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# Liberating Lawyers: Diverging Parallels in *Intruder in the Dust* and *To Kill a Mockingbird*

Rob Atkinson

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## LIBERATING LAWYERS: DIVERGENT PARALLELS IN *INTRUDER IN THE DUST* AND *TO KILL A MOCKINGBIRD*

ROB ATKINSON<sup>†</sup>

### ABSTRACT

*Professor Atkinson hopes William Faulkner's Intruder in the Dust will replace Harper Lee's To Kill a Mockingbird as our favorite story of lawyerly virtue. In both stories, a white male lawyer and his protégé try to free a black man falsely accused of a capital crime. But below these superficial similarities, Professor Atkinson finds fundamental differences. To Kill a Mockingbird, with its father-knows-best attorney, Atticus Finch, celebrates lawyerly paternalism; Intruder in the Dust, through its aristocratic black hero, Lucas Beauchamp, and his lay allies, challenges the rule of lawyers, if not law itself. The first urges us to serve others in a way that confirms our superiority in a system we have made in our own image; the second engages us in a*

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<sup>†</sup> Professor of Law, Florida State University. I am grateful to Paulo Annino, Sandy D'Alemberte, Stephanie Gamble, Adam Hirsch, Tahirih Lee, Josh Morse, and Mark Seidenfeld for their comments and encouragement. Jeremy E. Cohen provided invaluable research assistance. I am particularly indebted to Thomas Shaffer, the pioneer student of Atticus's ethics, who not only commented in detail on my manuscript, but also shared with me his notes and an unpublished manuscript on Gavin. The Florida State University College of Law supported my work with a summer research grant.

In writing a paper on two *bildungsromans*, I have been constantly reminded of my mentors and my protégés, those who have taught me, and those whom I have taught. I am most thankful for those times when the distinction has disappeared, when we have ceased to be teacher and student, and become simply friends. That happens in only one of the novels I consider; that, ultimately, is why I consider it the better.

*dialogue with those who may be able to help us make our common world better than we alone could ever have imagined.*

*Beyond this comparison, Professor Atkinson invites us to wonder why we prefer the more comforting tale to the more challenging. In his view, the fault lies largely with contemporary legal education. Even as that education recommends our using the law to liberate others, it fails to free us from our own prejudices and preconceptions. Current calls for more skills training and doctrinal scholarship both reflect and exacerbate this failure. Although Professor Atkinson doubts that literature can lead us to eternal, transcendent values, he believes that it can open us to new possibilities of personal virtue and social justice. Like the Socratic dialogues, *Intruder in the Dust* makes us examine our lives in dialogue with others. That, Professor Atkinson concludes, is both its principal lesson for us lawyers and its best claim for elevation in our canon.*

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We know that all men are not created equal in the sense that some people would have us believe—some people are smarter than others, some people have more opportunity because they are born with it, some men make more money than others, some ladies bake better cakes than others—some people are born gifted beyond the normal scope of most men.

But there is one way in this country in which all men are created equal—there is one human institution that makes a pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. That institution, gentleman, is a court.

*Atticus Finch*, criminal defense counsel<sup>1</sup>

“Mr. Finch, if you was a nigger like me, you’d be scared, too.”

*Tom Robinson*, rape defendant<sup>2</sup>

“I’m a nigger,” Lucas said. “But I’m a man too. I’m more than just a man.”

*Lucas Beauchamp*, murder defendant<sup>3</sup>

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1. HARPER LEE, *TO KILL A MOCKINGBIRD* 218 (1960) [hereinafter LEE, *MOCKINGBIRD*] (quoted by his daughter, Jean Louise (“Scout”) Finch).

2. *Id.* at 207.

3. WILLIAM FAULKNER, *GO DOWN, MOSES* 46-47 (Vintage Books 1990) (1940) [hereinafter FAULKNER, *MOSES*].

‘You’re just my uncle.’

‘I’m worse than that,’ his uncle said. ‘I’m just a man.’

*Gavin Stevens*, criminal defense counsel<sup>4</sup>

#### INTRODUCTION

William Faulkner in *Intruder in the Dust* and Harper Lee in *To Kill a Mockingbird* have given us strikingly parallel accounts of lawyers as liberators in the most literal and compelling sense. Faulkner’s Gavin Stevens and Lee’s Atticus Finch work against great odds to release innocent black clients from incarceration, where they stand falsely accused of capital crimes, crimes attributed to them largely because of their color. Both of the would-be liberators are presented as progressive southerners, but southerners in good standing.<sup>5</sup> Both are aided by children, through whose awakening eyes we see much of the stories.<sup>6</sup>

Yet, the stories also differ markedly. Most saliently, Faulkner’s defendant lives to be freed from jail; Lee’s dies fleeing from prison. In a sense, Gavin Stevens succeeds, and Atticus Finch fails—more precisely, the former’s client saves himself; the latter’s gets himself killed. Faulkner’s is a story of how a black man coolly uses a white lawyer and his nephew, often very much against their wishes, to deliver himself from the law’s very human limitations; Lee’s is a story of how a white lawyer and his daughter, despite their most sincere and strenuous efforts, ultimately fail to save a black man who runs, panic-stricken, before the law’s promised deliverance.

As the stories differ, so have their receptions. From the novels’ first appearances, critics have hailed Atticus and castigated Gavin.<sup>7</sup>

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4. WILLIAM FAULKNER, *INTRUDER IN THE DUST* 121 (First Vintage Int’l ed. 1991) (1948) [hereinafter FAULKNER, *INTRUDER*] (as spoken to his nephew, Charles (“Chick”) Mal-lison, Jr.).

5. See Thomas L. Shaffer, *Growing Up Good in Maycomb*, 45 ALA. L. REV. 531, 556-57 & n.119 (1994) [hereinafter Shaffer, *Growing Up Good*] (describing Atticus’s insistence that Maycomb is his family’s home and that his opponents in Robinson’s trial are their friends and citing this as a theme in *Intruder* as well).

6. See Richard H. King, *Lucas Beauchamp and William Faulkner: Blood Brothers*, in CRITICAL ESSAYS ON WILLIAM FAULKNER: THE MCCASLIN FAMILY 233, 237 (Arthur F. Kinney ed., 1990) [hereinafter CRITICAL ESSAYS] (“At the moral center of such novels is the relationship between an adult of good will, often a lawyer, and a younger relative.”).

7. See discussion *infra* Part III.A.

Hollywood immortalized Atticus in an Academy Award-winning portrayal by Gregory Peck.<sup>8</sup> The movie version of *Intruder*,<sup>9</sup> though directed by Clarence Brown,<sup>10</sup> is mostly forgotten. Its favorable reviews were principally in Europe, and principally for the role of Lucas.<sup>11</sup> Legal scholarship and bar journal articles have been full of glowing allusions to Atticus, and the current professionalism movement has canonized him as something of a patron saint.<sup>12</sup> Gavin, by contrast, has gotten the equivalent of an occasional *see also* or *but cf.*

In legal scholarship, however, a reassessment, if not quite a reversal of fortunes, is afoot. Scholars on the Left, especially those influenced by feminist jurisprudence and critical race theory, are pointing with growing insistence to Atticus's shortcomings, particularly his paternalism toward blacks and women.<sup>13</sup> From a

8. See *TO KILL A MOCKINGBIRD* (Universal Pictures 1962).

9. *INTRUDER IN THE DUST* (Metro-Goldwyn-Mayer 1949).

10. Brown directed more than 50 films between 1920 and 1952, working with such stars as Greta Garbo, Clark Gable, Spencer Tracy, Elizabeth Taylor, and Gregory Peck. His screen credits include *Flesh and the Devil*, *The White Cliffs of Dover*, and *National Velvet*. See Internet Movie Database, *Clarence Brown* (visited Feb. 4, 2000) <<http://us.imdb.com/M/person-exact?Brown%2C%20Clarence%20%28I%29>> (on file with the *Duke Law Journal*).

11. See REGINA K. FADIMAN, *FAULKNER'S INTRUDER IN THE DUST: NOVEL INTO FILM* 7 (1978) (describing the film as a *succes d'estime* and noting Brown's receipt of the British Academy Award for Best Director in 1949); *Magills On-Line Movie Review*, 1995, available in WESTLAW, Database Magills (indicating that Juano Hernandez, who played Lucas, won two European film awards and that the movie as a whole "was well received in Europe"). Perhaps tellingly, the movie was panned by *Time* and praised by the *Times*. See *Cinema*, TIME, Dec. 12, 1949, at 98, 101 (describing the movie as a "too-earnest treatment" that is "not only dead serious, but dead on its feet"); Bosley Crowther, *The Screen in Review*, N.Y. TIMES, Nov. 23, 1949, at 18 ("And without one moment's hesitation, this corner, still shaking, proclaims that it is probably this year's pre-eminent picture and one of the great cinema dramas of our times.").

12. For the lawyerly equivalent of *The Imitation of Christ*, see MIKE PAPANTONIO, *IN SEARCH OF ATTICUS FINCH: A MOTIVATIONAL BOOK FOR LAWYERS* (1996). Tellingly, the volume of legal scholarship on *Mockingbird* significantly outweighs the literary. See CLAUDIA DURST JOHNSON, *TO KILL A MOCKINGBIRD: THREATENING BOUNDARIES* 20 (1994) (noting the paucity of literary scholarship on *Mockingbird* and concluding that "since 1960 a greater volume of critical reading of it has been amassed by two legal scholars in law journals than by all the literary scholars in literary journals").

13. See JANICE A. RADWAY, *A FEELING FOR BOOKS: THE BOOK-OF-THE-MONTH CLUB, LITERARY TASTE, AND MIDDLE-CLASS DESIRE* 337-47 (1997) ("For all its interest in empowering girls and Negroes, Harper Lee's novel finally assents to the rule of a learned and compassionate elite."); Monroe H. Freedman, *Atticus Finch—Right and Wrong*, 45 ALA. L. REV. 473, 480 (1994) [hereinafter Freedman, *Right and Wrong*] (citing Atticus's remark that he had hoped to get through life without taking a case like Tom Robinson's); Theresa Godwin Phelps, *The Margins of Maycomb: A Rereading of To Kill a Mockingbird*, 45 ALA. L. REV. 511, 530 (1994) (describing a "dismissive" narrative voice). Professor Monroe Freedman first questioned Atticus's character in the popular legal press in *Atticus Finch, Esq., R.I.P.*, LEGAL TIMES, Feb. 24, 1992, at 20, and *Finch: The Lawyer Mythologized*, LEGAL TIMES, May 18, 1992,

somewhat different direction, scholars of the law and literature movement are discovering unexpected virtues in Gavin, or at least looking for silver linings in what critics once dismissed as clouds on his character.<sup>14</sup> In the loquaciousness their predecessors found irritating, scholars now note Gavin's subtle uses of narrative to educate his nephew and protégé, Chick Mallison.<sup>15</sup> Even in Gavin's more politically incorrect monologues, scholars are finding the foils for his nephew's maturer vision of race and gender; an earlier generation of critics detected only the crudely fictionalized conservatism of Faulkner himself.<sup>16</sup> In scholarly exchanges, Atticus's stock is trading at something of a discount; Gavin's fortunes are on the rise.

These adjustments are, I think, long overdue. Moreover, as I shall try to show in this Article, they are at once more closely and more complexly related than has yet been appreciated. The current revisionism is not merely a matter of exaggerating the faults of Atticus, a southern liberal, and minimizing the faults of the more conservative Gavin. On a crudely bipolar political spectrum, Atticus and Gavin are not particularly far apart, and their differences seem greatest in matters of economics, which has attracted the least attention, and smallest in matters of race and gender, which has attracted the most.<sup>17</sup>

What distinguishes Atticus and Gavin is less what they think than how they act—in particular, how they interact with their black clients and with other social outsiders. Put somewhat differently, critical focus has shifted from the characters of Atticus and Gavin to the stories of which they are but part. From this perspective, what

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at 25, evoking a storm of protest that caught the attention of the *New York Times*. See David Margolick, *At the Bar*, N. Y. TIMES, Feb. 29, 1992, at B7 (discussing Freedman's critique of Atticus Finch); see also JOHNSON, *supra* note 12, at 15 (noting efforts on the part of blacks in the East and Midwest to censor *Mockingbird* on account of its "condonation of institutional racism").

14. See, e.g., RICHARD WEISBERG, POETHICS 92 (1992) (finding Gavin to be an exemplary lawyer figure in whom "there is every indication of ultimate soundness").

15. See JAY WATSON, FORENSIC FICTIONS: THE LAWYER FIGURE IN FAULKNER 109-39 (1993). *But cf.* WEISBERG, *supra* note 14, at 84-92 (faulting the loquacity of Gavin in his earlier appearances, especially in *Intruder*, but arguing for his growing appreciation of the value of silence in later novels, especially in Faulkner's *The Town*).

16. See discussion *infra* Part III.A.

17. See E. Grady Jolly, *Feelings for Flem, Faulkner and Federalism*, 4 MISS. C. L. REV. 217, 223-24 (arguing that Faulkner's fictional lawyers, typified by Gavin Stevens in *Intruder*, would have been active in the early phase of the civil rights movement, but would have resisted the later phases, as the role of federal intervention increased).

distinguishes one story from another is less the lawyer in the story than the place of the lawyer, and indeed, of law itself, in the story.

In *Mockingbird*, Atticus the lawyer takes center stage, preaching the gospel of equality before the law. He is the prophet of New Dealish progressivism, and his incrementalist, technically oriented professionalism is the new priesthood. His practice has shown him that equality before the law is “a living, working reality.”<sup>18</sup> Hope here lies in the prospect that, supported by women and children, right-thinking laymen will follow Atticus’s lead in recognizing the legal equality of blacks, who in their turn will have the patience to await the law’s processes. Blacks in Atticus’s world pose no threat to elite whites; the benign songbird of the book’s title conveys the character of the best of them, those like Atticus’s client, Tom Robinson.

In *Intruder*,<sup>19</sup> Gavin’s own client places him in the background, because Gavin’s lawyerly mindset obscures to him the novel’s central fact: Lucas Beauchamp is not just innocent, but virtuous. Moreover, Lucas’s virtue is from a moral order very different from that of high school civics or Sunday School Christianity. Lucas is self-consciously not just a man; he is a *mensch*, if not an *Übermensch*. He is not merely the legal equal of his white oppressors; he is the moral superior of his lawyerly liberator. His very presence is an unassimilable intrusion into the world of their inherited prejudices.

18. LEE, *MOCKINGBIRD*, *supra* note 1, at 218.

19. In analyzing *Intruder*, I follow other scholars in making intertextual comparisons with other Faulkner works set in his fictional Yoknapatawpha County, Mississippi. See John E. Bassett, *Gradual Progress and Intruder in the Dust*, 13 C. LITERATURE 207, 215 (1986) (“Multiple references [in *Intruder*] to *Go Down, Moses* and the McCaslin-Edmonds legends, of course, invite intertextual readings between the novels.”); see also WATSON, *supra* note 15, at 109 (calling for intertextual analysis of *Go Down, Moses* and *Intruder in the Dust*). For the classic statement that Faulkner’s Yoknapatawpha cycle should be read as a single, unified work, see Malcolm Cowley, *Introduction to THE PORTABLE FAULKNER* xi-xvi (Malcolm Cowley ed., Viking Press rev. ed. 1968) (1946). Gavin appears in the final, title story of *Go Down, Moses*, and he and Chick also figure prominently in the stories collected in *Knight’s Gambit* and in the second and third books of the Snopes trilogy, *The Town* and *The Mansion*. Their characters are generally consistent with their depictions in *Intruder*, though Faulkner’s chronology occasionally falters. In *The Mansion*, Chick is five in 1919, see FAULKNER, *The Mansion* [hereinafter FAULKNER, *The Mansion*], in SNOPEs 681, 839 (Modern Library Edition 1994), and thus 24 on the eve of World War II, see *id.* at 865. For this chronology to be consistent with that of *Intruder*, which covers Chick’s life from ages 12 to 16, the novel has to be set between 1926 and 1930. But several passages in *Intruder* suggest a post-World War II setting. Old Nub Gowrie and his sons share a “twenty-year womanless house,” FAULKNER, *INTRUDER*, *supra* note 4, at 214, and the date of death on his wife’s tombstone is 1926, *id.* at 100, yielding a date of 1946. And Gavin refers both to “our atom bomb,” *id.* at 147, and the communist threat to what seems to be post-Nazi Europe, *id.* at 211.



Gavin is slow to see this, not despite his legal training and practical wisdom, but precisely because of them. His lawyerly professionalism, the skills and habits formed in years of law practice, are not only not the solution; they are as much a part of the problem as the more obvious racism of his redneck compatriots. The outsiders in the novel—blacks, women, the elderly, children—teach him what he cannot see because his vision is narrowed and lowered by “busyness.” The outsiders themselves have not so much answers as other ways of approaching problems. Gavin’s hope—and the hope for the future of their shared moral world—lies in continued, mutually respectful conversation and openness to radically new possibilities of social order.

If this is so, then the greater appeal of *To Kill a Mockingbird* may tell us something less than wholly laudable about ourselves, those to whom it appeals.<sup>20</sup> It suggests, in the shadow of Nietzsche,<sup>21</sup> that we who would be liberators prefer Lee’s liberal-democratic vision at least in part because, in insisting that our job is to lift others up, we implicitly place ourselves always above them. Before we liberate them, they need us; afterward, they should be thankful to us. Abstractly and formally, we are never more than equal to them; practically and historically, they are always beholden to us.<sup>22</sup> We have it both ways, at their expense, all the time.

Faulkner’s feudal-aristocratic vision radically reverses this arrangement, very much at our expense. By identifying ourselves with Atticus in *Mockingbird*, we hope to save Tom Robinson, or at least to reap glory and honor in the trying.<sup>23</sup> But if we dare identify with

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20. See King, *supra* note 6, at 238 (“In general such novels [which King calls ‘racial thrillers’] are moral psychodramas for moderate, well-intentioned white readers who can have their essential moral decency reaffirmed and in turn can look down their moral noses at the backwardness of poor whites.”).

21. For a discussion of Nietzsche and altruism, see *infra* notes 624-28 and accompanying text.

22. See King, *supra* note 6, at 239 (“For the only way an oppressed people can become the psychological equal of their oppressors is by self-liberation”).

23. This, for example, was the initial reaction of Morris Dees, founder and current director of the Southern Poverty Law Center:

On a warm June night in 1966, I saw *To Kill a Mockingbird* at a local drive-in theater. . . . When Atticus Finch walked out of the empty courtroom after the jury ruled against his client and the upper gallery, still packed with black folks, rose in his honor, tears were streaming down my face. Why couldn’t I be a lawyer like Mr. Finch?

Morris Dees, *Foreword* to PAPANONIO, *supra* note 12, at 5, 7; see *id.* at 68 (“Are there any among us who would not trade several million dollar verdicts for such an expression of appreciation and admiration?”); Timothy L. Hall, *Moral Character, the Practice of Law, and Legal*

Gavin in *Intruder*, we risk despair of being Lucas Beauchamp and resentment at having to be his instrument, the means by which he transcends not just the redneck rabble, but also us. And yet there is here, too, a positive message, and a very ancient, even religious one, one that Nietzsche—perhaps caught in his own *ressentiment*—never saw.<sup>24</sup> To be humbled is not necessarily to be humiliated, and to insist on the virtue of humility is not necessarily either to assume a false pride or to abase the properly proud. We can do our part, which may not be the center and certainly will not be the whole. In more traditionally religious terms, we can be thankful that we are the means of grace, not resentful that we are not the messiah, or God.<sup>25</sup>

And there is also, I believe, something more generally salutary about the new appreciation for the relative merits of *Intruder in the Dust*. When all is finally weighed in the balance, *Mockingbird* is a much lighter tale.<sup>26</sup> Before its Pulitzer Prize triumph and Hollywood apotheosis, it could be seen as “respectable hammock reading.”<sup>27</sup> The fact that legal scholars are now digesting meatier fare (or, if you prefer, more complex carbohydrates) bodes well for legal education now, and for law itself, in the long run. In law and in life, as in *Intruder in the Dust*, the hard questions do not have simple answers,

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*Education*, 60 MISS. L.J. 511, 519 (1990) (“We want a lawyer-hero, and by the time the book is over we have one in Atticus’ defense of Robinson”).

24. It is also a message consistent with, if not rediscovered by, some branches of feminism, at least as early as George Eliot’s concluding elegy to Dorothea in her novel *Middlemarch*.

25. See THOMAS L. SHAFFER, *AMERICAN LAWYERS AND THEIR COMMUNITIES* 86-96 (1991) [hereinafter SHAFFER, *AMERICAN LAWYERS*] (criticizing traditional gentleman-lawyer ethics for elevating “mere optimism” above “hope” and truth, and for emphasizing the gentleman-lawyer’s skill at protecting the client from suffering instead of manifesting the Christian “hope” that the fate of others is in the hands of “the Ruler of the Universe”). As I have urged elsewhere, one can find insight in Shaffer’s traditional religious terminology without embracing any particular theological orthodoxy or theism in any form. See Rob Atkinson, *A Dissenter’s Commentary of the Professional Crusade*, 74 TEX. L. REV. 259, 269 (1995); Rob Atkinson, *How the Butler Was Made to Do It: The Perverted Professionalism of The Remains of the Day*, 105 YALE L.J. 177, 181 n.14 (1995) [hereinafter Atkinson, *Butler*].

26. Flannery O’Connor, in the candor of a private letter, put the matter more bluntly, explaining *Mockingbird*’s popularity “by the fact that it is a child’s book and that the average American reads on a child’s level.” Letter from Flannery O’Connor to Caroline Ivey (Aug. 20, 1961), quoted in Jerry Elijah Brown, *Introduction* to CAROLINE IVEY, *THE FAMILY* vii, xv (1991); see also Gregory J. Sullivan, *Children into Men: Lawyers and the Law in Three Novels*, 37 CATH. LAW. 29, 38 (1996) (“However much Atticus is and ought to be an ideal figure for a lawyer, the triumph of the child’s vision leaves *To Kill a Mockingbird* bereft of an enduring moral resonance.”).

27. Phoebe Adams, *Reader’s Choice*, THE ATLANTIC, Aug. 1960, at 98. There is, however, some evidence that the reviewer’s reading was in fact done in a hammock. According to the reviewer, “[t]he book’s setting is a small town in Mississippi.” *Id.* According to the novel, Ms. Lee’s Maycomb is in Alabama.

and the best answers are not always those our predecessors have given us. If we are to wrestle satisfactorily with those issues, we, like Gavin's nephew, Chick, must look for help to those mentors who have shown us how to move beyond their traditional solutions. That, of course, is what the Socratic method is ultimately supposed to teach us.

Applied to the books we have before us, that method strongly suggests that Faulkner's *Intruder* should displace Lee's *Mockingbird* in the canon of lawyers' inspirational literature. Part I of this Article examines in detail the diverging parallels of *Intruder* and *Mockingbird*. It begins in Section I.A by looking at their treatments of hospitality, a critical and recurrent theme in both novels that establishes very different social frameworks and patterns of relationships between the characters. Against this background, Section I.B analyzes the characters of the stories' main black figures, particularly how their strikingly dissimilar natures produce parallel problems with the law. Section I.C examines the relationships between these black clients and their lawyers. Section I.D widens our perspective to explore how the lawyers interact with various sets of outsiders: women, blacks, lower-class whites, children, and the North. Part I concludes with an examination of the relationship between lawyers and the law, one of lawyers' principal means of interaction with each outsider group. Part II draws lessons from these comparisons for the law and literature movement, especially its effort to find transcendent moral norms in literature and to listen to traditionally excluded voices. Finally, Part III turns the analytic lens around, moving from a focus on what literature can tell us about how to be to a more introspective look at what our choice of literature tells us about who we have been, who we are, and who we may become.

## I. THE DIVERGING PARALLELS

### A. *The Setting: Southern Hospitality*

The characters in both novels enact their complex social relations against a sharply defined background of Depression-era<sup>28</sup> southern hospitality. We shall examine class and race relations more

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28. Although it is clear that *Mockingbird* is set in the Depression, see, e.g., LEE, *MOCKINGBIRD*, *supra* note 1, at 217 (referring to "this year of grace, 1935"), there are inconsistencies in the chronology of *Intruder*, see *supra* note 19.

systematically below,<sup>29</sup> but the reciprocal rituals of guest and host serve as a useful introduction to the realities of social order, reflecting who takes precedence and who owes deference. These rituals reveal a pervasive tradition of *noblesse oblige*, and breaches of hospitality signal fundamental problems in social relations. The most fundamental problem in both novels is how to incorporate blacks into the system. Both stories are thus set firmly on a foundation of southern hospitality, a foundation dangerously astride the fault line of racial injustice.

Yet, on deeper inspection, the novels' fundamental structures of hospitality differ profoundly. As Alasdair MacIntyre has shown, the moral culture of the West is a sedimentary affair, comprising various layers of values laid down over wide stretches of time and sometimes brought into peculiar juxtaposition by normative shifts of seismic proportions.<sup>30</sup> Traditional southern culture, as seen in the hospitalities of both books, rests on two very distinct premodern traditions. Both of these traditions coexist in considerable tension, not just with the South's Jeffersonian, Enlightenment heritage, but also with each other.

The uppermost stratum is the Christianized chivalrous tradition of the European Middle Ages.<sup>31</sup> Beneath that tradition, itself quite old, are even earlier strata, the barely remembered, semi-barbarous heroic ages reflected, for example, in the Homeric epics, the chronicles of pre-Exilic Israel, and the Icelandic sagas.<sup>32</sup> Medieval Europe struggled, with only partial success, to Christianize and incorporate these earlier traditions,<sup>33</sup> and the untidy edges are evident in the stories under consideration.

29. See *infra* Part I.D.2.

30. See ALASDAIR MACINTYRE, *AFTER VIRTUE* 2-4 (2d ed. 1984) (describing how through the historical process of "one [conception of] morality succeeding another," we have arrived at a point where "the language of morality is in [a] state of grave disorder"). See generally ALASDAIR MACINTYRE, *WHOSE JUSTICE, WHICH RATIONALITY?* (1988) (discussing how the concepts of justice and rational action have evolved throughout Western philosophical history).

31. See W.J. CASH, *THE MIND OF THE SOUTH* ix (1969) ("[T]he gentlemanly idea . . . had taken refuge in the South and fashioned for itself a world to its heart's desire: a world singularly polished and mellow and poised, wholly dominated by ideals of honor and chivalry and *noblesse . . .*").

32. See *infra* notes 143-51 and accompanying text.

33. See MACINTYRE, *AFTER VIRTUE*, *supra* note 30, at 166 (explaining how in European literature from the Middle Ages, "Christian and pagan elements coexisted in varying degrees of compromise and tension").

Atticus, the moral center of Lee's novel, weds the later, Christian chivalrous tradition with the legal regime of modern liberal democracy. These are more or less contiguous strata, and the friction between them is not especially great. The same fault line of racism runs through them both, but in the novel it never yawns very wide, barely reaching progressive liberals like Atticus at the top. Lucas, the focus of Faulkner's novel, points both farther back, to the pre-Christian epics, and farther forward, to a Nietzschean transcendence of liberal egalitarianism. Lucas's volatile brand of heroism is thus disruptive in two directions. It threatens to erupt through the weakest points of both traditional southern culture, with its rejection of black aristocrats, and modern egalitarianism, with its embarrassment at individual superiority of any color.

Thus, the ceremonies of hospitality in the two novels teach very different lessons about who the nobles are—indeed, about what nobility is—and about who is beholden to whom. Lawyers in both novels come from the white plantation-owning aristocracy and are its presumptive co-heirs to social precedence. In *Mockingbird*, this basic position is affirmed, with a heavy emphasis on white professionals' concurrent obligations to social inferiors. It is among the latter that most of the racial tension occurs. Blacks' principal status claim directly threatens only the very lowest class of whites. In *Intruder*, by contrast, the social superiority of the white professional class is itself radically challenged.

In the final analysis, what really matters is not so much who's coming to dinner, as in what capacity. Tom Robinson merely seeks to be allowed to serve leftovers to the lowest of the low;<sup>34</sup> Lucas Beauchamp conveys the unmistakable impression that he should sit at the head of the table, as lord of the feast.

1. *The Heroic Ethos of Intruder in the Dust*. Two instances of hospitality in the opening chapter of *Intruder* establish the feudal-aristocratic background for the story. In the first, Carothers Edmonds, owner of the two-thousand-acre McCaslin Place, his great-grandfather's plantation, comes seventeen miles into town to discuss some "county business" with Gavin, the county attorney, with whom he became friends while they were students together at the state university.<sup>35</sup> Having stayed overnight with Gavin at the home of the

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34. See *Mark* 7:24-30 (describing Jesus' accession to curing the daughter of a Greek woman once she likened herself to a dog eating crumbs under a dining table).

Mallisons—Gavin’s twin sister and her husband—Edmonds reciprocates their hospitality, inviting their son, twelve-year-old Chick, to go home with him to hunt rabbits.<sup>36</sup>

Chick accepts the invitation, and the whole affair takes on a decidedly antebellum, English-squirearchical air. Carothers proffers a “boy” who has a good rabbit dog, and Gavin points out that Chick has his own “boy,” Aleck Sander. The three boys set out early the next morning. Chick carries the lordly shotgun; his two guides are armed with atavistic, metal-tipped throwing sticks. We see the dog, and more, through Chick’s eyes:

a true rabbit dog, some hound, a good deal of hound, maybe mostly hound, redbone and black-and-tan with maybe a little pointer somewhere once, a potlicker, a nigger dog which it took but one glance to see had an affinity a rapport with rabbits such as people said Negroes had with mules.<sup>37</sup>

This order, almost organically natural to Chick, is soon quite literally and irreversibly upset. Crossing a “footlog” over a creek, he loses his balance and, falling into the icy water, sees the world turn upside down. He surfaces to face his rescuer and nemesis, Lucas Beauchamp:

[H]e looked up at the face which was just watching him without pity commiseration or anything else, not even surprise: just watching him . . .—a face which in his estimation might have been under fifty or even forty except for the hat and the eyes, and inside a Negro’s skin but that was all even to a boy of twelve shaking with cold and still panting from shock and exertion because what looked out of it had no pigment at all, not even the white man’s lack of it, not arrogant, not even scornful: just intractable and composed.<sup>38</sup>

Lucas’s first words to him are “Come to my house,”<sup>39</sup> and Chick accedes. Though he wants to return to Edmonds’s house, he realizes that Lucas, like his own grandfather, “was simply incapable of conceiving himself by a child contradicted and defied.”<sup>40</sup> Following Lucas home, Chick remembers what everyone knows about him: Lucas is the grandson of the patriarch Carothers McCaslin himself; his first

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35. See FAULKNER, *INTRUDER*, *supra* note 4, at 4.

36. *See id.*

37. *Id.* at 5.

38. *Id.* at 6-7.

39. *Id.* at 7.

40. *Id.* at 8.

cousin, Carothers Edmonds's father, had deeded him the house to which they were headed, along with the surrounding ten acres, "an oblong of earth set forever in the middle of the two-thousand-acre plantation like a postage stamp in the center of an envelope."<sup>41</sup> Chick sees in that enclave, hill and house, respectively rutted and ramshackled though they are, precisely the features he first saw in Lucas: independence and intractability.<sup>42</sup>

He should have seen, he realizes later, that Lucas, every bit as much as Edmonds, had been his host, that "he had gone out there this morning as the guest not of Edmonds but of old Carothers McCaslin's plantation and Lucas knew it when he didn't and so Lucas had beat him . . ."<sup>43</sup> Lucas has, in fact, offered him a form of hospitality even more ancient than he imagines, biblical and Homeric rather than feudal and manorial. Lucas has given the sanctuary that the epic hero extends to strangers and wayfarers in his dominion.<sup>44</sup>

But this is obscured for Chick by his deeply ingrained racist assumptions about the place of black people, about their very nature. As soon as he enters Lucas's cabin he notices "that smell which he had accepted without question all his life as being the smell always of places where people with any trace of Negro blood live."<sup>45</sup> When Lucas offers his own supper to Chick, Chick sees it as "nigger food . . . what Negroes ate, obviously because it was what they liked, what they chose . . . because this was their palates and their metabolism."<sup>46</sup> Only much later, as an adult, would he begin to think otherwise, that the smell and the food might be neither natural nor chosen, but en-

41. *Id.* Old Cass built the house for Lucas when he married Molly. See FAULKNER, MOSES, *supra* note 3, at 46, 106.

42. FAULKNER, INTRUDER, *supra* note 4, at 8-9.

43. *Id.* at 18.

44. Thus, Odysseus, homeward bound from Troy, invoked the custom of sanctuary in the cave of Polyphemus the Cyclops:

But since we've chanced on you, we're at your knees  
in hopes of a warm welcome, even a guest-gift,  
the sort that hosts give to strangers. That's the custom.  
Respect the gods, my friend. We're suppliants—at your mercy!  
Zeus of the Strangers guards all guests and suppliants:  
strangers are sacred—Zeus will avenge their rights!

HOMER, THE ODYSSEY, bk. 8, ll. 300-06 (Robert Fagles trans., 1996). So, too, Lot, nephew of Abraham the patriarch, invoked the sanctity of hospitality against threats by the men of Sodom against his houseguests: "[D]o nothing to these men, for they have come under the shelter of my roof." *Genesis* 19:8 (Revised Standard Version).

45. FAULKNER, INTRUDER, *supra* note 4, at 9-10.

46. *Id.* at 13.

forced, not so much by poverty as by racism.<sup>47</sup> Quite explicitly, the mature Chick realizes that he has come to his new understanding on account of this encounter with Lucas and his wife Molly.<sup>48</sup>

The very familiarity of the smell, which suffuses the quilt that warms him and the food that revives him, reminds him of Aleck Sander's familiar cabin in his own backyard.<sup>49</sup> He realizes almost immediately that "his initial error, misjudgment had been there all the time, not even needing to be abetted by the smell of the house" or by the food.<sup>50</sup> On account of his habitual racism, Chick fundamentally misconstrues the relationship created between him and Lucas by the latter's act of hospitality. Assimilating it to the servile attentions of other blacks he knows, he offers Lucas's wife money for her kindness. The offer is meant, we recognize, not so much to pay them for their trouble as to put them in their place; it is less a payment compensating them for services than a gratuity implicitly confirming their servility.

More than a mistake is at work here. By this point, Chick has realized that something is radically wrong. Chick resolves to offer money only after he sees a portrait of Lucas and Molly and learns from her that Lucas had insisted she not wear the garb of a field hand. The offer of money is a frantic and futile effort to escape from the skewed reality of the situation, the very real sense in which Chick, the inadvertent trespasser, has become beholden to Lucas, the local landlord.

But Lucas refuses the money, which Chick flings to the floor in consternation. Chick's black companion obeys Lucas's explicit order to return the money, as Chick obeys his implicit and symbolic command to take it back. For the next four years, Chick struggles without success to restore the proper order of his world, to remove his deeply offensive debt to Lucas, a debt that threatens what he sees as his own-most self, "his masculinity and his white blood."<sup>51</sup> He and Lucas engage in a peculiar potlatch: he sends Lucas and his wife the kind of remembrances that white landlords give their black tenants: cigars and snuff at Christmas, a floral dress in the spring.<sup>52</sup> Lucas replies

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47. *See id.* at 11-13.

48. *See id.*

49. *See id.* at 12.

50. *Id.* at 14.

51. *Id.* at 26. In another instance, Chick describes Lucas as he "who had debased not merely his manhood but his whole race too . . ." *Id.* at 21.

52. *See id.* at 22.



with a gallon of homemade molasses at harvest, a treat from a gentleman farmer like Chick's grandfather to an urban child with a sweet tooth.<sup>53</sup> And Lucas ups the ante: he has the molasses delivered by a white boy. In effect, Lucas has returned the original money again, this time by white hands rather than black.

Realizing this, Chick despairs of finding a way to restore the old order: "[W]hatever would or could set him free was beyond not merely his reach but even his ken; he could only wait for it if it came and do without it if it didn't."<sup>54</sup> The reason is that his liberation does not exist in his world; it requires the shattering and reconstitution of that world. As he is already dimly aware, Lucas must liberate him; in the most fundamental sense, he cannot free himself, much less Lucas.

The book begins with Chick in this same anxious state—waiting. From a blacksmith shop across the street, Chick watches as the sheriff brings Lucas to jail for the murder of a white man. The meaning of Chick's presence is highly ambiguous: "He was there, waiting. He was the first one, standing lounging trying to look occupied or at least innocent . . ." <sup>55</sup> He does not know why he is there, or what he will do. He may become a more or less active part of the gathering crowd, presumptive spectators to a lynching; he may give way to a deep urge to flee.<sup>56</sup> His meal at Lucas's house, which he recalls in detail as he waits in the square, prepares both him and us for his ultimate course: he will do Lucas's bidding. In the words of Milton's sonnet on his blindness and the sovereignty of his Lord: "They also serve who only stand and wait."<sup>57</sup>

2. *The Gospel According to Atticus.* In *Mockingbird*, hospitality also plays a critical role in setting the social background and establishing bonds of obligation, but with decidedly different results. In the opening chapter, Atticus, like Gavin, entertains a client from the country in his home. But this is no plantation-owning university

53. See *id.* at 22-24.

54. *Id.* at 23; cf. King, *supra* note 6, at 241 (maintaining that "Lucas subtly shifts the nature of the transactions from a battle of gifts to an exchange of services *among equals*" but concluding that "[b]y finally allowing Chick to pay him back, Lucas maintains his life and *his superiority*" (emphasis added)).

55. FAULKNER, *INTRUDER*, *supra* note 4, at 3.

56. See WATSON, *supra* note 15, at 134-35 (agreeing that the novel portrays Chick in an ambivalent relation to the angry mob).

57. JOHN MILTON, *Sonnet XIX* ("When I consider how my light is spent . . ."), in *THE COMPLETE POETICAL WORKS OF JOHN MILTON* 190 (Douglas Bush ed., 1965).

buddy come to discuss “county business.” Atticus’s client is the father of one of Scout’s poorer schoolmates, and he comes to Atticus’s house to secure help in freeing his modest farm from entailment. When he tells Atticus he will not be able to pay him right away, Atticus magnanimously declares, “Let that be the least of your worries.”<sup>58</sup>

He explains afterward to Scout that they will be paid within the year, but “not in money.”<sup>59</sup> Sure enough, they are paid in kind: first a load of stovewood, then a sack of hickory nuts; a crate of smilax and holly at Christmas, and a crokersack of turnip greens in the spring.<sup>60</sup> There is no mistaking what manner of man Mr. Cunningham is. Rather than leave his land to take a WPA job, “he was willing to go hungry to keep his land and vote as he pleased.”<sup>61</sup> He comes, Atticus explains, “from a set breed of men”;<sup>62</sup> he is a sturdy yeoman, a Jeffersonian Democrat.

And yet, in escaping both the dead hand of feudal restrictions and the blandishments of the welfare state, Mr. Cunningham is hardly as free as Atticus would have Scout believe. He is, rather, caught in the middle, beholden to the liberating law and its incarnation, Atticus Finch. Their respective social and economic statuses are obvious, although only the latter is explicit. Atticus explains to Scout that, although they themselves are poor, they are not as poor as the Cunninghams: “The Cunninghams are country folks, farmers, and the crash hit them the hardest.”<sup>63</sup>

More indirectly, Lee reveals their relative social status. In admitting that he cannot pay immediately, the farmer makes his embarrassed apology to “Mr. Finch”; in response, it is “Walter” to whom the lawyer magnanimously extends his credit.<sup>64</sup> The fruits of the farmer’s land are distinctly inferior recompense for the lawyer’s professional services in the dominant cash economy; thus, they are received as a favor rather than paid as a right. Mr. Cunningham’s insistent offerings of agricultural produce are oddly reminiscent of feudal dues, the proverbial rose at midsummer. They are the sign, not of independence, but of subinfeudation. The essential difference is that

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58. LEE, *MOCKINGBIRD*, *supra* note 1, at 27.

59. *Id.*

60. *See id.*

61. *Id.*

62. *Id.*

63. *Id.*

64. *See id.*

the recipient is not a traditional landlord, but a modern lawyer. As we move up the social pyramid in Maycomb County, we find not so much tightening tiers of rural magnates, as an apex of urban professionals.

As in *Intruder*, from this first act of hospitality—a lawyer receiving a client at home—flows another. But in *Mockingbird*, there is no reciprocity; all the generosity runs in one direction. On the pretext that their fathers are friends, Atticus's ten-year-old son, Jem, invites Cunningham's son Walter home from school for lunch. The real point of the invitation is to patch over a fight between young Walter and Scout, his first-grade classmate.<sup>65</sup> They had come to blows on their first day at school when she failed to explain with sufficient tact to the new teacher why he had no money for lunch and was too proud to accept any as charity.<sup>66</sup>

Atticus, himself home from his law office for lunch, plays the gracious host, talking man-to-man with his guest about farm problems.<sup>67</sup> But things go awry when Scout accidentally humiliates young Cunningham. She asks why he is pouring molasses all over his food, country-fashion, apparently spoiling his wholesome, middle-class meal. Calpurnia, their black maid and surrogate mother, marches Scout off to the kitchen. Over Scout's objection that Walter is not company, but just a Cunningham, Calpurnia lays down the law of hospitality:

Hush your mouth! Don't matter who they are, anybody sets foot in this house's yo' comp'ny, and don't you let me catch you remarkin' on their ways like you was so high and mighty! Yo' folks might be better'n the Cunninghams but it don't count for nothin' the way you're disgracin' 'em . . . .<sup>68</sup>

Thus, Scout learns the lesson of *noblesse oblige*, liberal style: though she and her professional family are better than common folk, she must respect her subordinates' pride while extending them her charity, even as her father does.<sup>69</sup> Chick, sharing the "hamely fare"<sup>70</sup> of

65. See *id.* at 29.

66. See *id.* at 26-27.

67. See *id.* at 30. Similarly, in *Intruder*, Chick describes an exchange between Gavin and a farming client about "crops or politics, one of which his uncle knew nothing about and the other the farmer didn't, until the man would get around to telling what he came for." FAULKNER, *INTRUDER*, *supra* note 4, at 74.

68. LEE, *MOCKINGBIRD*, *supra* note 1, at 31.

69. See Shaffer, *Growing Up Good*, *supra* note 5, at 539 ("Calpurnia is an avenging angel on behalf of Walter and of Southern manners . . . ."). But see JOHNSON, *supra* note 12, at 101

Lucas Beauchamp's cabin, learned a very different lesson, as we have seen.<sup>71</sup>

But if Calpurnia can instruct Scout on manners toward lower-class whites, it is clear from another instance of hospitality that Jem and Scout have a benevolently patronizing attitude toward her. While Atticus is away on legislative business in Montgomery, Calpurnia takes Scout and Jem to worship at her church. When they balk at her elaborate preparations, she mutters, "I don't want anybody sayin' I don't look after my children."<sup>72</sup> Once they are in the pew with her, she gives them each a dime for the collection plate. Jem whispers that they have their own, but Calpurnia insists that they take hers, since they are her "company."<sup>73</sup> This poses a minor dilemma: "Jem's face showed brief indecision on the ethics of withholding his own dime, but his innate courtesy won and he shifted his dime to his pocket."<sup>74</sup>

Jem's instinctive understanding of how to be a guest among the lower orders is, of course, precisely what got Chick into trouble. Jem was the honored guest of his maid, in a place of Christian worship, where the last can safely play at being first. Chick's host was no one's servant; the sanctuary of his house, no temple to meekness.

These instances of hospitality reveal the mores of *Mockingbird* to be quite patrician and patriarchal, and in that respect they are very like those of *Intruder*. But it is a later incident of hospitality that more precisely parallels Chick's encounter with Lucas as the novel's central social disruption. This is the fateful encounter between Tom Robinson and his false accuser, Mayella Ewell, in the latter's home, a shack on the outskirts of the town dump. Here is revealed the racism that subverts the order of Scout's world, even as the meal with Lucas does Chick's. But what Tom breaks into is not the self-assured superiority of white professionals, but the intense status anxiety of the very lowest white class.

