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## NATURAL LAW, POSITIVE LAW, AND CONFLICTING SOCIAL NORMS IN HARPER LEE'S *TO KILL A MOCKINGBIRD*

MAUREEN E. MARKEY\*

### INTRODUCTION

*To Kill a Mockingbird* by Harper Lee<sup>1</sup> is a classic of the Law and Literature canon, much loved and appreciated because of its universal themes, articulated through that unerring grasp of the human condition that is the hallmark of great literature. It is a deeply affecting drama that reveals the essence of human behavior, both noble and craven. Because Atticus Finch, more than any real life lawyer, exemplifies both the personal and professional identity that most lawyers strive for, the novel has been hugely influential in many lawyers' lives.<sup>2</sup> In a profession often stereotyped as greedy, amoral, and uncaring, Atticus represents transcendent moral values, traditionally recognized as a natural law view of the world,<sup>3</sup> and respect for the rule of law reflected in good positive law. But Atticus also presents a compelling depiction of the moral courage required of an ethical person when

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1. HARPER LEE, *TO KILL A MOCKINGBIRD* (Warner Books 1982) (1960). This novel is one of the most widely read works in all of American literature, having sold more than 10 million copies worldwide. See *Best Sellers; List of World's Best Selling Books*, DAILY MIRROR (London), June 12, 1995, at 7.

2. Atticus Finch "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." David Margolick, *At the Bar: To Attack a Lawyer in 'To Kill a Mockingbird': An Iconoclast Takes Aim at a Hero*, N.Y. TIMES, Feb. 28, 1992, at B7. For example, James Carville, a southern liberal, relates that after *Brown v. Board of Education*, he still "'took segregation for granted and wished the blacks just didn't push so damn hard to change it.' But then he read *To Kill a Mockingbird*, 'and that novel changed everything. I got it from a lady who drove around in the overheated bookmobile in my parish. I had asked the lady for something on football, but she handed me *To Kill a Mockingbird* instead. I couldn't put it down. I stuck it inside another book and read it under my desk during school. When I got to the last page, I closed it and said, 'They're right and we're wrong.' The issue was literally black and white, and we were absolutely, positively on the wrong side.'" Cited in Christopher Metress, *The Rise and Fall of Atticus Finch*, 24 CHATTAHOOCHEE REV. 95, 96 (2003), reprinted in BLOOM'S MODERN CRITICAL INTERPRETATIONS: HARPER LEE'S 'TO KILL A MOCKINGBIRD' 143 (Harold Bloom ed., Chelsea House 2006) (1998). [hereinafter BLOOM'S]

3. Harper Lee can be seen as essentially a moralist in the Jane Austen vein and the novel as a "complete cohesion of art and morality." R.A. Dave, "TO KILL A MOCKINGBIRD": HARPER LEE'S TRAGIC VISION (1974), reprinted in BLOOM'S, supra note 2, at 46.

confronted with deeply flawed social norms that conflict with natural law or positive law. Atticus enables us to believe that we might respond as honorably in confronting comparable moral dilemmas. This Article explores the complex interaction of natural law, positive law, and conflicting social norms in *To Kill a Mockingbird*,<sup>4</sup> as manifested in the private sphere through the family and the public sphere through various social institutions.

Natural law, in its various manifestations, has been a centerpiece of legal philosophy since the ancient Greeks and Romans.<sup>5</sup> Natural law focuses on absolute, unchangeable, immutable, universal values and moral precepts, from which one develops an innate sense of right and wrong.<sup>6</sup> The belief in universal principles of right and wrong and the essential integration of law and morality are the central tenets of natural law.<sup>7</sup>

This moral sense can be derived either from religion or from the human capability for rational thought. In ancient and medieval times, natural law drew its moral force from its grounding in divine precepts or religious law.<sup>8</sup> But in its long history, the understanding of natural law has also had a secular, rational philosophical basis. Universal moral law is that which is knowable by human beings through reason, intellect, and experience.<sup>9</sup> The Deists who drafted our country's founding documents, the Constitution and the Declaration of Independence, were influenced by eighteenth century Enlightenment philosophers,<sup>10</sup> who gravitated toward a more secular philosophy and

4. The most interesting critical analysis of *To Kill a Mockingbird* has been done by legal, rather than literary, scholars. See Claudia Johnson, *Without Tradition and Within Reason: Judge Horton and Atticus Finch in Court*, 45 ALA. L. REV. 483 (1994). *To Kill a Mockingbird* has been used in legal ethics classes as a textbook. See, e.g., THOMAS L. SHAFFER, AMERICAN LEGAL ETHICS: TEXT, READINGS & DISCUSSION TOPICS (1985).

5. See generally, PLATO, PHAEDO (Benjamin Jowett, trans. 1994) (Forgotten Books 2008); ARISTOTLE, RHETORIC, bk. 1, ch. 13 (Jenny Bak, ed., W. Rhys Roberts, trans., Dover 2004). <http://www2.iastate.edu/~honey1/Rhetoric/rhet1-13.html>; and MARCUS TULLIUS CICERO, THE REPUBLIC (Jonathan Powell, ed., Oxford Univ. Press 2009).

6. See EDWIN J. PATTERSON, JURISPRUDENCE: MEN & IDEAS OF THE LAW 332-33 (1953); H.L.A. HART, THE CONCEPT OF LAW (10th ed. 1979).

7. See Kent Greenawalt, *How Persuasive Is Natural Law Theory?*, 75 NOTRE DAME L. REV. 1647, 1657 (2000) (discussing moral ideas in the context of natural law).

8. See, e.g., ST. THOMAS AQUINAS, SUMMA THEOLOGICA, pt. I-II, question 3, art. 8 (Fathers of the English Dominican Province, trans., 1947), available at <http://www.newadvent.org/summa/4003.htm#article8>.

9. See, e.g., HUGO GROTIUS, DE JURE BELLI AC PACIS LIBRI TRES 38 (Francis W. Kelsey, trans., William S. Hein & Co., Inc. 1995) See generally JOHN LOCKE, TWO TREATISES OF GOVERNMENT (Peter Laslett ed., Cambridge Univ. Press 1988) (1690); STEPHEN BUCKLE, NATURAL LAW AND THE THEORY OF PROPERTY: GROTIUS TO HUME (1991); RONALD DWORKIN, LAW'S EMPIRE (1986); JOHN RAWLS, A THEORY OF JUSTICE (1971).

10. The rational philosophical approach of French and English Enlightenment thinkers like Jean Jacques Rousseau and John Locke greatly influenced the Founding Fathers. William Blackstone was also a proponent of natural law. Blackstone's *Commentaries on the Laws of England*, the most influential book in the training of lawyers in Britain and the U.S. throughout the late

believed in natural law based on human reason rather than on divine teachings.

Whatever its source, the chief hallmark of natural law is a necessary integration of law and morality, a belief that any legitimate legal system must be based on accepted moral values.<sup>11</sup> The contemporary approach to natural law emphasizes moral values such as justice, fairness, and human dignity.<sup>12</sup> The principal divide between natural law and positivism is whether there is such a thing as universal or transcendent moral laws.

Positivism, which became dominant in the nineteenth century as a rejection of natural law philosophy, severs the connection between law and morality.<sup>13</sup> Law does not derive from religious beliefs or absolute moral values; rather, law is that which is promulgated by a legitimate authority and backed by sanction for failure to comply.<sup>14</sup> By definition, positivism results in a more relative view of law, a reflection of different societies at different times. Although the positive law is defined as morally neutral, it can either reflect or contradict the natural law. Much of human behavior is also governed by an elaborate system of social norms, the set of unwritten rules that dictate what is or is not acceptable in a given society at a given time. Like the positive law, social norms may or may not conform to natural law.

Positive law at one level may conflict with positive law at another level. Particular positive law may also either conflict with the natural law or reflect the natural law. At the national level, the United States Constitution is positive law that reflects the natural law in its guarantee of freedom and equality to all. However, as illustrated in *To Kill a Mockingbird*, various state and local laws in the Deep South were intended to preserve at any cost the white power structure by perpetuating racism and discrimination, in opposition to both the Constitutional guarantees and natural law.<sup>15</sup> Known collectively as the Jim Crow

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eighteenth and early nineteenth centuries, embodied the precept that law is a product of natural reason, as illustrated by the common law. See BAILEY KUKLIN & JEFFREY STEMPEL, FOUNDATIONS OF THE LAW: AN INTERDISCIPLINARY AND JURISPRUDENTIAL PRIMER 142-43 (1994).

11. See Kent Greenawalt, *The Natural Duty to Obey the Law*, 84 MICH. L. REV. 1 (1985). See also AQUINAS, *supra* note 8, at pt.I-II, questions 93, 95-96.

12. See, e.g., DWORKIN, *supra* note 9; RAWLS, *supra* note 9; Letter from Martin Luther King, Jr. (Apr. 16, 1963), available at [http://www.africa.upenn.edu/Articles\\_Gen/Letter\\_Birmingham.html](http://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html).

13. See, e.g., JOHN AUSTIN, THE PROVINCE OF JURISPRUDENCE DETERMINED 184 (Wilfred E. Rumble, ed. 1995) (1832); H.L.A. Hart, *Positivism and the Separation of Law and Morals*, 71 HARV. L. REV. 593, 594 (1958).

14. See AUSTIN, *supra* note 13, at 11, 29; JEREMY BENTHAM, OF LAWS IN GENERAL 18 (H.L.A. Hart, ed., Athlone Press 1970).

15. Of course, racism was not and is not limited to the Deep South. April 12, 2009, marked the 70th anniversary of the historic performance of Marian Anderson on the steps of the Lincoln Memorial in Washington, D.C., before a crowd of 75,000 people. Because of her race, the incomparable Ms. Anderson had been denied the right to perform at nearby Constitution Hall (the

Laws, these laws were able for a considerable period of time to undercut the Constitutional guarantees and negate the underlying natural law principles by providing allegedly “separate but equal” accommodations to the black population.<sup>16</sup> In addition, the Jim Crow laws spawned throughout the South a system of social norms that violated natural law.

*To Kill a Mockingbird* reflects the natural law belief that human beings are sustained and improved by good positive law.<sup>17</sup> Civilization rests on respect for law because good civil law brings with it the moral virtues that reflect the natural law. Individuals are capable of good and evil, and the only real safeguard against the vagaries of human nature is the rule of law. But to be effective, the civil law must conform to the higher moral law. As countless works of literature have shown us, when the two are inconsistent, tragedy and chaos result. In *To Kill a Mockingbird*, Atticus Finch represents the moral law as that sanctioned by rational thinking and reflected in our constitutional guarantees of equality, justice, fairness, freedom, and respect for the rule of law. However, there coexists a travesty of the moral law because of a disjunction between those democratic principles and the positive law and the social norms of the community in which Atticus lives and works.<sup>18</sup>

Harper Lee introduces her story and its intertwining themes, childhood and the law, with an epigram from Charles Lamb, “Lawyers, I suppose, were children once.”<sup>19</sup> Atticus Finch, the protagonist of *To Kill a Mockingbird*, is a lawyer, a state legislator, and also a widower who is rearing his two young children, Jem and Scout, in the small southern town of Maycomb, Alabama. Scout narrates this memory tale from her vantage point as a mature woman recalling her childhood. Because of Scout’s close relationship with her lawyer father, much of the story revolves around the law—its intricacies, its formali-

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largest venue in the capital) by the Daughters of the American Revolution, the owner of the hall. Most memorable was Ms. Anderson’s stirring rendition of “My Country Tis of Thee,” which identified a “sweet land of liberty” that denied her many of those same liberties even as she sang that iconic song. Natasha T. Metzeler, *Concert to Pay Tribute to Marian Anderson*, THE ASSOCIATED PRESS, USA TODAY, Apr. 12, 2009, available at [http://www.usatoday.com/life/music/news/2009-04-12-anderson-concert\\_N.html](http://www.usatoday.com/life/music/news/2009-04-12-anderson-concert_N.html).

16. In 1954, the U.S. Supreme Court in *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954), exposed separate but equal for the sham that it was, but in the 1930s setting of *To Kill a Mockingbird*, the Jim Crow laws were alive and well.

17. See generally ARISTOTLE, *supra* note 5; AQUINAS, *supra* note 8; GEORG WILHELM FRIEDRICH HEGEL, *HEGEL’S SCIENCE OF LOGIC* (A.V. Miller, trans. 1969) (1812).

18. See Claudia Johnson, *The Secret Courts of Men’s Hearts: Code and Law in Harper Lee’s ‘To Kill a Mockingbird’*, STUD. IN AM. FICTION 129 (1991). Although Atticus is inspired and motivated by the lofty principles reflected in the Constitution and the Declaration of Independence, his community, Maycomb, is not. There, the values of Jim Crow prevail.

19. CHARLES LAMB, *Epigraph to LEE*, *supra* note 1. Lee faced structural challenges in integrating these two plots into a cohesive whole.

ties, its fascination, and its foibles. Both Jem and Scout wrestle with the difficult reconciliation of the official law and the unofficial rules that often govern behavior in their community. The climax of the story is the trial of Tom Robinson, a black man whom Atticus defends when Tom is wrongly accused of raping a poor white woman in the rural south of the 1930s.<sup>20</sup>

#### NATURAL LAW IN THE PRIVATE SPHERE: FAMILY RELATIONSHIPS

The public/ private dichotomy within the natural law-positivism construct becomes a problem when acting for the public good, as the community defines it, conflicts with acting for the good of the family or for the public good, as determined by one's personal sense of morality. The protagonist's ability to bridge the gulf between the private and public realms affects the outcome. The private realm includes family relationships, personal ethics, values, and individual conscience. The public realm includes the relationship of the protagonist to the larger society and its institutions, including race and class distinctions, the justice system, community standards, education, religion, and the role of civil disobedience. Gender roles and stereotypes, which intersect the private and public realms, play a critical role as well. In *To Kill a Mockingbird*, Atticus is always keenly aware of the balance—the tightrope he must maneuver to do what is morally right in the face of conflicting laws and social norms. This awareness leads Atticus to greater success in balancing the public and the private realms.

*To Kill a Mockingbird* explores family relationships and gender roles through strong parent-child, especially father-daughter, relationships and a strong female narrator who exhibits traits traditionally more identified with male characters. The novel opens with a family scene: Scout reminiscing about the summer Jem broke his arm. It comes full circle when it concludes with a family scene: Atticus sitting at Jem's bedside reading a book, after the doctor has set Jem's broken arm. Lee provides considerable detail about family structure and relationships in the Finch household and, by indirect comparison, in the households of other Maycomb families.<sup>21</sup> *To Kill a Mockingbird* at

20. The two strong vectors of Lee's novel are "its focus on childhood, the battleground of desegregation, and the rhetorical power of white womanhood, long the weapon of choice in racist arguments against equality." Eric J. Sundquist, *Blues for Atticus Finch: Scottsboro, Brown, and Harper Lee, in THE SOUTH AS AN AMERICAN PROBLEM* 181 (Larry J. Griffin & Don H. Doyle, eds., 1995), reprinted in BLOOM's, *supra* note 2, at 78.

21. The Radleys and the Ewells and even Dill, who comes from a broken home, are covered extensively. The households of the Cunninghams, Aunt Alexandra, and several of the Finches' neighbors, like Maudie Atkinson, Rachel Haverford, and Mrs. Dubose, receive more cursory attention.

one level is a coming of age novel. The first plot, introduced on page one and occupying roughly the first half of the book, deals with the progression of Jem and Scout Finch from the innocence of childhood toward the moral awareness of adulthood. Their family situation and Atticus' role as a single parent with two young children dominate this plot. The parallel plot, developed in the second half of the novel, addresses the prelude to the trial of Tom Robinson, the trial itself, and the aftermath. The entire story is told from the perspective of Scout, and her perceptions and judgments about the trial are largely formed by her upbringing in the house of Atticus Finch.

### *The Finch Family*

Atticus certainly considers family important as it relates to parenting. He is a single father, raising his two children to develop strong moral values that will help them withstand and combat "Maycomb's usual disease,"<sup>22</sup> the deep-seated and rampant racism in their community. For Atticus' sister, Alexandra, however, family is all about background, ancestors, and breeding.<sup>23</sup> Alexandra, the archetypal Southerner, is obsessed with the Finch family and its reputation and lineage,<sup>24</sup> a consciousness she struggles vainly to instill in Scout and Jem. Alexandra takes advantage of every opportunity to emphasize "the shortcomings of other tribal groups to the greater glory" of the Finch family. Somewhere, Scout had gotten the idea that "Fine Folks were people who did the best they could with the sense they had," but

22. LEE, *supra* note 1, at 88.

23. Aunt Alexandra has perhaps a too "well-developed regard for kin-group relations." Fred Erisman, *The Romantic Regionalism of Harper Lee*, 76 THE ALA. REV. 122 (1973) reprinted in BLOOM'S, *supra* note 2, at 27. Although Atticus' attitude toward family is more admirable, Alexandra's attitude is far more common in defining the Southern sense of identity, which Lee establishes right at the outset. "Being Southerners, it was a source of shame to some members of the family that we had no recorded ancestors on either side of the Battle of Hastings." LEE, *supra* note 1, at 3. To establish the importance of family background and the web of family connections, Lee provides otherwise irrelevant details. Although Scout's mother has been dead for four years when the novel opens, Lee alludes to her background and her family. *Id.* at 6.

24. Alexandra's constant anxiety about disgrace to the family overshadows her concern for the potential danger to Atticus and his children in Atticus' representation of Tom Robinson. Jem describes to Scout a conversation between Atticus and Alexandra that he overhears. "She won't let him alone about Tom Robinson. She almost said Atticus was disgracin' the family." LEE, *supra* note 1, at 147. On the night before Tom Robinson's trial, Jem and Scout watch from the living room window with the lights out as a group of townspeople show up in the front yard to warn Atticus about the potential danger from the Old Sarum mob. Worried mainly about appearances, Alexandra tells Jem and Scout that if they don't turn the living room lights back on, they will disgrace the family. *Id.* at 146.

Scout's cousin Francis parrots what he has heard from his grandmother, Alexandra, calling Atticus a "nigger lover," who "certainly does mortify the rest of the family." *Id.* at 83. When Scout demands an explanation, he replies, "Grandma says it's bad enough he lets you all run wild, but now he's turned out a nigger-lover we'll never be able walk the streets of Maycomb again. He's ruinin' the family, that's what he's doin'." *Id.*

Alexandra thought that “the longer a family had been squatting on one patch of land the finer it was.”<sup>25</sup>

Just before Tom Robinson’s trial, Alexandra decides to visit the Finches in order to exert some “feminine influence” over Scout’s upbringing.<sup>26</sup> Atticus tells the children that this is a favor to him, but Scout knows better. “Aunty had a way of declaring What Is Best For The Family, and I suppose her coming to live with us was in that category.”<sup>27</sup> Of course, by the time Alexandra arrives, Scout is nine years old and much of her “formation in virtue” has already taken place.<sup>28</sup> Maycomb welcomes the stalwart Alexandra. Although she has never lived in Maycomb, Alexandra can identify with Maycomb values far more than Atticus can.

Aunt Alexandra fitted into the world of Maycomb like a hand into a glove. . . . To all parties present and participating in the life of the county, Aunt Alexandra was one of the last of her kind: she had riverboat, 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 chance she would exercise her royal prerogative: she would arrange, advise, caution, and warn.<sup>29</sup>

Although Alexandra may have fit into the world of Maycomb like a glove, she certainly never fit well into the world of Jem and Scout. She is a formidable and somewhat threatening presence in Scout’s life.<sup>30</sup> When Scout and Jem ignore her earnest lessons about the importance of the Finch family background, she enlists Atticus to “educate” his children in this regard.<sup>31</sup> Exasperated, Atticus makes a halfhearted at-

25. *Id.* at 130. Clearly, the source of Scout’s impression is Atticus’ teaching of the moral values of tolerance and acceptance of other people as they are, even if they are different. Scout’s confusion results from the different meanings of family to Atticus and Alexandra. The superficiality of Alexandra’s view, which is so unlike that of Atticus, is not lost even on young children like Jem and Scout who have been taught a more serious understanding of the value of family.

26. *Id.* at 127.

27. *Id.* at 128-29.

28. Thomas L. Shaffer, *Growing Up Good in Maycomb*, 45 ALA. L. REV. 531, 538 (1994). Fortunately for Scout, but much to Alexandra’s consternation, most of Scout’s education has been “masculine education – not because women are absent but because Scout’s only living parent is a man, a man of moral power and influence.” *Id.* It is much more important to Atticus that Scout learn moral values than that she dresses like a lady.

29. LEE, *supra* note 1, at 129, 131-32.

30. Scout’s vivid impression of Aunt Alexandra sitting on the porch when Scout and Jem return from church with Calpurnia: “I looked down the street. Enarmored, upright, uncompromising, Aunt Alexandra was sitting in a rocking chair exactly as if she had sat there every day of her life.” *Id.* at 126. “[Scout] so often wondered how [Alexandra] could be Atticus’ and Uncle Jack’s sister that [she] revived half-remembered details of changelings and mandrake roots that Jem had spun long ago.” *Id.* at 132.

