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FAULKNER'S KNOWLEDGE OF THE LAW

Morris Wolff*

William Faulkner was an excellent "curbstone lawyer." He was a man who learned and applied the law without any formal legal education. The best evidence of Faulkner's knowledge of the law is his accuracy in its use. This accuracy can be demonstrated by comparing his legal references in the stories and anecdotes of the *Snopes Trilogy* to actual courtroom cases recorded in the *Mississippi Reports* and statutes at the time the three novels of the *Trilogy* (*The Hamlet*, *The Town*, and *The Mansion*) were written. That Faulkner had a meticulous interest in legal detail and a good working knowledge of the law is reflected in the accurate legal references woven into the structure of his stories.¹ Not only are his legal quotations correct; some of them can be traced to actual cases recorded in the *Mississippi Reports*, a fact which suggests that Faulkner may have read the law as part of his self-education.

Some sources for his knowledge of the law may be suggested. Faulkner received no formal legal education, but as a child, and later as a writer, he was surrounded by friends and relatives who were trained in the law. Faulkner came from a family of lawyers. His great-grandfather W. C. Falkner; his grandfather John Wesley Thompson Falkner; his uncle John Wesley Thompson Falkner, II; and his first cousin John Wesley Thompson Falkner, IV, were all practicing lawyers. According to his nephew Jimmy Falkner, "William came to know the law through listening to law stories told during family discussions. He had a photographic mind and an excellent memory. Whatever he heard he remembered."² In addition to practicing law, his grandfather, as a banker, dealt with money and banking law on a daily basis—perhaps imparting to Faulkner the knowledge of money and banking which he used in endowing Flem Snopes with the legal knowledge needed for his rise to leadership in the local banking community.

Faulkner was meticulous in his use of the law. At times he would verify the accuracy of his knowledge by checking with lawyers. On one occasion Faulkner wanted to know the legal procedure involved in a congressional election. He proceeded to the law office of his literary agent, Philip Stone, where he spoke with one

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1. Faulkner's concern for accuracy in specialized fields suggests that before using either Indian Lore or the Law he carefully researched the field of interest. For an article which reflects Faulkner's deep concern for accuracy in specialized fields of research, the reader is referred to A. A. Hill, "Three Examples of Unexpectedly Accurate Indian Lore," *Texas Studies in Literature and Language* 6 (1964): 80.

2. Jimmy Falkner, interview in William Faulkner's personal library at Rowan Oak, Oxford, Mississippi, July 31, 1977.

of Stone's law partners, T. H. Freeland, III. Freeland recalled the incident:

I told him exactly what was involved and he listened carefully. When I was done he looked up at the volumes behind me and asked me to take a look at the specific statute in the *United States Code* just to be sure that my oral recollection was correct. On several occasions he discussed the law with Mr. Phil (Philip Stone).³

Upon entering the law offices where Philip Stone once maintained his practice, one notices that the entire wall on the right side, stretching to a height of twelve feet and a width of twenty-five feet, is occupied by glass bookcases filled with law books. These law books have been there, according to present members of the firm, since 1920, and many volumes bear the name "James Stone and Son" on their cover. These books were readily available to Faulkner, who regularly visited Stone's law offices. Stone routinely kept Faulkner waiting in the lobby near the bookcases for ten to fifteen minutes each time he came, even when Stone had nothing else to do.⁴ Faulkner was a voracious reader, and it is possible, that while waiting to see Stone he might have pulled volumes from the bookcases and actually read some of the cases. In addition, according to both Freeland and Jimmy Falkner, Stone discussed with Faulkner humorous cases which Stone had found in the *Mississippi Reports*. The cases mentioned later in this paper, particularly *Minor v. Dockery*⁵ and *Bloodworth v. Stevens*,⁶ would have been available to Faulkner at the time he wrote and completed *The Hamlet* in 1939. According to one critic, H. Edward Richardson, it may have been books in Stone's library which originally stimulated Faulkner's interest in the law as a resource for tales or stories.⁷ In his article Richardson relates that "Faulkner read Stone's library and stored a virtual reservoir of the man's ideas, which continued to flow with rich depths of humor over the years."⁸ Stone, in addition to making his library available, may have helped Faulkner verify the accuracy of his legal references. Since Faulkner used Stone's library, we assume that he had access to Stone's law books as well as to his legal knowledge. According to Richardson, Stone helped Faulkner to develop some of the stories concerning the Snopes clan:

3. T. H. Freeland, III, interview in his law office, Oxford, Mississippi, August 1, 1977.

4. *Id.*

5. 125 Miss. 727, 88 So. 321 (1921).

6. 51 Miss. 475 (1875).

7. H. Edward Richardson, "The Ways That Faulkner Walked: A Pilgrimage," *Arizona Quarterly* (Summer 1965): 139.

8. *Id.*

So in their conversations during long walks about the countryside, the Snopes clan emerged with growing power, and Stone even gave names to some of them, such as Admiral Dewey and Wall Street Panic Snopes. The many conversations of the two men were often based upon stories that grew to such involved proportions that Faulkner often found it necessary to return to Stone's office in order to check his lore.⁹

And the lore which Faulkner carefully checked for accuracy may have been the legal anecdotes which Stone shared with his friend. Joseph Blotner also suggests that Stone was one of Faulkner's sources for legal knowledge and accuracy. According to Blotner:

[Stone] was entranced with the turns and twists of human behavior which his legal practice daily showed him There in Stone's law office the two men would talk about the actual doings of people like the Snopeses. And when the fancy struck them, they would make up wild, outrageous stories of things which no Snopes-counterpart may have done, but things of which they thought them perfectly capable.¹⁰

These "wild, outrageous stories" may have included the two legal anecdotes—the "Pound Fee" incident included in *The Mansion* and the "Spotted Horses" episode included in *The Hamlet*—which are considered later in this paper.