Mayella's family, the Ewells, are poor white trash, the local *lumpenproletariat*, a kind of outcaste, pariah people:

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(citing young Walter Cunningham's lunch with Atticus as evidence of Atticus's breaking down class barriers).

70. ROBERT BURNS, *A Man's a Man, for A' That, in 3 THE POETICAL WORKS OF ROBERT BURNS* 234, 234 (Wm. Scott Douglas ed., 1886) ("What though on hamely fare we dine, wear hoddin grey, an' a' that . . . [t]he honest man, tho e'er sae poor, is king o' men, for a' that.").

71. See *supra* notes 38-57 and accompanying text.

72. LEE, *MOCKINGBIRD*, *supra* note 1, at 128.

73. See *id.* at 130.

74. *Id.*

Every town the size of Maycomb had families like the Ewells. No economic fluctuations changed their status—people like the Ewells lived as guests of the county in prosperity as well as in the depths of a depression. No truant officers could keep their numerous offspring in school; no public health officer could free them from congenital defects, various worms, and the diseases indigenous to filthy surroundings.<sup>75</sup>

On the Ewells, Atticus himself is uncharacteristically harsh: “Atticus said the Ewells had been the disgrace of Maycomb for three generations. None of them had done an honest day’s work in his recollection. . . . They were people, but they lived like animals.”<sup>76</sup>

The animals they resemble are scavengers and vermin. They subsist on the gleanings of garbage, and the yard around their hovel is littered with a kind of surreal meta-trash, the remains of refuse, “like the playhouse of an insane child.”<sup>77</sup> Their home itself is a castoff of the lowest social caste: they live in the decaying hull of “what was once a Negro cabin.”<sup>78</sup> This is almost literally a no-man’s land. Scout explains that “[n]obody had occasion to pass by except at Christmas, when the churches delivered baskets,” and when conscientious citizens discarded their own trees and excess holiday trash, at the mayor’s request, to spare the town the trouble.<sup>79</sup>

But Tom Robinson must walk past this wasteland every day on his way to work.<sup>80</sup> Mayella, the eldest of the Ewell children, frequently accosts him to help her with chores: chopping kindling and fetching water.<sup>81</sup> Late one November day, she asks him to come into the house to repair a hinge. But her real purpose is to seduce him; discovering it, he recoils in terror and flees. Mayella’s father, who has watched from a window, beats her. Then, closing ranks against the outside, the two of them accuse Tom Robinson of rape.

This is the ultimate perversion of hospitality. The guest has not come to seek sanctuary; the lady of the house has invited him to render chivalrous service. But the guest is not honored, or even protected; he is immediately vilified and ultimately killed. Accused of in-

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75. *Id.* at 181.

76. *Id.* at 37; *see also* Shaffer, *Growing Up Good*, *supra* note 5, at 555 (noting that Atticus’s condemnation of people who are “trash” is uncharacteristically harsh).

77. LEE, *MOCKINGBIRD*, *supra* note 1, at 181.

78. *Id.*

79. *Id.* at 182.

80. *See id.* at 203.

81. *See id.*

flicting the greatest breach of hospitality possible for a guest, seduction of his hostess,<sup>82</sup> he suffers the greatest breach of hospitality by the householder, betrayal unto dishonorable death.<sup>83</sup> This treachery goes unpunished simply because, as we shall see in the next section, Tom's damsel chooses to relieve her distress with a knight who is not literally white.

Yet, even to apply these terms to Mayella and Tom is to parody them. There are indeed a knight and a damsel in *Mockingbird*, but they are Atticus and his daughter, Scout. What we have here is a peasant helping a waif, starved as much for affection as for food. To be sure, racial differences disrupt what might otherwise have been a standard Shakespearean subplot. Tom's blackness makes it presumptuous for him to help Mayella in her hovel; her whiteness makes it outrageous for her to woo him there. But this is a far cry from his presenting himself at Atticus's home, asking for Scout's hand in marriage and his share of the patrimony. And it is a far cry from what Lucas did: acting with the assurance that the patrimony was already his, the white heir apparent not merely his squire, or even his page, but his errand boy, despite the fact that he himself is the product of the ultimate anathema, miscegenation. Lucas's cabin is his castle, metaphysically as well as metaphorically. It is the real seat of the McCaslin dominion, as he is its proper lord.<sup>84</sup>

### B. *Characters of the Black Defendants*

Their respective ordeals reveal Tom Robinson and Lucas Beauchamp as the paradigms of deeply different values in superficially

82. This was, of course, the offense that launched the chief of the classical epics, *The Iliad*. See also GUILLAUME DE LORRIS & JEAN DE MEUN, *THE ROMANCE OF THE ROSE* § 42 (Charles W. Dunn ed. & Harry W. Robins trans., Dutton 1962); HOWARD MAYNADIER, *THE ARTHUR OF THE ENGLISH POETS* 205-10 (1907) (describing Sir Gawain's betrayal of his host's hospitality through dalliances with the Green Knight's wife in *Sir Gawain and the Green Knight*).

83. Cf. *Genesis* 39:6-20 (imprisonment of Joseph under false accusation by his Egyptian master's wife of having tried to seduce her, after he refused thus to betray his master and "do this great wickedness"); *Genesis* 19:1-8 (Lot's effort to protect the strangers whom he had extended "the shelter of my roof" from sexual defilement by offering his virgin daughters in their stead).

84. Cf. S.F.C. MILSON, *HISTORICAL FOUNDATIONS OF THE COMMON LAW* 105-06 (1981) (recording the absence of inheritability immediately after the Conquest); A.W.B. SIMPSON, *A HISTORY OF THE LAND LAW* 3 (2d ed. 1986) (noting that after the Norman conquest of England, William parceled out land to his more proficient knights to ensure their continued loyalty and service); *id.* at 49 ("Immediately after the [Norman] Conquest it seems that the tenant's fee was not regarded as heritable of right . . .").

similar worlds. The egregiously ill treatment of each in his world reveals the difficulties those worlds have in dealing with differences of race. At the same time, however, they reveal that both the background value systems and the racisms that disrupt them are radically different in the two stories. Tom is charitably engaged, and engagingly charitable, the model not so much of Christian kindness as of saintly supererogation. Lucas is pitiless and aloof, a pagan hero out of place in the myths of both the chivalrous past and the liberal present.

1. *Tom Robinson, the Good Samaritan.* As the reality of Tom Robinson's encounter with Mayella Ewell becomes clear to us in the course of his trial, we realize that he is a model liberal citizen and Christian neighbor. But what we learn of him first, before the trial begins, is that he is a model black man in the eyes of contemporary whites. Calpurnia vouches to Atticus for Tom as coming from a family of "clean-living folks" whom she knows well, who are members of her church.<sup>85</sup> He lives in one of the cabins out past the dump, but not a derelict cabin like the Ewells'. These cabins rival the cottages of Irish tourism brochures in their picturesque rural poverty: "neat and snug with pale blue smoke rising from the chimneys and doorways glowing amber from the fires inside."<sup>86</sup>

In direct examination at trial, Atticus brings out the basics of Tom's biography—he is twenty-five, married with three children—and paints his one prior legal misadventure in the best possible light—he served thirty days for disorderly conduct after trying to defend himself from a knife attack; the attacker served no time because he could afford the fine.<sup>87</sup> He is a faithful employee—one is tempted to say retainer—of a respected white landowner; he helps to tend and harvest the boss's cotton crop and does yardwork in the off-season.<sup>88</sup>

Tom Robinson knows his place, and his predicament, and Atticus carefully elicits this self-knowledge. In explaining why he fled the scene of his alleged crime, Robinson says, "Mr. Finch, if you was a nigger like me, you'd be scared, too."<sup>89</sup> Watching from the black people's balcony, as a guest of the wizened Reverend Sykes, Scout af-

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85. LEE, *MOCKINGBIRD*, *supra* note 1, at 88.

86. *Id.* at 182.

87. *See id.* at 202.

88. *See id.*

89. *Id.* at 207.

firms Tom's goodness: "He seemed to be a respectable Negro . . . ."<sup>90</sup> At the end of Atticus's direct examination, Tom's employer blurts out, "That boy's worked for me for eight years an' I ain't had a speck o'trouble outa him. Not a speck."<sup>91</sup>

Tom Robinson, moreover, is not merely humble and respectable; he is pitiable. "If he had been whole," Scout observes at his trial, "he would have been a fine specimen of a man."<sup>92</sup> But he is broken. Even before Atticus shows through Tom's own testimony that he lacks the moral depravity to rape Mayella, he has already shown in cross-examining her that Tom lacks the physical capability. As a boy, he had had his left arm nearly ripped off by a cotton gin; the accident left Tom's left arm useless, a foot shorter than his right, with a "small, shriveled hand."<sup>93</sup> Thus, the humble, hard-toiling helot is also the victim of a Dickensian industrial disaster. In the pantheon of appealing working-class prototypes, Robinson has a dual distinction: he is both a worker and a peasant. His very ministrations to Mayella depict his subjection in almost literally biblical terms: he splits kindling and fetches from the well; he is a hewer of wood and a drawer of water.<sup>94</sup>

But as Tom Robinson's encounter with Mayella Ewell becomes clear to us in the course of his trial, we realize that he is more than just a respectable Negro, a falsely accused innocent. He is a model liberal citizen and Christian neighbor, and in that lies both his undoing and the indictment of his persecutors. Tom Robinson takes the part of the Good Samaritan, helping those whom the conventionally righteous pass by,<sup>95</sup> even the part of Christ, ministering to the most despised and socially opprobrious in their own homes.<sup>96</sup> He, like Jesus, enters homes where the host does not confer honor and sanctuary, but disgrace and even danger. Speaking of Mayella and her family from the balcony at Tom's trial, Scout tells us that "Maycomb

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90. *Id.* at 204; compare RALPH ELLISON, *SHADOW AND ACT* 58 (Signet 1964) on whites' ambivalence between "a malignant stereotype (the bad nigger) on the one hand and a benign stereotype (the good nigger) on the other." For both blacks and whites, of course, the latter stereotype has an eponym from earlier fiction: Uncle Tom.

91. LEE, *MOCKINGBIRD*, *supra* note 1, at 207.

92. *Id.* at 204.

93. *Id.* at 197.

94. *See Joshua* 9:3-27 (describing Israel's reduction of the people of Gibeon to "hewers of wood and drawers of water").

95. *See Luke* 10:30-36 (relating the parable of the Good Samaritan who helps a stranger on the side of the road).

96. *See Matthew* 9:11; *Mark* 2:16; *Luke* 5:30 (discussing the religious establishment's questioning of Jesus's eating with "tax collectors and sinners").



gave them Christmas baskets, welfare money, and the back of its hand. Tom Robinson was probably the only person who was ever decent to her.”<sup>97</sup> Having met Jesus’s unspoken command—“inasmuch as ye have done it unto the least of these my brethren, ye have done it unto me”<sup>98</sup>—Tom deserves his benediction: “Come, O blessed of my Father, inherit the kingdom prepared for you.”<sup>99</sup>

That he receives a very different reward (at least in the here and now) is attributable to his embodying the lesson of the Good Samaritan parable even more perfectly than is at first apparent. That parable itself was originally an indictment of racial prejudice, a much more radical message to its first-century Jewish audience than it is to us in its present form.<sup>100</sup> In the sanitized version we have in the Gospels, the message is the one we have just seen in Tom’s case: the neighbors we are to love as we love ourselves are the suffering strangers, the least among us.

This was a message the religious establishment of Jesus’s day—the very priests and rabbis who ignore their needy neighbor in the parable—had long espoused themselves. Thoroughly orthodox rabbis were already teaching that even strangers are our neighbors and that virtue requires care for them.<sup>101</sup> Nor was Jesus’s message merely that they failed to practice what they preached. This indictment of them was certainly there, but that was not the point that would have been most salient to the parable’s original hearers. For them, the central question was not “who is my neighbor,” which the religious establishment had accurately answered, but “who can be good,” which the religious establishment held to be orthodox Jews, members of their own temple-centered culture.<sup>102</sup>

The parable’s answer to that latter question cut to the very root of rabbinical culture: a Samaritan can be good, can fulfill the essence of the moral law, to love thy neighbor as thyself.<sup>103</sup> This was a radical

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97. LEE, MOCKINGBIRD, *supra* note 1, at 204.

98. *Matthew* 25:40 (King James Version).

99. *Id.* 25:34.

100. See John Dominic Crossan, *Parable and Example in the Teaching of Jesus*, 18 NEW TESTAMENT STUD. 285, 294-95 (1971/72) (arguing that the Good Samaritan story should be read as a parable within its original historical context as well as an allegory of the divine). Crossan’s thesis is now widely shared among New Testament scholars. See, e.g., NORMAN PERRIN, *THE NEW TESTAMENT: AN INTRODUCTION* 291-93 (1974) (following Crossan’s account).

101. See PERRIN, *supra* note 100, at 292.

102. See *id.* at 292-93.

103. More precisely, as Jesus is reported to have said to one of the scribes, the First Commandment is to love God above all; the second, to love your neighbor as yourself. See *Matthew*

reversal of moral expectations because Samaritans were mixed-race pariahs.<sup>104</sup> They were apostate Jews who had intermarried with their non-Jewish neighbors during the Exile, while the ancestors of Jesus's audience, led by the predecessors of his "Scribes and Pharisees," had kept the original creed and culture pure and intact.<sup>105</sup> Jesus's radical message was that these very Samaritans, whom his hearers had been taught to despise and reject, could be more virtuous than their teachers.<sup>106</sup> To translate this message into the language of Tom's trial—language that has not lost its power to disturb—the Samaritan whom Jesus held up as a moral model was, in the minds of Jesus's audience, a "nigger."

In his closing argument, Atticus invokes Jefferson's egalitarianism and denounces "the evil assumption—that *all* Negroes lie, that *all* Negroes are basically immoral beings, that *all* Negro men are not to be trusted around our women . . ." "<sup>107</sup> As Atticus knows, he has already refuted the charge that this particular black man fits these stereotypes, already disproved the charge that Tom is bad. What he cannot do is convince Tom's jury to admit what it clearly knows: that Tom is affirmatively good, and good in precisely the way that makes him, by their own standards, their moral superior.

The prosecutor's sly trading on this difference—the difference between not being bad and being affirmatively good—is Tom's undoing. Having established that Tom had entered the Ewell compound many times to help Mayella, the prosecutor asks, "Why were you so anxious to do that woman's chores?" "<sup>108</sup> Tom apparently takes the implication to be that he had amorous designs on Mayella, or worse, and he hastens to reveal his real motive as not just innocent but virtuous: "I felt right sorry for her, she seemed to try more'n the rest of 'em—."<sup>109</sup> At that point, the prosecutor, Mr. Gilbert, springs the trap, with the desired effect:

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22:34-40; accord *Mark* 12:28-31. On this point, at least according to the Gospels, Jesus and the Jewish authorities were in accord. See *Mark* 12:32-34; see also *Luke* 10:25-28 (describing how when a lawyer gives Jesus the same answer, Jesus affirms that it is the proper one). As we shall see below, Jesus radicalized the First Commandment as well as the second, also with explicit reference to the despised Samaritans and the temple establishment. See *infra* note 112 and accompanying text.

104. See PERRIN, *supra* note 100, at 292-93.

105. See *id.* at 319-20.

106. See *id.* at 292-93; Crossan, *supra* note 100, at 294.

107. LEE, MOCKINGBIRD, *supra* note 1, at 217.

108. *Id.* at 209.

109. *Id.*

“*You* felt sorry for *her*, you felt *sorry* for her?” Mr. Gilmer seemed ready to rise to the ceiling.

The witness realized his mistake and shifted uncomfortably in the chair. But the damage was done. Below us [children, seated in the black balcony], nobody liked Tom Robinson’s answer. Mr. Gilmer paused a long time to let it sink in.<sup>110</sup>

What sinks in is the realization, not of Tom’s guilt, but of his even more damnable presumption: condescending to help a white woman, even a Ewell, in her home, even a home that is literally a dump. The prosecutor’s strategy works because Tom’s jury is not ready to admit that the Samaritan in their midst could be good—as good as, even better than, they themselves, something of a saint, if not quite a messiah. Atticus’s fellow citizens fail not so much politically, because they cannot acknowledge Robinson’s legal equality, as morally, because they cannot accept his spiritual superiority.

Thus, Tom’s embodying of the values his community professes to hold fundamental is implicitly at stake in his trial. It is important to see what is implicitly secure, affirmed rather than challenged. The truth of Tom’s position, religious and secular, is indeed suppressed here, but we must be clear on just how subordinate he would have remained even if his truth had won. What he affirmatively asks for is itself essentially negative. Tom asks only to be given the very little to which the law, as thoroughly racist in its letter as in its application, already entitles him: not to be judicially condemned for a crime that he very obviously did not commit, merely because a white person bears transparently false witness against him. Beyond that, he asks nothing. Far from asking to be co-ruler with Atticus, or even for a color-blind legal regime, he does not even ask for an end to what we know as petty apartheid: drinking from separate water fountains, stepping to the back of the bus, sitting in a segregated balcony in public buildings.

Nor are these requests, minor as they are in themselves, implicit in what he does ask. Doing racial justice in Tom’s trial is wholly consistent with a thoroughly Jim Crow legal regime. Tom does not even ask that the separate facilities of his segregated world be made equal; all he asks is that he not be punished for a crime he did not commit nor for crossing a line not itself inscribed in law.

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110. *Id.*

Tom does not even ask directly for that. Quite significantly, his modest, indeed minimal, demand is made only through Atticus, his white lawyer. Thus, Atticus is not merely unthreatened by Tom's demand; his social and moral supremacy is implicitly reaffirmed. As a moral matter, he is revealed as a meta-Samaritan, implicitly improving on the parable itself: he is the helper of the helper of the neighbor who is the most needy. As a sociopolitical matter, even the most humble demands for minimal social justice must be made through him. The political priesthood of all believers—as exemplified by Dr. Martin Luther King, Jr.'s boycotts and street demonstrations and the black churches' voter registration crusades—is nowhere in sight. If you want absolution in Atticus's world for secular sins you did not commit, you must approach the temple of justice through its self-appointed priests. If Tom's assumption of his true place is a threat to the most economically poor and morally benighted, it is no threat to the superiority of Atticus and his ilk. Tom, after all, declines a clumsy advance from Mayella Ewell; he does not come a-courting Atticus's sister, Alexandra.<sup>111</sup>

Here again, a comparison with the original Good Samaritan story is instructive. Jesus presents his principal audience, the lower orders of the Palestinian Jewry, with a bitter pill: the Samaritans, religious syncretists and racial amalgamists whom the Jews had always despised as lower even than themselves, may in fact be purer and more pious. That is not the whole message, or even its most radical part. Implicit in the parable is the message Jesus gives on another occasion to someone who is herself a Samaritan: the day is at hand when true worship shall be rendered not in the sacred mountains of Samaria, or even in Jerusalem itself, but in spirit and in truth.<sup>112</sup> Jesus's universalizing, spiritualizing message, in other words, threatens not just to equate the lowest orders of Jewry with their historically compromised neighbors; it calls for the transcendence of the very cultic apparatus of traditional Judaism itself, and thus the displacement of Judaism's priestly ruling class.

Tom's story presents the parable's first, less-radical message. It threatens to disabuse lower-class whites of their sense of innate, race-

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111. See JOHNSON, *supra* note 12, at 64 ("The most destructive disruption occurs when Mayella Ewell asks a Black man, Tom Robinson, to first come inside the Ewell fence and then the Ewell house."). Though Johnson rightly notes that this is the novel's greatest disruption, she fails to note how much this disruption leaves intact, and thus how relatively minor it really is.

112. See *John* 4:21-24.

based moral superiority to their fellow peasants who happen to be black. Their resentment is not presented as particularly understandable, and no one would defend their carrying it to the extreme of condemning an innocent man to death. The other half of Jesus's parable, the toppling of the top, is strikingly absent here. Tom's trial leaves the temple of liberal law very much intact, with its secular priests reaffirmed in their moral and social superiority. As we shall see,<sup>113</sup> this cannot but have been a profoundly comforting message.

Furthermore, Tom's story does not just omit this critical element of the Good Samaritan story; it also reverses an important aspect of the Gospel account of which that story is itself but a part. In the Gospels, it is the religious establishment that conspires to crucify the ultimate Samaritan, with the connivance of the secular Roman legal authorities.<sup>114</sup> In *Mockingbird*, as we shall see,<sup>115</sup> it is the ordinary farmer folk on the jury who condemn Tom, who kill the mockingbird, the embodiment of beneficent humility. Unlike the Palestinian mob that cried, "Crucify him!" in Jesus' case, Tom's jurors have no high priest to orchestrate their anger, and no magisterial Pilate accedes to it. Quite the reverse: Atticus opposes the hoi polloi at every turn, with the active sympathy of the trial judge.<sup>116</sup> On appeal and certification, we have every reason to believe, a higher court—not in Heaven hereafter, but in Alabama here and now<sup>117</sup>—will deliver Tom from this evil, if only he is sufficiently long-suffering. When he is not, the fault is more in his character than in their justice. The Gospel according to Atticus is that liberalism's law is our proper lord and lawyers its holy priesthood.

2. *Lucas Beauchamp, the Denigrated Nobleman.* Lucas, too, gets into trouble for embodying in his blackness the highest virtues of his culture, but those values and that culture are radically different from Tom Robinson's. Lucas is the paradigm of the hereditary landed aristocrat, representative of an aristocracy founded on

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113. See *infra* Part III.A.

114. See *Matthew* 26:3-5, 14-16, 47-75, 27:1-26; *Mark* 14:1, 2, 10, 43-72, 15:1-15; *Luke* 22:2-6, 47-71, 23:1-25; *John* 18:1-40, 19:1-16.

115. See *infra* Part I.E.2.

116. See LEE, *MOCKINGBIRD*, *supra* note 1, at 228 (describing the judge's appointment of Atticus instead of the usual, less well-qualified, candidate). In the movie version, the judge signals his disgust at the trial's conclusion by slamming his door on the jury's verdict.

117. This was the lesson of the Scottsboro rape case. See *infra* notes 190-91 and accompanying text.

ruthless military prowess.<sup>118</sup> Lucas is self-consciously such a person, and his neighbors' resentment of his being such a person, paradoxically conjoined with their incomprehension of what such a person is, is the source of his trouble.

Lucas, we have already seen, is the grandson of old Carothers McCaslin; Carothers Edmonds, current owner of the McCaslin plantation, is his cousin. Lucas, however, thinks of himself as "the oldest living McCaslin descendant still living on the hereditary land . . . ."<sup>119</sup> As Gavin says elsewhere of a less noble and less sympathetic black, Lucas's heritage, or at least his patronym, "runs Norman blood."<sup>120</sup> In the language of the conquerors of Anglo-Saxon England, Lucas's surname, Beauchamp, literally means "beautiful field," bespeaking his alliance with the land and the landed. The white family whose name Lucas's ancestors took was quite conscious of this aristocratic heritage.<sup>121</sup>

Lucas's given names—Lucius Quintus Carothers McCaslin—alude not just to the Classical Romans, but also to one of the most notable Mississippians of the nineteenth century, Lucius Quintus Cincinnatus Lamar, a U.S. Senator, Secretary of the Interior, and Justice of the U.S. Supreme Court.<sup>122</sup> As a young man, Lucas was careful to assert his transcendence of this background by literally making a name for himself. By his own fiat, Lucius became Lucas, "not denying, declining the name itself, because he used three quarters of it; but simply taking the name and changing, altering it, making it no longer the white man's but his own, by himself composed, himself selfprogenitive and nominate, by himself ancestored, as . . . old Carothers himself was . . . ."<sup>123</sup>

118. On virtue in heroic cultures generally, see MACINTYRE, *AFTER VIRTUE*, *supra* note 30, at 121-30.

119. FAULKNER, *MOSES*, *supra* note 3, at 39.

120. WILLIAM FAULKNER, *REQUIEM FOR A NUN* 103 (Vintage Books 1975) (1951) [hereinafter FAULKNER, *REQUIEM*] (explaining that the murderer Nancy Manigault's patronym, if not her heritage, is Norman).

121. One Beauchamp asserted the family's rightful ownership of the Beauchamp estate in England and proper succession to its earldom, insisting that its Mississippi plantation be called Warwick, after the family's English seat. See FAULKNER, *MOSES*, *supra* note 3, at 5, 288.

122. See C. VANN WOODWARD, *ORIGINS OF THE NEW SOUTH 1877-1913*, at 17-18, 271 (rev. ed. 1971); Arthur F. Kinney, *Introduction* to *CRITICAL ESSAYS*, *supra* note 6, at 1, 16 (suggesting that Faulkner meant the name Lucius Quintus Carothers McCaslin to allude to L.Q.C. Lamar).

123. FAULKNER, *MOSES*, *supra* note 3, at 269.

When Chick first sees Lucas, towering above him on the stream bank, he immediately notices the trappings of aristocracy: the worn, handmade beaver hat like his own grandfather's and the heavy gold watch chain.<sup>124</sup> Later, in Lucas's cabin, Chick sees him use a gold toothpick, again like his grandfather's,<sup>125</sup> and notices "a vast shadowy tester bed which had probably come out of old Carothers McCaslin's house . . . ."<sup>126</sup> He also sees a gold-framed portrait of Lucas in his full regalia: "the worn brushed obviously once-expensive black broadcloth suit . . . and the raked fine hat and the boiled white shirt of his own grandfather's time and the tieless collar and the heavy watch-chain and the gold toothpick like the one his own grandfather had carried in his upper vest pocket . . . ."<sup>127</sup> All these, like his land, Lucas has from his ancestors, and he has more besides: a walnut bureau, a wedding gift from Isaac McCaslin,<sup>128</sup> legally rightful heir of the plantation, and a .41-caliber Colt pistol, "that weapon workable and efficient and well cared for yet as archaic peculiar and unique as the gold toothpick, which had probably (without doubt) been old Carothers McCaslin's pride a half century ago."<sup>129</sup> This pistol, like the heroic heritage it symbolizes, will be Lucas's burden and his salvation—in a word, his fate.<sup>130</sup>

These things are not castoffs, and Lucas is not aping illegitimate aristocratic ancestors. Lucas not only owns his heirlooms; he is entitled to them. Beyond that, he literally bears them well, befitting his status: "not arrogant at all and not even scornful: just intolerant inflexible and composed."<sup>131</sup> In his own house, Lucas stands over his guest,<sup>132</sup> "straddled baronial as a duke or a squire or a congressman before the fire . . . ."<sup>133</sup> This is his bearing in public as well. Unlike other blacks and poorer rural whites, Lucas comes to town only on

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124. See FAULKNER, INTRUDER, *supra* note 4, at 6, 12-13.

125. See *id.* at 12, 24.

126. *Id.* at 10. Heirlooms, at common law, were chattels that descended like real property to the primogenitary heir. Local custom sometimes included the best bed among the heirlooms; it went with the patrimony to the new head of the family. See ROBERT MEGARRY & H.W.R. WADE, *THE LAW OF REAL PROPERTY* 547-48 (5th ed. 1984).

127. FAULKNER, INTRUDER, *supra* note 4, at 24.

128. See FAULKNER, MOSES, *supra* note 3, at 51.

129. FAULKNER, INTRUDER, *supra* note 4, at 68.

130. Significantly, Lucas insists that he has the pistol by purchase, not by gift. See *id.* at 221. Lucas has earned, not merely inherited, his aristocratic accoutrements.

131. *Id.* at 13.

132. See *id.* at 12.

133. *Id.* at 36.

weekdays, not on Saturday. Like whites who are planters, not mere farmers, he seldom comes more than the once a year he makes the trip—always in his broadcloth suit—to pay taxes on his land.<sup>134</sup>

This lordly deportment—not designed to impress, not in any conscious sense designed for any outward effect—is profoundly offensive to Lucas's white fellow citizens. After their initial encounter, Chick learns how whites universally thought of Lucas:

[T]he Negro who said 'ma'am' to women just as any white man did and who said 'sir' and 'mister' to you if you were white but who you knew was thinking neither and he knew you knew it but who was not even waiting, daring you to make the next move, because he didn't even care.<sup>135</sup>

The effect of this attitude is wide and deep: “[E]very white man in that whole section of the country had been thinking about him for years: *We got to make him be a nigger first. He's got to admit he's a nigger. Then maybe we will accept him as he seems to intend to be accepted.*”<sup>136</sup> When his uncle Gavin tells him Lucas has been arrested for murder, Chick initially responds, “Yes . . . They're going to make a nigger out of him once in his life anyway.”<sup>137</sup> Nor are blacks favorably impressed. As Chick's companion, Aleck Sander, tells him, “[i]t's the ones like Lucas makes trouble for everybody.”<sup>138</sup>

White resentment at Lucas has boiled over before, but he remains unperturbed. When an affronted white sawmill hand insults him in a country store one Saturday as “[y]ou goddamn biggity stiff-necked stinking burrheaded Edmonds sonofabitch,”<sup>139</sup> Lucas calmly corrects him: “I aint a Edmonds. I dont belong to these new folks. I belongs to the old lot. I'm a McCaslin.”<sup>140</sup> As Cleanth Brooks has pointed out, “[t]his is not precisely the soft answer that turneth away wrath, and it is not meant to be.”<sup>141</sup> In response to the ominous obser-

134. *See id.* at 24-25.

135. *Id.* at 18; *see also* FAULKNER, MOSES, *supra* note 3, at 101, 110-11, 113 (describing how Lucas always refuses to call Edmonds and his father “mister” or “Mister Zach,” but instead says “Mr. Edmonds” or no name at all).

136. FAULKNER, INTRUDER, *supra* note 4, at 18.

137. *Id.* at 31.

138. *Id.* at 84.

139. *Id.* at 19. Significantly, the murder of which Lucas is accused occurs near the same store, also on a Saturday. *See id.* at 27.

140. *Id.* at 19.

141. CLEANTH BROOKS, WILLIAM FAULKNER: THE YOKNAPATAWPHA COUNTRY 284 (La. State Univ. Press 1990) (1963).



vation that “that look” will get him killed, Lucas is even more condescendingly dismissive: “Yes, I heard that idea before, And I notices that the folks that brings it up ain’t even Edmondses . . . .”<sup>142</sup> This retort incites a murderous assault, to which Lucas responds with unsettling equanimity while a white bystander diverts the blow. Lucas remains “quite calm, not even scornful, not even contemptuous, not even very alert.”<sup>143</sup>

These are the characteristics of the warrior-aristocrat in its neo-classical, Nietzschean incarnation.<sup>144</sup> Lucas embodies virtue in its primary, primitive sense—natural and instinctual. His conduct is hardly the product of reflective choice; it is more the unselfconscious outworking of his character. He is quite conscious of, and comfortable with, who he is, and from that consciousness flows, with an almost organic inevitability, what he does. Even in the face of a lynch mob, Lucas evinces not just calm, but also a related heroic trait, a sardonic sense of humor.<sup>145</sup> Lucas is cavalier, and not just metaphorically, in a culture that idolizes the mythic cavalier. This is how Lucas’s white cousin, Isaac McCaslin, sees Lucas when he comes to claim his patrimony, his share of the thousand dollars Carothers McCaslin bequeathed his slave son, Lucas’s father:<sup>146</sup> “the face the color of a used saddle, the features Syriac, not in a racial sense but as the heir to ten centuries of desert horsemen.”<sup>147</sup>

We learn of Lucas through his acts because he is a classical hero, a man of action, as opposed to introspection, or even words.<sup>148</sup> Indeed, his very words—orders, insults, jokes—are performatives

142. FAULKNER, INTRUDER, *supra* note 4, at 20.

143. *Id.*

144. See FRIEDRICH NIETZSCHE, ON THE GENEALOGY OF MORALS 39 (Random House 1967) (1887) (“To be incapable of taking one’s enemies, one’s accidents, even one’s misdeeds seriously for very long—that is the sign of strong, full natures in whom there is an excess of power to form, to mold, to recuperate and to forget . . . .”); see also David Millard, *What Is It Like to Be a Faulkner?*, in PERSPECTIVES ON PERCEPTION: PHILOSOPHY, ART, AND LITERATURE 139, 145 (Mary Ann Caws ed., 1989) (describing as “an admirable Southern response” Lucas’s choice to cite his own prestigious ancestry in response to angry comments from a white man).

145. See FAULKNER, INTRUDER, *supra* note 4, at 63, 72; see also MACINTYRE, AFTER VIRTUE, *supra* note 30, at 123 (“In the Icelandic sagas a wry sense of humor is closely bound up with courage.”).

146. See FAULKNER, MOSES, *supra* note 3, at 257-58; see also *id.* at 102 (describing how the legitimate sons of Carothers McCaslin execute the legacy).

147. *Id.* at 104.

148. See MACINTYRE, AFTER VIRTUE, *supra* note 30, at 122 (explaining that in a heroic society, actions are required because a man is what he does).

rather than descriptions or explanations.<sup>149</sup> He does eventually explain how he came to be in his predicament, but only after he has gotten himself out of it. He gets himself out of it by evoking rather than commanding obedience, by being taken on faith, before he will condescend to explain.

The best bred of his white contemporaries, his white cousin Carothers Edmonds, owner of the McCaslin plantation and Chick's original host on the fateful day of his fall into the creek, has long ago understood Lucas's character and the basis for it. Looking at the same face that Chick saw as he emerged from the creek, Edmonds had seen

a composite of a whole generation of fierce and undefeated young Confederate soldiers, embalmed and slightly mummified—and he thought with amazement and something very like horror: *He's more like old Carothers [McCaslin] than all the rest of us put together, including old Carothers. He is both heir and prototype simultaneously of all the geography and climate and biology which sired old Carothers and all the rest of us and our kind, myriad, countless, faceless, even nameless now except him who fathered himself, intact and complete, contemptuous, as old Carothers must have been, of all blood black white yellow or red, including his own.*<sup>150</sup>

These are the same features that Edmonds's cousin Isaac McCaslin, rightful heir of the plantation, had seen in Lucas forty-five years before: “the composite tintype face of ten thousand undefeated Confederate soldiers almost indistinguishably caricatured, composed, cold, colder than his [Isaac's], more ruthless than his, with more bottom than he had.”<sup>151</sup>

Edmonds knows all this because he has grown up almost literally in Lucas's house, and he has come to understand how Lucas had bested Edmonds's own father when the latter tried to take Lucas's

149. See J.L. AUSTIN, *HOW TO DO THINGS WITH WORDS* 4-6, 47 (1962) (distinguishing “performative” from “constative” uses of language).

150. FAULKNER, *MOSES*, *supra* note 3, at 114-15; see also *id.* at 101 (“Yet it was not that Lucas made capital of his white or even his McCaslin blood, but the contrary. It was as if he were not only impervious to that blood, he was indifferent to it.”). It is important to note, against any suggestion that Lucas's aristocratic qualities all come from white people, that his black great-grandmother, herself a slave, who committed suicide upon learning of Carothers McCaslin's unavengable act of incest against their daughter, had qualities precisely like those of Lucas: “solitary, inflexible, griefless, ceremonial.” *Id.* at 259; see also *id.* at 69 (recounting Gavin's description of Lucas as “a man most of whose blood was pure ten thousand years when my own anonymous beginnings became mixed enough to produce me”).

151. *Id.* at 104-05.

wife, Edmonds's wet nurse and surrogate mother, as his mistress.<sup>152</sup> Edmonds also realizes why Lucas had stayed on after this: "because Lucas is impervious to anybody, even to forgiving them, even to having to harm them."<sup>153</sup>

Edmonds might thus have realized the truth about Lucas in the present case—that Lucas could not be provoked by anyone, much less a local redneck, into a murderous rage. Moreover, Edmonds, given his longstanding ties to Lucas and his status in the community, is, as Chick puts it, "the one man white or black . . . who would have had any inclination let alone power and ability . . . to try to stand between Lucas and the violent fate he had courted . . ." <sup>154</sup> Unfortunately, Edmonds is, at the critical juncture, off in New Orleans having surgery.<sup>155</sup>

All other white people—from the rednecks at the barber shop to the hyper-educated Gavin—profoundly misunderstand Lucas. Accordingly, when he is found standing over the newly slain body of a white man, everyone assumes that he has acted in the most flagrant defiance, courting disaster. They see all his proud, even haughty conduct as seething up to the point when it inevitably boiled over in murderous rage against a white man.<sup>156</sup> This misunderstanding operates at two levels. At the first level, white people attribute to Lucas, as a black man, the resentments that they believe all black people feel, the fantasies of rage black men in particular want to act out. For most whites, this assumption is unconscious; Gavin at his most sententious makes it explicit for Chick in analyzing the actions of the expected lynch mob and its sympathizers.<sup>157</sup>

At a deeper level, a very different kind of imputation is occurring, one which Gavin also shares, but without being conscious of it himself. The construction of black rage that all whites share and impute to Lucas is a projection of the kind of rage they would themselves feel if they were black. It is a very human urge to lash out against deeply dehumanizing subordination. In imputing that rage to blacks, whites implicitly grant them a common human nature, the

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152. *See id.* at 112.

153. *Id.*

154. FAULKNER, *INTRUDER*, *supra* note 4, at 35-36.

155. *See id.* at 30, 36.

156. *See id.* at 32, 36-37, 48.

157. *See id.* at 47-48 ("Which is exactly what Lucas is doing: blew his top and murdered a white man—which Mr. Lilley [a local shopkeeper] is probably convinced all Negroes want to do . . .").

human nature that is theirs, and thus they must deny them its outlet, lest they grant them a too-explicit equality. Black murderers, accordingly, must be lynched. To allow them a trial—even a trial that inevitably will result in conviction and execution—would implicitly recognize their legal, moral, and psychological equality, all of which their lynchers at once know and must deny.

As applied to Lucas, this mentality is fundamentally misplaced. He is not, in the sense that this thinking implies, their equal; he does not share their resentment. He is above that, and in being above that, above them. Quite ironically, he is superior to them in ways that even the best of them cannot imagine. Because they do not know Lucas, and because Lucas is the only one in their midst possessing such a nature, they have no means of understanding him. The closest category they have to explain black forbearance is Christian forgiveness, and Lucas, as only Edmonds is aware, has long since transcended that. Far from forgiving enemies like them, he knows instinctively that they are not worthy of his attention. Thus, the aloofness that they most resent in him, and which they believe they have finally broken down with the cumulative impact of their disrespect, is in fact more insulting than they are even capable of realizing.

It is not so much that their desire to lynch him is evidence of their evil nature, for “evil” is a category that applies only in their own resentful moral universe. It is rather that their failure to understand his innocence reveals their “badness,” or baseness, the absence not merely of the virtue that crowns Lucas in the very different moral universe he inhabits, but also of the capacity even to see that virtue.<sup>158</sup> Long before this tribulation, Lucas had ceased resenting their effort to make him “a nigger” and had ceased to strive to be their equal as a man. He has come to understand what they never can: he is more than merely a man.<sup>159</sup>

John Grisham’s *A Time to Kill*,<sup>160</sup> whatever its other merits, offers an instructive logical and psychological middle ground between *Intruder* and *Mockingbird*. Faced with an affront to his moral integrity, the meek and saintly Tom Robinson essentially turns the other cheek; Lucas Beauchamp, at the opposite, Nietzschean end of the

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158. See NIETZSCHE, *supra* note 144, at 40 (describing how in Nietzsche’s moral order, those of base morality are unable to perceive the true moral nature of things, and, through their misunderstanding, conceive of aristocratic “good” as “evil”).

159. See *supra* note 3 and accompanying text.

160. JOHN GRISHAM, *A TIME TO KILL* (1989).

moral spectrum, is almost wholly unperturbed, simply taking the follies of his inferiors in stride. Grisham's Carl Lee Hailey, in contrast to both, acts as most of us would be inclined to act, taking violent vengeance upon the defilers of his daughter.<sup>161</sup> Grisham's moral message is thus thoroughly orthodox: more egalitarian than Lee's and less aristocratic than Faulkner's. To paraphrase Lucas's and Tom's self-descriptions, Carl Lee is not a "nigger"; he is a man. He is, however, no more than a man.

### C. *Lawyers and Clients*

In the last section, we saw how Lucas's and Tom's characters upset their places in their respective social worlds. In this section, we will see how their characters and social positions combine to shape their relations both to their lawyers and to the law itself. Through the various phases of their cases—the initial selection of the lawyer, the actual conduct of the case, and the final settling up of lawyer and client—Lucas shapes his own fate, while Tom is ever at the mercy of others.

1. *Selecting the Lawyers.* Both Lucas and Tom get their lawyers through intermediaries, but there the similarities end. Lucas sends his own knight-errant, Chick, to fetch a free-lance lawyer, Gavin, whom he plans to pay and whose proffered services he carefully weighs but quickly rejects. By contrast, a judge appoints Atticus to defend Tom pro bono; we learn how wise the judge was to choose Atticus and how virtuous Atticus was to accept the appointment. But, for all we are told, Tom is wholly silent and passive throughout the entire process.

a. *Intruder.* In *Intruder's* opening scene, Chick awaits Lucas's arrival at the jailhouse. He shares the town's belief that Lucas has

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161. Witness the exchange between Carl Lee and his liberal white lawyer, Jake Brigrance:

"Lemme ask you this. If it was your little girl, and if it was two niggers, and you could get your hands on them, what would you do?"

"Kill them."

Carl Lee smiled, then laughed. "Sure you would, Jake, sure you would."

....

"I have no choice, Jake. I'll never sleep till those bastards are dead. I owe it to my little girl, I owe it to myself, and I owe it to my people. It'll be done."

*Id.* at 43-44.

murdered a white man, but he is drawn to him by a compelling sense of continued obligation and, beyond that, of something approaching awe.<sup>162</sup> Lucas, seeing Chick in the crowd, dispatches him to bring his uncle, the lawyer, to the jail.<sup>163</sup> The quasi-feudal bond established by the meal Chick ate at his house is thus the first link between Lucas and his lawyer, and it is the imprisoned Lucas who initiates the relationship. Though Chick later wrestles with why he was drawn to Lucas's aid,<sup>164</sup> the central reason is adumbrated in the opening scene, where Chick awaits Lucas's arrival at the jail: "Because he knew Lucas Beauchamp . . . because he had eaten a meal in Lucas' house."<sup>165</sup> Chick's deliverance from the creek reminds us of that most ancient of fealties, the source of obligation in the very Decalogue itself: "I am the LORD thy God, which have brought thee out of the land of Egypt, out of the house of bondage. Thou shalt have no other gods before me."<sup>166</sup>

Lucas's relationship with his other principal assistant, the elderly Miss Habersham, illustrates the same pattern. As we shall see in more detail below,<sup>167</sup> she comes to Lucas's aid not in a spirit of Christian charity or liberal justice, but of feudal obligation—in her case, to Lucas's wife. No matter that this was an obligation to a kind of feudal subordinate; feudal obligations ran in both directions, down to subordinates as well as up to superiors. Every lord but the king was also a vassal.<sup>168</sup>

In an ironic reversal of his refusal of Chick's payment for hospitality, Lucas insists on paying Chick for his quasi-legal service. Lawyers and their runners never do Lucas a favor; he makes clear from the outset that they are his paid agents. He has no friends, he insists,

162. See FAULKNER, *INTRUDER*, *supra* note 4, at 3, 42-44.

163. See *id.* at 44.

164. See *id.* at 64-67, 71.

165. *Id.* at 3-4.

166. *Exodus* 20:2-3 (King James Version). Reference to the Exodus, of course, points to an important, and ironic, reversal. Chick is saved by a black man, a son of slaves. He is literally saved from death in the creek, but more fundamentally, he is saved from the racism that trampled his understanding of human excellence. See King, *supra* note 6, at 241 ("Having saved Chick's life, Lucas asks now to be saved by him.").

