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COMMENT

RETHINKING ATTICUS FINCH

*"I thought I wanted to be a lawyer but I ain't so sure now!"*¹

These days, most of us Americans first encounter *To Kill a Mockingbird* during our time in junior high or high school.² A favorite among English teachers of adolescents,³ perhaps these educators find that the novel tenderly conveys a message well-suited to students in their most formative years. And though teenagers often dismiss the tastes of adults as out-of-touch with prevailing fashions, Harper Lee's Depression-era Maycomb County has, nevertheless, served as generational common ground for decades of classroom discussions. Taking a few hours of the school day to show 1962's film version⁴—a familiar and appreciated practice among teachers—goes a long way toward endearing *Mockingbird* to students, as well.

Over the course of this distinctively American ritual, few readers lose sight of *Mockingbird*'s protagonist: Atticus Finch. And for good reason—Jean Louise voices *Mockingbird*, and Jean Louise's retrospect converges from all directions upon her father.⁵ With nearly imperceptible subtlety,⁶ Jean Louise—or Scout, as almost everyone

¹ HARPER LEE, *TO KILL A MOCKINGBIRD* 50 (1960) (Jem to Atticus).

² See RENAISSANCE LEARNING, *WHAT KIDS ARE READING: THE BOOK-READING HABITS OF STUDENTS IN AMERICAN SCHOOLS 11–12* (2009), available at <http://doc.renlearn.com/KMNet/R004101202GH426A.pdf> (naming *To Kill a Mockingbird* as one of the books most commonly read by students in grades 8–12).

³ See Arthur N. Applebee, *Book-Length Works Taught in High School English Courses*, ERIC DIG., May 1990, at 2, available at <http://eric.ed.gov/PDFS/ED318035.pdf> (listing *To Kill a Mockingbird* as one of the books most commonly read by students in grades 9–12 in public, Catholic, and independent schools).

⁴ *TO KILL A MOCKINGBIRD* (Universal Pictures 1962).

⁵ See Timothy Hoff, *Influences on Harper Lee: An Introduction to the Symposium*, 45 ALA. L. REV. 389, 392 (1994) ("Harper Lee has described *To Kill A Mockingbird* as a 'love story pure and simple.' It is based on a child's love for her father and his love in return." (footnote omitted)).

⁶ To start, consider that Scout and her brother, Jem, effortlessly refer to her father by his first name. See LEE, *supra* note 1, at 280 ("Atticus, I wasn't scared," Scout to Atticus); *id.* at 212 ("It ain't right, Atticus," said Jem."). Normally, making such references to a parent would

calls her—spins a tale through which she draws the reader into her world of filial devotion.⁷ Before we know it and before we know why, we begin to love and admire Atticus nearly as much as Scout does. Perhaps the reverence readers and moviegoers have for Atticus Finch, seemingly unrivaled throughout the rest of fiction,⁸ speaks to this phenomenon.

To some, however, *Mockingbird* is much more than a love story. President George W. Bush expressed such a reading when, in 2007, he awarded Harper Lee the Presidential Medal of Freedom.⁹ According to Mr. Bush, the novel gives an especially compelling account of the “solitary business” of courage.¹⁰ Through its account, the President remarked, *Mockingbird* had “influenced the character of our country for the better.”¹¹

Though tributes to its richness, these two understandings come far short of exhausting all the plausible readings of *Mockingbird*. And while the book holds a special place for many, Atticus’s would-be colleagues have been remarkably keen on *Mockingbird*’s narrative.¹² Or, perhaps more accurately, lawyers have been remarkably keen on the story of Atticus Finch.¹³

This, in itself, does not surprise. While learning that Atticus played a central role in the lives of his young children, readers also learn that Alabama admitted Atticus to the state bar,¹⁴ and readers follow his

be out of place, but they are not at all jarring to *Mockingbird* readers.

⁷ See Hoff, *supra* note 5, at 392.

⁸ See W. Bradley Wendel, *Symposium Introduction: Our Love-Hate Relationship with Heroic Lawyers*, 13 WIDENER L.J. 1, 4 (2003) (“Finch was ranked first on the list of movie heroes by the American Film Institute, ahead of stalwarts such as James Bond, Indiana Jones, Shane, Robin Hood, Oskar Schindler, Rocky Balboa, General Patton, Lassie, and the Mr. Smith who went to Washington.”); see also *Librarians Choose a Century of Good Books*, LIBR. J., Nov. 15, 1998, at 34 (“The book that was far and away your first choice is Harper Lee’s *To Kill a Mockingbird*.”).

⁹ See Remarks on Presenting the Presidential Medal of Freedom, 43 WEEKLY COMP. PRES. DOC. 1454, 1456 (Nov. 5, 2007) [hereinafter Bush Remarks].

¹⁰ *Id.*

¹¹ *Id.* at 1457.

¹² See Mary Ellen Maatman, *Justice Formation from Generation to Generation: Atticus Finch and the Stories Lawyers Tell Their Children*, 14 J. LEGAL WRITING INST. 207, 208 (2008) (“Lawyers see Atticus as a hero to be emulated; some even say the book or movie inspired them to become lawyers, or inspires their practice of law.” (footnote omitted)).

¹³ See Wendel, *supra* note 8, at 4–5 (discussing the heroic light in which Atticus Finch is viewed); see also Michelle Weyenberg, *20 Must-See Legal Movies*, NAT’L JURIST, Jan. 2010, at 22, 24, available at <http://www.nxtbook.com/nxtbooks/cypress/nationaljurist0110/#/22> (listing *To Kill a Mockingbird* as the top “legal movie” of all time).

¹⁴ See LEE, *supra* note 1, at 4. The following is worth noting: “The model for Atticus Finch was [Harper Lee’s] father, A.C. (Amasa Coleman) Lee. Mr. Lee, who died in April 1962, was throughout his professional life a partner in the Monroeville law firm of Barnett, Bugg, & Lee, where Harper Lee’s sister, Alice Finch Lee [was, as of 1994] the senior attorney . . .” Hoff, *supra* note 5, at 392 (footnote omitted). It should also be noted that Harper Lee studied

professional exploits throughout many of the most suspenseful parts of the novel. Certainly, lawyers tend to appreciate a good war story,¹⁵ and *Mockingbird* does not disappoint seekers of legal drama.¹⁶

But Atticus is far more than Jack McCoy, Michael Clayton or Elle Woods. Atticus is a reason people become lawyers,¹⁷ and, once they become lawyers, Atticus is the person many lawyers aspire to be.¹⁸ Some attorneys even point to Atticus Finch not merely as a model of lay courage—as President Bush seems to understand the character¹⁹—but as an aspirational standard of professional conduct.²⁰ And to say that Atticus is the favorite lawyer of American lawyers, even though he never actually existed, runs little risk of overstating the case.²¹

law for several years at the University of Alabama, although she never earned a law degree. See Michael Asimow, *When Lawyers Were Heroes*, 30 U.S.F. L. REV. 1131, 1134 n.29 (1996). Presumably, casting the protagonist as an attorney enabled Lee to craft a more believable novel, as she was familiar with legal conventions and practices.

