Atticus Finch – Alive or dead? A Socio-legal Question

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ABSTRACT

In this article, the fictional lawyer Atticus Finch serves as a reference point for a broader discussion of socio-legal studies and its relevance today. Depicted in Harper Lee's 1960 novel *To Kill a Mockingbird*, Finch came to occupy an exalted position in the cultural, political and legal landscapes of the late twentieth century. For generations of students and citizens, Finch served as a model of what it was to be just, civil, honourable and brave. However, in the politically charged and deeply divided context of 2019, this article asks if Atticus Finch is dead. Has the "hero lawyer" and all that he stood for been displaced? And if so, who killed him and what does that mean for the socio-legal quest?

Keywords – *Law and Society, Lawyers, Globalisation, Racism, Literature*

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Summary

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1. INTRODUCTION

Sometimes I wonder whether Atticus Finch is dead or whether he ever existed at all. Don't misunderstand me. I do realize that Atticus is a fictional character, but I also know that throughout the late twentieth century Harper Lee's stoic Southern lawyer stood as a talisman of decency, empathy and justice for many within, and well beyond, the borders of the United States. However, the ascendance of Donald Trump and Trumpism, the swirling of fake news, and the regrettable need for movements such as *Black*

Lives Matter and *#MeToo*, lead me to question whether the qualities embodied by Atticus have ever really been put into effect in any lasting sense.

In thinking about my socio-legal perspective, I find myself turning to Atticus. My relationship with him started in the 1970s and has grown and changed over the years in ways that say more about my own journey than it does about him. For much of my life, it seemed that Atticus did not change at all. He appeared as solid as a rock, as

collected and calm as he had ever been. Unlike his real-life contemporaries—Martin Luther King Jr., the Kennedy brothers and Marilyn Monroe—neither rumour, innuendo nor revelation seemed to have sullied his reputation. At the end of the twentieth century, his star was still shining bright. However, today it is fading. I find him now to be as much a source of frustration as inspiration. Atticus was once wonderful, but was he ever, and is he now, enough? To explain my malaise, it is perhaps best that I start by introducing him to you.

2. MEET ATTICUS

In introducing Atticus, I have to apologise if I appear to be going over ground that is all too familiar. My need to do so has partly been sparked by a conversation I recently overheard at an airport gate. A young woman who was perhaps 15 or 16 years old was detailing to her family the reading she was expected to do for school. Like generations before her, she wasn't impressed at the prospect of required reading. Nor was she excited at the inclusion of *To Kill a Mockingbird* within it. As she so adamantly put it, "I don't read books about animals." The comment amused me—she clearly had the wrong end of the stick about the book—but it also jarred me. As an almost past middle-aged white Australian queer woman, I feel like Atticus has always been around and that everyone has at least heard of him. That perception is partly a coincidence of timing.

It was in 1960 that Atticus burst onto America's cultural and politically charged landscape. As one of the central characters in Harper Lee's novel *To Kill a Mockingbird*, his standing was initially intertwined with the book which quickly won critical and popular acclaim. In 1961, Lee was awarded the Pulitzer Prize and by the end of the following year the book had sold more than 500,000 copies and been translated into ten languages (Johnson 1994, p. 13). A cinematic adaptation bearing the same title and featuring Gregory Peck as Atticus premiered in Hollywood on Christmas Day 1962. Valentine's Day 1963 was chosen for the film's New York opening. With one of Hollywood's leading men embodying Atticus and a script that recast him as *the* main character in the narrative, his popularity was sealed. Academy Awards for Best Actor

and Bested Adapted Screenplay followed along with another six nominations. While the immediate success of the book and film are notable, the prominence of *To Kill a Mockingbird* and Atticus Finch as cultural markers over subsequent decades is more remarkable. Based upon its polling, the American Film Institute has recognised Atticus as "the greatest hero in 100 years of film" and *To Kill a Mockingbird* as the best trial movie ever made (AFI 2011). A PBS survey which concluded in October 2018 and which garnered over 4 million votes saw Lee's novel emerge as the most popular ever amongst American readers (Reints 2018).

