

LAWYERS, ETHICS, AND *TO KILL A MOCKINGBIRD*

I

LAWYERS ARE WIDELY THOUGHT to be callous, self-serving, devious, and indifferent to justice, truth, and the public good. The law profession could do with a hero, and some think Atticus Finch of Harper Lee's *To Kill a Mockingbird* fits the bill.<sup>1</sup> Claudia Carver, for instance, urging lawyers to adopt Atticus as a role model, writes: "I had lots of heroes when growing up. . . . Only one remains very much 'alive' for me. . . . Atticus made me believe in lawyer heroes."<sup>2</sup> Not everyone endorses Atticus's nomination. Most influentially, Monroe Freedman argues that Atticus is hardly admirable since, as a state legislator and community leader in a segregated society, he lives "his own life as the passive participant in that pervasive injustice."<sup>3</sup>

Although there is plainly disagreement between Freedman and his opponents, there is also an important point of consensus. Both sides to the debate accept that Atticus's suitability as a role model is settled by his character. Freedman argues that Atticus should not be a role model because he is not the admirable figure he is made out to be: appointed counsel to an unpopular defendant, Atticus admits that he had hoped "to get through life without a case of this kind" (p. 98). He excuses the leader of a lynch mob as "basically a good man" who "just has his blind spots along with the rest of us" (p. 173). He sees that "one of these days we're going to pay the bill" for racism, but hopes that payment, and so justice for blacks, will not come during his children's life times (pp. 243–44).<sup>4</sup> On the other hand, a leading Atticus supporter, Thomas Shaffer, argues that Atticus shows us precisely that what matters in professional ethics is character rather than moral principle:

One thing you could say about Atticus is that he had character. . . . We say that a good person has character, but we do not mean to say only that he believes in discernible moral principles and, under those principles, makes good decisions. We mean also to say something about who he is and to relate who he is to his good decisions. When discussion proceeds in this way, principles need not even be explicit. We can say, "How would Atticus see this situation?" or "What would Atticus do" rather than, "What principles apply?"<sup>5</sup>

So understood, the debate about Atticus connects with the recent resurrection of virtue ethics and with concomitant suggestions that a virtue or character-based ethics might provide a particularly promising approach to professional ethics in general and to legal ethics in particular.

In the following essay, I argue that this character-based appeal to Atticus is misplaced. Although Atticus can teach us important lessons, they are not about the priority of virtue or character. Neither side to the debate has Atticus quite right. Sorting out what it is about him that makes him an appropriate or inappropriate role model for lawyers will both enrich our appreciation of a fine novel and further our understanding of what it is to be an ethical lawyer. More generally, my analysis will suggest that virtue ethics has little to offer toward an understanding of the moral responsibility of lawyers.

## II

In brief, *To Kill a Mockingbird* is the story of the trial of a black man, Tom Robinson, for the rape of a white woman, Mayella Ewell, in racist Alabama in the 1930s. Appointed to defend Robinson, Atticus Finch takes the task seriously, drawing upon himself and his children the slurs and taunts of neighbors. At trial he proves that Robinson could not have raped Mayella, showing that her attacker was left-handed with two good arms, whereas Robinson had lost the use of his left arm in a cotton-gin accident. Robinson is convicted nonetheless. The verdict does not surprise Atticus. Racism, "Maycomb's usual disease" (p. 98), has made it a forgone conclusion. Indeed, shortly afterward, Tom is killed, shot while climbing a prison fence in full view of guards. Tom's death completes one story in *Mockingbird*: an innocent black man has been falsely accused, wrongfully convicted, and killed.

"Tom's story" occurs in the middle parts of the novel, flanked by

another focussing on the Finch's mysterious neighbor, Arthur 'Boo' Radley. Boo has been a recluse inside his family's house for close to twenty-five years, unseen for ten years since stabbing his father with a pair of scissors. The children regard him as a bogeyman, and play what seem to them dangerous games of brinkmanship with him. The reader knows that the children are mistaken about Boo. He is a gentle person: he leaves gifts for the children; he wraps a blanket around Scout as she watches a fire in the cold; he attempts to mend the trousers Jem has torn and abandoned in flight from a raid on the Radley property.