In addition to possibly using Stone's mind to test the legal accuracy of his anecdotes, and possibly using Stone's law library as a resource to verify the accuracy of certain "stories," Faulkner may have augmented his knowledge of the law by listening to courtroom trials in Oxford and by speaking with lawyers, who were waiting for cases to be heard.¹¹ Oxford is the county seat, and the location for courtroom trials. Law offices are located around the square. On the benches outside the courthouse, Faulkner, the great listener, probably heard stories about actual cases.¹² The drugstore where Faulkner often stood was directly across from the courthouse, and perhaps the two anecdotes to be examined here first came to his ears either in the courtroom or through the conversation of two lawyers as they emerged from the courthouse.

In the "Spotted Horses" episode the fictional anecdote can be traced back to possible roots in a Mississippi case, *Minor v.*

9. *Id.* at 138. In his article, Richardson portrays Stone as a source for Faulkner's knowledge of the law. According to Richardson, Stone was a "[f]riend, teacher, editor, advisor, a cultured man with a creative mind in his own right Phil Stone stands in a relationship to Faulkner similar to that of Mentor Graham to Lincoln, or William Godwin to Shelley, although the Stone-Faulkner association was much closer in both age and mutuality of literary interest. Faulkner read Stone's library and stored a virtual reservoir of the man's ideas, which continued to flow with rich depths of humor over the years." *Id.* at 139.

10. Joseph Blotner, *Faulkner: A Biography* (New York: Random House, 1974), Vol. I, p. 537.

11. This possibility was suggested by Faulkner's friend and attorney and former Dean of the University of Mississippi Law School, Robert Farley. Interview with Robert Farley in his home, Oxford, Mississippi, August 1, 1977.

12. *Id.*

Dockery.¹³ This case was decided by the Mississippi Supreme Court in March of 1921, ten years prior to its possible inclusion in "Spotted Horses," a short story which was published in 1931 in *Scribner's Magazine* and later (in 1940) incorporated into *The Hamlet*.

In the "Pound Fee" incident, an assortment of law cases and statutes, which Faulkner may have read or learned of through yarn-swapping sessions with friends in Oxford, are considered.

THE LAW AND "SPOTTED HORSES"

In the "Spotted Horses" episode a herd of wild horses had been brought to town for an auction. They were placed in a barn's corral under the direction of Eck Snopes, a member of the Snopes clan, and a stranger identified only as the "Texas Man." The corralled horses escaped and injured two men in the community whose wives brought actions to recover damages for their husbands' injuries.

Vernon Tull was injured when the cart in which he and his family rode was upset by one of the runaway "spotted horses." The horse causing Tull's injuries had been *given* to Eck Snopes by the "Texas Man" to overcome the auction crowd's disinterest in bidding for wild horses. Mrs. Tull sought damages for her husband's injuries in the action *Tull pl. vs. Eckrum Snopes*.

After bidding began, Henry Armstid bid for and purchased one of the "spotted horses" for five dollars, in spite of his wife's protests that the couple's few remaining dollars should be spent on winter shoes for their children. Mrs. Armstid was assured by the "Texas Man" that the five dollars her husband had paid for the horse would be returned by Flem Snopes. After her husband was injured by a runaway horse and Flem failed to return the purchase price, Mrs. Armstid brought the action *Armstid pl. vs. Snopes*.

There was no bill of sale to indicate who owned the horses that had injured Tull and Armstid. Eck, however, claimed to own the horse which had escaped from the corral and, while running down the road, had bumped into the wagon of Vernon and Mrs. Tull. Although Flem Snopes had not received money for the horse at the time of the escape, the transfer of money alone would not have been sufficient to prove Flem's ownership and liability for the injuries. The "Texas Man," who had brought the horses to town for the auction and who could presumably identify the man to

13. 125 Miss. 727. 88 So. 321 (1921).

whom he had sold the particular horses, left town prior to the horses' escape. Both Eck and Flem Snopes, through their control of the horses, would appear to be accountable for injuries that the horses had caused; yet neither one, according to the justice of the peace, could be held liable as an owner. Eck even admits ownership: "It [the horse] was mine. How much do I have to p _____." ¹⁴

The justice of the peace's narrow reading of the law exonerates both Eck and Flem. His refusal to permit Eck to admit ownership and his insistence that a recorded document of title, bill of sale, or actual possession of the horse be shown to prove Eck's ownership leads to a harsh and unfair result. Eck might have successfully asserted ownership of the animal if he had taken possession of the animal on finding it alive in a field after the escape. The reader's sense of justice is disturbed by the unfair and highly technical ("legalistic") result. The judge prevents justice by prohibiting Eck's payment of damages to the injured and innocent bystander who protests: "[M]y wagon is wrecked; my husband is jerked out of it and knocked unconscious and unable to work for a whole week with less than half of our seed in the ground, and I get nothing." ¹⁵ To add final insult to injury the justice of the peace advises the family that they can only look to the dead horse, as perpetrator of the injuries and not to Eck, as a source of compensation for their damages. As often happens in Faulkner's "legal situations," our expectations of justice and financial award are jarred by the intervention of the law which produces an unfair result. The justice of the peace rules that:

"[T]he injured or damaged party shall find recompense in the body of the animal. And since Eck Snopes never owned that horse at all, and since you just heard a case here this morning that failed to prove that Flem Snopes had any equity in any of them, that horse still belongs to that Texas Man. Or did belong. Because now that horse that made your team run away and snatch your husband out of the wagon, belongs to you and Mr. Tull."