167. See *infra* note 308 and accompanying text.

168. Under the feudal doctrine of *nulle terre sans seigneur*, "all land whatsoever is held, mediately or immediately, that is directly or indirectly, of the Crown." SIMPSON, *supra* note 84, at 1. On the other hand, outside his own dominions, even the king himself could be a vassal.

and he pays his own way.<sup>169</sup> Chick may not be clear on what draws him to Lucas, or on what sort of relationship he can establish with Lucas, but Chick is quite clear on Lucas's view of him: "[H]e was not even asking a favor, making no last desperate plea to his humanity and pity but was even going to pay him provided the price was not too high . . . ."<sup>170</sup>

*b. Mockingbird.* By contrast, it is the law's guarantee of legal counsel, not any deep personal ties, that puts Atticus in touch with Tom. Atticus tells his brother, "You know, I'd hoped to get through life without a case of this kind, but [Judge] John Taylor pointed at me and said, 'You're it.'"<sup>171</sup> It is clear that this is to be a classic, indeed paradigmatic, *pro bono* case. The court, personified in the judge, sends the lawyer to the passive, imprisoned client; the officer of the court implicitly picks up the tab, absorbing the economic cost of providing uncompensated representation.<sup>172</sup> And here liberal justice is not blindly impartial, but presciently benevolent. Atticus's neighbor, Miss Maudie, explains to Jem that Judge Taylor passed over the usual court-appointed defense lawyer, "Maycomb County's latest addition to the bar, who needed the experience," in order to appoint Atticus, "the only man in these parts who can keep a jury out so long in a case like that."<sup>173</sup>

When pressed to explain his motives for taking the case, Atticus's focus is distinctly on himself, not his client. He makes clear several times that it is his own sense of personal rectitude and his need to be seen as virtuous by others that compel him to take Tom's case. In response to Scout's asking why he is defending someone most people think he should not, Atticus alludes to "a number of reasons,"

169. See FAULKNER, *INTRUDER*, *supra* note 4, at 63 ("I said I pays my own way," said Lucas.").

170. *Id.* at 71.

171. LEE, *MOCKINGBIRD*, *supra* note 1, at 97.

172. See Talbot D'Alemberte, *Remembering Atticus Finch's Pro Bono Legacy*, *LEGAL TIMES*, April 6, 1992, at 26 (describing as *pro bono* Atticus's representation of Tom). On the other hand, some commentators have argued that Atticus's representation of Tom should not be viewed as true *pro bono* work because Atticus was not a volunteer. See Freedman, *Right and Wrong*, *supra* note 13, at 481 (noting somewhat disparagingly that "Atticus Finch never in his professional life voluntarily takes a *pro bono* case in an effort to ameliorate the evil—which he himself and others recognize—in the apartheid of Maycomb, Alabama"); see also LEE, *MOCKINGBIRD*, *supra* note 1, at 174 (noting that Scout is relieved to discover that Atticus did not take the case voluntarily).

173. LEE, *MOCKINGBIRD*, *supra* note 1, at 228.

but elaborates only one: “The main one is, if I didn’t, I couldn’t hold up my head in town, I couldn’t represent this county in the legislature, I couldn’t even tell you or Jem not to do something again.”<sup>174</sup> Each explanatory clause begins with “I”; Atticus does not mention Tom Robinson at all.

When Atticus places his position on a religious foundation, he does base his sense of obligation on Tom’s need for help: “This case, Tom Robinson’s case, is something that goes to the essence of a man’s conscience—Scout, I couldn’t go to church and worship God if I didn’t try to help that man.”<sup>175</sup> But even here, the emphasis is on Atticus’s personal righteousness. That entails helping Tom, but helping Tom is in the subordinate clause. In helping Tom Robinson, as Thomas Shaffer has pointed out, Atticus’s mode is not primarily acting according to high principles in the Kantian, deontological tradition. Instead, he is simply living out the consequences of his virtuous character.<sup>176</sup> But Atticus’s character, if not flawed, is oddly focused. He turns distinctly inward, toward being a virtuous person, rather than outward, toward helping another.

2. *Listening to the Client’s Story.* Gavin and Atticus both respond with genuine, even physical, courage to what they perceive as threats of grievous racial injustice, willingly interposing themselves between their clients and lynch mobs.<sup>177</sup> But Gavin fundamentally, almost fatally, misconstrues his client’s situation; the critical work in making Lucas’s case is complete before Gavin has done anything but argue with him. Atticus, by contrast, foresees everything from the beginning and assumes full control of every aspect of the case, without our ever hearing him even consult with his client.

a. *Mockingbird.* Atticus scarcely needs to listen; he seems to have gathered the truth of Tom’s innocence osmotically. We never hear Tom tell Atticus his story; the closest we have, in barest outline, is what Atticus tells his brother: “The only thing we’ve got is a black man’s word against the Ewells’. The evidence boils down to you-did—I-didn’t.”<sup>178</sup> Atticus not only knows, almost instinctively, his

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174. *Id.* at 83; *see also id.* at 96 (Atticus explains to his brother, “But do you think I could face my children otherwise?”).

175. *Id.* at 113.

176. *See* THOMAS SHAFFER, FAITH AND THE PROFESSIONS 7 (1987) [hereinafter SHAFFER, FAITH AND THE PROFESSIONS] (arguing that Atticus is best understood by examining his character, not his principles).



client's innocence; he also knows his neighbors' racism: "The jury couldn't possibly be expected to take Tom Robinson's word against the Ewells'."<sup>179</sup> Atticus knows from the outset that he will lose at trial, and he plans accordingly: "Before I'm through, I intend to jar the jury a bit—I think we'll have a reasonable chance on appeal, though."<sup>180</sup>

Nowhere does Atticus consult with his client on this strategy, though he reports that he tried to explain it.<sup>181</sup> But, when the authorities take Tom to prison, Atticus tells Calpurnia that "he just gave up hope."<sup>182</sup> Although Atticus empathizes with Tom's frustration, we are left with the conviction that, had Tom listened to his lawyer and kept his faith in the law, he would have been saved. The tragedy, ultimately, is that Tom took his fate into his own hands, when he should have relied upon his lawyer and the law.

We learn of that fate thirdhand. Atticus reports to his sister what he heard through an intermediary about the prison guards' account of Tom's futile attempt to escape from prison:

"It was during their exercise period. They said he just broke into a blind raving charge at the fence and started climbing over. Right in front of them—"

...

"They fired a few shots into the air, then to kill. They got him just as he went over the fence. . . . Seventeen bullet holes in him. They didn't have to shoot him that much."<sup>183</sup>

This sequence confirms the town's racist interpretation:

To Maycomb, Tom's death was Typical. Typical of a nigger to cut and run. Typical of a nigger's mentality to have no plan, no thought for the future, just run blind first chance he saw. Funny thing, Atti-

177. See FAULKNER, *INTRUDER*, *supra* note 4, at 63 (Gavin offers to stay with Lucas in jail in the face of a mob's imminent arrival); LEE, *MOCKINGBIRD*, *supra* note 1, at 155-157 (Atticus faces down a lynch mob).

178. LEE, *MOCKINGBIRD*, *supra* note 1, at 96.

179. *Id.*

180. *Id.* Earlier, Atticus had told Scout they must fight on even though they will lose: "Simply because we were licked a hundred years before we started is no reason for us not to try to win." *Id.* at 84.

181. See *id.* at 247.

182. *Id.* at 248-49.

183. *Id.* at 248.

cus Finch might've got him off scot free, but wait—? Hell no. You know how they are. Easy come, easy go. Just shows you, that Robinson boy was legally married, they say he kept himself clean, went to church and all that, but when it comes down to the line the veneer's mighty thin. Nigger always comes out in 'em.<sup>184</sup>

Thus, the town makes sense of the death of one who, they learned at trial, was a “respectable Negro”: all blacks are, at bottom, “bad.”

The town's minority of respectable white citizens draws the opposite conclusion and draws together around it. The local newspaper editor, who had put aside his own racism to support Atticus against the lynch mob,<sup>185</sup> fulminates in an editorial: “[I]t was a sin to kill cripples, be they standing, sitting, or escaping. He likens Tom's death to the senseless slaughter of songbirds by hunters and children.”<sup>186</sup> Tom's death finally brings Atticus's ambivalent sister Alexandra around to his side: “This is the last straw, Atticus.”<sup>187</sup>

Atticus, as always, is forgiving and philosophical (and, of course, correct). With respect to the guards who shot Tom, he tries to see things their way: “He wasn't Tom to them, he was an escaping prisoner.”<sup>188</sup> And in Tom's death itself, Atticus bends under the tragic burden of its ill-fated heroism:

Atticus leaned against the refrigerator, pushed up his glasses, and rubbed his eyes. “We had such a good chance,” he said. “I told him what I thought, but I couldn't in truth say that we had more than a good chance. I guess Tom was tired of white men's chances and preferred to take his own.”<sup>189</sup>

His futile escape attempt was not, from Atticus's perspective, a confirmation of Tom's racial inferiority. It was, instead, a flash of understandable but ill-advised heroism sparked by deeply human frustration.

Just how good a chance they had, or may be supposed to have had, on appeal is clearly to be assessed against the background of the

184. *Id.* at 253-54.

185. *See id.* at 167 (“‘You know, it's a funny thing about Braxton,’ said Atticus. ‘He despises Negroes, won't have one near him.’”).

186. *Id.* at 254.

187. *Id.* at 248.

188. *Id.* at 249.

189. *Id.*

contemporary Scottsboro case.<sup>190</sup> Addressed to an audience in 1960, Lee's account contains a heightened tragedy. If only Tom had taken Atticus's advice, a virtuous appellate court might well have overturned his conviction on appeal, as appellate courts repeatedly did in the Scottsboro case.<sup>191</sup>

*b. Intruder.* With Lucas, precisely the opposite is true. Lucas takes matters into his own hands at the very outset, and he delivers himself not only without his lawyer's help, but against his lawyer's advice. Moreover, Lucas makes it quite clear from the outset that the law itself is a danger, with which he suspects Gavin may be too closely allied. Gavin, who comes to the jail already having decided to represent Lucas, learns that Lucas does not see him in the first instance as a liberator. Knowing that appearances are against him, Lucas first asks Gavin, "What you going to do with me?"<sup>192</sup> Gavin, surprised and offended, distances himself from what he presumes to be the source of Lucas's danger, the murdered man's family and their network of kin. Lucas dismisses these dangers with a wave of his hand, then gets to the point: "I mean the law. Aint you the county lawyer?"<sup>193</sup>

Only after Gavin assures him that he is not the prosecutor does Lucas observe, "Then you can take my case."<sup>194</sup> Even then, Lucas makes clear that he is not primarily interested in hiring a lawyer. Gavin's status as a lawyer is incidental, rather than essential, to Lu-

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190. See JOHNSON, *supra* note 12, at 11 (analyzing parallels with the Scottsboro case as essential to understanding the historical context of *Mockingbird*). The Scottsboro case developed from the March 25, 1931, arrest of nine young black men in Scottsboro, Alabama, for the alleged rape of two young white women. See JAMES GOODMAN, *STORIES OF SCOTTSBORO* 3-5 (1994). Even though most of the evidence against them came from the testimony of their accusers, one of whom subsequently recanted, eight of the accused were sentenced to death. See *id.* at xi, 131-32. The trial of the ninth, who was only thirteen years old, ended in a mistrial. See *id.* at 8-9. After seven years of appeals and retrials, during which the U.S. Supreme Court twice overturned the convictions, four of the original indictments were dropped, and the remaining five men received long prison terms. See *id.* at 394-96. By 1946, all the men had been paroled except one. See *id.* at 396. Two years later, he escaped to Michigan, where the state government refused to extradite him to Alabama. See *id.* at 379-81.

191. See *Patterson v. Alabama*, 294 U.S. 600 (1935) (overturning a conviction because blacks were excluded from the jury); *Norris v. Alabama*, 294 U.S. 587 (1935) (same); *Powell v. Alabama*, 287 U.S. 45 (1932) (reversing convictions on the ground that Alabama failed to provide adequate assistance of counsel); *Powell v. State*, 141 So. 201 (Ala. 1932) (reversing one defendant's conviction on the ground that he was a juvenile at the time of the alleged crime).

192. FAULKNER, *INTRUDER*, *supra* note 4, at 58.

193. *Id.*

194. *Id.*

cas, a potentially serious hazard but not a particularly promising help: "I wants to hire somebody. It dont have to be a lawyer."<sup>195</sup> Their meeting is a veritable poker game of high stakes and mutual distrust. Each looks for advantage, hoping to bend the other to his wishes.<sup>196</sup> Lucas tries to maneuver Gavin into taking his case before revealing what happened; Gavin tries to extract Lucas's story before agreeing to handle the case in the manner Lucas wishes.

Frustrated with Lucas's reticence and insistence on controlling the course of the representation, Gavin asserts that he holds all the cards: "Because you aint got any job to offer anybody. You're in jail, depending on the grace of God to keep those damned Gowries from dragging you out of here and hanging you . . ."<sup>197</sup> Assuming that Lucas wants to plead not guilty and go to trial, Gavin is unequivocal: "I dont defend murderers who shoot people in the back."<sup>198</sup> Gavin lays out an alternative strategy: he will secure a venue in which the judge does not know Lucas, plead him guilty, and persuade the judge to sentence him to life imprisonment, in view of his advanced age and clean record.<sup>199</sup>

But the advantage, ironically, is with Lucas. His look is "shrewd secret and intent";<sup>200</sup> he knows his opponent better and sizes him up more accurately. Lucas's abbreviated version of events does not re-

195. *Id.* at 59.

196. *See id.* The conversation first reminds Chick of the child's game Five Hundred, then of high-stakes poker. *See id.* The latter allusion clearly raises the metaphorical stakes for Lucas; his mother was won (and, of course, lost) in a poker game between two white men, one her cousin, the other her owner. *See* FAULKNER, MOSES, *supra* note 3, at 20-29, 101. And the deck was almost certainly stacked by the dealer, Lucas's father, who stood to marry the young slave woman at wager, and did. Here the stakes are equally high, but now Lucas is playing his own hand.

197. FAULKNER, INTRUDER, *supra* note 4, at 60; *see also* MACINTYRE, AFTER VIRTUE, *supra* note 30, at 127 (identifying the role of suppliant as antithetical to that of hero: "The suppliant, too, who has been forced to beg for what he must have, has put himself at the mercy of another and so renders himself a potential corpse or slave.").

198. FAULKNER, INTRUDER, *supra* note 4, at 58; *see also* BROOKS, *supra* note 141, at 282-83 (asserting that "it is essential to our understanding of the novel for us to realize that when Gavin Stevens tells Lucas that he will take his case, he does so in spite of a presumption of Lucas's guilt that amounts almost to certainty").

199. *See* FAULKNER, INTRUDER, *supra* note 4, at 63. The penitentiary to which Lucas would have gone was the notorious Parchman, *see id.* at 58, a byword for slave labor under field-gang conditions, *see* DAVID M. OSHINSKY, "WORSE THAN SLAVERY": PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE; WILLIAM BANKS TAYLOR, DOWN ON PARCHMAN FARM: THE GREAT PRISON IN THE MISSISSIPPI DELTA (1999). *But cf.* BROOKS, *supra* note 141, at 286 (stating that "Gavin Stevens . . . simply wants Lucas to get a fair trial and only such punishment as the law will properly mete out").

200. FAULKNER, INTRUDER, *supra* note 4, at 59.

veal his innocence to Gavin, but it does reveal to Lucas that Gavin cannot begin to fathom that possibility and thus that Lucas will have to look elsewhere for assistance.<sup>201</sup> Gavin offers Lucas physical protection at the obvious risk of his own life, precisely as Atticus had done for Tom.<sup>202</sup> But Lucas rejects this aid, not because he believes he does not need it, but because he knows it is inadequate. Moreover, he rejects it with sardonic humor, nicely lampooning Gavin's loquacity: "If you stay here you'll talk till morning."<sup>203</sup>

What Lucas needs is someone to do the unthinkable: to exhume Vince Gowrie, whom he had apparently shot, in order to prove that the fatal bullet was not from his antique Colt pistol.<sup>204</sup> He arranges for Chick to return without his uncle on the pretext of bringing him some tobacco, and he puts the job to him. Chick, as we have seen, accepts. Gavin only returns to Lucas's aid after Chick, with the help of Miss Habersham and Aleck Sander, makes the exculpatory discovery that Vince Gowrie's body had been removed from its grave after Lucas's arrest.<sup>205</sup>

3. *Settling up.* The conclusions of Tom and Lucas's cases confirm the nature of their relationships with their lawyers. The entire black community symbolically acknowledges its debt of gratitude to Atticus. Lucas, if no longer quite indebted to nothing and to no one, nevertheless deftly puts Gavin in his place.

a. *Mockingbird.* The underlying spirit of *noblesse oblige* in *Mockingbird* is underscored in a scene at the end of the trial that nicely echoes the terms of Atticus's relation with his other impoverished client, the white Walter Cunningham. At breakfast on the day after the trial, Calpurnia serves up to Atticus's surprise the offerings of the grateful black community: a chicken "Tom Robinson's daddy sent you along . . . this morning" and rolls from "Estelle down at the hotel."<sup>206</sup> Following Calpurnia back into the

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201. See *id.* at 60-63.

202. See *supra* note 177.

203. FAULKNER, INTRUDER, *supra* note 4, at 63.

204. See *id.* at 93 ("It remained . . . to elect and do . . . the two things out of all man's vast reservoir of invention and capability that Beat Four [an area of Yoknapatawpha County] would repudiate and retaliate on most violently: to violate the grave of one of its progeny in order to save a nigger murderer from its vengeance.").

205. See *id.* at 103.

206. LEE, MOCKINGBIRD, *supra* note 1, at 225-26.

kitchen, Atticus and his children discover a countrified cornucopia: “The kitchen table was loaded with enough food to bury the family: hunks of salt pork, tomatoes, beans, even scuppernongs. Atticus grinned when he found a jar of pickled pigs’ knuckles.”<sup>207</sup>

Even though Atticus seems amused, Calpurnia is concerned: “This was all ‘round the back steps when I got here this morning. They—they ‘preciate what you did, Mr. Finch. They—they aren’t oversteppin’ themselves, are they?”<sup>208</sup> The bounty briefly overwhelms Atticus, but he recovers and reassures Calpurnia: “‘Tell them I’m very grateful,’ he said. ‘Tell them—tell them they must never do this again. Times are too hard . . . .’”<sup>209</sup>

With this magnanimous message, Atticus restores order, but it is worth noting in some detail what an order this is. In the first place, and most fundamentally, it is an order in which Atticus is the arbiter of order. Calpurnia is not sure her fellow blacks’ gesture is proper until she has Atticus’s reaction. In the second place, it is an order in which not just Tom Robinson, Atticus’s pro bono client, and not just Tom Robinson’s immediate family, but also the entire local black community—“they”—are indebted to Atticus. For all his graciousness, Atticus keeps it that way; indeed, keeping it that way is not an intentional element that undermines his graciousness; it is implicit in and inseparable from that very graciousness itself.

In the third place, these are the very sorts of offerings Mr. Cunningham made to pay Atticus for his legal service in the novel’s opening pages. And Atticus makes clear, as we have seen, that the Cunninghams are extremely poor. In Atticus’s words, “[t]he Cunninghams are country folks, farmers, and the crash hit them hardest.”<sup>210</sup> Yet, times are not too hard for Atticus to allow Mr. Cunningham to pay in full, albeit in kind and on installment. Scout long ago learned the reason: “The Cunninghams never took anything they can’t pay back—no church baskets and no scrip stamps”<sup>211</sup>—in other words, no charity. Atticus clearly admires this independence: “Mr. Cunningham,” Atticus has said, “came from a set breed of men.”<sup>212</sup> Blacks, it seems to go without saying, are from a different breed. Im-

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207. *Id.* at 226.

208. *Id.*

209. *Id.*

210. *Id.* at 27.

211. *Id.* at 26.

212. *Id.* at 27.

plicit in Atticus's refusal of further payment from them is an acceptance not only of their collective debt, but also of their collective place as the objects of the charitable forgiveness of debt.

*b. Intruder.* Nothing could be further from the aristocratic aloofness of Lucas. He is not just free of debt, but above the very commercial world in which mere monetary debt is incurred. Everyone who is black is beholden to Atticus; Lucas, although black, thinks himself beholden to no one, least of all to his lawyer.

At the end of his ordeal, in the very final pages of the story, Lucas confirms the nature of his relationship with his lawyer. Gavin sees him coming across the town square and tells Chick, “[H]e’s a gentleman; he wont remind me to my face that I was wrong; he’s just going to ask me how much he owes me as his lawyer.”<sup>213</sup> Sure enough, Lucas has come to settle his accounts, and what transpires is a comic recapitulation of their earlier, jailhouse encounter, in which Gavin mis-measured Lucas with very nearly tragic consequences.<sup>214</sup>

Gavin, jockeying for the upper hand, says Lucas owes him nothing for legal services, since he did not believe Lucas at the outset.<sup>215</sup> Lucas insists on at least paying Gavin’s expenses, which Gavin sets at a ludicrously low two dollars, the price of a fountain pen tip he broke writing down Lucas’s story. Lucas responds to what might have been taken as a slighting offer of charity by reminding Gavin of their respective roles: “That dont sound like much to me but then I’m a farming man and you’re a lawing man and whether you know your business or not I reckon it aint none of my red wagon . . . to try to learn you different.”<sup>216</sup> What is more, Lucas proffers his payment in pennies. Gavin, with mock insistence that “this is business,” requires Lucas to count the coins. But Lucas has the last word: he asks for a receipt.<sup>217</sup>

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213. FAULKNER, INTRUDER, *supra* note 4, at 234.

214. See *supra* notes 192-201 and accompanying text.

215. See FAULKNER, INTRUDER, *supra* note 4, at 238.

216. *Id.* at 239.

217. See *id.* at 240-41; cf. BROOKS, *supra* note 141, at 292-94 (conceding that “Lucas leaves with the honors of the field, and he is allowed the last word,” but viewing Lucas’s coins as “token of a debt beyond payment” to Gavin and Chick); King, *supra* note 6, at 241-42 (conceding that Lucas turns the tables and finally reverses Gavin’s paternalism here, but finding the reversal inadequate because it is merely personal, not communal and political, a gesture rather than a conversation).

The mock-seriousness of the entire exchange redounds to Lucas's advantage.<sup>218</sup> It trivializes both the currency in which Gavin, in his capacity as a lawyer, is paid and the nature of the bonds that such payments establish. More significantly, it underscores who, in the relationship between lawyer and client, is beholden to whom. The agrarian aristocrat calls the lawyer, and by implication the legal profession and even the law itself, to account, without even taking that accounting very seriously.

#### D. Lawyers and "Others"

Gavin's relationship with Lucas, like Atticus's with Tom, is only the most salient way in which these lawyers interact with traditional outsiders. In what follows, we will examine the links between Gavin and Atticus and several outsider groups: women, blacks and lower-class whites, and children, especially the lawyers' protégés.<sup>219</sup> In each case, we will see that, as presented in their respective stories, Atticus has much to teach,<sup>220</sup> and Gavin, much to learn.

1. *Lawyers and Women.* Bordering the adult male dominion in the world of each novel is a distinct female hemisphere, never fully separate but never quite perfectly congruent. Moreover, in each novel, a particular woman embodies virtues admirable in the male realm. But these women's worlds differ both from each other and in their intersections with the world of men, particularly male lawyers. *Mockingbird's* women's world is supporting and subordinate; *Intruder's* is, in important respects, independent and superior.

a. *Mockingbird.* Like the male world it complements, the female world of *Mockingbird* revolves around Atticus. Atticus's wife

218. Cf. BROOKS, *supra* note 141, at 294 (noting the characters' use of jests to handle what might otherwise have been an embarrassingly maudlin situation).

219. See JOHNSON, *supra* note 12, at 71-93 (discussing encounters with "the Other" as one of *Mockingbird's* main Gothic themes).

220. Thus, according to Janice Radway,

Harper Lee's novel aims for nothing less than the reconceptualization of women and "Negroes" as collections of individually different human beings rather than as categories of people identifiable by certain common properties. In the end, though, it can only manage that task by modeling this newly recognized individuality on that of the white men who are presumed to be its most extraordinary exemplars. Although the book wants very much to be progressive about the subjects of gender and race, it fails finally to undo the fundamental equations that generally ensure that those with power are gendered male and tinted white.

RADWAY, *supra* note 13, at 337.



has died by the time the novel opens;<sup>221</sup> there are three significant women in Atticus's life, each in a distinctly supporting role. They are his maid, Calpurnia; his next-door neighbor, Miss Maudie Atkinson;<sup>222</sup> and his sister, Alexandra. Calpurnia is, as we have seen, Jem and Scout's surrogate mother, the junior partner in Atticus's unorthodox parenting arrangement. As such, she runs afoul of Aunt Alexandra, who is very much torn between affection for her brother and unthinking acceptance of traditional southern folkways. This is how Scout describes Aunt Alexandra upon her coming to live with them:

To all parties present and participating in the life of the county, Aunt Alexandra was one of the last of her kind: she had river-boat, boarding-school manners; let any moral come along and she would uphold it; she was born in the objective case; she was an incurable gossip. When Aunt Alexandra went to school, self-doubt could not be found in any textbook, so she knew not its meaning. She was never bored, and given the slightest chance she would exercise her royal prerogative: she would arrange, advise, caution, and warn.<sup>223</sup>

She is particularly concerned about the proper deportment of elite women and the preservation of family status. Atticus's representation of Tom precipitates her decision to displace Calpurnia by moving in with Atticus's family.<sup>224</sup> Her chief complaint is Scout's unladylike dress and conduct.<sup>225</sup> She and Atticus come to loggerheads over her insistence that Calpurnia be dismissed; he steadfastly refuses, maintaining that Calpurnia is part of the family.<sup>226</sup>

Miss Maudie is a different kind of southern lady, unorthodox in socially acceptable ways that make her in many respects the female counterpart of Atticus. Scout introduces her as "the best lady I

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221. See LEE, *MOCKINGBIRD*, *supra* note 1, at 12.

222. I have persuaded a surprising number of people that Miss Maudie is my paternal grandfather's sister-in-law; this is probably not the place to continue the claim.

223. LEE, *MOCKINGBIRD*, *supra* note 1, at 139.

224. Aunt Alexandra arrives precisely as Jem and Scout return from their visit to Calpurnia's church. *See id.* at 137.

225. *See id.* at 89 ("But the only time I ever heard Atticus speak sharply to anyone was when I once heard him say, 'Sister, I do the best I can with them!' It had something to do with my going around in overalls.").

226. *See id.* at 147; *see also* JOHNSON, *supra* note 12, at 52 ("Aunt Alexandra, so strong in her obsession of remaking Atticus's unconventional family into an orthodox one and forcing the family history on the reluctant children, ironically promotes the emergence of the worst values from Atticus's family, and simultaneously threatens the existence of the best values of that family.").

know.”<sup>227</sup> She both resolves the conflict between Atticus and Alexandra over the rearing of his children and teaches them and Alexandra what Atticus is all about. Like Atticus’s family, she comes from the old aristocratic stock of Finch’s Landing,<sup>228</sup> a pedigree that permits her an appealing array of eccentricities. She has a sharp tongue, a love of the outdoors, and a no-nonsense candor with children.<sup>229</sup> These qualities endear her to Atticus’s children, especially Scout, who confides in her and takes her as something of a role model. The most prominent aspect of her role is defending and explaining Atticus.<sup>230</sup>

Miss Maudie’s values and her version of being a lady triumph in a Methodist missionary society tea that Aunt Alexandra holds at Atticus’s house.<sup>231</sup> Aunt Alexandra is clearly in her element as hostess. Calpurnia is serving teacakes in a starched apron;<sup>232</sup> Scout also attends as a lady-in-training, with her best Sunday dress concealing her “britches.”<sup>233</sup> Miss Maudie, not a Methodist herself, is consigned to an adjunct status: “It was customary for every circle hostess to invite her neighbors in for refreshments, be they Baptists or Presbyterians.”<sup>234</sup>

But Aunt Alexandra soon loses the upper hand. The meeting’s ugly subtext, establishment disapproval of Atticus’s representation of Tom, threatens to disrupt the façade of Christian concern for the disadvantaged safely overseas in Africa.<sup>235</sup> Miss Maudie puts Atticus’s detractors in their place with a deft word, winning a grateful glance from Aunt Alexandra. Scout is duly impressed, if a bit mystified, by their odd alliance: “I wondered at the world of women. Miss Maudie

227. LEE, *MOCKINGBIRD*, *supra* note 1, at 52.

228. *See id.* at 50.

229. *See id.* at 51.

230. For example, when Atticus proclaims that it is a sin to kill a mockingbird, Scout recalls that she has never before heard Atticus call anything a sin, so she asks Miss Maudie about it. *See id.* at 98. Miss Maudie explains: “Your father’s right . . . Mockingbirds don’t do one thing but make music for us to enjoy. They don’t eat up people’s gardens, don’t nest in corncribs, they don’t do one thing but sing their hearts out for us. That’s why it’s a sin to kill a mockingbird.” *Id.*

231. *See id.* at 240-51.

232. *See id.* at 240.

233. *Id.* at 241.

234. *Id.*

235. *See* JOHNSON, *supra* note 12, at 87 (describing the society meeting’s Gothic fascination with the safely distant “‘sin and squalor’ of a dark Other”).

and Aunt Alexandra had never been especially close, and here was Aunt silently thanking her for something. For what, I knew not.”<sup>236</sup>

But that is only the beginning. Back in the kitchen, Atticus calls Calpurnia out to help him break the news of Tom Robinson’s death to his widow. Shattered by this news and shorn of their servant, Aunt Alexandra and Scout must keep up appearances on their own. Aunt Alexandra nearly breaks down:

“I can’t say I approve of everything he does, Maudie, but he’s my brother, and I just want to know when this will ever end.” Her voice rose: “It tears him to pieces. He doesn’t show it much, but it tears him to pieces. I’ve seen him when—what else do they want from him, Maudie, what else?”<sup>237</sup>

This is a critical juncture. Aunt Alexandra’s perspective has shifted from presiding over a hypocritical ceremony to helping Atticus, but she cannot quite see what that involves. At this point, Miss Maudie, the ultimate lady, takes charge: “‘Be quiet, they’ll hear you,’ said Miss Maudie. ‘Have you ever thought of it this way, Alexandra? Whether Maycomb knows it or not, we’re paying the highest tribute we can pay a man. We trust him to do right. It’s that simple.’”<sup>238</sup>

As Scout notices, Miss Maudie identifies who “we” are in almost precisely the same terms she earlier had used to console Jem over the injustice of Tom’s conviction: “The handful of people in this town who say that fair play is not marked White Only; the handful of people who say a fair trial is for everybody. . . . The handful of people in this town with background . . . .”<sup>239</sup> With that identification of the true aristocracy and its champion, everything falls into place, all in the service of Atticus.

At the outset of the meeting, when facetiously asked whether she wanted to be a lawyer, Scout had replied, “Nome, just a lady,” and Miss Maudie had approvingly squeezed her hand.<sup>240</sup> As the scene in the parlor opened, Scout had “wondered at world of women,” expressing anxiety about her inevitable entry into its superficiality and

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236. LEE, *MOCKINGBIRD*, *supra* note 1, at 246.

237. *Id.* at 249.

238. *Id.*

239. *Id.* at 249-50; *cf. id.* at 228 (“‘We’re the safest folks in the world,’ said Miss Maudie [to Jem]. ‘We’re so rarely called on to be Christians, but when we are, we’ve got men like Atticus to go for us.’”).

240. *Id.* at 243.

hypocrisy.<sup>241</sup> She felt “more at home in my father’s world,” the rough but honest world of men, where people “did not trap you with innocent questions to make fun of you.”<sup>242</sup> Now, having explained things, Miss Maudie checks them for their composure and joins them as co-hostess. “After all,” Scout concludes at the scene’s close, “if Aunty could be a lady at a time like this, so could I.”<sup>243</sup> Atticus, self-appointed messenger of the law, has dispatched himself to the relief of Tom’s widow; back in the parlor, standing and waiting takes a very different form from Chick’s service to Lucas: “Aunt Alexandra looked across the room at me and smiled. She looked at a tray of cookies on the table and nodded at them. I carefully picked up the tray and watched myself walk to Mrs. Merriweather. With my best company manners, I asked if she would have some.”<sup>244</sup>

Miss Maudie’s depth of insight into Atticus’s character and her devotion to his cause might suggest an element of romance between them. But their relationship is wholly platonic; when Miss Maudie playfully flirts, it is with Atticus’s brother, a protégé of her father, a doctor.<sup>245</sup> Indeed, it is Miss Maudie herself who makes clear to the children an aspect of Atticus’s character that they can understand only obliquely at their age. Implicit in the wisdom of his fifty years is an immunity from romantic passion: “You and Jem have the benefit of your father’s age. If your father was thirty you’d find life quite different.”<sup>246</sup> By “different,” she clearly means to imply worse, and maybe even the worst, the horror of childhood horrors: a stepmother.

In a heavily symbolic—indeed, almost parodically, Freudian—scene early in the novel, Lee removes any suspicion that Atticus’s age, in Scout’s innocent terms, “reflected upon his abilities and manliness.”<sup>247</sup> Compared to the occupations and achievements of her

241. *Id.* at 246-47; *see also id.* at 147 (“I felt the starched walls of a pink cotton penitentiary closing in on me . . .”).

242. *Id.* at 246-47. Unless, of course, you deserve to be tricked, as both Bob and Mayella Ewell learn to their chagrin. *See id.* at 189 (describing Bob Ewell’s opinion that “[t]ricking lawyers like Atticus Finch took advantage of him all the time with their tricking ways”); *id.* at 193-200 (detailing Atticus’s sly and devastating cross-examination of Mayella).

243. *Id.* at 251.

244. *Id.* Although Mrs. Merriweather was a simpering hypocrite, the Atticus detractor whom Miss Maudie had initially silenced, even she must be accorded the courtesies due guests in a proper lady’s house.

245. *See id.* at 50-51.

246. *Id.* at 99.

247. *Id.* at 97; *cf.* JOHNSON, *supra* note 12, at 36 (“The gun also takes on some symbolic value in the novel as a source of power that must always be reined in.”).

schoolmates' fathers, Atticus's career is a disappointment. He is fifty and feeble; he works in an office and wears glasses; he will not even play on the Methodists' church-league football team. Unlike other fathers, who hunted, fished, played poker, smoked, and even drank, Atticus "sat in the livingroom and read."<sup>248</sup> Pressed to his defense, Miss Maudie insists that "he can make somebody's will so airtight can't anybody meddle with it";<sup>249</sup> besides which, he plays not only checkers, but also the Jew's harp. But Scout remains unimpressed; indeed, having discovered only these modest accomplishments, she is even more ashamed.<sup>250</sup>

Then she and Jem discover a mad dog on their quiet street. Calpurnia coolly calls Atticus, who rushes home with Sheriff Tate. Having declared that "this is a one-shot job," the sheriff, much to the amazement of Jem and Scout, "almost threw the rifle at Atticus."<sup>251</sup> Atticus pushes his glasses up onto his forehead, then drops them to the street, where Scout hears them crack; moments later, he "ground the broken lenses to powder under his heel,"<sup>252</sup> presumably to protect the feet of small children. But first, with Zen-like coordination, he fires a single shot that hits the mad dog just above the eye; the animal "didn't know what hit him."<sup>253</sup> Jem and Scout are astounded.<sup>254</sup>

Miss Maudie hails Atticus from across the street: "I saw that, One-Shot Finch!" She follows up her advantage with the children, explaining the nickname of Atticus's youth, when he was renowned as the best shot in the county.<sup>255</sup> When Jem asks why he no longer hunts, Miss Maudie elaborates: "If your father's anything, he's civilized in his heart. Marksmanship's a gift of God, a talent . . . . I think maybe he put his gun down when he realized that God had given him an unfair advantage over most living things."<sup>256</sup> Atticus's apparent lack of stereotypical southern machismo is not impotence, but a kind of chivalrous renunciation, the symbolic celibacy of the most truly virile.

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248. LEE, *MOCKINGBIRD*, *supra* note 1, at 98.

249. *Id.* at 99.

250. *See id.*

251. *Id.* at 104.

252. *Id.* at 105.

253. *Id.*

254. *See id.* at 105-06.

255. *Id.*

256. *Id.* at 107.

A political cartoon in the *Montgomery Advertiser* suggests an element of sublimation as well, revealing the real outlet of Atticus's mature energies: "It showed Atticus barefooted and in short pants, chained to a desk: he was diligently writing on a slate while some frivolous-looking girls yelled, 'Yoo-hoo!' at him."<sup>257</sup> Jem explains to Scout that this is a compliment. In an emergency session called in the depths of the Depression, Atticus is doing the things that otherwise would not get done, "like reorganizing the tax systems of the counties and things. That kind of thing's pretty dry to most men."<sup>258</sup> That kind of thing, in our idiom, of course, is not "sexy."

Atticus had met his much younger wife while he was in Montgomery with the legislature, but she is dead and that phase is long past. Lee avoids the obvious cliché of calling the law Atticus's jealous mistress. But this metaphor would not be entirely accurate: Atticus is, rather, the law's devoted consort, with all the women in his life as law's ladies-in-waiting.

But even well-meaning ladies can be a bother, to law and to its male agents, as we learn in the book's final episode. In a kind of Halloween-out-of-hand, the elusive Boo Radley saves Jem and Scout from the vengeance of Bob Ewell, whom he kills in the fracas. Atticus, briefly addled by the affair, mistakenly assumes that Jem, rather than Boo, has killed Bob Ewell. Even after Sheriff Tate dispels this illusion, Atticus insists on an inquest to clear Jem's name. The sheriff vows to assert that Bob Ewell fell on his own knife; Atticus insists, true to form, that the "[b]est way to clear the air is to have it all out in the open."<sup>259</sup>

But the sheriff finally prevails, convincing Atticus not to subject the reclusive Boo to the ordeal of publicity. Significantly, it is not the inquest itself that concerns the sheriff; it is the well-intended but unwelcomed attentions Boo's heroism would inevitably bring from women:

"All the ladies in Maycomb includin' my wife'd be knocking on his door bringing angel food cakes. To my way of thinkin', Mr. Finch, taking the one man who's done you and this town a great service an'

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257. *Id.* at 126.

258. *Id.*

259. *Id.* at 287.

draggin' him with his shy ways into the limelight—to me, that's a sin. It's a sin and I'm not about to have it on my head.”<sup>260</sup>

Scout, who has overheard the debate, tells Atticus that the sheriff is right. She has heard Atticus call only one thing a sin,<sup>261</sup> and she recognizes that sin here: “[I]t'd be sort of like shootin' a mockingbird, wouldn't it?”<sup>262</sup>

Thus, Atticus's understudy, with his assent, equates the customary attentions of southern women with the cardinal sin, the only other instance of which we have in the story is the shooting of Tom Robinson. Scout, Atticus, and the sheriff all agree implicitly that the women in question could not be made to understand what a child realizes instantly and intuitively. Rather than try to explain something so simple to women of ordinary intelligence, Atticus will not only wink at a lie, but also involve his daughter in the connivance. In Atticus's manly world, even the processes of law itself must bend in the crisis to the silly ways of women.<sup>263</sup>

There is, however, one woman in *Mockingbird* who is neither silly nor servile, one who embodies manly virtues that Atticus himself admires as such. She is another of their neighbors, Mrs. Henry Lafayette Dubose.<sup>264</sup> Paradoxically, she loathes Atticus, largely for his representation of Tom, though Atticus greatly admires her. As it turns out, however, this paradox, too, is resolved very much in Atticus's favor.

Mrs. Dubose is a perversion of masculine virtues, a virago. Her trademark is a Confederate army pistol, “concealed among her numerous shawls and wraps.”<sup>265</sup> She is physically hideous<sup>266</sup> and thoroughly racist, sexist, and snobbish. She taunts Jem and Scout by calling Atticus “a nigger-lover,”<sup>267</sup> and she torments Scout about her

260. *Id.* at 290.

261. *See id.* at 98.

262. *Id.* at 291.

263. Johnson is right, as far as she goes, to argue that “[i]n the case of Boo Radley's killing of Bob Ewell . . . laws and boundaries must be overridden for justice to be done.” JOHNSON, *supra* note 12, at 106. It is important, however, to see precisely what, in Atticus's mind, the particular threat to justice is here.

264. *See* LEE, *MOCKINGBIRD*, *supra* note 1, at 114-21, 257.

265. *Id.* at 108. Lest we overlook the obvious phallic associations, the movie has Jem tell us she keeps the pistol in her lap.

266. *See id.* at 115-16. This is Scout's perception; Atticus explains, “She can't help that. When people are sick they don't look nice sometimes.” *Id.* at 117.

267. *Id.*

unladylike deportment and the prospect of her becoming a waitress at a local cafe, to the disgrace of her well-born mother from Montgomery.<sup>268</sup>

Atticus enjoins Jem to bear with her stoically, like a gentleman, but Jem breaks under the constant insults to his father. He retaliates by decapitating her prized camellias.<sup>269</sup> Having “fallen into her hands,”<sup>270</sup> as Atticus puts it, Jem must honor what seems at first a bizarre request. Late each afternoon, he must read to her from *Ivanhoe*.<sup>271</sup> The point of this exercise only becomes apparent with her death. Atticus, who as her lawyer was with her at the last, informs Jem that, after putting her business affairs in order, she had resolved to conquer her morphine addiction, “to leave this world beholden to nothing and nobody.”<sup>272</sup> For her, Jem’s readings were nothing more than distractions from the agonies of her ultimately successful withdrawal.

But for Jem Atticus meant these readings to be something more, as he explains:

“I wanted you to see something about her—I wanted you to see what real courage is, instead of getting the idea that courage is a man with a gun in his hand. It’s when you know you’re licked before you begin but you begin anyway and you see it through no matter what. You rarely win, but sometimes you do. Mrs. Dubose won, all ninety-eight pounds of her. According to her views, she died beholden to nothing and nobody. She was the bravest person I ever knew.”<sup>273</sup>

She was also “a great lady,” and Jem is duly impressed.<sup>274</sup> The scene, which concludes the book’s first part, closes with Jem “fingering the wide petals”<sup>275</sup> of the perfectly white Snow-on-the-Mountain camellia, symbol of pure and incorruptible southern womanhood,<sup>276</sup>

268. See *id.* at 110.

269. See *id.* at 111.

270. *Id.* at 120.

271. See *id.* at 114-15. As Claudia Durst Johnson points out, “[t]he malignancy of romance is most apparent in the association of Sir Walter Scott’s *Ivanhoe*, a novel synonymous with romance, with Mrs. Dubose, the repugnant old woman . . .” JOHNSON, *supra* note 12, at 69.

272. LEE, *MOCKINGBIRD*, *supra* note 1, at 120.

273. *Id.* at 121.

274. *Id.*

275. *Id.*

276. Hence the name of a Reconstruction-era vigilante band, the Knights of the White Camellia, “a particularly violent group of southern vigilantes, given to lynching and terrorizing the



which she had sent him as her parting *beau geste*—and Parthian shot.<sup>277</sup>

Self-immolation in gloriously lost causes is, of course, the stereotypically Cavalier and Confederate virtue, rivaled only by the aristocratic aloofness of “being beholden to nothing and no one.” These are the virtues Lucas embodies in *Intruder*, and it would be striking indeed if their ultimate exemplar in *Mockingbird* were Atticus’s candidate, Mrs. Dubose. Scout knows otherwise and has told us before Mrs. Dubose’s apotheosis. Describing the foul-mouthed abuse Atticus unflinchingly endured from his heroine, Scout says, “It was times like these when I thought my father, who hated guns and had never been to any wars, was the bravest man who ever lived.”<sup>278</sup>

Furthermore, Atticus has already stated his own position on lost causes. When Scout asked him whether they would win Tom Robinson’s case, he had replied, “Simply because we were licked a hundred years before we started is no reason for us not to try to win.”<sup>279</sup> Scout immediately recognized this as the spirit of “Cousin Ike Finch [who] was Maycomb County’s sole surviving Confederate veteran.”<sup>280</sup> But it is neither this nostalgic relic, given as he was to “rehash[ing] the war,”<sup>281</sup> nor the cantankerous Mrs. Dubose, secreting her CSA pistol, who ultimately stands for virtue, southern style. It is, of course, Atticus. He divorces Confederate pertinacity from both the re-living of past glories and the exorcizing of personal demons, wedding it to the progressive, public cause of racial justice.

