THE ETHICS OF ATTICUS FINCH REVISITED

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June 13, 2016
ATTICUS FINCH

• *To Kill a Mockingbird* won Pulitzer Prize in 1961.
• Has sold more than 40 million copies worldwide.
• Voted Best Novel of the 20\textsuperscript{th} Century by readers of *Library Journal* in 1999.
• Voted #1 Book You Must Read Before You Die by British librarians in 2006.
Atticus Finch, cont’d

• Atticus Finch voted #1 Greatest Film Hero of All Time by American Film Institute in 2003.
• Named Favorite Fictional Lawyer by ABA Journal in 2010.
• Voted “Most Inspiring Character in Literature” in Great Britain in 2016.
A PARAGON OF LEGAL ETHICS?

• He is appointed to represent Tom Robinson, a black man accused of raping a white woman.
• He continues to represent Robinson despite disapprobation of his community.
• He stands up to a lynch mob in defense of his client.
• He doesn’t just make a pro forma defense – he “aims” to defend him.
• He urges the jurors to overcome their prejudices and to believe Robinson’s testimony.
Is Atticus a Model of Ethical Behavior?

• First code of legal ethics was adopted by the Alabama Bar Association in 1887.

• Preamble states:

  “The purity and efficiency of judicial administration, which, under our system, is largely government itself, depend as much upon the character, conduct, and demeanor of attorneys in this great trust, as upon the fidelity and learning of courts or the honesty and intelligence of juries."
1887 Alabama Code of Ethics

• Based in part on the *Resolutions* of David Hoffman (1784-1854), a Baltimore lawyer and legal educator.

• Hoffman believed that the paramount guide to legal ethics was the lawyer’s own conscience:

• “I am resolved to make my own, and not the conscience of others, my sole guide. What is morally wrong cannot be professionally right.” Resolution XXXIII.
ABA Canons of Ethics

• First adopted in 1908
• Based to some extent upon the 1887 Alabama Code of Ethics
• Also based on 1854 *Essay on Professional Ethics* by George Sharswood (1810-1883), Law Professor at University of Pennsylvania

• Sharswood emphasized the adversary process and the lawyer’s duty to zealously advocate the client’s position:
“[The lawyer] is not morally responsible for the act of the party in maintaining an unjust cause, nor for the error of the court, if they fall into error, in deciding it in his favor. The court or jury ought to hear and weigh both sides; and the office of the counsel is to assist them doing that, which the client in person, from wanting of learning, experience, and address, is unable to do in a proper manner. **The lawyer, who refuses his professional assistance because in his judgment the case is unjust and indefensible, usurps the function of both judge and jury.**"
Sharswood, cont’d

• With respect to criminal defense, Sharswood asserts:

• “[T]he advocate [should] exert all of his ability, learning, and ingenuity, . . . even if he should be perfectly assured in his own mind of the actual guilt of the prisoner.”
Sharswood, cont’d

• However, in civil cases, Sharswood’s position is more nuanced:

• An attorney has “an undoubted right, and [is] in duty bound, to refuse to be concerned for a plaintiff in the legal pursuit of a demand, which offends his sense of what is just and right.”

• It is “an immoral act to afford that assistance, when his conscience t[ells] him that the client [is] aiming to perpetrate a wrong through the means of some advantage the law may have afforded him.”
ABA Canons of Ethics

Canon 15: How Far a Lawyer May Go in Supporting a Client’s Cause

“The lawyer owes ‘entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability,’ to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public unpopularity should restrain him from the full discharge of his duty.
“In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of the law or any manner of fraud or chicane. He must obey his own conscience and not that of his client.”
Bringing Civil Cases

• Canon 30:

“The lawyer must decline to conduct a civil cause or to make a defense when convinced that it is intended merely to harass or to injure the opposite party or to work oppression or wrong. . . . His appearance in Court should be deemed equivalent to an assertion on his honor that in his opinion his client’s case is one proper for judicial determination.”
Declining Representation