31. Alexandra lecturing Atticus on properly educating children is indeed ironic. Alexandra fails to appreciate the far more important education Atticus provides for his children every day by helping them become conscientious and morally aware adults.



tempt to instill the appropriate degree of family pride in Scout and Jem. Clearly uncomfortable with his task,<sup>32</sup> he makes a hash of it. Atticus adopts his serious, lawyer's voice in addressing the children: "Your aunt has asked me to try and impress upon you . . . that you should try to live up to your name . . . . She wants [me] to talk to you about the family and what it's meant to Maycomb County . . . so you might be moved to behave accordingly."<sup>33</sup>

Atticus' speech about family background is so out of character that Scout, already traumatized by Alexandra's mere presence, starts to cry and asks if "all this behavin' and stuff" is going to make things different. Atticus responds, "Don't you worry about anything. It's not time to worry."<sup>34</sup> When Scout complains that she cannot remember everything that Finches are supposed to do, Atticus responds, "I don't want you to remember it. Forget it."<sup>35</sup>

### *Atticus As a Parent*

Religion and the social environment may enable the development of strong moral values and civic virtues in children, but the most important influence is family relationships, especially good parenting. Children develop an intuitive sense for either bias or tolerance based on what they see and hear at home. The Finch household is a model, and Atticus' parenting provides great insight into how children can be inculcated with the values of natural law. As the protagonist of *To Kill a Mockingbird*, Atticus Finch is its moral center. To many readers, Atticus is also the novel's hero. He is the voice of conscience, a man of character with strong moral principles and personal ethics derived from long-standing habits of careful and rational consideration of each situation he confronts, whether in his private or his public life. He is principled, but he is not an ideological purist.

Atticus teaches his children right from wrong through a variety of means: explanation and discussion, answering questions, setting an example for the children to follow, allowing them to experience things for themselves and make mistakes from which he hopes they will learn

32. Usually so cool and unflappable, Atticus actually fidgets. See LEE, *supra* note 1, at 133.

33. *Id.* at 134. The irony is intentional. "To 'behave accordingly' would mean to behave like the missionary ladies . . . to know your place and stay within your sphere." Teresa Godwin Phelps, *The Margins of Maycomb: A Rereading of 'To Kill a Mockingbird'*, 45 ALA. L. REV. 511, 517 (1994). "[A]s readers, we find the inappropriate behavior of Atticus and Scout" far more appealing than the appropriate behavior of those who conform to Aunt Alexandra's strict rules governing race, class, and gender. *Id.*

34. LEE, *supra* note 1, at 134.

35. *Id.* The children are relieved that this temporary lapse is over; Atticus has returned to his true self and to them. As an adult, Scout reflects on Atticus' awkward and ill-fated attempt to instill family pride: "I know now what he was trying to do, but Atticus was only a man. It takes a woman to do that kind of work." *Id.*

and mature, and gently reprimanding them when necessary. He intuitively understands that although children need security, they also need to grow, and that a certain degree of insecurity or disequilibrium is necessary for moral growth.<sup>36</sup>

Atticus exhibits many of the virtues that characterize an exemplary parent,<sup>37</sup> virtues that also happen to reflect the values of natural law: reasonableness, calmness, and patience; empathy, compassion, and tolerance; consistency, honesty, and integrity; self-respect and respect for others; pragmatism; and a sense of humor. In addition, the skills and qualities that Atticus brings to the practice of law also reflect the essential values of natural law. His love of language and books; his deep appreciation of fairness, mercy, and justice; his insistence on courtesy and civility; and his moral courage augment rather than diminish his parental role. That role is pivotal because Atticus is a single parent<sup>38</sup> and because other influences on his children do not reflect his natural law values. The accepted and pervasive lower-caste citizenship of blacks was perpetuated everywhere else in his society: through the educational system, the churches, the legal system, and Maycomb's social mores.

Regardless of the circumstances or provocation, Atticus is always reasonable and calm. His very name is a synonym for ancient Greece,<sup>39</sup> and harkens back to the principles for which Athens stood in the Golden Age of Pericles: reason, law, and moral authority. At-

36. See William J. O'Malley, *Atticus Finch and the Family*, 164 AM. 509 (1961) (arguing that some disequilibrium is essential for moral development).

37. Atticus is widely viewed as an exemplary parent. See, e.g., Phelps, *supra* note 33.; O'Malley, *supra* note 36. Even Monroe Freedman, who doggedly seeks to dethrone Atticus Finch as a worthy role model for lawyers, believes Atticus is a good parent. "He is a loving, patient, and understanding father, successfully coping with the burden of being a single parent." Monroe Freedman, *Atticus Finch - Right and Wrong*, 45 ALA. L. REV. 473, 482 (1994).

38. This novel is set in the 1930s and was published in 1960, both eras when traditional two-parent families with children predominated. But the novel "is remarkably deplete of heterosexuality as conventionally represented through traditional marriage." Gary Richards, *LOVERS & BELOVEDS: SEXUAL OTHERNESS IN SOUTHERN FICTION, 1936-1961* 137 (La. State Univ. Press 2007), reprinted in BLOOM's, *supra* note 2, at 168.

39. Attica was a region in southeastern Greece, surrounding Athens and under Athenian rule in ancient times. It is far more likely that Lee had in mind the democratic values of the Age of Pericles when she named her hero, rather than the decidedly odd theory articulated by John Osborn: "[T]he play on Atticus' name, a derivation of attic, and the prison of the same name, is probably intentional." John Jay Osborn, Jr., *Atticus Finch - The End of Honor: A Discussion of 'To Kill a Mockingbird'*, 30 U.S.F. L. REV. 1139, 1141 n.5 (1996). Atticus is frequently described in terms reminiscent of Greek mythology or tragedy. See, e.g., Elizabeth Lee Haselden, *We Aren't In It*, CHRISTIAN CENTURY, (May 24, 1961), reprinted in READINGS ON 'TO KILL A MOCKINGBIRD', at 29 (Terry O'Neill ed., 2000) [hereinafter READINGS] (describing Atticus as a lawyer who acts upon his conviction with "Olympian wisdom and calm."); Carolyn Jones, *The Mad Dog as Symbol*, in READINGS 39 (suggesting that Atticus' "Apollonian virtues are based on the assumption that he is dealing with rational and reflective people."); Erisman, *supra* note 23, at 28 (describing Atticus as "no heroic type but any graceful, restrained, simple person like one from Attica.").

ticus consistently acts from reason, not emotion. Maycomb, the town where Atticus lives and works, acts mainly from passion and emotion.<sup>40</sup> However, Atticus' reason is neither cold nor calculating. He shows us, as he teaches his children, how to achieve a fine and difficult balance: to act rationally, but without sacrificing empathy and compassion.

Atticus is an unlikely hero, "just a homespun small-town lawyer and state legislator struggling during the Depression to make a living."<sup>41</sup> In every situation, he remains reticent and dignified, never letting his emotions get the better of him. He never raises his voice or loses his temper. He is that rare individual who is always reasonable, whether he is talking to his children, advising a client, trying a difficult case, or talking to his neighbors. Although Atticus is benevolent toward his children, neighbors, and town, his benevolence emanates from reason, a much more stable and reliable source of ethical behavior than emotion.<sup>42</sup> Atticus teaches his children to handle conflict by being analytical, rather than emotional. As Atticus well knows, emotional reaction is particularly dangerous in a racist society where it can quickly lead to violence.<sup>43</sup>

Scout, the precocious six-year-old daughter of Atticus who narrates *To Kill a Mockingbird*, is a motherless tomboy. She prefers overalls to dresses, she gets into fist fights with neighborhood boys, and she resists pressure from her Aunt Alexandra to dress and act like a lady. Although the ladylike demeanor Aunt Alexandra admires is invariably lacking, Scout is strong, outspoken, and resilient, largely because of Atticus' sensible and levelheaded approach to parenting. Atticus teaches Scout about what he considers the more important things: fairness, compassion, self-discipline, reading, being a good citizen, and the importance of rational thinking.

Both Atticus and Calpurnia (and gradually Jem) try to move Scout away from settling disputes with her fists and toward reliance on reason and discussion. When Atticus learns what Miss Fisher, Scout's first grade teacher, said about his having taught Scout to read, he is

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40. Atticus is at odds with his society because he is the "anomalous man of right reason in an emotion-driven society." Johnson, *supra* note 4, at 496.

41. Michael Asimow, *When Lawyers Were Heroes*, 30 U.S.F. L. REV. 1131, 1137 (1996).

42. See generally Johnson, *supra* note 4.

43. "[V]iolence has been superseded in Atticus' life by love and laws; the violence of [Bob] Ewell's life is untempered by sanity." Johnson, *supra* note 18, at 135. The danger of unchecked emotional response is evident in the holiday atmosphere of the crowd streaming to Tom Robinson's trial to observe the "sacrifice of a scapegoat." Johnson, *supra* note 4, at 495. This is uncomfortably reminiscent of public hangings as occasions for festive entertainment, a shameful and barbarous relic in the history of the administration of our criminal justice system. Miss Maudie is alone in refusing to participate in the spectacle surrounding Tom's trial.

not angry or resentful.<sup>44</sup> Instead, he offers Scout a sensible and rational compromise, which will send her back to school but allow her to continue to read. The growth away from physical violence toward reasoned debate as a way to resolve differences represents the movement from childhood toward adulthood and the development of moral values as part of the natural maturation process, as well as a rejection of the Southern tradition of a code of honor in favor of a more enlightened code of reason.

Atticus recognizes the tendency toward hotheadedness in both of his children, and teaches them to respond to all situations rationally rather than emotionally. Scout and Jem would usually meet Atticus at the post office corner in the evening on his way home from work. Frequently, Jem would be furious at some nasty or threatening comment their neighbor, the elderly and cranky Mrs. Dubose, had made as they walked by her house. Atticus' invariable response is, "Easy does it, son . . . She's an old lady and she's ill. You just hold your head high and be a gentleman. Whatever she says to you, it's your job not to let her make you mad."<sup>45</sup> Unfailingly courteous and kind to everyone, Atticus attempts by example and gentle instruction to instill those virtues in his children. Despite Mrs. Dubose's routine and vicious insults, Atticus' manner to her is always courtly. He would gallantly sweep off his hat, warmly greet Mrs. Dubose, and chat briefly with her.

Atticus is preternaturally calm, completely unflappable, and unfailingly patient. A peacemaker, he does not raise his voice or lose his temper, regardless of the provocation.<sup>46</sup> When Scout, Jem, and Dill show up in front of the Radley house after Jem has left his pants on the fence in his struggle to get loose, Atticus calmly asks Jem where he left his pants. Atticus shows no dismay, just a routine question, as if he were asking about the weather. To conceal the fact that they had been trespassing on the Radleys' property, despite Atticus' admonition to the contrary, Dill makes up a brazen lie about strip poker. At the suggestion that the children had been gambling, Dill's Aunt Rachel is outraged. By contrast, Atticus quietly tells the children not to play poker in any form again, to go by Dill's and get Jem's pants, and to settle it among themselves. Atticus' dispassionate handling of this tense situation saves Dill from "immediate dismemberment."<sup>47</sup>

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44. Just as he does not get angry when he hears what Mrs. Dubose has said about him representing Tom Robinson.

45. LEE, *supra* note 1, at 100.

46. Scout had never heard Atticus speak sharply to anyone until she heard him respond to Alexandra's obsession with Scout's overalls, "Sister, I do the best I can with them!" *Id.* at 81.

47. *Id.* at 55.

Near hysteria when she looks out the window and sees snow for the first time, Scout screams that the world is ending. Atticus responds immediately to find out what is wrong, looks out the window, and says laconically, "No, it's not. It's snowing."<sup>48</sup> When Miss Maudie's house burns down in the middle of the night, Atticus remains calm despite the chaos. Because of the danger to their own house, he awakens the children, makes sure they are warmly dressed, takes them outside, positions them a safe distance from the fire, and tells them to stay put before he joins the rest of the adult neighbors in trying to save the contents of Maudie's house. After the fire department takes over, "Atticus was standing with his hands in his overcoat pockets. He might have been watching the football game. Miss Maudie was beside him."<sup>49</sup> Atticus knows better than to overreact when his children do things just to get attention. Atticus cuts short Jack's outrage at Scout's cussing with a suggestion to ignore her. "Don't pay any attention to her, Jack. She's trying you out. Cal says she's been cussing fluently for a week now."<sup>50</sup>

If rationality and civility are the hallmarks of Atticus' demeanor, then empathy is the hallmark of Atticus' character. He displays good, healthy emotions, such as love and compassion, but he does not seem to be plagued by negative ones. He teaches tolerance and empathy by repeatedly encouraging Scout to try walking in someone else's shoes before making a judgment, a skill he himself consistently practices. Atticus wants Scout to develop empathy in regard to everyone, not just those whose values reflect his. Atticus' goal is not for Scout to adopt the views of those with whom she empathizes, but rather that Scout will learn love, kindness, and understanding.<sup>51</sup>

One of Atticus' strongest virtues as a moral individual and as a parent is his utter consistency in matters large and small. That consistency is the secret of the calm, serenity, and centeredness that characterize Atticus throughout the novel. That consistency is his integrity, which Miss Maudie appreciates. She comments to Scout that Atticus is the same everywhere: on the street, at home, at work, with the neighbors, with the rabble, or in court.<sup>52</sup> He consistently tries to act simultaneously for the good of his family and for the good of his community,

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48. *Id.* at 64.

49. *Id.* at 68-70.

50. *Id.* at 78. As part of Scout's relentless campaign to avoid school, she hoped that if she started cussing and blamed the habit on something she picked up at school, Atticus would not make her go to school. Atticus sees through this ruse, as he does with every trick Scout tries.

51. See Shaffer, *supra* note 28, at 532 n.3.

52. LEE, *supra* note 1, at 46. "Integrity" applies to Atticus in both senses of the word: moral uprightness and a fully integrated personality.

even though at times neither his family nor his community realize or appreciate what he does for them.

Because Atticus is consistent, he is predictable. His children understand that Atticus is a creature of habit, and they know exactly what to expect of him in any situation and therefore, exactly what is expected of them, even if they do not always comply. Wherever Atticus went in Maycomb, he walked, and reserved the car for trips to the state capital on legislative business.<sup>53</sup> In the evenings after dinner, Atticus always sat in the living room and read. Therefore, Jem immediately suspects something when Atticus comes into the living room at ten o'clock on the night before Tom Robinson's trial, carrying a long extension cord with a lightbulb on the end, says goodnight to the family, and gets into the car and leaves. Scout and Jem are sufficiently concerned about Atticus' aberrant behavior to sneak out of the house, get Dill to join them, and go downtown to see what Atticus is up to.

Atticus is scrupulously honest and straightforward with his children and insists that others be the same.<sup>54</sup> When Jack tells Atticus that he changed the subject to avoid answering when Scout asked him what a whore lady was, Atticus admonishes him to answer the children's questions directly without evasion.<sup>55</sup> When Alexandra reprimands Atticus for discussing race in front of Calpurnia, Atticus responds, "Anything fit to say at the table's fit to say in front of Calpurnia. She knows what she means to this family."<sup>56</sup> Because Jem is upset after Tom Robinson is convicted, Alexandra begins to lecture Atticus about allowing the children to attend the trial. Although Atticus wants to prevent his children from developing Maycomb's attitudes, he knows that he cannot shield them from awareness of those attitudes. "This is their home, sister. We've made it this way for them, they might as well learn to cope with it . . . It's just as much Maycomb County as missionary teas."<sup>57</sup>

Atticus' desire to maintain his personal integrity by being honest with himself and others faces the ultimate test in the final pages of the

53. "Our father had a few peculiarities: one was, he never ate desserts; another was that he liked to walk . . . in Maycomb he walked to and from his office four times a day, covering about two miles . . . In Maycomb, if one went for a walk with no definite purpose in mind, it was correct to believe one's mind incapable of definite purpose." *Id.* at 148-49.

54. In his dealings with his children and everyone else, Atticus is "uncommonly devoted to the truth." Thomas L. Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181, 185 (1981). Although he knows he cannot win Tom Robinson's case, he insists that the truth must be told at the trial.

55. LEE, *supra* note 1, at 87. Scout's cousin Francis uses the phrase in a fight with Scout.

56. *Id.* at 157. Even the always serene Atticus begins to chafe under Alexandra's rigid rules of artificial courtesy. "I was beginning to notice a subtle change in my father these days, that came out when he talked with Aunt Alexandra. It was a quiet digging in, never outright irritation. There was a faint starchiness in his voice." *Id.*

57. *Id.* at 212.

book. Atticus confronts a moral dilemma when he realizes that his children were saved only because Boo Radley deliberately killed Bob Ewell to protect Jem and Scout. When Sheriff Tate implores Atticus to keep silent about how Bob Ewell died, in order to protect Boo Radley from public scrutiny, Atticus must decide whether these circumstances justify compromising his lifelong allegiance to the truth. Atticus, who has just nearly lost his children physically, now worries about losing them morally. Echoing a recurrent theme, Atticus tells the sheriff, "Jem and Scout know what happened. If they hear of me saying downtown something different happened – Heck, I won't have them anymore. I can't live one way in town and another way in my home."<sup>58</sup> Although he has spent his life dedicated to both the law and the truth, Atticus abrogates both when he reluctantly agrees to the secrecy advocated by the sheriff.<sup>59</sup> It is hard to imagine how difficult it must have been for Atticus to forsake, even temporarily, his consistent moral code that demanded honesty and integrity. But in order to protect the innocent and reclusive Boo Radley from the public spectacle of a trial, he does so.

Atticus has a well-developed and wry sense of humor, a distinct advantage when dealing with the trials and tribulations of parenting. He is very effective at defusing tense situations with dry humor. As part of Aunt Alexandra's ongoing campaign to get Scout out of overalls and into a dress, she tells Scout that she should try to be a "sunbeam" in her father's lonely life. The suggestion that she has disappointed her father hurts Scout's feelings and puts her on edge. But Atticus reassures Scout that there are already enough sunbeams in the family and to "go about my business, he didn't mind me much the way I was."<sup>60</sup>

At one point, Dill runs away from his family, catches the train to Maycomb, climbs in through Scout's bedroom window, and hides under the bed, where he is discovered, dirty, tired, and hungry, by Scout and Jem. Dill expects Jem and Scout to keep his secret, but realizing Dill's family will be worried about him, Jem tells Atticus what has happened.<sup>61</sup> Atticus responds in his usual level-headed and practical way. He walks to the middle of the room and stands quietly with his hands in his pockets, looking down at Dill. Scout tries to reassure Dill, "It's okay, Dill. When he wants you to know something, he tells you."<sup>62</sup> Atticus realizes that Dill, in his present condition, is

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58. *Id.* at 274.

59. But because we know and respect Atticus as we do, this "lie" does not diminish our regard for him; rather, it confirms him as a hero. It is the "final act that secures Atticus' sainthood." Johnson, *supra* note 18, at 139.

60. Lee, *supra* note 1, at 81.

61. Thus breaking the remaining code of their childhood, according to Scout.

62. *Id.* at 141.

probably famished, so he suggests that they feed him first and then try to find out what happened. Atticus gently suggests a bath as well: "And for goodness sake put some of the county back where it belongs, the soil erosion's bad enough as it is."<sup>63</sup> As usual, Atticus maintains perspective in the midst of chaos and confusion. At the end of that evening, which included a confrontation between Alexandra and Scout, trying to define rape for Scout, a fistfight between Jem and Scout, and discovering the runaway Dill, Atticus says to Alexandra, "From rape to riot to runaways . . . I wonder what the next two hours will bring."<sup>64</sup>

When Atticus sees the snowman that Jem and Scout have built from a combination of dirt and snow, he compliments them on their skill and creativity rather than being angry that "most of the back yard [was] in the front yard."<sup>65</sup> Atticus appreciates the humor in the striking resemblance to Mr. Avery, one of their neighbors, but he suggests that Jem and Scout disguise the snowman to avoid libel. Atticus also seems to delight in Jem and Scout's discomfiture when they realize that it was Boo Radley who put the blanket around Scout's shoulders when Miss Maudie's house was on fire.

Because Atticus is a fully integrated person, his humanity is evident in his lawyering; and his lawyerly skills are evident in his parenting. Atticus has a great respect for language, and he strives to instill in his children his love of books and learning. His diction and rhetorical style are lawyer like—precise, dry, and analytical—and he never patronizes or condescends to his children.<sup>66</sup> He speaks to them not as children, but as young adults, and he is always willing to listen to them and to answer questions and explain if they do not understand his "last will-and-testament diction."<sup>67</sup> Atticus' serene and rational approach extends to all manner of conversations with his children. In the same cool, analytical voice, he defines rape for Scout and entailment for Jem, he explains why Scout must go to school even though the Ewells are excused and why everyone is poor during the Depression, he demands from Jem an explanation for destroying all of Mrs. Dubose's flowers, and he negotiates a return-to-school truce with Scout.

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63. *Id.*

64. *Id.* at 142.