¹⁵ See generally Weyenberg, *supra* note 13, at 23 (noting that among legal movies “there are favorites beloved by all, including law professors”).

¹⁶ See, for example, Scout’s account of the conclusion of Atticus’ closing argument:

“I am confident that you gentlemen will review without passion the evidence you have heard, come to a decision, and restore this defendant to his family. In the name of God, do your duty.”

Atticus’s voice had dropped, and as he turned away from the jury he said something I did not catch. He said it more to himself than to the court. I punched Jem. “What’d he say?”

“‘In the name of God, believe him,’ I think that’s what he said.”

LEE, *supra* note 1, at 205–06.

¹⁷ See Maatman, *supra* note 12, at 208.

¹⁸ *Id.*; see also Weyenberg, *supra* note 13, at 24.

¹⁹ See Bush Remarks, *supra* note 9, at 1456 (“We’re moved by the story of a man falsely accused . . . and an old sense of honor that rises to his defense.”).

²⁰ See Wendel, *supra* note 8, at 5 (“There is even a sort of lawyer self-help book using Finch as a model for teaching virtue, which actually instructs lawyers to ask themselves the question, ‘What would Atticus Finch do?’ In a more intellectual mode, legal scholars have long held out Finch as the signal exemplar of lawyering values.” (footnote omitted)). The self-help book to which Wendel cites is MIKE PAPANTONIO, IN SEARCH OF ATTICUS FINCH: A MOTIVATIONAL BOOK FOR LAWYERS (3d. ed. 1997). See also THOMAS L. SHAFFER, AMERICAN LEGAL ETHICS: TEXT, READINGS, AND DISCUSSION TOPICS (1985); Weyenberg, *supra* note 13, at 24 (describing *Mockingbird* as “a moving story about right and wrong and an attorney who lives up to the highest ideals of his profession”).

²¹ See Steven Lubet, *Reconstructing Atticus Finch*, 97 MICH. L. REV. 1339, 1339–40 (1999) (observing that “[n]o real-life lawyer has done more for the self-image . . . of the legal profession than the hero of Harper Lee’s novel,” because he demonstrates the nobility that is possible of lawyers, despite their “failings and imperfections”); see also Maatman, *supra* note 12, at 208 (observing that Atticus Finch is “arguably the most praised lawyer, real or fictional, in American legal lore” (quoting Randy Lee, *Lawyers and the Uncommon Good: Navigating and Transcending the Gray*, 40 S. TEX. L. REV. 207, 209 (1999)) (internal quotation marks omitted)).

Yet, how appropriate is the reverence for this imagined colleague? We have only Scout's account to go on, after all, and while a classically unreliable narrator Scout is not, is it possible that her loving account so moves a reader that it captivates his judgment, as well?²² Unquestionably, young children easily fail to see glaring flaws in their parents' characters, and slightly more discerning older children may willingly overlook the same out of devotion. Has Harper Lee's success as an author—skillfully drawing readers into a child's enchantment for her only living parent—obscured Finch's failures as an attorney or, perhaps more importantly, as a man?

Some commentators seem to think so and have skeptically questioned *Mockingbird's* usefulness in the moral education of lawyers. Throughout the mid to late '90s, and the first half of the last decade, Atticus Finch experienced a fall from grace in the legal literature. During this time, various commentators attempted to brush away the loving gloss Scout heaps onto her father's escapades and to evaluate Mr. Finch's actions from as objective a perspective as possible.²³ Under this scrutiny, the Atticus that emerged was not an especially attractive attorney, for most, or man, for more. And while some critics have remained relatively collegial, merely denouncing the character as unrealistic, "sanctimonious," or "boring,"²⁴ others level considerably more pointed criticisms. Far from a lawyer-hero, they argue, Finch "indulge[s] . . . the tendency to prejudice, and [is] almost amused by the Ku Klux Klan."²⁵ A number of detractors even suggest that Atticus was complicit in Jim Crow southern racism,²⁶ or that he, himself, engaged in racist exclusion.²⁷ In the past year, this type of criticism has begun to trickle out of the law reviews and into the popular press.²⁸ This is not to say, however, that Atticus no longer

²² See Lubet, *supra* note 21, at 1346 (focusing on Atticus's defense of Tom Robinson and observing that "[a] responsible reading of the novel ought to consider the possibility that Scout, worshipfully devoted to her father, might have misapprehended either the facts or the credibility of the witnesses" presented at Robinson's trial).

²³ See, e.g., Monroe H. Freedman, *Atticus Finch—Right and Wrong*, 45 ALA. L. REV. 473, 476 (1994) (debunking the "truthfulness" of Atticus' character by referencing his "fatuousness" toward the lynch mob led by Walter Cunningham).

²⁴ Wendel, *supra* note 8, at 7.

²⁵ Lubet, *supra* note 21, at 1360.

²⁶ See, e.g., Teresa Godwin Phelps, *Atticus, Thomas, and the Meaning of Justice*, 77 NOTRE DAME L. REV. 925, 925 (2002) ("Atticus's acceptance of the racist status quo of Maycomb seriously undermines his character.").

²⁷ See, e.g., Freedman, *supra* note 23, at 477 ("[T]he apartheid that Atticus Finch practiced every day of his life . . . [is] wrong today, and [was] wrong in Maycomb County, Alabama, in the 1930s.").

²⁸ See, e.g., Malcolm Gladwell, *The Courthouse Ring: Atticus Finch and the Limits of Southern Liberalism*, NEW YORKER, Aug. 10, 2009, at 26, available at http://www.newyorker.com/reporting/2009/08/10/090810fa_fact_gladwell.

finds proponents among the ranks of legal scholars,²⁹ but the volume of professional criticism directed at Atticus indicates that in this particular war over an icon's soul the tide may have turned in favor of the iconoclasts.

As tempting as taking up sides in the conflict may be, a thoughtful reading of *Mockingbird* exposes the debate, I think, as misguided. Concededly, I find Atticus a morally problematic character, and I believe that his shortcomings only come into focus when one recognizes the extent of the narrator's proclivities. However, to assume that moral flaws within the character contravene the novel's worth for lawyers may be to maintain a hardly self-evident conclusion without support. If *Mockingbird* never holds out Atticus as a paragon of virtue, proving that he either is or is not an archetypically moral and professional attorney is, at best, an oblique observation that does little to prop up or tear down the character's overall value to legal professionals.

