wrong. Mr. Finch ain’t takin his story against our’n. Well they was wrong wasn’t they?”

Atticus avoids answering the question about whether he believes Tom, taking on the mantle of liberal legality rather than racial solidarity. “I’ve been appointed to defend Tom Robinson,” he says, “Now that he has been charged that’s what I intend to do.”

As Atticus departs, walking down the stairs out of the frame, the camera closes in on Ewell, his teeth clenched, calling after Atticus. “What kind of man are you? You’ve got children of your own.” Ewell’s question, might be read as asking “What kind of (white) man are you?” – meaning, are you one who will protect his white daughter from the dangers of racial intermixing? one who will enforce the race line at all cost? Read this way, Ewell’s accusation of betrayal raises questions about law’s proper role in relation to racial hierarchy and racial privilege. His is a call to serve the present, to acknowledge and protect white supremacy. Atticus’s flat, matter-of-fact response points to a future in which African-American men accused of raping white women routinely will be afforded the full protections of the law.³¹

³¹ However unsuccessfully, Atticus enacts that future as an answer to Ewell’s question. After the trial is complete and the verdict rendered, when Atticus exits the courtroom moving down the same center aisle as Ewell had used earlier the camera shows people looking down on Atticus from the segregated, coloreds-only balcony where the African-American community has risen to pay homage to Atticus. If Ewell’s question called forth the logic of racial solidarity under Jim Crow, the homage of the African-American community is their tribute to a vision of the future in which law can live up to its promise of equal treatment.

Of course, that future remains over the horizon. Thus, in spite of overwhelming evidence to the contrary, Tom Robinson is found guilty by an all-white, all-male jury. Sometime later, Tom is shot trying to escape as he is transported to jail in a neighboring town. The law of the present, it seems, is allied with the entailments of the past. Yet Atticus's cross-examination of Bob and Mayella Ewell during the trial leaves a cloud of suspicion that Ewell had beaten his daughter for her willing dalliance with an African-American man and fabricated the rape allegation to cover up Mayella's transgression.

The cloud of that dishonorable imputation provokes Ewell to menace Atticus and his children, and that menace lays bare the promise as well as the limitations of Atticus's redefinition of fatherhood and law. In emphasizing the fact that Atticus is also a father, Ewell suggests that lawyerly niceties ought to matter less than remembering what it means to have children. For Ewell, having children is an occasion for and a call to violence, and it is precisely this call that Atticus refuses to hear and heed, for better or worse.

Ewell's spiteful critique of Atticus's manhood marks one way in which Atticus is vulnerable to violence in the present: through his children, whether it be their verbal harassment in the schoolyard or Ewell's final attack on them in the woods. While the critic Stella Bruzzi observes that Atticus is there "to protect Jem and Scout from the brutalizing adult world Mayella's father embodies,"³² early in the film Atticus articulates a more tragic understanding of fatherhood. "There's a lot of ugly things in this world, son," he tells Jem. "I wish I could keep

³² See Bruzzi, Bringing Up Daddy, 88.

'em all away from you. That's never possible.’”³³ Knowing that, Atticus embraces a model of fatherhood and law that aims to build a new and different future rather than remaining tethered to entailments of the past and present. “You're gonna hear some ugly talk about this (Atticus’s representation of Tom Robinson) in school,” he tells Scout after her fight with young Walter Cunningham. “But I want you to promise me one thing: that you won't get into fights over it, no matter what they say to you.”

This move away from reflexive violence is paradigm-shifting in the Depression-era South for both men (insult demands response in honor-based cultures³⁴) and for law (contrast, for example, the lynch law demanded by townsmen with Tom Robinson’s actual trial). Once again Atticus embodies that shift. Late in the film, after hearing of Tom’s death, Atticus and Jem go to Tom’s home to convey the tragic news to his wife and family. As Jem sits in the car, Ewell appears out of the shadows and orders one of Tom’s relatives to fetch Atticus from the house (“Boy, go inside and tell Atticus Finch I said to come out here. Go on boy,” he says to a grown man, in true racist form). While they wait for Atticus to appear, the camera brings Ewell and

³³ It is worth noting that Jem and Scout are saved from Ewell’s attack by their neighbor, the reclusive Boo Radley, rather than their father Atticus. Boo is able to take on the mantle of protector perhaps because he has lived fully apart from the norms of the community and so remains outside the controversies of the Robinson case; is at least reputedly capable of violence where Atticus is reluctant; and has observed, and in his own way, befriended Jem and Scout as they have grown, though he has never actually met them. He sees them in ways Atticus, otherwise occupied with the future, does not. He understands how dangerous their world is, even as Atticus refuses to take that danger seriously.