Mrs. Dubose, then, is what theologians call a type or prefigure of Atticus, a kind of rough-hewn John the Baptist preparing us for his gentler Jesus. Moreover, she is not quite as “unbeholden” as she would like to believe. It is, after all, Atticus who sends Jem to relieve her suffering with his gentlemanly readings of Scott’s chivalrous epic. It is Atticus who recognizes her as the bravest person he ever knew and Atticus who uses her to educate his children in courage. Thus, she who denounces Atticus is eventually brought round to serving his purposes, even as the rebellious angels unwittingly serve God; those who curse him, bless him. Ultimately, Atticus even improves on God;

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black populace after the Civil War as a way of preserving the old southern way of life . . . .” JOHNSON, *supra* note 12, at 48-49.

277. See LEE, *MOCKINGBIRD*, *supra* note 1, at 121.

278. *Id.* at 109.

279. *Id.* at 84.

280. *Id.*

281. *Id.*

he, like Christ, is modest. Mrs. Dubose has wronged Atticus, and he implicitly forgives her (presumably because she knows not what she does).

*b. Intruder.* Gavin's relationships with women could not be more different from Atticus's. Seeing Atticus through the eyes of Scout, we would think he never had a sexual thought; seeing Gavin through Chick's eyes, we blush at both the adolescent romantic exuberance of his young adulthood and the almost ludicrous misogyny of his middle age. The latter comes out most clearly in the book's final chapter, when Gavin delivers to Chick a long excursus on how "the automobile has become our national sex symbol":<sup>282</sup>

[T]he American woman has become cold and undersexed; she has projected her libido onto the automobile not only because its glitter and gadgets and mobility pander to her vanity and incapacity . . . but because it will not maul her and touse her, get her all sweaty and disarranged. So in order to capture and master anything at all of her anymore the American man has got to make that car his own.<sup>283</sup>

When Chick protests, "That's not true," Gavin gives the basis for his opinions: "I am fifty-plus years old. . . . I spent the middle fifteen of them fumbling beneath skirts. My experience was that few of them were interested in love or sex either. They wanted to be married."<sup>284</sup>

As Chick will come to find out later, his uncle's assessment is not so much a deduction from false premises as an induction from too small a sample. We learn through Chick's narration in other Faulkner novels, particularly *The Town* and *The Mansion*, that fumbling beneath skirts was very much on his uncle's mind for the better part of fifteen years and that few women were interested in either love or sex with him.<sup>285</sup> The height of his romantic misadventures involves Eula Varne Snopes and her daughter, Linda. He pursues the married mother with awkwardly adolescent chivalry, ostensibly to defend her

282. FAULKNER, INTRUDER, *supra* note 4, at 233.

283. *Id.*

284. *Id.* at 234.

285. See BROOKS, *supra* note 141, at 194 ("For if any one thing about [*The Town*] soon becomes clear, it is that Gavin, and not for the first time in Faulkner's fiction, is treated as a figure of fun—almost as the butt of the author's jokes."); *id.* at 219 (observing that by the time of *The Mansion*, when he has graduated from Harvard, Chick "in spite of his affection for his uncle, sees him more and more as a lovable old fuddy-duddy").

universally and rightly doubted chastity;<sup>286</sup> he courts the daughter when she is barely an adolescent, plying her with poetry and ice cream floats on the dubious pretext of “forming her mind.”<sup>287</sup> At various times, he engages in fisticuffs on behalf of each.<sup>288</sup> As Richard Weisberg has observed, these indiscretions reveal not the sterling attributes we look for in our heroes, but the darker desires we fear finding in ourselves.<sup>289</sup>

At the risk of radical understatement, Gavin is a deeply sexually frustrated fellow by the time of *Intruder*.<sup>290</sup> Faulkner gives us ample reason to suspect that many of Gavin’s higher intellectual pursuits are thinly concealed sublimations. He flees to the University of Heidelberg when he loses Eula;<sup>291</sup> he uses poetry to impress Linda.<sup>292</sup> In stark contrast with Atticus’s behind-the-scenes service to the law as legislator, Gavin as city attorney presses an absurdly public lawsuit to harass Eula’s paramour, the mayor.<sup>293</sup> No dusty-street showdown with a mad dog redeems his masculinity. Rather, as Chick later observes about his quail-hunting, “[h]e—Gavin—wouldn’t be much of a gun even if he stopped talking long enough but now and then he would go with me.”<sup>294</sup> Gavin does eventually marry, but only to become a kind of cuckold by indirection. His wife is an old flame from another fine local family, the wealthy widow of a murdered New Orleans mobster whose children Gavin must assist from the well-feathered nest before he can resume his long-suspended wooing.<sup>295</sup>

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286. See WILLIAM FAULKNER, *The Town* [hereinafter FAULKNER, *The Town*], in SNOPEs, *supra* note 19, at 351, 391-93, 415.

287. *Id.* at 505-06; see FAULKNER, *The Mansion*, *supra* note 19, at 802.

288. Gavin scuffles with Eula’s husband out of jealousy. See FAULKNER, *The Town*, *supra* note 286, at 415. Gavin is also forced to defend himself from an attack by a boy enamored with Linda. See *id.* at 514.

289. See WEISBERG, *supra* note 14, at 88.

290. Eula has committed suicide, after committing Linda to his care, see FAULKNER, *The Town*, *supra* note 286, at 634-40; Linda herself, widowed and war-wounded, see FAULKNER, *The Mansion*, *supra* note 19, at 838-39, professes a love for her mentor that needs no consummation, *id.* at 904, then leaves town, never to return, *id.* at 1054-58.

291. See FAULKNER, *The Mansion*, *supra* note 19, at 795; FAULKNER, *The Town*, *supra* note 286, at 396, 437.

292. See FAULKNER, *The Mansion*, *supra* note 19, at 802; FAULKNER, *The Town*, *supra* note 286, at 505-06.

293. See FAULKNER, *The Town*, *supra* note 286, at 421.

294. FAULKNER, *The Mansion*, *supra* note 19, at 863.

295. This is recounted in the title story of *Knight’s Gambit*. See WILLIAM FAULKNER, *Knight’s Gambit* [hereinafter FAULKNER, *Knight’s Gambit*], in KNIGHT’S GAMBIT (Vintage Books 1978) (1939) [hereinafter KNIGHT’S GAMBIT]; see also FAULKNER, *The Town*, *supra* note 286, at 504 (briefly describing Gavin’s wife’s former marriage).

Gavin, like Atticus, has a sister—indeed, a twin—but she, unlike Aunt Alexandra, is in no need of enlightenment about her brother. She predicts not only that he will lose his first love through an excess of porch-swing poetry reading, but also that he will marry a widow with children;<sup>296</sup> with uncanny accuracy, she is right on both counts, about the same woman. It is this sister's son, Chick, who is the childless Gavin's understudy, almost exactly the reverse of Atticus and Alexandra's child-rearing arrangements.<sup>297</sup> Gavin's sister does play something of a supporting role, but this is particularly in furtherance of Gavin's quixotic romances, and it generally serves to limit their damage publicly while privately highlighting their absurdity.<sup>298</sup>

As there is in *Mockingbird* a female character, Mrs. Dubose, who parallels the protagonist, so there is in *Intruder* a female counterpoint, Miss Habersham, to Lucas.<sup>299</sup> But Miss Habersham, unlike Mrs. Dubose, is not a dark mirror giving a recognizable but distorted reflection of her male counterpart. She is of essentially the same heroic substance as Lucas himself, and she brings the same insights to Chick about his uncle and his world. In the end, the only ascendancy Gavin, perennially wrong about women in general, ever gains over Lucas is to point out that Lucas ultimately is beholden to Miss Habersham.

Miss Habersham's similarity to Lucas, especially from Chick's perspective, is adumbrated as he introduces her. She wears a hat and gold watch like his grandmother's, even as Lucas's matched his grandfather's;<sup>300</sup> her expensive gloves and shoes, "made to her measure in a New York shop,"<sup>301</sup> contrast with her secondhand pickup truck and unpainted house with "neither water nor electricity,"<sup>302</sup> just

296. See FAULKNER, *The Town*, *supra* note 286, at 393.

297. Unlike Gavin, Aunt Alexandra does have a child, but her son "left home as soon as was humanly possible" and remains deeply estranged from his parents. LEE, *MOCKINGBIRD*, *supra* note 1, at 85.

298. See BROOKS, *supra* note 141, at 194 ("Naturally, his twin sister, Maggie Mallison, loves him and, as he is well aware, would like to mother him and protect him from some of his follies.").

299. Thomas Shaffer has noted that the children in both stories learn about courage from these "elderly, single women." Thomas L. Shaffer, *On Teaching Legal Ethics in the Law Office*, 71 NOTRE DAME L. REV. 605, 610 n.24 (1996), but he does not go on to explore differences between these teachers and their lessons.

300. See FAULKNER, *INTRUDER*, *supra* note 4, at 74-75.

301. *Id.* at 76.

302. *Id.* at 75-76.

as the worn elegance of Lucas's attire contrasts with the rudeness of his cabin.

Yet, even here, the implicit comparison begins to run in Miss Habersham's favor: her dilapidated home is not a cabin but "the columned colonial house on the edge of town."<sup>303</sup> Lucas, as we have seen, is proud to be the oldest McCaslin living on the ancestral plantation; Miss Habersham's name "was now the oldest which remained in the county."<sup>304</sup> The county seat, indeed, was originally called "Doctor Habersham's,"<sup>305</sup> after her ancestor and the town's founder, whose ascendancy thus antedated the existing political order symbolized by the town's new name, Jefferson.

Even in independence, Lucas's most cherished quality, Miss Habersham excels him. Thanks to her land, she is as economically independent as he; she makes her living selling door-to-door the vegetables and chickens she and her retainers<sup>306</sup> raise. But personally, she is even more independent. She is "a kinless spinster of seventy";<sup>307</sup> though old and a widower by the time she helps rescue him, Lucas has had a wife and children.

And it is through his beloved wife that Lucas, who claims to be friendless and beholden to no one, comes to be both befriended by and beholden to Miss Habersham:

[O]ld Molly, Lucas's wife, who had been the daughter of one of old Doctor Habersham's, Miss Habersham's grandfather's, slaves, she and Miss Habersham the same age, born in the same week and both suckled at Molly's mother's breast and grown up together almost inextricably like sisters, like twins, sleeping in the same room, the white girl in the bed, the Negro girl on a cot at the foot of it almost until Molly and Lucas married, and Miss Habersham had stood up in the Negro church as godmother to Molly's first child.<sup>308</sup>

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303. *Id.* at 75.

304. *Id.* Faulkner emphasizes the antiquity of the Habershams as chief of Jefferson's three founding families elsewhere as well. See FAULKNER, *The Town*, *supra* note 286, at 628. Indeed, the town originally bore their name. See FAULKNER, *REQUIEM*, *supra* note 120, at 6-7. *But cf.* FAULKNER, *Knight's Gambit*, *supra* note 295, at 65-66 (implying the third family was Stevens, not Habersham).

305. FAULKNER, *REQUIEM*, *supra* note 120, at 7.

306. She has two "Negro servants," an elderly woman and her husband, FAULKNER, *INTRUDER*, *supra* note 4, at 76, who is the brother of Lucas's wife, Molly, *see id.* at 117. *See also* FAULKNER, *MOSES*, *supra* note 3, at 114 (referring to Molly's older brother living in Jefferson).

307. FAULKNER, *INTRUDER*, *supra* note 4, at 75.

308. *Id.* at 86; *see* FAULKNER, *MOSES*, *supra* note 3, at 357 (depicting a parallel account of the two women's long-standing relationship). In the earlier story, the prototype of Miss Haber-

Lucas, who prides himself on being descended from his illustrious forebears through the male line, is rescued by the female sole surviving heir of a longer line. And Lucas is not even rescued in his own name. Miss Habersham comes not primarily to help Lucas, the man, but derivatively, in the name of Molly, another woman.

It is Chick who remembers the connection with Molly, and it is he who also sees that there is something more between Miss Habersham and Lucas. Theirs is not just a quasi-feudal tie between vassal and lady, but also a shared insight into the nature of the social and legal order in which they are both outsiders, Titans surviving the end of their time. Indeed, just as Chick originally failed to appreciate Lucas's noble qualities because he was black, so Chick had not only failed to take Miss Habersham's proper measure at the outset, but also dismissed her as entirely irrelevant, because she was an old woman.<sup>309</sup>

This shared outsider status gives Miss Habersham a particular appreciation of Lucas's plight. When Chick tells her Lucas's account of the murder, Miss Habersham knows immediately why Lucas did not confide in Gavin:

'Yes,' Miss Habersham said. 'Of course. Naturally he wouldn't tell your uncle. He's a Negro and your uncle's a man . . . Lucas knew it would take a child—or an old woman like me: someone not concerned with probability, with evidence. Men like your uncle and Mr. Hampton [the sheriff] have had to be men too long, busy too long. —Yes?'<sup>310</sup>

Chick had first heard this analysis in a homey, stereotypically "other" setting: an elderly black man, with the help of an elderly white witch, had located a lost ring of Chick's mother's under a pig trough.<sup>311</sup> It was a friendship ring, "a cheap thing with an imitation

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sham was called Miss Worsham. See WATSON, *supra* note 15, at 109 (identifying Miss Habersham with Miss Worsham).

309. See FAULKNER, *INTRUDER*, *supra* note 4, at 76-81; see also *id.* at 77 ("He had forgotten Miss Habersham. He had dismissed her; he had said 'Excuse me' and so vanished her . . ."). Even after their successful graveyard expedition, he repeatedly finds himself thinking that, as an old woman and a lady, she should not be involved in such things. See *id.* at 110, 114.

310. *Id.* at 88.

311. See *id.* at 69. Faulkner leaves no question about her being a witch: "Mrs. Downs: an old white woman who lived alone in a small filthy shoebox of a house that smelled like a fox-den on the edge of town in a settlement of Negro houses . . . who . . . didn't merely tell fortunes and cure hexes but found things . . ." *Id.*; see also WILLIAM FAULKNER, *SANCTUARY* 200 (First Vintage Int'l ed. 1993) (1931) ("[T]he ramshackle house of an old half-crazed white woman who was believed to manufacture spells for negroes. It was on the edge of town . . .").

stone,” one of a pair, “which his mother and her roommate at Sweetbriar Virginia had saved their allowances and bought and exchanged to wear until death as young girls will . . . .”<sup>312</sup> The outsiders’ uncanny, intuitive, almost clairvoyant approach had succeeded where Chick’s family’s more orthodox methods had failed. Chick had explicitly doubted whether this alternative approach could apply in the serious world of his uncle, the real and important world of adult white men, particularly in life-and-death matters like Lucas’s case.<sup>313</sup>

Miss Habersham shows him that it can.<sup>314</sup> Chick continues to doubt Lucas’s claim that someone else committed the murder;<sup>315</sup> Miss Habersham accepts it immediately on its own authority or, more precisely, on Lucas’s authority. And she moves to do something about it, without entertaining the probability of failure but not without attention to logistics: she lends her pickup and lines up the picks and shovels.<sup>316</sup> Her after-hours presence in Gavin’s office when Chick arrives there Sunday evening from Lucas’s jail cell is uncanny and never accounted for; she is just there, as the need arises.

This event points to the most striking dimension of Miss Habersham’s world—her time. As Chick himself comes to understand it, her time requires the attention in which access to truth is available universally, to anyone: “[A]ll they had to do was just to pause, just to stop, just to wait . . . .”<sup>317</sup> This is the very element lacking in the men’s time, which is why she says they miss the truth of Lucas’s story.<sup>318</sup> In

312. FAULKNER, *INTRUDER*, *supra* note 4, at 68-69.

313. *Id.* at 70-71 (“Only this was no obscure valueless little ring exchanged twenty years ago between two young girls but the death by shameful violence of a man who would die not because he was a murderer but because his skin was black.”).

314. *See* BROOKS, *supra* note 141, at 286 (“Charles Mallison would, of course, have been unable to perform his mission without the aid of Miss Habersham. He had to have . . . her pickup truck, but he needs even more than that her counsel and her moral backing.”). Gavin himself puts the matter more bluntly: “[Y]ou might have gone out there without her to drag you by the hand but Aleck Sander wouldn’t and I’m still not so sure you would when you came right down to it.” FAULKNER, *INTRUDER*, *supra* note 4, at 104-05.

315. *See* FAULKNER, *INTRUDER*, *supra* note 4, at 86-87.

316. *See id.* at 89.

317. *Id.* at 88. This is remarkably close to the “careful attention,” PLATO, *Euthyphro*, in EUTHYPHRO, APOLOGY, CRITO 1, 16 (F.J. Church & Robert J. Cumming trans., MacMillan 1948) (n.d.), to which Socrates, on the eve of his execution, calls back his frantic friend Crito for their final dialogue. *See* PLATO, *Crito*, in EUTHYPHRO, APOLOGY, CRITO, *supra*, at 51, 59. It is also reminiscent of Milton’s mature reflection on his blindness: “They also serve who only stand and wait.” MILTON, *supra* note 57, at 190. This latter position, as we have seen, *see supra* notes 55-57 and accompanying text, is precisely the position in which Chick finds himself vis-à-vis Lucas at the novel’s beginning.

318. *See id.* at 88, 116.

presiding over Chick and Aleck Sander's exhumation, she insists that they take time reverently to remove and replace the flowers on the grave despite their alarming lack of time.<sup>319</sup> On the boys' nearly heedless panic, she imposes the reverence of an almost religious order.

Yet, this is an order very much at odds with that of adult males, business and professional men. Her real, organic time sharply contrasts with their artificial, mechanical, nine-to-five schedule. Her time is responsive to the exigencies at hand but never wholly determined by them; their schedules force the needs at hand into a Procrustean bed of office hours, only to be swept away themselves in the rush of unpredictable events. Hers is flexible; theirs, static. When Gavin, informed of their discoveries, insists on waiting for daylight to re-exhume the body, she cuts him off with a curt observation: "We didn't."<sup>320</sup>

If only briefly and symbolically, Miss Habersham makes even the menfolk bend their time to hers. Gavin astutely observes that, if she will stay at the jail with Lucas while they reopen the grave, the Gowries, out of deference to her sex, will not lynch Lucas in the men's absence. Before acceding, she insists that they take her home to fetch her mending. Now that the crisis is over, she will not sit idly by or, worse still, impose on the jailer's wife the social obligation of entertaining her.<sup>321</sup> Time to her is more than money and more than a Newtonian dimension: it is a fluid element with which she lives in harmony.<sup>322</sup>

Even in stereotypically manly things, Miss Habersham excels her men. She proves herself an excellent equestrian, dismissing Chick's apology for not having a ladies' sidesaddle with a disdainful "pah."<sup>323</sup> She rides astride, literally like a cavalier, in a culture in which the cavalries of J.E.B. Stuart and N.B. Forrest have cultic status.

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319. *See id.* at 100, 127.

320. *Id.* at 110.

321. *See id.* at 116.

322. Miss Habersham's time is emphatically not the enforced idleness of southern lady time, the ritualized, formalistic, numbingly boring time of Aunt Alexandra's missionary circle in *Mockingbird*. *See* LEE, *MOCKINGBIRD*, *supra* note 1, at 241 (depicting Scout's impressions of a dull meeting of the missionary circle). From Scout's innocent perspective, the excitement of men's time is vastly preferable. *See id.* at 246-47. The wiser Miss Habersham knows better than both; she carries her mending to the jail. *See* FAULKNER, *INTRUDER*, *supra* note 4, at 116.

323. FAULKNER, *INTRUDER*, *supra* note 4, at 97.



Lucas, as we have seen, embodies the resolution of defeated but unvanquished Confederate youth;<sup>324</sup> his female counterpart, Miss Habersham, acts with that resolution to save him, doing what needs doing in the face of seemingly inevitable failure.<sup>325</sup> Unlike Mrs. Du-bose, she does not act for her own sake; unlike Atticus, she does not act through the law, or on the basis of faith in the law. Atticus believes firmly in the justice of the courts and the efficacy of his own words before them; Miss Habersham rests her faith, rightly as it turns out, on her own actions and the word of the beleaguered Lucas Beauchamp, uttered in jail.<sup>326</sup>

It is only to her, at the end of the book, that Lucas must pay homage, at the behest of Gavin. He pays in flowers, the currency of her kind, which Lucas must get from Gavin's sister, since his wife, Molly, who grew the flowers at his house, is dead.<sup>327</sup> Lucas's token payment to Gavin, as we have seen, asserts his mastery over those who work for bourgeois money.<sup>328</sup> By contrast, his payment of flowers to Miss Habersham acknowledges fealty to one who works in a very different, and implicitly superior, realm. That superiority, Miss Habersham has shown us, is not the enforced elevation of genteel white ladies, into which Chick originally and repeatedly tried to dismiss her. Nor is it an untenable, isolating self-reliance of adult men. It is, rather, an organic, almost familial network of both friendship and practical, effectual virtue, a fellowship to which even the heroic Lucas belongs only by proxy, through his wife.

*c. Summary.* At the outset of the final chapter of *Mockingbird*, Scout declares, "Haints, Hot Steams, incantations, secret signs, had vanished with our years as mist with sunrise."<sup>329</sup> Aunt Alexandra had a premonition of evil that fateful night,<sup>330</sup> but she had long since been shown to be woefully unreliable. None other than the wise Calpurnia had dismissed such references to the supernatural as "nigger-talk,"<sup>331</sup> and when Calpurnia herself displays

324. See *supra* notes 150-51 and accompanying text.

325. This is her exchange with Chick, when he realizes "the simple inert unwieldy impossible physical vastness of what he faced":

"We cant possibly do it."

"No," Miss Habersham said. "Well?"

FAULKNER, *INTRUDER*, *supra* note 4, at 89.

326. See *id.* at 228 ("I know Lucas Beauchamp.").

327. See *id.* at 235-36.

328. See *supra* notes 215-18 and accompanying text.

an uncanny intuition, Scout dismisses it as “some voo-doo system.”<sup>332</sup> Very early in *Intruder*, Chick realizes that his mother’s friendship with her girlhood roommate is like Miss Habersham’s sisterly tie with Molly, the connection that is essential to saving Lucas. And he comes to appreciate that the “outsider” mode of experience and praxis, peculiar in his world to women, blacks, the elderly, and the young, ought not be rejected simply on account of these associations. Quite the contrary, he comes to see the busyness of “menfolks” as inferior in fundamental ways to the womanly, even the witchly.

2. *Lawyers, Race, and Class*. Both Faulkner and Lee portray a gallery of lower-class whites distinct from both the country gentry and the urban professional class, themselves mostly descended from the gentry. Both authors draw the racism of their poor whites in stark relief, and both make it an immediate threat to the very lives of their innocent black defendants. Their principal false accusers are very devils: Faulkner’s Crawford Gowrie is a thief,<sup>333</sup> a fratricide,<sup>334</sup> and a corpse-defiler;<sup>335</sup> Lee’s Bob Ewell is a violent drunkard, a child abuser,<sup>336</sup> and an attempted murderer. Faulkner’s “Beat Four” and Lee’s “Old Sarum” are rural enclaves of violent autonomy, literally laws unto themselves, where the writ of liberal law only sporadically runs.<sup>337</sup>

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329. LEE, *MOCKINGBIRD*, *supra* note 1, at 268.

330. *See id.* at 267.

331. *Id.* at 44.

332. *Id.* at 112. Miss Maudie dismisses rumors about Boo Radley as “three-fourths colored folks and one-fourth Stephanie Crawford.” *Id.* at 52.

333. To make matters worse, he steals from his own business partners, who were his younger brother and his handicapped uncle. *See* FAULKNER, *INTRUDER*, *supra* note 4, at 217-18.

334. The town “repudiat[ed]” Crawford Gowrie upon learning of his fratricide, thereby doing their worst to him, “depriv[ing] him to the full extent of their capacity of his citizenship in man.” *Id.* at 198.

335. Miss Habersham pronounces the final judgment here: “‘He [Crawford] put him [his brother Vinson] in quicksand,’ she said with calm and implacable finality . . .” *Id.* at 226.

336. Atticus proves at trial that Mr. Ewell beats Mayella, and Tom’s testimony strongly implies incest. According to Tom, she told him she had never been kissed by a grown man, since “what her papa do to her don’t count.” LEE, *MOCKINGBIRD*, *supra* note 1, at 206; *see also* JOHNSON, *supra* note 12, at 7 (resolving ambiguities in the direction of incest).

337. *See* FAULKNER, *INTRUDER*, *supra* note 4, at 35 (describing Beat Four’s violence and turmoil); JOHNSON, *supra* note 12, at 66 (“Old Sarum . . . is a place where violence always threatens to spill over into the more restrained town of Maycomb.”); LEE, *MOCKINGBIRD*, *supra* note 1, at 155-66 (providing an account of a lynch mob from Old Sarum).

On the other hand, neither author reduces all poor whites to easy, even tempting, negative stereotypes.<sup>338</sup> Instead, both Faulkner and Lee attribute to their lower-class whites the virtues of sturdy yeomanry, virtues that their lawyers very much admire,<sup>339</sup> and both show that even members of lynch mobs can be sympathetic figures.<sup>340</sup> Both draw their law enforcement officers from the white lower-middle class,<sup>341</sup> and both not only absolve them of any active sympathy with the lynch mobs, but also show them to be heroic upholders of the rule of law, ready to risk their very lives to protect their charges.<sup>342</sup> Indeed, the lawyers in both stories insist on solidarity with

338. See Frank H. Lyell, *One Taxi Town*, N.Y. TIMES BOOK REV., July 10, 1960, at 5 (“Miss Lee has not tried to satisfy the current lust for morbid, grotesque tales of Southern depravity.”). *But cf.* JOHNSON, *supra* note 12, at 41 (“Virtually every external feature of the Gothic can be located in *To Kill a Mockingbird* . . .”). For a discussion of the frequent recourse to such stereotypes in fiction about the South, and their recurrent popularity, see BROOKS, *supra* note 141, at 10-11. In *Intruder* itself, Chick is well aware of the appeal of southern stereotypes, especially to northern audiences: “[A] volitionless, almost helpless capacity and eagerness to believe anything about the South not even provided it be derogatory but merely bizarre enough and strange enough . . .” FAULKNER, *INTRUDER*, *supra* note 4, at 150. The classic work of southern stereotypes, if the term classic can indeed be applied to this genre, is ERSKINE CALDWELL, *TOBACCO ROAD* (1932). See also JAMES GOODMAN, *STORIES OF SCOTTSBORO* 148 (1994) (noting a defense counsel’s explanation of how the jury could reach a guilty verdict: “If you ever saw those creatures, those bigots whose mouths are slits in their faces, whose eyes popped out at you like frogs, whose chins dripped tobacco juice, bewhiskered and filthy, you would not ask how they could do it.”).

339. See BROOKS, *supra* note 141, at 11 (noting that although Faulkner was aware of the comic possibilities in poor white characters, he “frequently reveals his sympathies with the characters who come of poor-white stock, seeing in them an integrity, dignity, and sense of values which is not commensurate with their inadequacies in speaking or writing formal English”).

340. See FAULKNER, *INTRUDER*, *supra* note 4, at 214 (suggesting that the Gowries [a family of lower-class whites] refrained from lynching Lucas because they know from the outset that he is innocent); LEE, *MOCKINGBIRD*, *supra* note 1, at 164-65 (describing how a lynch mob disperses after Scout strikes up a conversation with Walter Cunningham, Sr., a member of the mob who is also the father of one of her schoolmates).

341. See FAULKNER, *INTRUDER*, *supra* note 4, at 105:

He [Sheriff Hampton] was a countryman, a farmer and son of farmers when he was first elected and now owned himself the farm and house where he had been born, living in the rented one in town during his term of office then returning to the farm which was his actual home at each expiration, to live there until he could run for—and be elected—sheriff again.

LEE, *MOCKINGBIRD*, *supra* note 1, at 288 (“Mr. Tate’s [stubbornness] was unschooled and blunt, but it was equal to my father’s.”).

342. See FAULKNER, *INTRUDER*, *supra* note 4, at 51-53 (describing the steadfastness of the jailer and deputy in guarding Lucas); LEE, *MOCKINGBIRD*, *supra* note 1, at 162 (alluding to the sheriff and his deputies’ pursuit of a suspected lynch mob deep into the woods); see also FAULKNER, *INTRUDER*, *supra* note 4, at 227 (“[Sheriff Hampton] has a way of carrying right along with him into all situations maybe not peace, maybe not abatement of the base emotions

their communities, including their racist members,<sup>343</sup> and each helps his adolescent male protégé address a deep ambivalence between communal loyalty and revulsion at racism. Each protégé, in turn, comes to see his and his mentor's role toward the community as one of respected, albeit sometimes tragic, leadership.

Yet, there are striking and instructive differences. Lee's racists, or at least some of them, have an element of incorrigibility that Faulkner's lack. Lee's poor whites, as a jury, convict Tom even after Atticus proves his innocence, and their upper-class white sympathizers never show any shame about the injustice.<sup>344</sup> Faulkner's poor whites, even the family of Lucas's alleged victim, accede to Lucas's release without any trial at all, as soon as the evidence of his innocence is established.<sup>345</sup> They never admit, much less apologize for, their error, but neither do they assert their rightness. Indeed, in acting as if nothing untoward had occurred, they implicitly acknowledge their guilt.<sup>346</sup> Bob Ewell egregiously lies to support his daughter's false accusation of rape, and he attempts to murder Atticus's children after Atticus reveals the lie. Nathan Bedford Forrest ("Nub") Gowrie<sup>347</sup> ignores Chick's profound affront to his youngest son—Chick's disturbing of his grave to exonerate a black man—once it becomes clear that the dead son's elder brother is the real culprit. The truth

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but at least a temporary stalemate of crude and violent behavior just by moving slow and breathing hard.”).

343. In *Mockingbird*, Atticus continues to think of his fellow community members as friends, despite the hostility they express toward him. See LEE, *MOCKINGBIRD*, *supra* note 1, at 84. Atticus's faith in his fellow citizens is not shaken, even when those citizens threaten him with violence. The morning after a lynch mob threatens Atticus and Tom, Atticus describes one of the mob's members as still a friend and “basically a good man.” *Id.* at 168. Likewise, in *Intruder*, Gavin sees himself as no better than the citizens who condemn him, and he refuses to share in Chick's sense of moral superiority to their community. See FAULKNER, *INTRUDER*, *supra* note 4, at 205.

344. Mrs. Merriweather, “the most devout lady in Maycomb” and a peer of Aunt Alexandra, suggests that black servants will stop grumbling and that “[i]f we just let them know we forgive 'em, that we've forgotten it, then this whole thing will blow over.” LEE, *MOCKINGBIRD*, *supra* note 1, at 243-44.

345. Cleanth Brooks emphasizes this in *William Faulkner: The Yoknapatawpha Country*. See BROOKS, *supra* note 141, at 281-82; see also FAULKNER, *INTRUDER*, *supra* note 4, at 214 (demonstrating Nub Gowrie's readiness to kill his older son for the murder of his brother).

346. See FAULKNER, *INTRUDER*, *supra* note 4, at 192. Chick observes that “[t]hey ran. . . . They reached the point where there was nothing left for them to do but admit that they were wrong. So they ran home.” *Id.*

347. See *id.* at 100.

brings Ewell to cynical, even diabolical, denial; in Gowrie, it arouses deep, and deeply human, grief.<sup>348</sup>

As Lee and Faulkner give very different accounts of lower-class racists, so they treat very differently important aspects of their lawyers' relationships to them. Both Gavin and Atticus purport to understand what drives racism, and on that basis to forgive it, even as they oppose it. But Atticus's virtue is defined in total opposition to racism; Gavin's moral failing lies largely in his complicity with it, conscious as well as unconscious. In *Mockingbird*, sympathy for Tom Robinson against the racists is the precise demarcation of "real" social standing. People "with background" are with Atticus; those against him, whatever their pedigree, are "trash."

In *Intruder*, Gavin, for all his aristocratic ancestry, his Harvard and Heidelberg education, cannot escape the racist assumptions that infect his entire community. He only belatedly understands Lucas's innocence, and he never quite appreciates the fullness of his nobility. Moreover, his affiliation with his racist compatriots, even the lynchers, has an aspect Atticus's lacks. Gavin, quite unlike Atticus, insists on standing with them, despite the evil of their position, against outsider reformers. As we shall see in the next section, Gavin insists at great, indeed wearying, length on taking his stand with a solid South, his country, right or wrong; for Atticus, this issue never arises.

Inextricably bound up with issues of class are issues of race. Both novels depict blacks as an underclass, repressed and oppressed. Both show their lawyers to be opposed to lynching, to the point of being willing to risk their lives to prevent it. On the other hand, neither lawyer is particularly radical on matters of race.<sup>349</sup> The central difference between the stories, however, is their treatment of race relations. *Mockingbird*, particularly the trial of Tom Robinson and its impact on Atticus's children, leaves us with the unmistakable impres-

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348. Indeed, the grief that Chick sees Gowrie experience over the defilement of his son's body reminds him of the grief he saw in Lucas over the death of his wife, "where in a sense a heart capable of breaking had no business being." *Id.* at 158; see also BROOKS, *supra* note 141, at 288 ("The enlargement of the boy's sympathies thus works in two directions to include the chief of the lynchers-to-be as well as the man in danger of being lynched.").

349. See Jolly, *supra* note 17, at 224 (speculating that Gavin would have opposed the "massive integration" phase of the civil rights movement because of its reliance on heavy federal involvement). Atticus, in rejecting the epithet of radical, says "I'm about as radical as Cotton Tom Heflin," a notorious segregationist. LEE, *MOCKINGBIRD*, *supra* note 1, at 264; see also GOODMAN, *supra* note 338, at 220 (quoting Heflin, a former U.S. Senator, as warning that anything less than a conviction in the Scottsboro case would put "wicked thoughts in the minds of the lawless Negro men").

sion that Atticus is right about race; *Intruder* shows Gavin's attitude to be deeply flawed, particularly in his misassessment of Lucas Beauchamp, who has revealed to Chick a very different perspective on race.

a. Mockingbird. The proper ordering of the social classes and relations between them are very much an issue in *Mockingbird*. Aunt Alexandra's criterion, a travesty of traditional southern female opinion,<sup>350</sup> is a muddled notion of pedigree and "background" that even the children can parody, if not quite escape:

Aunt Alexandra was of the opinion, obliquely expressed, that the longer a family had been squatting on one patch of land the finer it was.

"That makes the Ewells fine folks, then," said Jem. The tribe of which Burris Ewell and his brethren consisted had lived on the same plot of earth behind the Maycomb dump, and had thrived on county welfare money for three generations.<sup>351</sup>

Against Aunt Alexandra's comically genealogical notion of class, Scout places her childlike version of Atticus's implicit moral meritocracy: "Somewhere, I had received the impression that Fine Folks were people who did the best they could with the sense they had . . ."<sup>352</sup> When Atticus tries to oblige Aunt Alexandra by presenting Jem and Scout with their aunt's view on what it means to be a Finch, "the product of several generations' gentle breeding,"<sup>353</sup> things end in a muddle of mutual embarrassment. All three know that Atticus takes a different position, but even he is unable at this point to articulate it clearly.<sup>354</sup>

The children struggle to reconcile Aunt Alexandra's preachments on "background" with Atticus's meritocratic practice.<sup>355</sup> Jem suggests that "[b]ackground doesn't mean Old Family" but rather "how long your family's been readin' and writin'";<sup>356</sup> Scout maintains

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350. See LEE, *MOCKINGBIRD*, *supra* note 1, at 143-44.

351. *Id.* at 140.

352. *Id.*

353. *Id.* at 143.

354. See *id.* at 143-45.

355. See *id.* at 237-40.

356. *Id.* at 239.

that “there’s just one kind of folks. Folks.”<sup>357</sup> Jem, however, cannot concur in this innocent affirmation. The cataclysm of Tom Robinson’s conviction has shaken the foundation of his democratic faith: “If there’s just one kind of folks, why can’t they get along with each other? . . . [W]hy do they go out of their way to despise each other?”<sup>358</sup>

But if Tom Robinson’s case destroys a childlike moral egalitarianism, it does so to make way for a more mature moral meritocracy. As we have seen, Miss Maudie Atkinson provides the synthesis,<sup>359</sup> modulating social class and personal morality to identify Maycomb’s real aristocrats:

“The handful of people in this town who say that fair play is not marked White Only; the handful of people who say a fair trial is for everybody, not just us; the handful of people with enough humility to think, when they look at a Negro, there but for the Lord’s kindness am I. . . . The handful of people in this town with background, that’s who they are.”<sup>360</sup>

This is, of course, a very particular virtue, and its exponents have Atticus at their head.

Atticus, for his part, identifies the other end of Maycomb’s sociomoral spectrum, the true “trash.” As he tells Jem, they are his principal opponents in Tom Robinson’s case, those whose essential vice negates his defining virtue:

“As you grow older, you’ll see white men cheat black men every day of your life, but let me tell you something and don’t you forget it—whenever a white man does that to a black man, no matter who he is, how rich he is, or how fine a family he comes from, that white man is trash.”

Atticus was speaking so quietly his last word crashed on our ears. I looked up, and his face was vehement. “There’s nothing more sick-

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357. *Id.* at 240.

358. *Id.* On Jem’s alienation from the white community, see *id.* at 223-24 (describing Jem’s immediate reaction to Tom’s conviction); *id.* at 227-29 (depicting Jem’s discussion of the conviction with Miss Maudie Atkinson); *id.* at 260-61 (depicting Atticus’s explanation of Jem’s confusion to Scout).

359. See *supra* note 239 and accompanying text.

360. LEE, *MOCKINGBIRD*, *supra* note 1, at 249-50.

ening to me than a low-grade white man who'll take advantage of a Negro's ignorance."<sup>361</sup>

On other occasions, Atticus explicitly links the use of racial epithets with low class standing.<sup>362</sup>

Atticus had begun his early, ill-fated, and palpably unauthentic disquisition to his children on the standing of their family by describing it as "the facts of life," reflecting his sister's insistence on the fundamentality of class.<sup>363</sup> In the same passage in which he identifies "trash," Atticus points to a very different fundamental reality:

"There's something in our world that makes men lose their heads—they couldn't be fair if they tried. In our courts, when it's a white man's words against a black man's, the white man always wins. They're ugly, but those are the facts of life."<sup>364</sup>

Yet, even Scout realizes that this is not the whole story, but merely "another scrap to add to Jem's definition of background."<sup>365</sup> There is, she senses, something not quite complete about this synthesis, with its subordination of class to virtue. Jem's own amateur taxonomy reflects a sociological insight that cannot be reduced without remainder to personal morality, without distorting their social world:

"There's four kinds of folks in the world. There's ordinary folks like us and the neighbors, there's the kind like the Cunninghams out in the woods, the kind like the Ewells down at the dump, and the Negroes."

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361. *Id.* at 233. Earlier, Scout had observed that, according to Atticus, "cheatin' a colored man" is "the worst thing you can do." *Id.* at 214.

362. He forbids Scout to use the word "nigger" on the grounds that it is "common," *id.* at 82, and he explains use of the expression "nigger-lover" this way: "ignorant, trashy people use it when they think somebody's favoring Negroes over and above themselves. It's slipped into usage with some people like ourselves, when they want a common, ugly term to label somebody," *id.* at 117.

363. *Id.* at 143.

364. *Id.* at 233. As Thomas Shaffer notes: "The judgment Atticus hands down to his children regarding people who are trash seems to contradict the ethic he otherwise announces to them, namely, the ethic of climbing into the other person's skin." Shaffer, *Growing Up Good*, *supra* note 5, at 555. Indeed, the one time Atticus suggests that this approach be applied to Bob Ewell, it is not to understand the source of Ewell's wickedness, but to explain a particular outburst—spitting in Atticus's face—in terms of that wickedness. See LEE, *MOCKINGBIRD*, *supra* note 1, at 231.

365. *Id.* at 250.



“The thing about it is, our kind of folks don’t like the Cunninghams, the Cunninghams don’t like the Ewells, and the Ewells hate and despise the colored folks.”<sup>366</sup>

This account, which strongly reflects Aunt Alexandra’s perspective, is a necessary supplement to Atticus’s analysis of social standing.

For one thing, blacks, whatever their virtue, are definitely not included in Jem and Miss Maudie’s “people like us.”<sup>367</sup> As Jem’s taxonomy makes explicit, everyone acknowledges them as the lowest class, and not just as a matter of economic reality. Even in their moral definitions of “background,” the most enlightened of the uppermost class, Miss Maudie and Atticus, condescend toward blacks. For Miss Maudie, blackness is an unmistakable mark of divine pretermission, if not quite reprobation, a stigma right-thinking white people see and allow for;<sup>368</sup> for Atticus, blacks are susceptible, if not gullible, and decent white people do not take advantage of them. For both Miss Maudie and Atticus, blacks’ exclusion from the virtue of “our kind of folks” is implicit in their very definition of that virtue: blacks are those permanent unfortunates in the helping of whom we—“folks like us”—become virtuous.

Conversely, the virtuous are only those who are, or become, “folks like us.” Aristocratic roots seem almost a necessary, though not quite a sufficient, condition of Miss Maudie and Atticus’s brand of virtue. No lower-class whites seem immune to the infection of racist unreason, and none of them ever seems to be cured. Not all upper-class whites are immune; many in Aunt Alexandra’s missionary circle, for example, spout the foulest racism, as does the dowager Mrs. Dubose. Even Atticus’s own children are susceptible.<sup>369</sup>

The critical factor seems to be education, and not so much elitist, liberal education as education in elitist liberality. Though Jem’s effort to explain background in terms of education<sup>370</sup> is held up as farcical, it has surprising explanatory power. All the white upper-class folk who support Atticus are themselves either professional people, the chil-

366. *Id.* at 239.

367. *Id.* at 228. Miss Maudie juxtaposes “people like us” and Atticus’s “colored friends.” *Id.*

368. Miss Maudie dismisses rumors about Boo Radley as “three-fourths colored folks.” *Id.* at 52.

369. Scout uses “nigger” to describe a muddy snowman, without malice and to what the author apparently intended to be taken as humorous effect. *See id.* at 74. Dolphus Raymond comments on the corruption of children after overhearing Scout’s observation to Dill that Tom Robinson was “after all . . . just a Negro.” *Id.* at 211-14.

370. *See supra* note 356 and accompanying text.

dren of professional people, or officers of the law: Atticus's sympathetic brother is a doctor, as was Miss Maudie's father; Atticus's only other identified supporters are Heck Tate, the sheriff; John Taylor, the presiding judge; and Braxton Underwood, the local newspaper editor. The exceptions that tend to prove the rule are two plantation owners: Link Deas, who also runs a store in town and who was Tom's employer, and Dolphus Raymond, who lives down on the river with his black mistress and their outcast children.