65. *Id.* at 67.

66. When Scout asks Atticus what rape is, he responds in typical lawyer fashion, with the legal definition: "carnal knowledge of a female by force and without consent." *Id.* at 135.

67. *Id.* at 31. Perhaps Atticus' respect for his children, his willingness to make time for them, and his ability to really talk to them can explain the timeless appeal of this novel for young adults. See David Everitt, *A Bushel of Peck; The Star of To Kill A Mockingbird Marks its 35th Anniversary Edition by Revisting his Career Peaks*, Entertainment Weekly, March 20, 1998, at 95.



Because they have a lawyer and state legislator as their father, both Scout and Jem learn more about lawyering skills than other children their age. Jem learns about debate, argument, and reasoning like a lawyer when Atticus traps him into admitting that the children were playing games that made fun of Boo Radley. Although Jem is angry when he realizes what has happened, he learns from it. Jem didn't learn to stop tormenting Boo Radley, but he did gain "insight into the art of cross-examination."<sup>68</sup>

Atticus genuinely loves his children, and he treats them, as he does everyone, with respect and fairness and insists they do the same. But Atticus can also be firm when the situation requires.<sup>69</sup> He is even-handed and pragmatic, whether settling disputes between his children or their disputes with others. Scout and Jem are accustomed to Atticus resolving their disputes like a judge, fairly and only after hearing all the evidence. Therefore, Scout reacts badly when Uncle Jack subdues and reprimands her after her fist fight with her cousin Francis on Christmas Day. She accuses Jack of being unfair and not understanding children much. Uncle Jack responds that conduct such as Scout's "required little understanding. It was obstreperous, disorderly and abusive."<sup>70</sup> She informs him that when she and Jem fight, "Atticus doesn't ever just listen to Jem's side of it, he hears mine too."<sup>71</sup>

Although Atticus is always willing to listen patiently to Scout's complaints, he often does not support her position, especially when the dispute is with a legitimate authority figure like Aunt Alexandra or Calpurnia, the black housekeeper who has been with the Finch family for many years. In Scout's ongoing struggles with Calpurnia, Atticus always supports Calpurnia because he recognizes and appreciates the vital role Calpurnia plays in the lives of his family. After Calpurnia punishes Scout for her rudeness toward Walter Cunningham at lunch, Scout takes the opportunity to "advise Atticus of Calpurnia's iniquities" and suggest "that Atticus lose no time in packing her off . . . . Atticus' voice was flinty. 'I've no intention of getting rid of her, now or ever. We couldn't operate a single day without Cal, have you ever thought of that? You think about how much Cal does for you, and you mind her, you hear?'"<sup>72</sup>

In many of Scout's confrontations with Alexandra, Atticus sides with Alexandra, although Alexandra clearly disapproves of the respect, appreciation, and admiration Atticus shows toward Calpurnia.

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68. Lee, *supra* note 1, at 51.

69. As when he insists that Jem read to Mrs. Dubose and when he orders the children to stop tormenting Boo Radley.

70. *Id.* at 85.

71. *Id.* at 86.

72. *Id.* at 25.

When Alexandra learns that Jem and Scout went to Calpurnia's church and that Scout wants to spend a day at Calpurnia's house, Alexandra forbids her to do so. Although Atticus disagrees with Alexandra's dismissive attitude toward Calpurnia, he supports Alexandra because he will not tolerate Scout's lack of respect for her aunt. When Scout talks back to Alexandra, Atticus reprimands her in as stern a tone as he ever uses, "Now then, let's get this clear: you do as Calpurnia tells you, you do as I tell you, and as long as your aunt's in this house, you will do as she tells you. Understand?"<sup>73</sup>

When his children are wrong, Atticus does not hesitate to tell them so. But if they can make a legitimate argument for a particular position, Atticus will negotiate with them. Old enough to understand that Atticus has a lot on his mind with the upcoming trial, Jem tries to caution Scout not to antagonize Aunt Alexandra. Aggravated by Jem's newfound attitude of superior knowledge, Scout starts a fistfight with him. Atticus breaks up the fight and asks who started it before sending both of them to their rooms. Chafing under the obligation to obey an increasing number of people—Atticus, Calpurnia, and Alexandra—Scout tells him that Jem was trying to tell her what do. She asks Atticus, "I don't have to mind him now, do I?" Searching for a reasonable compromise, Atticus responds, "Let's leave it at this: you mind Jem whenever he can make you. Fair enough?"<sup>74</sup>

Although Atticus strives every day to live up to his high moral ideals, he is a pragmatist, not a crusading idealist. As with all good parents, he understands the necessity of choosing one's battles when rearing children. Despite his distaste for guns, in a concession to Southern tradition and culture, he arranges for his brother Jack to purchase air rifles to give to Jem and Scout for Christmas. When Jack reminds Atticus that now he will have to teach them how to use the guns, Atticus responds, "That's your job . . . I merely bowed to the inevitable."<sup>75</sup> Jack instructs Scout and Jem in the rudiments of gun usage, but Atticus makes it quite clear that if they do not use the guns properly, he will take them away for good.

Because Atticus is gentle, occasionally people underestimate his determination to do what is right. Scout overhears Alexandra pressuring Atticus to dismiss Calpurnia.<sup>76</sup> Here, Atticus firmly but politely draws

73. *Id.* at 136. When Scout complains at Christmas dinner about having to sit at the small table, instead of with the adults, Atticus refuses to intercede with Alexandra. But he tries to mollify Scout as well. He tells her Alexandra "didn't understand girls much, she'd never had one." *Id.* at 82.

74. *Id.* at 130.

75. *Id.* at 79.

76. Jem and Scout are worried about the argument between Alexandra and Atticus, as they have never seen nor heard of anyone quarreling with Atticus. "It was not a comfortable sight." *Id.* at 137.

the line. "Alexandra, Calpurnia's not leaving this house until she wants to. You may think otherwise, but I couldn't have gotten along without her all these years. She's a faithful member of this family and you'll simply have to accept things the way they are."<sup>77</sup> When Alexandra interrupts, Atticus adds, "Besides, I don't think the children've suffered one bit from her having brought them up. If anything, she's been harder on them in some ways than a mother would have been . . . . [S]he's never let them get away with anything, she's never indulged them . . . . She tried to bring them up according to her lights, and Cal's lights are pretty good—and another thing, the children love her."<sup>78</sup>

Atticus' pragmatism is also evident in the closing scene of the novel when he reluctantly agrees with Sheriff Tate that Boo Radley should not be prosecuted for the death of Bob Ewell. Although this decision is based on pragmatism and expediency, it is not a selfish decision. Atticus colludes with Sheriff Tate, not to obstruct justice, but to make sure that justice is achieved, by preventing the creation of any more victims of the racist society in which he and the sheriff live.<sup>79</sup> Because of their agreement, Boo Radley is able to intervene, anonymously and with impunity, to render compensatory justice to Bob Ewell for the death of Tom Robinson. If real justice is thwarted by following the law, then the law has failed, and reason mandates that the law be ignored.<sup>80</sup>

Of the many positive characteristics that have contributed to the enduring appeal of Atticus Finch as a model lawyer, moral courage is fundamental. Moral courage is acting on principle even when it is difficult, responding to the duty to one's individual conscience even when collective action or opinion is opposed. It may develop from religious beliefs, society, one's family, or simply from a rational thought process. Atticus' moral authority derives principally from his rational mind. Although Atticus is not dramatic, he is a radical, in the sense that those rare people who demonstrate true moral courage always are. Although he may be standing alone, in the street or in the courthouse, he is willing to face down madness and irrationality to do what he believes is right, despite considerable personal risk to himself and his children in doing so.

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77. *Id.* In his usual courteous fashion, Atticus softens the harshness of his position. "Besides, sister, I don't want you working your head off for us—you've no reason to do that. We still need Cal as much as we ever did." *Id.*

78. *Id.*

79. See Patrick Chura, *'Prolepsis and Anachronism: Emmett Till and the Historicity of To Kill a Mockingbird*, 32 S. LITERARY J. 1 (2000), reprinted in BLOOM's, *supra* note 2, at 115, 130.

80. See Johnson, *supra* note 4, at 499.

Atticus tries to impress upon his children the distinction between moral courage and physical courage and the greater importance of the former. Early in the novel, Scout and Jem see courage as merely physical courage—of which they believe Atticus has none until he shoots the rabid dog in the street. The irony is that, for Atticus, because of his personal aversion to guns, the shooting of the mad dog is more an act of moral courage than physical courage. Atticus is a crack shot, and he is in little physical danger when he shoots the slowly moving dog. Although it is difficult for him, Atticus reluctantly accepts the gun from Sheriff Tate and shoots the dog only because it is the right thing to do under the circumstances.

Despite the numerous warnings from Atticus about not letting Mrs. Dubose aggravate him, when Mrs. Dubose yells that their father is “no better than the niggers and trash he works for,”<sup>81</sup> Jem forgets Atticus’ admonition. In a fury, he whacks the top off of every camellia bloom in Mrs. Dubose’s yard. Although Scout is shocked by Jem’s outburst, Atticus responds calmly. But Atticus makes it quite clear that Jem’s misbehavior is inexcusable, and he sends a reluctant Jem to Mrs. Dubose’s house to apologize. As reparation, Mrs. Dubose requests that Jem read to her six days a week for a month, and Jem is horrified when Atticus insists that he do it. Atticus understands in a way that Jem cannot the opportunity this presents. Seeing moral courage in action is more meaningful than a simple explanation of it, and he wants his children to understand that true courage is not a man with a gun in his hand.

Scout’s description of the oppressive atmosphere inside Mrs. Dubose’s home is worthy of any Gothic novel.<sup>82</sup> During the month of visits, Mrs. Dubose continues the verbal attacks on Atticus and the children, but Scout and Jem gradually learn to tolerate her insults and bad humor without reacting emotionally, just as Atticus hoped they would. Scout’s description of Jem’s newfound tolerance could well be a description of Atticus: “[H]e would gaze at Mrs. Dubose with a face devoid of resentment. Through the week he had cultivated an expression of polite and detached interest, which he would present to her in answer to her most bloodcurdling inventions.”<sup>83</sup>

Perhaps the best illustration of Atticus’ adherence to natural law values in parenting is the way he prepares his children for the turmoil

81. Lee, *supra* note 1, at 102.

82. “An oppressive odor met us when we crossed the threshold, an odor I have met many times in rain-rotted gray houses where there are coal-oil lamps, water dippers, and unbleached domestic sheets. It always made me afraid, expectant, watchful.” *Id.* at 106.

83. *Id.* at 110. It is only several months later, after Mrs. Dubose has died, that Atticus tells Jem and Scout that their daily readings with her helped her break a morphine addiction, which she was determined to do before she died. *See id.* at 111.

of Tom Robinson's trial. Atticus knows it will be difficult for him and his children when he accepts the defense of Tom Robinson, but he is willing to act on principle and to accept the consequences of his decision. As the conscience of Maycomb, he demonstrates the true integrity and dedication to truth that characterize moral courage.<sup>84</sup> Atticus acts for his children and in their best interest, but he is always cognizant that he is grounded in a society and a culture that he and the children are accountable to as well. Atticus accepts the assignment to defend Tom Robinson only reluctantly, because he knows he is also accepting the moral imperative of providing Tom with the best defense possible. Atticus is aware that his decision will antagonize most of the populace of Maycomb, who expect Atticus to provide no more than a token defense for Tom. Without sacrificing his principles, Atticus must assuage the community's anger because he and his children will continue to live among the townspeople after the trial. So Atticus reacts with his usual stoic calm to the most outrageous insults and condemnations from the community about his representation of Tom.

Atticus also anticipates the taunts and ridicule his children will be subjected to because of his decision, and he tries to prepare them. Scout's first encounter is a fight with a classmate, Cecil Jacobs, who announces to everyone in the schoolyard that Atticus "defended niggers."<sup>85</sup> Beginning to sense for the first time a dark underbelly in Maycomb, Scout asks Atticus about this, and he replies, "Of course I do. Don't say nigger, Scout. That's common."<sup>86</sup> To Scout's reply that that's "what everybody at school says," Atticus responds tersely, "From now on it'll be everybody less one."<sup>87</sup> When Scout asks Atticus if they're going to win, he does not evade her question. He tells her

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84. Most movements that ultimately achieve a paradigm shift in culture begin with lonely, and often dangerous, acts of moral courage by one or a few individuals standing in opposition to the collective view of what is appropriate. The moral hero is usually defined by the courage required to speak up when no one else is doing so. In this sense, moral heroes are often simply before their time in relation to the society at large. The civil rights movement in the United States started with a few brave people, like Martin Luther King and Rosa Parks, who were willing to stand up (or sit down, as was more often the case, whether it was on the bus or at the lunch counter) for what was right. Eventually, the vast majority of Americans recognized the moral rightness of the civil rights movement. The same can be said for Mahatma Gandhi's movement for the independence of India. One who later becomes a moral hero is usually reviled when he or she alone initially challenges the established view. But as the old adage says: All that is necessary for evil to prevail is for good people to do nothing. "In explaining true courage to Jem and Scout, Atticus defines a tragic hero, which, as it turns out, is a description of his own role in the case of Tom Robinson." Johnson, *supra* note 18, at 133. Atticus also personifies the existential hero who persists despite the hopelessness of the situation. See, e.g., ALBERT CAMUS, *THE MYTH OF SISYPHUS* (Justin O'Brien trans., Hamish Hamilton 1969) (1955).

85. Lee, *supra* note 1, at 75.

86. *Id.*

87. *Id.* Scout, in her relentless campaign to avoid school, says, "Well if you don't want me to grow up talkin' that way, why do you send me to school?" *Id.* Although mildly amused by Scout's various devious maneuvers, Atticus knows better than to take the bait. See *id.*

no, but she cannot understand why Atticus would continue to work on the case if he knows he is going to lose. Atticus responds, "Simply because we were licked a hundred years before we started is no reason for us not to try to win."<sup>88</sup> When Scout compares Tom's losing case to boring rehashes of long lost Civil War battles, Atticus continues patiently to try to help her understand. "It's different this time . . . . This time we aren't fighting the Yankees, we're fighting our friends. But remember this, no matter how bitter things get, they're still our friends and this is still our home."<sup>89</sup>

Atticus explains to Scout the principles behind the case, his motives for acting as he does, and the importance of following one's conscience. Although it is not fair that Scout and Jem will be targeted, they must keep their heads about them and make the best of the situation. Atticus does not dwell on the fact that he was assigned the case, but rather on the rightness of accepting the case even in the face of insurmountable odds. Atticus knows quite well that because Tom is black, he can never get a fair trial in Maycomb County, no matter who represents him. But Atticus justifies putting himself and his children into this situation because Tom Robinson's case "is something that goes to the essence of a man's conscience."<sup>90</sup>

Atticus' challenge is to explain in terms a young child can understand the importance of doing what is morally right, despite the unpopularity or the certainty of defeat, but without unduly frightening his children. He knows they are too young to completely understand such a moral imperative, but he does not want them to lose confidence in him. Although Scout and Jem do not yet realize it, they will need him, as there are very few other people in Maycomb who share Atticus' values and support his choice. The decision to represent Tom goes to the heart of Atticus' integrity as a moral person. Atticus explains this to Scout in simple terms by telling her that he couldn't hold up his head in town, go to church and worship God, represent the county in the legislature, or even tell her or Jem not to do something if he didn't try to help Tom.

Scout is convinced Atticus must be wrong because most of the people in the town disagree with him. Atticus is not resentful because the town disagrees with him or angry because his young daughter has just challenged him. Instead, he uses the opportunity to teach Scout an important lesson about tolerance, integrity, and the tyranny of the ma-

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88. *Id.* at 76. Perhaps what elevates one to the status of a mythic hero is that, even when faced with the certainty of defeat, he or she insists on doing what is right.

89. *Id.* They are not only friends. "Atticus was related by blood or marriage to nearly every family in town." *Id.* at 5. Besides, despite their differences, Atticus likes Maycomb. "[H]e was Maycomb County born and bred; he knew his people, [and] they knew him." *Id.*

90. *Id.* at 104. A classic natural law argument.

jority: "They're certainly entitled to think that, and they're entitled to full respect for their opinions, but before I can live with other folks I've got to live with myself. The one thing that doesn't abide by majority rule is a person's conscience."<sup>91</sup> Atticus explains that every lawyer gets at least one case that affects him personally. And this one, Tom Robinson's case, is his. Atticus cautions Scout to avoid getting into fights if people in town say ugly things about Atticus defending Tom. He warns her that there will be ugly talk, but she is not to let it get to her. He wants Scout to fight with her mind and her head, rather than with her fists, for what is morally right.<sup>92</sup>

Scout remembers Atticus' admonition the next day when Cecil Jacobs calls her a coward. She simply stares Cecil down and walks away, although it nearly kills her to do so.<sup>93</sup> Because Atticus rarely asked Jem and her to do anything for him, she doesn't want to disappoint him. By allowing herself to be called a coward for Atticus' sake, Scout justifies as noble action what might otherwise be construed as cowardly behavior.

Because Atticus is a different kind of parent, his children are somewhat different from other children. An imaginative child herself, Scout dislikes her cousin Francis not only because he is boring,<sup>94</sup> but also because he is a tattletale.<sup>95</sup> At the Christmas celebration at Finch's Landing, Francis taunts Scout by repeating that Atticus is a "nigger lover."<sup>96</sup> Francis' insults are more than Scout can handle, and she promptly forgets her solemn promise to Atticus to avoid fistfights about his representation of Tom Robinson. Scout punches Francis in the mouth, which brings all of the adults running out of the house to see what has happened. Later, she explains to Uncle Jack that she punched Francis because she could not let him get away with saying such a thing about Atticus, but Scout makes Jack promise not to tell Atticus what had caused the fight. Like the confrontation with Cecil Jacobs, Scout does not want to disappoint Atticus, so she would rather Atticus think she and Francis were fighting about something else.

Atticus understands that Scout's cussing is just a phase that all children go through, but he is genuinely concerned about her hot-headedness. He anticipates trouble for Jem and Scout because of the

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91. *Id.* at 105.

92. *Id.* at 76. "Try fighting with your head for a change . . . it's a good one, even if it does resist learning." *Id.*

93. *Id.* at 76-77. "It was the first time I ever walked away from a fight." *Id.* at 77.

94. *Id.* at 81. "Talking to Francis gave me the sensation of settling slowly to the bottom of the ocean. He was the most boring child I ever met." *Id.*

95. *Id.* "He managed to tell everything he knew to Aunt Alexandra, who in turn unburdened herself to Atticus, who either forgot it or gave me hell, whichever struck his fancy." *Id.* Atticus is neither so inconsistent nor so whimsical.

96. *Id.* at 83.

Tom Robinson trial, and he tells Jack that Scout must learn to keep her head because of what the children will confront in the next few months. Atticus is a realist. He knows when he accepts the case that he cannot win, but his integrity and his conscience will not let him refuse the assignment. He explains to Jack that he could not face his children if he refused Judge Taylor's request. Atticus fervently hopes he can get Jem and Scout through the ordeal without bitterness, or at least without them catching "Maycomb's usual disease," the rampant prejudice that informs any situation involving race. Atticus understands that his hope is more likely to be realized if his children trust him enough to come to him instead of looking to the town for answers.

### *Children's Perception of Atticus*

Although Atticus is a good parent, he is atypical and eccentric, especially from the perspective of his children. As a widower and single father, Atticus' relationship with Jem and Scout is loving, supportive, and nurturing, but not overprotective or cloying. His children may call him by his first name,<sup>97</sup> but he does not try to be their friend or their peer. Atticus treats his children with "detached affection,"<sup>98</sup> as well as a great deal of patience and understanding. Atticus' devotion to his children has nothing to do with the family as an institution (unlike his sister, Alexandra). He values his children as individual moral beings worthy of respect in their own right.

Jem and Scout think Atticus is old and feeble<sup>99</sup> because he is not involved, like other parents, in sports and games. Too young to appreciate Atticus' formidable intellectual and moral gifts, Jem and Scout cannot identify anything tangible or exciting that Atticus knows how

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97. See *id.* at 100. This practice moves their neighbor, Mrs. Dubose, to call Jem and Scout "the sassiest, most disrespectful mutts who ever passed her way." *Id.* Atticus does not have it easy as a single father. Even before the Tom Robinson ordeal, his relatives, friends, and neighbors subject him to persistent and critical scrutiny of his parenting skills. Echoing Alexandra's criticism of Atticus, Mrs. Dubose also thought it was "heartbreaking the way Atticus Finch let [his] children run wild." *Id.*

98. Several times, Scout describes her father as "detached." As used by Scout, detachment is not a pejorative indicating remoteness. It suggests a rational approach to parenting rather than an emotional approach. Scout and Jem found their father "satisfactory"; he played with them, read to them, and treated them with "courteous detachment." *Id.* at 6. Certainly, Scout as a child did not appreciate what a treasure her father was.

99. *Id.* at 89.