. . . .

"The horse!" Mrs. Tull shouted. "We see it for five seconds, while it is climbing into the wagon with us and then out again. Then it's gone, God dont know where and thank the Lord He dont! And the mules gone with it and the wagon wrecked and you laying there on the bridge with your face full of kindlingwood and bleeding like a hog and dead for all we knew. And he gives us the horse!"

. . . .

"I cant stand no more!" The old Justice cried. "I wont! This court's adjourned! Adjourned!" ¹⁶

14. William Faulkner, *The Hamlet* (New York: Random House, 1940), p. 335.

15. *Id.*, p. 337.

16. *Id.*, p. 337-38.

The outrageous courtroom result can only be understood in the context of Faulkner's plot. In trying to discover why the law as applied, seems to go haywire, the reader is reminded that Snopesian interests never lose in a brush with the law; Flem Snopes's behavior is above legal correction. His position, outside the legal system, is part of his power. Faulkner will not permit a relative (Eck Snopes) to be ensnared in the law as long as his relative is representing Flem's business interests. When he loses that protection, legal punishment can ensue. Mrs. Tull's interests clash with the interests of a powerful Flem Snopes before an uncourageous and cowardly justice of the peace. The law is invoked by the judge to support Flem's political power. The law is not corrupt, but its application in the hands of ignorant people has a corrupting effect.

The judge has only a superficial knowledge of the law and a superficial commitment to justice. Only one page of his law book, the 1881 *Mississippi Reports*, has been used, having a "thread-thin line of soilure as if during all the time of his possession its owner . . . had opened it at only one page though that quite often" ¹⁷ The justice of the peace is a political hack, not an objective dispenser of justice. He can only regurgitate borrowed information. He is intimidated and takes the side of the rich and the powerful against the interests of the displaced and the poor. He twists the law to fit Flem's power interests, and rejects Eck's natural impulse to offer to pay. A finding of liability and thus a requirement that damages be paid might suggest that Snopesian interests are within the jurisdiction of the courts and within the constraints of the legal system. Flem is too shrewd to be brought into court by subpoena and too clever to be punished for any injury that his livestock may have caused the plaintiff. This insulation from legal process and court appearance coincides with Flem's rise to power. He is depicted as a manipulator of legal processes rather than as subject to them.

Faulkner uses the law as a foil. What occurs in the courtroom disturbs our reasonable expectation with regard to courtroom procedure. The lawsuit provides a result, which is unexpected, artificial and bizarre. The litigants have not been given justice; they have not been made whole. The application of the law to the facts has not brought a rational result. On one level the result is humorous in a black, comic way. But for those who are victimized

17. *Id.*, p. 328.

by the irrational application of the law, the reaction is outrage, and a sense of defeat.

The justice of the peace's decision, exonerating Flem and Eck from liability for injuries caused by the livestock, is based on a tortured interpretation of an old legal doctrine, *damnum absque injuria* or injuries without an action for damages. The judge found that the injuries inflicted by the escaping horses were merely the result of risks that one undertakes as a member of organized society. "[C]ompensation for such risks may be found in the general welfare which the society is organized to promote."¹⁸ The justice of the peace accurately states the rule of law regarding the liability of livestock owners for injuries caused by their animals.

"If you please, ma'am," the Justice said

"The injury to your husband aint disputed

The law says that when a man owns a creature which he knows to be dangerous and if that creature . . . known to him to be dangerous ceases to be restrained by that suitable pen or enclosure, either by accident or design and either with or without the owner's knowledge, then that owner is liable. That's the law. All necessary now is to establish first, the ownership of the horse, and second, that the horse was a dangerous creature within the definition of the law as provided."¹⁹

By comparing the judge's statement of the law to the language in *Minor v. Dockery*,²⁰ we can see the possible source of Faulkner's legal knowledge. In *Minor v. Dockery*, the Mississippi Supreme Court states that: "[T]he owners of trespassing stock are made absolutely liable for all damages done by such stock."²¹ This strict liability for owners of trespassing stock was based on "[t]he statute (section 2222, Code of 1906; section 4541, Hemmingway's Code), [which] provides that, 'Every owner of . . . shall be liable,' etc."²²

Faulkner may have modified the language of *Minor* for dramatic impact and may have removed the section and code numbers. The language is otherwise quite similar. The facts of *Minor v. Dockery* are surprisingly similar to the facts in the "Spotted Horses" episode. Although Mr. Tull was trampled by a runaway horse in "Spotted Horses," Miss Dockery's crops were trampled by unrestrained cattle, horses, and mules in *Minor*. In each case, the legal ownership of the animals causing injury is an issue at trial. One of the attorneys in *Minor* (Ratcliff) bears almost the same name as that of a major character in the "Spotted Horses" episode, a fact that

18. *Pleasants v. Smith*, 90 Miss. 440, 450, 43 So. 475, 476 (1907).

19. Faulkner, *The Hamlet*, p. 334-35.

20. 125 Miss. 727, 88 So. 321 (1921).

21. *Id.* at 732, 88 So. at 321.