³⁴ See William Ian Miller, Humiliation and Other Essays on Honor, Social Discomfort, and Violence (Ithaca: Cornell University Press, 1993) and Richard Maxwell Brown, Strain of Violence: Historical Studies of American Violence and Vigilantism (New York: Oxford University Press, 1975).

Jem into the same frame. They glance at each other, visually connecting, registering yet again Ewell's awareness of Atticus's vulnerability as a father. In this moment, viewers are invited to take on Jem's perspective as the conflict between Atticus and Ewell plays out.

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Caption: Ewell and Jem

As Atticus exits the Robinson's house and slowly walks toward Ewell, the ensuing confrontation occurs wordlessly. When Atticus nears Ewell, Ewell suddenly spits on him. Startled by the violent act, seemingly about to lose control at its deep insult, Atticus takes one step forward, anger registering on his face for the first and only time in the film, as if he were going to defend his honor. Shifting quickly, the camera registers Jem's frightened reaction to the impending violent confrontation. We catch a glimpse of Ewell and over his shoulder of Jem, anxiously waiting to see what Atticus will do in response to this gross provocation. However, instead of resorting to violence, Atticus stops, reaches into his pocket and takes out his handkerchief, wipes the spit off his face with disgust, and steps around Ewell. As he drives away, the car's lights illuminate Ewell's scowling face.

Yet again Ewell has been frustrated. Again he is unable to draw Atticus into his world – now not in the racialized alliance contemplated in their earlier interaction, but instead in a confrontation between white men over insults to their honor. Atticus models for his son (and for the film's viewers) the answer to Ewell's question "What kind of man are you?". His version of manliness shows restraint in the face of a crude attack and evokes in that restraint a choice

between the world that Ewell inhabits and the one that Atticus seeks to create, a world in which manliness resides in self-control and moral rectitude, not violence or physical confrontation.

Non-Compliant Jurors/Disobedient Children

While the film portrays Atticus as an idealized figure, it remains the case that whether during Tom Robinson's trial or in daily dealings with his children, Atticus Finch is often unable to work his will in the present. Drawing a parallel between the non-compliant jury in Tom's case and Atticus' disobedient children, the film suggests that, if the present is the touchstone of his efficacy as a father and a lawyer, Atticus is oddly impotent. The viewer's embrace of him and his vision of fatherhood and law depends, then, upon the affection and ratification the narrator's post-hoc voiceover provides. Seeing Atticus as his children see him, knowing that the disobedience of the present becomes the embrace of the future, we are able to take the long view of his immediate failings as a lawyer and father even as we understand their costs.

With respect to the legal present, Atticus' reasoned, careful parsing of evidence, so persuasive to contemporary viewers, is of no avail before the film's white, male jury. He cannot convince them to embrace and ratify his civics book belief in equal justice for all.³⁵ "Now gentlemen," he tells the jury as if anticipating Brown v. Board of Education and the Warren Court, "in this country the courts are the great levelers. In our courts all men are created equal." Atticus is uncharacteristically animated in his plea to the jury to review the evidence

³⁵“(T)he reality was that Atticus' defense was doomed from the start....” See Asimow, “When Lawyers Were Heroes,” 1136.

dispassionately and restore Tom Robinson to his family, “In the name of god,” he says his voice raised, “do your duty.” “In the name of god,” Atticus continues, “believe Tom Robinson.”³⁶

As he utters these lines the camera closes in on Jem intently surveying the scene from the colored balcony. With the scene’s focus on Jem, who has begun to identify powerfully with his father, the film transforms the legal argument before the jury into an instruction from father to son and into an inter-generational, family legacy.³⁷ What Atticus cannot bring to fruition in Tom Robinson’s case is left to his children’s generation to complete. As he explains to Tom while he is led from the courtroom after the guilty verdict, “I’ll go to see Helen first thing tomorrow morning. I told her not to be disappointed, that we’d probably lose this one.” Losing “this one” refers to the trial, but also to the legal present. Atticus knows the obstacles he confronts in the Alabama courts, and losing “this one” is Atticus’s acknowledgment that law of the here and now cannot overcome the racism of its cultural surround.³⁸

Later, after learning of Tom’s death, Atticus despairingly tells his children, their friend Dill, and a neighbor, “The last thing I told him was not to lose heart, that we’d ask for an appeal.