• Canon 31
• “No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment. Every lawyer upon his own responsibility must decide what employment he will accept as counsel, what causes he will bring into Court for plaintiffs, what cases he will contest in Court for defendants.”
Canon 4 – Criminal Defense

• Canon 4 provides:
  • “A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts on his behalf.”
“Let this cup pass from me”

• Discussing the case with his brother Jack, Atticus says, “You know, I’d hoped to get through life without a case of this kind, but John Taylor pointed at me and said, ‘You’re It.’”
Role of Conscience for Atticus Finch

• Atticus explains to Scout why he cannot abandon Robinson’s case, despite opposition from his family and community:

• “This case, Tom Robinson’s case, is something that goes to the essence of a man’s conscience – Scout, I couldn’t go to church and worship God if I didn’t try to help that man.”
[8] Many of a lawyer's professional responsibilities are prescribed in the Rules of Professional Conduct, as well as substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, and to exemplify the legal profession's ideals of public service.
Tennessee Rule of Professional Conduct 6.2

RULE 6.2: ACCEPTING APPOINTMENTS
A lawyer shall not seek to avoid appointment by a tribunal to represent a person except for good cause, such as:
(a) representing the client is likely to result in a violation of the Rules of Professional Conduct or other law;
(b) representing the client is likely to result in an unreasonable financial burden on the lawyer; or
(c) the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer’s ability to represent the client.
Appointed Counsel

[2] For good cause a lawyer may seek to decline an appointment to represent a person who cannot afford to retain counsel or whose cause is unpopular. Good cause exists if the lawyer could not handle the matter competently, see RPC 1.1, or if undertaking the representation would result in an improper conflict of interest, for example, when the client or the cause is so repugnant to the lawyer as to be likely to impair the client-lawyer relationship or the lawyer’s ability to represent the client.
Challenges to Ethics of Atticus Finch

• Monroe Freedman
Professor of Law
Hofstra University
1928-2015
Freedman Critique, cont’d

Atticus “’hoped to get through life without a case of this kind.’ It means that Atticus Finch never in his professional life voluntarily takes a pro bono case in an effort to ameliorate the evil--which he himself and others recognize--in the apartheid of Maycomb, Alabama.”
Freedman Critique, cont’d

“Here is a man who does not voluntarily use his legal training and skills—not once, ever—to make the slightest change in the pervasive social injustice of his own town. Atticus Finch is, after all, a skilled lawyer, a friend of the rich and powerful, and for many years a member of the state legislature. . . . Could he not introduce one bill to mitigate the evils of segregation? Could he not work with Judge Taylor in an effort to desegregate the courthouse? Could he not take, voluntarily, a single appeal in a death penalty case? And could he not represent a Tom Robinson just once without a court order to do so?”

• Monroe H. Freedman, Atticus Finch – Right and Wrong, 45 Ala. L. Rev. 473 (1994)
• A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should:

  (a) provide a substantial portion of such services without fee or expectation of fee to:

  (1) persons of limited means; or

  (2) charitable, religious, civic, community, governmental, and educational organizations in matters that are designed primarily to address the needs of persons of limited means; . . . .
Challenges to Atticus’s Ethics, cont’d

Steven Lubet
Professor of Law
Northwestern Univ.
• Atticus chose to use the “‘she wanted it’ defense,” which was “demeaning and stereotyped.” Atticus “employed most, if not all, of the well-worn negative conventions historically used to debase and discourage rape victims.”

• Atticus “asked the jury to substitute one of their prejudices for another.”
“Here is what it said about Mayella: She was so starved for sex that she spent an entire year scheming for a way to make it happen. She was desperate for a man, any man. She repeatedly grabbed at Tom and wouldn't let him go, barring the door when he respectfully tried to disentangle himself. And in case Mayella had any dignity left after all that, it had to be insinuated that she had sex with her father.”

Tennessee Rule of Professional Conduct
1.3

A lawyer shall act with reasonable diligence and promptness in representing a client.