Eric J. Sundquist, who has traced the intertwining of Black and Jewish experiences in American representational practices post-holocaust, has described *To Kill a Mockingbird* as "the most widely read novel on the problem of racism in the United States" (Sundquist 2005, p.12). He attributes this partly to the appeal of Scout, Atticus's innocent, tomboyish ten-year-old daughter who narrates what is effectively a coming of age story. It is through Scout's eyes that we learn about life in the fictional town of Maycomb, Alabama. We learn of the ordinariness of everyday ideas and practices that maintain divisions of race, gender, and class, and which manifested themselves ultimately in injustices so profound they were deadly. Scout's detailing of her father's stoic defence of Tom Robinson, a black man wrongly accused of raping a white woman, lays bare such injustice but at the same time, serves as a vehicle for championing the ideal of law and the incorruptibility and honour of those committed to its realisation. If there ever was an embodiment of the "heroic lawyer", it is Atticus Finch.

Harper Lee completed the first draft of *To Kill a Mockingbird* in 1957. At the time she was living in New York, having left her hometown of Monroeville, Alabama, 13 years earlier. But Lee's Maycomb was based upon Monroeville and there is no doubt that in weaving her narrative she drew heavily upon the figures and experiences of her childhood. The 1933 trial of Walter Lett, a black man who lived near Monroeville, has been identified as the most likely inspiration for the Tom Robinson case (Shields 2007, p. 117-20). Lee was seven years-old when Lett was found guilty of raping an impoverished white woman. The flimsiness of the evidence against him most likely helped

the public campaign which would eventually lead to his death sentence being commuted to life imprisonment. James Miller has described Lee as offering a “Scottsboro narrative”, a reference to the infamous 1931 case which resulted in nine black youths being convicted of supposedly raping a white woman on board a freight train (Miller 2009). Eight were sentenced to death but a flurry of legal actions ensured the sentences never took effect. Even so, for Black men in Alabama in the depression years of the early 1930s, death at the hands of the law was less likely than lynching. Lynchings numbered almost twenty per year (Johnson 1994, p. 6).

Miller suggests that for Lee, the Scottsboro case remained “an important touchstone for gauging the potential of the South for civilized behaviour” (Miller 2009, p. 221). However, events which coincided with the writing of her first novel, might just as readily have served as evidence that the South was slow to change. In 1955, 15-year-old African-American Emmett Till was murdered by two men. The circumstances and manner of this death, and the subsequent acquittal of his killers, highlighted for all to see the stark reality of racial violence in the South and the impotence of the criminal justice system to counter it. In the same year, Rosa Parkes was arrested on a Montgomery bus for breaking a segregation ordinance, and the following year, despite the Supreme Court ruling in *Brown v. Board of Education*, incensed Southerners sought unsuccessfully to prevent Autherine Lucy from enrolling at the University of Alabama.

By setting her novel in earlier times, Lee elided the injustices of the present. Race-based segregation and violence could be reflected upon as vestiges of the past against which good white men—or at least one good white man—had fought. As Sundquist has noted:

The novel harks back to the 1930’s both to move the mounting fear and violence surrounding desegregation into the arena of safer contemplation and to remind us, through a merciless string of moral lessons, that the children of Atticus Finch are the only hope for a future world of social justice (Sundquist quoted by Miller 2009, p. 221).

But events contemporaneous to the writing of *To Kill a Mockingbird* also evidenced a readiness on the part of many to recognise the injustices of the past and present

and to work towards their eradication in the future. In that context, Lee’s novel proved an important tool in the battle for hearts and minds, especially those of young adults. It was quickly incorporated into junior high and high school curricula and even today remains as one of the books most frequently set as required reading for American students. (Johnson 1994, p. 14). But the popularity of the book, like the seriousness of the issues it dealt with, were not confined to the United States. My introduction to it as a student in an Australian public school was equally prescriptive. My battered copy dates from 1977. It is the sixth printing of a 1974 edition and has a bright orange cover that screams “over 11,000,000 copies sold”. In Australia, earlier events such as Paul Robeson’s 1960 tour and the 1965 journeying of the Freedom Riders led by young indigenous law student Charles Perkins evidenced distinct but related concerns. Whether Lee had intended it or not, *To Kill a Mockingbird* quickly became part of the trans-pacific exchange of ideas concerning race, law and injustice. But at its centre, was not a black woman or man, but a white Southern man of genteel stock—Atticus Finch.