Miss Maudie leaves no doubt, however, that there are other "people like us,"<sup>371</sup> and Scout suggests why:

Because its primary reason for existence was government, Maycomb was spared the grubbiness that distinguished most Alabama towns its size. . . . Maycomb's proportion of professional people ran high: one went there to have his teeth pulled, his wagon fixed, his heart listened to, his money deposited, his soul saved, his mules vetted.<sup>372</sup>

Maycomb, it seems, is something of a professional enclave, "an island in a patchwork sea of cottonfields and timberland."<sup>373</sup> Education, particularly professional education, is its bulwark against the backwardness of the countryside and the racism that arises there.<sup>374</sup>

Lee's aristocrats are always reading.<sup>375</sup> Atticus starts every morning, in proper professional fashion, with the newspaper, and he spends each evening with a book.<sup>376</sup> Sitting in his lap each night, Scout learned to read so effortlessly that Jem brags she was born knowing how. Her teacher looks foolish for failing to appreciate her precociousness as a student and Atticus's genius as a teacher. Calpurnia, best of the black folks, taught Scout to write.<sup>377</sup> Calpurnia herself learned from "Miss Maudie Atkinson's Aunt, old Miss Buford," who

371. LEE, *MOCKINGBIRD*, *supra* note 1, at 228.

372. *Id.* at 141.

373. *Id.* Early in the novel, Scout provides a comic description of North Alabama as "full of Liquor Interests, Big Mules, steel companies, Republicans, professors, and other persons of no background." *Id.* at 23.

374. See JOHNSON, *supra* note 12, at 60 ("Jem is probably not far from correct in supposing that education makes the crucial difference between white social classes.").

375. See *id.* at 107-11 (discussing the importance of literacy to the virtuous characters in *Mockingbird*, and the novel's tendency to symbolize virtue itself with reading.).

376. See LEE, *MOCKINGBIRD*, *supra* note 1, at 23, 98; see also JOHNSON, *supra* note 12, at 110 ("The most civilized, the most humane, the wisest character is the one who reads obsessively."); RADWAY, *supra* note 13, at 338 ("In my mind there was more than a chance connection between the endless scenes of Atticus reading at night in the halo of light and his quiet determination to defend 'the Negro,' Tom Robinson . . .").

377. See LEE, *MOCKINGBIRD*, *supra* note 1, at 23-25.

taught her from a copy of Blackstone's *Commentaries*, a gift from Atticus's father.<sup>378</sup> Calpurnia's son Zeebo, a garbage collector, appears in the story principally to make the point that she taught him to read from the *Bible* and Blackstone,<sup>379</sup> and that his literacy makes him a leader in their church despite his humble occupation.<sup>380</sup> Jem, for all his adolescent male energy, is addicted to books.<sup>381</sup> Miss Maudie Atkinson, despite her gardener's conviction that "time spent indoors was time wasted,"<sup>382</sup> quotes Holy Writ to the consternation of lower-class literalists, the Primitive Baptists, from "out of the woods."<sup>383</sup>

If lower-class whites are united in their ignorance and racism, they are divided by another distinctly moral quality: their industriousness. The Cunninghams, the eponymous people "of the woods," are, as we have seen, paradigmatic Jeffersonian yeomen, indefatigable workers of proud peasant stock.<sup>384</sup> The Ewells "of the dump" are congenitally lazy, ever on the dole. If the Cunninghams are backward and ignorant, it is the fault of economic forces beyond their control; the Ewells' misery is of their own making. Walter Cunningham, Sr., declines a WPA job rather than risk losing his ancestral farm and his political independence;<sup>385</sup> Bob Ewell "made himself unique in the annals of the nineteen-thirties" as "the only man . . . who was fired from the WPA for laziness."<sup>386</sup> Walter Cunningham, Jr., clad in "a clean shirt and neatly mended overalls," has hookworms because he has no

378. *Id.* at 135-36. Janice Radway observes that "it is essential to note that the extension of literacy and recognition of [Calpurnia's] individuality that seem to follow from it are conferred by authoritative, white men." RADWAY, *supra* note 13, at 341.

379. *See* LEE, MOCKINGBIRD, *supra* note 1, at 135-36.

380. *See id.* at 131-32. Zeebo does make one other appearance, in his capacity as garbage collector, to remove the corpse of a mad dog Atticus has slain. *See id.* at 106-07.

381. *See id.* at 39 ("[N]o tutorial system devised by man could have stopped him from getting at books.").

382. *Id.* at 49.

383. *Id.* at 51, 170. The literacy of Maycomb's better sorts is reflected in their language as well. Scout reports that "[Maudie's] speech was crisp for a Maycomb County inhabitant," *id.* at 49, and that, although Calpurnia's grammar lapses unconsciously when she is excited, *see id.* at 31, and intentionally when she is among other blacks, *see id.* at 136, "[w]hen in tranquility, her grammar was as good as anybody's in Maycomb," *id.* at 31, because, as Atticus has explained, "Calpurnia had more education than most colored folks," *id.*

384. *See supra* notes 58-63 and accompanying text.

385. *See* LEE, MOCKINGBIRD, *supra* note 1, at 27.

386. *Id.* at 261.

shoes;<sup>387</sup> Bob Ewell's son Burris, whom Scout calls "the filthiest human I had ever seen," has head lice because he refuses to bathe.<sup>388</sup>

Burris's sister Mayella, by contrast, is habitually clean. What arouses Scout's sympathy for her is not so much her poverty, or even her abuse at the hands of her father, as her efforts to keep herself clean and raise herself up. She eminently qualifies as one of traditional philanthropy's favorites, the deserving poor. In the Gospel that informs Scout's story, even the least complacent of Christians prefer to help those who help themselves.

What distinguishes the deserving poor whites is thus their industriousness and their amenability to self-improvement: led to water, they not only drink, they wash.<sup>389</sup> Industriousness, moreover, is critically linked to education, here as in the mythology of Lincoln's log cabin.<sup>390</sup> Citing Walter Cunningham, her classmate, Scout contests Jem's identification of education and family background: "That Walter's as smart as he can be, he just gets held back sometimes because he has to stay out and help his daddy."<sup>391</sup> By contrast, the evil Burris Ewell defies the teacher to keep him in school, slurring her as a slut and stomping home to the dump, thus confirming the Ewells' reputation for recalcitrance and truancy.<sup>392</sup>

Jem's deserving poor, "the Cunninghams out in the woods," are thus redeemable in a way that the Ewells of the dump are not.<sup>393</sup> What the Cunninghams need are stable markets for their crops and education for their children—the very benefits promised by the modest reforms of the New Deal, mediated by progressive local lawyers like Atticus. As we have seen, Atticus is ever willing to lend a helping hand not only in the microcosm of Maycomb, but also in the legislature in Montgomery. Beyond that, Lee is careful to tell us, he is a

387. *Id.* at 25.

388. *Id.* at 33.

389. Aunt Alexandra, predictably, misses this distinction, dismissing the Cunninghams as "trash" and insisting that their visits be strictly business, never social. *See id.* at 237.

390. *See, e.g.,* CARL SANDBURG, ABRAHAM LINCOLN: THE PRAIRIE YEARS 71 (1926):

The farmboys in their evenings at Jones's store in Gentryville talked about how Abe Lincoln was always reading, digging into books, stretching out flat on his stomach in front of the fireplace, studying till midnight and past midnight, picking a piece of charcoal to write on the fire shovel, shaving off what he wrote, and then writing more—till midnight and past midnight. The next thing Abe would be reading books between the plow handles, it seemed to them.

391. *Id.* at 240.

392. *See id.* at 33-34.

393. *Cf. Shaffer, Growing Up Good, supra* note 5, at 547-51 (stating the view that, in the implicit theology of Atticus and his family, their community is *already* redeemed).

supporter of the macroeconomic program of the New Deal. When Scout asks what happened to Maycomb's "NRA—WE DO OUR PART" stickers, Atticus replies that "nine old men" killed the National Recovery Act.<sup>394</sup>

Maycomb's religion reflects the same patterns of class and race. At the top, good Christianity reflects and reinforces good citizenship. The religion of the upper-class whites is uniformly low-church Protestant,<sup>395</sup> internally divided along lines of racial sympathy. On one side of that divide are the hypocrites, epitomized by hyperemotional women who worry over foreign missions while ignoring their own injustice to local blacks generally and to Tom Robinson in particular.<sup>396</sup> On the other side are the "true Christians," who support Atticus's position.<sup>397</sup> Implicitly representing lower-class white religion are the foot-washing, Bible-thumping Primitive Baptists. They rail at the virtuous regular Baptist, Miss Maudie, for her vain interest in the beauty of her flowers, and she cites their benighting influence on Boo Radley's father as a principal source of Boo's misery.<sup>398</sup> What is more, as Miss Maudie points out, "foot-washers think women are a sin by definition. They take the Bible literally, you know."<sup>399</sup> These are the folks of the Monkey Trial—and, of course, of Tom Robinson's jury.

Among blacks, religion is a source of comfort and community, as Scout and Jem see when they accompany Calpurnia to her church, First Purchase African M.E. Church (so called because it was bought with the first earnings of freed slaves). Black religion is not an un-mixed blessing: the preacher lapses into an antediluvian misogyny that offends Scout,<sup>400</sup> and Sister Lula affronts both the children and her fellow parishioners with a most inhospitable prototype of black separatism.<sup>401</sup> Black religion, like black life generally, bears the scars of disreputable white racism: on weekdays white men defile the black

394. LEE, *MOCKINGBIRD*, *supra* note 1, at 264.

395. Aunt Alexandra's missionary circle is Methodist; her guests are Presbyterian and Baptist. *See id.* at 242. Atticus cannot remember any Roman Catholics in Maycomb, but there is at least one Jewish family, the Levys, who are in the dry goods business. *See id.* at 157.

396. *See id.* at 240-51.

397. *See id.* at 228 (recounting Miss Maudie's explanation to Jem that "[w]e're so rarely called on to be Christians, but when we are, we've got men like Atticus to go for us").

398. *See id.* at 51-53.

399. *Id.* at 52.

400. *See id.* at 132 ("Again, as I had often met it in my own church, I was confronted with the Impurity of Women doctrine that seemed to preoccupy all clergymen.").

401. Miss Lula says to Calpurnia: "I wants to know why you bringin' white chillun to nigger church." *Id.* at 129.

people's sanctuary with gambling.<sup>402</sup> But the black church provides wise—which is to say, deferential—leadership as well: Jem and Scout sit in the black balcony with the Reverend Sykes at Tom's trial, and he bids them rise with his flock in silent tribute as Atticus, their knight-errant, leaves the courtroom.<sup>403</sup> As he had told them when they worshiped with him, "[t]his church has no better friend than your daddy."<sup>404</sup>

In summary, then, Maycomb's class structure is essentially as Jem describes it, once we supplement that description with Atticus's and Miss Maudie's moral insights. At the top is an educated, urban professional class, drawn from the rural aristocracy. This class is subdivided into those who, like Atticus, are enlightened on racial matters and those who, irrespective of their aristocratic pedigrees, are the moral equivalent of "trash." The true trash, socially and morally, are the undeserving poor like the Ewells, irredeemably racist and lazy. Other lower-class whites, represented by the Cunninghams, are poor and benighted but diligent and educable, and thus redeemable through a combination of their own efforts and modest progressive reforms. At the bottom are blacks, whose permanently underprivileged status is the foundation of the moral community. Whites who are truly virtuous, those with genuine background, mitigate black suffering; whites who oppress them, from whatever class, are the most vicious.

Only one group is omitted, and tellingly so: people of mixed race. In explaining to Scout what mulattos are, Jem describes their pariah status: "They don't belong anywhere. Colored folks won't have 'em because they're half white; white folks won't have 'em 'cause they're colored, so they're just in-betweens, don't belong anywhere."<sup>405</sup> In explaining Mayella Ewell's false testimony against Tom Robinson, Atticus sounds the same theme: "I say guilt, gentlemen, because it was guilt that motivated her. She has committed no crime, she has merely broken a rigid and time-honored code of our society, a code so severe that whoever breaks it is hounded from our midst as unfit to live with."<sup>406</sup>

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402. *See id.* at 128.

403. *See id.* at 224.

404. *Id.* at 133.

405. *Id.* at 172.

406. *Id.* at 216.

b. Intruder. Like Atticus's son, Jem, Gavin's nephew, Chick, also muses on the composition of his community and on his own place in it. As he drives with his uncle into the hill country for the second, official opening of Vinson Gowrie's grave, "he seemed to see his whole native land, his home . . . unfolding beneath him like a map in one slow soundless explosion . . ."<sup>407</sup> At the same time, he remembers his uncle's account of his people, which he matches to the topography.<sup>408</sup> As Jay Watson has shown, "[t]his great patchwork quilt of a landscape . . . is the visual equivalent—indeed the embodiment—of all that Gavin has orally brought to life for Chick in his Yoknapatawpha tales and legends."<sup>409</sup> It is a stratification superficially congruent with Jem's "four kinds of folks"; it includes an urban professional class allied with the plantation-owning country gentry, two categories of lower-class white farmers, and an underclass of black peasants. But closer inspection reveals some very different features and relationships.

In the hill country live the Gowries and their ilk, the constituents of Lucas's expected lynch mob. They choose to live in the hills, as Gavin has told Chick, because these hills are like those from which they came—the Highlands of Scotland by way of the Appalachians of the Carolinas.<sup>410</sup> And these Mississippi hills are equally harsh and lawless; the hillfolk can grow just enough corn to manufacture illegal whiskey,<sup>411</sup> which they still call by its ancient Scots Gaelic name, *usquebaugh*.<sup>412</sup> Their folk, furthermore, are largely illiterate, their very names the barely recognizable corruptions of the Highland clan rolls.<sup>413</sup>

407. FAULKNER, INTRUDER, *supra* note 4, at 148.

408. *See id.*

409. WATSON, *supra* note 15, at 127. For Gavin's own survey of the same terrain and history, see FAULKNER, *The Town*, *supra* note 286, at 621-24.

410. *See* FAULKNER, INTRUDER, *supra* note 4, at 145; *see also* FAULKNER, *The Town*, *supra* note 286, at 623 (providing Gavin's own account).

411. *See* FAULKNER, INTRUDER, *supra* note 4, at 146.

412. *See* FAULKNER, *The Town*, *supra* note 286, at 623.

413. *See* FAULKNER, INTRUDER at 146; *see also* WILLIAM FAULKNER, *Monk*, in KNIGHT'S GAMBIT, *supra* note 295, at 39, 41; *cf.* LEE, MOCKINGBIRD, *supra* note 1, at 16 (describing the Cunninghams as "an enormous and confusing tribe"); *id.* at 176 (recounting a Dickensian lawsuit in which the son testified that "his mother spelled it Cunningham on deeds and things, but she was really a Coningham, she was an uncertain speller, a seldom reader, and was given to looking far away sometimes when she sat on the front gallery in the evenings").

In their outlawry and illiteracy, these hillfolk are reminiscent of Lee's Ewells, themselves a Scottish clan.<sup>414</sup> Yet, their highland aerie is the antipodes of the Ewells' dump; the very air they breathe, in sharpest contrast to the Ewells' reeking dump, is intoxicatingly rarefied, acting on the lungs as wine on the stomach.<sup>415</sup> They are not so much lawless as autonomous, a law unto themselves.<sup>416</sup> Though ready on Saturday evening to wreak blood-vengeance on the murderer of their kin, they, with the inflexible Sabbatarianism of the Ulster Scots, will forebear until Sunday midnight.<sup>417</sup> It is from the perspective of their plateau that Chick looks back over everything else. Their synecdoche is not the dump down below town, but a chapel high above it:

[A] plank steepleless box no longer than some of the one-room cabins hill people lived in, paintless too yet (curiously) not shabby and not even in neglect or disrepair because he could see where sections of raw new lumber and scraps and fragments of synthetic roofing had been patched and carpentered into the old walls and shingles with a savage almost insolent promptitude, not squatting nor crouching nor even sitting but standing among the trunks of the high strong constant shaggy pines, solitary but not forlorn, intractable and independent, asking nothing of any, making compromise with none and he remembered the tall slender spires which said Peace and the squatter utilitarian belfries which said Repent and he remembered one which even said Beware but this one said simply: Burn . . . .<sup>418</sup>

There are some significant connections to be noted here. First, the essential features of the church, and by extension its congregants—poor but self-reliant, “solitary but not forlorn, intractable and

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414. There are, indeed, Ewells in Faulkner's Yoknapatawpha. See, e.g., FAULKNER, *The Mansion*, *supra* note 19, at 706 (describing Walter Ewell and Ike McCaslin, Lucas's white cousin, as “the best hunters in the county”).

415. See FAULKNER, *INTRUDER*, *supra* note 4, at 98.

416. Cf. JOHNSON, *supra* note 12, at 98 (“The villainy of Mayella's father, Bob Ewell, arises from his unwillingness to be governed by any law, either internal or external . . .”).

417. See FAULKNER, *INTRUDER*, *supra* note 4, at 33 (“[They] were waiting . . . simply because it would be Sunday in three hours now and they didn't want to have to hurry, bolt through the business in order to finish it by midnight and not violate the Sabbath . . .”); *id.* at 47 (referring to keeping the Sabbath holy). When Tom Robinson is returned to Maycomb on the Sunday before his trial is to begin, Atticus observes that the Old Sarum crowd “don't usually drink on Sunday, they go to church most of the day.” LEE, *MOCKINGBIRD*, *supra* note 1, at 156. But “someone” ominously points out that “this a special occasion,” *id.* at 157, and the lynch mob arrives at the jail shortly after Atticus's children's bedtime, *id.* at 159-66.

418. FAULKNER, *INTRUDER*, *supra* note 4, at 153-54.



independent”<sup>419</sup>—are precisely the features of Lucas’s cabin and, of course, of Lucas himself. Lucas’s free, almost wild, aloofness has, in Lucas’s own mind, a source that is essentially the same as that of his nemeses. His measure of himself is his grandfather, old Carothers McCaslin, a Highland Scot who came to Mississippi by way of Carolina.<sup>420</sup>

Second, these are, as we have seen, essential qualities of Miss Habersham,<sup>421</sup> some of the very virtues that enable her to help Chick rescue Lucas by violating the sanctity of this same churchyard. Indeed, at the end of his quest, when Chick leaves his uncle to walk back into the silent and dark town square, he himself manifests these same heroic virtues, virtues shared with all the aristocratic elements in his culture and community. He is “unhurried and solitary but nothing at all of forlorn.”<sup>422</sup> Only at that point does he feel a degree of reintegration with his people, “a sense a feeling not possessive but proprietary, vicegeral, with humility still, himself not potent but at least the vessel of a potency.”<sup>423</sup>

As Claudia Durst Johnson has observed, “Bob Ewell is the antithesis of Atticus,”<sup>424</sup> the one’s home the inversion of the other’s.<sup>425</sup> To Chick and Gavin, by contrast, hillfolk like the Gowries are anything but alien. Chick recognizes their hills as rising “in similitude of the actual mountains in Carolina and before that in Scotland where his ancestors had come from but he hadn’t seen yet.”<sup>426</sup> He knows these distant mountains from his beloved uncle’s firsthand accounts,<sup>427</sup> and in time he will make his own *hadj*, Gavin’s gift for his graduation from Harvard.<sup>428</sup> The chapel of Chick’s highland compatriots bears the ancient Roman name of their common homeland: Caledonia.<sup>429</sup>

419. *Id.*

420. See FAULKNER, MOSES, *supra* note 3, at 254 (recording Lucius Quintus Carothers McCaslin’s birth in “Callina” in 1772 and death in “Missippy” in 1837).

421. See *supra* notes 300-27 and accompanying text.

422. FAULKNER, INTRUDER, *supra* note 4, at 206.

423. *Id.*

424. JOHNSON, *supra* note 12, at 99.

425. See *id.* at 102.

426. FAULKNER, INTRUDER, *supra* note 4, at 99.

427. See *id.*

428. See FAULKNER, *The Mansion*, *supra* note 19, at 864-65.

429. See FAULKNER, INTRUDER, *supra* note 4, at 67.

The Gowries and their ilk, then, are not lumpenproletarians like the Ewells, exemplars of the basest vices. They are, rather, remnants of heroic ur-ancestors, living near the source of elemental virtues. Their very insistence on blood-vengeance for the death of a kinsman affirms their affinity to Lucas's own heroic value system. They are not killing Lucas because he is black, but because their own obligations of kinship require it.<sup>430</sup> They are reminiscent of Nietzsche's proto-heroes, the much-misunderstood "blond beasts."<sup>431</sup> Though Chick must and will transcend them, he cannot ultimately repudiate them. Like Lucas, he must acknowledge their virtues as essential parts of himself, even as he incorporates them into a superior synthesis.

In Chick's survey of Yoknapatawpha, its lowland farmers get shorter shrift than these highland folk: "And in the valleys along the rivers, the broad rich easy land where a man can raise something he can sell openly in daylight, the people named Littlejohn and Greenleaf and Armstead and Millingham and Bookwright . . ." <sup>432</sup> The equivalent of Lee's Cunninghams, they bear obviously Anglo-Saxon surnames, rather than Celtic, and their pursuits are those of law-abiding, yeoman farmers, not brawling moonshiners. Yet, they do not hesitate to join the throngs who flock to see Lucas lynched—if not as active participants, then at least as eager, even insistent, spectators.<sup>433</sup>

Blacks symbolically live—more precisely, "elect" to live—in both the highlands and the lowlands. According to Gavin, "they elect both because they can stand either [and] because they can stand anything."<sup>434</sup> Gavin very much admires this capacity for endurance.<sup>435</sup> As the word "elect" suggests, the patience of Gavin's blacks is not to be confused with helplessness or passivity. To the contrary, it is the foundation of what he calls "homogeneity," a deep cultural rooted-

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430. See MACINTYRE, *AFTER VIRTUE*, *supra* note 30, at 124 (observing that, in a heroic society, "[i]f someone kills you, my friend or brother, I owe you their death and when I have paid my debt to you their friend or brother owes them my death").

431. For Nietzsche's initial comparison of his heroes to the "blond beast," see NIETZSCHE, *supra* note 144, at 40. See also *id.* at 40-41 n.3 (summarizing position of Walter Kaufman and Arthur Danto that problematic "blondness" refers to the heroes' prototype, the lion, not to racial features of the heroes themselves).

432. FAULKNER, *INTRUDER*, *supra* note 4, at 146.

433. See *id.* at 46-47, 143.

434. *Id.* at 146.

435. See *id.* at 146-47, 153.

ness<sup>436</sup> that he sees as the precondition of all virtue<sup>437</sup> and the defining quality of all southern culture, white as well as black.<sup>438</sup> Indeed, according to Gavin, the rootedness of the Yoknapatawpha black exceeds that of its whites, a superiority proved by “finding himself roots into the land where he had actually to displace white men to put them down . . . .”<sup>439</sup> If Gavin had his way, southern whites would “confederate” with blacks to produce a strong, organic national character drawing especially on blacks’ superior capacity “to wait and endure and survive.”<sup>440</sup>

Thus, though Gavin uses the disparaging generic “Sambo” to refer to blacks, he apparently uses it ironically, for he is quite explicit in his admiration.<sup>441</sup> He has, moreover, conveyed this admiration to Chick. Approaching the pinnacle from which he surveys Yoknapatawpha’s sociogeography, Chick spots “the land’s living symbol,” a man plowing with a mule.<sup>442</sup> Of course, it is a black man.<sup>443</sup> Most of the black laborers are discreetly indoors, and most of their white counterparts have flocked into Jefferson for the spectacle about to be made of Lucas. But, as Gavin reminds Chick, “somebody’s got to stay home and work . . . .”<sup>444</sup> On the boy’s first trip along this road, the trip that consciously marked his earliest emergence from “the long tradition of his native land,”<sup>445</sup> the absence of blacks along the way had revealed to him their central position in the moral as well as political economy of the county: “[T]he deliberate turning as with one back of the whole dark people on which the very economy of the land itself was founded, not in heat or anger nor even regret but in one irremediable invincible inflexible repudiation, upon not a racial outrage but a human shame.”<sup>446</sup> When Lucas is finally free, we are not surprised

436. See BROOKS, *supra* note 141, at 421 (“In calling a people homogeneous Gavin can only mean that they have a community of values that is rooted in some kind of lived experience.”).

437. See FAULKNER, INTRUDER, *supra* note 4, at 151 (“[O]nly from homogeneity comes anything of a people or for a people of durable and lasting value . . . .”).

438. See *id.* at 150-51.

439. *Id.* at 152.

440. *Id.*

441. See BROOKS, *supra* note 141, at 421 (“We may feel that Gavin’s rhetorical device is strained or in bad taste, but we misread if we say that he uses Sambo in order to deprecate Lucas Beauchamp and the race he represents.”).

442. FAULKNER, INTRUDER, *supra* note 4, at 144.

443. See *id.* at 145.

444. *Id.* at 145.

445. *Id.* at 95.

446. *Id.*

that these people do not regale Gavin and his family with the folksy country breakfast that Maycomb's blacks give the Finches.

Jefferson, the county seat, shares in the county's shame to a much greater extent than Maycomb. The countryfolk flood into Jefferson to attend the lynching, confident that the town is "theirs . . . since it existed only by their sufferance and support to contain their jail and their courthouse . . . theirs the right not just to mere justice but vengeance too to allot or withhold."<sup>447</sup> They find in Jefferson itself the willing help of more distinctly urban sorts—clerks, shopkeepers, and tradesmen generally,<sup>448</sup> many of whom are their recently transplanted rural neighbors.<sup>449</sup> And, as Chick ruefully notes, this crowd has the tacit support "behind the drawn shades of the offices themselves" of those who indisputably belong to the professions.<sup>450</sup> Scout sees Maycomb as a tidy professional island secure against a sea of rowdy rural griminess;<sup>451</sup> against the blue-green panorama of his homeland, Chick sees "the faint stain of smoke which was town."<sup>452</sup>

Chick's survey of his home county, finally, sweeps in "the long reach of rich bottom land marked off into the big holdings, the plantations."<sup>453</sup> He realizes in the same thought that these are the sites of miscegenation, "where the present Edmonds and Lucas both had been born, stemming from the same grandfather."<sup>454</sup> In his account, people of mixed race cannot be officially omitted and said parenthetically not to belong anywhere. They spring from the same stock as the socially superior, and sometimes they surpass them; if they lie generally outside society, in mutual shame and shared pathos, at least one of them stands self-consciously above society, in independent pride.

These plantations, like those in *Mockingbird*, are typically the ancestral homes of the urban professional class. Chick recalls that his

447. *Id.* at 143.

448. *See id.* at 198, 209.

449. Gavin reserves some of his sharpest scorn for these urbanized rustics, whom he characterizes as having brought along all the prejudices of their parochial backgrounds without any of the compensating virtues. *See id.* at 46-48.

450. *Id.* at 209; *see also* WATSON, *supra* note 15, at 129 ("The volatility first assigned to the mob alone now extends to the whole town, and the passage makes clear that all levels of white male society are implicated in Beauchamp's fate.") Bassett is thus wrong to suggest that "[n]o Jefferson bourgeoisie, only the scruffier elements, are involved." Bassett, *supra* note 19, at 216.

451. *See supra* notes 372-74 and accompanying text.

452. FAULKNER, INTRUDER, *supra* note 4, at 148.

453. *Id.* at 149.

454. *Id.*

grandfather, a judge, was a cousin of one of the great landowners, Major de Spain.<sup>455</sup> As we saw at the outset, Chick's family reciprocates hospitality with Lucas's cousin Edmonds, present lord of the McCaslin lands. But even his uncle Gavin, most educated of these aristocratic urban professionals, is not untainted by racism. He is allied to the racism of the lower elements in ways wholly absent in Atticus.

Near the outset, on their way to meet Lucas in jail, Gavin lectures Chick on the lynch-mob mentality of lower-class whites.<sup>456</sup> Although he does not condemn the lynchers and, indeed, sees a certain logic in their thinking, his condemnation of the practice is clear: "Which proves again how no man can cause more grief than that one clinging blindly to the vices of his ancestors."<sup>457</sup> He is, moreover, ready to stand against the lynchers, against overwhelming odds, to the last.<sup>458</sup> Beyond that, Gavin makes quite clear that blacks should be given their full civil rights, "economic and political and cultural."<sup>459</sup> Even on the very sensitive issues of voting and public education, he is unequivocally progressive.<sup>460</sup>

But there are two critical qualifications to Gavin's progressiveness. First, Gavin is a gradualist.<sup>461</sup> He quite explicitly believes that these reforms, necessary and desirable as they are, are not to be wrought overnight,<sup>462</sup> though he thinks the worst abuses will end "[s]oon now."<sup>463</sup> Not an activist, he has no particular agenda or positive reform program. More precisely, his reform platform has a single plank, that southern whites will be the liberators of southern blacks. He explains that southern whites deserve "the privilege of setting him free ourselves."<sup>464</sup>

455. *See id.* at 92.

456. *See id.* at 48. After a conversation with a white shopkeeper whose sympathies lie with the lynch mob, Gavin explains to Chick: "[N]ow the white people will take him out and burn him, all regular and in order and themselves acting exactly as [the shopkeeper] is convinced Lucas would wish them to act: like white folks; both of them observing implicitly the rules . . ."

457. *Id.*

458. *See id.* at 53.

459. *Id.* at 153.

460. *See id.* at 151-52.

461. *See* BROOKS, *supra* note 141, at 422-24. Gavin's gradualism nicely reflects that of southern liberals generally, as analyzed in David Potter, *A Minority Within a Minority*, 46 *YALE REV.* 264-65 (1957).

462. *See* FAULKNER, *INTRUDER*, *supra* note 4, at 152, 211.

463. *Id.* at 151 (referring to lynching).

464. *Id.*

Conversely—and this is the second qualification of Gavin’s reformism—efforts to reform at a faster pace and through other agencies than southern whites are to be condemned and actively resisted. This is especially true of northern efforts to ameliorate the condition of southern blacks through federal legislation.<sup>465</sup> Gavin points back to the failure of Radical Reconstruction and extrapolates from that the futility of all such efforts in the future. Not only will they fail; they will set the course of black liberation back even as, in his mind, radical abolitionism did.<sup>466</sup> Like a mantra, he repeats the conditions of liberation: “[O]nly we must do it and we alone without help or interference or even (thank you) advice.”<sup>467</sup>

At one level, this sectionalism has a certain symmetry. It can be seen not just as a tribal “myself against my brother; my brother and I against all outsiders,” but also as an insistence on taking upon oneself the sins of one’s brother as the only real expiation. But it fails in two related ways. In its rejection of the alien North, it frustrates real reform, sacrificing aid to the repressed on the altar of redemption, or perhaps just face-saving, for the oppressor. As we shall examine in more detail below, this makes it unacceptable to most readers.<sup>468</sup> Moreover, in its embrace of the solid South, which is our focus here, Gavin’s sectionalism violates its own premise. The basis for Gavin’s critique of his fellow southerners is the harm done by blindly following ancestral errors. But this is exactly his basis for defending them: the ancient insistence on not having the slave freed by outsiders, “the privilege of setting him free ourselves.”<sup>469</sup> Gavin’s prescription for racial reform thus threatens to collapse into the very atavistic and self-perpetuating harm to self and other that Gavin at the outset deplors.

The untenability of Gavin’s position is underscored not only by this internal tension, but even more by a critical situational irony. Even as Gavin is arrogating to himself the right to liberate blacks, praising their patience in awaiting his conferral of equality and treating Lucas as an eponym for blacks generally, the very course of Lucas’s case is negating each of these assumptions. In their first en-

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465. See *id.* at 152, 199, 210-11; see also FRANK FREIDEL, *F.D.R. AND THE SOUTH* 83-89 (1965) (describing successful opposition of southern congressmen to federal anti-lynching legislation early in the New Deal era).

466. See FAULKNER, *INTRUDER*, *supra* note 4, at 199, 210-11.

467. *Id.* at 211. In a previous passage, Gavin says almost identically: “We must expiate and abolish it ourselves, alone and without help nor even (with thanks) advice.” *Id.* at 199.

468. See *infra* notes 646-48 and accompanying text.

469. *Id.* at 151.

counter, Lucas tried Gavin and found him wanting; Lucas has already seen to his own liberation, a liberation that will not confer upon him a mere legal equality, but restore to him the physical freedom with which to resume his long exercise of natural superiority.

Gavin's general disquisitions on race relations suffer the same deficiency that Miss Habersham sees in his dealing with Lucas's case: he is too caught up in his preconceptions and preoccupations to see the very facts before him. When Gavin predicts the effect of Lucas's release from jail on the white citizens of Yoknapatawpha County, he gets it exactly wrong: "[W]e shall watch right here in Yoknapatawpha County the ancient oriental relationship between the savior and the life he saved turned upside down: Lucas Beauchamp once the slave of any white man within range of whose notice he happened to come, now tyrant over the whole county's white conscience."<sup>470</sup> As we have seen, Lucas never kowtowed to anyone; as Chick is soon to learn, the county forgets its wrongful assumption of Lucas's guilt before the week is out.<sup>471</sup>

Beyond these weaknesses, Gavin's position poses two further problems, each of which we shall take up later. For readers of *Intruder*, it has been profoundly off-putting, particularly for those who glibly attribute Gavin's views to Faulkner.<sup>472</sup> Second, and more significantly, Gavin's opinions threaten to corrupt Chick, the novel's central figure of hope and redemption.<sup>473</sup>

3. *Lawyers and the North*. In both books, the southern setting is essential, and the characters' southernness is underscored, especially in the case of the lawyers. Both books deal not only with relations between lawyers and "outsiders" within their culture, but also with one group literally outside that culture, the North. Attitudes toward the North, however, differ significantly between the two novels. In *Mockingbird*, references to the North are the source of little more than mild and minor interregional humor. Such references reveal the provinciality of the children and highlight the quaintness of some of the more droll adult characters, a background against which Atticus's progressiveness stands out all the more sharply. In *Intruder*, by contrast, the North is serious stuff indeed. As we have already begun

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470. *Id.* at 194-95.

471. *See id.* at 209.

472. *See infra* notes 646-48 and accompanying text.

473. *See infra* notes 493-97, 551-55 and accompanying text.

to see,<sup>474</sup> lingering animosity toward the North on the part of the most enlightened of southerners, Gavin himself, threatens to divide reformist southerners from their counterparts in the North and to unite them with racists at home in a reactionary common front against the outside.

a. Mockingbird. In *Mockingbird*, continued animosity toward the North appears in the form of comic figures like cousin Ike Finch, Maycomb County's sole surviving Confederate veteran, who is ever ready to re-fight the battle of Shiloh from his porch rocker.<sup>475</sup> The basically decent but blustering newspaper editor, Braxton Bragg Underwood, is undone by "a fey fit of humor" that gave him his name, and Scout observes, "Atticus said naming people after Confederate generals made slow steady drinkers."<sup>476</sup> The higher the general's rank, apparently, the greater the harm: Bob Ewell is the namesake of none other than Robert E. Lee.<sup>477</sup> As Claudia Durst Johnson concludes, "the destructive and powerful influence of the past is linked with another characteristic of the Gothic—the theme of decay and degeneration . . . ."<sup>478</sup>

Recalling sectional conflict too vividly is a mark of consummate kookiness. The sanctimonious Mrs. Merriweather, champion of keeping Alabama blacks in their place while saving souls in Africa, ironically berates the Yankees for their hypocrisy toward blacks.<sup>479</sup> The devilish and drug-addicted Mrs. Dubose brandishes a Confederate pistol, and, as we have seen, Atticus carefully redirects the lesson of her courage from the Lost Cause to the liberal cause.<sup>480</sup> In invoking the stolidness of their Confederate kin, Atticus can assure Scout, "It's different this time. . . . This time we're not fighting the Yankees,

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474. See *supra* notes 465-69 and accompanying text.

475. See LEE, *MOCKINGBIRD*, *supra* note 1, at 84.

476. *Id.* at 167.

477. See *id.* at 181; see also JOHNSON, *supra* note 12, at 49 ("It is probably no accident that the most racist character in the novel is given a name associated with old South gentility—Robert E. Lee Ewell.").

478. JOHNSON, *supra* note 12, at 49.

479. See LEE, *MOCKINGBIRD*, *supra* note 1, at 247 ("People up there set 'em free, but you don't see 'em settin' at the table with 'em. At least we don't have the deceit to say to 'em yes you're as good as we are but stay away from us.").

480. See JOHNSON, *supra* note 12, at 48 ("Mrs. Lafayette Dubose . . . is in many ways the epitome of the worn-out, old southern past."); *supra* notes 265-81 and accompanying text.



we're fighting our friends."<sup>481</sup> At least implicitly, the Yankees are in important respects the model he holds up to his children. Having pressed Jem to the limits of his understanding, Atticus would assign him the speeches of Henry W. Grady,<sup>482</sup> whose New South creed preached assimilation to northern industrialism as the South's road to salvation after the Civil War.<sup>483</sup>

The children's own attitude to the North is one of mild bemusement. In explaining why the déclassé Dolphus Raymond sends his mixed-race children, "in-betweens, [who] don't belong anywhere," North to school, Jem observes that "[t]hey don't mind 'em up north."<sup>484</sup> Scout relates that their old family home at Finches' Landing has "the usual legend about the Yankees."<sup>485</sup> It is a comic tale of a young bride-to-be getting stuck in a stairway after she "donned her complete trousseau to save it from raiders in the neighborhood."<sup>486</sup> As it turned out, the Finches were "stripped of everything but their land."<sup>487</sup> The culprit, however, was not the North, but "the disturbance between the North and the South," which their antebellum ancestor "would have regarded with impotent fury."<sup>488</sup> Adult thought on the conflict thus comes to us in the present perfect conditional, with a futurity odder than its futility; there simply is no looking back in anger.<sup>489</sup> The war Jem and Scout are taught to remember hardly seems like Hell; it is a comically understated "recent unpleasantness" no more unpleasant than recent.

Atticus's only negative comments about the North are oblique and ambiguous. They appear in the peroration of his closing argument, as he is laying the foundation for his ultimate appeal to equality before the law. He is careful to distinguish more radical notions of equality, which he vaguely equates with the North. Jefferson's "all

481. LEE, *MOCKINGBIRD*, *supra* note 1, at 84. Implicitly, of course, as we shall see below, the tables are even more dramatically turned: the Yankees are Atticus's silent partners. *See infra* notes 653-58 and accompanying text.

482. *See* LEE, *MOCKINGBIRD*, *supra* note 1, at 156.

483. *See* WOODWARD, *supra* note 122, at 145 (documenting Grady's industrialist ideas, the messianic tone of his message, and its popularity in the post-Civil War South).

484. LEE, *MOCKINGBIRD*, *supra* note 1, at 172.

485. *Id.* at 88.

486. *Id.*

487. *Id.* at 10. Scout also recounts Halloween pranks played on two elderly deaf women, "the Barber ladies," reported Republicans who moved to Maycomb from northern Alabama with "Yankee ways," such as their insistence that their house have a cellar. *Id.* at 265.

488. *Id.* at 8.

489. *See id.*

men are created equal,” he laments, is “a phrase that the Yankees and the distaff side of the Executive Branch in Washington are fond of hurling at us.”<sup>490</sup> The disapproving allusion to Eleanor Roosevelt would certainly have carried racial connotations for his audience, but his examples of acceptable inequality all have to do with natural differences in individual endowments.

Atticus in his closing must distinguish carefully between the First Lady’s locally unpopular integrationist views and the cause of justice in Tom’s trial, if the latter is to have any chance of prevailing over his lower-class compatriots’ prejudices against both northerners and blacks. This is not a particularly strong indication that he himself shares the former prejudice any more than the latter. Indeed, when Mrs. Roosevelt’s integrationist ideas, along with those of the North generally, come in for direct censure, it is with heavy irony. Mrs. Merriweather, the target of Miss Maudie’s subtle barbs and the most transparently hypocritical member of the ladies’ missionary society, declares, “People up there set ’em free, but you don’t see ’em settin’ at the table with ’em.”<sup>491</sup> Whatever Atticus himself thinks of “the distaff side of the Executive Branch,” he is, as we have seen, a general proponent of the New Deal against the courts.<sup>492</sup>

*b. Intruder.* Gavin’s aversion to things northern, by contrast, could not be deeper or more explicit. Moreover, Gavin’s sectionalism is not that of the parochial redneck or the nostalgic ne’er-do-well. He has been not only to Harvard, but also to Heidelberg. When a wealthy and well-educated northerner, besotted with champagne, crashes his convertible into a Jefferson storefront and comes to admire the town’s rustic jail, it is the cosmopolitan Gavin who acts as ambassador. He brings the stranger home to dinner, where they “talked for three hours about Europe and Paris and Vienna.”<sup>493</sup> Gavin’s southern patriotism, particularly his animosity toward the North, is disturbing precisely because it cannot be easily dismissed as silly or self-serving.

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490. *Id.* at 217; see FREIDEL, *supra* note 465, at 84-87 (describing Eleanor Roosevelt’s intervention with FDR on behalf of civil rights leaders, especially in support of federal anti-lynching legislation).

491. LEE, MOCKINGBIRD, *supra* note 1, at 247.

492. See *supra* note 394 and accompanying text.

493. FAULKNER, INTRUDER, *supra* note 4, at 54. For Faulkner’s history of the jail, see FAULKNER, REQUIEM, *supra* note 120, at 183-225.

This is underscored by the fact that Chick initially shares Gavin's sentiment. Here is the North's place in the cosmology Chick envisions from the Gowries' highland redoubt:

[T]he uttermost rim of earth itself, the North: not north but North, outland and circumscribing and not even a geographical place but an emotional idea, a condition of which he had fed from his mother's milk to be ever and constant on the alert not at all to fear and not actually anymore to hate but just—a little wearily sometimes and sometimes even with tongue in cheek—to defy: who had brought from infancy with him a childhood's picture which on the threshold of manhood had found no reason or means to alter and which he had no reason to believe in his old age would alter either . . . .<sup>494</sup>

These ideas come principally from Gavin, as Chick acknowledges at each of their several iterations.<sup>495</sup> But it is especially important to note, in light of what we have seen of the role of women in the novel, that these ideas come from the maternal side as well.<sup>496</sup> These *idées fixes* about the North, particularly the role of the North in ameliorating the condition of blacks, seriously jeopardize real reform. Whether and how Chick can transcend this mindset is a critical issue up to the final pages of the novel. As we shall see in the next section, it is not comfortably resolved, though there is genuine room for optimism.<sup>497</sup>

4. *Lawyers and Innocents*. We see each story largely through the eyes of an innocent, Atticus's daughter, Scout, and Gavin's nephew, Chick. Each is related to the respective lawyer figures by much more than mere consanguinity; they are quite distinctly protégés and understudies. Yet, as their relationships with their mentors develop through the course of their stories, they diverge sharply. Childlike innocence, though critical in both stories, works in very different ways. In *Mockingbird*, it is the *tabula rasa* on which Lee writes us Atticus's moral message; in *Intruder*, it is the window through which

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494. FAULKNER, *INTRUDER*, *supra* note 4, at 149.

495. *See, e.g., id.* at 210.

496. Nor is this feminine source of animosity historically unlikely. *See* ERIC L. MCKITRICK, ANDREW JOHNSON AND RECONSTRUCTION 39-40 (1960) ("The women, far from performing for their people any of the gentler rites of peace, were the bitterest of all," even after Confederate veterans themselves were reconciled). Faulkner makes this explicitly a theme in one of his more historically rooted works, *Requiem for a Nun*. *See supra* note 120.

497. *See infra* notes 520-60 and accompanying text.

Faulkner shows Gavin—and, through Gavin, us—an alternative not only to Gavin’s world, but also to our own.

*a. Mockingbird.* Scout’s story sees her coming to appreciate, and revealing to us in the process, the fundamental virtue of her father and the essential rightness of his view—indeed, of his life. At the beginning, she thinks he is embarrassingly boring and not worth much;<sup>498</sup> by the end, he is the bravest man that ever was.<sup>499</sup> Atticus, it turns out, is right not only about Tom Robinson, Mayella Ewell’s mischosen Lancelot, but also about Boo Radley, Scout and Jem’s unlikely guardian angel. His unorthodox child-rearing practices are implicitly vindicated in the very lives of his children, as his litigation strategy would have been, we are led to believe, if only Tom Robinson had listened and waited.