22. *Id.*

episode, a fact that may be more than mere coincidence. Knowing that Faulkner loved detective stories, this could be his clever way of creating a link between the court case and his story. Or perhaps the name caught his fancy while reading the case and later emerged from his subconscious as part of the episode, especially since Ratliff throughout *The Hamlet* shows some of the negotiator qualities of a shrewd lawyer.

There is additional evidence that Faulkner may have read *Minor v. Dockery* and later used it for plot material. Under the law of Mississippi as stated in *Minor*, one who has possession of a horse as an agent for a principal who owns the horse which injures or otherwise harms another, "is liable to no one except his principal for damages resulting from an omission or neglect of duty" ²³ Unlike an agent, one who has possession of another's animal as a bailee "is the owner *pro hac vice* of the subject of bailment [the animal]. An owner *pro hac vice* has some interest or title in the property. As a bailee, he would be such an owner." ²⁴ Assigned the status of owners, bailees of livestock are "made absolutely liable for all damages done by such [trespassing] stock." ²⁵ As in *Minor*, the outcome of "Spotted Horses" turns on whether the defendants, Eck and Flem, are legally characterized as owners, agents, or bailees. Eck is deemed by the court to be an agent acting on behalf of the "Texas Man;" the defendant in *Minor v. Dockery* is also found to be an agent. No legal liability is the result in both cases. If Faulkner had allowed the judge to consider the fact that Eck held money for the "Texas Man," corralled the horses, and watched over the horses during the auction, he might have characterized Eck's legal status as that of a bailee and not an agent. Thus, Eck would have been liable for the injuries to Mr. Tull. In both "Spotted Horses" and in *Minor* there is a finding of no liability for the custodian of the livestock. In both, a finding of agency and a rejection of liability based on bailment is the legal result. In both cases, the injured party is left without compensation, despite the availability of a potential remedy under the theory of bailment.

Faulkner in "Spotted Horses" accurately applies the legal doctrines expressed in *Minor v. Dockery*. The judge in *Minor* states the opposing theories of bailment (under which possession of the livestock without title is sufficient to establish liability) and agency

23. *Id.*

24. *Id.* at 733, 88 So. at 322.

25. *Id.* at 732, 88 So. at 321.

(under which possession without title is not sufficient to establish liability). The court states that:

[U]nder the terms of the statute imposing absolute liability only the owners [the "Texas Man"] are made liable . . . an agent [Flem] is liable to no one except his principal [the "Texas Man"] for damages resulting from an omission or neglect of duty in respect to the business of the agency.

. . . .

But a mere agent in charge of personal property for his principal, is not the owner in any such sense.²⁶

Most of Frenchman's Bend believed that Flem owned the horses when he arrived in town with them. But Faulkner leaves the issue of Flem's ownership purposely ambiguous.

"Boys," Ratliff said, "Eck knows all about them horses. Flem's told him how much they cost and how much him and that Texas man aim to get for them, make off of them. Come on Eck. Tell us."

. . . .

"I dont know," he said.

. . . .

"Eck dont know who them horses belong to anymore than we do," one of the others said. "He knows that Flem come here on the same wagon with them, because he saw him. But that's all."²⁷

Even Ratliff suggests that the only way to find out who is the owner of the horses was to "wait until the auction's over and split up and some can follow Flem and some can follow that Texas fellow and watch to see which one spends the money."²⁸ Faulkner maintains a sense of ambiguity and follows the legal thinking expressed in *Minor* to assist the development of his story. Had Faulkner permitted the justice of the peace to find sufficient evidence of bailment, Eck as a bailee would have been liable for the injuries. Indeed, Eck thought he was the owner: "Was that your horse that ran over Mr. Tull?" "Yes," Eck said. "It was mine. How much do I have to p _ I'm sorry it made Tull's mules snatch him outen the wagon. How much do I owe him?"²⁹

The court should have accepted this admission of ownership and found Eck liable, but this result might have hindered Flem's swift rise to power, and left Faulkner with a villain-hero who no longer appeared to be "above the law." Faulkner refuses to limit Flem's rise to power by a finding of liability. Instead, Faulkner

26. *Id.* at 732, 733-34, 88 So. at 321, 322.

27. Faulkner, *The Hamlet*, pp. 282-84.

28. *Id.*, p. 280.

29. *Id.*, p. 335-36.

insulates Flem from the law's effect. Flem has a certain arrogance towards the law (as symbolized by his spitting in the following quotation) which is based on his control of the system, coupled with his astute knowledge of how to make the law work to his own advantage:

Flem Snopes flatly refused to recognize the existence of the suit against himself, stating once and without heat and first turning his head slightly aside to spit, "They wasn't none of my horses," then fell to whittling again while the baffled and helpless bailiff stood before the tilted chair with the papers he was trying to serve.³⁰

The justice of the peace could have required Flem to be present at his own trial since a subpoena had been served on Flem. The justice of the peace could have found Flem in contempt of court and punished him for his failure to appear:

"Wait," the Justice said. He looked about at the faces, the blurred eyes fleeing behind the thick lenses. "Where is the defendant? I dont see him."

"He wouldn't come," the bailiff said.

"Wouldn't come?" the Justice said. "Didn't you serve the papers on him?"

"He wouldn't take them," the bailiff said. "He said ____"

"Then he is in contempt!" the Justice cried.

....

"So he refuses to defend himself," the Justice said. "Dont he know that I can find against him for that reason, even if pure justice and decency aint enough?"