Whether discussed in high school English classes or in university law schools, Atticus came to be lauded as a figure whose actions and thinking warranted praise and emulation both inside and outside of courtrooms. David Margolick, a legal writer for the *New York Times*, described one aspect of what might be called “The Atticus Effect”. In his view, Atticus Finch was a man:

who taught a community and his two young children about justice, decency and tolerance, and drove a generation of real-life Jems and Scouts to become lawyers themselves. (quoted in Johnson 1994, p. 17)

Over the decades since its publication, many have publicly testified to the “moral” and “life lessons” that might be learnt from *To Kill A Mockingbird* and from Atticus (Maxwell 2018). These lessons have been applied in varying contexts and for varying purposes. Some such as American lawyer Claudia Carter have argued for a style of lawyering that builds upon and exemplifies Atticus’s compassion, responsibility to others and gentleness beyond the courtroom (Johnson 1994, p. 17). Australian lawyer Greg Barnes has explicitly drawn upon lessons from Atticus Finch to critique Australian politicians treatment of race

issues, and in particular, the treatment of asylum seekers (Barnes 2010). Similarly, over the decades, Atticus has provided inspiration and sustenance for liberal lawyers working on behalf of death row clients in the United States. And then there are “lessons on manliness” as suggested by Brett and Kate McKay in 2011. They listed six:

- 1) A man does the job no one else wants to do
- 2) A man lives with integrity everyday
- 3) The most important form of courage is moral courage
- 4) Live with quiet dignity
- 5) Cultivating empathy is paramount
- 6) Teach your children by example

But today I’ve been reading about Donald Trump and his response to the latest accusation of sexual assault against him. It has come from E. Jean Carroll, a New York based writer, who has written of an incident which she says occurred in the 1990s. It is consistent with the predatory and demeaning behaviour outlined in the string of previous allegations and, of course, it has been swatted away just as brusquely and narcissistically. As Trump put it, “she’s not my type” (Wagner 2019). That Trump’s presidency is built upon a “politics of debasement” and division is all too clear (Ott 2016). That he is frighteningly popular amongst young white men who perceive themselves as silenced and wronged reminds us of the fragility of change (Huber 2016). The slogan “Making America Great Again” champions a return to a less tolerant past and one without Atticus Finch. And so, I’m left wondering if Atticus Finch is alive or dead. And if he’s been killed, who did him in?

3. THE SUSPECTS

If Atticus and his legacy are dead, or at the very least waning, how are we to explain this? There is the possibility of death by natural causes. Perhaps Atticus has simply been around too long and others have emerged to take his place in our hearts and minds. Or might it be that the passage of time, accompanied as it is by constant change, has rendered him and all that he supposedly embodies irrelevant. At this point in time, this is a proposition I find difficult to accept. I am not saying that Atticus was faultless, but I am saying that empathy, personal integrity, and care for others are attributes that should be considered as important today as they were when Atticus first appeared

on our cultural landscapes. If Atticus is disappearing, it is under the combined weight of more than 50 years of scrutiny and there is an expansive list of those who have contributed to it.

Despite its popularity, or more correctly because of it, *To Kill a Mockingbird* has the distinction of being one of the most challenged books in modern American history. The first calls to censor it emerged in the mid-1960s following the book’s inclusion as a standard work in school curricula and came from Southern white conservatives who listed profanity, sex scenes and immorality as the grounds for their complaint. However, at least one analyst has suggested that what was really being objected to was the “candid portrayal of Southern white attitudes” (May in Johnson 1994, p. 15). In writing the novel, Harper Lee had certainly sought to bring the life of the South to life. In 1964, she offered this thought on her reason for writing:

the South still is made up of thousands of tiny towns. There is a very definite social pattern in these towns that fascinates me. I think it is a rich social pattern. I would simply like to put down all I know about this because I believe that there is something universal in this little world, something decent to be said for it, and something to lament in its passing (Shields 2007, p. 241).

But it is clear that Lee’s position within the South was very particular. Commentators share the view that she modelled Atticus upon her own father Amasa Lee, who was an active player in civil life as a lawyer, legislator and newspaper owner. As his daughter, Lee enjoyed a relatively privileged and comfortable existence which stood at odds with the life experiences and circumstances of most of the southerners she sought to write about. In the midst of battles over desegregation, it is hardly surprising that those who expected to be entitled simply by virtue of their whiteness would find the book, and its central character Atticus, objectionable. The lynch mob that gathered to claim Tom Robinson comes to mind. It is a pivotal moment in Lee’s tale. Atticus faces off with the men, whose working lives are evidenced by their overalls and sun-scorched faces, their heavy shoes and sullen looks. Among them is Mr Cunningham, an impoverished farmer who has availed himself of Atticus’s legal services and the father of a young boy who goes to school with Scout. In the