In this brief Comment, I offer a reading of *Mockingbird* that is surprisingly absent from the debate over Atticus Finch. Part I suggests that instead of painting Atticus as a picture of righteousness, Scout's account of her father's responses to southern racism tells a story of contrasts. Invariably, the children at the heart of the novel—Scout, her brother Jem, and their friend Dill—have strong, visceral reactions to injustice. Atticus, on the other hand, tends to capitulate soberly, despite obvious uneasiness. Part II argues that Atticus's profession makes him especially susceptible to this sort of compromising. *Mockingbird*, Part II concludes, should serve as a cautionary tale: a story especially pertinent for lawyers who, because of their shared profession, have vulnerabilities in common with Atticus Finch.

²⁹ See, e.g., Ann Althouse, *Reconstructing Atticus Finch? A Response to Professor Lubet*, 97 MICH. L. REV. 1363, 1364 (1999) ("For those entering the legal profession . . . Atticus is a model of integrity . . ."); Thomas L. Shaffer, *On Lying for Clients*, 71 NOTRE DAME L. REV. 195, 202–04, 210–11 (1996) (defending Atticus's character); Thomas L. Shaffer, Essay, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181 (1981) [hereinafter Shaffer, *Moral Theology*] (discussing the values underlying Atticus's character); Lance McMillian, Atticus Finch as Racial Accommodator: Answering Malcolm Gladwell's Critique (Jan. 16, 2010) (unpublished manuscript), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1537688 (criticizing Gladwell's article in the *New Yorker*). For a critical response in the popular press to the Gladwell article, see Posting of Isaac Chotiner to The Plank, *What is Malcolm Gladwell Talking About?*, <http://www.tnr.com/blog/the-plank/what-malcolm-gladwell-talking-about> (Aug. 4, 2009, 15:52 EST).

I. "YOU AREN'T THIN-HIDED, IT JUST MAKES YOU SICK, DOESN'T IT?"³⁰

The story of Atticus, his children, Tom Robinson and Maycomb County is such a well-known one that an elaborate retelling here would be of little use. Let it suffice to say that at some time during the 1930s, Atticus Finch, a general practitioner in small-town Alabama and a widowed father of two, finds himself the court-appointed lawyer of an ostensibly innocent black man, charged with raping a nineteen-year-old white woman. The charge carries with it a death sentence as a matter of course, and, while Atticus has tried capital cases in the past,³¹ he finds this one to be especially troubling.³² Nonetheless, he accepts the appointment and resolves to put forward a zealous defense of his client, although he has little hope for an acquittal.³³ Atticus's hesitancy proves to be warranted—and then some—as the trial of Tom Robinson incites a firestorm of controversy in the segregated county, which jeopardizes not only his professional and social status, but his life and the lives of his young children.

Through it all, Atticus maintains an even-keeled poise and, at times, shows remarkable valor. When authorities transfer his client to a vulnerable holding cell near the courthouse, for example, Atticus defies a lynch mob while armed with nothing more than a newspaper and a quiet sense of rectitude.³⁴ Not simply intrepid in the face of mob violence, he accounts ably for himself in court, as well. Any other attorney in Maycomb, one character concludes, would have been at a loss in the Robinson case. But Atticus, in a trial unwinnable for the defense, was "the only man in [those] parts who [could] keep a jury out so long in a case like that."³⁵ And he accomplished as much not with theatrics or melodrama, but with unassailably polite decorum, at all times respectful of the court as an institution of justice.³⁶

³⁰ LEE, *supra* note 1, at 199 (Dolphus Raymond speaking to Dill).

³¹ *See id.* at 4–5.

³² *See id.* at 88 (Atticus remarks to his brother that he had "hoped to get through life without a case of this kind").

³³ *See id.* at 75–76, 88, 163.

³⁴ *See id.* at 151–52.

³⁵ *Id.* at 216. The jury deliberated for hours, late into the night; much longer than one might have expected. *See id.* at 209–10.

³⁶ *See, e.g., id.* at 182; *id.* at 169 ("Atticus was proceeding amiably, as if he were involved in a title dispute. With his infinite capacity for calming turbulent seas, he could make a rape case as dry as a sermon."). Some disagree. *See, e.g.,* Lubet, *supra* note 21, at 1359 (suggesting that elements of the type of defense used by Atticus served "solely to degrade [the complaining witness], and not to develop any evidence actually relevant to the case"). Lubet very well may be correct, but as the issue is unimportant to this Comment's thesis, Atticus's courtroom demeanor is left to the discussion of others.

But *Mockingbird* is more than just Atticus, and a reasonable assessment of the book and any of its characters would take into account the forest, and not simply fixate on an especially tall tree. If the debate over Finch misses anything, it misses the other half of the novel: the half that prominently features siblings Scout and Jem and, to a lesser extent, their friend Dill. Unless these characters serve merely as props to facilitate the drama surrounding Atticus—a proposition, by the way, that finds scant support outside of legal academia's implicit endorsement³⁷—it stands to reason that critiques that take into account nothing in the novel but Atticus fail to contextualize, and suffer from a certain over simplicity. If he wishes to make a fair appraisal of the novel's value as a moral compass, a reader should consider not just Atticus's actions in a vacuum, but the rest of *Mockingbird*'s narrative, as well.

A. Atticus: A Man Apart

Upon moving beyond Atticus to the context that surrounds him, one thing becomes clear immediately: the man is remarkably different from the other characters in *Mockingbird*.³⁸ He is, for one, much older than most parents of young children in town,³⁹ so much so that his age seems to embarrass Jem and Scout.⁴⁰ And even though the citizens of Maycomb reliably elect him to serve as their representative in the state legislature every term,⁴¹ Atticus dismisses many of the conventions of the community he represents. The way he treats Calpurnia, his black housemaid and cook, offers a prime example. Certainly, a black woman serving as a maid, childcare giver or cook in a white household would be a race and gender role familiar to most in 1930s Alabama. But while Atticus employs Calpurnia to keep his household and look after his children, his attitude toward her is out of

³⁷ See, e.g., GARY RICHARDS, *LOVERS AND BELOVEDS: SEXUAL OTHERNESS IN SOUTHERN FICTION, 1931–1961*, at 119–20, 128 (2005) (examining the implications of Scout's "tomboy" characteristics).

³⁸ For that matter, Atticus is plain odd. He wears thick, clumsy glasses, and near blindness in his left eye precipitates an ungainly habit of "turn[ing] his head and look[ing] from his right eye" "[w]henver he want[s] to see something well." LEE, *supra* note 1, at 89. He is a big man, *id.* at 136, but he is also feeble, *id.* at 89, and unable to take part in vigorous physical activities like football. *Id.* Yet, he walks with a "youthful step." *Id.* at 276. He wakes up at "ungodly" hours. *Id.* at 213. He does not seem to socialize, but spends all of his leisure time reading. *Id.* at 89. The two most interesting things about him, according to a friendly neighbor, are that he plays a "Jew's harp" and is good at checkers. *Id.* at 91. And even though he is a dead-eye with a rifle, he "[hasn't] shot a gun in thirty years." *Id.* at 96. Still, Atticus can pick-off a rabid dog with one shot, even after losing his glasses. *Id.*

³⁹ *Id.* at 89.