Tom and Boo's stories come together at the end of the novel. Mayella's father, Bob Ewell, attacks the Finch children. They are rescued by Boo, who kills Ewell. In an important moment for my account of the novel, Atticus goes along with the Sheriff's recommendation not to charge Boo over Ewell's death. Instead, Atticus and the Sheriff adopt the fiction that Ewell fell on his knife.

Atticus's daughter Scout narrates *Mockingbird*, and the novel is also the story of her moral development. Her innocence is a crucial aspect of the narration, highlighting the senseless racism and class divisions that rend Maycomb. Scout's innocence wanes during the course of the novel, but it gives way to informed goodness rather than prejudice, a transformation most evident in her attitude to Boo. At the beginning of the story, she regards him as an outsider and misfit, legitimately tormented and feared. The novel closes with her taking his hand to lead him home and seeing that things look the same from the Radley porch as they do from her own.

Much of the credit for Scout's moral development is owed to Atticus. He is a loving, patient, and understanding father who guides his children to virtue while respecting them as individuals capable of judgment and decision. He teaches them compassion and tolerance, frequently advising Scout to "step into the shoes" of others such as the Ewells and Boo Radley. Atticus treats everybody with respect, regardless of class or color. He is courageous, both in zealously pursuing Tom's defense while knowing that it will not succeed and in arming himself only with a newspaper though anticipating a confrontation with a lynch mob. In sum, Atticus's is a voice of decency, wisdom, and reason, courageously speaking out against bigotry, ignorance, and prejudice.

## III

There are three moments in *Mockingbird* of particular significance for lawyers and legal ethics. The first is Atticus's summation to Tom's jury. One often hears, he remarks, that all men are created equal. On some construals, the assertion is simply ridiculous: people are not born equally smart or equally wealthy. Nevertheless, says Atticus:

... 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, gentlemen, is a court. . . . Our courts have their faults, as does any human institution, but in this country our courts are the great levellers, and in our courts all men are created equal. (p. 227)

This is as plain a statement of the role of courts as one could hope for. Whatever inequities people suffer outside the court, within it, they are to be treated as equals.

The second moment occurs after Tom's death. Mr. Underwood, the editor of the local newspaper, has published a courageous editorial condemning the death as sinful and senseless, likening it to the "slaughter of songbirds" (p. 265). Initially, Scout is puzzled by the editorial: how could Tom's death be sinful when he had been granted due process and vigorously defended in an open court? But then, she continues, "Mr. Underwood's meaning became clear: Atticus had used every tool available to free men to save Tom Robinson, but in the secret courts of men's hearts Atticus had no case. Tom was a dead man the minute Mayella Ewell opened her mouth and screamed" (p. 266). Again, the meaning of the passage seems clear: Tom was convicted because he had been tried not in a court of law but "in the secret courts of men's hearts." These courts were governed not by presumptions of equality and innocence, but by prejudice and bigotry. Atticus's plea to the jury had been ignored and Tom had been convicted and killed as a result.

In his summation, Atticus makes clear his commitment to the ideal of the rule of law, understood precisely as rule by public standards rather than by the private wishes and inclinations of individuals. Scout's explication of Mr. Underwood's editorial further emphasizes that commitment. An innocent man has died because a jury chose to try him by their own standards rather than by those of the public system of

law. Thus far, the message of *Mockingbird* is one in favor of the rule of law. Lawyers should honor and protect the public judgments of courts in preference to and from the private judgments of individuals.

The third great moment occurs after Boo Radley rescues Atticus's children from Bob Ewell. Initially, all that is clear is that the children have been attacked and that their attacker lies dead. Atticus thinks that Jem has killed Ewell, wresting a knife away during the attack. He takes it for granted that Jem will go before a court, though he will be acquitted since "it was clear cut self-defense" (p. 300). Sheriff Tate interrupts, telling Atticus that Jem did not stab Ewell, that he fell on his own knife. Atticus assumes Tate is trying to hush up what has happened to protect Jem, and refuses to go along with the subterfuge. But soon Atticus realizes that it is Boo, not Jem, who the Sheriff is trying to protect. It would, Tate maintains, be a sin to bring Boo "and his shy ways" before a court. Atticus sits, looking at the floor for a long time before finally raising his head and saying to Scout, "Mr. Ewell fell on his knife. Can you possibly understand?" Scout's response demonstrates that she understands perfectly well: there has been a decision to accept a fiction. "Yes sir," she says, "I understand. . . . Mr. Tate was right. . . . Well, it'd be sort of like shootin' a mockingbird, wouldn't it?" (p. 304).