company of Atticus and white society he is a respectable and respectful working man, but his membership of the lynch mob speaks to the racialised underpinnings of the world in which he exists and his efforts to hold on tight to whatever status and power he has. The dispersal of the lynch mob might be read as a moral victory for Atticus and as a testament to his courage in defending Tom, but it does not mark an acceptance of his position by them. Nor should it be assumed that only poor whites might object to Atticus. Men of education, wealth and status have also been well represented in lynch mobs as in the ranks of the Ku Klux Klan. In 2016, Donald Trump's visit to the University of Iowa was met with students chanting "If it ain't white, it ain't right" (Huber 2016, p. 220). It may be that the mob is growing and has never let Atticus Finch out of its sights.

The second suspect in the demise of Atticus may come as a surprise but it shouldn't be. It's the usual suspect—the mother—in this case, Harper Lee. In 2014, two years before her death, the notoriously reclusive author authorised the publication of a new novel, *Go Set a Watchman* (Lee 2015). The news of this "long lost" book, the manuscript of which had been recently found in a bank vault, immediately roused interest and expectations. Fuelled by its publisher and the multi-faceted industry spurred by the success of *To Kill a Mockingbird*, cultural and literary critics along with generations of appreciative and in many cases adoring readers eagerly awaited its release. However, anticipation was soon replaced by disappointment as readers and reviewers were presented with a book that was less mature in its writing than its predecessor and, more troublingly, threw into doubt the very things that had made *To Kill a Mockingbird* so appealing and so seamless for so many. At the heart of dissatisfaction stood Lee's depiction of Atticus. In a review featured in *The New York Times*, Michiko Kakutani summed up the problem:

The difference is that "Mockingbird" suggested that we should have compassion for outsiders like Boo and Tom Robinson, while "Watchman" asks us to have understanding for a bigot named Atticus. (Kakutani 2015)

In *Go Set a Watchman*, Scout appears as twenty-six-year-old Jean Louise who is returning to her childhood home to visit her aged and increasingly disabled father. In

many ways, she is an older version of her younger self. She remains energetic, a little tomboyish and curious, but she is also restless and unfulfilled. In returning to Maycomb from New York, she finds the fixed mindsets and unchanging ways of her hometown and its people stifling. It is the 1950s, not the 1930s, and the Supreme Court's ruling in *Brown vs the Board of Education* is reverberating across the South. Jean Louise soon discovers things about the past and the present which change her view of her father. She finds a racist pamphlet, *The Black Plague*, in the living room and watches Atticus introduce to the Citizen's Council a man who delivers a racist speech. She learns that as a young man Atticus had once attended a meeting of the Ku Klux Klan, and that he now stands opposed to the activities of the National Association for the Advancement of Coloured People. The South, as he puts it, is not ready for civil rights and by attempting to advance it, the bench of the Supreme Court has acted unconstitutionally and irresponsibly. Adding to her confusion is the fact that Calpurnia treats Jean Louise as almost a stranger. By the time she leaves Maycomb, the fundamentals that shaped her childhood are in tatters and Atticus is no longer her moral guide but a mere mortal.

A note from the publisher which appears in *Go Set a Watchman* suggests that the manuscript for this book was written separately from *To Kill a Mockingbird*. However, others have noted the obvious parallels and similarities in the texts. These range from shared characters and events through to identical passages. Some have argued that *Go Set a Watchman* was in fact the first draft of *To Kill a Mockingbird* and that it was subsequently rewritten to make it more subtle and appealing. Hence the emergence of Scout as child narrator, the larger emphasis on the trial of a black man, which in turn, provided a mechanism for the re-presentation of Atticus as heroic. When spruiking the manuscript of *Go Set a Watchman* in 1957, Lee's literary agent Maurice Crain promised potential publishers it would be "an eye-opener for many Northerners as to Southern attitudes, and the reasons for them, in the segregation battle" (quoted in Lee 2015). Cain's description may well have rung warning bells for those hoping to attract rather than repel Southern readers. But in no way should the failure to publish the novel be read as evidence of a lack of its authenticity. It is widely acknowledged that

To Kill a Mockingbird drew heavily upon Lee's childhood experiences. There is no reason to believe that *Go Set a Watchman* is any different. Given its timing, it may indeed reflect Lee's own journey and struggles as she gradually came to recognise those aspects of Southern life that were as unpalatable as they were unavoidable.