Atticus insists that Scout, in good lawyerly fashion, fight evil with her head, not her fists.<sup>500</sup> In skillfully dispatching a mad dog with a single rifleshot, he shows her that he does not lack more manly virtues, but transcends them. He gives Scout the slightly offbeat, child-friendly version of the Golden Rule that she tries to apply throughout the book: “You never really understand a person until you consider things from his point of view . . . until you climb into his skin and walk around in it.”<sup>501</sup> And his central parable of good and evil, killing a mockingbird,<sup>502</sup> informs her understanding of both Tom and Boo and, of course, gives the story its title and theme. If everyone were like Atticus, Scout comes to understand, all would be well. Yet, all the while, in her daughterly way, she reveals enough of Atticus’s fatherly foibles to prevent him from hardening into a marble man.

Atticus is the ideal father, the perfect prototype for the projections of paternalistic religions.<sup>503</sup> His benevolence is not quite om-

498. See LEE, *MOCKINGBIRD*, *supra* note 1, at 97-99.

499. See *id.* at 109.

500. See *id.* at 84.

501. *Id.* at 36. Atticus later applies this maxim to Bob Ewell, see *id.* at 231, and Boo Radley, see *id.* at 290-91.

502. See *id.* at 98. Instructing Jem on the proper use of an air rifle, Atticus says: “I’d rather you shot at tin cans in the back yard, but I know you’ll go after birds. Shoot all the bluejays you want, if you can hit ’em, but remember it’s a sin to kill a mockingbird.” *Id.*

503. See SIGMUND FREUD, *MOSES AND MONOTHEISM* 172-73 (1939) (“We know that the great majority of people have a strong need for authority which they can admire, to which they can submit . . . . It is the longing for the father that lives in each of us from his childhood days . . . .”); see also THURMAN W. ARNOLD, *THE SYMBOLS OF GOVERNMENT* 59-71 (1935) (applying Freud’s dynamics to the justice system, with the law in the place of the father); cf. JOHNSON,

nipotent, but he is wise to the point of omniscience. He cannot deliver his client, the Christ-like Tom, from death, but Tom's death is not in vain. Rather, through it Atticus delivers his younger protégés, Scout and Jem, from the besetting sin of their southern idyll, racism. Lee makes it quite clear that it is not the children who deliver Atticus from racism, but very much the other way around. They are already imbibing its poisonous assumptions by the time of Tom's trial,<sup>504</sup> and Atticus is explicit about the source of their problem and its cure. In describing the difficulties of Tom's case, Atticus tells his brother, "I just hope that Jem and Scout come to me for their answers instead of listening to the town."<sup>505</sup> Nor does Atticus leave this to chance. Scout herself comes to understand that he arranged for her to overhear this: "I never figured out how Atticus knew I was listening, and it was not until many years later that I realized he wanted me to hear every word he said."<sup>506</sup>

The truth about racism, revealed to them by Atticus through the trial of Tom, frees them from it. There remains, however, a final temptation, particularly for the older, more idealistic Jem: bitterness toward and hatred of their racist neighbors and fellow citizens. Here again, the lesson is familiar and ultimately well learned: "[F]orgive them; for they know not what they do."<sup>507</sup> This is not to denigrate this message, in the context of either the story or the southern civil rights movement. In that latter, larger context, after all, it was the message

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*supra* note 12, at 99 (observing that, in the Finch household, "the saintly Atticus, Christ-like in his code of honor, bestows a system of benevolent laws").

504. See JOHNSON, *supra* note 12, at 38 ("What keeps these two children from practicing the same cruelty as the other children is a father, a supreme adult, who speaks to them as adults.").

505. LEE, *MOCKINGBIRD*, *supra* note 1, at 97.

506. *Id.* Claudia Durst Johnson speaks with obvious approval of this father-knows-best family:

Of all the societies that the children will ever encounter, their familial one is the most whole, and therefore, the most sane. Heart and head rule in harmony, inner and outer laws work in tandem, for there are no hidden agendas, no double standards, no dark secrets in their home.

JOHNSON, *supra* note 12, at 101. Even she, however, points to an oddly stifling element. After describing in detail the subversive, indeed patricidal, aspects of children's games, especially playacting, as evidenced in Jem and Scout's dramatizing of what they imagine to be the Radley family story, *id.* at 77-82, Johnson concludes with this pregnant observation: "In light of this view of the ritual, it is interesting that it is Atticus who calls a halt to the little drama." *Id.* at 82-83. In light of Johnson's psychoanalytic account, surely at least a clinical "hmm" is in order here.

507. *Luke 23:34* (Revised Standard Version). Illustrating the lesson, Atticus describes Walter Cunningham, Sr., on the day after his joining a lynch mob as "basically a good man" with "his blind spots along with the rest of us." LEE, *MOCKINGBIRD*, *supra* note 1, at 168.

of Dr. King himself from the very beginning.<sup>508</sup> The point here is that, in the context of the novel, forgiveness is Atticus's message, especially his message to his children. As such, it is further evidence of Atticus's moral superiority to the innocents around him.

In a revealing coda at the novel's conclusion, Scout does seem to teach Atticus an important moral lesson. But this is the exception that proves the book's otherwise unvarying rule; the lesson she teaches him is none other than his own. Boo Radley has killed Bob Ewell, who had waylaid Jem and Scout in an effort to kill them. Sheriff Tate, as we have seen, finally convinces Atticus to help him cover up the truth about Ewell's death, to save Boo from public attention. It remains for Atticus to explain this apparent lapse from truthfulness to Scout, who has overheard and understood the sheriff's evasions. "Can you possibly understand?" Atticus asks.<sup>509</sup>

He need not have worried: "Atticus looked like he needed cheering up. I ran to him and hugged him and kissed him with all my might. 'Yes, sir, I understand.'"<sup>510</sup> And indeed she does: "Well, it'd be sort of like shootin' a mockingbird, wouldn't it?"<sup>511</sup> She is, of course, referring Atticus to the ultimate moral authority, himself, with all the tentativeness and tenderness of a devoted daughter. She has learned at last the lesson of Maycomb's southern womanhood, of Miss Maudie and Calpurnia, even of the initially critical Aunt Alexandra: help your man stand by his own principles.

In his dealings with the childlike Boo, Atticus also shows himself to be ultimately in charge. At one level, of course, it is Boo who saves Atticus by saving his children, and this salvation takes Atticus by surprise. But that is hardly the whole story. Atticus has taken up for Boo from the beginning,<sup>512</sup> and his surprise at Boo's beneficence is a function of its timing, not its source. Beyond that, we have a strong hint that Boo shares Atticus's sense of what is wrong with the world. In the throes of his alienation from his community after Tom's trial, Jem

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508. See DAVID J. GARROW, BEARING THE CROSS: MARTIN LUTHER KING, JR., AND THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE 59-61 (1986) (recounting Dr. King's conciliatory message immediately after the bombing of his home in Montgomery during the Bus Boycott).

509. LEE, MOCKINGBIRD, *supra* note 1, at 291.

510. *Id.*

511. *Id.*

512. See *id.* at 47, 56 (forbidding Scout and Jem to dramatize Boo's rumored condition in their games).

diagnoses Boo's problem: he does not want to come out; he cannot bear the evil of the world.<sup>513</sup>

Boo only ceases to be pathetic when he briefly abandons his arrested-adolescent world-aversion and comes out to play his role, actively and manfully, in Atticus's cause. And if the logic of his position is close to that of Atticus, the dramatic relation is closer still: it is a matter of cause and effect. Atticus's defense of Tom ignites Bob Ewell's murderous rage, which brings Boo out to defend Atticus's children. Atticus thanks Boo at the end for giving him his children's lives. But it was through Atticus's own endangering of his children that Boo's life gained its modicum of moral meaning as a tragedy rather than merely as a mystery or a monstrosity.

And yet, in the last analysis, it is Atticus who ensures that the moral meaning of Boo's life is but minimal. In protecting his mockingbird from the town's attention, Atticus keeps him caged in his own severe, and unaddressed, psychopathology. Boo's transcendence of his reclusiveness is most transient; after this appearance, Scout herself never sees him again.<sup>514</sup> Atticus's paternalism, for all its kindness, is not without its costs, not least of which is its undiluted transmission to Scout's generation.

And if Scout has, by the end, become a supporter of this paternalism, she has also become its victim. She is poignantly aware that Boo saved her life, that, in a deeply moral sense, he was "our neighbor."<sup>515</sup> She knows, too, that "neighbors give in return" and that she has in that sense not been a proper neighbor to Boo: "[W]e had given him nothing, and it made me sad."<sup>516</sup> Her sadness bespeaks the ultimate inadequacy of Atticus's gift, protection, and points to what their relationship with each other and with Boo essentially lacks: reciprocity. Boo never becomes a full member of their community; he literally disappears within it, protected from it rather than helped by it or reintegrated into it.

More tragically, Scout and Atticus themselves show little sign of entering into a fuller communion with each other. Even as she feels the inadequacy of Atticus's way of dealing with Boo, she is unable to try to save his life in return, because she is unable to question Atti-

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513. See *id.* at 240; JOHNSON, *supra* note 12, at 59 (noting Jem's association of "acrimony between social classes" and Boo's alienation).

514. See LEE, MOCKINGBIRD, *supra* note 1, at 293.

515. *Id.*

516. *Id.*

cus's way, to acknowledge that it might be other than absolutely right. To the end, she is the protégé. She does, of course, mature, but her maturer vision is only clearer insight into her father's infallibility.

On the very night that she has barely survived a murderous assault, Atticus reads her a story in which an initially scary character turns out, like Boo Radley, to be, as she puts it, "real nice."<sup>517</sup> Atticus makes clear that it is not a story he has read before, but no matter: it strikingly parallels Scout's own story, and all stories point in one direction. As he tucks her in, Atticus affirms her liberal optimism (which is, of course, really his own) in his final words to her: "Most people are [nice], Scout, when you finally see them."<sup>518</sup> She has seen Bob Ewell with the ultimate finality, and to the end he was not very nice; one suspects the irony here is unintentional.

But perhaps not. By the end of *Mockingbird* an innocent has seen radical evil, and she can safely forget about it, literally lulled to sleep by its denial. Scout has the last word in her story, and she seems to say that Atticus the protector will always be there: "He turned out the light and went into Jem's room. He would be there all night, and he would be there when Jem waked up in the morning."<sup>519</sup>

*b. Intruder.* It is emphatically otherwise between Gavin and Chick. As we have seen, it is Chick who returns to Lucas in jail, who believes his story, and who acts on his instructions, all without the aid, or even the understanding, of Gavin. And it is through Chick that we see, dimly but definitely from the very beginning, the inassimilable excellence of Lucas. Chick's innocence is our window on what even the most receptive and childlike of the white male adults in his world cannot see. He does not come around, like Scout, to seeing how and why his mentor is always right; he sees, from fairly early on, why his mentor misses not only most of what is really true and virtuous about his client, but also much of what is false and vicious about his world.

Quite the opposite of Scout, Chick begins with the assumption that his uncle is an oracle: "[H]is uncle who had for everything an explanation not in facts but long since beyond dry statistics into some-

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517. *Id.* at 295.

518. *Id.* at 296.

519. *See id.*; JOHNSON, *supra* note 12, at 92 ("As Atticus puts Scout to bed, she summarizes the Tom Swift tale for him, finding herself merging the fiction of one of their favorite books with their experience with Arthur Boo Radley and the inner and outer terrors with which they have become friendly.").



thing far more moving because it was truth: which moved the heart and had nothing whatever to do with what mere provable information said.<sup>520</sup> But the end of Chick's enlightenment is not the antipodes of his beginning; his earlier adoration is not merely negated. He comes around at the end, not to dismissing his uncle, but to arguing with him.<sup>521</sup>

As Chick accepts the job of helping Lucas, he realizes why his uncle could not accept it and why Lucas ultimately declined to offer it to him. The job is nearly impossible for Chick to conceive of undertaking and obviously impossible for him to perform in the time available. It is the very sort of job the comprehension and undertaking of which requires suspending belief in the ordinary limits of the possible. When he sees it as such, Chick remembers the words of old Ephraim, the elderly father of his mother's housemaid:

'Young folks and womens, they aint cluttered. They can listen. But a middle-year man like your paw and your uncle, they cant listen. They aint got time. They're too busy with facks. In fact, you might bear this in yo mind; someday yo mought need it. If you ever needs to get anything done outside the common run, dont waste yo time on menfolks; get the women and children to working at it.'<sup>522</sup>

Grown white men are bounded by the rationality of their mundane worlds; only those not so bounded can see beyond the horizon to possibilities otherwise unthinkable.

Having realized that, Chick also realizes how close Lucas had come to confiding in Gavin and how nearly worthy of that confidence Gavin was. He remembers "that quality in his uncle which brought people to tell him things they would tell nobody else, even tempting Negroes to tell him what their nature forbade them telling white men."<sup>523</sup> On most occasions Gavin "had had no more trouble than he believing things that all other grown people doubted for the sole reason that they were unreasonable . . . ."<sup>524</sup>

But at the critical juncture when his client's life hangs in the balance, that childlike quality fails Gavin. Lucas has seen both the possibility of his transcendence and its failure. Gavin, like the other adult

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520. FAULKNER, *INTRUDER*, *supra* note 4, at 49.

521. *See id.* at 233-34 (disputing Gavin's disquisition on men, women, and the automobile).

522. *Id.* at 70; *see also* FAULKNER, *MOSES*, *supra* note 3, at 13 (conveying the same essential message, from Lucas's father, Tomey's Turl, in a somewhat comic setting).

523. FAULKNER, *INTRUDER*, *supra* note 4, at 68.

524. *Id.* at 70.

male citizens of Jefferson, reasons from their flawed premises about Lucas's character to the only conclusions consistent with those premises and the facts before them. Having imbibed—albeit less fully than most—the racism of the contemporary adult world, Gavin as a lawyer cannot presume his own client's innocence and cannot even listen to that client long enough to hear, much less believe, the truth that would ultimately exonerate him. For that, as Miss Habersham immediately understood, Lucas needed an innocent, an outsider.

Chick's innocence has an equally important converse aspect. As we have just seen, unlike Gavin (and presumably in common with most of us readers), Chick is more innocent of racism and thus more capable of seeing something in Lucas, a black man, that Gavin, a mature white southerner of the 1930s, cannot see. But in common with Gavin, and opposed to us—or most of “us”—Chick is “innocent” in a very different, and more problematic, way. He is “innocent” of the notion, deeply ingrained in the prevailing ethos of the modern liberal West, that what Lucas really is, Lucas's real character, cannot be called—indeed, experienced as—“good.”<sup>525</sup>

For us, the essential aspects of Lucas's character—his aloofness, intractability, intolerance, and inflexibility—oft-repeated in Faulkner's account, are eccentric at best, and more properly antisocial. The more sophisticated among us, trained in the pluralist school of, say, Sir Isaiah Berlin and, before him, Giambattista Vico,<sup>526</sup> may acknowledge, at a rational level, that such features counted as virtues in long-lost, if not purely mythic, heroic societies.

For Chick, by contrast, they are the very features that marked his own grandfather, although in less high relief than Lucas.<sup>527</sup> And Chick's relationship with his grandfather, unlike ours with the heroes

525. See King, *supra* note 6, at 236 (analyzing Lucas as Faulkner's failed effort to create an autonomous black man, resulting in “a backwoods Nietzschean superman, serene in his indifference to most recognizable human motivations”).

526. See ISAIAH BERLIN, *THE CROOKED TIMBER OF HUMANITY* 10-13 (1990); see also RICHARD A. POSNER, *LAW AND LITERATURE* 299-300 (1988) (characterizing ours as an age of relativism and observing that many of the values and virtues of literary heroes are reprehensible by modern standards).

527. See FAULKNER, *INTRUDER*, *supra* note 4, at 8, 12, 24. Chick understands quite clearly that it is his southernness that enabled him to respond to Lucas:

the earth which had bred his bones and those of his fathers for six generations and was still shaping him into not just a man but a specific man . . . even among a kind and race specific and unique . . . since it had also integrated into him whatever it was that had compelled him to stop and listen to a damned highnosed impudent Negro . . .

FAULKNER, *INTRUDER*, *supra* note 4, at 148.

of myth and saga, is quite literally immediate, unmediated by translation, either linguistic or cultural. To the extent that we can empathize with Chick and thus share his “innocence” of our modern liberalism, we not only come into direct contact with the embodiment of a very alien set of values; we can also experience those values as familiar, even familial. At the very least, we can see that, through the eyes of an engaging young person not alien to ourselves, Lucas is virtuous. We may also see, in the example of Lucas, a different Jeffersonian vision, not a radical egalitarianism but a natural aristocracy of talent.

Chick himself stands, even as Gavin brings him to understand it, in a position of leadership in his community. His deep, familial identification with local aristocrats like his grandfather enables him to see and to affiliate with Lucas’s nobility in a way that other whites might have missed. Here, Chick has already transcended Gavin as a leader against his own people’s racism. Yet, on the other, external front, he is very much at risk of following in Gavin’s anti-northern footsteps. That is the unresolved tension within the book, and, as we shall see, an essential part of the book’s ambiguous relationship with its readership.<sup>528</sup>

Faulkner underscores Chick’s position of leadership with an extended theatrical metaphor.<sup>529</sup> The scene is set with the urban crowd before the jail “in that preliminary settling down like the before-curtain in a theatre,”<sup>530</sup> awaiting the lynch mob’s performance of Lucas’s tragic fate. When, to the crowd’s consternation, Chick and his collaborators exonerate Lucas, the crowd flees the scene of its humiliation, exiting the stage even as the focus of the drama shifts to its own flight. Chick is angry that they have sullied the part he performed in freeing Lucas; he had wanted to act with them, not against them.<sup>531</sup>

Only later does he realize how their parts are related. Leaving his uncle, Chick reenters a now-vacant square

with a sense a feeling not possessive but proprietary, vicegeral, with humility still, himself not potent but at least the vessel of a potency like the actor looking from wings or perhaps empty balcony down upon the waiting stage vacant yet garnished and empty yet, never-

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528. See *infra* note 665 and accompanying text.

529. See WATSON, *supra* note 15, at 136-38 (analyzing the metaphor and explaining Chick’s role as healer in “a community that cannot or will not heal itself”).

530. FAULKNER, *INTRUDER*, *supra* note 4, at 134.

531. See *id.* at 177-90.

theless where in a moment now he will walk and posture in the last act's absolute cynosure, himself in himself nothing and maybe no world-beater of a play either but at least his to finish it, round it and put it away intact and unassailable, complete . . . .<sup>532</sup>

On further reflection, he realizes the square is not empty, any more than it was the night of the expected lynching.<sup>533</sup> The town had not abandoned the square, "but only withdrawn giving room to do what homely thing must be done in its own homely way without help or interference or even (thank you) advice."<sup>534</sup> This is precisely the language Gavin uses with respect to the North, and it is, in fact, its local equivalent: aristocrats like Chick will lead their own people in both internal reform and external defense. The crowd abandoned this critical public space to those who would do what needed doing not just better, but right:<sup>535</sup> Chick and Miss Habersham, with their assistant, Aleck Sander, and with the help of the sheriff, Gavin, and Lucas himself.<sup>536</sup>

But exactly what is to be done, beyond wrapping up Lucas's case, is painfully unclear to Chick, as is how to do it. All through this dramatic section, the interaction between Chick and Gavin is critical, and critically ambiguous. Gavin insists that Chick not repudiate his community; Chick accuses Gavin of excusing, or even defending, lynchers, then of asking too much of him. Gavin recognizes Chick's sanctimoniousness toward his fellows, forgives it, and insists that he keep on going. Their dialogue becomes intense and elliptical:

'Dont stop what?' he said again. But he knew what now; he said, 'Aint it about time you stopped being a Tenderfoot scout too?'

'This is not Tenderfoot,' his uncle said. 'This is the third degree. What do you call it?—'

'Eagle scout,' he said.

'Eagle scout,' his uncle said. 'Tenderfoot is, Dont accept. Eagle scout is, Dont stop. You see? No, that's wrong. Dont bother to see. Dont even bother to not forget it. Just dont stop.'

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532. *See id.* at 206-07.

533. *See id.* at 208.

534. *Id.* at 209-10.

535. *See id.* at 204.

536. *See id.* at 205, 210.

‘No,’ he said. ‘We dont need to worry about stopping now. It seems to me what we have to worry about now is where we’re going and how.’<sup>537</sup>

These questions are never explicitly answered; as is often the case in Socratic dialogues, the answers must be extrapolated from the interaction of the interlocutors, the dramatic matrix in which the dialogue itself develops.<sup>538</sup> Ultimately, these dialogues are about the nature of communal life,<sup>539</sup> and critical hints about how that life is to be structured are given in the way the speakers interact, between themselves and with other members of the community, in addressing these very issues.<sup>540</sup> Thus, if Chick and Gavin never give a definitive answer to the broader aspects of the question of “where we’re going and how,”<sup>541</sup> the way they go about inquiring may itself contain the answer.

It becomes clear that Chick and Gavin, between themselves, will answer these questions in continued conversations. Gavin, who has always attended to Chick’s questions, now attends increasingly to his answers; indeed, Gavin revises his own answers in light of Chick’s objections. In this sense, Gavin implicitly but unmistakably takes Chick into full partnership in a shared moral life, a shared moral life of a distinctly Socratic sort. Their court of ultimate resort on fundamental moral issues is each other, through the medium of mutually respectful conversation. In an important sense, the question of “where we are going” is answered in how they go about getting there; through their dialogue, they are creating a mutually acceptable moral world.

But if the nature of the community between Gavin and Chick is thus clear, at least in outline, the nature of their relation to the larger community remains very much in doubt. At a minimum, as we have seen in the several acts of the town square drama, Gavin’s conversa-

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537. *Id.* at 205-06.

538. See OLGA W. VICKERY, *THE NOVELS OF WILLIAM FAULKNER* 142-44 (rev. ed. 1964) (analyzing the dialogue between Gavin and Chick); Bassett, *supra* note 19, at 208, 212 (discussing the relationship between Gavin and Chick as dialectical).

539. See BROOKS, *supra* note 141, at 292 (“[I]n *Intruder in the Dust* the meaning of the community is uppermost in the minds of Gavin and Charles and constitutes the chief topic of their speculation and dialogue.”).

540. See James Boyd White, *The Ethics of Argument: Plato’s Gorgias and the Modern Lawyer*, 50 U. CHI. L. REV. 849, 851, 861-71 (1983) (demonstrating that dialectic expresses and shapes a person’s character, life, and community).

541. FAULKNER, *INTRUDER*, *supra* note 4, at 206.

tions with Chick prevent Chick's repudiating his fellow white citizens.<sup>542</sup> Beyond that, in the scene where Chick reenters the square alone, Chick assumes that his role will be front and center, that he will be the drama's star and enact its conclusion. In his frequent invocation of Gavin's "solid South" orations, we have reason to fear that Chick simply sees himself as uncritically picking up his uncle's banner.

But the novel's final scene opens with Chick a spectator again, looking down with Gavin from the latter's law offices onto the square below. The square itself, the equivalent of Socrates's agora in consciously neoclassical Jefferson, has become incapable of sustaining reasoned discourse. Jammed with Saturday commercial and recreational traffic, it is too crowded and too noisy. The blare of bourgeois sales pitches and the blast of working-class radio music cancel each other out in pure cacophony. Lucas strides through this chaos, across the square, to settle his account with Gavin. Lucas, not Chick, becomes "the cynosure"<sup>543</sup> of the drama's final scene.<sup>544</sup>

Lucas shifts the focus of discussion back to the place of Chick's original enlightenment, Lucas's house, by inviting Chick to come there again.<sup>545</sup> Chick's oblique reference to Miss Habersham, "sitting in her own hall now, mending the stockings until time to feed the chickens,"<sup>546</sup> reminds us that this is at once the place of "the other," the outsider, and the aristocratic, ancestral hero. This is an order of apparent opposites that she and Lucas have merged in their persons and, more particularly, in their homes, the seats of hereditary aristocrats who are also social outsiders. Moreover, Lucas invites Chick to reenter that order, at once outside and above the bourgeois town, on radically altered terms. This time Chick is not to come as a supplicant, arriving by accident and staying at the sufferance of the landlord, but at his lord's express invitation, voluntarily to assume his position as a proper member of that order himself.

This altered relationship is apparent in the chivalrous banter of Lucas and Chick's final exchange:

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542. See BROOKS, *supra* note 141, at 288 ("The tension . . . is between a boy's ties with his community—his almost fierce identification with it—and his revulsion from what the community seems committed to do.").

543. See FAULKNER, *INTRUDER*, *supra* note 4, at 207; *supra* notes 529-32 and accompanying text.

544. See *id.* at 229-33.

545. See *id.* at 235.

546. *Id.* at 231.

‘Young man—’ courteous and intractable, more than bland: downright cheerful almost, removing the raked swagger of the hat: ‘You aint fell in no more creeks lately, have you?’

‘That’s right,’ he said. ‘I’m saving that until you get some more ice on yours.’

‘You’ll be welcome without waiting for a freeze,’ Lucas said.<sup>547</sup>

Lucas thus reminds Chick of how their relationship began, the source of quasi-feudal obligation that Chick has obviously acknowledged and reciprocated in saving Lucas’s life. Chick responds with the self-deprecating humor of the noble who is also a vassal, free to joke with his overlord, but in a way that accedes to a subordinate role. Accepting this tacit affirmation of their respective roles, Lucas in turn invites Chick back to his cabin on the McCaslin place. It is an invitation that parallels Edmonds’s rabbit-hunting invitation to Chick at the outset. But now it comes from the plantation’s true lord, Lucas, to Chick in his own right, not as the nephew of Gavin. And, implicitly at least, it is not about boyish stuff like rabbit-hunting, but the serious matter of remaking their common world.

Yet, there hangs in Lucas’s invitation an unmistakable, almost painful irony. He leaves us with the fear that Chick will not come until that proverbial freeze, ever invoked by the defiant and the despairing alike: not until Hell freezes over. Before, Lucas had orchestrated Chick’s rescue; this time, Chick must save himself. To enter the kingdom of God, Chick must have heard, one must become as a little child;<sup>548</sup> whether his original baptism at Lucas’s hands can survive his impending immersion in the adult white male world of his uncle is, at the end, poignantly in the balance.

Yet again, the end of the novel is encouraging on this point. As we have seen, the final word in the novel is Lucas’s,<sup>549</sup> and in it he

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547. *Id.* at 235. Although this analysis differs with Cleanth Brooks on precisely who is indebted to whom, and how, Brooks is certainly right that “[p]eople who understand and feel affection for each other can turn the most serious matter into a joke, and may prefer the affectionate joke for expressing, without embarrassing sentimentality, the deepest kind of understanding.” BROOKS, *supra* note 141, at 294.

548. *See Mark* 10:15.

549. *See supra* notes 213-18 and accompanying text.

shows, to both Gavin and Chick,<sup>550</sup> the superiority of his world to Gavin's, even as Gavin, in his turn, had shown Lucas his fealty to Miss Habersham. Gavin's giving Lucas his receipt, like Chick's returning to Lucas's cabin, lies outside the literal scope of the book. Yet, we know Gavin will give the receipt immediately, and we have reason to hope Chick will eventually return the visit.

What gives us that hope is what we have come to know about Chick's relationship with Gavin, which takes a critical turn in the final chapters. At numerous junctures in the novel, Chick answers questions, from the most practical to the most profound, from minor issues of local lore to fundamental matters of morality, with the remembered lectures his uncle has given him.<sup>551</sup> When he finally faces the critical dilemma of his place in their deeply flawed community, he finds he is at a crossroads:

Gavin is the person who would naturally talk to the boy about the problems that are disturbing him, and the adult's notions about the community, the Negro, and the nature of law and justice represent for the boy at once a resource and an impediment. It is against these that his own developing notions must contend and it these views that he must accept, repudiate, or transcend.<sup>552</sup>

Chick is by then painfully aware that his uncle had radically misunderstood Lucas, and he has taken to heart Miss Habersham's critique of adult male problem-solving. Moreover, he has proved himself able to act on these insights.

Just before Lucas crosses the square at the end of the novel, Chick contradicts Gavin most explicitly. Gavin has delivered his disquisition on America's love affair with the automobile, and its result, the frigidity of American women. Chick, who early in the novel had identified his uncle's discourse with Truth itself, says simply, "That's

550. See MINROSE GWIN, *THE FEMININE AND FAULKNER: READING (BEYOND) SEXUAL DIFFERENCE* 93 (1990) (arguing that Lucas "demonstrates to Chick the invalidity of his desire for mastery").

551. Jay Watson has identified these incidents and analyzed their importance in detail. See WATSON, *supra* note 15, at 121-28.

552. BROOKS, *supra* note 141, at 288. Jay Watson makes much the same point: "All in all, Gavin's spoken stories and anecdotes instruct Chick in communal values and assumptions even as they sometimes kindle in him an urge to challenge these values and assumptions." WATSON, *supra* note 15, at 127; see also Bassett, *supra* note 19, at 210 ("Chick, driven by guilt more than by liberalism, is not simply an open-minded youth: to the extent he acts commendably, he is a disciple of Gavin.").



not true.”<sup>553</sup> Gavin offers the evidence of his personal experience, but Chick is unmoved, for his own experience has by this time been different. He has worked with Miss Habersham, and he will have none of Gavin’s misogyny: “I still dont believe it.”<sup>554</sup> It is Gavin who relents and, beyond that, encourages Chick’s dissent: “‘That’s right,’ his uncle said. ‘Dont. And even when you are fifty and plus, still refuse to believe it.’ And that was when they saw Lucas crossing the Square, probably at the same time . . . .”<sup>555</sup> They literally see, together, the personified refutation of Gavin’s prejudices, and Gavin has prepared Chick for further insights by encouraging Chick to continue to argue with him.

Atticus, it must be conceded, is in some respects a good mentor. He teaches painful but invaluable lessons about virtue, particularly about courage. He does not merely lecture about goodness; he leads a good life, practicing instead of preaching. At the end of his story, we hope Jem will grow up to be like him. But we know Scout is bound for a very different fate. In our time, we see that the lessons Atticus taught, the very life he lived, are inadequate. Most critically, his lessons leave people out, in ways of which he himself was unaware, even as he tries to take care of them.<sup>556</sup> He is a fine father, but he is only as good a person as a paternalist can be. As Thomas Shaffer has eloquently demonstrated, the ethic of the southern gentleman is itself ultimately inadequate if Atticus Finch, its most famous example, is also its exemplar.<sup>557</sup>

But he is not. Uncle Gavin is a paternalist, too, but he is also something else altogether. He is no Socrates, but he is a Socratic teacher. From him Chick learns, not merely how to be good, but how to make the good—or at least the received wisdom about “good”—better: he learns how to engage in constructive dialogue with not only his mentor and other people “like us,” but also with “others,” those who are racially, and even more radically, different. Looking to the future, faced with the awful prospect that his protégé will exceed him, even leave his world behind, Gavin has a consistent, indeed resolute,

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553. FAULKNER, *INTRUDER*, *supra* note 4, at 234.

554. *Id.*

555. *Id.*

556. See SHAFER, *AMERICAN LAWYERS*, *supra* note 25, at 86-97 (showing that the gentleman’s legal ethic ultimately fails by attempting to “protect the weak who are not weak”).

557. See *id.* at 93, 95 (discussing Atticus’s moral failures). Shaffer himself fails to sharply distinguish between Gavin and Atticus, treating them both as prime examples of the southern gentleman ethic but giving greater attention to Atticus.

response: “Just dont stop.”<sup>558</sup> And his continued encouragement is a large part of what enables Chick to go on, to transcend, to create a better world than the one Gavin’s discourse has yet given him.

Critics originally focused almost exclusively on Gavin’s tendency to serious moral and political error, particularly in defense of the established southern order.<sup>559</sup> Only recently have they come to appreciate his capacity not only to accept correction, but also to create his own best critic, his nephew Chick, the potential co-creator of a radically new order.<sup>560</sup> Chick’s ultimate assessment of Gavin, from the perspective of his own Harvard education and post-graduation European tour, is this:

Because he is a good man, wise too except for the occasions when he would aberrate, go momentarily haywire and take a wrong turn that even I could see was wrong, and then go hell-for-leather, with absolutely no deviation from logic and rationality from there on, until he wound us up in a mess of trouble or embarrassment that even I would have had sense enough to dodge. But he is a good man. Maybe I was wrong sometimes to trust him and follow him but I never was wrong to love him.<sup>561</sup>

### *E. Lawyers and the Law*

Both Tom Robinson and Lucas Beauchamp are in serious trouble with the law, and both secure the services of lawyers. Legal process, moreover, is a source of potential relief to both, a plausible place from which to expect justice. In both accounts, law is not an autonomous system of rules and procedures, but, as the Legal Realists saw it, a complex of social interactions ultimately inseparable from society itself. Moreover, neither Gavin nor Atticus is a fetishist of legal form; each takes liberties with the law’s letter to achieve what he sees as substantive justice. Yet, they have very different relationships with

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558. FAULKNER, *INTRUDER*, *supra* note 4, at 206.

559. For a summary of these early critics, see BROOKS, *supra* note 141, at 280-81; WATSON, *supra* note 15, at 111; WEISBERG, *supra* note 14, at 82-83.

560. This is especially true of both Jay Watson, *see* WATSON, *supra* note 15, at 112 (“To do justice to the novel demands doing justice to all sides of [Gavin’s] character.”), and Richard Weisberg, *see* WEISBERG, *supra* note 14, at 84 (arguing that, for all his faults, Gavin ultimately develops a willingness to take risks in the service of what he considers right), although on some important matters they differ with both the preceding analysis and each other. Cleanth Brooks, as we have seen, was an important early precursor of Gavin’s recent defenders. *See supra* note 552 and accompanying text.

561. FAULKNER, *The Mansion*, *supra* note 19, at 884.

the law, and the law plays very different roles in their respective stories.

1. *Intruder: Law Burdened by Busyness.* A salient aspect of *Intruder* is the extent to which legal process is repressed into the background. Lucas is arrested off-stage, as it were, and the charges against him are dropped behind the scenes. Moreover, what little formal legal process there is is highly irregular. Lucas's arrest is primarily a matter of protecting him from a lynch mob, and only secondarily a prelude to trial and legal conviction or vindication. His official release is the mere ratification, the rubber-stamping, of the exonerating evidence gathered in a technically illegal exhumation and never formally presented. The anticipated drama of criminal trial, with all its ritual and regularity, its unequivocal verdict, is anticlimactically absent. Not only is Lucas exonerated without trial; the real culprit, Crawford Gowrie, dies without one.<sup>562</sup>

This striking absence, and awkward presence, of formal legal procedure is less a fault of law itself than it is of law's functionaries, those whose job it is to invoke and apply formal legal process. Deeply ingrained racism, as we have seen, keeps Gavin and other agents of the law from seeing Lucas as he is, and thus from invoking proper legal process in his defense.<sup>563</sup> But more than racism is at fault here. Understanding Lucas's paradoxical nobility, the precondition of appreciating his innocence, is but one instance of a general category of experience closed to adult white men. Old Ephraim had identified such experience as "something outside the common run."<sup>564</sup> It is not the case, then, that law is inherently "male," principled rather than practical, rule-bound and harsh rather than fact-sensitive and equitable.<sup>565</sup> The absence of legal process in *Intruder* indicates not so much law's inadequacy as an instrument for handling Lucas's problem, as the inability of law's principal agents, adult white men, to preside over its application in his peculiar case.

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562. The sheriff seems to have let him kill himself in jail with his own pistol, the same one with which he killed his brother. See FAULKNER, *INTRUDER*, *supra* note 4, at 231.

563. See *supra* notes 154-57 and accompanying text.

564. FAULKNER, *INTRUDER*, *supra* note 4, at 70. Chick later recalls the words of old Ephraim. See *id.* at 110.

565. On the split between law and equity, or between rule and act consequentialism, see POSNER, *supra* note 526, at 108-10, 122-26 (2d ed. 1998) (contrasting "legalistic" and "non-legalistic" conceptions of law, noting that all systems involve elements of both, and refusing to identify either as "male" or "female").

Moreover, as Miss Habersham and Ephraim understand it, the ultimate problem lies no more in the whiteness or maleness of the law's agents than it does in the nature of law itself. The problem lies, in both their views, in white men's being too busy, in their not having time, or not being able to take time, to listen. The conscientious agents of law, men like Gavin and the sheriff, fail to understand, but not because they are too obtuse to hear or too committed to maintaining the status quo to listen. They are quite simply too caught up in the busyness of mundane affairs to attend, to harken, to the extraordinary. The press of business—the need to process not just “cases,” but “facts,” the very raw data of experience itself, through standard categories, “the common run”—has closed their minds to radically different ways of seeing, and thus of being.<sup>566</sup>

Yet, significantly, the mind of the most perceptive of law's agents, Gavin, is not closed to that very insight.<sup>567</sup> Indeed, Gavin is able to assimilate the need to listen to outsiders to a part of their common cultural perspective, to an existing category—albeit, significantly, a religious, rather than strictly legal, category. Upon learning of the results of the exhumation that Chick, Aleck Sander, and Miss Habersham had performed, Gavin concedes, “Out of the mouths of babes and sucklings and old ladies—.”<sup>568</sup> Chick immediately recognizes this as a paraphrase of Jesus's paradoxical teachings,<sup>569</sup> teachings about radical epiphanies, indeed, teachings that were themselves radical epiphanies.<sup>570</sup>

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566. Richard Weisberg argues that “Gavin Stevens becomes the first major literary lawyer to develop positively as a human being *in the direction of*, and not in rebellion against, his professional strengths.” WEISBERG, *supra* note 14, at 84. This, of course, runs counter to the critique of busyness that Faulkner is making in *Intruder*, where even Weisberg admits Gavin has not reached his full maturity. That maturity comes, in Weisberg's view, in *The Town*. See *id.* at 86-92. Contrary to Weisberg's suggestion, however, see *id.* at 85, Gavin is not younger in *Intruder* and *Knight's Gambit*. In the title story of *Knight's Gambit*, Gavin gets married; in the Snopes trilogy, his marriage comes in *The Mansion*, which follows *The Town*. Though the precise internal dating in *Intruder* is uncertain, see *supra* note 19, both of the two plausible time frames have to fall after the events of *The Town*. Chick is 12 when his encounter with Lucas begins in *Intruder*; *The Town* opens with Chick's saying of the story he is about to relate, “I wasn't born yet . . .” FAULKNER, *The Town*, *supra* note 286, at 353.

567. See Bassett, *supra* note 19, at 209 (noting that Gavin “shows a capacity to question his own assumptions”).

568. FAULKNER, *INTRUDER*, *supra* note 4, at 105.

569. See *id.*; accord Matthew 21:15-16.

570. See PAUL RICOUER, *Listening to the Parables of Jesus*, in *THE PHILOSOPHY OF PAUL RICOUER* 239, 245 (Charles E. Reagan & David Stewart eds., 1978) (analyzing Jesus's parables of the kingdom as calls for openness toward the radical reorientation of one's being in the world).

Law, then, is not so much pushed to the side in *Intruder*, dismissed as unnecessary, as it is marked for radical recentering, reorienting. Law, as practiced by men of affairs, is limited by their limitations. In order for law to work, those who work with it must broaden their horizons, lift their heads from the mill. Lucas's case shatters conventional paradigms of justice and equality, not only in his time, but also in ours. As he himself posits, he is not a "nigger," someone less than equal under segregation law, but neither is he merely a man. He is more than a man,<sup>571</sup> a notion our egalitarian law can scarcely accommodate. To be equal to the demands of justice in such a case, law must not be bound by those paradigms.

The problem of lawyerly busyness occurs at two levels, which overlap in Lucas's case. At the first level, the problem reflects the oft-noted tension between law and equity, between what old Ephraim calls "the rules and the cases," with which men like Gavin work, and "the circumstances," the intricate and immediate, sometimes anomalous, details with which women and children work. Pressed to get results, to finish business, lawyers and other agents of the law rely on simplifying heuristics in dealing with facts and broad principles in applying law; in a word, they become "legalistic."

Gavin critically overlooks Lucas's innocence because he is interpreting the facts before him—a long-harassed and proud black man caught standing over the slain body of a white man—according to implicitly plausible assumptions about how such men act in such matters. As Miss Habersham puts it, he is concerned with "probabilit[ies],"<sup>572</sup> with what is likely to happen most of the time, in the mill run of cases. Similarly, when Chick relates to him Lucas's alternative account, he dismisses it out of hand; it is precisely the kind of account that he knows, as an experienced lawyer, the guilty of Lucas's class and race typically concoct.<sup>573</sup>

But, as I have been at pains to show, Lucas is not typical, much less stereotypical, and the nature of his uniqueness takes us to the second level at which the problem of lawyerly busyness operates. Any legal system must balance the streamlining achieved by simplifying rules and evidentiary assumptions against their cost, the inequities of their application, in anomalous, atypical cases. If this balance

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571. See FAULKNER, MOSES, *supra* note 3, at 46-47.

572. See FAULKNER, INTRUDER, *supra* note 4, at 88.

573. See *id.* at 78-79.

is properly struck, the gains in the mill run of cases offset the costs of injustice in the few.

The rules applied in Lucas's case reflect this instrumental logic remorselessly. The unwritten but clearly operative procedural and substantive rules in Lucas's case are these: as a matter of substance, blacks must act at their own risk when they presume to help whites; as a matter of procedure, "uppity" blacks are presumed to react explosively, even murderously, when years of pent-up rage inevitably boil over. Both rules rest on an implicit constitutional principle, which itself rests on an unquestioned empirical assumption: blacks do not deserve the equal protection of law because they are inherently inferior beings by every relevant measure, worth less than whites, if not quite worthless.

Lucas's case is not just that of an innocent black suffering under these implicitly racist rules. Nor, unlike Tom's case, does it call into question merely a few of the basic assumptions and ancillary rules—in Tom's case, that all blacks are lechers and liars, and therefore that no blacks are to be believed or trusted with white women. Lucas's embodiment of heroic human excellence—his natural superiority to, not just equality with, whites—undermines the very premise of these racist rules, black inferiority, and thus it threatens to topple the logic of the entire racist legal edifice built upon that premise.

It calls, in other words, for a paradigm shift—not for a lament at the injustice of a good rule in a hard case, nor even for the recalibrating of a particular rule, but for the root-and-branch reformation of an entire legal system. Yet, that call is inaudible even to so attentive a lawyer as Gavin, precisely because he is distracted with the day-to-day workings of that very system. On the other hand, what makes Gavin capable of achieving this insight indirectly through the "outsiders," Chick and Miss Habersham, is precisely the features that push him to the very margin of the practical, "insider" world of men: his childishness, his antiquarianism, his bookishness, his adolescent romanticism, a persistent quixotic streak. As we shall see in detail below, this view of law and lawyers is radically at odds with the dominant vision of the current lawyer professionalism movement.<sup>574</sup> Before turning to that, however, we need to examine Atticus's very different relationship to the law, a relationship much more in harmony with prevailing contemporary tastes.

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574. See *infra* Part III.B.

2. Mockingbird: *Lawyers Liberating the Laity*. In *Mockingbird*, the paradigm of legal process, a criminal trial, lies at the center. All the critical action in the book flows into and out of that watershed event. As in *Intruder*, the formal mechanism of law is up to the task before it, but that task is very different here. Racism and busyness divert people from their proper functions under law, but those diversions are not shown as particular problems for the principal agents of law—the trial judge, the sheriff, and Atticus. Moreover, the insights of women and children at most confirm Atticus’s views, rather than challenge them.

Lucas, insightful enough to see Gavin’s blindness, puts his case in the hands of outsiders, irregulars who in their turn enlighten Gavin. Tom, too impatient to see Atticus’s chance of winning on appeal, fatally takes matters into his own hands, providing a vital object lesson on the virtues of Atticus’s way. Atticus’s deep, technical, practitioner’s expertise in the law, unlike Gavin’s, does not obscure the need for radical reform. On the contrary, it allows him to see that Tom’s case is essentially ordinary. If only jurors generally accorded blacks the formal legal guarantee of equality, innocent blacks like Tom would not be scapegoated in murder trials; all would be well.