These three episodes pose an obvious challenge. The first two deliver a clear message in favor of the rule of law, put quite specifically as a warning about the danger of deciding upon guilt or innocence in the "secret courts of men's hearts." But this seems to be exactly what Atticus countenances in the final episode. Atticus and the Sheriff have decided that Boo should be spared a trial. They have tried him in the secret courts of their hearts and declared him innocent, and Scout endorses their decision: to try Boo would be like shooting a mockingbird. What was a wicked thing in Tom's case is a good thing in Boo's case.

#### IV

The ethical contradiction has not gone unnoticed, and some commentators have been mildly critical. For the most part, however, both Atticus's summation and his decision to spare Boo have been applauded. Indeed, the apparent inconsistency between the two episodes is taken to show Atticus's praiseworthy character and his laudable attitude toward the law. Claudia Johnson writes at length of Atticus's respect for law, before commenting that "despite [this] . . . he believes

that reason must prevail when law violates reason. . . . In the case of Boo Radley's killing of Bob Ewell, law is proven inadequate, because on occasion reason dictates that laws and boundaries must be overridden for justice to be done."<sup>6</sup> And, although he thinks Atticus made a mistake over Ewell's death, Shaffer does not think the mistake diminishes Atticus as a hero, but that it shows us precisely "how a good man makes a doubtful choice" and demonstrates "that more is involved than whether the choice is sound in principle."<sup>7</sup> These commentators take the importance of *Mockingbird* to lie in its demonstration of the centrality of character in professional ethics. In effect, they render Atticus's conduct consistent by subsuming it under the notion of "judgment." His conduct may well be inconsistent when viewed from the perspective of this or that general principle or rule of right conduct, but such a method just shows the inadequacy of principle or rule-governed approaches to ethical conduct.<sup>8</sup>

Assessments of Atticus that elevate judgment over principle reflect wider developments in contemporary ethics and moral philosophy, which have, strikingly, rediscovered Aristotle. At the heart of this renaissance is the idea that moral deliberation and justification cannot proceed deductively through the application of general principles to particular cases. Aristotle supposes that the phenomena with which ethical inquiry is concerned is marked by mutability, indeterminacy, and particularity such that they can never be subsumed under general principles of right action unproblematically. His view of the limitations of general principles of right action led him to stress the importance of "practical judgment" (*phronesis*), a practical reasoning skill which is neither a matter of simply applying general principles to particular cases nor of mere intuition. Both general principles and the particularities of a case play a role in *phronesis* which thus emphasizes judgment and brings the character of the practical reasoner to center stage. We cannot look to general principles to settle what is the right thing to do, hence we must look to the character—or virtues—of those doing the judging.<sup>9</sup>

Atticus supporters present him as the *phronimos*, an expert practical reasoner sensitive both to general principles and the particularities of cases. Atticus is one who knows what to do not by applying general principles, but by being the sort of person he is, by having the sort of character he has. Atticus recognizes that confining himself to general principles, such as those he defended at Tom's trial, would be a recipe for obtuseness.

## V

I am not convinced that Atticus is an appropriate ethical role model for lawyers. He fails not, as Monroe Freedman would have it, because his character makes him unsuited to the role, but because the character approach itself is unable to provide an appropriate grounding for the ethical obligations of lawyers and similar professionals. That is Atticus's lesson for us. My starting point is a reiteration of the challenge posed by the three episodes set out above. Atticus's defenders, we have seen, respond to that challenge by subsuming Atticus's conduct under the notion of "judgment." His conduct may well be inconsistent when viewed from the perspective of this or that general principle or rule of right conduct, but this just shows the inadequacy of principle or rule-governed approaches to ethical conduct. I think there are textual difficulties with this reading, but will not dwell on them here. Instead, I will offer what I think is a more natural reading of Atticus's conduct.