Intriguingly, read now, Lee's 1957 manuscript pre-empted almost sixty years of subsequent critique from a third group of suspects who, for the lack of a better description, I will refer to as "socio-legal left". Amongst this number I count a myriad of people who, having distanced themselves from the aura of law, have contemplated at length the deification of Atticus, its basis and its effects. Their critique has come in waves, reflecting changes in politics, priorities, and popular and intellectual thinking over time. It has also consisted of discernible but inter-related strands, each derived from particular standpoints and starting points. The one that has proved to be the most powerful and sustained accuses *To Kill a Mockingbird* of condoning institutional racism. This critique informed objections to the book that were lodged in the 1970s and early 80s, and in 1992, was forcefully expressed in Monroe Freedman's "obituary" for Atticus which appeared in the American periodical *Legal Times*. In "Atticus Finch, R.I.P." Freedman, one of America's leading professors of Legal Ethics, challenged what he described as the "mythological deification" of Atticus. He argued that far from being "a paragon of social activism or being motivated by true compassion, Atticus acted out of an elitist sense of noblesse oblige" (quoted in Phelps 1994, p. 511-12). Freedman accused Atticus at best of failing to overtly challenge existing structures, and at worst, of tolerating and sometimes even trivialising and condoning the mechanics of race and class that made his life so comfortable whilst so grievously undermining the dignity and existence of others. Atticus, he reminded readers, had not sought to defend Tom Robinson but rather had reluctantly agreed to do so at the request of someone else. As a lawyer, legislator and community leader in a segregated society, Freeman concluded that Atticus was living "his own life as the passive participant in [a] pervasive injustice" (Quoted in Johnson 1994, p. 18).

Freedman's critique spurned a furious reaction, especially by some from within the legal profession. He was accused of presentism in applying the context and values of the 1990s to the fictional account of the 1930s, and thus failing to recognise that at that time southern lawyers who defended, much less advocated for justice for African-Americans, were non-existent. The importance of Atticus as a source of continuing inspiration to old and young lawyers was emphasised by the president of the American Bar Foundation. In a letter to the editor of the *Legal Times* he asserted that Finch "rose above racism and injustice to defend the principle that all men and women deserve their day in court represented by competent counsel, regardless of their ability to pay" (Quoted in Johnson 1994, p. 19). After two months of attacks across various fora including the *New York Times* and leading law journals Freedman announced that his report of the death of Atticus Finch had been premature. The "mythical deification" of Atticus, as he put it, had been "illustrated by Atticans who wrote to equate my rejection of Finch, literally, with attacking God, Moses, Jesus, Ghandi and Mother Teresa" (Quoted in Phelps 1994, p. 512).

But the concerns that Freedman raised were not to go away. Indeed, they were to be added to. Greater attention was beginning to be paid to Atticus Finch as a man, and a particular sort of man. Undoubtedly, the identification and dissection of the "man of reason" in feminist critiques provided one impetus for this. Qualities that were admired in him—objectivity, rationality, courage and dependability—were rendered suspect once considered within the framework of Cartesian dualisms (Lloyd 1994). Atticus was now identified, in representational terms, as fitting within an "heroic tradition" in which men and those qualities traditionally associated with post-enlightenment masculinity have been depicted and championed as being central and necessary to law. Margaret Thornton uses the term "benchmark men" to refer to "those who embody a constellation of characteristics, conventionally associated with dominance, namely, whiteness, Anglo-centricity, heterosexuality and able-bodiedness" (Thornton 2002, p. 4). She goes on to note how "benchmark men" have historically dominated the constitution of Western legal fraternities and also come to represent and embody law

within popular culture (Thornton 2002, p. 7-8). Atticus Finch, who plainly embodies these characteristics, might well then be understood as a man of law in the most celebrated, idealised and criticised sense.