⁴⁰ See *id.* at 90–92.

⁴¹ *Id.* at 32.

place in Maycomb—far enough out of place that it makes his own sister, Alexandra, palpably uncomfortable.⁴² Alexandra even demands that Atticus fire Calpurnia lest Calpurnia play too great of a role in Scout's upbringing.⁴³ Atticus, on the other hand, instructs Scout to obey Calpurnia as she would obey him or her aunt,⁴⁴ and refers to her as "a faithful member of [the] family."⁴⁵ Even if one were to suggest that Jim Crowism had a paternalistic bent and that southern, white employers of black servants did, on occasion, treat them fondly, one would re-write history by maintaining that southern whites commonly defied family matrons out of loyalty to their maids and cooks.

The most vivid contrasts surrounding Atticus, however, have little to do with the degree to which he finds himself in Depression-era Maycomb County, but not of it. Instead, they have everything to do with the sharp contrasts *Mockingbird* draws between Atticus and his children.⁴⁶ In fact, Atticus and Scout could not be more different, despite sharing a household, genetics, and a profound affinity. Atticus is, above all else, reserved and dispassionate. Only once in her life does Scout see him even "loosen[] his tie,"⁴⁷ and only once does she see him sweat.⁴⁸ Scout, on the other hand, has an excitable and emotional disposition. When Walter Cunningham innocently touches off a tense exchange between Scout and her first-grade teacher,⁴⁹ Scout tracks him down in the schoolyard and rubs his face in the dirt until Jem persuades her to stop.⁵⁰ Easily goaded into a fight, she

⁴² *See id.* at 136–37.

⁴³ *Id.* at 137. Presumably, Aunt Alexandra fears that Calpurnia is not an acceptable role model of southern womanhood.

⁴⁴ *Id.* at 136.

⁴⁵ *Id.* at 137. Atticus also remarks at one point that "[a]nything fit to say at the table's fit to say in front of Calpurnia. She knows what she means to this family." *Id.* at 157.

⁴⁶ Although Dill is not Atticus's son, *Mockingbird* hints that Atticus does much to fulfill the role of father-figure for Dill. While nothing is particularly explicit, consider that Dill runs away from home to Atticus's house—not his Aunt's—to get away from his stepfather, whom Dill accuses of mistreating him. *See id.* at 140. For this reason, I occasionally refer to "the Finch children" or "Atticus's children" in a way that sweeps in Dill. This practice does not seem to me to be out of place. Interestingly, Harper Lee apparently based Dill on her childhood friend Truman Capote. *See* CHARLES J. SHIELDS, *MOCKINGBIRD: A PORTRAIT OF HARPER LEE* 212 (2006). Capote, himself, claimed as much. *See* LAWRENCE GROBEL, *CONVERSATIONS WITH CAPOTE* 53 (Da Capo Press 2000) (1985) ("Harper Lee was my best friend. Did you ever read her book, *To Kill a Mockingbird*? I'm a character in that book . . ."). Capote, like Dill, was raised by relatives for several years, *see* GERALD CLARKE, *CAPOTE: A BIOGRAPHY* 14 (1988), and was eventually adopted by his mother's second husband. *Id.* at 36–37. "Capote" is actually his stepfather's surname, and when his stepfather, Joseph Capote, adopted Truman Streckfus Persons he changed the boy's name to Truman Garcia Capote. *Id.* at 38.

⁴⁷ LEE, *supra* note 1, at 202 (he loosens his tie during his closing argument).

⁴⁸ *See id.* at 204–05 (again, during his closing argument).

⁴⁹ *See id.* at 20–22 Scout had tried to explain to Ms. Caroline, unsuccessfully, that Walter's family was too poor to send him to school with lunch, and that family pride prevented Walter from accepting a small loan to buy lunch in town. *Id.*

⁵⁰ *Id.* at 22.

responds to taunts from her cousin by “split[ting] [her] knuckle to the bone on his front teeth.”⁵¹ Atticus, himself, remarks that Scout has an impulsive streak, observing that “Scout’d just as soon jump on someone as look at him if her pride’s at stake.”⁵² In comparison, “I wish Bob Ewell wouldn’t chew tobacco,”⁵³ is all Atticus says after “Ewell stopped Atticus on the post office corner, spat in his face, and told him he’d get him if it took the rest of his life.”⁵⁴

Similarly, Jeremy Atticus Finch—Jem—has little in common with his middle namesake. The boy loves nothing more than football.⁵⁵ And a model of youthful energy and dauntlessness, he terrifies Scout with death-defying feats of throwing open the gate to the Radley house, running up to it, and slapping the house’s side.⁵⁶ Atticus, however, is a bookworm⁵⁷ who grows increasingly irritated over his children’s fascination with Boo Radley.⁵⁸ Despite Jem’s earnest entreaties, he never plays football with his son⁵⁹: a state of affairs that makes Jem increasingly “gloomy.”⁶⁰

And say nothing about Dill, perhaps the most unlike Atticus of all the children. This whimsical dreamer and teller of fanciful tales occupies a level of the atmosphere far above the sober, realistic Atticus Finch.⁶¹

All this serves to set Atticus and the younger Finches apart. But, while opposing character traits demonstrate obvious disanalogy between Atticus and the children, they exist mainly to prime the plot and lend credibility to yet-to-be-drawn, more illuminating contrasts. The most noteworthy disharmony in *Mockingbird*—and the most interesting one for readers seeking a “moral message”—centers on far more subtle dissonance than personality-conflict. The book’s real wisdom has much to do with the different ways in which the children and Atticus respond to the racial injustice they encounter. Invariably, their reactions differ radically and are, at times, incompatible.

⁵¹ *Id.* at 84.

⁵² *Id.* at 88.

⁵³ *Id.* at 217.

⁵⁴ *Id.*

⁵⁵ *See id.* at 89 (describing Jem as “football crazy”).

⁵⁶ *Id.* at 15.

⁵⁷ *See* discussion *supra* note 38 (describing Atticus’s various oddities, as well as his love of reading).

⁵⁸ *See* LEE, *supra* note 1, at 48–49. Atticus refers to Jem and Scout’s attempts to provoke Boo Radley to come out of his house as “nonsense” and “tormenting.” *Id.*

⁵⁹ *See id.* at 89 (noting that Atticus was always willing to engage in a game of keep-away but considered himself too old for football).

⁶⁰ *Id.* at 92.

⁶¹ *See id.* at 12 (describing Dill as “a pocket Merlin, whose head teemed with eccentric plans, strange longings, and quaint fancies”).