We seek an interpretation of Atticus's conduct that renders it, if not consistent, at least coherent. We have such a reading if we regard Atticus as a tragic figure. *Mockingbird* has at least some elements of tragedy: an innocent man (Tom) falls victim to evil despite the best efforts of the novel's hero. Atticus's story too is tragic. Regarding the rule of law as tremendously important, he presents his arguments in its favor to the jury with passion and all of his professional ability, recognizing that the life of an innocent man rests upon his success. But he fails, and Tom dies. When a decision over Boo is required, Atticus is struck by the similarities between the cases. Both Tom and Boo are mockingbirds: innocents who it would be sinful to harm. Both Tom and Boo are 'outsiders'; Tom because he is black and Boo because he is a handicapped recluse, isolated from the dominant community. Each must rely upon the dominant community to ignore the fact that they are outsiders. In Tom's case, the community does not do so. When Boo kills Bob Ewell, Atticus, cast as protector of both men, must decide whether he will allow another outsider to face the same threat. Confronted with the possibility of another tragedy, Atticus's faith in the rule of law, and perhaps his courage as well, fail him. He cannot bear the possibility that he will be party to the death of another mockingbird.

In the end, Atticus abandons the principles that determined his self-understanding, secured his unique and valuable position in Maycomb, and received his passionate defense. That is the stuff of tragedy: a principled man has come to doubt the adequacy of principles by which

he understands himself and abandons those principles. Whether or not it is wicked to try people in the secret courts of men's hearts now depends upon *which* men's hearts. Hence we need not strain for a reading which makes Atticus's conduct consistent: it is not consistent. Atticus is not throughout the *phronimos*, an eye firmly on substantive principles of justice and fairness, but a more human figure. Tragically though understandably, he is not prepared to risk a vulnerable person effectively in his care, having so recently seen how his legal system mistreated another similarly placed outsider.

The point of interpreting Atticus as a tragic figure is not to brand him as less than admirable and *therefore* as an unsuitable role model. Instead, this interpretation contrasts with that which portrays him as the *phronimos* and provides an alternative to the assumption shared by both sides of the debate that his significance for legal ethics is to be settled by reference to his character. Cast as a tragic figure, Atticus yields a very different message than that which he conveys as a wise figure. We are not meant to *admire* what he does but to be struck by the gravity of his loss. Viewed as a tragic figure, his message is one about the value of the principles he has abandoned, not one about the desirability of regarding them as disposable, trivial, or burdensome.

## VI

A tenacious Atticus supporter might claim that even if Atticus did abandon the principles he defended in Tom's case, the decision to do so was a wise one, and does not show Atticus to have acted other than as the *phronimos*. However, there are reasons to reject this assessment. Some of these reasons are specific to Boo's case: they undercut the claim that Atticus's decision in Boo's case was a wise one. I begin with these Boo-specific issues.

Perhaps the most striking Boo-specific feature in this context is the fate from which Atticus and Sheriff Tate are attempting to save Boo. In portraying Atticus as a tragic figure, I suggested that he could not bear the thought of being party to the death of another mockingbird. The talk is warranted from Atticus's point of view. It explains why Scout speaks so effectively when she likens putting Boo on trial to "shootin' a mockingbird." However, it is rhetorical. No one seems to think Boo will really suffer Tom's fate. They take it for granted that he will be acquitted. The worst Sheriff Tate can imagine for Boo is that he will be besieged by grateful Maycomb ladies bearing angel food cakes (p. 304)!



Plainly, this is not a trivial matter for Boo and his shy ways. Surely, however, it cannot be sufficient to warrant rejection of what on any reading of the novel is a fundamental principle of justice.

There are other factors that cast doubt on the wisdom of Atticus's decision. There is no consideration of how the decision will seem to other members of the community. No middle grounds are canvassed—there is no discussion of the possibility of putting Boo on trial and forbidding the Maycomb ladies from bombarding him with angel food cakes. Further, by the time of the episodes recounted in *Mockingbird*, Boo has been held in his family home for some twenty-five years. Might not Boo have been better served by giving him his day in court, bringing him out of the shadowy world he had occupied for so long? Surely one need not be terribly hard-hearted to think that the local community had an interest in knowing that someone with Boo's history had been about with a honed kitchen knife with which he had dispatched Bob Ewell, no matter how much Ewell deserved his fate or how clearly Boo had merely been trying to prevent a crime.