³⁶As one critic of Atticus Finch puts it, “Finch wants his all white, all male jurors to do the right thing. But as a good Jim Crow liberal he dare not challenge the foundation of their privilege. Instead, Finch does what lawyers for black men did in those days. He encourages them to swap one of their prejudices [about race] for another [about class and respectability]” (parentheticals added). See Malcolm Gladwell, “The Courthouse Ring: Atticus Finch and the Limits of Southern Liberalism,” *The New Yorker* (August 10, 2009). Found at www.newyorker.com/reporting/2009/08/10/090810fa_fact_gladwell

³⁷See Holcomb, “To Kill a Mockingbird,” 40. Holcomb calls attention to what he labels “Jem’s nascent activism....”

³⁸See Eric J. Sundquist, “Blues for Atticus Finch,” in *The South as an American Problem*, Larry Griffin and Don Doyle, eds. Athens, GA.: University of Georgia Press, 1995.

We had such a good chance. We had more than a good chance.” To whom would Atticus have made his appeal? What gave him such confidence in its success? Here there is a suggestion that Atticus’ appeal would be addressed to the courts but also to an indeterminate future in which the promise of justice could, and would, be redeemed, a future where courts could/would indeed be the great levelers.

Just as he is unable to get the jury to do its “duty” and believe Tom Robinson, Atticus frequently is unable to make his children obey him. Indeed, six minutes into the film, we first meet Jem in a moment of stubborn defiance, sitting in a tree-house refusing to come down until Atticus agrees to play on a church football team. Atticus calmly walks over to the tree, looks up, as if offering a prayer, and asks, “Son, why don’t you come down out of there now and have your breakfast?” “No sir,” Jem responds, “not until you agree to play football for the Methodists....I ain’t coming down.” Atticus response highlights what Jem sees as his father’s limitations: “Oh, son, I can’t do that. I’m too old to get out there.” Yet as in his confrontations with Bob Ewell, when Jem continues his protest Atticus turns, walks away, and offers a calm rejoinder. “Suit yourself.” And so Jem stays in the tree.

Moreover, despite his best efforts, Atticus has great difficulty stopping Scout from fighting with other children at school. “Scout I don’t want you fighting....,” he explains, “I don’t care what the reasons are, I forbid you to fight.” In a voiceover, Scout acknowledges Atticus’ point: “Atticus had promised me he would wear me out if he ever heard of me fighting anymore...I was far too old and too big for such childish things and the sooner I learned to hold it in, the better off everybody would be.” But, as she puts it, “I soon forgot.”

If Scout and Jem's childishness proves frustratingly resistant to Atticus's incessantly reasonable injunctions, it offers an opening onto a world in which social norms have not completely colonized the children's every thought and action. In their relative innocence, they relate to those around them in ways, though mildly defiant, that unravel the tight fabric of racism bit by bit. In so doing, they provide a vision of a more just social order that is, in the world of the film, incipient, and ready for cultivation.

The film conjures that alternative most powerfully in a scene, midway through the narrative, in which Atticus and his children avert a lynch mob on the jailhouse steps. Atticus is called to the jail by the sheriff the evening before Robinson's trial is to begin, and he posts himself on the front step with a chair, a lamp, and a law book – ready to confront impending violence with reason and enlightenment. After Atticus left his house, the children and their friend Dill snuck out and followed him to see what is going on. Hiding in bushes across from the jail, Jem tells Scout, "I just wanted to see where he was and what he was up to. He's alright," he says as if he were responsible for protecting Atticus. "Let's go back home."

Just as they are about to leave, a group of armed men from Old Sarum, a nearby area in which poor whites live, arrive at the jail and demand that Atticus turn over Tom. At this point, the children run to Atticus making their way through the crowd of men. "Jem, go home and take Scout and Dill home with you," Atticus says when they appear. Jem, slowly surveying the crowd of men, refuses to leave. "Son I said, go home," Atticus insists, to which Jem replies "No sir." Someone in the crowd tells Atticus that he'd better get the children out of there. "Jem, I

want you to please leave,” Atticus says. “No sir” Jem repeats. “Jem,” Atticus intones, anxiously raising his voice. “I tell you I ain’t going,” Jem insistently replies.