The intersections between race, gender and class came increasingly to the fore. In 1994, the *Alabama Law Review* devoted most of its Winter edition to discussing *To Kill a Mockingbird*. Alongside an article by Freedman¹ which offered a spirited elaboration of his position were contributions that placed the novel in broader historical, cultural and literary contexts. Amongst these is an insightful unpacking of the socio-spatial dimensions of Maycomb by Teresa Phelps. In her “rereading” of the novel, she revealed much about the composition and distribution of the town’s population, the social standing of each of the four distinct groups² within it as well as the degree to which each were considered entitled to access and to be protected by law (Phelps 1994). Quite rightly, Phelps identifies Atticus as occupying a vastly different position from that of the impoverished and disenfranchised living at Maycomb’s social and geographic margins. It is not only race but also class and gender distinctions which she argues underpin and perpetuate this inequality. Why is it she asks, that neither Atticus nor any of the town’s “ordinary people” concern themselves with the orphaned children of Bob Ewell who are “left to slouch and swear their way into the future that promises never to share in the community life of Maycomb” (Phelps 1994, p. 530). And, in particular, what of their failure to recognise Mayella Ewell as a victim of physical and sexual violence at the hands of her father? (Phelps 1994, p. 524)

In 1999, in an essay entitled “Reconstructing Atticus Finch”, Steven Lubet pushed the law’s failure to protect Mayella once step further by asking “What if Mayella Ewell was telling the truth?” (Lubet 1999, p. 1339). The idea seems almost inconceivable at first hearing as the narrative and

historical reality of African-American men meeting their death after being wrongly accused of the rape of a white woman is so familiar. Indeed, Phelps might well be right in surmising that no-one reads the book for the plot as the outcome of rape trial is never in doubt’ (Phelps 1994, p. 512). Yet it is Atticus’s defence of Tom Robinson, both inside and outside of the courtroom, which provides the primary basis for his exaltation. As Lubet so compellingly points out though, if Atticus stands any chance of succeeding at all it is at the expense of Mayella Ewell. Compared to those around him Atticus appears gentlemanly, but he is also calculated and ruthless in a way that only the law allows. His defence of Tom Robinson can’t be separated from his understandings of how Maycomb worked, and the dynamics of race, class and gender infused within it. Thus, Lubet highlights how Atticus “rightly or wrongly, designed his defence to exploit a virtual catalogue of misconceptions and fallacies about rape, each one calculated to heighten mistrust of the female complainant” (Lubet 1999, p. 1351). He argues that in examining Mayella and Tom, Atticus set out to elicit details which in combination created a potent image of the alleged victim as a woman driven by sexual fantasy, who was sexually voracious, spiteful, confused, and ultimately so ashamed, she could do nothing else but lie. What Atticus offers, Lubet argues, is a multidimensional rendering of the “she wanted it” defence (Lubet 1999, p. 1351-3).

In analysing Atticus’s tactics, Lubet questioned whether Atticus actually proved anything that he claimed. He is critical of Atticus for failing to recognise the class and gender-based assumptions informing his world view and which manifested themselves in the type of defence he pursued. But Lubet was also bothered that such a defence should be regarded as allowable and ethical. Thus, he offered a critique of the adversarial system and the types of lawyers and lawyering it enabled. His observations proved

¹ Freedman lists these “enviable array of qualities” as follows: “He is a loving, patient and understanding father, successfully coping with the burden of being a single parent. In his personal relations with other people, black and white, he unfailingly treats everyone with respect. Professionally, he is a superb advocate, a wise counselor, and a conscientious legislator.” (Freedman 1994, p. 482)

² The four groups identified by Phelps are: “the ordinary people like us”—the white, genteel folk like Atticus who live in the township of Maycomb, have access to the law and see themselves as legally entitled; “the Cunninghams who live out in the woods”, who are white, respectful of their social superiors, willing to improve themselves through education and hard work and who have some access to the law; “The Ewells down at the dump” who are white, dirt poor, without manners or education, and who are untrustworthy, dissolute, carnal in their habits and inclinations, with no legal entitlement, no access to justice; and “the negroes” who are further divided into two groups—the respectful such as Calpurnia and those who stand for Atticus in the courthouse and the trouble-making who question their place and refuse to be subservient. Significantly, the film version of *To Kill A Mockingbird* only features African Americans who are respectful in their dealings with whites.