This is to suggest that Atticus makes a mistake in Boo's case, putting aside too easily fundamental principles in the face of insufficiently countervailing considerations. It is not hard to see why he does so. I have suggested that Atticus's deliberations about Boo are dominated by his experience in Tom's case and, in particular, by the perception that Boo, like Tom, is a vulnerable outsider. But Boo is a very different sort of outsider than Tom, and the difference is both plain and important. We see it illustrated starkly in the Sheriff's responses to Boo and Tom. After a somewhat perfunctory investigation of each episode, he immediately arrests Tom, with no apparent qualms about the reliability of the Ewells' accusation. Yet he decides on the spot to adopt a fiction to spare Boo a trial, evidencing sensitivity to Boo quite absent from his dealings with Tom. The Sheriff's apparent change of heart shows clearly that Boo, at least compared to Bob Ewell, is a privileged outsider, and Atticus seems not to have noticed this or to have given it too little weight. The second obvious explanation for Atticus's lapse is the involvement of his own children in Boo's case. His gratitude to the man who saved his children is surely understandable, and one can see why he would be loathe to insist that his children's rescuer be put through the ordeal of a trial and displays of public gratitude. But the involvement of his children should have led Atticus to be especially careful about trying Boo in the secret court of his own heart.

Hence, we might wonder whether Atticus gets it right in Boo's case.

We have seen that Shaffer also describes Atticus's decision to spare Boo as a mistake, albeit one that reminds us of the importance of character. But I think that Sheriff Tate has it right when he says, "Mr. Finch I hate to fight you when you're like this. You've been under a strain tonight no man should ever have to go through. Why you ain't in bed from it I don't know. But I do know that for once you haven't been able to put two and two together . . . ." (p. 303).

This reading of Atticus's decision in Boo's case supports the interpretation of him as a tragic figure. He makes a poor decision in Boo's case because his focus on the common themes in the cases prevents him from paying sufficient detail to the particularities of Boo's situation. It is difficult to believe the details would not have moved a wise-Atticus, but we would expect a tragic-Atticus to respond just as Atticus Finch does respond. This account also reveals the flaws of the character approach. If even Atticus cannot avoid the sort of understandable cognitive dissonance that seems to mark his deliberations in Boo's case, we should favor an alternative approach that places less emphasis upon the particular judgments of individuals. A rule or principle-based approach, though not eliminating the need for judgement, is such an alternative.

There is another point to be drawn from this discussion. Behind much of it has been the idea that the decision to spare Boo a trial may have been reasonable had there been a genuine risk that Boo would have suffered Tom's fate. I have suggested that the facts of Boo's case simply do not support that conclusion. But suppose for a moment that a Maycomb jury would have unjustly convicted him of wrongdoing in the death of Bob Ewell. The supposition renders *Mockingbird* the story of a legal system in crisis. We may think, indeed, that Tom's fate alone is enough to show that this is just what *Mockingbird* is. But what would its lesson be if this were correct? Not that identified by Atticus's defenders. Rather, assuming that *Mockingbird* is the story of a system in crisis, its lesson is that lawyers should not admire and emulate Atticus's alleged attitude to rules and principles. For on the reading of the novel which portrays it as the story of a legal system in crisis, it is precisely the jury's *disregard* for these constraints which generates the crisis. Here, once again, Atticus's lesson for us would be about the importance of rules and principles, not about their triviality.

## VII

I remarked that there were two sorts of reasons to doubt that Atticus's decision in Boo's case was a wise one, some specific to Boo's case and others of more general import. I turn to the reasons of the second sort. As well as bearing again upon the question of Atticus's wisdom in Boo's case, these are reasons to think that we should reject the character approach to legal ethics itself.

I begin with an account of the nature and function of law. One of Atticus's most important moral lessons to his children is that of tolerance and appreciation of difference. Here Atticus gestures at what has been described as the problem of political liberalism: "How is it possible that there may exist over time a stable and just community of free and equal citizens profoundly divided by reasonable religious, philosophical and moral doctrine?"<sup>10</sup> A central part of the liberal response to this question has been the establishment of procedures and institutions that aspire to an ideal of neutrality between reasonable views represented in the communities to which they apply. The members of pluralist communities will often be able to agree on the structure of neutral institutions and practices even when they cannot agree on the right outcome of a policy question as a substantive matter. Of course, these institutions and practices cannot guarantee outcomes which will suit all the reasonable views: often there will be no such universally acceptable outcomes. The hope of liberalism, however, is that even those whose substantive preferences do not win the day on this or that occasion will have cause to accept the decisions of these institutions as fair and just. At the very least, they must have reason to believe that their views have been taken seriously and that the decision procedures have not simply turned the individual preferences of some members of the community into public policy.