Atticus was feeble: he was nearly fifty. When Jem and I asked him why he was so old, he said he got started late, which we felt reflected upon his abilities and manliness. He was much older than the parents of our school contemporaries, and there was nothing Jem or I could say about him when our classmates said, 'My father—'

*Id.* But Atticus' decision to defend Tom Robinson changes everything. To Scout's chagrin, Atticus was no longer inconspicuous: "[T]hat year, the school buzzed with talk about him defending Tom Robinson, none of which was complimentary." *Id.*



to “do” except read.<sup>100</sup> In this masculine, gun-oriented culture, he does not excel or even indulge in the sports and leisure activities or fields of employment that they could describe or brag about to their friends.

Our father didn’t do anything. He worked in an office, not in a drug-store. Atticus did not drive a dump-truck for the county, he was not the sheriff, he did not farm, work in a garage, or do anything that could possibly arouse the admiration of anyone. Besides that, he wore glasses . . . . He did not do the things our schoolmates’ fathers did: he never went hunting, he did not play poker or fish or drink or smoke.

He sat in the livingroom and read.<sup>101</sup>

Adding to his peculiarity, instead of children’s stories, Atticus has always read to his children from whatever he happened to be reading at the time: legislative bills, the newspaper, nonfiction, the classics, or anything else.<sup>102</sup>

When Miss Maudie’s house burns down, Scout asks Jem why Atticus is not on top of one of the houses with the rest of the men, helping to put out the fire, to which Jem replies, “He’s too old, he’d break his neck.”<sup>103</sup> But when Scout complains to Miss Maudie that Atticus is old and cannot do anything, Miss Maudie tells her that Atticus’ skills and talents are simply different from their schoolmates’ fathers. For example, Atticus could “make somebody’s will so airtight can’t anybody meddle with it,”<sup>104</sup> Atticus is the best checker player in town, and he can play the Jew’s harp.<sup>105</sup> These accomplishments simply make Scout even more ashamed of him.<sup>106</sup>

But Jem and Scout’s perception of Atticus’ shortcomings is radically altered when the rabid dog enters the neighborhood.<sup>107</sup> Jem sees the dog acting strangely and tells Calpurnia, who confirms the behavior as that of a rabid dog.<sup>108</sup> She calls Atticus, who shows up with Sheriff Tate.<sup>109</sup> As the dog approaches, Atticus urges the sheriff to shoot the dog quickly before it’s too late. Sheriff Tate hesitates, then hands the

100. *Id.*

101. *Id.* Apparently being a fine lawyer and a member of the state legislature were not occupations or accomplishments that one could admire. Atticus has been delightfully described as a “rusticating, classics-reading, glasses-wearing but (literally!) straight-shooting father-who-knows-best.” Rob Atkinson, *Comment on Steven Lubet, Reconstructing Atticus Finch*, 97 Mich. L. Rev. 1370, 1371 (1999).

102. See LEE, *supra* note 1, at 29. As a result, his children learn to read and develop an appreciation of sophisticated language at an early age.

103. *Id.* at 70.

104. *Id.* at 91.

105. *Id.*

106. *Id.* at 91-92. Calpurnia agrees that Atticus can do lots of things, but she is unable to itemize them. *Id.*

107. *Id.* at 92-99.

108. *Id.* at 93.

109. *Id.* at 94.

rifle to Atticus, saying he cannot shoot that well.<sup>110</sup> Never having seen Atticus pick up a gun, Scout and Jem are stunned.<sup>111</sup> Atticus protests that he has not shot a gun in thirty years, to which Sheriff Tate responds, "I'd feel mighty comfortable if you did now."<sup>112</sup> When Atticus tries to give the rifle back to Sheriff Tate, the sheriff refuses, saying, "Mr. Finch, this is a one-shot job."<sup>113</sup> Although Atticus has neither hunted nor used a gun for many years, he reluctantly accepts the task of confronting the rabid dog. Scout and Jem watch in utter amazement as Atticus takes the gun, walks to the middle of the street, raises his glasses to his forehead, aims the gun and shoots, dropping the rabid dog in a single shot just above his left eye.<sup>114</sup>

As usual, Atticus is motivated by principles, but they are pragmatic, not ideological. Rigid ideological principles would suggest that Atticus refuse Sheriff Tate's request because he does not believe in shooting animals. But pragmatic principles demand that, whatever his personal beliefs, he act reasonably and expediently for the greater good, to remove the imminent danger from the neighborhood.

Although Scout and Jem are amazed and delighted to discover that Atticus is a crack shot, Atticus simply warns the children to stay away from the dead dog and gets into the car with Sheriff Tate to go back to town.<sup>115</sup> When Scout wonders why Atticus never goes hunting when he is such a good shot, Miss Maudie explains,

If your father's anything, he's civilized in his heart. Marksmanship's a gift of God, a talent—oh, you have to practice to make it perfect, but shootin's different from playing the piano or the like. I think maybe he put his gun down when he realized that God had given him an unfair advantage over most living things. I guess he decided he wouldn't shoot till he had to, and he had to today.<sup>116</sup>

Now that Scout has discovered that Atticus can actually do something that she can be proud of, she is eager to get to school and brag about it, but Jem tells her not to say anything.<sup>117</sup> "I reckon if he'd wanted us to know it, he'da told us. If he was proud of it, he'da told

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110. *Id.* at 96.

111. *Id.*

112. *Id.*

113. *Id.* at 95.

114. *Id.* at 96.

115. *Id.* at 96-97. Scout and Jem now think Atticus is a hero because of the physical courage required to face down the mad dog in the street. But they eventually learn the nature of true courage. Miss Maudie's comment to Jem after Tom Robinson's trial could just as well have been made after Atticus shot the mad dog: "[T]here are some men in this world who were born to do our unpleasant jobs for us. Your father's one of them." *Id.* at 215. Few people, in Maycomb or elsewhere, have the courage to confront madness head on, whether it be rabid dogs or rabid racism. Atticus is the exception.

116. *Id.* at 98.

117. *Id.*

us.”<sup>118</sup> Jem adds cryptically, “Atticus is real old, but I wouldn’t care if he couldn’t do anything—I wouldn’t care if he couldn’t do a blessed thing . . . . Atticus is a gentleman, just like me.”<sup>119</sup> Jem is beginning to realize that although Atticus is not the stereotypical Southern male, he has admirable attributes outside the usual rigid gender and societal expectations.

Through Atticus, Scout and Jem learn the important moral virtues that characterize natural law: compassion, empathy, decency, courtesy, tolerance, self-respect, self-restraint, honesty, respect, kindness, courage, cooperation, trust, and responsibility.

### *Atypical Family Relationships*

Considering its setting, *To Kill a Mockingbird* presents mostly anomalous family relationships, including an atypical relationship between parenting and gender. Atticus is a model parent, but neither his family nor most of those in the novel are usual for the time period.<sup>120</sup> Although the events in *To Kill a Mockingbird* take place in the early 1930s, when two-parent families were the norm, most of the children in the book are motherless or fatherless. Scout and Jem have only a father, as their mother died when Scout was a baby.<sup>121</sup> Their friend, Dill, supposedly has a mother and a stepfather, but in any event, no parental figure appears to care much about him. Bob Ewell, the villain of the novel, has a whole brood of motherless children, including Mayella, the principal witness against Tom Robinson.

The major influences on Scout and Jem are Atticus and Calpurnia. Calpurnia is a domestic servant, but she is far more than that. She functions as a mother figure for Jem and Scout, a role in which she sees herself as well. She fusses over the clothes that Jem and Scout will wear when they attend her church with her: “I don’t want anybody sayin’ I don’t look after my children.”<sup>122</sup> Calpurnia manages the household and takes care of all the domestic duties, as well as teaching Scout and Jem a great deal about moral values, practical skills, and social sense. Calpurnia provides a lesson in manners when she explains to Scout why she does not speak the same way at the Finch

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118. *Id.*

119. *Id.* at 99.

120. The Finches’ neighborhood and town is replete with widows, widowers, spinsters, and bachelors (but precious few extant and stable marriages): Atticus, Maudie Atkinson, Stephanie Crawford, Rachel Haverford, Caroline Fisher, Mrs. Henry Dubose, Mr. Avery, Nathan Radley, Boo Radley, and Bob Ewell (as well as Atticus’ brother, Jack). In addition, Dill comes from a broken home, and Alexandra’s marriage to a “virtual nonentity” is not portrayed as particularly happy. See Richards, *supra* note 38, at 143. See also Johnson, *supra* note 18. Such a predominance of unconventional relationships highlights the role of outsiders in this novel.

121. Lee, *supra* note 1, at 6.

122. *Id.* at 118.

household and in her own community. "It's not necessary to tell all you know. It's not ladylike – in the second place, folks don't like to have somebody around knowin' more than they do. It aggravates 'em."<sup>123</sup> Calpurnia is much more effective at socializing Scout than Alexandra is, although not nearly so dogmatic. Calpurnia "seemed glad to see me when I appeared in the kitchen, and by watching her I began to think there was some skill involved in being a girl."<sup>124</sup> Unlike most of the black community, Calpurnia is literate. Calpurnia teaches Scout to write before Scout starts school, just as Atticus teaches her to read.

To some extent, Calpurnia and Atticus reverse gender roles. Atticus exhibits traditionally maternal traits. He is gentle, conciliatory, a peacemaker, while Calpurnia is so strict that Scout is surprised when Calpurnia treats her gently. "Calpurnia was something else again. She was all angles and bones; she was nearsighted; she squinted; her hand was as wide as a bed slat and twice as hard. Our battles were epic and one-sided. Calpurnia always won, mainly because Atticus always took her side. She had been with us ever since Jem was born, and I had felt her tyrannical presence as long as I could remember."<sup>125</sup> Calpurnia reprimands the children, particularly Scout, more severely than Atticus ever does. When Calpurnia becomes angry with Scout, she is more likely to use corporal punishment;<sup>126</sup> but Atticus never loses his temper and never strikes his children. If Scout misbehaves, Jem does not threaten to tell Atticus; he threatens to tell Calpurnia.

#### NATURAL LAW, POSITIVE LAW, AND SOCIAL NORMS IN THE PUBLIC SPHERE

Although family relationships in the private sphere play the central role in inculcating the moral values of natural law in children, public institutions and interaction also play an integral role. Personal values influence and are influenced by all of the following: positive, public laws; social norms; distinctions based on race, class, and gender; the justice system; community codes and standards; education; and religion.

In any discussion of natural law, the concept of acting on principle suggests that the "principles" are beneficial moral values, such as fair-

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123. *Id.* at 126.

124. *Id.* at 115-16.

125. *Id.* at 6. After she starts school, Scout describes the change from Calpurnia's "tyranny, unfairness, and meddling in my business" to "gentle grumblings of general disapproval." *Id.* at 34. Even the latter is harsher than any description of Atticus. One wonders whether Calpurnia actually changed her treatment of Scout or Scout's perception changed because of a greater appreciation of Calpurnia as she was growing up.

126. *See id.* at 6, 24-25.

ness and justice, because we tend to equate “principles” with morally lofty actions and values. The classic civil disobedience scenario usually involves someone who violates the positive or civil law by responding to a higher or natural law,<sup>127</sup> with the goal of achieving fairness, justice, decency, or tolerance. But acting on principle can also describe acting out of a firm belief in the rightness of a particular position, regardless of the positive law or the moral rightness of the position. One might just as easily “act on principle” in a destructive way, to preserve or further firmly held harmful moral values such as bias, hatred, and prejudice.<sup>128</sup>

When Atticus defends Tom Robinson as a matter of conscience, despite the town’s disapproval, he facilitates the natural law by acting from affirmative passions, or positive moral principles. But when the majority of Maycomb works to ensure the continued subjugation of blacks, they subvert the natural law by acting from negative passions, or destructive moral principles. No doubt they were acting on principles they genuinely believed in, according to well-established social norms, but their actions resulted in the routine miscarriage of justice.

### *Positive law and Conflicting Social Norms*

Positive law originates as a method of promulgating and enforcing unstated but understood social and cultural norms by converting them to written law.<sup>129</sup> It imposes structure on a society by making express an accepted code of conduct. But positive law and social norms have a greater tendency to later diverge in a large, racially and culturally diverse society. The value of positivism is that well-crafted written law functions as a brake or counterbalance to negative acts resulting from passion.

Social and cultural norms exert enormous influence over behavior, often operating as informal laws that are more powerful motivators than the formal law.<sup>130</sup> Because they reflect the strongly held beliefs of the majority, either good or bad, observing social norms may propel

127. Fred Erisman compares Atticus to Emerson: he “looks to the higher laws—those of the court and of the nation—that enable man to transcend his base diversity and give him the only form of equality possible in a diverse society.” Erisman, *supra* note 23, at 30.

128. See generally Johnson, *supra* note 4, at 491.

129. See generally AUSTIN, *supra* note 13, at 173; RONALD DWORKIN, TAKING RIGHTS SERIOUSLY (1977); Ronald Dworkin, *Hard Cases*, 88 HARV. L. REV. 1057 (1975); Robin West, *Three Positivisms*, 78 B.U. L. REV. 791 (1998).

130. “*To Kill a Mockingbird* describes exactly why the South would remain an American problem so long as it refused to admit that federal oversight and the Constitution took precedence over state and local custom.” Sundquist, *supra* note 20, at 91.

individuals toward either laudable or reprehensible goals. The difference is reason.<sup>131</sup>

To appreciate Scout and Jem's moral growth, one must understand how the social structure and mores of Maycomb and the larger context of the South in the 1930s<sup>132</sup> fit into the laws of the country. The United States Constitution, which reflects the natural law values of the founding fathers, together with the post-Civil War amendments, guarantee equality to all.<sup>133</sup> The positive law in this broad sense and the natural law of reason are thus in confluence. But in order to preserve and protect a racially segregated society, the South had developed its own set of laws and codes of acceptable behavior, which directly contradicted not only reason, but both the letter and the spirit of the democratic laws on which the country was founded.<sup>134</sup> The mindless racist ideology of the Jim Crow south, reflected in the social norms of Maycomb County, conflicts with both the natural law and the positive law.<sup>135</sup> The Jim Crow laws created a pernicious equilibrium in the South, which allowed whites to cling tenaciously to their racist past, and their delusions of white superiority by imposing upon the black population an inexorable system of de facto and de jure segregation that forbade mixing of the races or anything else that might lead to social equality. In Maycomb, no justice toward blacks was possible.

Atticus shows great respect, even reverence, for the rule of law, the established legal code of this country as reflected in the Constitution. He acts within this formal law in zealously defending Tom Robinson. The voice of moral authority in his community, Atticus defies local custom and practice, public opinion, and the expectations of his fellow

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131. The higher civilization that Atticus personifies results from a more refined reasoning capability than that possessed by the rest of Maycomb. See Johnson, *supra* note 4, at 488. The source of Atticus' more refined moral development is dual: his ability to reason to a system of behavior and his respect for the written legal code. *Id.* at 498. In other words, a harmonious balance of natural law and positive law informs Atticus' life.

132. The setting is the Great Depression. The Southern economy, heavily dependent on small farmers, was hit very hard, and there was no social safety net. Economic deprivation was endemic. When Scout asks Atticus if they are poor, he says yes, everyone is poor because of the crash. LEE, *supra* note 1, at 21.

133. See U.S. CONST. amend. XIV. § 1.

134. The central "conflict in the novel [is] between an irrational establishment and the man of reason who respects the written law, even when he knows it to be flawed and even when he decides pragmatically, with head more than heart, that he must on occasion ignore that law." Johnson, *supra* note 4, at 488. But not everyone agrees that Atticus is a noble and admirable man confronting a lawless society. John Osborn suggests that Atticus "stand[s] up for traditional values to the point of insanity." Considering the values of Maycomb, Osborn wonders "[a]t what point a belief in traditional natural law become[s] absurd." Osborn, *supra* note 39, at 1140.

135. This is the negative aspect of acting on principle. The novel is a "study of the law in its broadest sense: familial, communal, and regional codes; those of the drawing room and the schoolyard; those written and unwritten; some that lie beneath the surface in dark contradiction of established law." Johnson, *supra* note 18, at 132.

citizens by challenging the destructive, negative passions embodied in the social norms of Maycomb County: rigidity, prejudice, and blind ignorance. His calm and steady rationalism and his absolute belief in his moral position enable him to calmly face down, with nothing more than a newspaper in his hand, a lynch mob who come to abduct his client. Although Atticus never fails to be courteous and congenial, his moral stance in representing Tom Robinson<sup>136</sup> deeply disturbs the routine of small-town, southern life.<sup>137</sup> Thus he inadvertently exposes his family to a risk of harm from those who resent his challenge to their staunchly held views of appropriate relations between the races.

As everyone does in growing up, Scout and Jem discover that sometimes the established social norms reflect common sense, what is logical and reasonable; other times, they fly in the face of it. Scout inadvertently violates an unwritten "rule" on the first day of school by already knowing how to read and write, which leads to Atticus' discussion with Scout about the nature of rules and laws. Soured by her experience with the "crime" of knowing how to read, Scout does not think she should have to return to school because as long as you show up the first day, as the Ewell children do, the truant officer will not come after you. Atticus negotiates a compromise with her whereby she will return to school and they will continue to read together.

Growth occurs as a result of confronting and resolving difficult moral questions. Both Scout and Jem struggle to reconcile the conflict between the natural law values they have learned from Atticus at home and the conflicting social norms that govern behavior in their community. Although Atticus' values reflect the democratic principles and written laws that govern the country, Maycomb's values reflect the racist ideology that is essential to preserve white hegemony in the South.<sup>138</sup>

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136. A United States Supreme Court case, *Powell v. Alabama*, 287 U.S. 45 (1932), had held that an indigent defendant in a capital case had a right to appointed counsel. Maycomb courts complied with the letter of the law by appointing counsel for indigent defendants, but routinely violated the spirit of the law. The court usually appointed young, inexperienced lawyers, who, in compliance with local custom, did nothing more than show up and watch the jury condemn their clients to death. Atticus upsets the local custom by actually fighting for Tom's life. Scout overhears a conversation about Atticus between two members of the Idlers Club, a group of old, white court watchers: "You know the court appointed him . . . Yeah, but Atticus aims to defend him. That's what I don't like about it." LEE, *supra* note 1, at 163.

137. Like Emerson's nonconformist, Atticus "finds himself whipped by the world's displeasure." Erisman, *supra* note 23, at 28.

138. Believing in Southern etiquette, both Atticus and Maycomb encourage good manners. But Atticus inspires his children to extend that courtesy and respect to everyone, whereas Maycomb considers only its white population deserving recipients of such civility, thus relegating blacks to permanent second-class status. See generally LEE, *supra* note 1.

### Racial Bias

In *To Kill a Mockingbird*, racial attitudes play an integral role in the implementation, meaning, and application of legal canons. They influence guilt or innocence and the penalty that is sought or rendered. As Tom's case illustrates, the presumption of innocence is irrelevant when the defendant is black. Although the criminal justice system, in its offensive or prosecutorial role, is directed disproportionately toward blacks, its defensive or protective role operates for whites only. In both its formal structure and a persistent undercurrent, racial tension and its attendant violence permeate Maycomb County.

Atticus demonstrates moral courage somewhat differently than in the classic civil disobedience scenario. Atticus confronts no conflict between the natural law and the positive law of the Constitution, which reflects natural law values in its guarantee of equality to all. But Atticus' values are not the racist values of the Jim Crow South reflected in the local laws and the customs and social norms of Maycomb. Looking beyond race to provide more than a token defense for Tom requires moral courage in the face of intimidation, threats, and mob violence from his own community.<sup>139</sup>

The most potent feature of the cultural norm requiring strict separation along racial lines was the sexual taboo against mixing of the races, especially white women and black men. Fear lies behind much of the strenuous effort to preserve the antiquated structure of Southern society—fear of the loss of white identity and with it white sovereignty. Violation of any of the rules that guaranteed separation of the races merited punishment, but any violation of the sexual taboo was met with particularly swift and cruel retribution, often in the form of vigilante justice such as lynchings.<sup>140</sup> The stereotype of the black rapist is the most powerful symbol of the irrational fear that if they were not kept in line, blacks would forcibly dilute the pure white race and usurp its power. This fear produces the travesty of Tom's trial, as illustrated by the conversation of the missionary society ladies,<sup>141</sup> the comments

139. Perhaps because Atticus is the most honorable of men, even many of the townspeople who opposed his defense of Tom retain enough respect for him to reelect him to the state legislature after the ordeal is over. Although they are obviously uneasy with the threat that Atticus represents to their traditional way of life, they still believed in him. *Id.*

140. In the Emmett Till case, a 13-year-old black boy from Chicago, visiting in the South in the 1950s, was lynched for allegedly whistling at a white woman. Although there was no doubt that the woman's husband and a friend had murdered Emmett Till, an all-white jury acquitted them of any wrongdoing. See Chura, *supra* note 79, at 116. See also Sundquist, *supra* note 20, at 79. (discussing the 1931 Scottsboro case, where nine young black men were convicted of the rape of two white women by multiple all-white juries despite overwhelming evidence that no crime had ever been committed).