With respect to the issue of characters' divergent responses to racism, Scout, in truth, does not serve as an especially instructive example. Perhaps so much is to be expected. The author never makes clear how old Scout is when she narrates the novel. And although Scout relays happenings after the fact⁶² and could be anywhere between third grade and early middle age when she "tells" her story,⁶³ Scout is extremely young during the events that take place in *Mockingbird*: at all times somewhere between six or seven and eight or nine. Scout is so childlike, in fact, that much of the racist status quo in Maycomb flies completely over her head.⁶⁴ Few things confuse Scout more, for example, than when she hears people around town calling Atticus a "nigger-lover."⁶⁵ Moreover, Scout is innocent enough that she infers only from the way in which the townsfolk say the words, "like [they]'d said snot-nose or somethin'," that the epithet is at all objectionable.⁶⁶ Scout's devotion to Atticus only compounds her undeveloped perspective. She maintains such unquestioning loyalty to her father that delineating between Scout's and Atticus's outlooks can, at times, pose major difficulties for even conscientious readers.

Dill, in comparison, offers much greater contrast. Largely a foil to the other children for most of the novel, prosecuting attorney Gilmer's cross-examination of Tom Robinson evokes from Dill a most extraordinary reaction. At some point during a condescending line of badgering from Gilmer, Jem and Scout notice that "Dill had started crying and couldn't stop."⁶⁷ "[Q]uietly at first," his sobs gradually become audible throughout the balcony in which the children sit.⁶⁸ Although Scout, completely caught up in the trial, wants to stay, Jem bosses her into taking Dill outside to avoid

⁶² See *id.* at 1. Scout states that the events in *Mockingbird* were only discussed after a number of years had passed. *Id.* She does not identify how many years that is.

⁶³ See *id.* at 241. *Mockingbird* was published in 1960. If Scout were a real person, she would have been in her late twenties or thirties in 1960. Harper Lee turned thirty-four in 1960, see Nancy G. Anderson, *Harper Lee*, *ENCYCLOPEDIA OF ALABAMA* (2010), and most assume the novel to be at least partially autobiographical. See, e.g., HAROLD BLOOM, *HARPER LEE'S TO KILL A MOCKINGBIRD* 38 (2007) ("To Kill a Mockingbird is autobiographical not merely in its mode of expression but also in quite a personal sense. If David Copperfield is Charles Dickens and Stephen Dedalus in *A Portrait of the Artist as a Young Man* is James Joyce, Jean Louise Finch (Scout) is unmistakably Harper Lee.").

⁶⁴ See, e.g., LEE, *supra* note 1, at 117–26 (describing that when Jem and Scout attend church with Calpurnia at First Purchase African M.E. Church, Scout is oblivious to how out-of-place she and her brother probably appear to everyone around them).

⁶⁵ See *id.* at 108 (describing a conversation between Scout and Atticus during which Scout is perplexed by the meaning of the phrase).

⁶⁶ *Id.*

⁶⁷ *Id.* at 198.

⁶⁸ *Id.*

disrupting the proceedings.⁶⁹ Once outside, the following exchange, recounted by Scout, ensues:

“Ain’t you feeling good?” I asked, when we reached the bottom of the stairs. . . .

“It was just him I couldn’t stand,” Dill said.

“Who, Tom?”

“That old Mr. Gilmer doin’ him thataway, talking so hateful to him—”

“Dill, that’s his job. Why, if we didn’t have prosecutors—well we couldn’t have defense attorneys, I reckon.”

Dill exhaled patiently. “I know all that, Scout. It was the way he said it made me sick, plain sick.”

“He’s supposed to act that way, Dill, he was cross—”

“He didn’t act that way when—”

“Dill, those were his own witnesses.”

“Well, Mr. Finch didn’t act that way to Mayella and old man Ewell when he cross-examined them. The way that man called him ‘boy’ all the time an’ sneered at him, an’ looked around at the jury every time he answered—”

“Well, Dill, after all he’s just a Negro.”

“I don’t care one speck. It ain’t right, somehow it ain’t right to do ‘em that way. Hasn’t anybody got any business talkin’ like that—it just makes me sick.”⁷⁰

One could hardly imagine a more visceral reaction. Though Dill barely has any idea why, he intuits that a horrible wrong is taking place: a wrong so abhorrent that even as a bystander it nauseates him and brings him to uncontrollable sobs. Up to this point, Dill had occupied the background behind Scout, Jem, and Atticus. He is, after all, relatively unremarkable. Dill’s speech—even less educated than

⁶⁹ See *id.* (recounting that Scout’s reluctance to leave the courtroom was so great that additional pressure from Reverend Sykes was needed to convince her to leave).

⁷⁰ *Id.* at 198–99.

Scout's—and his history of being passed around by relatives,⁷¹ reveal him to be the type of child who falls through the cracks. But now, this otherwise unremarkable boy, so easily overlooked, sits at the center of one of *Mockingbird*'s most cathartic moments. Dill has witnessed, first hand, the viciousness of Maycomb's pervasive racial injustice—even if he possesses no vocabulary to describe it—and the boy is inconsolable. Under a shade tree outside the courthouse, Dill disavows the ugliness he has just seen, and fades from the story.⁷²

A crueler fate awaits Jem. An aspiring lawyer, the trial entralls Jem, who gives a sort of running commentary to Scout, Dill and anyone else willing to listen.⁷³ Upbeat to the last, Atticus's defense completely persuades him.⁷⁴ With implicit faith in the jurors' fair-mindedness, Jem remarks that he “do[esn't] see how any jury could convict,” and tells Reverend Sykes, of Maycomb's only black church, not to “fret, we've won it.”⁷⁵ The guilty verdict, then, comes as quite a shock. Jem, who had been waiting in happy anticipation moments before,⁷⁶ emerges from the courthouse, “[h]is face . . . streaked with angry tears.”⁷⁷ For the life of him, Jem is unable to reconcile his faith in the law, and basic notions of fair play and honesty, with what has taken place. “It ain't right” is all he can say, and he mumbles the words again and again.⁷⁸ And while Scout, along with the rest of Maycomb, moves past the sad story of Tom Robinson as the seasons change and school begins,⁷⁹ Jem carries with him deep, festering wounds. Months after the trial, Scout nearly becomes the second casualty of Jem's disappointment. When she raises the events

⁷¹ See discussion *supra* note 46.

⁷² See *id.* at 239 (“Comfortable, I lay on my back and waited for sleep, and while waiting I thought of Dill. He had left us the first of the month with firm assurances that he would return the minute school was out . . .”).

⁷³ For example, Jem provides an ongoing account of who spoke, for how long, and on what topic. See *id.* at 208–09.

⁷⁴ Jem's assessments of the trial reveal him to be a remarkably intelligent boy. See, for example, his spot-on analysis of the crime of rape:

[W]e were subjected to a lengthy review of the evidence with Jem's ideas on the law regarding rape: it wasn't rape if she let you, but she had to be eighteen—in Alabama, that is—and Mayella was nineteen. Apparently you had to kick and holler, you had to be overpowered and stomped on, preferably knocked stone cold. If you were under eighteen, you didn't have to go through all of this.

Id. at 208–09.