Jem, fundamentally shaken by the miscarriage of justice in Tom’s trial, 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.<sup>575</sup> The ever-wise Atticus cannot avoid an air of condescension. Faced with Jem’s wounded adolescent idealism, “Atticus tried hard not to smile but couldn’t help it.”<sup>576</sup> When Jem is adamant that juries should be abolished, Atticus points to the racism of jurors, not to the jury system itself, as the problem.<sup>577</sup> Jurors, Jem remembers, “all come from out in the woods.”<sup>578</sup> “You never see anybody from Maycomb on a jury . . . .”<sup>579</sup>

Atticus, who “[f]or some reason . . . looked pleased with Jem,” explains that one reason is the legal exclusion of women from Alabama juries.<sup>580</sup> This initially affronts Scout, but Atticus eventually brings her around. He points somewhat scornfully to the asserted

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575. See LEE, *MOCKINGBIRD*, *supra* note 1, at 232-34.

576. *Id.* at 232.

577. *See id.* at 233.

578. *Id.* at 234.

579. *Id.*

580. *Id.*

need to “protect our frail ladies from sordid cases like Tom’s,”<sup>581</sup> but then humorously raises the deeper, converse concern, the need to protect the law from the ways of women: “I doubt if we’d ever get a complete case tried—the ladies’d be interrupting to ask questions.”<sup>582</sup> Scout laughs inwardly at the prospect of Miss Maudie and Mrs. Du-bose on a jury, and she concludes, “Perhaps our forefathers were wise.”<sup>583</sup> Gavin concedes Miss Habersham’s womanly perspective and persistence to be essential to the doing of justice in Lucas’s case; Atticus presents the prospect of women’s playing an integral role in the law as laughable *per se*, a meddlesomeness that would bring legal proceedings to a halt.

The problem of juries for Atticus, then, is not the exclusion of women (not to mention the exclusion of blacks). It is, rather, the refusal of educated white male urbanites to assume their civic responsibilities. Atticus, unlike Gavin, is aware that business is the culprit. But it is business in a narrower and less fundamental sense than in *Intruder*, a sense that emphatically does not include Atticus.

According to Atticus, otherwise virtuous bourgeois like Tom Robinson’s employer are afraid that serving on juries will require taking sides and thus losing customers in their commercial enterprises. Even the anonymity of jury votes is not enough, because there is a further problem: “Serving on a jury forces a man to make up his mind and declare himself about something.”<sup>584</sup> This, Atticus explains, is something men don’t like to do, because “[s]ometimes it’s unpleasant.”<sup>585</sup> Atticus, of course, has never had such a failure of nerve, even when the consequences threatened to be far worse than “unpleasant.”

Business in the narrow sense—trade and commerce—contributes to what Atticus presents as the main problem of Tom’s case. Virtuous people fail to stand together behind experienced legal professionals like him, against the subversion of law’s unquestionable guarantee of equality. The practice of law, presumably because it is a profession

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581. *Id.*; see also GOODMAN, *supra* note 338, at 13 (describing the exclusion of all females and males under 21 from the testimony of alleged rape victims in the Scottsboro case).

582. LEE, MOCKINGBIRD, *supra* note 1, at 234.

583. *Id.*

584. *Id.*

585. *Id.*; cf. GOODMAN, *supra* note 338, at 175-76 (explaining that a young doctor who examined the alleged Scottsboro rape victims and doubted their accounts felt that he “couldn’t” testify for the defense because, if he had, “he would not [have been] able to return to Scottsboro”).



and not merely a business, reveals to Atticus both the fundamental substance of the law, equality, and its basic procedural virtue, patience. What the law needs is for its proper agents in the laity, enlightened male urbanites, to have more of what Atticus, the ideal lawyer, has: civic virtue.

In *Intruder*, business in the broad sense—getting the job done, in the professions as well as in trade—blinds even the most virtuous of its practitioners to the flaws, the necessary slights and omissions, in their routine. Moreover, they miss not only the hard cases that call for equitable flexibility, but the badness in law itself that calls for fundamental change. To this latter, in *Mockingbird*, there is simply no parallel; the law is fundamentally right as it is. Insights from outsiders, accordingly, are not so much unwelcome as unneeded. The law and its principal agents are the protectors of the weak and excluded, not their students; law and lawyers have much to give, but nothing much to learn.

In *Intruder*, it is Ephraim—among the most marginalized of blacks, an ancient old man who lives in a cabin in Gavin's backyard, dozing all day with an empty pipe and aimlessly walking the deserted roads all night—who shows Chick the fundamental flaw in his uncle's legal method, the flaw that makes Lucas turn to law's outsiders to get him out of jail. Chick remembers this lesson, reinforced by Miss Habersham, and together they hasten to Lucas's extralegal—indeed, illegal—liberation. In *Mockingbird*, it is Calpurnia, the best of blacks, surrogate mother “in a lawin' family,”<sup>586</sup> educated on Blackstone himself, who tells a neighbor's cook, in Scout's presence, how Tom has lost hope in jail despite Atticus's assurance that he is doing his best to get him free.<sup>587</sup> On the next page, we learn that Tom is dead, shot while dashing in desperation for his freedom. Atticus laments his inability to wait on the law for his deliverance.<sup>588</sup>

In *Intruder* and *Mockingbird*, classic notions of *noblesse oblige* predominate, a predominance set early in their parallel hospitality scenes. But they give radically different versions of who the obliging nobles are. The ascendancy of the urban professional class, typified by Atticus in *Mockingbird*, starkly contrasts with the disappearance of the rural aristocratic class, typified by Lucas and Miss Habersham in *Intruder*.

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586. LEE, *MOCKINGBIRD*, *supra* note 1, at 247.

587. *See id.*

588. *See id.* at 248-49.

Innocent black defendants embody basic values, but Tom's saintly and engaged Christianity could not be further from Lucas's pagan and aloof heroism. White lawyers come to their defense, aided by innocent white protégés and virtuous white women. But Atticus's aid is early and central; Gavin's, late and peripheral. Scout ultimately comes to see the wisdom of her father's way; Chick learns at last to question the lectures of his uncle. Atticus's women stand on the sidelines, cheering him on and maintaining the civil façade that is the background for his heroism. Miss Habersham leads the highly irregular cavalry that rides to the rescue in Lucas's case, defying conventional time and space, while Gavin literally slumbers in his stereotypes. Law as Gavin practices it is deeply flawed; we simply have to wait for Atticus's law to take its course for all to go well.

## II. LESSONS FOR LAW AND LITERATURE

Having identified these divergences, what are we to make of them? In this part, we will first look at the lessons they hold for the jurisprudence of law and literature. In the next part, and on a somewhat more immediately practical level, we will examine their lessons for lawyers.

### A. *Divergent Parallels and the Search for Transcendent Norms*

One prominent branch of the law and literature movement, pioneered by Richard Weisberg and Robin West, directs us to literature as a means of redressing the normative gap postmodernism has created in both law and ethics. Professor West seeks in canonical literature "universal descriptions of human nature" as the basis for criticizing contemporary law and ethics.<sup>589</sup> Professor Weisberg hopes to "fill the ethical void"<sup>590</sup> with insights from literature, to reach "the correct, not merely the desired, outcome," particularly in law's treatment of outsiders.<sup>591</sup> The divergent parallels we have noted between the ethical worlds of *Mockingbird* and *Intruder* illustrate the serious problems with this approach and suggest a very different service that literature can provide at the normative foundations of law and ethics.

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589. ROBIN WEST, NARRATIVE, AUTHORITY, AND LAW 6-7 (1993). Professor West further "judge[s] institutions . . . by reference to how well they meet our very real human needs." *Id.* at 148. Additionally, she cites natural and animal selves, respectively, as the basis for her critique of social and professional self. *See id.* at 165, 172.

590. WEISBERG, *supra* note 14, at 4.

591. *Id.* at 41.

1. *Critique of the Weisberg-West Project.* Admittedly, as we have seen, there are parallel moral perspectives in the two books. At a fairly superficial level, both works show us that racism may lead us to overlook legal innocence and thus that at least the more lumpen forms of racism are in that sense bad. At a somewhat deeper level, they both tell us that racism blinds us to seeing fundamental human virtues in the “other”; specifically, racism prevents white people from seeing in black people the virtues they value in themselves and their heroes. But these are not particularly controversial points among people of even marginal conscientiousness, either within the stories or in the world outside the stories. Agreement at this level, therefore, is not especially helpful.

Outside the stories, it does not give us much guidance on how to face very real contemporary problems of race relations. Inside the stories, beyond this fairly thin layer of agreement, conscientious opinion could and does diverge sharply. This is evident by comparing the deeper moral messages of the stories themselves, as we saw in Part I. They offer strikingly different perspectives on issues of race, gender, class, and age, and on law as a means of resolving these issues. Juxtaposing *Mockingbird* and *Intruder* suggests that literature does not speak with one voice or convey one set of values. How might West and Weisberg address these divergences?

One possibility would be to dismiss them as resting on inadequate descriptions in one book or the other. Under this view, one account would be factually inaccurate, in the sense that it falsifies history or lacks verisimilitude. Such would be the case, for example, with a story that purported to illustrate as real or realistic the racist attitude that Atticus condemns in his closing argument: “the evil assumption—that *all* Negroes lie, that *all* Negroes are basically immoral beings, that *all* Negro men are not to be trusted around our women . . . .”<sup>592</sup> Such a story would simply fail as credible fiction. But this cannot be said of *Intruder* and *Mockingbird*. At this most basic level, their accounts have both historical foundation and verisimilitude; they meet one of Aristotle’s principal tests of literary merit.<sup>593</sup>

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592. LEE, *MOCKINGBIRD*, *supra* note 1, at 217.

593. See ARISTOTLE, *The Art of Poetry*, in ARISTOTLE 301 (Philip Wheelwright trans., Odyssey Press rev. ed. 1975) (“The poet’s function, then, is to describe . . . the kind of thing that might well happen—i.e., what is [dramatically] possible in the sense of being either plausible or inevitable.”).

One could, alternatively, argue that many, if not all, of the divergent descriptions are not so much inconsistent as supplemental. This was the method early textual critics used to reconcile conflicting Gospel accounts: if Luke and Matthew describe Jesus's visit to Jerusalem differently, maybe he visited more than once. Faulkner gives us a black man and an elderly white woman who are noble and a white male lawyer benighted by racism; Lee gives us a meek and charitable black man, an enlightened white male lawyer, and an elderly white virago. These are not mutually exclusive by any means. They all could easily live in neighboring county seats on opposite sides of the Alabama–Mississippi line; indeed, both Maycomb, Alabama, and Jefferson, Mississippi, should be comfortably big enough for all six.

But there are serious problems with this approach. To begin with, selection, focus, and arrangement are not unimportant. Who is at the center and who is at the periphery—not to mention who is left out altogether—very much affect the story being told. A story about a black man saving himself with the help of an elderly white woman does not preclude an equally credible story about a white man saving a helpless black man, but those stories are very different. Here the descriptive and the normative tend to meet, if not to merge; what the author chooses to describe has normative implications beyond the accuracy or credibility of the description. If all your exciting stories are about firefighters and all your firefighters are men, you have learned—or taught—an important, albeit merely implicit, moral lesson.

But this suggests another possible reconciliation, one that takes us more directly into the normative realm. A slightly different effort at minimizing the divergences between *Mockingbird* and *Intruder* might run along these lines: where their descriptions diverge, they nevertheless share a normative baseline. Thus, for example, the women's worlds that they describe differ radically. But (so this account might run), while Faulkner means to hold up the world of Miss Habersham as admirable and its marginalization as lamentable, Lee means to hold up the equally marginal but otherwise very different world of Miss Maudie and especially Aunt Alexandra as perverted.<sup>594</sup> We are, under this view, to see both the difficulty of the boy Chick's

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594. See WEISBERG, *supra* note 14, at 120 (describing the commonality that exists “whether we are reading Richard Wright’s *Native Son* or William Faulkner’s *Intruder in the Dust*, or for that matter Harper Lee’s *To Kill a Mockingbird*. What is going on is a progressivism beyond labels, an attack on the virtues of male-dominated WASP institutions.”).

entering Miss Habersham's virtuous female world and the inevitability of the girl Scout's entering the artificial female world of Aunt Alexandra as parallel tragedies.

Whatever its general, logical merit, the textual evidence cannot sustain this line of argument as applied to the divergences in question here. For one thing, Scout's ultimate entry into the female world is portrayed heroically. Furthermore, this is not a stoic resignation to defeat; it is an acceptance of her proper place in a properly subordinate, supporting role. For another, this world is subordinate to a world that is quite clearly higher and better, though meant for others. In *Intruder*, by contrast, the world of men suffers considerably in comparison to Miss Habersham's female world. As we have seen, Atticus's male world of law is inherently good, the hope of both the helpers and the helpless; Gavin's male world of busyness is essentially bad, the bane of the better. And this is, of course, but a single example. More generally, as we have seen, *Mockingbird* elevates the "insider" world of law; *Intruder* warns against ignoring voices outside the adult white male world.

The fact that the novels thus recommend and condemn particular moral positions and perspectives precludes another possible reconciliation. This one would hold that what the author is doing is describing a world with great accuracy, revealing it to us as it is and leaving it to us to make the normative call, to see human nature as it is, with its normative implications. This may well be what some authors do, but it is not what Lee and Faulkner are doing in the stories before us. Moreover, to take this position would be to abandon much of the ground of West and Weisberg, who seem to believe that such clear—if, for the most part, merely implicit—moral positions are what we are to seek in literature, or at least in some literature.<sup>595</sup>

This distinction between merely depicting a character and recommending a character as a moral ideal is often overlooked or blurred in the current debate about the moral standing of Atticus. Atticus's critics quite rightly point out his moral limitations, particularly his paternalism and his insensitivity to the sexism and subtler forms of racism in his community.<sup>596</sup> More dubiously, they tend im-

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595. See *id.* at 4, 41 (defining "poethics" as that which seeks "to fill the ethical void in which legal thought and practice now exist"); WEST, *supra* note 589, at 6, 7 (arguing that the humanities can serve to define "the commonly shared moral beliefs with which we typically criticize law").

596. See Freedman, *Right and Wrong*, *supra* note 13, at 480-81 (asserting that Atticus's reluctance to represent Tom demonstrates that he "is a man who does not voluntarily use his le-

PLICITLY to condemn *Mockingbird* because it has a flawed character at its center.<sup>597</sup> Faulty characters make famously good moral instructors by way of negative example.<sup>598</sup> The problem with *Mockingbird* is that Lee holds up Atticus as a virtually flawless character, as an almost purely positive, rather than significantly negative, example.<sup>599</sup> This is not to say that authors' voices are always, or even often, to be heard in central or significant characters. As we shall see, critical reception of *Intruder* was initially skewed by a demonstrably wrong attribution of Gavin's views to Faulkner.<sup>600</sup> But in *Mockingbird*, Lee's recommendation of Atticus's position is unmistakable, and by our lights much of that position is quite gravely mistaken. In assessing the moral merit of the book, that has to matter.

One of Atticus's principal critics—and one of the book's main admirers—makes the opposite error. Rather than fault the book for holding up the flawed figure of Atticus as a role model, Thomas Shaffer praises *Mockingbird* for revealing those very flaws. He finds Atticus's concealment of Boo's role in Bob Ewell's death a serious moral error, and a symptom of the ultimately unsatisfactory paternalism that subverts Atticus's gentlemanly ethical system.<sup>601</sup> Shaffer fails to take adequate account, however, of the fact that the book's lesson is precisely the opposite on both points: Lee holds up the particular untruth in the case of Boo as the capstone of Atticus's way of life, chivalrous protection of the weak and innocent.

Shaffer is quite right to say that the book is a great teaching device;<sup>602</sup> his own scholarship is proof enough of that. But, as he himself uses the book, it is great in a very distinctive, and very limited, way. It

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gal training and skills—not once, ever—to make the slightest change in the pervasive social injustice of his own town"); Phelps, *supra* note 13, at 518, 530 (describing Atticus as "both lawyer and lawmaker," who is as "implicated in the town's delusions" as the rest of Maycomb).

597. See Freedman, *Right and Wrong*, *supra* note 13, at 482 (claiming that Atticus "is not an adequate role model for today's lawyer"); Phelps, *supra* note 13, at 515 ("We readers, like the citizens of Maycomb, see what we want to see and are blind to much else. We, like Atticus, are implicated in the town's delusions as long as we read *To Kill a Mockingbird* with uncritical admiration.").

598. See, e.g., Atkinson, *Butler*, *supra* note 25, at 180 (offering the butler's flawed professional norms in *The Remains of the Day* as instructive for the development of better norms).

599. See JOHNSON, *supra* note 12, at 33 (rejecting any suggestion that *Mockingbird's* point of view is ironic and insisting that "though the tone is childlike, the reader is prone to trust the judgments and values of the narrator"); *id.* at 96 ("The novel itself is, in part, [Scout's] convincing brief for her father's sainthood . . .").

600. See *infra* notes 647-48 and accompanying text.

601. See SHAFER, *AMERICAN LAWYERS*, *supra* note 25, at 93.

602. See SHAFER, *FAITH AND THE PROFESSIONS*, *supra* note 176, at 5.

shows us, by way of extended example, the critical flaw in an elaborate ethical system, a system that is essentially an extrapolation from Atticus's flawed character. We recognize these flaws on the basis of moral criteria not only extrinsic to those of the book, but at variance with those that the book is implicitly commending. *Mockingbird* makes an idol of Atticus; Shaffer points to imperfections in the casting, if not clay in the feet. He brings his insights into the flaws of Atticus's character and ethic to the book; he neither finds those insights in the book nor derives them from it.<sup>603</sup>

Given these very real, irreducible normative differences between the ethical perspectives of *Mockingbird* and *Intruder*, what are those who look to canonical literature for a consistent moral message to do? The most radical resolution of the problem would be to reject explicitly their fundamental premise—namely, that such lessons are appropriately to be found there. This anti-didacticism has, of course, a host of defenders,<sup>604</sup> but, for West and Weisberg's purposes, it proves too much. The cost of reconciling the inconsistent moralities of *Intruder* and *Mockingbird* along this line would be rejecting the very enterprise that made their inconsistency a problem in the first place—the quest for monolithic moral messages in canonical literature.<sup>605</sup>

Rather than reject the moral lessons of literature wholesale, one could reject them retail, at the level of individual works, or even particular aspects of individual works. Thus, one might reconcile *Intruder* and *Mockingbird* by arguing that the ethic of one or the other—or both—is wrong, in whole or in part. Because one or the other fails to present an adequate morality, so the argument would run, it does not belong in the canon. If the sources of our moral norms are limited to canonical works, then the conflict in moral norms between a canonical and a noncanonical work ceases to be a problem.

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603. John J. Osborn, Jr., similarly confuses our moral perspective with that recommended in *Mockingbird* when he says that "it is the first great film of the Sixties that makes a convincing case that a new kind of lawyer is needed, one who will fight to eliminate the 'system' rather than participate in it." John J. Osborn, Jr., *Atticus Finch—the End of Honor: A Discussion of To Kill a Mockingbird*, 30 U.S.F. L. REV. 1139, 1142 (1996). Again, as with Shaffer, this is not the message Osborn draws from the story, but the one he brings to it.

604. For Posner's critique of didacticism, see POSNER, *supra* note 526, at 305-44 (2d ed. 1998).

605. Their form of didacticism may not be viable, but others do not share its weaknesses, although they may suffer their own.

This approach avoids jettisoning West and Weisberg's didacticism only by violating an equally important assumption of their system. A basic purpose of their brand of law and literature, as we have seen, is to derive moral messages from canonical literature. They turn to that source, they tell us, because others are not available after the postmodern critique of law and ethics.<sup>606</sup>

But here that premise itself becomes a problem. How is a particular moral norm in one canonical work to be judged against conflicting norms in another? It cannot be, without assuming what West and Weisberg hope to prove by reference to literature—that is, a norm-laden human nature. Stated otherwise, where would these extra-canonical criteria come from? To say that they come from other canonical works is to risk an infinite regress or an unrevisable canon. And to say that they come from direct observation of moral nature is to say that we did not need to look for them from literature in the first place. Only at risk of circularity can one exclude works from the canon on the grounds that they do not possess a qualification that is said to be drawn from the canon itself.

If Faulkner, for example, succeeds in showing us a credible Lucas, one with whom we can empathize, what more proof can they ask of him? And if we find his depiction compelling, what more can they ask of us? They can ask us to reject as morally unsatisfying what they concede to be a live possibility of being, but they will then have to look past their ethical naturalism. At very least, they cannot point to a single, identifiable way of being human as good; they must find some additional reason for choosing an alternative.

It is important to note, however, that this is not a problem for all normative uses of literature. As we shall see below, it is not a problem for my position, which rejects the notion that absolute or universal moral norms are to be found anywhere. It is possible, in other words, to affirm the postmodern metaethical predicament and to concede that literature is no more secure a normative source than, say, law or philosophy. Nor is it a problem for those who, like Thomas Shaffer, deny that the postmodern ethical predicament is in fact a real predicament. As we have seen, Shaffer says that Atticus's way is fundamentally flawed. Unlike West and Weisberg, Shaffer can say

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606. See WEISBERG, *supra* note 14, at 3-5 (observing that postmodernist thought has suggested an absence of ethical constraints on law and that literature can fill that ethical void); WEST, *supra* note 589, at 2-8 (suggesting that literature can address the "critical dilemma" of "how to criticize the law from a moral point of view, if the law itself so heavily determines so much of our moral sense").



that without contradiction, because he affirms what they and other postmodern moralists deny, a traditional access to moral truth. (In his case, the means seems to be the Thomist combination of religious faith and speculative philosophy.)

A similar, and similarly problematic, answer to the moral conflict between *Intruder* and *Mockingbird* would suggest that we look to canonical works, not for moral frameworks or ethical systems, but for the manifestation of general virtues. Thus, for example, in the stories before us we would not be concerned primarily with racial or gender justice, with who is oppressed, and by whom, but with courage or with empathy for the downtrodden, without particular regard for the form courage takes or the nature of those with whom one empathizes. Atticus's story, on that view, shows us courage in standing by Tom, as does Gavin's in standing by Lucas. Beyond that, the stories diverge, but there the moral message is unnecessarily, and perhaps unduly, specific. Beyond the appropriate level of moral analysis, differences are as irrelevant as, say, typefaces or paper stocks.

But how are we to know the appropriate level of analysis? How general is general enough? Perhaps the clue will be implicit in the text. But here it is not: both texts seem to recommend with fairly great particularity, and, as we have seen, what they recommend differs not only in important particulars, but at the highest level of generality, the very ethos of the central characters. Again, if we are to import the criterion of appropriate degree of detail from outside, we are begging a question closely related to that which turning to literature was supposed to solve. We would be asked to bring with us to literature, not the particular substantive moral standards for which we are looking, but a kind of procedural standard for determining the degree of particularity at which we can expect to find useful guidance. If such a standard exists outside literature, the postulated postmodern normative crisis is not so severe as we have been asked to assume.

The current debate over the ethics of Atticus suggests a final avenue for reconciling the moral worlds of *Intruder* and *Mockingbird*, but it, too, is closed to moral absolutists like West and Weisberg. Atticus's defenders tend to concede that certain aspects of his life are unacceptable by contemporary standards, but to insist that, by the standards of his time, his ethic is unassailably progressive. To judge

him by the standards of our time, they maintain, is to commit an unfair form of ethical anachronism.<sup>607</sup>

If, as I have argued, *Intruder* offers an alternative ethic for Atticus's time and place, then this anachronism defense would have to take a somewhat different form. One possibility, of course, would be to say that Atticus's way is right, and Faulkner's implicit indictment of it, wrong. For reasons we have already examined, that argument is not one that West and Weisberg can enter, for it assumes a moral standard outside the stories themselves by which their conflicting moralities can be judged.

That problem could be surmounted by a different anachronism argument. It would focus, not on the time in which the stories are set, but on the time in which they were written. This way, their very different ethics could both be "right": Faulkner's by the standards of 1948; Lee's by those of 1960. We need not pursue this line of argument further to see that it is not available to those who are seeking a set of natural, universal, and eternal values. The problem here lies in the very nature of the anachronism defense. Such a defense implies, of course, that what is right at one time may be wrong at another, an implication at odds with West and Weisberg's quest for ethical absolutism.

A final line of attack would be to question the canonicity of the offending book on nonmoral grounds—on formal aesthetic grounds, for example. That would take us beyond the scope of this paper, and, more importantly, beyond the works of West and Weisberg, the law and literature scholars with whom we are most concerned here. Each of them tends to take the canon as given, under criteria they do not elaborate, and to derive moral messages from works included under those other, nonmoral criteria. Weisberg, moreover, quite clearly views *Intruder* as canonical,<sup>608</sup> and his treatment of *Mockingbird* places it alongside, if not on a full parity with, canonical works.<sup>609</sup>

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607. See Freedman, *Right and Wrong*, *supra* note 13, at 477 (identifying and responding to charges of "presentism").

608. *Intruder* is explicitly in his canon. See WEISBERG, *supra* note 14, at 120. *But see* Richard H. Weisberg & Karen L. Kretschman, *Wigmore's "Legal Novels" Expanded: A Collaborative Effort*, 50 N.Y. ST. B.J. 122, 130 (1978) (listing Faulkner's *Sanctuary* but omitting *Intruder*).

609. See Weisberg & Kretschman, *supra* note 608, at 130 (including *Mockingbird* on their "revised list" of legal literary works); *see also* WEISBERG, *supra* note 14, at 41 (listing *Mockingbird* along with Faulkner's *Sanctuary*, Bernard Malamud's *The Fixer*, and Fyodor Dostoyevsky's *The Brothers Karamazov* as unusual cases in which "storytellers do create idealist lawyers to defend the nonpowerful"); *id.* at 53 (listing Atticus among "[t]he category of nice lawyers who lose their cases": "More poignantly yet, the sympathetic family man Atticus Finch does

Moreover, law and literature bibliographies typically list both works, at least implicitly acknowledging the canonicity of each.<sup>610</sup>

In summary, the conflicting moral worlds of *Intruder* and *Mockingbird* illustrate a problem for those who would find universal moral norms in literature as a source for criticizing contemporary norms, both legal and moral. A comparison of these two books suggests that literature gives us no single Archimedean point from the perspective of which we can criticize, and perhaps move, our normative world: it gives us many. Moreover, it gives us no template for determining which of these multiple fulcrums is the one and true. Literature seems to leave us with the very difficulty from which the West and Weisberg school of law and literature sets out to deliver us: the postmodern clash of theoretically irreconcilable values.<sup>611</sup> Turning to literature to solve this problem in law and ethics gives us not new answers to the original problem, but the old problem in a new context. Natural and universal norms are no easier to find in literature than elsewhere in law or in ethics.

2. *An Alternative Project.* But the difficulty of natural law theory, here as elsewhere, is the opportunity of its opponents. The problem, after all, is an embarrassment of riches: not too few values, but too many. A close study of literary classics reveals not that they contain no viable visions of being a good person or reforming society, but that they reveal competing visions. And, as these stories illustrate, these competing visions are not merely vague generalizations about life at large, private or public. They operate in particular contexts, and they imply fairly specific responses to real problems. They address oppression, and they deal with the lawyer's role in combating it; they involve lawyers and liberation.

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not have the necessary skills (admittedly Herculean in nature) to prevent a jury from convicting his innocent client, Tom Robinson, in Harper Lee's *To Kill a Mockingbird*."). Weisberg's citations of *Mockingbird* are sometimes a bit begrudging, but never wholly dismissive. See, e.g., Weisberg & Kretschman, *supra* note 608, at 120 ("or for that matter Harper Lee's *To Kill a Mockingbird*").

610. See Richard Delgado & Jean Stefancic, *Norms and Narratives: Can Judges Avoid Serious Moral Error?*, 69 TEX. L. REV. 1929, 1978 (1991) (compiling bibliographical references to *Mockingbird*).

611. See, e.g., Book Note, *Do the Right Thing*, 106 HARV. L. REV. 1352, 1352 (1993) (dismissing Weisberg's premise in *Poethics*: "This is a fatal mistake: given literature's intrinsic ethical diversity and many lawyers' sympathy for less-than-admirable clients, simply studying literature is unlikely to produce the shared sense of right and wrong that *Poethics* hopes to instill.").

As we have seen, *Intruder* and *Mockingbird* present very different messages about critical aspects of liberation: who is oppressed and how, by whom and by what, with which hope of help and which vision of deliverance. But this need not drive us to despair, any more than do parallel developments in other areas of normative discourse, in particular, law and ethics.<sup>612</sup> For what we have reached, on each of these parallel paths, can be seen not as an impasse, but as a fork. Our situation is not that we can go no further; it is that we must choose which way to go.

Nor is this to say that we are left without help in the choice and that literature cannot be uniquely helpful. Other branches of normative discourse—again, law and ethics come to mind—can offer us detailed maps of what lies ahead. Supplementing these more abstract discourses, literature can show us what it is like to go one way or the other. It can show us what it is like to be the kind of person who affirms one set of values over another, to live in a world where certain potential human capacities and relationships, on the part of some people or all, chronically are left unrealized. It can place not just Tom's humble charity, but also Lucas's heroic virtue, in opposition to prevalent racial stereotypes—and to each other. It can show us more than just the obvious fact that convicting innocents because they are black is a gross miscarriage of liberal justice. It can suggest that the businesslike methods of liberal law may conceal from us who the innocent victims really are and how they are best to be helped. It can contrast Miss Habersham's mode of practical reasoning with that of Gavin and Atticus, and her woman's sphere with that of Miss Maudie and Aunt Alexandra.

We must be careful, however, not to reject too much in abandoning the search for universal natural norms in literature. The "ought" notoriously implies the "can"; so, too, does the "may." In a natural law system, it makes no sense to say that we morally *must* do the physically impossible; it likewise makes no sense, in a non-natural law system, to say that we *may*. In that sense, human psychology is as much a matter of natural law as gravity, and it is relevant to ethics in precisely the same way, as an outer limit on the possibilities of human being. But psychology is relevant much more often, and much

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612. See, e.g., Rob Atkinson, *Beyond the New Role Morality for Lawyers*, 51 MD. L. REV. 853, 854-55 (1992) (outlining a lawyer's ethics based on meta-ethical skepticism); Joseph William Singer, *The Player and the Cards: Nihilism and Legal Theory*, 94 YALE L.J. 1, 8 (1984) (advocating the view that "[l]aw and morality have no rational foundation that once and for all compels all persons to prefer certain institutions and rules above all others").

more interestingly, and literature has much more to reveal about it. Accurate description of human nature is relevant to showing what we are capable of being, even if, in the wake of normative skepticism, it has no use in showing us what we ought to be. Literature, in other words, can help us see the real limits of human nature as well as its potential.

*B. The Medium and the Message*

As we have already noted, my disagreement with Weisberg and West's effort to find transcendent values in literature agrees with them at a more fundamental level: I share their assumption that we can legitimately look for moral messages in literature. Our comparison of *Mockingbird* and *Intruder* suggests, furthermore, that certain moral messages, if not absolute and eternal, may nevertheless be both more enduring and more widely relevant than others. *Mockingbird*, as we have seen, holds up Atticus's attitude toward race, and less directly his attitude toward gender and class, as essentially correct, for his time and perhaps for all time. These attitudes are already showing serious signs of wear, not just as permanent standards, but even as standards appropriate to his own time.<sup>613</sup>

*Intruder*, by contrast, has what at first seems a more negative moral message: Gavin's lawyerly way, the way of white male busyness, is fundamentally flawed. Even its more positive messages—that Lucas's aristocratic character cannot safely be ignored and that Miss Habersham and old Ephraim have something basic to teach about legal process—are significantly tentative. They are not, strictly speaking, negative; beyond calling into question Gavin's way, they solve a particular problem, establishing Lucas's innocence. But at the end, the principal recipients of their lesson, Chick and Gavin, are not at all sure what to do next. Unlike Jem and Scout, safely tucked in with Atticus firmly in charge, Chick and Gavin are left at a palpable loss, a loss of their old secure world of racial and gender superiority, without the clear outlines of an acceptable new world.

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613. For example, Atticus addresses his client as "Tom" when he is on the witness stand and allows the prosecutor to call him "boy" and "Robinson." LEE, *MOCKINGBIRD*, *supra* note 1, at 202-10. By contrast, counsel for the Scottsboro defendants objected to the prosecutor's addressing black witnesses by their first names. See DAN T. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH* 198 (1969); GOODMAN, *supra* note 338, at 122.

At this juncture, as we have seen, the form of their story merges with its content.<sup>614</sup> If a cliché can be excused where it does good service, the medium in a significant way becomes the message. Gavin and Chick proceed in a dialogue, and, in so doing, they lay the procedural foundation of their new life. We have already noted the parallel with Plato's dialogues, among the West's most enduring forms of moral fiction. It remains to be noted here that, further paralleling Plato, the dialogue has another aspect: the author not only shows us the characters in dialogue; he implicitly invites us to join them, and him. As the project turns from the largely negative task of analyzing an inadequate moral system to the primarily positive task of creating a new normative synthesis, the author implicitly acknowledges that he needs our help. In placing the stuff of a new synthesis before us, Faulkner becomes our Gavin, even as Plato, engaging us in the dialogues, becomes our Socrates.<sup>615</sup>

This is not, of course, in any sense essential or inevitable. The author could lecture to us, in the way that one suspects has helped give didactic literature its very bad name and didacticism's critics much of their best ammunition. But in inviting us to participate and in implying that the participation is open to all, he calls us back to and affirms very deeply shared values, even as he calls on us to abandon other, implicitly subordinated values.

### C. "Insiders" and "Outsiders"

Law and literature scholars from a wide range of perspectives—here Weisberg and West are very much in the vanguard—urge that literature open law to the perspective of outsiders.<sup>616</sup> Among literary

614. See *supra* notes 537-41 and accompanying text.

615. See White, *supra* note 540, at 850-51 (describing Plato's *Gorgias* as a dialogue "meant to exemplify the kind of life Socrates calls 'dialectic'").

616. See, e.g., POSNER, *supra* note 526, at 282-87 (2d ed. 1998) (asserting that "there is no better advice to a legal advocate than to empathize" with the outsider, a technique one can learn "from the example of the great writers of imaginative literature"); Kathryn Abrams, *Hearing the Call of Stories*, 79 CAL. L. REV. 971, *passim* (1991) (defending the value of feminist narrative as a form of legal persuasion); Delgado & Stefancic, *supra* note 610, at 1934-39, 1950-53 (examining the possibility that "outsider" treatments of homosexuality and race could have helped judges avoid "serious moral error" in cases such as *Dred Scott v. Sanford* and *Bowers v. Hardwick*); William N. Eskridge, Jr., *Gaylegal Narratives*, 46 STAN. L. REV. 607, 607 (1994) (employing gay and lesbian narratives to argue that storytelling can expand legal debate and drive social transformation); Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324 (1987) (suggesting that "looking to the bottom—adopting the perspective of those who have seen and felt the falsity of the liberal promise—can assist critical scholars in the task of . . . defining the elements of justice").

critics generally, there is considerable enthusiasm for opening the literary canon itself to the voices of outsiders. A sympathetic response has been to note how often canonical “insiders” offer radical critiques of traditional values.<sup>617</sup> In presenting the perspectives of outsiders, *Intruder* succeeds far better than *Mockingbird*. But *Intruder* does more than meet this widely shared normative requirement. It not only questions the implicit contours of that demand in its predominant present form; it also expands it in useful new directions.

Our comparison of *Intruder* and *Mockingbird* offers a corrective to the simplistic polarization of “insider” and “outsider.” On the one hand, that comparison reminds us that an “outsider” can present what amounts to an apologia for very conservative, even patriarchal, values. Harper Lee’s filial piety shines uncomfortably clearly through what she herself characterized as essentially a love letter to her father.<sup>618</sup> Her testimonial for Atticus attests that a writer’s membership in a traditionally disadvantaged group does not automatically confer special insights into that group’s disadvantages. Moreover, membership in a disadvantaged class obviously does not preclude membership in privileged classes—Lee was a woman, but she was also white and the daughter of a lawyer.

Faulkner’s case reminds us of the converse. An insider can present critiques of the inside from an outsider’s perspective, as Faulkner has done through Chick, Miss Habersham, and Lucas. And those who are insiders in some respects can be outsiders in others. Gavin may have been born and bred in Mississippi, but he was educated at Harvard and Heidelberg. Faulkner himself was not merely white, male, and upper-class; he was raised in a South that was as ruined as it was rural. In an era when the intellectual establishment was distinctly northeastern and urban, this very much affected the critical reception of *Intruder*.

This is not to say that the categories “insider” and “outsider” are meaningless or that they inevitably collapse. Nor is it to turn us from the “outsiders” to whom law and literature scholars generally urge us to attend—traditionally oppressed and excluded groups like women, ethnic, and especially racial, minorities, and the poor. It is rather to

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617. See WEISBERG, *supra* note 14, at 117-23 (arguing that both feminists and people of color can gain something from a study of canonical texts); WEST, *supra* note 589, at 13-14 (“A tremendous amount of canonical literature is highly critical of law, and of the arguments typically put forward to support its moral authority.”).

618. See Timothy Hoff, *Influences on Harper Lee: An Introduction to the Symposium*, 45 ALA. L. REV. 389, 392-94 (1994).

say that, to have any analytic power, the terms “insider” and “outsider” must be used in reference to a particular social world, and that the bipolar social world often implied by those terms is pathetically impoverished.

*Intruder* also shows how those who are both insiders and outsiders can act, in an almost literal way, as mediums. Within the story, as we have seen, the innocent Chick opens a window for us into Lucas’s heroic—and, for most of us, profoundly alien—character. Features of a lost heroic order become accessible to us through Chick, who, having known his grandfather and Lucas, recognizes those features immediately. Lucas, the supreme outsider in Chick’s world, manifests the ideal features of aristocratic, white, landowning southerners, Mississippi’s traditional “insiders.”<sup>619</sup>

It is important to note, however, that the heroic features of Lucas, the paradigmatic “other,” are not necessarily good. Similarly, the outsider position of Miss Habersham need not be—and from our perspective, certainly it is not—pure, resting as it did on a foundation of slavery and reflecting its continuing effects. Our apprehension of the “other” gives us a perspective from which to examine our own position, as the mainstream of law and literature scholars have pointed out.<sup>620</sup> But, contrary to what they sometimes imply,<sup>621</sup> the perspective of the “other” is not necessarily or uniquely right. Nor, to offer a useful critical perspective, need it be. What we need to critique our position is not necessarily a position that is better in an absolute sense, or even one that we would subjectively or idiosyncratically prefer to occupy. What we need, more simply, is just a perspective that is both accessible to us and outside our own: not so much God’s perspective, as that of the devil’s advocate.

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619. Lucas, of course, is the epitome of these values; he is better than the best of their traditional exemplars. It may well be the case that some blacks will occupy the opposite position. They may pervert the cruder forms of heroic values in such primitives as the Gowries. For an argument that the most violent of ghetto youths are bringing to fruition the hypersensitive code of honor of their slave ancestors’ overseers, see FOX BUTTERWORTH, *ALL GOD’S CHILDREN: THE BOSKET FAMILY AND THE AMERICAN TRADITION OF VIOLENCE* 327-29 (1995). This is an ironic twist on the old “massive resistance,” Dixiecratic canard that the traditional southern elite know blacks better than northern white liberals. If *All God’s Children* is right, northern white liberals must come to know not just Gavin, but also Nub Gowrie, if they are to understand problems much closer to home than Mississippi.

620. See *supra* note 616 and accompanying text.

621. See WEISBERG, *supra* note 14, at 41-47 (“And in the same stories that most feature skillful communication, the correct outcome is conveyed by the law’s treatment of the outsider, the ‘other.’”).



Unless they are to claim a privileged position above their own critical stance, this should apply to the central tenets of the law and literature movement itself. One of those tenets is empathy with previously excluded others. As generally understood, this has come to mean not just seeing those others as they are or seeing the world as they see it, but moving either to ameliorate their practical situation or to adopt their theoretical or political perspective. It has come to mean, in other words, not so much empathy as sympathy. As West expresses it:

An act of power in public life as well as in private life that is praiseworthy is an act of power that, in short, is loving: it is the act that originates in the heart and is prompted by our sympathy for the needs of others, and empathy for their situation.<sup>622</sup>

Yet, on this very point, Lucas's case offers a dual critique. In the first place, as we have already seen, Lucas's position is not altogether lovely; he is neither the kind of stereotypically downtrodden person with whom we can easily sympathize nor the kind of altruistic hero whom we are accustomed to emulate. And that raises the second, and more fundamental, point: Lucas, the novel's paradigmatic outsider, is not himself a model sympathizer. Not only does he not evoke the sympathy we conventionally reserve for the unfortunate; he himself does not evince it toward them. Looking into Lucas's face from the freezing waters of the creek, Chick does not see the face of Christian charity or liberal sympathy:

[H]e looked up at the face which was just watching him without pity commiseration or anything else, not even surprise: just watching him, whose owner had made no effort whatever to help him up out of the creek, had in fact ordered Aleck Sander to desist with the pole which had been the one token toward help that anybody had made.<sup>623</sup>

Lucas, quite significantly, is "without pity." Lucas does, of course, save Chick from the creek. But the motive is not altruistic regard for the needs of another; it is the pure, unselfconscious outworking of his own noble nature.

Lucas's notable, and explicitly noted, absence of pity is entirely consistent with his heroic character. As Nietzsche, the great exponent

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622. WEST, *supra* note 589, at 175.

623. FAULKNER, *INTRUDER*, *supra* note 4, at 6-7.

of such character, emphasized, pity was not only absent from it, but also radically inconsistent with it.<sup>624</sup> Moreover, Nietzsche was at pains to argue the point:

[T]his overestimation of and predilection for pity on the part of modern philosophers is something new: hitherto philosophers have been at one as to the *worthlessness* of pity. I name only Plato, Spinoza, La Rochefoucauld and Kant—four spirits as different from one another as possible, but united in one thing: in their low estimation of pity.<sup>625</sup>

This is not to say that Nietzsche is right in his own low estimation of pity, nor even in his marshaling of these other philosophers in his camp. It is rather to say that pity as the touchstone of all acts of power, the point that West takes for granted, is very much a debatable point. Lucas in his person shows us what Nietzsche in his writings described, a viable noble life. If we genuinely empathize with Lucas, we thus encounter a paradox: the recommended method of law and literature reveals to us a character very much at odds with the character that the mainstream of the law and literature movement presupposes to be good. Only if, therefore, the law and literature movement can meet Lucas on its own terms, which requires encountering him on *his* own terms, can it fulfill its own promise: calling received norms radically into question.

Here again, a comparison with *Mockingbird* is instructive. Robin West states the empathetic methodology of the law and literature movement in almost exactly the terms Atticus recommends to Scout: “We learn what it is to walk in another’s shoes.”<sup>626</sup> As we have seen, West’s substantive commitment, like his, is to help others, especially unfortunate others. Yet, as we have also seen, the ultimate effect of Atticus’s story is to reaffirm his place at the apex of both the moral and social world. Even if we ultimately come to commit ourselves—as I earnestly hope we shall—to helping others, we must, if we are to be honest with ourselves, ask ourselves the source of that commitment. As Phillipa Foot has pointed out, Nietzsche cannot, by his

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624. See NIETZSCHE, *supra* note 144, at 19 (arguing that it is precisely in the “instincts of pity, self-abnegation, [and] self-sacrifice” that lies “the *great* danger to mankind, its sublimest enticement and seduction”).