Precisely these sorts of general political concerns lie behind the requirement that individuals are to be tried by public standards in public courts rather than by private or secret tribunals. Why object to trials in the secret courts of men's hearts? Not only because we are worried about whether or not we have the *right* men's hearts, but also because a crucial part of the role of law in pluralist communities is to allow individuals to see the mechanisms by which public decisions are made and to see that those mechanisms have indeed been used. Liberal community so understood is undercut by those who insist upon appeal

to their own substantive views of the good rather than to public procedures.

Atticus has it right in his summation to the jury. A commitment to tolerance and equality leads to decision procedures that render trial within the secret courts of men's hearts illegitimate. Atticus's decision to spare Boo a public trial is a mistake not just because it fails to take account of the particular facts of Boo's case, but because it undercuts the role of law in securing community between people who hold a range of diverse and reasonable views. This view about the role of law in pluralist societies has consequences for the ethical obligations of lawyers. They act improperly when they substitute their own judgments for those of the procedures, acceptance of which makes pluralist community possible. An appreciation of the role of law should lead us away from rather than toward a character-based approach to legal ethics. The issue is not whether we have the right men's hearts, but whether any individual's heart will do.

This discussion provides a response to a recent and important contribution to the legal ethics debate. Anthony Kronman has argued that the legal profession is in the grips of "a spiritual crisis that strikes at the heart of [the lawyer's] professional pride" and threatens the very soul of the profession itself.<sup>11</sup> The crisis has resulted from the demise of a two-hundred-year-old professional ideal—that of the lawyer-statesman—which envisioned the outstanding lawyer as the *phronimos*: not a mere technician but a person of practical wisdom possessed of a range of honorable and more or less peculiarly legal character traits. Without this ideal, lawyers have come to regard law as an essentially technical discipline, requiring no particular character or virtue on the part of its leading practitioners, judges, and teachers.

As the lawyer-statesman epithet suggests, Kronman takes lawyers to have a significant leadership role. In the political sphere, the lawyer-statesman seeks a certain kind of political integrity, namely one that obtains despite the existence of significant and ineradicable conflict. The lawyer-statesman directs us to a condition of political wholeness in which "the members of a community are joined by bonds of sympathy, despite the differences of opinion that set them apart on questions concerning the ends, and hence the identity, of their community."<sup>12</sup>

The discussion of the role of law and lawyers given above provides a better account of these matters. There are a couple of points. First, the 'procedural' story is directed precisely at securing political community in the face of ongoing substantive dispute. The neutral institutions of

political liberalism aim to give us ways of going on as a community which assure even those whose personal preferences have failed to carry the day that neither they nor their views have been ignored. Law is an essential part of the effort to secure stable and just political community between the advocates of diverse views of the good. Second, the procedural approach provides a response to Kronman's spiritual crisis as well: on the procedural account the various law jobs are extraordinarily important in pluralist communities and hence are ones in which lawyers can and should take pride. One might think, indeed, that some such story would be a source of considerably more comfort to lawyers than Kronman's—it tells them, after all, that what most of them are doing most of the time has moral and political value.

## VIII

There are also reasons to be wary of character-based approaches to legal ethics that focus not upon the political or social significance of law in general, but upon the nature of lawyer-client relationships. We can relate these concerns to *Mockingbird* by noting a difference between Atticus's position and that of most contemporary lawyers. *Mockingbird* is importantly the story of an intimate community. A good deal of the book is concerned to place Atticus and his family within Maycomb, to show how he and his forebears came to the town, to show that the neighbors and the community know him well. Consequently, Atticus's professional relationships have much in common with relationships between family members or friends. In these latter relationships our intimate knowledge of the individual allows us to make assessments of the character of the person to whom we are vulnerable—of their motivations, their priorities and so forth—which explain our willingness to place ourselves in their hands. However, we do not have this sort of detailed knowledge of the character of our professionals. Hence we cannot rely upon their character as we rely upon the character of friends. The result is that the character aspect of the virtues approach makes it inappropriate for professional and legal ethics. Clients just do not have access to information about the character of their professionals that would make it reasonable to place themselves in positions of vulnerability in reliance upon character-based considerations.<sup>13</sup>