141. Lee, *supra* note 1, at 232 ("there's no lady safe in her bed these nights").



Scout overhears from her teacher after Tom's trial,<sup>142</sup> and the routine, everyday persecution of the black population of Maycomb.

This odious code dictated that a white woman, regardless of class, would always be believed and a black man would never be trusted if they told conflicting stories. Atticus upsets this precarious balance by adducing overwhelming evidence that Tom is innocent and that Mayella is lying. But the tradition of racial prejudice is so entrenched that the prevailing social mores trump with impunity both the natural law, reflected in the core values of democracy and justice, and the positive law, reflected in the Constitutional guarantees of equality.<sup>143</sup>

Tom Robinson's trial and the incidents surrounding it really allow Scout and Jem to glimpse a world from which they have been previously sheltered by Atticus' benevolent parenting.<sup>144</sup> After hearing the evidence in Tom Robinson's case, Jem is completely confident about the outcome.<sup>145</sup> Although Reverend Sykes cautions him about overconfidence, he refuses to be dissuaded, expounding on the legal rules and a lengthy review of the evidence. Jem may know the technical legal rules, but he clearly does not understand the unspoken but powerful social norms that underlie Reverend Sykes' caution. When the jury returns its verdict in the trial, Jem is angry and confused. He cannot understand why the positive law, as he understood it from everything Atticus had taught him and from Atticus' closing argument, did not produce the verdict he expected. Instead, as Reverend Sykes predicted, the jury followed the unwritten social code that required that the word of white witnesses, no matter how unreliable, be accepted as true over the testimony of an honest and believable black defendant.

Unlike Jem, who is distraught over the outcome of Tom's trial, Atticus understands the power of cultural norms in the clash with legal rules. He tries to explain to Jem that sometimes twelve otherwise reasonable men can be dissuaded from reason by prejudice and bias. This new world of lies, bigotry, and lynch mobs is both puzzling and frightening to Jem and Scout, but it is also the vehicle for their moral growth as they try to come to terms with the contradictions between

142. *Id.* at 247 ("the next thing they think they can do is marry us").

143. "[R]ulings handed down from the 'secret courts of men's hearts' became the laws they lived by openly." Johnson, *supra* note 18, at 129."

144. "Of all the societies that the children will ever encounter, this one is the most whole, 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 here." *Id.* at 135.

145. During Atticus' closing argument, Jem whispers to Scout, "He's just gone over the evidence, and we're gonna win, Scout. I don't see how we can't . . . He made it . . . plain and easy . . ." Lee, *supra* note 1, at 202. Shortly thereafter, he reassures Reverend Sykes that they are going to win: "Reverend . . . don't fret, we've won it. Don't see how any jury could convict on what we heard." *Id.* at 208.

what they know and what they are learning. After Tom's conviction, Jem describes it aptly: "It's like bein' a caterpillar in a cocoon, that's what it is. Like somethin' asleep wrapped up in a warm place. I always thought Maycomb folks were the best folks in the world, least that's what they seemed like."<sup>146</sup>

Jem and Scout are beginning to realize that pleasant appearances often mask ugly reality. Miss Maudie seeks to reassure Jem and Scout about both their community and their father: "We are the safest folks in the world. We're so rarely called on to be Christians, but when we are, we've got men like Atticus to go for us."<sup>147</sup> Still skeptical, Jem demands to know who in town besides Atticus did anything to help Tom Robinson. Miss Maudie explains that Judge Taylor broke with the usual protocol in purposely appointing Atticus, an experienced and principled lawyer, so that Tom would receive an adequate defense. Ever the optimist, Maudie knew Atticus couldn't win the case, but the fact that he kept the jury out as long as he did was perhaps a step in the right direction – "just a baby step, but it's a step."<sup>148</sup>

Scout gains insight into the difference between the law as she has learned it from Atticus and the conflicting social norm when she reads Mr. Underwood's editorial in the newspaper comparing Tom's death to the senseless slaughter of songbirds by hunters. Initially she is puzzled about how Tom's death could be construed as a "senseless killing" when "Tom had been given due process of law to the day of his death; he had been tried openly and convicted by twelve good men and true; my father had fought for him all the way."<sup>149</sup> Suddenly, the reality becomes clear. The fact that Tom was black and Mayella was white was all that *really* mattered. "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."<sup>150</sup>

Racial bias also plays an important role in the application of the law to particular situations outside the courtroom. Sheriff Tate, the official responsible for maintaining the peace in Maycomb, adopts quite a different attitude toward Boo Radley than he does toward Tom Robinson. Both men were suspects in a crime. The Sheriff promptly arrests Tom for rape and throws him in jail, simply on the word of Bob Ewell, whom nobody in the town trusts.<sup>151</sup> The sheriff neither performs an investigation nor calls a doctor, both of which would have provided

146. *Id.* at 215.

147. *Id.*

148. *Id.* at 216.

149. *Id.* at 241.

150. *Id.*

151. *See id.* at 30-31, 170-71, 192, 218, 250.

exculpatory evidence for Tom. In the case of Boo Radley, Sheriff Tate knows that Boo intentionally killed Bob Ewell by stabbing him with a kitchen knife. But the Sheriff creates a lie—that Bob fell on his own knife—and convinces Atticus to cooperate with the cover-up in order to protect Boo Radley from the trauma of a public trial.<sup>152</sup>

Sheriff Tate exercises enormous discretion to protect Boo Radley from the provincial Maycomb community that has marginalized him<sup>153</sup> although he exercised no discretion whatever that might have helped Tom Robinson. Justice is simply different for Tom and for Boo. The Sheriff performs perfunctory investigations in both cases, but follows up with very different actions. Sheriff Tate appears to act from a purely positivist view of the law in regard to Tom: It is his duty to enforce the law, which he does in a mechanistic manner.<sup>154</sup> But in regard to Boo Radley, Sheriff Tate acts from a natural law perspective, which requires that on occasion, the need for justice can trump the positive law.<sup>155</sup> Although the Sheriff knows the law and what it requires, fairness and justice apparently suggest that Boo be treated differently. Tom is a contributing member of society, but the Sheriff does nothing to help him. Boo is a shy recluse, withdrawn from society, but the Sheriff goes out of his way to help him. Tom simply does not evoke the same sympathy from the Sheriff that Boo does. The inescapable conclusion is that the two men, both sympathetic characters, are treated differently simply because of race. Tom and Boo are both outsiders. But unlike Tom, Boo is an outsider who is still alive. It appears that at least in regard to race, “equal justice under the law” is a charade.

152. It is doubtful the Sheriff would have protected him if Boo were black. Would the Sheriff have done anything if a black man (instead of Bob Ewell) had spit on Atticus? The ultimate outsiders, blacks often suffered punishment that was completely out of proportion to the minor infractions they committed. See generally Chura, *supra* note 79.

153. See Dean Shackelford, *The Female Voice in To Kill a Mockingbird: Narrative Strategies in Film and Novel*, 50 THE MISS. Quarterly 101 (1996).

154. See Bryan K. Fair, *Using Parrots to Kill Mockingbirds: Yet Another Racial Prosecution and Wrongful Conviction in Maycomb*, 45 Ala. L. Rev. 403, 419 (1994).

155. In order to insure that justice is served, at the end of the novel, Atticus enters into a legally subversive conspiracy with Sheriff Tate. The conspiracy is legally subversive because it violates the positive law that would require that Boo Radley stand trial for the killing of Bob Ewell. It is also personally subversive for Atticus, who heretofore has professed such fidelity to the rule of law. Although pragmatism and expediency are often the direct opposite of a natural law view, in this case they represent the classic natural law triumph of magnanimous mercy over inadequate positive law, flawed social norms, and the sham “justice” that usually prevailed in Southern society. Patrick Chura describes it as “a form of moral consensus concerning the dividing line between law-bound adherence and individual subversive behavior.” Chura, *supra* note 79, at 131. Atticus is always a realist, but he never acts from selfish expediency. If he abandons rigid principle, it is always in good conscience and for the greater good. Although Atticus dislikes guns and refuses to hunt, he shoots the mad dog; Atticus violates his society’s mores when he mounts a vigorous defense for Tom Robinson; and Atticus abrogates the law and obstructs justice when he is complicit in the lie about the death of Bob Ewell.

*Class Stratification*

Class differences also play an important role in the implementation and application of legal rules. Atticus' exemplary character is revealed mainly in regard to Maycomb's "usual disease," race discrimination. But there is another disease afflicting Maycomb County: class discrimination.<sup>156</sup> Besides its benighted Jim Crow laws dictating strict racial segregation, the South of the 1930s was also strangled by a rigid class system.<sup>157</sup> It is not that the novel does not address the subject of class distinctions. Class differences are discussed frequently, but the resulting marginalization of individuals or entire groups is not characterized as particularly problematic. Class consciousness is inextricably intertwined with the perception of family, manifested particularly in Aunt Alexandra;<sup>158</sup> the Finch family is frequently contrasted with the Ewells, the Radleys, the Cunninghams, and other families in Maycomb. Although everyone is poor, some are respected more than others, usually because of family background.

Until she goes to school, Scout's main exposure has been to her family and the neighbors, all of whom belong to Maycomb's middle class.<sup>159</sup> Scout understands very early that some sort of caste system exists in Maycomb, but it is apparent that she really recognizes only the middle class to which she belongs: "The older citizens, the present generation of people who had lived side by side for years . . . were utterly predictable to one another: they took for granted attitudes,

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156. See Phelps, *supra* note 33, at 514. Although Scout ultimately concludes that there is really only one kind of people in the world, Jem's description of four kinds of people in Maycomb County with its sharp class distinctions, is much more accurately reflected in the novel. *Id.*

157. See generally Erisman, *supra* note 23, at 23.

158. "Aunt Alexandra brings with her an elaborate system of codification and segregation of the human family according to class, race, and, in Scout's case, sex." Johnson, *supra* note 18, at 136. Her code "delineates very narrowly ladies and gentlemen, black and white people, 'good' families and trash. She files them in their proper, neat, separate boxes. Fearing contamination, she forbids Scout to visit Calpurnia's house or to invite Walter Cunningham to the Finch home again." *Id.*

159. The only real exception is Calpurnia, the Finches' black housekeeper, who has worked for the family for years. Although Atticus describes her as a member of the family, it is abundantly clear that she is not. Of course, Atticus always treats her with great respect and he insists that his children do as well. But Alexandra insists on maintaining the rigid class distinctions that separate Calpurnia from the Finches. To her, Calpurnia is nothing more than the hired help, and she treats her accordingly. When she comes to stay with the Finches, the first thing Alexandra does is order Calpurnia to put her bag in the front bedroom. Scout is shocked to learn that Calpurnia has a life outside of the Finch household and that Calpurnia can adapt her language to dialect when it is necessary. "But then I had never thought about it . . . . That Calpurnia led a modest double life never dawned on me. The idea that she had a separate existence outside our household was a novel one, to say nothing of her having command of two languages." Lee, *supra* note 1, at 125.

character shadings, even gestures, as having been repeated in each generation and refined by time.”<sup>160</sup>

Both Jem and Scout struggle to understand the significance of the class differences in their town.<sup>161</sup> Before Tom’s trial, Scout and Jem are familiar with the legal characters from their class: Sheriff Tate, Judge Taylor, Atticus, and Mr. Gilmer, the prosecutor. But the lessons they learn about class stratification—and troubling misconceptions about the legal system—come from watching and listening to the characters at the trial who are portrayed as lower class: the defendant, Tom Robinson; the principal witnesses, Bob and Mayella Ewell; and the entire jury. After the trial, Jem tries to explain to Scout his new awareness of the social hierarchy in Maycomb: “There’s four kinds of folks in the world. There’s the ordinary kind 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.”<sup>162</sup>

Like Scout, Jem is most familiar with the class to which he belongs, the “ordinary” folks, who are the middle class of Maycomb County. This includes Atticus, the neighbors,<sup>163</sup> Aunt Alexandra, the missionary ladies, Dr. Reynolds, Sheriff Tate, and Judge Taylor.<sup>164</sup> Because of old and complicated relationships, this group remains solid, no matter what happens. In anticipation of the upheaval Tom Robinson’s trial will cause, Atticus tries to reassure Scout that nothing about their friends or their home will change.

The “Cunninghams out in the woods”<sup>165</sup> and their ilk are trying under difficult economic conditions to eke out a living from subsistence farming. They are proud and willing to work hard, but they are separated from the ordinary folks by poverty, shabby clothing, poor etiquette, apathy for education, and a certain willingness to disregard the law when it conflicts with their strongly held beliefs about racial separation.

On her first day of school, Scout learns a difficult lesson about etiquette rules that sometimes require overlooking class distinctions.

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160. *Id.* at 131.

161. Having been reared by Atticus, they cannot comprehend “society’s division of the human family into hostile camps.” Johnson, *supra* note 18, at 133.

162. Lee, *supra* note 1, at 226.

163. The good, like Miss Maudie; the bad, like Mrs. Dubose; and the eccentrics, like the Radleys.

164. Because of Lee’s comfort and familiarity with the type, the “ordinary” folks are both the most numerous and the best-developed characters in the novel. Eccentricity is certainly no grounds for exclusion from this group, as practically everyone in Maycomb qualifies as an eccentric in one way or another. See Phelps, *supra* note 33, at 515.

165. Lee, *supra* note 1, at 226. It is the midst of the great depression, and the Cunninghams are poor farmers who do not always have the money to pay their bills, but who are too proud to accept charity. *Id.* at 20-21.

When she gets into a fistfight with Walter Cunningham, the son of an Old Sarum dirt farmer, because he made her “start off on the wrong foot,”<sup>166</sup> Jem breaks up the fight. To Scout’s consternation, Jem promptly invites Walter home for lunch. Atticus greets Walter courteously and converses with him about various topics, much to the astonishment of Jem and Scout. Disregarding both Atticus’ example of treating Walter as an equal and his repeated warning looks to her, Scout makes several flippant and condescending remarks to Walter. Although Scout understands exactly what Atticus is trying to communicate to her, to her peril she persists in calling attention to Walter’s “differences.” But when Walter pours molasses all over his food, Scout demands to know “what the sam hill” he is doing, whereupon Calpurnia unceremoniously orders her into the kitchen for a furious lecture on manners and the etiquette rules one must obey with company.<sup>167</sup> Scout compounds her mistake by saying, “He ain’t company, Cal, he’s just a Cunningham,” which really infuriates Calpurnia.<sup>168</sup> For her lack of courtesy, Scout must suffer the further humiliation of retrieving her plate from the dining room and finishing her dinner in the kitchen.<sup>169</sup>

The night before Tom’s trial, a group of poor and ignorant dirt farmers from Old Sarum comes to the Maycomb jail with the intent to lynch Tom. They are led by Mr. Cunningham, one of Atticus’ clients in an earlier unrelated matter. Atticus, seated in front of the jail, unarmed except for a light and a book in his hand, intends to prevent the lynching. It takes courage to stand alone, as an individual, against any form of collective action, but especially if that collective is a lynch mob. We will never know if Atticus alone could have stopped the mob simply by reasoning with them, his usual approach to solving problems.

Scout, not realizing the seriousness of the situation, intervenes and attempts to engage Mr. Cunningham in a conversation by speaking directly to him. She is able to get Mr. Cunningham to change his mind – and that of the mob – by appealing to his personal and family relationships. She reminds him that her father, Atticus, had represented him in a property matter, and that his son, Walter, is her classmate, whom Scout and Jem invited home for lunch on the first day of school. Scout’s singling out of Mr. Cunningham from the mob and reminding him of his family relationships humanizes him and, for a brief moment, erases the boundaries between the classes. She forces him to

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166. *Id.* at 22.

167. *Id.* at 24.

168. *Id.* at 24-25.

169. “Calpurnia sent me through the swinging door to the diningroom with a stinging smack.” *Id.* at 25.

retreat from the mob mentality and focus, at least temporarily, on his interpersonal relationships, thus breaking the spell that sometimes causes men in large groups to act like animals.<sup>170</sup>

After Tom Robinson's trial Scout says that she would like to ask Walter Cunningham home for dinner when school starts. Proud that she has overcome her earlier condescension toward Walter, Scout is therefore puzzled when Aunt Alexandra objects. "Why not, Aunt? They're good folks."<sup>171</sup> Aunt Alexandra, with her exaggerated appreciation of class differences, tries to undermine whatever enlightenment Scout has achieved. "[T]here is no doubt in my mind that they're good folks. But they're not our kind of folks . . . . [Y]ou can scrub Walter Cunningham till he shines, you can put him in shoes and a new suit, but he'll never be like Jem . . . . Finch women aren't interested in that sort of people."<sup>172</sup> Scout's resistance to Alexandra's efforts to choose her friends for her is met head-on by Alexandra: "I'll tell you why. Because— he— is— trash, that's why you can't play with him. I'll not have you around him, picking up his habits and learning Lord-knows-what."<sup>173</sup>

For Alexandra, class is as immutable a characteristic as race. She would condemn Walter Cunningham and his entire family to a permanent state of ignorance because that is the class into which they were born. Scout, fortunately, is Atticus' child more than she is Alexandra's niece. She explains to Jem, "No, everybody's gotta learn, nobody's born knowin'. 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. Nothin's wrong with him. Naw, Jem, I think there's just one kind of folks. Folks."<sup>174</sup> The progress of Atticus' steady and consistent moral tutelage is evident in the stark contrast between Scout's attitude toward Walter now and that of her first day of school, when she beat him up and insulted him.

The "Ewells down at the dump" are a different story entirely from either the middle class or the poor dirt farmers like the Cunninghams. The Ewells share the traits that separate the Cunninghams from the

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170. This temporary reprieve does not last, as the jury from the same class condemns Tom to death the very next day. It is profoundly disturbing that the same people comprise both the jailhouse lynch mob and the jury at Tom Robinson's trial.

171. *Id.* at 223.

172. *Id.* at 224.

173. *Id.* at 225. Adding insult to injury, Alexandra adds, "You're enough of a problem to your father as it is." *Id.* This pronouncement sends Scout out of the living room, sobbing in fury. Jem tries in his awkward way to comfort her, but with sentiments reminiscent of Atticus: "You know she's not used to girls, . . . leastways, not girls like you. She's trying to make you a lady. Can't you take up sewing or something?" *Id.*

174. *Id.* at 227. This also shows the ultimate optimism of Lee's novel – that there is hope for a more enlightened view of both race and class from a new generation in the South.

higher classes, but the Ewells are also separated by attitude, values, industry, language, appearance, physical condition, violence, the inability to engender the respect of any of their fellow citizens, and the applicability of the law. Even Atticus, the lawmaker and law interpreter, condemns the Ewells.<sup>175</sup> Atticus does not discriminate against the Ewells simply because they are poor. The Cunninghams are poor and Atticus is fine with them. They work hard and they remain poor. Atticus respects that, which is evident from his representation of Mr. Cunningham in the entailment matter and the way he treats Walter when Jem and Scout bring him home for lunch.

Atticus is willing to do what he can to help the Cunninghams, which is limited because it is the Great Depression and everyone is poor, but not the Ewells who are unwilling to help themselves. The difference between the Cunninghams and the Ewells is that the Cunninghams are reachable on occasion; the Ewells simply are not. The Ewells are completely marginalized “white trash.” Because of their dire, largely self-inflicted, economic circumstances, the Ewells live a subhuman existence. They live by the town dump, where they apparently belong as they are human trash, the discards of their society. Their lives are characterized by extreme deprivation, child neglect, violence, and child abuse. Bob Ewell, the head of the clan, is evil, a despicable racist who squanders the relief check on alcohol and abuses his motherless children. Burris Ewell, a member of Scout’s first grade class, is filthy, diseased, underfed, brutal, and rude; he is a savage. Mayella is ignorant and uneducated, certainly a victim of physical violence and likely a victim of incest. Although in the rigid class structure, blacks are at the bottom of the list, below the Ewells, it is quite obvious that Lee considered the Ewells the absolute dregs of society. Just as Maycomb’s strict class system teaches us to admire Atticus, it also suggests that we should deplore the Ewells.