In this dangerous moment, Atticus once again fails to control his children. Yet Jem’s defiance paradoxically is rooted in a deep identification with Atticus. It is almost as if Jem projects himself into the future and acts as he imagines Atticus himself would act – indeed, is acting: on principle.

It is Scout, however, who pierces the tension of the moment. She spots Walter Cunningham Sr., a leader of the mob, and, too young to understand his purpose, calls to him in a friendly way. “Hey, Mr. Cunningham...How’s your entailment going?” She had met him once before in the film’s first scene, when he drops by her house to pay Atticus for legal work in hickory nuts “as part of his entailment,” and she knows his son Walter, Jr. “Tell him ‘hey’ for me, won’t you?” she says to him. She then forays innocently into a topic with much deeper resonance across the film. “You know something, Mr. Cunningham?” she says, “Entailments are bad...”

INSERT IMAGE

(Austin3.tif)

Caption: Scout and the lynch mob

Cunningham, who has so far been avoiding her gaze shamefaced, begins to look at her quizzically. “It takes a long time, sometimes,” Scout continues (to play entailments out? get rid of them? Or, perhaps, to lift the burden of the entailments that structure a social inheritance of inequality and injustice?) Then, worried she has offended him with her forwardness, she quietly retreats. “What’s the matter? I sure meant no harm, Mr. Cunningham,” she says worriedly.

Finally he looks at her and replies, “No harm taken, young lady. I’ll tell Walter you said ‘hey.’”

Turning to the mob he says, “Let’s clear out of here; let’s go, boys.”

Scout, more credulous than defiant, breaks the frame of meaning that has structured the conflict between Atticus and the mob. She reaches across lines of class and racial antagonism and, as her father has always enjoined her to do, tries to stand in the shoes of someone else to understand the weight of the entailments Mr. Cunningham feels as a poor man – but also, in the wider world of the film, perhaps as he also stands ready to help lynch a black man.

In this scene, Jem and Scout disobey Atticus in service of some value or principle that Atticus himself might have espoused. By teaching his children about the proper way to live and act Atticus has given them grounds for disobeying his more immediate paternal commands. The children bring his values to bear, however prematurely, in ways that suggest they have already learned lessons about the kinds of adults Atticus wants them to become. Here again To Kill a Mockingbird plays out the temporal horizon of the lawyer/father. Like law itself, Jem and Scout exist both in the here and now and in an incomplete vision of what they can and should be.³⁹

The Colored Balcony

³⁹Shaffer argues that “the Finch children grow up, subordinate to the direction and witness indicated by faith...” See Thomas Shaffer, “Growing Up Good in Maycomb,” 45 Alabama Law Review (1994), 531, 553.

This orientation to the future is also captured visually in the positioning of Atticus's children as spectators in Tom Robinson's trial.⁴⁰ The courtroom, like the town in which it is located, is rigidly segregated, with whites seated on the first floor and African-Americans in the balcony. That Dill, Jem, and Scout cannot find a seat on the first floor among Maycomb's whites, but can comfortably join the balcony crowd, seems to foretell something about the world into which they will grow up. They find their place as spectators hovering over a classic southern race trial, looked after by an African-American minister, Reverend Sykes.

The camera places viewers alongside them, merging our gaze with theirs as we watch the trial proceed. But we also often look up from below to see three white children surrounded, indeed enveloped, by the African-American community, in a vision of racial integration imaginable within the confines of the law long before it is imaginable in the world outside the courtroom.⁴¹ It is to that imagining that Atticus as lawyer/father orients himself, offering a vision of formal legal equality, embraced in spite of social difference, to the law and his children. When

⁴⁰ That they attend the trial at all marks another instance of their defiance of Atticus. As they sit on the side of the road watching a parade of neighbors heading down to the courthouse, Jem suddenly gets up and begins to join that parade. He says, "I can't stand it any longer. I'm going down to the courthouse and watch." Scout replies, "You better not. You know what Atticus said." "I don't care if he did," Jem answers, "I'm not going to miss the most exciting thing that ever happened in this town."

⁴¹ Holcomb, in contrast, suggests that the film actually has little to say about race, that it displays "an implicit desire for race and class to simply not matter." See Holcomb, "To Kill a Mockingbird," 39.

Bob Ewell later tries to kill Jem and Scout, he avenging his own humiliation at Atticus's hands during the trial, but also acting to short circuit the future which Atticus's children embody.⁴²

The spectators in the colored balcony are an audience for the jury's verdict in Tom Robinson's case and another kind of jury for Atticus' arguments, for his vision of equal justice under law. Viewers focus on their reaction to the verdict as it occurs: the camera shifts to the African-Americans in the balcony and then returns to the jury below. When Tom Robinson is found guilty, we are returned to the balcony where Jem sits, head down and crying, and Scout stares out glumly, as if imprisoned between the slots of the balcony's railing.