Given this analysis of professional-client relations, it is important not only that professionals are ethical, but that clients and potential clients have some way of knowing the ethical stance of practitioners even

though they do not know them or their moral views personally. The adoption and promulgation of a distinct professional morality makes the ethics of the profession public in a way that the personal ethics of its members cannot be. Clients get the benefit of this public ethics, however, only if it is indeed given priority over personal ethical views in members' dealings with the public. Given this, to know what values at least should govern the professional's conduct, the client need only know what values the professional role requires the professional to adopt and that the professional is a role-occupant. In a different world, perhaps one characterized by the positive communal aspects of life in Maycomb, we may not need these guides to the ethical views of our professionals. However, Maycomb, both thankfully and sadly, is not our world.

## IX

In sum, Atticus does have an important lesson for professional and legal ethics, but not one about the importance of character over rules and principles. On the contrary, Atticus allows us to see the importance of the principles of law he defends so eloquently in Tom's case and abandons so tragically in Boo's case. In doing so, he shows why we cannot found an adequate professional ethic on the character of practitioners. Character approaches make it less rather than more likely that professionals will fulfill the ethical obligations appropriate to their roles. Atticus's lesson is not that lawyers should throw over rule- and principle-based models of professional ethical obligation, but that they should be brought to appreciate the significance of the social roles they serve, and to understand and take pride in fulfilling the duties which flow from those roles.

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1. Harper Lee, *To Kill a Mockingbird* (London: Heinemann, 1960). Subsequent references appear in parentheses in the text.
2. Claudia A. Carver "Lawyers as Heroes: The Compassionate Activism of a Fictional Attorney is a Model we can Emulate," *Los Angeles Lawyer* (July-August, 1988).
3. Monroe Freedman, "Atticus Finch, Esq., R.I.P.," *Legal Times*, 24 February 1992.

4. Monroe Freedman, "Atticus Finch—Right and Wrong," *Alabama Law Review* 45 (1994): 473–82. This volume contains a symposium on *To Kill a Mockingbird* and legal ethics.
5. Thomas L. Shaffer, *Faith and the Professions* (Provo, Utah: Brigham Young University Press, 1987), p. 5.
6. Claudia Johnson, "Without Tradition and Within Reason: Judge Horton and Atticus Finch in Court," *Alabama Law Review* 45 (1994): 483–510, 499. See also Timothy Hall, "Moral Character, the Practice of Law and Legal Education," *Mississippi Law Review* (1990): 511–25.
7. Thomas L. Shaffer, "The Moral Theology of Atticus Finch," *University of Pittsburg Law Review* 41 (1981): 181–224, 196.
8. For other applications of virtue ethics to the legal profession, see Anthony Kronman, *The Lost Lawyer* (Cambridge, MA: Belknap Press, 1993), discussed below, and Gerald Postema, "Moral Responsibility in Professional Ethics," *New York University Law Review* 55 (1980): 63–89.
9. See, for instance, John McDowell writing that "one knows what to do (if one does) not by applying universal principles but by being a certain sort of person: one who sees situations in a certain way." "Virtue and Reason," *The Monist* 62 (1979): 331–50, 347, reprinted in *Virtue Ethics*, eds. Roger Crisp and Michael Slote (Oxford: Oxford University Press, 1993), pp. 141–62. Crisp and Slote's collection contains many of the important contributions to the virtue ethics revival.
10. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. xxv.
11. Kronman, p. 2.
12. Kronman, p. 93. It is no coincidence that Kronman appeals to historical examples of the lawyer-statesman, just as the Atticus supporters appeal to a fictional figure. Both characterize the *phronimos* ostensibly, since they are suspicious of doing so by appeal to 'principles' of deliberation or good character. The use of such principles would undercut the character approach's rejection of principles.
13. This analysis may capture the compelling aspects of the idea that the professional is the client's "special purpose friend." See Charles Fried, "The Lawyer as Friend: The Moral Foundations of the Lawyer-Client Relation," *Yale Law Journal* 85 (1976): 1060–89.