The Ewells are so far removed from the mainstream that the law may not even apply to them as it does to everyone else. Adding to Scout’s trauma on the first day of school, her teacher reprimands her because she has learned how to read before the scheduled time in the school curriculum. After this inauspicious start, Scout resists returning to school, arguing that the Ewell children’s attendance at school only on the first day is sufficient to satisfy the truant officer, and that should be good enough for her as well. Atticus uses this opportunity to explain the difference between express laws or rules on the one hand and accepted but unwritten social norms on the other. It is also a lesson in how rules might apply differently depending on class divi-

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175. Scout explains to Calpurnia, “Why, Atticus said they were absolute trash—I never heard Atticus talk about folks the way he talked about the Ewells.” *Id.* at 124.



sions. Scout, as one of the “common folk,”<sup>176</sup> must abide by the formal rules requiring school attendance or suffer the consequences. But by unspoken agreement, the Ewells are not subject to the same rules as everyone else.<sup>177</sup>

Atticus does not excuse the Ewells because they think they are right or because he thinks they are right. Atticus respects the law, and the conduct of the Ewells is clearly illegal. But practical reason must prevail when the law, as applied, would be unreasonable. Like everyone else in Maycomb, Atticus simply accepts that the Ewells are socially inferior: They have never worked, they survive on the county dole, they have no interest in education, and they live like animals. It is useless to try to convert them into socially responsible citizens. Therefore, the usual rules do not apply. They do not have to go to school, and they can hunt and trap out of season.<sup>178</sup>

Even the always generous Atticus says they were people, but “they lived like animals.”<sup>179</sup> This is as judgmental as Atticus gets. Although Atticus does not approve of those who defy or flout the rule of law, he is gentler and more realistic than most people expressing disapproval of the Ewells. Atticus understands that Bob Ewell has no interest in ensuring his children’s education, and it would be futile to punish the children for not attending school. In addition, Atticus, following his own advice, can empathize with the Ewell children. Atticus does not begrudge the Ewell family whatever game their father can shoot because Atticus knows the children would go hungry without this source of food. Atticus justifies the social norm of excusing the Ewells from compliance with the law because he sees it as necessary to society. Here, as elsewhere, Atticus is a pragmatist.

Atticus’ sympathy, however, is limited to the Ewell children. He has no respect for Bob Ewell, who makes no effort to carry his weight in society, does not work, and neglects his children. But other than strong disapproval, no one really does anything about the Ewells, so Bob Ewell can continue to spend the relief checks on liquor and abuse his children, a fact that does not seem to particularly bother either

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176. *Id.* at 30.

177. The villainy of Bob Ewell “arises from his unwillingness to be governed by any law, either internal or external; his crimes run from the petty breaking of hunting and truancy laws to incest and attempted murder.” Johnson, *supra* note 18, at 132. That is no doubt true, but it is both glib and hyperbolic to say that Bob Ewell’s “counterpart in moral chaos on an international scale is Adolf Hitler.” *Id.*

178. Atticus excuses the Ewells from compliance with the laws requiring school attendance or a hunting license, because they “had been the disgrace of Maycomb for three generations. None of them had done an honest day’s work in his recollection.” Lee, *supra* note 1, at 30. Scout describes hunting out of season as “a misdemeanor at law, a capital felony in the eyes of the populace,” *id.* at 31, thus illustrating the distinction between formal laws and the social norms that sometimes exercise greater influence over behavior.

179. *Id.* at 30.

Atticus or Scout. Scout, of course, is only a child, so she is mainly concerned because she must go to school while Burris Ewell is excused, and she is shocked that Bob Ewell can violate the hunting laws with impunity. But it is surprising that Atticus, an adult with a well-developed moral conscience, should be so indifferent to this serious moral failing.

Tolerating the Ewells' noncompliance with the law does not result from class elitism, as Atticus appears to be one of the least elitist people one could find.<sup>180</sup> Nor is it truly charitable, although Atticus was undoubtedly motivated by charity. Atticus characterizes the Ewells as getting special "privileges" because of their situation, but permanent imprisonment in the lowest socioeconomic class is a strange privilege indeed.<sup>181</sup> Tolerance, which should enable people to grow beyond previously established boundaries, is misplaced here. Setting extremely low expectations, especially for people who have no motivation, ensures that they will reach no higher level. Excusing the Ewells' behavior serves only to lock the Ewells into a permanent state of poverty and ignorance, insuring they remain completely marginalized outsiders at the very bottom of the socioeconomic ladder.

In not questioning the legitimacy of a class system that permits exempting the Ewells from the same rules that everyone else must follow, Atticus plays a role in perpetuating that system. The voice of moral authority that might champion laws to protect the Ewell children from neglect and abuse is missing here. At least in this regard, Atticus is no better than the rest of Maycomb,<sup>182</sup> keeping the Ewells down by the dump with the discards. It is clear from Mayella's testimony at trial that she has been the victim of violence, and it appears from Tom's testimony that she has also been the victim of incest. Despite Mayella's deplorable circumstances and the obvious lack of assistance or understanding from any other source, Atticus demonstrates little empathy for Mayella at the trial. Atticus elicits details about her circumstances for the jury, not to create sympathy for her, but only to prove Tom's innocence.<sup>183</sup> It is understandable that even Atticus might lack empathy for Bob Ewell, but Mayella is a victim herself.

The more cavalier attitude toward class discrimination throughout the novel can be understood in part by a perception, right or wrong,

180. Apparently Monroe Freedman disagrees, asserting that in representing Tom, Atticus acts simply from an "elitist sense of noblesse oblige." Monroe Freedman, *Atticus Finch, Esq., R.I.P.*, LEGAL TIMES, Feb. 24, 1992, at 21.

181. Lee, *supra* note 1, at 30-31. It has been suggested that this is only a rationalization for guaranteeing them permanent marginalization as outsiders. Phelps, *supra* note 33, at 523.

182. Or than the rest of the South, for that matter. "Every town the size of Maycomb had families like the Ewells." LEE, *supra* note 1, at 170.

183. See *id.* at 185-88.

that one has more choice in regard to class than one does in regard to race. Although this is theoretically true – the Ewells certainly have a greater chance of improving their economic plight than Tom does of changing his race – it is perhaps only remotely possible, considering the time: the 1930s, in the deep South, a depressed time and area, with no social welfare network.

Atticus' otherwise prodigious capacity for empathy cannot stretch quite far enough to completely encompass the Ewells, perhaps because the Ewells are so extreme in their differences that they seem almost alien to the culture of Maycomb. Although the Ewells ostensibly speak the same language as the rest of Maycomb, at the trial both Bob and Mayella have difficulty understanding the questions and need interpretation.<sup>184</sup> Both react inappropriately to the most innocuous statements. When Judge Taylor comments that Bob Ewell is left-handed, Ewell launches into an irrelevant diatribe about "[t]ricking lawyers like Atticus Finch . . . with their tricking ways."<sup>185</sup> Mayella, completely misinterpreting common courtesy, believes she is being mocked and insulted when Atticus addresses her as "ma'am" and "Miss Mayella."<sup>186</sup> Even Judge Taylor, who appears to have seen a lot during his years on the bench, is taken aback and blurts out, "What's the matter with you?"<sup>187</sup> He is then compelled to explain to Mayella that Atticus was just being polite, a concept she had apparently never before encountered.

Although the jury condemns Tom Robinson to death ostensibly based on testimony by Bob and Mayella Ewell, the trial serves to further confirm the low opinion the community has of the Ewells. Bob Ewell struts up to the witness stand in court, confident that he and Mayella will prevail against a black man, which, of course, they do. Bob Ewell wins not because the jury believes him or Mayella, but because the jury cannot afford to vindicate Tom, given the prevailing cultural norms. But Bob Ewell deludes himself into thinking the trial has made him more respectable in Maycomb. Atticus "destroyed his last shred of credibility. . . if he had any to begin with,"<sup>188</sup> and everyone in town knows it.

After the trial, Maycomb has nothing but the usual contempt for Bob Ewell,<sup>189</sup> and he shows his resentment by making mischief. He

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184. Describing Bob Ewell's demeanor and facial expression as he struggles to figure out what Judge Taylor means, Scout says, "Mr. Ewell reminded me of a deaf-mute." *Id.* at 174.

185. *Id.* at 178.

186. *Id.* at 181-82.

187. *Id.* at 182.

188. *Id.* at 218.

189. The attitude in Southern society toward men like Ewell is complicated. In a very limited way, they are seen as defenders of the race (keeping blacks in line), but "outside this role they are scorned and ostracized for reasons of class." Chura, *supra* note 79, at 124-25.

spits in Atticus' face, he breaks into Judge Taylor's house, and he harasses Helen Robinson on her way to work. Alexandra and the children try to warn Atticus about the potential for violence that Ewell represents, but Atticus dismisses their concern. "I think I understand. It might be because he knows in his heart that very few people in Maycomb really believed his and Mayella's yarns. He thought he'd be a hero, but all he got for his pain was . . . okay, we'll convict this Negro but get back to your dump. He's had his fling with about everybody now, so he ought to be satisfied. He'll settle down when the weather changes."<sup>190</sup> Here, Atticus' universally charitable view of the human race leads him to a serious error in judgment. Atticus narrowly escapes paying dearly for his misjudgment of the depth of Bob Ewell's rage when Ewell's last "fling" is nearly deadly. He wreaks his revenge on Atticus by trying to kill Jem and Scout on their way home from the Halloween pageant.

Atticus' heroic status is based on his acute awareness of race discrimination, not class and gender issues, about which he seems far less concerned.<sup>191</sup> The novel consciously emphasizes the importance of knowing one's place in the class hierarchy, and perhaps less deliberately, the importance of keeping others in their place. From his description to Scout of the various classes of people in their town, it is apparent that Atticus accepts without much question the social stratification of Maycomb. And Atticus most likely inspired Jem's less sophisticated classification as well.

Although he is the most enlightened of the townspeople, Atticus does nothing to change the class structure of his society, of which he is an integral part. Those born into the group of "ordinary folks" seem to treat it as a birthright and do not question either their status or that of others.<sup>192</sup> This is particularly significant because this group includes the "caretakers of the law,"<sup>193</sup> the power brokers who create and implement the laws that affect not only them but all other groups as well.

190. Lee, *supra* note 1, at 250. Bob Ewell satisfied his racial animus by seeing Tom Robinson convicted. But his violent retaliation against Atticus after the trial is over is motivated by "public familial shame and loss of honor. . . . His need to strike out at the source of his public disgrace is as compelling." Chura, *supra* note 79, at 127.

191. Lee intended the focus to be race discrimination and not class discrimination. A heightened 21st century sensitivity to class issues likely accounts for the contemporary interpretation of the social stratification issue, rather than any intent by Lee to create ambiguity forty-five years ago when the novel was published. Perhaps Lee herself did not see class discrimination as a serious problem, as she did race discrimination. Just as Scout says more than she realizes, perhaps Lee writes more than she realizes. But race and class discrimination often go hand-in-hand. For example, in the New Orleans evacuations after Hurricane Katrina, most of the ones left behind were not poor *or* black; they were poor *and* black.

192. See Phelps, *supra* note 33, at 517.

193. *Id.* at 517-18.

*Legal System*

The conduct of a trial demonstrates most dramatically the influence of racial attitudes on the meaning and application of legal rules. In *To Kill a Mockingbird*, we see the legal system as it exists and functions, rather than as a set of rules or canons. In the 1930s, the “kinds of justice administered by southern mobs and southern courts were often indistinguishable.”<sup>194</sup> If a court or a jury willfully disregards the official laws of the United States, the verdict is likely to be the antithesis of the natural law values of fairness, justice, and equality.

Atticus invokes broad constitutional principles of fairness and justice in his closing argument to the jury:

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, gentlemen, is a court. It can be the Supreme Court of the United States or the humblest J.P. court in the land, or this honorable court which you serve. Our courts have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal.<sup>195</sup>

For Atticus, the law is not some abstract, ideal concept. It is the practical reality that should and, in the best of situations, does unite us all, despite differences among people because of money, ability, intelligence, or opportunity. But Atticus makes his closing argument before a community that is furious with him because he has vigorously represented a wrongly accused black man. He delivers his argument in a starkly segregated courtroom to a jury that, by local rule and custom, could include no women or blacks. Tom’s peers, who should be represented on his jury, are relegated to quietly observing the trial from the upper balcony. This rigid physical and social separation foreshadows the verdict that Atticus knows will come.

By acting on principle,<sup>196</sup> Atticus violates not the legal precepts referenced in his closing argument, but the powerful social norms of his community. Atticus knows that the Jim Crow laws, with their sham

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194. Sundquist, *supra* note 20, at 79.

195. Lee, *supra* note 1, at 205.

196. Struggling to achieve social justice is acting on principle in an affirmative way and completely within the purview of the natural law. But Atticus hardly fits the stereotype of a typical trial lawyer: “In practice, trial lawyers are the ultimate positivists; concerned primarily about what the law allows, they wonder little over the meaning of virtue.” Steven Lubet, *Reconstructing Atticus Finch*, 97 MICH. L. REV. 1339, 1358-59 (1999). “Virtue” is perhaps the primary reason Atticus, in the face of overwhelming odds, accepted Tom’s case and provided for him the best defense he knew how.

declarations of “separate but equal,”<sup>197</sup> exert a far greater influence than the formal law over the social mores of communities throughout the South, including Maycomb.<sup>198</sup> What Atticus understands, but cannot say at this time and in this place, is that “the law of the land is one thing and ‘the secret courts of men’s hearts’ is quite another.”<sup>199</sup> Until that secret court is laid bare and brought into harmony with democratic and constitutional principles, the law is simply incapable of delivering justice.

Scout and Jem learn from Tom Robinson’s trial about the injustice that results from a failure to follow the rule of law and do what is right. For the first time, they see the stark distinction between the official law that guarantees equality and a fair trial and the hidden laws, based on bigotry and hatred, that emanate from the “secret courts of men’s hearts.”<sup>200</sup> Instead of a jury of his peers, Tom Robinson’s jury consists entirely of ignorant, bigoted, white, male dirt farmers from Old Sarum. Women and blacks are totally excluded from the jury, and middle-class whites refuse to serve because they do not want to jeopardize their business relationships. As the lone voice of reason, Atticus can and does battle valiantly for Tom’s freedom, but an irrational disregard of the law and the evidence is largely unavoidable because of the composition of the jury.

Atticus depicts Mayella as a pitiable, untrustworthy, and ignorant sexual aggressor, a portrayal that certainly humiliates her as such conduct by a white woman toward a black man was absolutely dishonorable and disgraceful in this time and place.<sup>201</sup> Mayella violated an unstated cultural code when “she kissed a black man,” as Atticus reminds the jury in his closing argument:

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 . . . . She knew full well the enormity of her offense, but because her desires were stronger

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197. “Separate but equal” was determined to be certainly separate, but not at all equal, in *Brown v. Board of Education*. See 347 U.S. 483 (1954).

198. The architecture of Maycomb’s courthouse, the supposed center of justice, symbolizes the clash between law and conflicting social norms. The courthouse presents an unoffensive vista to the north, but to the south a jarring jumble of classic columns and an ancient nonfunctional clock, suggesting a town frozen in its devotion to an unworkable past including a shameful history of maltreatment of a large segment of its own population.

199. Johnson, *supra* note 18, at 129. “The rulings handed down from ‘the secret courts of men’s hearts’ became the unwritten codes they lived by openly in defiance not only of all reason, but of the laws of the land.” Johnson, *supra* note 4, at 504.

200. Lee, *supra* note 1, at 241.

201. The defense was not based on an argument of consensual sex. Rather, Atticus argued that neither a rape nor any consensual sexual act occurred between Mayella and Tom. Mayella made a pass at Tom, who was struggling to get away when Bob Ewell happened on the scene. See *id.* at 204.

than the code she was breaking, she persisted in breaking it . . . What did she do? She tempted a Negro. She was white and she tempted a Negro. She did something that in our society is unspeakable. She kissed a black man . . . No code mattered to her before she broke it, but it came crashing down on her afterwards.<sup>202</sup>

But Atticus uses this evidence only to the extent necessary to defend Tom against the accusation of rape. Atticus questions Mayella at length about her miserable home life, moving Scout to wonder, "What on earth was her life like?"<sup>203</sup> Atticus seems to feel a modicum of genuine empathy toward the pathetic Mayella, but he does not let this interfere with his duty to represent his client. Atticus was simply trying to establish a motive for Mayella violating such a powerful social code, but his approach compels Scout to stand, however briefly, in Mayella's shoes.<sup>204</sup>

To adequately represent his client, Atticus must cross-examine Mayella closely about the alleged rape. The context is Alabama in the 1930s, with a white woman accusing a black man of rape, which is tantamount to a demand for his death. With Tom's life hanging in the balance, Atticus was obligated to vigorously cross-examine Mayella, even if that meant humiliating her. Atticus uses the fact that Mayella and her entire family are despised by everyone in Maycomb to undermine her credibility.<sup>205</sup> His use of demeaning and stereotypical arguments to discredit Mayella was the standard tactic at the time in representing an accused rapist. In this case, it also happened to be true. Because Atticus' goal is justice for Tom, not revenge against Mayella, Atticus does not try to score meaningless points against Mayella. He establishes but does not emphasize the fact that it was Bob Ewell and not Tom Robinson who beat Mayella. Neither does Atticus exploit the evidence of incest.

Atticus does not introduce medical evidence in the rape trial because there is none. Sheriff Tate never ordered a medical examination when Bob Ewell accused Tom of raping Mayella; he simply accepted Bob Ewell's word and arrested Tom. Atticus uses the only evidence that is available to him: Mayella's injuries, Tom's damaged left arm, Bob Ewell's left-handedness, and the perjury of Bob and Mayella Ewell. Tom is honest, genuine, believable, and sympathetic, but the

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202. *Id.* at 203-04.

203. *Id.* at 182.

204. *But see* Phelps, *supra* note 33, at 525 (finding Atticus' compassion for Mayella "feigned and unconvincing"). The Ewells as a family, and especially Bob Ewell, certainly present the greatest challenge to Atticus' otherwise seemingly endless capacity for empathy.

205. In order to deflate the traditional view of Atticus as an inspirational hero, Steven Lubet presents the novel theory that Mayella Ewell may have been telling the truth, which he supports with a postmodern reading of the text. *See* Lubet, *supra* note 196. His revisionist interpretation is interesting, but ultimately unconvincing.

jury discredits his testimony because of racial animus. Although Atticus destroys the credibility of Bob and Mayella on cross-examination, the jury still finds Tom guilty because an uneducated, all white jury simply cannot accept the word of a black man against the word of two whites, even if they are white trash. Furthermore, Tom's own testimony harms him because he violated another unwritten social norm. A black man, he had the "unmitigated temerity to feel sorry for a white woman."<sup>206</sup>

The jury does not believe Mayella, but because of race, "Tom was a dead man the minute Mayella Ewell opened her mouth and screamed."<sup>207</sup> Realistically, there was no presumption of innocence when a Southern white woman of any class accused a black man of rape.<sup>208</sup> Mayella may be white trash, but in opposition to a black man, she necessarily symbolizes pure and sacred white Southern womanhood. What Mayella did, in attempting to seduce Tom, kindles the jury's deepest fears about mixing of the races, that dilution would jeopardize the fragile house of cards that supports the white power structure. Although the South perceived even the slightest challenge a threat to white supremacy, the overriding fear was that surrounding interracial sex. Regardless of the stated subject matter of any decision or change, everything was filtered through the prism of that primal fear.<sup>209</sup> Thus the idea of pure white Southern womanhood, the linchpin for the entire structure of institutionalized racism, is not simply reified, it is deified. This fragile and unsubstantiated myth explains everything from the jury's willingness to side with Mayella to Aunt Alexandra's obsession with Scout's attire.

To reach their verdict, the jury necessarily relies on an entire catalog of negative stereotypes, despite Atticus' admonition in his closing argument that all of these unwarranted assumptions are not just evil, but indicative of the white trash mentality that personifies the Ewells: "that all Negroes lie, that all Negroes are basically immoral beings,

206. Lee, *supra* note 1, at 204.

207. *Id.* at 241.

208. "Once we admit racial animus into the courtroom, we abandon the presumption of innocence standard that is supposedly central to our jurisprudential traditions. As a result, our criminal justice system loses its integrity." Fair, *supra* note 154, at 408.

209. "It is indisputable that the *Brown* decision, ostensibly about school desegregation, was actually understood by many in the South as a dangerous amelioration of deadly serious taboos regarding sexual relations between black males and white females.[T]he twin fears of amalgamation and miscegenation resulting from 'mixed relations' between blacks and whites rested ultimately on the idea that marriage or sexual intimacy with blacks would degrade and eventually extinguish Anglo-Saxon civilization itself." Chura, *supra* note 79, at 117. As Claudia Johnson has observed, "the symbolic force attached to these women as white, female accusers of black men was enough to counteract reality." Johnson, *supra* note 4, at 495. Scout overhears Atticus telling Alexandra that he is "in favor of Southern womanhood as much as anybody, but not for preserving polite fiction at the expense of human life . . ." Lee, *supra* note 1, at 147.



that all Negro men are not to be trusted around our women.”<sup>210</sup> Atticus argues in vain against stereotyping, by pointing out that although some Negroes may lie or be immoral, those statements would necessarily be true of all groups.

The trial scene parallels the rabid dog scene. In both, Atticus possesses extraordinary skills that he does not flaunt. But when called upon, he quietly does his duty in both situations to the best of his ability. Atticus is not merely a “hired gun,” literally or figuratively. He truly believes that what he is doing is for the greater good. When Mayella accuses an innocent man of a capital crime, she is the human equivalent of the mad dog. Atticus may feel compassion for her,<sup>211</sup> as he no doubt does for the mad dog, but with an entirely appropriate motive, he destroys Mayella’s credibility just as certainly as he destroys the mad dog.