"It'll be pure something," Snopes said. "It dont take no mind-reader to see how your mind is ____."

"Shut up, [Lump] Snopes," the bailiff said. "If you aint in this case, you keep out of it." He turned back to the Justice. "What you want me to do: go over to the Bend and fetch [Flem] Snopes here anyway? I reckon I can do it."

"No," the Justice said. "Wait." He looked about at the sober faces again with that bafflement, that dread. "Does anybody here know for sho who them horses belonged to? Anybody?" They looked back at him, sober, attentive—at the neat immaculate old man sitting with his hands locked together on the table before him to still the trembling.³¹

Despite his assertion that Flem is in contempt, the justice of the peace, as evidenced by his trembling hands and later by his quick adjournment of the court, is portrayed as too cowardly to try to bring Flem within the law's power.

It is clear from a review of *Minor v. Dockery*³² that the justice of the peace in the "Spotted Horses" episode had a sufficient legal basis to find Flem or Eck liable for the injuries. This conclusion is based on the author's comparison of the facts in *Minor* with the facts that culminated in actions against Flem and Eck Snopes and a determination that the theory of bailee liability in *Minor*

30. *Id.*, p. 327.

31. *Id.*, p. 330.

32. 125 Miss. 727, 88 So. 321 (1921).

could have been employed by the justice of the peace to reach a more just result.

Thus, it becomes apparent that Faulkner had the opportunity to guide matters towards either legal outcome depending on what he wished to do with Flem at this point in the story. Either choice—liability as a bailee or no liability as an agent—could be inferred from the facts.

Faulkner's choice of legal outcomes helps to sustain Flem's image of invulnerability. This image had been developed in earlier fact situations where Flem proved to be "uncatchable." In the "Stolen Brass" incident Flem directs two young boys to steal brass fittings from the power plant and hide them in the town water tank so that he can escape arrest. Despite a full court hearing, no trail to Flem's masterminding of the crime can be established and he is not brought to justice. Flem is also effective in using the law to rid the town of two of his embarrassing relatives. After Mink Snopes commits murder, Flem insures that he will receive a long sentence by refusing to hire experienced legal counsel and permitting the case to be tried by "a young man graduated only last June from the State University's law school . . . who did what he could and overdid what he could not, zealous and, for all practical purposes and results, ignored . . ."³³ In a separate incident he successfully traps Montgomery Ward Snopes, who has been running a pornographic peep show, by planting moonshine liquor among the man's photographic supplies in order to have him arrested for possession of untaxed liquor. Both Flem and Gavin Stevens, county prosecutor, participate in planting the incriminating evidence on the premises. In both situations the law punishes the wrong person, and abets injustice.

In the "Spotted Horses" episode, the law creates injustice partly because the facts concerning control and ownership remain cloudy and ambiguous. Legal outcomes at this point are used to benefit rather than injure Flem in his steady rise to power. With regard to just compensation for injuries to an innocent victim, the narrow and conservative decision of the justice of the peace seems unduly harsh:

"Yes, ma'am," the Justice said. "Your damages are fixed by statute. The law says that when a suit for damages is brought against the owner of an animal which has committed damage or injury, if the owner of the animal either cant or wont assume liability, the injured or damaged party shall find recompense in the body of the animal."³⁴

33. Faulkner, *The Hamlet*, p. 338.

34. *Id.*, p. 337.

Faulkner also suggests that given the power of Flem Snopes, the justice of the peace must twist the law, choose the more expedient option, and find no liability. The justice of the peace relies on the purported absence of ownership and actual possession to avoid a finding of liability even when Eck has enough decency to assume responsibility for the behavior of the horse. The justice of the peace creates an injustice to avoid a judgement against the Snopeses. One's expectations are jarred as the judge significantly ignores the demands of justice and rearranges the facts presented so that the issue of ownership appears ambiguous and the injured have no cause of action against Flem or Eck Snopes. Since a fair outcome is available, the judge must restructure the facts. What should happen does not happen in a world where Snopesian interests must prevail. Instead of money damages, Vernon Tull is given the body of a dead horse. The law as administered by the justice of the peace interferes with rather than leads to justice. Faulkner adopts a technical and narrow interpretation of the law rather than a liberal, policy-oriented interpretation, so that a denial of justice can result. No creative or equitable result is tolerated. The law is used to support the power interests of the Snopes family. What does this tell us about Faulkner's own cosmic attitude towards the law as a force in society? The justice of the peace's character is defined through his lack of original thought or creative expression. The judge's willingness to misapply the law renders him a powerless eunuch. He acts without compassion for the injured and without the imagination necessary to fashion a just remedy, even when the ingredients are available. He is a cipher, controlled by the ruling interests of the Snopes clan. He is overwhelmed by his legal responsibility as his trembling hands and quick adjournment of court suggest. Faulkner knows the law and consciously leaves the issue of ownership unresolved. We are not permitted to learn whether ownership by Flem was ever obtained. Faulkner gives us a Flem so astute that he makes it impossible to prove that he is a bailee. Indeed, the omission of a reference to the theory of bailment may indicate Faulkner's knowledge of the law, his familiarity with *Minor v. Dockery*,³⁵ and his conscious omission of this alternative in order to protect the interests of the Snopes family in this early section of the trilogy.