⁷⁵ *Id.* at 208.

⁷⁶ See *id.* at 210 (describing Jem as sitting contentedly while Dill's sleeping head rested on his shoulder).

⁷⁷ *Id.* at 212.

⁷⁸ *Id.*

⁷⁹ See *id.* at 247–48 (noting that by the middle of October, almost all things were as they had been before the trial).

of that shameful night in innocent conversation, Jem leaps at her, grabs her around the neck and violently shakes her. "I never wanta hear about that courthouse again, ever, ever, you hear me?" he screams.⁸⁰

B. *The Passion of the Finch*

At the outset, worth noting is that Atticus, Jem, and Dill share similar notions of right and wrong, justice and injustice. While saying as much offers little consolation to Jem, Atticus, for example, unqualifiedly agrees with his son's assessment of the Robinson verdict: "It ain't right."⁸¹ For that matter, he weaves through his entire closing argument a strong appeal to equality before the law, regardless of race.⁸² And unlike Mr. Gilmer, whose disrespect and conspicuous disdain for Tom prompted such a strong reaction in Dill, Atticus speaks to the black residents of Maycomb just as he speaks to his white neighbors: in court and elsewhere.

The contrast between Jem and Dill and Atticus, then, is not that they have moral compasses pointing in different directions. In fact, the moral "insights of . . . [the] children at most confirm Atticus's views, rather than challenge them."⁸³ Instead, the real difference at play has to do with how seriously they take their consciences. Whereas Jem rages and Dill sobs over injustice, Atticus quietly goes about his business. Though he treats everyone he encounters with fairness and respect, Atticus Finch has little shock or outrage for the very real evil that invades his community and kills his client. The best he can muster is placid sadness.

Arguably, one could attribute Atticus's even-tempered reactions to racism to a process of gradual desensitization. Certainly, a non-racist white person could scarcely emerge from the Depression-era Deep South without having become jaded. But Atticus's responses to the racism he encounters strike me as more meaningful than mere realism on the part of a man with worn out resolve. While Jem and Dill fail to comprehend how a world so inundated with injustice can exist—in fact, Jem and Dill are incapable of as much—Atticus can envision nothing else. Racial injustice is "just as much Maycomb County as

⁸⁰ *Id.* at 247.

⁸¹ *See id.* at 212.

⁸² *See id.* at 202–06 (arguing to the jury that they possessed the power to rectify the wrongs of society by standing up and making, at least for this one verdict, all men equal before the law and judged solely on the evidence presented).

⁸³ Rob Atkinson, *Liberating Lawyers: Divergent Parallels in Intruder in the Dust and To Kill a Mockingbird*, 49 DUKE L.J. 601, 710 (1999).

missionary teas,” Atticus gloomily says to his sister, at one point,⁸⁴ and, if the children are going to be a part of Maycomb, “they might as well learn to cope with it.”⁸⁵

Solemnity and folly are easy travelling companions, though, and the earnestness of Atticus’s remark nearly obscures its misguidedness. In so many words, Atticus resigns his children’s future to mockeries of justice that lead to judicially sanctioned killings of innocent, twenty-five-year-old fathers of three.⁸⁶ Certainly, a man will have loyalty to his own community despite its shortcomings,⁸⁷ and patience and understanding play crucial roles in getting on in any collection of diverse people,⁸⁸ but eradicating the problem, wholesale, would seem much more beneficial to the children than teaching them ways to capitulate gracefully. Jem’s situation offers especially compelling support for this proposition. Months after the trial is over and Tom Robinson is dead, what transpired still eats at Jem so much so that an innocent comment from Scout causes him to erupt in violent outrage.⁸⁹ While Atticus might be able to “cope” by pushing his nose into a newspaper or throwing himself into his work, times seem to be rather tough for Jem. But Atticus holds out hope that Jem will bury his outrage with time.⁹⁰ Perhaps Atticus’s quiet confidence in Jem’s success⁹¹ has something to do with his own ability—perhaps hard won ability—to censor his own conscience.

Early on, Scout and Atticus engage in a brief exchange that exemplifies Atticus’s fatalism. Troubled by rumors she hears at school, Scout brings up the Robinson case to Atticus.⁹² Ultimately, she asks “Atticus, are we going to win it?” “No, honey,” is Atticus’s response, but “[s]imply because we were licked a hundred years

⁸⁴ LEE, *supra* note 1, at 212 (internal quotation marks omitted).

⁸⁵ *Id.* (internal quotation marks omitted).

⁸⁶ *See id.* at 190 (discussing Tom’s family and prior history with the law, as well as Atticus’s initial response to Tom).

⁸⁷ Thomas Shaffer makes much of this point, which he describes as having a sense of irony for one’s community. *See, e.g.,* Shaffer, *Moral Theology*, *supra* note 29, at 187. While I agree with the basic premise—that one can have fondness for, and take part in, one’s community, despite its flaws—I find the racial injustice in Maycomb to be, using the language of moral theology, intrinsically evil. No amount of social harmony, in my view, counterbalances it. I think what happened to Tom Robinson is sufficiently grave to conclude as much.

⁸⁸ For a discussion of participation in a community as a valuable tool for improving that community, see McMillian, *supra* note 29, at 16–17.

⁸⁹ *See* discussion *supra* notes 77–80 and accompanying text.

⁹⁰ *See* LEE, *supra* note 1, at 247.

⁹¹ *See id.* (“Atticus said Jem was trying hard to forget something, but what he was really doing was storing it away for a while, until enough time passed. Then he would be able to think about it and sort things out. When he was able to think about it, Jem would be himself again.”).

⁹² *See id.* at 75–76.

before we started is no reason for us not to try to win.”⁹³ The reader feels the heaviness of Atticus’s words in his own throat.

Yet, for all its apparent sincerity, the colloquy reveals a vivid contrast: seeing up close “the hell white people give colored folks, without even stopping to think that they’re people, too,” brings Dill to his knees.⁹⁴ Man’s capacity to do injustice confounds and enrages Jem. But Atticus, ever the dutiful one, simply resigns himself to the terrible state of affairs, puts on a quixotic face, and becomes the hero of a few lawyers in the process. The best he has for his client, on whose back adoring readers foist the cross of Atticus Finch,⁹⁵ is disappointment that Tom had no patience for an appeal.⁹⁶

Scout, in a flash of wisdom far beyond her years, recognizes Atticus’s response to the Tom Robinson mess for what it is. “You sound like Cousin Ike Finch,” she tells him.⁹⁷ The Cousin Ike Finch, she tells the reader, who wiles away his days in nostalgia for the time he spent fighting valiantly for the lost cause of the Confederacy, while quietly and dutifully suffering the pangs of old battle scars.⁹⁸ The accusation could hardly be more damning. When what seemed on first pass to be a well-intended, self-denying struggle for racial justice comes into focus, the children’s responses and observations expose it as mere vainglory. The most instructive lessons from *Mockingbird*, then, are not that one should cleave to Atticus as a moral model or that Harper Lee failed in her attempt to set out a character of prototypical virtue. Instead, one should take away that heroism consists not simply of romantic intentions, and that the do-gooder is never greater than the good.