Clearly a victim of Bob Ewell’s racism, Tom elicits our sympathy. But Mayella is also a victim of her father. Although Atticus recognizes this, and we do as well, Mayella is less equipped to elicit our sympathy. Mayella’s role in victimizing Tom makes her a more culpable and less sympathetic victim than Tom. In addition, the race story is more effective here than the more subtle gender and class stories because race was the story Lee wanted to tell. The town’s white residents resent Atticus for representing Tom. They do not resent Atticus for humiliating both Mayella and Bob Ewell on the witness stand. Despite Mayella’s requisite victory over Tom, the trial elicits no sympathy for the Ewells. The Ewells may be white, but they are a disgrace to their race and an embarrassment to their town. Universal contempt continues to be the price they must pay for their dispensation from the laws and rules everyone else must follow.<sup>212</sup>

Atticus faces considerable risk and loss in negotiating the treacherous waters of his moral dilemma. In defending Tom Robinson, Atticus strives for justice under the natural law by challenging the shortcomings of the positive law and social mores. Atticus maintains his integrity without compromising himself or his principles, but it is a somewhat hollow victory. Tom’s case may be a moral victory for Atticus because he makes a valiant stand against racism, but it is both a legal defeat and a practical defeat. Despite his courageous effort, Atticus loses his case, his client ultimately loses his life, and Atticus and his children are subjected to abuse from their fellow citizens. At the

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210. Lee, *supra* note 1, at 204.

211. See *id.* at 181, 188.

212. See *id.* at 217-18, 248-51.

end, the inescapable and tragic truth is that Tom is dead. Any claim that Atticus has prevailed must contend with that fact.<sup>213</sup>

Atticus understands both the law and the social and cultural norms that influence this case, which dictate both resentment toward him for fighting for Tom and a guilty verdict regardless of the evidence. In his closing argument to the jury, Atticus states emphatically that the court is the one place where all men are created equal.<sup>214</sup> If Atticus actually believed that, he should expect to win this case, given the overwhelming evidence in Tom's favor. Atticus knows from the beginning that he cannot win, but he believes in the integrity of the courts and the jury system, not as an ideal, but as a living, working reality that necessarily depends on the routine performance of duty by good people. He wants to impress upon the jury that they have an opportunity to play a positive role in that reality by doing their duty and setting Tom free. But because of the stranglehold of the myth of white Southern womanhood and the fear of any real or imagined threat to white supremacy that informs every aspect of their lives, the jury declines the opportunity to render a just verdict. Tom's situation dramatically illustrates how the jury system, lofty in its ideal, is no better in practice than the members of the community who serve on juries.

### *Community Standards*

Much like the Chorus in an ancient Greek play, the depiction of Maycomb County suggests the significant role popular opinion often plays in the fate of a moral hero. Maycomb represents the establishment—often weak, sometimes irrational, typically lacking the courage to stand up for what is right, and occasionally downright venal. Lee's description of Maycomb is detailed and evocative.<sup>215</sup>

Maycomb is a small town, and it is characterized by certain negative traits stereotypically associated with small southern towns: passion, raw emotion, prejudice, bias, narrow vision, and irrational attachment to the past. In some ways, however, Maycomb is similar to many towns and cities, even contemporary ones. "White men have most of the wealth and influence; women disproportionately maintain the domestic sphere"; minorities are too often ensnared by the criminal jus-

213. Atticus' loss would be significantly greater but for several "deus ex machina": Scout outside the courthouse, when the mob comes to lynch Tom, and Boo Radley saving Jem and Scout from Bob Ewell's murderous intent. *Id.* at 154, 262-63.

214. *Id.* at 205.

215. See, e.g., *id.* at 5, 8-10, 20-21, 26-27, 30-31, 88, 118, 122, 129, 130-32, 145-55, 157-60, 162-63, 165, 170-71, 182-83, 192, 200-01, 212-13, 215, 220-22, 226-27, 234, 236, 240-41, 243, 245, 250-51, 257-58, 275-76. The description of the Radley place is especially spooky. See *id.* at 8-9.

tice system; obvious and rigid class distinctions divide the society; and de facto racial segregation is widespread.<sup>216</sup>

Maycomb is also an old town with old beliefs and old habits. Because of its geographic location, it did not grow in population. Instead, “[i]t grew inward. New people so rarely settled there, the same families married the same families until the members of the community looked faintly alike.”<sup>217</sup> Scout’s description of Maycomb, if not incestuous, certainly evokes the narrowmindedness and stifling atmosphere that are usually associated with excessive inbreeding. Perhaps the only reason Maycomb survived at all was that it was the county seat, and its primary reason for existence was government.

Besides time and geography, Maycomb’s provincial attitudes can be partially explained, although not excused, by the historical era in which its citizens live. Maycomb is a microcosm of the rural, depression-era South, mired in an unpredictable economic situation. Fear, instability, unemployment, stress, economic deprivation, and anxiety often produce irrational behavior. In Maycomb, they reinforce a pre-existing bulwark of racial bigotry.<sup>218</sup> Maycomb distrusts outsiders and clings tenaciously to the past. Racism, both overt and subtle, is deeply ingrained in the fabric of the culture,<sup>219</sup> especially the timeworn tradition of strict racial segregation. Poverty and ignorance are endemic. Scout’s matter-of-fact description of her first-grade class is horrifying.<sup>220</sup> The majority of these desperately poor children are without shoes, dressed in mended and patched clothes, and lacking either lunch or the money to purchase any. The worst of them are lice-ridden and downright filthy.

Even the architecture of Maycomb suggests disorientation, a town with a confused moral sense lost in the fog of the past. Tom Robinson’s detention in the Maycomb County jail, where he narrowly escapes being lynched, and his jury trial in the Maycomb County Courthouse, where he is condemned to death despite overwhelming exculpatory evidence, make a mockery of democratic standards of justice. Lee describes both the courthouse and the jail, typical symbols of the justice system, in evocative but trenchantly satirical language.

The Maycomb jail was the most venerable and hideous of the county’s buildings. . . . Starkly out of place in a town of square-faced stores and steep-roofed houses, the Maycomb jail was a miniature Gothic joke one cell wide and two cells high, complete with tiny battlements and

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216. See Fair, *supra* note 154, at 411.

217. Lee, *supra* note 1, at 131.

218. See Johnson, *supra* note 4, at 489-90.

219. Maycomb is a “society that rules its members from the heart’s fears and hatreds, and in defiance of written law and reason.” *Id.* at 489.

220. Lee, *supra* note 1, at 16-17, 19-20, 25-27.

flying buttresses. Its fantasy was heightened by its red brick facade and the thick steel bars at its ecclesiastical windows. . . . The jail was Maycomb's only conversation piece: its detractors said it looked like a Victorian privy; its supporters said it gave the town a good solid respectable look.<sup>221</sup>

Whether treated as a joke, a phantasmagorical dream, or a nightmare, Maycomb's institutions of justice are equally ineffectual.

Although Atticus is the reasonable foil for his town's prejudice and bias, as a citizen of Maycomb, he is always cognizant that he and his children are grounded in a society and a culture that they are accountable to as well. Atticus is not good because of his society; Atticus is good in spite of it.<sup>222</sup> His attitude toward Maycomb, whose values are so different from his, is to live and let live. Atticus is an eccentric among an entire community of eccentrics, "but he arrives at his own values through the exercise of his reason, quite independent of—even contrary to—the values held by his neighbors."<sup>223</sup> Atticus is, under the circumstances of time and place, an eminently reasonable man, but he is also a lonely man. Atticus reads while his neighbors play sports. He refuses to hunt or use a gun, except in the most exigent circumstances, in a gun-loving culture. Other than Miss Maudie and his brother Jack, who doesn't even live in Maycomb, Atticus stands alone as the voice of reason and moderation. His more progressive views on race are shared by very few other whites in his town. Even his sister, Alexandra, exhibits the bigotry typical for the era, although she is perhaps less venomous in her expression than others.

Despite the turmoil in the community that Tom Robinson's trial causes, Atticus remains an integral part of the fabric of Maycomb.<sup>224</sup> Atticus is steadfast in his belief in doing what is morally right, but he is no crusading reformer. Atticus is not simple, naive, or unrealistic. He is a pragmatist<sup>225</sup> with common sense and a firm grasp of his own moral integrity.<sup>226</sup> Atticus is clearly the intellectual superior to most of

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221. *Id.* at 150.

222. See Johnson, *supra* note 4, at 503. However, John Osborn suggests that our view of Maycomb is clouded because of the perspective of Scout, the child narrator. If we saw Maycomb as it really is—"a place where the rule of law does not exist, where murder is tolerated by the authorities, where racism is brutal and rampant, and where the jury system is a mockery"—we would also see that it is absurd to view Atticus as a reasonable man. Osborn, *supra* note 39, at 1141.

223. Johnson, *supra* note 4, at 503.

224. "It is important to understanding Atticus Finch to see that he was able to tell the truth about his community but still remain fond of his community . . ." SHAFER, *supra* note 4, at 7.

225. But Atticus' realism does not constitute moral relativism, as pragmatism is often understood today. He operates from established moral principles without being an ideologue.

226. Atticus is also a survivor. The time had not yet arrived when many Americans "could no longer reconcile national pronouncements of freedom and equality with apartheid in the United States." Fair, *supra* note 154, at 404.

the people in Maycomb, but because he neither flaunts his superior intellect and education nor condescends, generally he does not offend his neighbors. Although Atticus disagrees with the small-minded prejudice and racism of his friends and neighbors in Maycomb, he does not judge them. Although he recognizes their moral failings, his moral superiority does not make him smug. His voice of moderation and his exemplary behavior do combat the raw emotion and prejudice that generally permeate Maycomb, but Atticus does not directly challenge his neighbors' views or values.<sup>227</sup> He knows that one must go along to get along to some extent in a society with values radically different from his. But Atticus chooses his battles wisely. Because of his strong moral grounding, he understands intuitively where to draw the line between "live and let live" and standing up and confronting his society's immoral rules and norms.<sup>228</sup>

Atticus likes and respects his neighbors, even when they disagree with him, and he teaches his children to do the same. He repeatedly tells Jem, Scout, and Dill to mind their own business and respect the privacy of their eccentric neighbor, Boo Radley, an order the children, given their inordinate curiosity about the invisible Boo, find particularly difficult to obey. Mrs. Dubose's regular verbal abuse of his children and even her vitriolic racist remarks about Atticus' representation of Tom Robinson would prompt most people to respond in kind, but Atticus is unfailingly courteous to Mrs. Dubose, prompting Scout to observe, "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>229</sup> Atticus is able to see whatever good there may be even in a deeply flawed character like Mrs. Dubose, who shows moral courage in overcoming her morphine addiction.

The key to Atticus' integrity is that he is the same person, whether he is talking to the court, the jury, his clients, his children, or his friends and neighbors. He has an enormous respect for language, and he doesn't misuse it. In someone else, Atticus' diction could easily appear pompous, but it does not here because of his humility<sup>230</sup> and

227. See Ann Althouse, *Reconstructing Atticus Finch? A Response to Professor Lubet*, 97 MICH. L. REV. 1363, 1364 (1999).

228. Unlike a character like Sophocles' Antigone, who is incapable of going along to get along. Just as Atticus is criticized by some for not opposing more vigorously the injustices of racism and class discrimination in his society, Antigone is criticized for being so rigid and brittle in standing up for what she believed in and becoming a martyr. Antigone is criticized throughout the play by both Kreon and the Chorus for her rigidity. See generally Sophocles, *Antigone* (R. C. Jebb trans.) (1994) <http://classics.mit.edu/Sophocles/antigone.html>.

229. Lee, *supra* note 1, at 100.

230. His humility is authentic, not slick like that of a Uriah Heep. Uriah Heep is one of Charles Dickens' most memorable villains. Although Heep grovels in the most obsequious manner, always proclaiming his humility, he is actually cold, scheming, and conniving. See generally CHARLES DICKENS, *DAVID COPPERFIELD* (Penguin Books 1996) (1850).

unfailing courtesy to everyone he encounters. Because he is always reasonable, occasionally Atticus' behavior is misinterpreted. Atticus addresses Mayella on cross-examination in his usual courteous fashion, but Mayella thinks he is mocking her, and Judge Taylor must explain that Atticus is always polite to everyone.<sup>231</sup>

Curing Maycomb County of its "usual disease," an addiction to white power, presents a formidable challenge, even to someone with Atticus' moral strength. The crowd of men who come to warn Atticus about the danger of a lynch mob on the eve of Tom Robinson's trial consists of the same people they see every day: "merchants, in-town farmers; Dr. Reynolds was there; so was Mr. Avery."<sup>232</sup> This is Maycomb's establishment: timid, wary, afraid to take a moral stand or to support Atticus publicly, even if they know he is right. Attempting to alleviate the concerns of his friends and neighbors, Atticus says to Sheriff Tate, "Don't be foolish, Heck. This is Maycomb. . . . I don't think anybody in Maycomb'll begrudge me a client, with times this hard."<sup>233</sup> When Link Deas reminds Atticus that he has everything to lose from this case, Atticus' response shows his firm grasp of reality: "Link, that boy might go to the chair, but he's not going till the truth's told. And you know what the truth is."<sup>234</sup> Atticus prefaces this with his "dangerous question": "Do you really think so?" This question is rather like a warning shot across the bow to allow his opponent time to reconsider a rash thought or deed before it is too late, an approach he typically uses in playing checkers with Scout and debating with Jem.<sup>235</sup> Unlike Atticus, most of Maycomb's citizens lack moral courage and fall back on a reflexive defense of the status quo, rather than challenging it when it is wrong. The racism in Maycomb and the South is intractable because of the belief that without strict racial boundaries the white power structure would disintegrate.<sup>236</sup> That proposition is simply too frightening for most of Atticus' friends and neighbors to contemplate.

Sensing danger and desperate to get Atticus out of the situation, Jem yells that the telephone is ringing, and the men in the front yard scatter.<sup>237</sup> Atticus comes back into the house, and Jem confronts him directly, "They were after you, weren't they? They wanted to get you, didn't they?"<sup>238</sup> Atticus responds, "No son, those were our friends."<sup>239</sup>

231. Lee, *supra* note 1, at 181-82.

232. *Id.* at 146.

233. *Id.* at 145.

234. *Id.* at 146.

235. *Id.*

236. Johnson, *supra* note 4, at 490. "The vehemence with which these traditions were maintained is at the center of Harper Lee's novel." *Id.*

237. Lee, *supra* note 1, at 146.

238. *Id.*

Still suspicious, Jem asks if it was a gang, and Atticus says, “No, we don’t have mobs and that nonsense in Maycomb. I’ve never heard of a gang in Maycomb.”<sup>240</sup> Persisting, Jem says he remembers the Ku Klux Klan going after some Catholics one time, but Atticus responds, “Never heard of any Catholics in Maycomb either . . . you’re confusing that with something else. Way back about 1920 there was a Klan, but it was a political organization more than anything. . . . the Ku Klux’s gone . . . . It’ll never come back.”<sup>241</sup>

In this instance, Sheriff Tate is right and Atticus is wrong. This is the mid-1930s, and the Ku Klux Klan is alive and well throughout the South and not just as a political organization. Atticus is a perceptive, intelligent lawyer and a state legislator. Although his insight is invariably right on point, his perception here seems off. It is unlikely that he is mistaken or so naive as to be unaware of the violent and racist activity of the Klan. It is equally unlikely that this is wishful thinking, which would be entirely out of character with the otherwise consistent portrayal of Atticus throughout the novel. Thus, Atticus’ reassurances to Jem about the Ku Klux Klan and gangs in Maycomb must be just that – reassurances to set Jem’s mind at ease and not a statement of the facts as Atticus knows them. Likewise, Atticus’ apparently casual response to the sheriff’s serious concern was undoubtedly made to reassure his audience, which included Jem and Scout, who he knew were listening from the living room.<sup>242</sup>

In any event, Atticus is sufficiently concerned about the threat that he goes to the jail to make sure that nothing happens to Tom. When the lynch mob does show up at the jail later that evening, Atticus looks up from his newspaper, unsurprised. He calmly closes the newspaper, folds it deliberately, drops it into his lap, and pushes his hat to the back of his head. It is a lynch mob, and Atticus knows it, but he responds as calmly as if a group of friends had dropped by. Showing no discomposure, Atticus carries on a seemingly normal conversation with the men. Even when he realizes that the mob has sent the sheriff off on a bogus search, so they would not be interrupted, Atticus’ voice and attitude do not change. We will never know if Atticus’ attempt to reason with the homegrown lynch mob would have been successful, as he and Tom are saved by Scout bursting onto the scene and inadvertently talking Mr. Cunningham down from his deadly intent.<sup>243</sup>

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239. *Id.*

240. *Id.* at 146-47.

241. *Id.* at 147.

242. *Id.* at 145-47.

243. *Id.* at 150-55.

To some extent, Atticus tolerates racism, gender discrimination, and class discrimination and the polite fictions that support them,<sup>244</sup> because he cannot by himself change the society he lives in.<sup>245</sup> He is willing to work within the system, but he draws the line in the Tom Robinson case because of what is at stake.<sup>246</sup> Atticus challenges the mythic structure, the “polite fiction,” that surrounds the idea of Southern womanhood when Tom’s life hangs in the balance. He chooses to combat virulent racism the only way he knows how: by providing Tom with the best defense he can. Atticus does not seek out Tom’s case, but once he is assigned the case, he uses all his skill to defend Tom, even though he knows it is a losing battle.

Unwritten cultural norms also dictate appropriate behavior in Maycomb in less threatening situations. Scout and Jem try to find the owners of the two pennies left in the tree by the Radleys’ house. Their “ethical culture” allowed occasionally picking the neighbors’ flowers, getting milk from a neighbor’s cow, and picking scuppernongs, but money was different.<sup>247</sup> Property norms like “finders keepers” applied unless title could be proven in someone else. In addition, cultural norms that develop to respond to the needs within a particular setting may bear no logical connection outside that setting. In Maycomb, local custom conferred considerable responsibility unrelated to her job on Eula May, Maycomb’s leading telephone operator. She “was entrusted with issuing public announcements, wedding invitations, set-

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244. In 1992, Atticus Finch was charged and tried, but not necessarily convicted, in the popular legal press. Atticus, accused by the white people of Maycomb of an “excessive love of black people,” was now accused of racism. See Johnson, *supra* note 4, at 483. Monroe Freedman, a legal ethics professor from Hofstra, challenged the received wisdom of upholding Atticus as a moral and worthy role model for lawyers because Atticus served as a state legislator and a community leader in a segregated society, living as a “passive participant in that pervasive injustice.” Freedman, *supra* note 180, at 20. The reaction to Freedman’s column from the legal profession was swift, widespread, and severe. Freedman’s hyperbolic self-defense screed did little to assuage his critics, and Freedman was forced to concede that his report of the “death of Atticus Finch was premature.” See Monroe Freedman, *Finch, The Lawyer Mythologized*, Legal Times, May 18, 1992, at 25.

This controversy and Freedman’s concession only confirm Atticus’ stature as a mythic hero and the ongoing significance of the novel in both the individual and the national consciousness. Johnson, *supra* note 4, at 485. Contemporary assessments of Atticus as boringly good, in need of more cynicism, or lacking moral complexity are largely the result of 21st century cynical, postmodern perspectives, rather than any major failing in Atticus.

245. Although he has his detractors, Atticus has many more defenders, who consider him “a model of integrity, showing us how to persevere day-to-day when our contributions may be only modestly incremental.” Althouse, *supra* note 227, at 1364. Although he undoubtedly is morally superior to most of Maycomb, Atticus is neither smug nor condescending to his fellow citizens. He knows he is not capable of resolving all the problems that plague his town, but he does not give up. Instead, his behavior demonstrates a remarkable consistency, which is the essence of his moral integrity. “It is this moderation and willingness to continue to work within the system . . . and not any high degree of legal skill, that makes Atticus a paragon.” *Id.*

246. See Lee, *supra* note 1, at 146-47.

247. *Id.* at 35.



ting off the fire siren, and giving first aid instructions when Dr. Reynolds was away.”<sup>248</sup>

### *Education, Books, and Reading*

The importance Atticus places on written expression and reading cannot be overstated.<sup>249</sup> For Atticus, the written word is emblematic of civilization, human dignity, and reason, and he tries to cultivate this knowledge and appreciation in his children. That lesson seems to have worked. Scout is crestfallen when her first grade teacher tells her she can no longer read with Atticus: “Until I feared I would lose it, I never loved to read. One does not love breathing.”<sup>250</sup> Atticus’ love of books and reading, the law, literature, and reasoned discourse, all of which play a critical role in the moral education of his children, is evident on every page of the novel and is central to the way his children perceive and define him. Atticus’ major leisure activity is not playing sports, like other fathers, but reading, which his children initially see as a weakness. Atticus reads with Scout every evening, and she learns to read long before she ever starts school. At the end of the novel we see Atticus sitting at Jem’s bedside, reading.