so confronting that when published in the *Michigan Law Review*, they were accompanied by responses from a panel of legal academics, one of whom warned that Lubet was taking “revisionism in a distinctly postmodern direction, if not to a radically new level” (Atkinson 1999, p. 1370). But Lubet was certainly not alone. By the closing years of the twentieth century, a growing number of socio-legal scholars, some identifying as lawyers and others not, were questioning Atticus’s status as a “lawyer hero”. Atticus claimed to have faith in the law but when confronted with the prospect of the eccentric hermit Boo Radley being tried for murder, he shies away from it. Placing Boo on trial, he tells Scout, to even expose him to the curiosity of Maycomb’s townsfolk, would “be sort of like shootin’ a mockingbird” (Lee 1974, p. 280). In 1998, legal ethicist, Tim Dare, concluded this decision was neither legally ethical nor heroic. He instead described it as:

the stuff of tragedy. A principled man has been confronted by the inability of principles by which he understands himself to resist evil, and realizes he cannot risk another loss. He abandons the principles and adopts a fiction. Whether or not it is wicked to try people in the secret court of men’s hearts now depends upon which men’s hearts. (Dare 1998, p. 50)

4. ATTICUS: DEAD OR ALIVE?

As I write, Atticus Finch has reappeared, this time on the stage of the Schubert Theatre in New York. It is just over seven months since the play *To Kill a Mockingbird* made its Broadway debut and while it has received glowing reviews from critics, it seems that audiences are more doubtful as to its worth. Today, the website *Broadway World*, for example, reports that critics rate the play 8 out of 10 stars, whilst readers rate it a lowly 3.47 (Broadway World, 15 July 2019). The problem may well be that the portrayal of Atticus is not what is expected by Northern liberal audiences who remain largely wedded to the idea of him as a paragon of moral and lawyerly virtue. It is certainly that image which Harper Lee’s estate tried to maintain when it filed a lawsuit against the play’s producer claiming that Aaron Sorkin’s script departed from the contractually required representation of Atticus as being—as in the novel—a model of “wisdom, integrity and professionalism” (quoted in Gizzo, 2019). Once the

play eventually debuted, it quickly proved a box office hit, becoming one of the highest grossing non-musicals in Broadway history. But those who have attended have been confronted by a version of Atticus who is an accommodationist when it comes to racism and conflicted in his quest for justice. “It’s not clear” as one commentator has recently observed, “whether Atticus is enjoying a revival or taking his final bow.” (Cep 2018)

Far off Broadway, there is no doubt that Atticus has lost much of his lustre. The question of whether *To Kill a Mockingbird* is suitable reading for school children has become increasingly commonplace in North America. In 1996, Nova Scotia’s Department of Education removed it from required reading lists and in 2017, the Biloxi school district in Mississippi did the same, saying that racist language within the book made some people uncomfortable (Saney 2003) (Chen 2017). But of course the objection runs deeper than that with it long having been argued that the derisory term “nigger” which appears 48 times in the novel is demeaning and offensive in that, irrespective of the context in which it is used, it summons to life all the stereotypical generalisations that African-Americans have been forced to labour under and which still endure today (Saney 2003, p. 99-100). Why then, it is asked, should *To Kill a Mockingbird* be chosen, above all other books, as the first book that children read about race and injustice? Does its lack of an African-American perspective, and the fact that it champions a white saviour whilst being is totally devoid of any black characters who exercise agency, not make it even more unsuitable? (Marer 2018, Randall 2017) And as Alice Randall leads us to ask, what damage might be caused by a book that “encourages boys and girls to believe women lie about being raped?” As she points out *To Kill a Mockingbird* is “often read by children in wildly different—and sometimes profoundly damaging—ways” (Randall 2017).

The question of how the novel is read and indeed taught has extended into law schools and has particular significance for Atticus. While still a staple in discussions of legal ethics, his once unquestionable values and actions have now become moot points to be debated, judged and, where thought inappropriate or unsound, discarded. Cynthia Bond, a clinical professor of lawyering skills, argues

that she still finds value in *To Kill a Mockingbird* but that it must be supplemented by varying texts—autobiographical accounts, films and documentaries—which provide differing accounts of “the complex interconnections between race and law” (Bond 2018, p. 207). Bond suggests that Lee’s other novel, *Go Set a Watchman*, might also provide a useful starting point for facilitating discussion of Atticus’s “less admirable beliefs and broader political context” (Bond 2018, p. 205). At the end of the day, Bond argues that dismantling the construction of Atticus as a lawyer hero is essential in fostering students to become socially engaged and reflective professionals.