II. “LAWYERS, I SUPPOSE, WERE CHILDREN ONCE.”⁹⁹

Naturally, the question of “why is this so?” immediately follows. If Atticus, a reader should ask, responds to racial injustice in ways remarkably different from his children, what causes this disconnect?

⁹³ *Id.* at 76.

⁹⁴ *Id.* at 201.

⁹⁵ Tom, after all, is the one who is dead. For an argument that readers “have appropriated [Tom’s] story into [their] own narrative of Atticus’ nobility,” see Phelps, *supra* note 26, at 930, 930–31.

⁹⁶ See LEE, *supra* note 1, at 235–36.

⁹⁷ *Id.* at 76.

⁹⁸ See *id.* Treating Atticus’s attitude toward the Robinson trial and a nostalgic confederate soldier along side of each other is hardly unintentional on the part of Harper Lee. Atticus’s statement that “[s]imply because we were licked a hundred years before we started is no reason for us not to try to win,” perfectly mirrors Cousin Ike Finch’s ramblings that “the Missouri Compromise was what licked us, but if I had to go through it agin I’d walk every step of the way there and every step back jist like I did before.” *Id.*

⁹⁹ *Id.* at epigraph. The quote is from CHARLES LAMB, *ESSAYS OF ELIA* 55 (1823).

“Loss of youthful innocence” appears to be the popularly given reason,¹⁰⁰ and such an explanation does, indeed, find some support in the text. The children grow older throughout the novel,¹⁰¹ for example, and characters in the story often comment on the progress of the children’s maturation¹⁰²—especially Jem’s. And while the children slowly move toward adulthood, Atticus has been a much older man since the novel’s beginning.¹⁰³ Presumably, he had encountered the harsh realities of southern racism before, but the Robinson trial prompts Scout’s, Jem’s, and Dill’s first major, conscious experiences of such things.

Yet, “loss of innocence” seems to offer an incomplete explanation. If *Mockingbird* draws its foremost contrast on the basis of little more than nostalgia for youth, and youth involves “innocence,” which, in turn, imparts an arresting aversion to racial injustice, it stands to reason that other young people in the novel would share the same arresting aversion to racism as Jem and Dill. The other children of Maycomb County, however, exhibit symptoms of a virulent strain of racism throughout the narrative.¹⁰⁴ Even Atticus’s own nephew taunts Scout that her father is a “nigger-lover” and complains that, because of Atticus, members of the extended family will “never be able to walk the streets of Maycomb ag[a]in.”¹⁰⁵ And though not conspicuously racist, Scout—herself younger than Jem and Dill—experiences nothing comparable to Dill’s and Jem’s extreme disgust for the miscarriage of justice in the Robinson case.¹⁰⁶

Perhaps most importantly, though, Atticus and the children clearly share the same sense of right and wrong.¹⁰⁷ If Atticus has lost anything on account of his age, he certainly retains this much, and his

¹⁰⁰ See, e.g., Shaffer, *Moral Theology*, *supra* note 29, at 202 (arguing that “[t]he difference between Scout and Atticus,” with respect to their responses to racial injustice, “is that Atticus ha[s] learned his way out of innocence”); see also Tim Dare, *Lawyers, Ethics and To Kill a Mockingbird*, 25 PHIL. & LITERATURE 127, 129 (2001), available at http://muse.jhu.edu/journals/philosophy_and_literature/v025/25.1dare.pdf (asserting that “[Scout’s] innocence is a crucial aspect of the narration, highlighting the senseless racism and class divisions that rend Maycomb”).

¹⁰¹ The narrator even makes explicit that Jem entered puberty during or shortly after the Robinson trial. See LEE, *supra* note 1, at 225.

¹⁰² See *id.* at 74, 115, 247.

¹⁰³ See *supra* notes 39–40 and accompanying text; see also LEE, *supra* note 1, at 267 (describing Atticus in the following way: “His age was beginning to show, his one sign of inner turmoil: the strong line of his jaw melted a little, one became aware of telltale creases forming under his ears, one noticed not his jet-black hair but the gray patches growing at his temples”).

¹⁰⁴ See, e.g., LEE, *supra* note 1, at 74 (one of Scout’s classmates derides her father in the schoolyard for defending “niggers”).

¹⁰⁵ *Id.* at 83. Also, consider that Dolphus Raymond, an adult, reacts to the Robinson trial in a way similar to Dill. See *id.* at 199.

¹⁰⁶ See discussion *supra* notes 62–66 and accompanying text.

¹⁰⁷ See discussion *supra* Part I.B.

moral scruples make him more like his children than any other character in the book. Their differences, then, are not a question of philosophical principle, but a question of execution.

Along these lines, I submit that Atticus's depleted measure of "innocence" is not the exclusive cause of his unsatisfying response to racist inequity. His profession, it seems to me, plays a role as well. As an initial matter, the novel's epigraph itself supports such a reading. "Lawyers" it concludes "were children once."¹⁰⁸ A far cry from mere truism about *adults* having once been children, this quote suggests that the author understood *Mockingbird's* narrative to reveal something unique about *lawyers* in comparison to children.

A general survey would reveal many qualities that are unique or especially common among those who practice law. Lawyers are usually articulate,¹⁰⁹ for one, and most attorneys possess above average intelligence.¹¹⁰ In addition, successful attorneys often have a knack for creativity and flexible thinking.¹¹¹ This flexibility enables them to extrapolate practical guidance from ethereal concepts, like consideration and *mens rea*, and to draw non-obvious, but valid, analogies between the facts of decided cases and scenarios that face their clients.¹¹² But, above all, lawyers embrace a results-oriented approach to problem solving¹¹³ and are an extremely practical

¹⁰⁸ LEE, *supra* note 1, at epigraph (quoting LAMB, *supra* note 99, at 55).

¹⁰⁹ See ZIVA KUNDA, SOCIAL COGNITION: MAKING SENSE OF PEOPLE 36 (1999) ("[W]e know that lawyers are articulate *because* they need to be persuasive in the courtroom."); see also GEOFFREY C. HAZARD & DEBORAH L. RHODE, THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION 271 (1988) ("Lawyers are articulate in one of the major media of public discourse, legal language."); STEPHEN L. WASBY, RACE RELATIONS LITIGATION IN AN AGE OF COMPLEXITY, at xviii (1995) ("[L]awyers are articulate and able to reconstruct past events to fit preconceived notions . . .").

¹¹⁰ See GERALD G. GOLDBERG, PRACTICAL LAWYERING: THE SKILLS YOU DID NOT LEARN IN LAW SCHOOL 72-73 (2009) ("Most attorneys are intelligent, having gone to college and having passed a bar exam.").