After the rest of the courtroom empties, spectators in the balcony remain to watch Atticus pack his briefcase. As he begins to leave, the camera moves behind him to show the African-Americans in the balcony standing in silent tribute.⁴³ Jem immediately joins them in standing, but the still-untutored Scout remains seated until Reverend Sykes tells her, "Miss Jean Louise, stand up." Scout complies without protest as the Reverend puts his hand around her and adds, "Your father is passing."

INSERT IMAGE
(Austin4.tif)
Caption: The Black Balcony

⁴²As Shaffer explains, "Robert Ewell...was humiliated and saw his daughter humiliated by Atticus in the trial....Robert Ewell became obsessed with his humiliation and with the idea that Atticus was the source of his humiliation. He stalked the Finch children, attacked them, and nearly killed them." Thomas Shaffer, "The Moral Theology of Atticus Finch," 42 University of Pittsburgh Law Review (1980-1981), 181, 191.

⁴³Bruzzi, Bringing Up Daddy, 87. The African-Americans rise, Bruzzi suggests, to honor Atticus as "the great protector who stands up for the weak and the good."

The word “passing” in this deeply affecting scene suggests not just physical movement out of the courtroom but the passing on of a legacy. The lawyer’s appeal and the work of the father in passing on his values are joined. The African-Americans in the balcony rise for Atticus the way the spectators at a trial stand when the judge enters and exits the courtroom. For Maycomb’s African-American community, and for his children who stand with them, Atticus is the true embodiment of law, of a law whose gaze is oriented beyond this courtroom to a time when equality before the law may be achieved, segregation ended, and African-Americans and whites will sit side by side.

Conclusion

In its temporal orientation, To Kill a Mockingbird captures a constituent element of both law and fatherhood. With respect to law, as Drucilla Cornell reminds us, “Legal interpretation demands that we remember the future.”⁴⁴ In that phrase, Cornell suggests that law fixes its gaze temporally, not just on the possibilities (or impossibilities) of the present, but on a future promise of justice. Justice, Cornell argues, “is precisely what eludes our full knowledge.” We cannot “grasp the Good but only follow it. The Good...is a star which beckons us to follow.”⁴⁵ While justice, what Cornell calls the Good, is, on her account, always present *to* law, it is never

⁴⁴Lobel argues that, “Even when prophetic litigation loses in court, it often functions...as an appeal to future generations.” See Jules Lobel, “Losers, Fools & Prophets: Justice as Struggle,” 80 Cornell Law Review (1995), 1333, 1347.

⁴⁵Drucilla Cornell, “From the Lighthouse: The Promise of Redemption and the Possibility of Legal Interpretation,” Cardozo Law Review 11 (1990), 1697.

completely realized *in law*.⁴⁶ “[T]he law posits an ideality...that it can never realize, and...this failure is constitutive of existing law.”⁴⁷ Law exists in time, in the “as yet” failure to attain the Good, and in the commitment to its future realization. Cornell reminds us that there are, in fact, two audiences for every legal act, the audience of the present and the audience of the future (which stands as a figure of law's redeeming promise of justice). Both audiences seem to be very much part of the legal and paternal world of Atticus Finch.

Perhaps no one had a deeper and more penetrating understanding of the centrality of the temporal duality that Cornell highlights than Robert Cover.⁴⁸ Cover compellingly called our attention to law's “jurisgenerative” as well as what he called its “jurispathic” qualities.⁴⁹ “Law,” Cover argued,

may be viewed as a system of tension or a bridge linking a concept of reality to an imagined alternative...Thus, one constitutive element of a *nomos* is the

⁴⁶Drucilla Cornell, "Post-Structuralism, the Ethical Relation, and the Law," Cardozo Law Review 9 (1988), 1587.

⁴⁷Judith Butler, "Deconstruction and the Possibility of Justice: Comments on Bernasconi, Cornell, Miller, Weber," 11 Cardozo Law Review (1990), 1716. Butler argues that "this horizon of temporality is always to be projected and never fully achieved; this constitutes the double gesture as a persistent promise and withdrawal....Cornell argues that it is necessary to repeat this gesture endlessly and thereby to constitute the posture of vigilance that establishes the openness of a future in which the thought of radical alterity is never completed."