THE LAW AND THE "POUND FEE"

In the "Pound Fee" incident of *The Mansion*, Faulkner explores

35. 125 Miss. 727, 88 So. 321 (1921).

the legal obligation of an owner of livestock to pay a pound fee for the shelter and feed accorded a stray cow after it had wandered on to a neighbor's property. Under Mississippi law, a landowner who takes in a lost or stray cow, mule, horse or other animal is entitled to a daily fee for providing feed and care for the animal during the period of its impoundment on his property.³⁶ Mink Snopes learns that his cow has escaped and is grazing on Houston's property; he also knows that:

By not claiming the worthless cow yet, he would not only winter her, he would winter her twice—ten times—as well as he himself could afford to. He would not only let Houston winter her . . . but when he would reclaim the cow in the spring she would have come in season again and, running with Houston's beef herd-bull, would now be carrying a calf which would not only freshen her for milk but would itself be worth money as grade beef³⁷

Mink knows that the law will require him to pay a pound fee for each day it receives care as long as his ownership of the cow can be determined. In an effort to avoid liability for payment of the fee, Mink first invents a story that he has sold the cow to Nub Gowrie and later concocts a story of repurchase from Gowrie. At winter's end, Mink ventures to Houston's home and livestock feedlot to reclaim his cow.

"I thought you sold that cow to Nub Gowrie," Houston said.

"So did I," Mink said. "Until Nub rid up this morning on a mule and said that cow broke out of his lot the same night he got her home and he aint seen her since, and collected back the eight dollars he paid me for her So, eight dollars seems to be the price of this cow, I reckon I owe you that for wintering her. Which makes her a sixteen dollar cow"

"That cow wasn't worth eight dollars last fall," Houston said. "But she's worth a considerable more now. She's eaten more than sixteen dollars' worth of my feed. Not to mention my young bull topped her last week."³⁸

When Houston and Mink fail to resolve the matter, Will Varner, the justice of the peace, intervenes. Based on the price that two professional cattle buyers are willing to pay for the cow, Varner declares: "Call it [the cow's market value] thirty-seven and a half then When you [Mink] pay Houston eighteen dollars and seventy-five cents, you can have your cow."³⁹ Unable to pay the judgement, Varner tells Mink that "he would have to work out [the judgement] at fifty cents a day [by digging postholes and

36. MISS. CODE ANN. § 5444 (1930).

37. William Faulkner, *The Mansion* (New York: Random House, 1955), pp. 9-10.

38. *Id.*, p. 14.

39. *Id.*, p. 17.

stringing wire for Houston] to gain possession of his cow.”⁴⁰ Mink completes the work required of him. On the following day, Mink returns to Houston’s homestead to reclaim the cow. Houston refuses to allow Mink to take possession of the cow until Mink pays an extra dollar, the pound fee, for his failure to take possession on the preceding day.

Faulkner was apparently familiar with case law construing the pound fee statute in writing this anecdote. His legal quotations are accurate, and can be traced to an actual statute and various cases. Under Mississippi law, a landowner had the right to charge a pound fee for each day the livestock was in his care:

Any such live stock may be taken up and confined by any person upon whose land such animal, or animals, may have entered or may be found, such person not having consented for the animal, or animals, to run at large on such land, and when so taken up shall be dealt with as estrays. For taking up any animal the person so taking the animal up shall be allowed 50 cents per head for each animal taken up He may also receive reasonable compensation for feeding and caring for such animals while keeping them.⁴¹

Houston’s quotation of this law, in advising Mink of his legal liability is accurate. “[T]he law says that when anybody has to take up a stray animal and the owner dont claim it before dark that same day, the man that took it up is entitled to a one-dollar pound fee.”⁴²

At first glance it seems that Faulkner may have exercised a certain literary license in increasing the per day charge from fifty cents to one dollar. A statewide daily charge of fifty cents per head remained unchanged from 1881, the year of the statute’s enactment, until 1978, when the allowable charge was increased to “ten dollars (\$10.00) per head for each animal so taken up”⁴³ In 1929, however, a local option increasing the fee from fifty cents to one dollar was passed in Oxford.⁴⁴ Thus Faulkner’s quote of the local ordinance is precise. It is also quite possible that Faulkner was familiar with the statute which provides that “after the owner has been notified of the first trespass or injury, double damages shall be recovered with costs.”⁴⁵ We know that Mink was notified, and perhaps Faulkner, without going into the details of the statute in his story, calculated a doubling of the fifty cent charge provided by statute.

40. *Id.*, p. 24.

41. MISS. CODE ANN. § 5444 (1930).

42. Faulkner, *The Mansion*, pp. 25-26.

43. MISS. CODE ANN. § 69-13-17 (Supp. 1984).

44. Robert Farley, interview in the Farley home in Oxford, Mississippi, August 1, 1977.

45. MISS. CODE ANN. § 5443 (1930).

Mississippi law also required Houston to place the cow in an enclosure, known as a pound and then to notify Mink of his possession. This requirement is set forth as follows:

When a person shall find any horse, mule, jack, cattle, sheep, goat or hog straying upon his land, he may take up such animal, and, if the owner be known, he shall forthwith send the estray to the owner or notify him of the taking of same.⁴⁶

Faulkner accurately follows this legal procedure in his story. Houston notifies Mink of the "taking up" of the cow, by having a townsman convey the information to Mink: "Jack Houston says for you to come and get that bonerack of yours out of his feed lot; he's tired of boarding it."⁴⁷ Oral rather than written notice is given. Normally, only written notice would suffice: "a notice that does not show the owner's name . . . is not sufficient. Nor does actual knowledge on the part of the owner take the place of the written notice" ⁴⁸