¹¹¹ See Elaine McArdle, *A Curriculum of New Realities*, HARV. L. BULL., Winter 2008, at 17-41 (asserting that "creative thinking and an ability to draw from a variety of resources in order to solve real life legal problems" is an essential lawyering skill); see also Afra Afsharipour, *Incorporating "Business" in Business Law Classes*, 8 U.C. DAVIS BUS. L.J. 1, 3 (2007) (arguing that "[w]hat distinguishes the successful lawyer is the ability to think creatively"); Janet Weinstein & Linda Morton, *Stuck in a Rut: The Role of Creative Thinking in Problem Solving and Legal Education*, 9 CLINICAL L. REV. 835, 835 (2003) ("The ability to engage in creative thinking is essential to problem solving. Problem solving is the essence of what lawyers do." (footnote omitted)).

¹¹² Cf. Weinstein & Morton, *supra* note 111 at 838 (arguing that "an idea" such as a legal precedent "may be a tried and true concept in a different context, but qualify as a creative idea when applied in a new way within the context of solving legal problems").

¹¹³ Stephen N. Subrin & Thomas O. Main, *The Integration of Law and Fact in an Uncharted Parallel Procedural Universe*, 79 NOTRE DAME L. REV. 1981, 2002 (2004) ("Lawyers are practical and professional problem solvers: they want to find effective ways to advocate for their clients."); see also DAVID W. LOUISELL, GEOFFREY C. HAZARD & COLIN C. TAIT, CASES AND MATERIALS ON PLEADING AND PROCEDURE: STATE AND FEDERAL

breed.¹¹⁴ Confronted with a client who has a legal problem—whether criminal or civil in nature—every ounce of an attorney’s professional training impels him, then, to strategize with an eye toward a quick and economical resolution. Such an approach to problem solving places a premium on strategies with high probabilities of success and low costs that are justifiable in comparison to what stands, in likelihood, to be gained.

Children, on the other hand, rarely think in such tempered terms. Instead, children often act on the basis of their instinctive responses, without considering how others might perceive them or whether their responses will have productive effects.¹¹⁵ This is especially clear in *Mockingbird*’s account of the Robinson trial. While Atticus and the children all intuit that racial injustice is just that, only the children passionately act on their intuitions. Jem and Dill, especially, care little as to whether anyone sees them crying, or whether their tears and frustration will produce desirable outcomes.¹¹⁶ Atticus, in contrast, always follows a practical tack. According to Scout, Atticus puts on a very competent defense for Tom at trial. But it begins and ends there. Atticus is too practical to appeal for a radical social shift toward justice¹¹⁷: the probability of success is almost zero, so he simply takes

1117 (1983) (“Lawyers are practical people”); STEPHEN C. NEFF, WAR AND THE LAW OF NATIONS 40 (2005) (“Lawyers are practical people, even if theologians and monks and professors are not (or not always.)”); Tom C. Clark, *Justice Among Men—The Significance of Law Day*, 48 A.B.A. J. 313, 313 (1962) (“[L]awyers are practical people—doers of things—who are able to meet and solve specific issues.”); Harold J. Laski, *The Personality of Associations*, 29 HARV. L. REV. 404, 405 (1916) (“Now lawyers are practical men dealing with the very practical affairs of everyday life”).

¹¹⁴ See, e.g., Jeanne Charn, *Service and Learning: Reflections on Three Decades of The Lawyering Process at Harvard Law School*, 10 CLINICAL L. REV. 75, 84–85 (2003) (describing lawyers as “practical actors” and noting the desire to train law students to develop such practical skills); see also Guy Canivet, *The Interrelationship Between Common Law and Civil Law*, 63 LA. L. REV. 937, 938 (2003) (describing lawyers as “pragmatic people”).

¹¹⁵ See, e.g., MARJORIE J. KOSTELNIK ET AL., GUIDING CHILDREN’S SOCIAL DEVELOPMENT 300 (3d ed. 1998) (“At times, children act without thinking: an idea or desire pops into their heads, and they are in motion; they see something they want and grab for it; they think something and blurt it out.”); William Pickett et al., *Unintentional Injuries in Children, in MATERNAL AND CHILD HEALTH: GLOBAL CHALLENGES, PROGRAMS, AND POLICIES* 341, 351 (John Ehiri ed., 2009) (“Most children are impulsive and curious.”); WILLIAM SEARS ET AL., THE SUCCESSFUL CHILD: WHAT PARENTS CAN DO TO HELP KIDS TURN OUT WELL 142 (2002) (“[M]ost children are impulsive (at least at times).”).

¹¹⁶ See *supra* notes 67–72, 77–80 and accompanying text (describing the open reactions of Dill and Jem to various parts of the trial).

¹¹⁷ Perhaps the most vivid contrast of Atticus’s practical approach to injustice with one of the children’s responses is found in an exchange Atticus has with Jem several days after the trial concludes. See *id.* at 220. Concerned that all-white juries recruited from backward sections of Maycomb County would prejudice the outcome in trials like Tom’s, Jem “insists on radical reforms, but Atticus patiently rebuts each point, on practical grounds and from the perspective of his experience in both courts and the legislature.” Atkinson, *supra* note 83, at 710.

the course of action that carries with it the smallest cost and a slightly higher chance of success. Instead of demanding that the jury abide by its oath and reject racism as a proxy for justice, Atticus merely implores the jury to treat Tom as if he were white.¹¹⁸ The jury declines and convicts Tom, but Tom always had a greater probability of success at the appellate level, anyway. Such is the elegant solution of a seasoned litigator.

Concededly, hindsight is twenty-twenty. Yet, anyone with a basic understanding of the subject knows that Atticus wound up on the wrong side of American history. Whether or not soft-spoken lawyers who appealed to juries' better sides had any effect on Jim Crowism, it is undeniable that far more dramatic actors had the most success in advancing equality for blacks in the South. Perhaps the most effective aspect of King's dream, for example, had to do with how impractical such aspirations seemed.

Those content to castigate Atticus and argue against *Mockingbird's* usefulness to lawyers, then, overlook an especially useful lesson. While Atticus recognized injustice, his lawyerly, pragmatic response to the obvious evil invading his community proved to be completely ineffective. Tom Robinson is dead, after all. But, only by rejecting injustice out of hand, we know, did the civil rights movement make any progress in the South. This contrast is the real story of *Mockingbird*, and it plays out as the author reveals Atticus to be practical and his children, principled. Lawyers would do well to take note and avoid the pitfalls of importing the pragmatic, cost-benefit analysis of standard legal practice into their moral responses to the injustices they encounter.

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¹¹⁸ See LEE, *supra* note 1, at 203–06. The point here is that Atticus merely tries the Robinson case as he would any other—by impeaching prosecution witness testimony, buttressing the testimony of his own witness and emphasizing physical evidence that contradicts the state's theory of its case—and insists in his closing argument that the jury should do the same.

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