⁴⁸For a collection of Cover's work, see Martha Minow, Michael Ryan, and Austin Sarat, eds. Narrative Violence and the Law: The Essays of Robert Cover (Ann Arbor: University of Michigan Press, 1993).

⁴⁹"The Supreme Court, 1982 Term-Foreword: Nomos and Narrative," Harvard Law Review 4 (1983),

phenomenon George Steiner has labeled 'alterity': the 'other than the case', the counterfactual propositions, images, shapes of will and evasions with which we charge our mental being and by means of which we build the changing, largely fictive milieu for our somatic and our social existence.' But the concept of a *nomos* is not exhausted by its 'alterity'; it is neither utopia nor pure vision. A *nomos*, as a world of law, entails the application of human will to an extant state of affairs as well as toward our visions of alternative futures.⁵⁰

The *nomos* which law helps to create, Cover believed, always contains within it visions of possibility not yet realized, images of a better world not yet built. But, he reminds us, law is not simply, or even primarily, a gentle, hermeneutic apparatus; it always exists in a state of tension between a world of meaning in which justice is pursued, and a world of violence in which "legal interpretation takes places on a field of pain and death."⁵¹ In this sense, law, as Robert Cover writes, provide "a bridge to alterity."⁵²

Taking Cornell's and Cover's perspective, one might say that Atticus Finch's effort to save an African-American man accused of raping a white woman in To Kill a Mockingbird, while it had little chance of immediate success, provides such a bridge and participates in the

⁵⁰Id., 9.

⁵¹Robert Cover, "Violence and the Word," Yale law Journal 95 (1986), 1601.

⁵²See Robert Cover, "The Supreme Court, 1982 Term-Foreword: Nomos and Narrative,"97 Harvard Law Review (1983), 4, 9.

logic of what Cover called “redemptive constitutionalism.”⁵³ Atticus refused to recognize the injustice of the time and place in which he lived as the defining totality of law and, as such, acted as the carrier of a vision of a future in which justice might prevail. For people like Atticus, as Cover argues, “Redemption takes place within an eschatological schema that postulates: (1) the unredeemed character of reality as we know it, (2) the fundamentally different reality that should take its place, and (3) the replacement of one with the other.”⁵⁴

Cover uses the example of anti-slavery activism in the mid-nineteenth century to suggest that the work of “redemptive constitutionalism” reveals “a creative pulse that proliferates principle and precept, commentary and justification, even in the face of a state legal order less likely to hold slavery unconstitutional than to declare the imminent kingship of Jesus Christ on Earth.”⁵⁵ In this view, lawyers like Atticus Finch speak in a prophetic voice even as they supply the argumentative and interpretive resources to bridge the gap between the present and the beckoning possibility of justice.⁵⁶

⁵³Cover, "Nomos and Narrative....," 34.

⁵⁴Id.

⁵⁵Id., 39.

⁵⁶Lobel explores the utility of the idea of prophecy to the work of lawyers who serve losing causes. See "Losers, Prophets....," 1337. Phelps argues that Atticus' vision of justice was too “closely aligned to due process,” and suggests that, like Captain Vere in Melville’s Billy Budd, he is “complicitous in an unjust status quo.” Phelps, “Atticus, Thomas, and the Meaning of Justice,” 932.

To Kill a Mockingbird suggests that fathers also are called on to remember the future and to imagine for their children a time different from, and perhaps better than, the present.⁵⁷ As a father and figure of law, Atticus attends to the demands of the present, but keeps the future firmly in view. He cultivates a way of being with his children that recognizes who they are while never forgetting who he hopes they can and will, in the future, become.⁵⁸ Fifty years after its screen debut, many of this film's viewers join Scout-as daughter/narrator- in memorializing and idealizing Atticus precisely because he held firm to his hope for the law he served and the children he raised.⁵⁹

⁵⁷See David Dollahite and Alan Hawkins, "A Conceptual Ethic of Generative Fathering," 7 The Journal of Men's Studies (1998), 190.

⁵⁸On the theme of hope in To Kill a Mockingbird see Shaffer, "The Moral Theology of Atticus Finch," 221.

⁵⁹As Bruzzi puts it, "Mockingbird...wants its audience to believe in the peculiar brand of patriarchy and paternity Atticus represents-benevolent, just, and innately traditional." See Bringing Up Daddy, 87-88.