Over more than twenty years, I too have sought to engage students in the dismantling of Atticus. My decision to do so began with a nagging discomfort, a sense that something just wasn’t quite right about the story and the man at its centre. Perhaps it had something to do with the scene which establishes Atticus as a man of courage and action before his children and his community. He shoots a rabid dog dead in the street. I still find the scene unsettling and ominous. This is a man who will protect his community, but who is his community and who or what are the dangers to it? As the answers to these questions have become clearer to me, so too has my disappointment at Atticus’ inability to recognise the racially-based injustices existing within his community and law’s role in their inscription and maintenance. In his final summation to the jury that will judge Tom Robinson, Atticus praises America’s courts as “the great levellers” in which “all men are created equal”. He goes on to say:

I’m no idealist to believe firmly in the integrity of our courts and in the jury system – that is no ideal to me, it is a living working reality.... I am confident that you gentlemen will review without passion the evidence that you have heard, come to a decision, and restore this defendant to his family. In the name of God, do your duty (Lee 1974, p. 209-10).

Atticus’s final statement is so passionately delivered that for a very long time, I and no doubt many others, took it as evidence of his faith in the law and its capacity to do justice. If he had any doubt at all about justice being done that related to the quality of jury, not the institution of law. As he notes, “a court is only as sound as its jury, and a jury is only as sound as the men who make it up” (Lee

1974, 210). I have finally come to the conclusion, however, that there are only three ways to interpret Atticus’ assertions and neither of them add cause for his continued deification. One interpretation is that Atticus’s statement is simply part of his strategy to gain the acquittal of his defendant, rather than a statement of fact or personal belief. In this reading, which is consistent with one line of thought presented by Lubet, Atticus is simply a legal technician using every avenue allowable to increase his chances of achieving Tom Robinson’s acquittal. Understood in this way, Atticus’ summation exemplifies law as “constitutive rhetoric”:

as a set of resources for claiming, resisting, and declaring significance...a way of asking and responding to questions; of defining roles and positions from which, and voices with which, to speak; of creating and maintaining relations; of justifying and explaining action and inaction (White 1985, p. 207).

If Atticus’ summation is not understood in this way, and instead is accepted as evidence of his faith in the law, then we are faced with two other possibilities. The first is that Atticus is astonishingly ignorant or blind to the reality faced by many; namely, that far from being great levellers, the courts, like the law generally, as they existed at that time constituted a significant force in facilitating the maintenance of a social order that was blatantly unjust in its treatment of significant segments of the population. Monroe Freedman’s controversial condemnation of Atticus as a “passive participant in that pervasive injustice” comes to mind again (quoted in Johnson 1994, p. 18). The second possibility is that Atticus did believe in what he was saying at the time of the summation but subsequently loses his faith in law. This view is advanced by Tim Dare who highlights how Atticus acquiesces to Sheriff Tate’s plan to spare Boo Radley from prosecution. Within this reading, Atticus acknowledges that the law cannot protect the recluse and, in so doing, emerges as a tragic figure who has either lost or abandoned his faith in law. Even more tellingly though, it is at this point that Atticus becomes part of the process by which guilt or innocence is determined in private by a privileged few rather than by a jury of community members operating in a public court of law (Dare 1998, p. 44).

To Kill a Mockingbird has never in my view been primarily about Scout or Tom Robinson. It is Atticus who has always been at the centre of it, even to the point, as Charles Shields has noted “that Tom’s fate, which means death, seems less important than Atticus’s losing the case” (Shields 2007, p. 226). In light of almost 60 years of critique, much of it based not just in careful reflection but on experiences of marginalisation, it seems implausible that Atticus can continue on as a hero for the future. The case against him is now overwhelming, but understanding Atticus and his actions within his context, still remains important to me. My changing perceptions of Atticus have been part of a broader battle of mine to understand the nature and significance of law and to position myself in relation to it. It strikes me that the work of socio-legal scholars is too often dismissed, confused or mistaken as reflecting a nihilistic mission to destroy law. As legal anthropologists and a platoon of socio-legal scholars have shown us, and indeed as *To Kill a Mockingbird* illustrates, to live in a world without some form of law being enacted seems as improbable as divorcing law from power. To my mind, if there is a distinguishing purpose for socio-legal studies, it is to expose law for what it is - a socio-historical and very human construction that is as complex and flawed as those who create and interact with it. To recognise the ways in which law can be manipulated and exploited flows on from this, as does the responsibility to acknowledge injustices and to work towards the protection and empowerment of those who have or are at risk of experiencing them. Given this, we might still learn much from Atticus Finch, be he dead or alive.

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