In Scout and Jem’s ongoing struggles to make sense of the class distinctions in Maycomb, Jem finally decides that it is literacy that makes the difference: “Background doesn’t mean Old Family. I think it’s how long your family’s been readin’ and writin’.”<sup>251</sup> Atticus believes in the civilizing influence of reading, as a way of moving beyond ignorance and achieving wisdom and empowerment. The fact that Atticus is more enlightened than most of Maycomb is attributable directly to the fact that he is educated and well read.<sup>252</sup>

After the townspeople show up in the front yard on the eve of Tom Robinson’s trial to warn Atticus about the potential for a lynching, Atticus comes back into the house, goes to his chair, and picks up the evening paper, prompting Scout to observe: “I sometimes think Atticus subjected every crisis of his life to tranquil evaluation behind *The Mobile Register*, *The Birmingham News*, and *The Montgomery Advertiser*.”<sup>253</sup> When Scout and Jem and Dill sneak downtown to check on Atticus the night before Tom’s trial, they see Atticus sitting in one

248. *Id.* at 64.

249. The importance of reading is introduced early in the novel, when Dill introduces himself to Scout and Jem by announcing that he can read. *Id.* at 7. “The properties of setting in the novel are children’s books, grade school texts, many different local newspapers and national news magazines, law books, a hymnal, and Sir Walter Scott’s *Ivanhoe*.” Johnson, *supra* note 4, at 500.

250. Lee, *supra* note 1, at 18.

251. *Id.* at 226.

252. Besides being ignorant, backward, and prejudiced, the Cunninghams and the Ewells are portrayed as illiterate.

253. *Id.* at 146.

of his office chairs, propped against the front door of the county jail, reading. The extension cord he took with him when he left the house runs between the bars of a second-floor window and down the side of the building to provide reading light from its bare bulb. This is potent symbolism: Atticus is prepared to confront the lynch mob at the jail with a book and a reading lamp, rather than with a gun. The power of reading, reasoned discourse, and ideas replaces the power of the gun, to confront and triumph over brute force, racism, and emotional demagoguery. That is what makes us civilized. It is also the power of the nonviolent protest to bring about radical change that was preached by Martin Luther King and Mahatma Gandhi.

Lee and all of her admirable characters revere books and reading, but the novel's indictment of the formal educational system is devastating. Through the combined efforts of Atticus, Calpurnia, Miss Maudie and other adults in their lives, Scout and Jem are educated in spite of rather than as a result of the hopelessly inadequate public school system.<sup>254</sup> Scout's first day of school is a catastrophe.<sup>255</sup> Instead of rejoicing that Scout can read, Miss Caroline Fisher disdains Scout's literacy, criticizing her for reading and Atticus for teaching her to read.<sup>256</sup> This supposedly educated teacher tells Scout, "Your father does not know how to teach."<sup>257</sup> This is rich irony indeed. Atticus, who has had no formal training in teaching, shows vastly superior wisdom, knowledge, and insight. Any good teacher would love to have parents as involved as Atticus is in his children's education, but this teacher shows her deplorable ignorance by ridiculing it. How could any teacher in good conscience discourage reading?

Miss Fisher may have a college degree, but she is woefully ignorant; and on her first day of teaching, she becomes an object of ridicule because she refuses to learn. Her students, representing a cross-section of Maycomb, are also mostly ignorant, as a result of poverty and a lack of education. But Miss Fisher's ignorance is far more culpable because it results from insensitivity to the economic plight of her students and a complete lack of empathy. She is an adult, and she should know better. She makes no effort to understand the differences be-

254. Lee renders Alabama's system of "compulsory education a farcical enterprise." Sundquist, *supra* note 20, at 82.

255. Scout describes her school days as the state's "well-meaning but fruitless efforts" to teach her "group dynamics." Lee, *supra* note 1, at 32.

256. "Pathetically inept" is a more apt description of Miss Fisher. Erisman, *supra* note 23, at 31. "The society that imprisons Tom Robinson is the same one that imprisons Scout in the 'Dewey Decimal System' . . . . The practical result of Dewey's system on Scout is to . . . hinder reading and writing, and, along with it, individuality." Johnson, *supra* note 4, at 500.

257. Lee, *supra* note 1, at 17. Miss Fisher instructs Scout to tell her father not to teach her anymore. She also discourages Scout's writing – until it's "time" to learn it.

tween her students and her. Not merely oblivious, she is also judgmental.

Miss Fisher is unaware of the social norms in Maycomb that dictate that one does not offer charity to a Cunningham. Although the Cunninghams are poor, they are proud. All the six-year-olds in the first grade understand exactly why Walter Cunningham refuses the quarter, but Miss Fisher does not.<sup>258</sup> In an awkward attempt to be helpful, Scout tries to educate Miss Fisher about the community, but she is punished for her efforts. So Miss Fisher misunderstands the community—and misconstrues Scout's attempts to educate her—to her peril. Although Scout is the one who purportedly is being punished, the true punishment is the ridicule suffered by Miss Fisher as her class of six-year-olds laughs at her.<sup>259</sup> Miss Fisher fails to appreciate the difference between book learning and the common sense that comes from understanding the prevailing social norms.

Things have not improved much when Scout starts second grade. The teacher "still flashed cards at you and wouldn't let you read or write."<sup>260</sup> It also appears that Miss Fisher may not have learned much about social norms in the intervening year. "Miss Caroline's progress next door could be estimated by the frequency of laughter; however, the usual crew had flunked first grade again, and were helpful in keeping order."<sup>261</sup> The failure to understand and appreciate the importance of social and cultural norms creates this strange inversion, where six-year-olds try in vain to educate the teacher and maintain order in the classroom. Miss Fisher, the "real" teacher, loses the respect of the children in her class because she is judgmental and condescending, and she embarrasses her students instead of trying to understand them.

Atticus, on the other hand, teaches his children with gentleness, humor, and respect, although he does not hesitate to point out to Scout and Jem the dividing line between acceptable and unacceptable behavior. He repeatedly admonishes his children about respecting the privacy of the neighbors, especially the reclusive Boo Radley, about

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258. *See id.* at 19-20.

259. *Id.* at 19-22.

260. *Id.* at 58. Scout describes the first day of second grade: "As bad as the first, only worse." *Id.* at 57-58. Any remaining faith Scout may have had in the education system is further eroded when she overhears her teacher, Miss Gates, outside the courthouse after Tom Robinson's conviction. "[I]t's time somebody taught 'em a lesson, they were gettin' way above themselves, an' the next thing they think they can do is marry us." *Id.* at 247. This hypocrisy comes from the same teacher who, without a trace of irony, condemns Hitler for his persecution of the Jews. "That's the difference between America and Germany. We are a democracy and Germany is a dictatorship . . . . Over here we don't believe in persecuting anybody. Persecution comes from people who are prejudiced." *Id.* at 245.

261. *Id.* at 58.

whom the children are inordinately curious.<sup>262</sup> But Atticus corrects his children's errors without embarrassing them. He merely shakes his head at Scout when she twice makes inappropriate, rude remarks to Walter Cunningham at lunch.<sup>263</sup> He defines entailment for Scout without belittling Jem for getting it wrong. Atticus avoids embarrassing Jem by humorously correcting Jem's assessment of the contributions to society made by the Egyptians: When Jem tells Scout that the Egyptians invented toilet paper and perpetual embalming, Atticus tells Scout to simply delete the adjectives and she will have the facts.<sup>264</sup> Through his admirably consistent behavior day after day, Atticus teaches by example, as well as through discussion.

After her many transgressions on the first day of school, Scout feels like a criminal.<sup>265</sup> But she begins to see the relative value of Calpurnia's strict methods. Calpurnia does not bestow many rewards or compliments on Scout, but Calpurnia taught her to write, just as Atticus taught her to read. Scout never appreciated what Atticus and Calpurnia had taught her until she went to school and her teacher posed a threat to those gifts. Scout figures out fairly quickly the difference between those educated by the school system and the self-educated. Good citizenship does not necessarily come from what you learn in school. It is internalized from many sources. Atticus and his brother Jack were taught at home, but they seem to know everything. Jack is a successful physician, and Atticus is a fine lawyer and a state legislator. They are both good, successful citizens without the benefit of any formal schooling in good citizenship.

Lee rejects a rigid approach to education, where every child is thrust into the Procrustean bed of a single developmental sequence, in favor of Atticus' approach: a combination of reading, discourse, and training in sensitivity, wisdom, empathy, and compassion that one might characterize as human literacy. Jem got along well in a group or alone, not because of the "half-Decimal, half-Dunce cap" education he received in the school system,<sup>266</sup> but because of his love of books. That is the true education. Scout reads everything she can find, but she cannot believe that "twelve years of unrelieved boredom" is what the state had in mind for her.<sup>267</sup>

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262. *Id.* at 40-41, 49.

263. *Id.* at 24.

264. *Id.* at 59.

265. She drags herself home, "weary from the day's crimes." *Id.* at 29. Perhaps Scout's teacher considers her reading and writing before the proper time a crime because "reading and writing are means of empowerment that place her out of her teacher's control." Johnson, *supra* note 4, at 501.

266. Lee, *supra* note 1, at 32.

267. *Id.* at 33.

Because Scout has known how to read for as long as she can remember, she assumes all adults know how to read. Thus she is shocked to learn that hymn books would be wasted at Calpurnia's church, even if they were affordable, because only about four people in the entire congregation can read. Fascinated by this discovery, Scout quizzes Calpurnia about where she went to school and how she learned to read. Coming from a home rich in reading material, Scout and Jem are astonished to learn that Calpurnia learned to read and taught her son Zeebo to read from only two books: the Bible and Blackstone's Commentaries on the Laws of England. She tells them, "They were the only books I had. Your granddaddy said Mr. Blackstone wrote fine English."<sup>268</sup>

### *Religion*

Religion and religious values can play a role, for good or for ill, in enforcing rules by imposing behavioral standards on believers. Although formal religion permeates the society of Maycomb at all levels, it does not appear to be the source of Atticus' unique moral value system. Certainly Atticus is religious in a conventional sense. He attends church, but that is true of everyone in Maycomb. Going to church was Maycomb's "principal recreation," which suggests that religion was primarily a social activity and not the source of serious moral values, such as those held by Atticus.<sup>269</sup>

The extraordinary empathy that characterizes Atticus would certainly not describe most of his fellow church-going citizens. The compassion of most of Maycomb's residents extends only to their own kind or to those at a safe distance, like the far-flung primitive Mrunas, the object of the Missionary Society's dubious benevolence. Other than token expressions of charity, like baskets at Christmas, it certainly does not extend to the Ewells with their houseful of neglected and abused children. Even superficial gestures are denied to the black population; instead, they are relegated to permanent outsider status, qualified only for manual and menial labor, doomed to live out beyond the dump, and blamed for anything that goes wrong in the town.

The references to Atticus and religion are meager and not particularly positive. Any reference to the actual influence of religion on Atticus is nonexistent. When he gives Jem and Scout air rifles for Christmas, Atticus says he would prefer they shoot at cans in the backyard but if they want to shoot birds, they can shoot blue jays, but to remember that "it's a sin to kill a mockingbird."<sup>270</sup> Atticus' unusual

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268. *Id.* at 125.

269. *Id.* at 9.

270. *Id.* at 90.

reference to sin so surprises Scout that she asks Miss Maudie about it. Atticus explains his decision to represent Tom by saying that he could not go to church and worship God if he refused the case. Because of the strong moral code that Atticus lives by and tries to teach his children, Atticus is more accurately characterized as a secular humanist.<sup>271</sup> The source of his natural law values is not his religion, but his rational mind.<sup>272</sup>

In general, organized religion is not treated kindly in the novel. The standard religion of most of the townspeople, either Baptist or Methodist, is the origin of the sanctimonious and mean-spirited missionary society, misogynist preachers, and a churchgoing lynch mob.<sup>273</sup> Extreme fundamentalist religions fare even worse. The Radleys, who belong to a very strict religious sect,<sup>274</sup> lock Boo in the house for years because of minor youthful indiscretions. The Radleys' rigid religious views create other social eccentricities as well. Unlike their neighbors, they worship at home, rather than attending church, and Mrs. Radley did not belong to a missionary circle. But their most egregious offense appears to be a lack of hospitality, unforgivable in a small, close-knit town like Maycomb. "The shutters and doors of the Radley house were closed on Sundays, another thing alien to Maycomb's ways . . . . Of all days Sunday was the day for formal afternoon visiting . . . . But to climb the Radley front steps . . . of a Sunday afternoon was something their neighbors never did."<sup>275</sup>

Miss Maudie tells Scout the story of a group of fundamentalist foot washing Baptists who walked by her house one day and told her she was going to hell because of her flowers.<sup>276</sup> At Scout's astonishment, Miss Maudie explains that the foot washers believe that anything that is pleasure is a sin, and that they thought she spent too much time "in God's outdoors and not enough time inside the house reading the Bible."<sup>277</sup> Scout's "confidence in pulpit Gospel lessened" at the prospect of Miss Maudie, one of her favorite people, "stewing forever in various Protestant hells."<sup>278</sup> When Scout questions Miss Maudie about this discrepancy, Miss Maudie responds that the foot washers think

271. Secular humanism is a philosophy that espouses a person's capacity for self-realization through an emphasis on reason, ethics, and justice, rather than religion and the supernatural, as the basis of moral reflection and decision-making. See Council for Secular Humanism, [http://www.secularhumanism.org/index.php?section=main&page=what\\_is](http://www.secularhumanism.org/index.php?section=main&page=what_is) (last visited Apr. 5, 2010).

272. See Johnson, *supra* note 4, at 509.

273. See *id.*

274. Miss Maudie called them "foot washing Baptists," to distinguish them from the usual Baptists, which described her and probably most of the townspeople. Lee, *supra* note 1, at 44.

275. *Id.* at 9.

276. *Id.* at 44.

277. *Id.*

278. *Id.*

that women are a sin by definition because they take the Bible literally. She condemns those who abuse the Bible's teachings as worse than others who get drunk, a fairly serious indictment coming from a Southern Baptist.

Despite her young age, Scout understands the difference between Miss Maudie, who is not particularly religious, but is one of the few truly good people in her town, and the gossipy Stephanie Crawford, who does "good works," but whom no one would trust. She cannot understand how religion could teach that someone as reasonable as Miss Maudie could be condemned to hell simply for enjoying her flowers. Because of the influence of Atticus and neighbors like Miss Maudie, Scout is beginning to develop an intuitive sense of what is good. But her faith in organized religion is weakened by contrast.

The fire and brimstone sermon that Reverend Sykes delivers when Calpurnia takes Scout and Jem to her church is familiar to them. Too young to be offended by the harshly negative view of women espoused by traditional religion, Scout nonetheless notices this recurrent theme.

His sermon was a forthright denunciation of sin . . . he warned his flock against the evils of heady brews, gambling, and strange women. Bootleggers caused enough trouble in the Quarters, but women were worse. Again, as I had often met it in my own church, I was confronted with the Impurity of Women doctrine that seemed to pre-occupy all clergymen.<sup>279</sup>

Aunt Alexandra's missionary society meeting reveals the stark hypocrisy and superficiality of organized religion. Although this disturbing blend of blatant racism and pious gentility is hardly the most auspicious setting for self-improvement, Scout is trying to learn to act like a lady to please Aunt Alexandra.<sup>280</sup> But Scout also learns something about "Christian charity" as it is practiced by the bigoted society matrons of Maycomb. The conversation of the missionary society ladies begins with a heartfelt discussion of their sympathy for the far-away Mrunas, a primitive and squalid tribe with "no sense of

279. *Id.* at 122. But to Scout's amazement, Rev. Sykes also used the pulpit to call attention to individual lapses from grace, as well as counting the money from the offering as soon as it was collected. He then announced that because it was not enough, no one could leave until an amount sufficient to help Helen Robinson while Tom was in jail had been given. *Id.*

280. Scout's effort is largely for the benefit of Aunt Alexandra, as Scout shows little interest in the circumscribed and stifling existence of Southern ladies. "I was more at home in my father's world. People like Mr. Heck Tate did not trap you with innocent questions to make fun of you . . . Ladies seemed to live in faint horror of men, seemed unwilling to approve wholeheartedly of them. But I liked them. There was something about them, no matter how much they cussed and drank and gambled and chewed; no matter how undelectable they were, there was something about them that I instinctively liked . . . they weren't—[h]ypocrites." *Id.* at 233-34.

family,"<sup>281</sup> whose existence is dominated by poverty, darkness, and immorality.<sup>282</sup>

The conversation then moves easily<sup>283</sup> to thinly disguised criticism of Atticus in his own house (for representing Tom Robinson) and a stunning demonstration of their intolerant attitudes toward the racial minorities in their midst. Without mentioning his name, they describe Atticus as "[g]ood but misguided," and they blame him for the gloomy attitude of their servants after Tom's trial.<sup>284</sup> Apparently sympathy is much easier to practice when the object is half a world away. With appalling insensitivity, Mrs. Merriweather denounces her black household help for sulking after Tom Robinson's conviction. She relates the conversation she had with her cook, Sophy, the day after Tom's trial.

I tell you there's nothing more distracting than a sulky dardy . . . Just ruins your day to have one of 'em in the kitchen. I said, 'Sophy, . . . you simply are not being a Christian today. Jesus Christ never went around grumbling and complaining . . . [Y]ou never ought to let an opportunity go by to witness for the Lord.'<sup>285</sup>

Besides their black servants, the criticism is directed toward Helen Robinson, Tom's wife. Scout mistakenly surmises that they are referring to Mayella Ewell, but they cannot criticize Mayella. Although she may be an embarrassingly anemic example of the type, Mayella, because she is white, does represent mythologized Southern womanhood, an idea in which all of these women are irrevocably invested. With an abundance of self-righteousness and without a trace of irony, the missionary society condemns the Northerners who freed the slaves:

Hypocrites, . . . born hypocrites. At least we don't have that sin on our shoulders down here. . . . 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. Down here we just say you live your way and we'll live ours.<sup>286</sup>

281. *Id.* at 228.

282. *Id.* at 230. "Mrs. Merriweather's large brown eyes always filled with tears when she considered the oppressed." *Id.*

283. Although the ladies in the Missionary Society move easily from sympathy for the Mrunas to criticizing Atticus, this transition is quite jarring for the reader.

284. *Id.* at 232. The missionary society is the equivalent of the lynch mob that comes to the jail in the middle of the night. "That their destruction is psychological and waged with tongues instead of guns makes them no less violent . . ." Johnson, *supra* note 4, at 506.

285. Lee, *supra* note 1, at 232. Although Mrs. Dubose is a virulent racist, she is a more sympathetic character than the hypocritically racist missionary society, for whom Lee reserves some of her harshest condemnation. The rich irony and devastating satire of this scene are worthy of any Charles Dickens novel. See, e.g., Charles Dickens, *Bleak House* 34 (W.W. Norton Co. 1977) (1853) (providing a satiric description of Mrs. Jellyby's earnest charitable endeavors while she neglects her family).

286. Lee, *supra* note 1, at 234. The final insult is to First Lady Eleanor Roosevelt: "I think that woman, that Mrs. Roosevelt's lost her mind – just plain lost her mind coming down to Birmingham and tryin' to sit with 'em." *Id.*



Atticus' entry into the middle of this sanctimonious pontification with the sobering news that Tom has been killed creates "one of the most chilling juxtapositions in the book,"<sup>287</sup> reminding us that such bigotry and prejudice have violent and deadly consequences in the real world. The lessons Scout learns from the Missionary Society about hypocrisy, prejudice, and mean-spiritedness undercut Atticus' valiant efforts to convince Scout and Jem that the people of Maycomb are not as bad as the jury that convicted Tom.<sup>288</sup>

#### CONCLUSION

Representing the transcendent moral values of natural law that are embodied in good positive law in our Constitution, Atticus Finch must confront in his daily life the conflicting positive law and social norms reflected in the Jim Crow laws that are prevalent in his town of Maycomb. Atticus is the ultimate reasonable man, whether he is teaching his children moral values or interacting in the public sphere with his neighbors, clients, or the court. This consistency is the source of both his integrity and the difficulties he encounters. Although he is not successful in every endeavor, we admire Atticus' moral courage.

*To Kill a Mockingbird* is ultimately an optimistic novel. Although reason is challenged by the Jim Crow laws, the benighted attitudes of Maycomb, and Tom's jury, reason wins out in the novel. The adult, mature approach to problem-solving reflected in the natural and positive law that are championed in the novel leads to a more satisfactory conclusion than the primitive reactionary approach reflected in the social norms of Maycomb County. Of course, there are significant sacrifices in the struggle between the values of natural law and conflicting cultural norms: the death of Tom, the endurance of racism, and the disillusionment of children who once believed the whole world was as good as that exemplified by their father, Atticus Finch. *To Kill a Mockingbird* has remained popular since its publication in 1960, at least partly because it evokes the lawyer as a hero, as a gentle man who steadfastly believes in the truth and who believes in the essential decency of humankind. "There is hope in the fact that readers . . . are drawn to such goodness."<sup>289</sup>

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287. Phelps, *supra* note 33, at 516.

288. See Johnson, *supra* note 4, at 507.

289. Timothy Hoff, *Influences on Harper Lee: An Introduction to the Symposium*, 45 Ala. L. Rev. 389, 401 (1994).