The defense of defective notice remains open and is not pursued as an issue by Faulkner. The third-hand, casual oral notice from an unidentified messenger could be challenged as defective notice: "It was at Varner's store Until finally one said—he didn't remember who; it didn't matter" ⁴⁹

Had he resorted to a court of law rather than taking the law into his own hands by killing Houston, Mink might have argued his right to return his cow without payment of the fee. He could have argued that the notice he received was defective, and that without written notice he was not liable for the costs of any care provided to his cow during the winter. Faulkner might have permitted an astute Flem Snopes to use this technicality to escape liability. But Mink is not among the astute and clever group to whom Faulkner might provide this legal insight. Nor does Mink even suggest the pound fee is fifty cents per day and not a dollar. Without legal knowledge Mink is obliged to negotiate an arrangement for the recovery of his cow by digging post holes and stringing wire at fifty cents a day.

Faulkner may have read the statute in Stone's office. Moreover, Faulkner may have been aware that a finder of livestock under Mississippi law had an obligation to locate the owner and return the livestock at the earliest possible date. But Faulkner chose to place his characters on a path of legal confrontation. Had Mink

46. MISS. CODE ANN. § 5449 (1930).

47. Faulkner, *The Mansion*, p. 10.

48. 4 AM. JUR. 2D *Animals* § 43 (1962).

49. Faulkner, *The Mansion*, p. 10.

consulted Flem, he might have suggested the defective notice as the defense. Flem might have indicated that Houston's failure to return the cow immediately upon learning the name of the owner was also improper. It is quite probable that Faulkner considered this option and chose to portray Mink as lacking in legal knowledge, since any other portrayal would not be believable.

The "Pound Fee" incident has its roots in Mississippi law. In *Bloodworth v. Stevens*,⁵⁰ a lessee of fenced farmland and his lessor disputed who bore responsibility for maintaining a fence to keep cattle from entering lessee's planted fields. At the trial it was proved that "Bloodworth leased from Wiley H. Stevens . . . for the year 1872, 99 acres of land at \$5 per acre, and that the intestate [Stevens] agreed to keep in repair that portion of the fencing on the eastern boundary . . . and prevent any stock from getting into the field and damaging the crop" ⁵¹

The agreement to keep fences in repair, the development of a dispute over a stray animal and damage to crops, and the death of one party following the dispute and before trial, may have provided working material for Faulkner's imagination as he crafted the pound fee dispute. Cases such as *Bloodworth* were available in the lobby of the Stone law office, where Faulkner would often sit and wait before seeing his lawyer and literary agent. Apparently the time Faulkner spent waiting for Stone in his law office lobby was not wasted.

There are other parts of the law which Faulkner may have considered and rejected as material in the "Pound Fee." Under Mississippi law, "a man is entitled to permit his cattle and other stock to go at large in the neighborhood range, and is not liable as a trespasser for the damage done by them to the premises of his neighbor, which are not enclosed by lawful fence."⁵² This rule of law as stated in *The Vicksburg and Jackson R.R. Co. v. Patton*,⁵³ was available to Faulkner at Stone's law office at the time he wrote the "Pound Fee" incident. Had Faulkner adopted this rule of law, the outcome of the incident would have been substantially changed. Free grazing is suggested as the custom. Had Faulkner chosen to employ this legal doctrine, the burden would have been born by Houston who would be required to prove that his land was carefully fenced. The facts indicate that there was no fence enclosing at least some portion of Houston's land before

50. 51 Miss. 475 (1875).

51. *Id.* at 478.

52. *The Vicksburg and Jackson R.R. Co. v. Patton*, 31 Miss. 156, 186 (1856).

53. *Id.*

Mink's post-digging work. Nor do the facts indicate that Houston could have proved at trial the cost for feeding Mink's cow. Had Flem rather than Mink owned the cow, the owner's statutory right to replevy the animal could have been exercised: "The owner of the animal . . . may, after suit is brought and before final judgment, replevy the animal by giving bond . . . and thereafter the suit shall proceed and the bond be in place of the animal" ⁵⁴

Flem could peacefully and legally have recovered his cow and then defeated Houston's claim for pound fee expenses by showing defective notice of estray. From his reading Faulkner may have discovered this temperate and calm procedure and even considered invoking the procedure. But responses of this kind would have been inconsistent with Mink's nature and mental capacity. If Houston had denied Flem's offer to remove the runaway cow from his land, any monetary award to which Houston was entitled would not include the time after Flem's offer. In *Galloway v. Brown*,⁵⁵ the Mississippi Supreme Court states that:

[T]he plaintiff [livestock owner] . . . was entitled to shorten the period of the trespass of his cattle by removing them from the lands of the defendants. If [plaintiff was] forbidden to come on the lands of the defendants to repossess the cattle . . . then the defendants would not be entitled to any damage caused after the plaintiff offered to remove his cattle⁵⁶

Had Faulkner permitted Mink to know this law, he could have reduced his pound fee debt and avoided the final dispute with Houston which led to the murder.