625. *Id.*

626. WEST, *supra* note 589, at 425. Atticus says to Scout: “You never really understand a person until you consider things from his point of view . . . until you climb into his skin and walk around in it.” LEE, *MOCKINGBIRD*, *supra* note 1, at 36.

methodology or perhaps any other, prove that altruism is a bad thing. But he may convince us that, in our own individual cases, we have chosen altruism for deeply selfish reasons.<sup>627</sup> It is entirely consistent with the most orthodox versions of Christian charity itself to affirm that “[t]he last temptation is the greatest treason: [t]o do the right deed for the wrong reason.”<sup>628</sup>

Finally, even if our motives are the purest, a measure of humility may be in order for a very different reason. *Intruder* suggests that our interventions, even our message of liberation, may be resented, and not because they are wholly self-serving or hypocritical, or even because they are insufficiently altruistic or sincere. They may be resented not because of their bad motivation, but despite their good motivation—simply because they are ours, and we are others. Gavin, the most enlightened of Faulkner’s Mississippians, is, at bottom, neither bad nor benighted. He is no xenophobe and certainly no scoundrel, but he is irreducibly a patriot. If not before we declare, as some of us are all too ready to declare, the triumph of liberal democracy and even the end of history,<sup>629</sup> then at least before we claim that triumph as our own, we would do well to empathize with him, too. For he likely has his counterparts in all the lands we would liberate: Haiti and Hanoi, Bosnia and Beirut, Iraq and Northern Ireland, South Africa and Afghanistan. The fact that those counterparts may not be white should not obscure the fact that they, too, are proud.

#### D. *Writers and Lawyers, Literature and Law*

It is famously possible to make too much of the relations of authors’ lives to their works; much—perhaps too much—has been made of the influence that lawyers in their lives had on the writings of Lee and Faulkner.<sup>630</sup> Reversing the usual terms of the debate, I want to suggest that the lawyers in their works may tell us something important about Lee and Faulkner’s respective relations to law and lawyers in their lives.

As others have shown, Lee had her Atticus in her father, and Faulkner something like his Gavin in his older contemporary and

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627. See Phillipa Foot, *Nietzsche’s Immoralism*, N.Y. REV. BOOKS, June 13, 1991, at 18.

628. T.S. ELIOT, *MURDER IN THE CATHEDRAL* 44 (1935).

629. See FRANCIS FUKUYAMA, *THE END OF HISTORY AND THE LAST MAN* (1992).

630. See WATSON, *supra* note 15, at 6-16 (analyzing Faulkner’s fictional lawyers in terms of his relationships with the lawyers in his life); Joseph Blotner, *William Faulkner: Author-at-Law*, 4 *MISS. C. L. REV.* 275, 278-81 (1984) (same).

mentor, Phil Stone.<sup>631</sup> Lee dedicated her sole work “for Mr. Lee and Alice in consideration of Love and Affection”;<sup>632</sup> Faulkner dedicated the book that has Gavin most clearly at its center, *The Town*, to Phil Stone, “[who] did half the laughing for thirty years.”<sup>633</sup> Their relationships with the principal lawyers in their lives were, as these dedications suggest, in many respects quite different.

Lee has called her work a love letter, and, if she has never revised or retracted the missive, she has also never written another. Her single, if singular, literary contribution is a paean to paternalism. Like Scout, she never seems to come out from under her father’s spell.<sup>634</sup> It is tempting to speculate—though speculation is admittedly the most I can call it—that her failure to write again is related to the content of the original message,<sup>635</sup> a message that I suspect she came to question, if not quite to regret.

*Mockingbird* is, after all, the retrospective of a precocious little girl whose father always knew best. Might not the phenomenal success of that story—a success that we must examine in its own right below—itsself have impeded the development, at least in print, of a more mature, more questioning message? In the last analysis, Harper Lee had but to look about her. For all its anonymous black martyrs and heroic white lawyers, the ultimate hero of the civil rights movement—and not just in Alabama—is Dr. King. Here was a black man whose virtue was passive only by the grossest misnomer and whose method was lawful only because it stretched our understanding of legality beyond any limit that Tom Robinson and Atticus Finch ever dreamed of approaching. And long before that, George Eliot’s *Middlemarch* should have laid to rest the reverie of any young woman hoping to find fulfillment in building a monument to an old man.<sup>636</sup>

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631. See generally Susan Snell, *Phil Stone and William Faulkner: The Lawyer and “The Poet”*, 4 MISS. C. L. REV. 169 (1984) (recounting Faulkner’s friendship and working relationship with Stone); Morris Wolff, *Faulkner’s Knowledge of the Law*, 4 MISS. C. L. REV. 245 (1984) (describing Faulkner’s close and working friendship with Phil Stone).

632. LEE, *MOCKINGBIRD*, *supra* note 1, at dedication.

633. FAULKNER, *The Town*, *supra* note 286, at dedication.

634. See JOHNSON, *supra* note 12, at 96 (“The novel itself is, in part, her convincing brief for her father’s sainthood, an ironic reversal of the usual novelistic cliché of adolescent (and Gothic) patricide.”).

635. See *id.* (“That Lee’s readers, who are in a sense her jury, so readily and perpetually render a decision in Atticus’s favor, closing the case, as it were, may in some way account for the silence of this authorial voice thereafter.”).

636. See *supra* note 24 and accompanying text.

Faulkner, on the other hand, famously fell out with his mentor. His writing took turns of which Stone disapproved, and Stone grumbled that the Nobel laureate had developed “Nobelitis.”<sup>637</sup> But if Faulkner could never quite restore the breach, neither did he ever quite reciprocate the hostility. Indeed, Chick’s lawyerly mentor seems to have done what his creator’s could not: come to terms with a creature greater than he.

Harper Lee attended law school but never finished;<sup>638</sup> William Faulkner steadfastly resisted parental and social pressure to follow in the footsteps of numerous relatives, including a grandfather, great-grandfather, uncle, brother, and cousin.<sup>639</sup> No doubt many factors contributed to this resolution, not least of them Faulkner’s ultimately accurate assessment of his literary talent. But, I suspect that, early on, there must have been the seed of the insight that bore fruit in the law-oriented fiction of his mid-career: that the law that lawyers do, day in and day out, ultimately has less to do with the kind of liberation Faulkner wanted to be about. Well before his 1950 Nobel acceptance speech, he had not only declined to accept the end of humanity;<sup>640</sup> he had set about to improve its condition.<sup>641</sup> He had discovered, and was putting into practice, the dictum of Shelley: “Poets are the unacknowledged legislators of the world.”<sup>642</sup>

### III. LESSONS FOR LAWYERS

As we have seen, we can go to literature for insight into what we should be like, or, as I prefer, what we can be like. Either way, we search the scriptures of the literary canon for normative guidance, for help on what good is, or how we might become better. But the relationship between the seeker and the sought is curiously reciprocal. Every self-improvement plan, from the ancient Greeks’ “Know thyself” to today’s multifarious twelve-step programs, begins with de-

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637. See Snell, *supra* note 631, at 192.

638. See Timothy Hoff, *Influences on Harper Lee: An Introduction to the Symposium*, 45 ALA. L. REV. 389, 396 (1994).

639. See Blotner, *supra* note 630, at 276, 278-81 (enumerating Faulkner’s lawyer-relatives and describing his relations with his own lawyers); Wolff, *supra* note 631, at 245 (same).

640. See WILLIAM FAULKNER, Address upon Receiving the Nobel Prize for Literature (Dec. 10, 1950), in THE PORTABLE FAULKNER, *supra* note 19, at 724 (“I decline to accept the end of man.”).

641. See *id.* (“The poet’s voice need not merely be the record of man, it can be one of the props, the pillars to help him endure and prevail.”).

642. THE OXFORD DICTIONARY OF QUOTATIONS 644 (rev. 4th ed. 1996).

scription rather than prescription. Diagnosis necessarily precedes cure.

Where we go to look for guidance, and what guidance we take to heart, may tell us a great deal about what we think our problem is, and thus about who we are. As Nietzsche noted, the kind of good we seek to become may be a painfully accurate index of the kind of bad we already are.<sup>643</sup> As scholars of law and literature have more recently observed, the kind of stories we read and recommend tells us as much about the values we already have as about those we might or should acquire.<sup>644</sup>

With that in mind, I want to examine what I think are reasons why *To Kill a Mockingbird* has had a much greater appeal to the public generally, and to lawyers particularly, than *Intruder in the Dust*. I want to be careful at the outset, however, not to claim too much for my methodology. I abjure at the start the ambitious—and, I think, hopeless—task of proving the cause, or even the extent, of the former book's greater popularity. Looking more narrowly at critical reception and subsequent commentary—hardly ideal indexes of popularity or influence—I shall try to identify plausible sources of appeal. Beyond that, I shall, in the spirit of Nietzsche's genealogy of morals,<sup>645</sup> ask you to look with me at why we—not the world, but you and I—might be inclined to favor one book over the other, and to reflect on what that tells us about ourselves, for better and for worse.

#### A. *Looking Backward*

Both books came at critical junctures in the modern civil rights movement, and their initial receptions were certainly colored by that timing.<sup>646</sup> The year of *Intruder's* publication, 1948, was the year of

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643. See NIETZSCHE, *supra* note 144, at 36-40 (discussing the development of differing conceptions of morality).

644. See BROOK THOMAS, CROSS-EXAMINATIONS OF LAW AND LITERATURE 3 (1987) ("A major purpose of my study is to use selected literary texts from the American Renaissance to help define the legal ideology of the period."); *id.* at 5 ("One way to accomplish this task [of reconstructing the cultural narratives that grant the law its authority] is to compare a culture's law with its literature, since literature, in a much more obvious way than law, reveals the stories that a culture tells about itself.").

645. Indeed, this enterprise can be seen as a particular application of Nietzsche's more general critique. Examining why the morals of particular literary works have deep psychological, pre-moral appeal is a special case of examining why particular moral systems as a whole have such appeal.

646. See BROOKS, *supra* note 141, at 281 (observing that "[t]he supercharged atmosphere in which [*Intruder*] has been read played all sorts of tricks on its reviewers" from the beginning);

Truman's integration of the armed forces. This, along with other aspects of his position on civil rights, precipitated the secession of Strom Thurmond's "Dixiecrats" from the Democratic Party.

Against this background, elite eastern reviewers, following the lead of Edmund Wilson in the *New Yorker*,<sup>647</sup> tended to read Gavin's speeches on race and sectionalism as Faulkner's manifesto against the contemporary civil rights movement.<sup>648</sup> The South's foremost author, soon to be a Nobel laureate, was heard to say, through the Harvard- and Heidelberg-educated Gavin, that blacks could help themselves through evolutionary means, and that white southern patriarchs not only had any local excesses well in hand, but would not brook any outside interference. Indeed, in the face of such interference, they would ally with the redneck rabble, wrapping a solid white South in the Stars and Bars—ready, again, for defeat, but not for surrender.

Nor was Lucas Beauchamp, the real hero of the novel, particularly appealing. Indeed, for all his negation of Christ-like qualities, the message implicit in his character had the Gospels' paradoxically double distaste among the established order. As the resurrection proverbially stood as a stumbling block to the Jews and an absurdity to the Greeks,<sup>649</sup> so must Lucas's aristocratic blackness have put off traditional southern conservatives and northern liberals alike. If he was a strong black character, his was no Uncle Tom's cabin. To the consternation of northern liberals, he embodied distinctly southern aristocratic values. Yet, to the irritation of southern conservatives, he embodied those values in a black skin, and he transcended even his eponymous white ancestor. Asked if he were the model for Gavin in *Intruder*, one of Faulkner's uncles answered unequivocally and, we may guess, not atypically: "Me, that nigger-lovin' Stevens? Naw, I don't read Billy's books much. But he can write them if he wants to. I guess he makes money at it—writing those dirty books for Yan-

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JOHNSON, *supra* note 12, at 12 ("[T]he reception of [*Mockingbird*] was profoundly affected by the events of the 1950s.").

647. See Edmund Wilson, *William Faulkner's Reply to the Civil-Rights Program*, *NEW YORKER*, Oct. 23, 1948, at 106 ("The book contains a kind of counterblast to the anti-lynching bill and to the civil rights plank in the Democratic platform.").

648. See BROOKS, *supra* note 141, at 279, 281 (discussing misconceptions of Wilson and other reviewers). *But see* Bassett, *supra* note 19, at 208 ("Only a few critics unsympathetic to Faulkner tend to identify his views with Gavin's.").

649. See 1 *Corinthians* 1:23.

kees.”<sup>650</sup> Even Lucas’s potential point of common appeal, aloof self-reliance, presented a problem: it rested on a nexus of reciprocal obligations with women, both black and white, and with children.

As C. Vann Woodward has demonstrated, northern audiences had been accustomed, almost from the moment of Robert E. Lee’s magnanimous surrender, to having their arriviste, urban, industrial culture criticized from the perspective of aristocratic and agrarian Confederate veterans.<sup>651</sup> These figures of chivalrous defeat were a stark contrast with the excesses of the victors, especially the robber barons of the Gilded Age, and they represented classical values that both sections could remember to have been shared in the early republic, before the crisis of slavery.

These southern figures, however, appeared in the works of authors who were themselves northern—Herman Melville, Henry Adams, and Henry James—not southerners like Faulkner. Moreover, these fictitious southerners were expatriates resigned to defeat; unlike Gavin, they were not speaking from Mississippi and spoiling for another fight.<sup>652</sup> But, from the other side, they were unlike Gavin in another critical respect: they were not tainted with busyness (or, for that matter, business). The message of Miss Habersham and Ephraim is that all men of affairs, even the most consciously and loyally southern, are mired in busyness. In *Intruder*, the problems of adult male business are not Yankee imports, or, if they are, they have insidiously captured the South’s ablest cultural defenders.

*To Kill a Mockingbird* came at a later, and arguably more severe, impasse in the civil rights movement, the era of “massive resistance” after *Brown I*.<sup>653</sup> It offered, however, a much more conciliatory message. Indeed, if *Intruder* was doubly offensive, *Mockingbird* had a

650. JOEL WILLIAMSON, *WILLIAM FAULKNER AND SOUTHERN HISTORY* 270 (1993). According to Williamson, this comment “caught accurately the mood of southern white response.” *Id.*

651. See C. VANN WOODWARD, *A Southern Critique of the Gilded Age*, in *THE BURDEN OF SOUTHERN HISTORY* 109, 109-110 (rev. ed. 1968) (“The crudities, excesses, and shams of the Gilded Age presented the Southern critics and moralists with the broadest target they had ever had above the Potomac. . . . [C]hampions of the Lost Cause continued to pronounce judgment upon the shortcomings of the new Yankee order.”).

652. See *id.* at 110-11 (“In each of these works a Southerner, a veteran of the Confederate Army, is introduced in a sympathetic role.”).

653. *Brown v. Board of Educ.*, 347 U.S. 483 (1954). This national climate is discussed in JOHNSON, *supra* note 12, at 11-12 (observing that a full appreciation of *Mockingbird* derives from a grasp of the conflict over civil rights in 1950s Alabama).



dual appeal.<sup>654</sup> *Mockingbird* depicted the traditional white leaders of the South, the counterparts of men like Atticus and their female helpmates, as fully on the side of the northern angels. Individual justice in individual cases, they were able to hear, was what those of their class had always stood for.<sup>655</sup> Northerners, on the other hand, remained conveniently offstage, up North but not upstage. Unlike Gavin in the discursive dicta of his incendiary set-pieces, Atticus kept to the morally easy facts of the case before him.

Here the daughter of an Alabama lawyer, himself a sympathizer with the Scottsboro defendants, had a reassuring message for northern audiences: on the fundamental point of equality before the law, we are with you (and you need not worry with the details). Atticus was thus not only a hero of whom elite southerners could be proud; he was also someone with whom liberal Yankees could work—or, better yet, trust to do their good works for them.<sup>656</sup> With the elegantly aristocratic easterner Jacqueline Bouvier Kennedy presiding in Camelot, three years before *The Feminine Mystique*,<sup>657</sup> the supporting role of elite southern ladies was not likely to come in for heavy censure. And when it did, when scholars like Thomas Shaffer began to question Atticus's paternalism, the egalitarian answer was ready at hand: ladies can be gentlemen, too.<sup>658</sup>

*Mockingbird's* message about southern blacks and poor whites should also have been reassuring to northern and southern elites. Blacks were asking most politely for very little, and they were effusively grateful when they got nothing but conscientious failure. Red-necks' ignorance and intransigence were the principal evils; their accepting the leadership of their betters, the principal hope. Where *Intruder* threatened to take both northern and southern elites down,

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654. For a survey of the generally favorable critical reaction to *Mockingbird*, see JOHNSON, *supra* note 12, at 21-25.

655. *But see id.* at 15 (noting that the first wave of efforts to censor *Mockingbird* came from "southern conservatives," without identifying their social class).

656. *See id.* at 16-17 (arguing that the North's stereotypes of southerners, drawn from such sources as "the jaded degeneracy of William Faulkner's characters in *Absalom, Absalom!*," were "moderated by the civilized, highly-educated, morally courageous Atticus Finch").

657. BETTY FRIEDAN, *THE FEMININE MYSTIQUE* (1963).

658. *See* SHAFFER, *AMERICAN LAWYERS*, *supra* note 25, at 95 ("I try . . . and almost always fail, to persuade [law students] that Atticus Finch made moral mistakes. The students will not stand for it. They confront the fact that Atticus is a man with a patriarchal ethic by saying that ladies can be gentlemen too."); *see also* RADWAY, *supra* note 13, at 346 (observing that *Mockingbird* opens its patriarchy only to those women and blacks who successfully remake themselves in the image of white men like Atticus).

and more than just a notch, *Mockingbird* justified ample self-congratulation for everyone who was already at the top. Being on the side of the angels is very much what *Mockingbird* is about, as even its name implies. How long must anyone's moral compass float on its bearings before pointing fixedly away from killing mockingbirds? Here is a strikingly straightforward, even Manichean, morality; here, I think, lies much of the breadth of its appeal.<sup>659</sup> The best of the good guys, Atticus, is presented as virtually perfect; the worst of the bad guys, Bob Ewell, scarcely needs a black hat. The book's moral crisis occurs at the level of the lowest common denominator: falsely accusing and violently slaying someone who is not only obviously innocent, but also actively virtuous, purely because he is black. All the right-thinking people in the book are appalled, and their counterparts in the book's readership are invited to join in their outrage and to bask in their approbation.

To be sure, there is danger in *Mockingbird*, but it is danger of a Gothic, almost fairytale genre.<sup>660</sup> Troglodytes hurl crude epithets and spit tobacco juice at the hero. They attempt clumsy assaults on the hero's friends and family, only to be thwarted by a guardian angel of the most improbable sort. A mockingbird does, indeed, die, but everybody who is anybody learns a very important lesson: it is a sin to kill them. The only real surprise is why: "[T]hey don't do one thing but sing their hearts out for us."<sup>661</sup>

In an important sense, *Mockingbird* is not liberating, but enthralling, both to the outsiders within it and to its readers, looking from the outside in. That is a severe charge, and one that I am happy not to have to make on my own. Here I am following one of the novel's most enthusiastic champions, the author of its first book-length analysis. Her conclusion, ironically consistent with my own, warrants quoting at length:

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659. On the breadth of that appeal, see generally JOHNSON, *supra* note 12, at 13-14 (citing statistics indicating the popularity of *To Kill A Mockingbird*). Thomas Shaffer has observed that "Atticus Finch . . . is better known to the average American twenty-year-old than King David is." SHAFFER, *AMERICAN LAWYERS*, *supra* note 25, at 3. The reason is not hard to find: "[T]he novel has appeared on secondary school reading lists as often as any book in English." JOHNSON, *supra* note 12, at 14. Indeed, in a 1991 survey under the auspices of the Book of the Month Club and the Library of Congress's Center for the Book, only the *Bible* edged out *Mockingbird* as "most often cited as making a difference in people's lives." *Id.*

660. See generally JOHNSON, *supra* note 12, at 39-93 (analyzing the Gothic elements in *Mockingbird*).

661. LEE, *MOCKINGBIRD*, *supra* note 1, at 98.

Not only are characters in the Gothic enthralled, but the reader of the Gothic is as well. In the case of [*Mockingbird*], readers learn of the enthrallments of Jem, Dill, and Scout. But the reader of their story is also enthralled, not by the horror of racial mixing or the Dracularian Boo, but by the reminders of a lost innocence, of a time past, as unreal, in its way, as Transylvania. We, as readers, encounter the ghosts of ourselves, the children we once were, the simplicity of our lives in an earlier world. While the children's voyeurism is Gothic, our own as readers is romantic. In either case, the encounter is with the unreal. The children's encounter is in that underworld beneath reality, and ours is in a transcendent world above reality, which nostalgia and memory have altered. It is a world where children play in tree houses and swings and sip lemonade on hot summer days, and in the evenings, sit in their fathers' laps to read. Reality and illusion about the past is blurred.<sup>662</sup>

Eagerness to escape the complexities of our present into such fantasies about the past is very much with us, as lawyers and as citizens. In the practice of law, as the American Bar Association's own encyclical on professionalism has observed, "[p]erhaps the golden age of professionalism has always been a few years before the time that the living can remember."<sup>663</sup> In the area of civil rights, with a democratic President having signed into law admittedly radical and punitive welfare legislation, the rush to press the recent spate of church burnings into the comfortable category of racist conspiracy reflects a yearning for morally simpler times, the days when the bad guys wore white hoods (and the good guys, dark suits).<sup>664</sup>

*Intruder* does not indulge this perennial nostalgic turn. Its past is as complex and disturbing as any present, including our own. The best of the conventionally good, Gavin, is persistently and annoyingly misguided. The principal victim not only declines to take his preordained fall, but also retains a prickly sense of superiority to his primary rescuer. No songs for "us" from him; unlike mockingbirds, real and symbolic, Lucas calls his own tune. Whether good will triumph in his story is very much an open question at the end; by then, it is clear

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662. JOHNSON, *supra* note 12, at 112.

663. A.B.A. COMMISSION ON PROFESSIONALISM, IN THE SPIRIT OF PUBLIC SERVICE: A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM 55 (1986).

664. See Michael Kelly, *Playing with Fire*, NEW YORKER, July 15, 1996, at 28 ("There is a final, emotional reason that the idea of a national epidemic of racist whites burning black churches has such resonance. It taps the culture's profound longing for a return to a time of moral clarity.").

that no sympathetic character's original vision of the good is entirely intact. Their best hope seems to lie not in converging on a common answer, but in continuing a fragile conversation.<sup>665</sup>

But I must be careful here. I clearly think that *Intruder* is the better book, at least in terms of its implicit moral message. And I have given less than flattering reasons why its inferior companion has a larger following, why, indeed, many of us have been in that following. To put it succinctly—and bluntly—it tells us what we want to hear about ourselves and our world. If I were to censure *Mockingbird's* adherents for their alignment, however, I would myself very much miss the central moral insight of *Intruder*.<sup>666</sup>

First, and most fundamentally, I might be wrong, and wrong in ways that I have not even imagined. That, after all, is the lesson that Gavin's protégé learned, and taught him. For obvious reasons, that is not a problem with which I can deal adequately here. I can only make explicit an invitation that must be implicit in every academic paper: let me know what you think, particularly where you think I am wrong.

But even if I am right about the morally superior vision of *Intruder*, moral censure of *Mockingbird's* adherents does not follow. Contrary to the moral psychology of *Mockingbird*, *Intruder* does not depict moral life as primarily a matter of will, of whether one has or lacks the courage to make the right choice. Logically anterior to that is the capacity to see the choices available as choices at all.<sup>667</sup> Reflecting the moral theology of Augustine and Calvin,<sup>668</sup> both deeper

665. On the superiority of *Intruder's* complexity, see Bassett, *supra* note 19, at 216 (“The very shortcomings and confusions in the novel, however, may keep it alive longer than clearer, more liberal Southern novels like *Strange Fruit* and *To Kill a Mockingbird*.”).

666. I would also perhaps follow in the dubious footsteps of those of Janice Radway's professors who pressed upon her the painful choice between their elite, formal literary tastes and her parents' “middlebrow,” morally impassioned readings. See RADWAY, *supra* note 13, at 119-22, 311-13.

667. This is not to ignore the critical insight of virtue theory, that moral life is not isolated choices. It is rather to affirm what I and others have said elsewhere: the ultimate unit of moral analysis under virtue theory, a life, consists of the choices that determine, by their cumulative weight, character. See Atkinson, *Butler*, *supra* note 25, at 217-18.

668. For the classic treatments, see SAINT AUGUSTINE, ON FREE CHOICE OF THE WILL (Anna S. Benjamin & L.H. Hackstaff trans., Bobbs-Merrill 1964) (ca. 395); JOHN CALVIN, INSTITUTES OF THE CHRISTIAN RELIGION 255-70 (John T. McNeill ed. & Ford Lewis Battles trans., The Westminster Press 1960) (1559); see also MARTIN LUTHER, THE BONDAGE OF THE WILL (James I. Packer & O.R. Johnston trans., Fleming H. Revell 1957) (1525) (affirming and extending Augustinian doctrine and anticipating Calvin's position).

and darker than Atticus's Methodism,<sup>669</sup> *Intruder* suggests that the will itself is not essentially free; something outside the will must deliver it from bondage. As Chick's involuntary baptism implies, we have to be born again before we can see, much less seek, the light. We cannot, on our own, seek the truth; the truth must first make us free. In *Intruder*, as in the Augustinian tradition, salvation is the gift of grace, not the purchase of good works.

Under the implicit moral psychology of *Intruder*, it should come as no shock, and certainly as no great shame, that lawyers, particularly practicing lawyers, have chosen the morally simple world of *Mockingbird* over the more complex alternative Faulkner offered. In a word—Miss Habersham and Ephraim's word—they (and here it is fairer to say “we”)—may have been too deeply immersed in “busyness.” It was the busyness of a world in which lawyers were assumed to have the answers to the fundamental problems of social justice, and a world in which, for much of the careers of many of us, lawyers were assumed to be white and male.<sup>670</sup>

But this analysis may assume too much. For all its plausibility, there may be a more elegant, and more accurate, explanation for *Mockingbird*'s greater appeal: in a word, default. Many lawyers who have read *Mockingbird*, or at least seen the movie version, have simply never heard of *Intruder*. Many who have, have not read it; until five years ago, long after I had become an academic, neither had I. There is an important lesson here for lawyers, not least for lawyers who are also legal educators.

### B. Looking Forward

Judge Harry Edwards has lamented that legal scholarship has become too esoteric and in-grown—at times, indeed, too self-indulgent—to be useful to practicing lawyers and sitting judges.<sup>671</sup>

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669. John Wesley, Methodism's founder, expressly repudiated the Calvinist doctrine of the will. See JUSTO L. GONZÁLEZ, 3 A HISTORY OF CHRISTIAN THOUGHT 283-84 (1975).

670. See RADWAY, *supra* note 13, at 351:

Perhaps it was the very intensity of the particular desires these [Book-of-the-Month Club] books cultivated that prevented so many of us from seeing that the value of the knowledge and expertise they celebrated was dependent in the end on a prior act of exclusion whereby the alternative knowledges possessed by others were construed as ignorance or naivete or, even worse, as lack of ambition in the first place.

671. See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 35 (1992) (“[I]t is my impression that judges, administrators, legislators, and practitioners have little use for much of the scholarship that is now produced by members of the academy.”).

What they need, according to Judge Edwards, is help with traditional, doctrinal analysis, the kind of help once offered by the classic treatises, Wigmore and Williston, Corbin and Moore.<sup>672</sup> Of course, there is an element of truth to Judge Edwards's critique, as even its original targets concede.<sup>673</sup> But his critique is, I am afraid, itself symptomatic of a deeper problem, a problem to which a close reading of the novels before us should have alerted us.

If Miss Habersham is right, one of the central problems of our legal culture, and by extension our larger culture, is that lawyers are too much with the world, too oriented toward business. I hasten to add that this is not merely "commercialism," the getting and spending bemoaned in today's professionalism movement; *Intruder's* critique of business cuts much deeper. It points, as we have seen, to the ordinary press of day-to-day demands to get one's job done, to pass cases and clients, even novel cases and unique clients, down familiar channels. This was, of course, the very pressure that led even the usually perceptive and reflective Gavin to misunderstand Lucas's case and, even more basically, Lucas's character. And this is, I am convinced, the press behind judges' and practitioners' calls for academic lawyers to do more doctrinal analysis and to teach more practical skills<sup>674</sup>—to help them and the next generation of lawyers get down to business.

As a second-year law student, following the custom at my alma mater, I spent a day interviewing with Wall Street law firms. Near the close of what had seemed a pleasant half-hour with a mid-level litigation partner in the Cravath firm, I ventured to ask him what he did when he was not working. That was clearly the wrong question. He snapped, "What do *you* want to do, write novels?" I had not yet heard of Auchincloss, and in any event I was flustered by the change in tone. All I had the presence of mind to say was, "No, sir, but I would like to read them."

Before long I came to share his frustration. As a junior associate at a large K Street firm, I watched my salary rise in the wake of Cravath's landmark decision to inject an unprecedented level of price-

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672. See *id.* at 43 ("The paradigm of 'practical' legal scholarship is the treatise.").

673. See George L. Priest, *The Growth of Interdisciplinary Research and the Industrial Structure of the Production of Legal Ideas: A Reply to Judge Edwards*, 91 MICH. L. REV. 1929, 1930 (1993) ("I can appreciate the source of Judge Edwards' dismay.").

674. See TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP, ABA SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, STATEMENT OF FUNDAMENTAL LAWYERING SKILLS AND PROFESSIONAL VALUES (1992).

competition into the recruitment of law firm associates.<sup>675</sup> Predictably, my annual billings also rose, and I learned a localized lesson in legal realism: the “official” eighteen-hundred-hour year that brought smiles in 1985 could raise eyebrows in 1986 without ever ceasing to be “official.” Not finding myself with much time to read novels, I approached a member of the firm’s unofficial steering committee<sup>676</sup> with a proposal. During the next recruiting season, why not market our firm to the usual target audience—students at elite schools—as a more humane place, where one could do exciting legal work, but with more time for other things (and, offsettingly, for less pay)?

I tell these stories with some trepidation. I know that traditional scholars, both the doctrinal and the theoretical, frown on personal narratives as scholarship,<sup>677</sup> and I doubt that narrativist scholarship, traditionally the province of the “outsider,” will welcome a white boy straight from South Carolina into its midst. But traditional, doctrinal analysis had no answer to my proposal, and no helpful way of assessing it. From that perspective, the problem we at my firm faced was invisible; indeed, it was not even a legal problem at all.

Non-doctrinal, interdisciplinary scholarship was to offer real insight. My proposal was, in essence, a practical groping toward understandings of law firm structure that the law and economics movement was just beginning to provide; I had stumbled onto an aspect of sharing among the human capitalists.<sup>678</sup> These scholars had not yet explained why a related set of solutions—part-time work and other

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675. See Marc S. Galanter & Thomas M. Paley, *Why the Big Get Bigger: The Promotion-to-Partner Tournament and the Growth of Large Law Firms*, 76 VA. L. REV. 747, 753 (1990) (“As firms have grown and required larger numbers of qualified associates, recruitment activity has intensified, and starting salaries have increased dramatically.”).

676. As I recall, that person was Douglas Rosenthal, a former pupil of Isaiah Berlin who had written a pioneering empirical study of the legal profession. See DOUGLAS E. ROSENTHAL, *LAWYER AND CLIENT: WHO’S IN CHARGE?* (1977).

677. See Daniel A. Farber & Suzanna Sherry, *Telling Stories out of School: An Essay on Legal Narratives*, 45 STAN. L. REV. 807, 809 (1993) (“In general, we conclude that legal storytelling can contribute to legal scholarship. We also believe, however, that storytellers need to take greater steps to ensure that their stories are accurate and typical, to articulate the legal relevance of the stories, and to include an analytic dimension in their work.”). See generally Arthur Austin, *Evaluating Storytelling as a Type of Nontraditional Scholarship*, 74 NEB. L. REV. 479, 507-22 (1995) (discussing methods of evaluating legal storytelling).

678. See Ronald J. Gilson & Robert Mnookin, *Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits*, 37 STAN. L. REV. 313, 320 (1985) (describing how law firms provide the opportunity for individual lawyers to diversify the risks inherent in human capital).

alternative associate career paths—had failed to emerge at that stage of corporate law firm evolution.<sup>679</sup>

In its own terms, my proposal tried to incorporate fairly intuitive economics, lessons widely taught in law schools by the early 1980s. I proposed to ask very bright people to make a trade, at the margin, of foregone salary for increased leisure time. Already, however, my senior colleague anticipated a problem at the very edge of wealth-maximization theory. Elite law school graduates were demanding prestige as well as money, and they were using the amount of money firms offered as a proxy for the prestige that working for them conferred. These graduates would, accordingly, have to buy their leisure from our firm doubly dear, and the firm's reputational currency would depreciate even as they accepted it. On those terms, my consultant suspected, probably too few of them would accept our offer to meet our recruiting needs.

I thought at the time that my consultant was right, and right for an additional reason that has worried me ever since, the inklings of a peculiar market failure. I realized, in not too distant retrospect, that I as a law student had had no clear sense of what it would be like to work literally all the time, all the time. Not all the time for four years of college as a prelude to three years of law school, then a year or two in the highly recommended clerkship, but the traditional seven-year (and lengthening) associate's apprenticeship on top of that, with the rigors of junior partnership yet to come, on into the indefinite but definitely finite future. My more-life-for-less-money proposal would fail, if only because people in the position I had recently been in myself would not realize the value of their lives until after they had sold them. At the risk of making too explicit the obvious, if we had read *The Remains of the Day* or *The Death of Ivan Ilich*—even John Jay Osborn's *The Associates*—we might have sold or held ourselves more dear.

Now of course it is not fashionable to lament the lost youths of yuppies. From the Left, we can expect to be told to look to the less well-off; from the Right, we have already been told that the market takes its toll. In any case, the days when partners and associates could presume to set their hours, if not their salaries, without looking to

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679. See Ronald J. Gilson & Robert Mnookin, *Coming of Age in the Corporate Law Firm: The Economics of Associate Career Patterns*, 41 STAN. L. REV. 567, 568 (1989) ("The first [question] is why the up-or-out system was dominant for so long when, on initial analysis, it appears to work to the advantage of neither the firm nor the employee lawyer.").



their clients and their competition are long gone. In his own response to Judge Edwards, Judge Richard Posner seems to welcome the much-bemoaned loss of lawyers' leisure time. He sees it as salutary, as economically healthy, and he dismisses as self-indulgent whiners those nostalgic for the lost days of lawyerly inefficiency and overcharging: "Competitive markets are not much fun for sellers; the effect of competition is to transform producer surplus into consumer surplus."<sup>680</sup>

But there is, as Judge Posner should have seen, a public goods element that his analysis omits from the time-for-money equation. To see this, we must first note that Posner himself has found merit in the law and literature movement. At the very least, he hopes that it will "reawaken[] a delight in literature in some lawyers";<sup>681</sup> beyond that increase in personal pleasure, he holds out very ambitious prospects of professional benefits. He believes great literature can teach lawyers and judges three important "craft values": impartiality, scrupulousness, and concreteness.<sup>682</sup>

Posner suggests that judges and lawyers who learn these craft values will be able to write more persuasively.<sup>683</sup> Assuming this to be true, however, only raises the ancient issue that divided the sophists and Socrates: is it enough to teach persuasion alone, winning others over to what is good for you and your cause, or is it also necessary to teach to persuade what is just, what is good for the whole community? Socrates famously embraced the latter view, and Posner seems to stand firmly in his camp.<sup>684</sup>

This classic moral problem can be usefully analyzed in economic terms. Learning how to persuade the sophisticated way—getting one's client's will done, with indifference to social justice—is essentially a private good. Most of the benefits of such goods—in this case, skills—accrue to the individual who invests labor and other resources

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680. Richard A. Posner, *The Deprofessionalization of Legal Teaching and Scholarship*, 91 MICH. L. REV. 1921, 1922 (1993). Perhaps as a model of scholarly economy, Posner makes the same point, in almost the same words, in a 1995 book. See RICHARD A. POSNER, *OVERCOMING LAW* 92 (1995). It may be telling, however, that what was "not much fun" in 1993 had become "no fun at all" by 1995.

681. POSNER, *supra* note 526, at 364 (1988).

682. See POSNER, *supra* note 526, at 282 (2d ed. 1998).

683. See *id.* at 283.

684. As to lawyers, Posner's alliance with Socrates is less clear. *But see id.* (suggesting that lawyers in preparing their cases ask, "How can I limit my submission so that its acceptance would not require an unsettling change in doctrine or have untoward practical consequences?").

in their acquisition.<sup>685</sup> The lawyer thus skilled predictably will command premium fees from eager clients. By contrast, the skills of persuading the Socratic way—producing justice and benefitting society as a whole—have important elements of what economists call public goods.<sup>686</sup> The benefits of these skills accrue not just to the lawyer or judge who troubles to acquire them, but also to the legal system in which such professionals practice law as a publicly consumed commodity.

This is particularly true of what Posner calls the skill of impartiality. He argues at considerable length that we can acquire impartiality by empathizing, in the reading of great literature, with a wide range of characters different from ourselves and our usual heroes.<sup>687</sup> That, of course, is very much what I suggest about the affiliation we come to feel with Lucas through Chick in *Intruder*. It is close to the position that Atticus recommends to Scout, as well as that which Harper Lee never quite achieves for us with respect to Robert E. Lee Ewell: “[C]limb into his skin and walk around in it.”<sup>688</sup> Posner quite rightly insists that a critical distinction between great and lesser literature is that the former presents even its villains as fully rounded characters, never as mere caricatures.<sup>689</sup> For Posner as for me, empathizing with the perspectives of others through classic literature helps free lawyers and judges from the prejudices that distort their professional lives and, inseparably, the quality of justice they dispense and law they practice. For Posner, however, this poses a garden-variety economic problem: lawyers whose only incentive—or only economically viable choice—is to maximize billable hours will predictably undersupply such goods, to the detriment of wealth maximization in the aggregate.<sup>690</sup>

Stated somewhat differently, if we are serious about the valuable lessons that literature holds for law, then we need to ensure that lawyers can meet the critical precondition. They cannot learn from lit-

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685. See MARK SEIDENFELD, MICROECONOMIC PREDICATES TO LAW AND ECONOMICS 66 (1996) (contrasting public and private goods).

686. See *id.* (defining and illustrating the concept of public good).

687. See POSNER, *supra* note 526, at 327 (2d ed. 1998) (“Imaginative literature can . . . engender in its readers emotional responses to experiences they have not had.”).

688. See LEE, MOCKINGBIRD, *supra* note 1, at 36.

689. See POSNER, *supra* note 526, at 282-83 (2d ed. 1998) (“Forgoing the facile triumph, the author makes the reader see the situation from the villain’s point of view too.”).

690. See SEIDENFELD, *supra* note 685, at 66 (describing the likely undersupply of public goods due to the incentive to “free ride”).

erature the lessons Posner himself hopes they will find there if, under the market conditions Posner applauds, they have no time to read. And they cannot use literature more ambitiously, as West, Weisberg, and others would have it, as a basis for questioning contemporary values, including Posner's commodification of life itself, if their literature is purely popular.

De Tocqueville early in the last century,<sup>691</sup> and Brandeis in the present century,<sup>692</sup> suggested that lawyers, given their immersion in worldly affairs and their intermediate status between the best- and the worst-off, are ideally suited to be statesmen. Lately, of course, the lawyer-statesman ideal has been in decline, if not already forgotten.<sup>693</sup> Miss Habersham should be credited with implicitly criticizing the original idea and predicting its demise. The pragmatism that practice requires of lawyers may benight rather than enlighten, narrow rather than broaden their social and political horizons.

But there is this much to be said in defense of the older model (which is also an implicit indictment of the present state of affairs): in those days, particularly the earlier days of the republic to which even Brandeis already looked wistfully back, we had reason to believe that lawyers were not just public citizens, but public citizens who took time to read the classics. Washington would have modeled himself on Cincinnatus in vain, if the other public citizens of his day, including lawyers like Jefferson and Madison, had not known who Cincinnatus was.<sup>694</sup> Judges like Posner and Edwards—jurists above the mill run, actively concerned with the commonwealth—require lawyers like Gavin, “who could discuss Einstein with college professors.”<sup>695</sup> Students like Chick, whom Gavin guided to Harvard Law School,<sup>696</sup> deserve him as well—chastened, of course, by his brush with Lucas and Miss Habersham.

691. See 1 ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 280 (Henry Reeve trans., Francis Bowen rev., Phillips Bradley ed., Alfred A. Knopf 1946) (1835) (“[M]ost public men are or have been legal practitioners . . .”).

692. See LOUIS D. BRANDEIS, *The Opportunity in the Law*, in *BUSINESS: A PROFESSION* 313, 314 (1914) (“[I]n America the lawyer was in the earlier period almost omnipresent in the State. . . . [N]early every statesman, great or small, was a lawyer.”).

693. See ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993) (chronicling the institutional and intellectual forces causing the decline of the lawyer-statesman ideal and attempting to resuscitate the ideal for contemporary lawyers).

694. Cf. FAULKNER, *REQUIEM*, *supra* note 120, at 43 (describing Gavin as “a sort of bucolic Cincinnatus”).

695. WILLIAM FAULKNER, *Smoke*, in *KNIGHT'S GAMBIT*, *supra* note 295, at 3, 16.

696. See FAULKNER, *The Mansion*, *supra* note 19, at 864.

And Lucas, for all his independence, also needs such lawyers, if only as Aesop's lion needed his mouse. The lives of privileged insiders are linked to those of excluded others through other nexuses than trickle-down economics. The sooner we lawyers learn the lesson of Lucas, the better we can serve him—which is not, of course, the same as saving him. The lives we save—if I may be forgiven a final allusion to a southern author—may ultimately be our own.<sup>697</sup> If this is, by contemporary standards, an insufficiently altruistic note on which to conclude, let me in lieu of apology point to an older, more humane—if more conservative—attitude that laments the waste of any life, even so pampered and privileged a life as Ivan Ilych's, or ours.

### CONCLUSION

Before he became a law professor, Charles Black, the constitutional law scholar, had been actively involved in the civil rights movement. According to the lore of the Yale Law School, he was once asked how he, a southern boy, had become engaged in that movement. I have always assumed that Black's questioner expected a tale of downtrodden but diligent sharecroppers and domestic servants who kept their dignity despite their humiliating labor. But Professor Black told a different story. He recounted how, as a freshman at the University of Texas, he had gone to a concert, where he heard Louis Armstrong play the trumpet. There, he said, he encountered, for the first time in the flesh, genuine genius. That encounter—that epiphany—changed his life, and, through his life, many another.<sup>698</sup>

We have listened long enough to the mockingbird, with its reassuring harmony and its nostalgic notes.<sup>699</sup> In the final analysis, Miss Maudie, Atticus's ever-faithful interpreter, was right from the beginning: "Mockingbirds don't do one thing but make music for us to enjoy."<sup>700</sup> It is time we were more attentive to intruders—in life, in law, even in legal education. As Gavin conceded, belatedly but unbe-

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697. FLANNERY O'CONNOR, *The Life You Save May Be Your Own*, in FLANNERY O'CONNOR: THE COMPLETE STORIES 145 (Robert Giroux ed., 1971).

698. See CHARLES L. BLACK, JR., *THE HUMANE IMAGINATION* 66-73 (1986) (recounting the story of how hearing Louis Armstrong prompted his involvement in the civil rights movement).

699. See JOHNSON, *supra* note 12, at 37 ("The two most obvious mockingbirds, Tom Robinson and Boo Radley, are not literally singers, but they convey song stories through the lives that they live: Tom the black man and Boo the recluse singing through their lives of mystery and gentleness.").

700. LEE, *MOCKINGBIRD*, *supra* note 1, at 98.

grudgingly, their riffs and interruptions, though importunate and inopportune, may show us the truth about ourselves and about others. And here even Christ and anti-Christ converge: only the truth, harsh and humbling though it is, can make us free. What can freedom be in our time, but the will to improvise our common future from the values we choose together out of our diverse pasts?