Finally, Faulkner might have permitted Flem to know that his cattle could wander at liberty, under Mississippi law, on Houston's unenclosed land as long as there was no actual damage done to any fences. In *Pongetti v. Spraggins*,⁵⁷ the Mississippi Supreme Court stated:

"It is now well established by authority and reason in this state, that uninclosed lands, although private property, are a quasi common, or, as expressed in local parlance, a 'range,' in which the owners of cattle . . . may permit them to go out at large and depasture without thereby incurring any responsibility as trespassers. [E]ach occupant of lands must secure his fields by strong and sufficient enclosures against the intrusion of animals; and that the owner cannot be held as a trespasser for their entering a close unless they have broken a fence deemed in law sufficient to exclude them. Uninclosed lands in this state are held subject to this right or easement."⁵⁸

54. MISS. CODE ANN. § 5448 (1930).

55. 230 Miss. 471, 93 So. 2d 459 (1957).

56. *Id.* at 492, 93 So. 2d at 468.

57. 215 Miss. 397, 61 So. 2d 158 (1952).

58. *Id.* at 408, 61 So. 2d at 160 (quoting *J. and G.N.R. Co. v. Field*, 46 Miss. 573 (1872)).

Had the cow strayed in summer and fattened on unplanted grasslands, Mink could have returned in the early autumn to collect his cow without paying a fee. But Faulkner places the time of the stray in winter. Costly feed thus replaces free grass and the necessity for enclosed shelter and remuneration replaces free grazing land. By carefully choosing the time of year, Faulkner selects facts that logically result in the legal confrontation so crucial to the story. As part of his meticulous concern for legal detail, Faulkner displays his accurate knowledge of the Mississippi local option law, by describing his fictitious county as one requiring that "all stock would be kept up until all crops were out of the field."⁵⁹ Faulkner acknowledges this detail: "[T]hen he [Mink] had to keep the barren and worthless cow up under fence . . . during the rest of that summer and fall, since the local [option] agreement was that all stock would be kept up until all crops were out of the field."⁶⁰

The "local agreement" referred to is the same option law authorized in the General Stock Law of Mississippi,⁶¹ which Faulkner could have reviewed in Stone's law office. Under this law, each county had the option "upon the petition of twenty per cent of the qualified electors [to hold an election] to vote upon the question of whether or not the provisions of the State-wide stock law shall remain in force in such county"⁶² According to Faulkner's comment on the "local agreement," the fictitious county in which the action takes place had apparently voted to exclude itself from the general statewide law and therefore allow animals to roam at large as set forth in *Pongetti v. Spraggins*.⁶³

The local county, as was true of Lafayette County at that time, had decided that "all stock would be kept up until all crops were out of the field."⁶⁴ Faulkner demonstrates both his knowledge of the statewide stock law and the local option exercised by the electors of the county. In order to make his comment technically correct he is obliged to mention the local agreement. His legal knowledge is thus consistent with actual law. He also notes the close of the free grazing period: "[T]he moment, the day at last at the end of winter when by local custom the livestock which had run loose in the skeletoned cornfields since fall, must be taken

59. Faulkner, *The Mansion*, p. 9.

60. *Id.*

61. MISS. CODE ANN. § 4864 (1942 and Supp. 1954).

62. *Id.*

63. 215 Miss. 397, 61 So. 2d 158 (1952).

64. Faulkner, *The Mansion*, p. 9.

up by their owners and put inside fences so the land could be plowed and planted again" ⁶⁵

CONCLUSION

Whether Faulkner learned the fine legal points of these two anecdotes through conversations with lawyers or by his own legal research is hard to determine; but it is clear that his meticulous concern for detail and accuracy reflects a sound and consistent working knowledge of both state and local law.

Faulkner uses the law to create a sense of character and suspense. By his use of the law, Faulkner evokes humor and tragedy, portrays strong emotions, and creates a sense of legal realism. The uncourageous and callous attitude of the justice of the peace, the outrage and indignation of Mrs. Tull, the stubborn and mean attitude of Houston, and the lawless response of Mink are exhibited in legal confrontations.

Faulkner does not suggest that the law itself is unjust. Injustice results from the way the law is applied to human situations by judges or lawyers. The law at times may seem unfair or unjust, but Faulkner's legal confrontations are moments of truth and realism. We can understand the outcomes given the human beings involved, and their conditions. There are no happy endings or romantic outcomes in Faulkner's legal entanglements. Such would not be believable, given the oppressive human context in which the legal confrontations arise. The law becomes a vehicle for unfairness. It permeates the human experience. The law is an influence but not an objective determinant when Faulkner's litigants enter a courtroom. In the lives of the poor and uneducated the law is applied without compassion or concern. At times its application triggers feelings of helplessness and frustration leading to the anger shown by Mink in murdering Houston and by Mrs. Tull in her reaction to the judge's preposterous decision.

In both anecdotes the law is quoted with great accuracy. It is used skillfully as part of the plot and character development. In the *Snopes* trilogy, which at times relies heavily on stories about horse-swapping, fence disputes, conning and trickery, the law is an important resource for Faulkner as story material.

Faulkner's use of the law demonstrates his ability to consult subject matters foreign to his own professional training and to learn them sufficiently to use them with ease and believability in his novels. It is not possible to determine whether Faulkner developed

65. *Id.*, p. 13.

his knowledge of the law by reading law books or hearing courtroom trials. Perhaps the reverse is true. Perhaps Faulkner picked up these anecdotes through word of mouth; by sitting with men on a country store front porch and swapping yarns; or walking with Phil Stone and discussing Stone's cases.

Despite the source of Faulkner's legal knowledge, by studying his use of the law we can learn more about Faulkner's creative process, his values, and his procedure for constructing anecdotes from real-life material. His accuracy reflects how carefully the yarns were perhaps transmitted by word of mouth and then accurately recorded by Faulkner, whose ear and memory for such matters were incredible.