Comment
[1] A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client’s cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client’s behalf.
Comment [1] cont’d

A lawyer is not bound, however, to press for every advantage that might be realized for a client. For example, a lawyer may have authority to exercise professional discretion in determining the means by which a matter should be pursued. See RPC 1.2. The lawyer’s duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect.
Challenges to Atticus’s Ethics cont’d

Malcolm Gladwell
Canadian journalist
Staff writer for *The New Yorker*
Author of *Outliers* and *Blink*
Gladwell Critique, cont’d

• According to Gladwell, Atticus’s “moral test” comes at the end of the novel, when the sheriff is determined to cover up Boo Radley’s killing of Bob Ewell.

• When the sheriff declares that Ewell fell on his knife, Atticus asks Scout, “Can you possibly understand?”
Gladwell Critique, cont’d

• Here is Gladwell’s response:

• “Understand what? That her father and the Sheriff have decided to obstruct justice in the name of saving their beloved neighbor the burden of angel-food cake?”
Tennessee Rule of Professional Conduct 8.4(c)

It is professional misconduct for a lawyer to:
(c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; . . .
Final Verdict on Atticus Finch?

• Harper Lee’s first novel, Go Set a Watchman, was published on July 14, 2015.
Go Set a Watchman - Discovery

• The discovery of the manuscript was announced by Lee’s publisher, HarperCollins, in February 2015, a few months after the death of Harper Lee’s sister Alice.

• According to a statement by Harper Lee’s attorney, Tonja Carter, the manuscript was discovered in 2011 in Lee’s safe deposit box.
Go Set a Watchman - Discovery, cont’d

• However, inconsistent statements by the participants have led to skepticism about the discovery and about Lee’s consent to publish.

• BUT the novel also suffers from its audience’s ambivalence: We wanted more from Harper Lee, but dreaded it as well. Could anything else come up to the standard of *To Kill a Mockingbird*?
Michigan Bookstore Offers Refunds on Harper Lee's Novel *Go Set a Watchman*

- Brilliant Books in Traverse City, Michigan, posted a blog on its website warning customers that the story is "not a sequel or a prequel to *To Kill a Mockingbird*. Neither is it a new book. It is a first draft that was originally, and rightfully, rejected."

Maria Coder, People Magazine, Aug. 7, 2015
Joni Rodgers, Boston Globe, July 15, 2015

“‘Go Set a Watchman’ is a novel we can love”

“Like most people who love ‘To Kill a Mockingbird,’ I came skeptically to ‘Go Set a Watchman.’ Would it be a buried treasure or a hijacked rough draft? Turns out, it’s neither. And both. I loved it for exactly what it is: a brilliantly written, underedited, beautiful Southern novel about a young woman who discovers her father is not a god.”
Portrayal of Atticus Finch

• Atticus is neither the protagonist nor the hero of *Go Set a Watchman*.

• The protagonist is 26-year-old Jean Louise Finch, who is making her fifth annual trip home to Maycomb, Alabama from New York City, where she now works.

• The novel is set immediately after the Supreme Court’s decision in *Brown v. Board of Education*, May 31, 1955.
He is 72 years old, arthritic, and rather crotchety.

Amasa Coleman Lee
Portrayal of Atticus Finch, cont’d

• He has taken on an associate, Henry “Hank” Clinton, a childhood friend of Jean Louise, with whom she has a dating relationship.

• The first half of the novel is devoted to Jean Louise’s discovery of her father’s reaction to the Brown v. Board decision.

• The second half is devoted to a series of dialogues, most importantly, between Jean Louise and her father.
[Warning: Some of the sentiments and language that follows are offensive.]
Atticus’s Position on *Brown vs. Board*

Explains that he attended the Citizens’ Council meeting because of “the Federal Government and the NAACP. . . . I’d like very much to be left alone to manage my own affairs in a live-and-let-live economy. I’d like for my state to be left alone to keep house without advice from the NAACP, which knows next to nothing about its business and cares less. That organization has stirred up more trouble in the past five years---”
“Negroes down here are still in their childhood as a people. . . They’ve made terrific progress in adapting themselves to white ways, but they’re far from it yet. They were coming along fine, traveling at a rate they could absorb, more of ‘em voting than ever before. Then the NAACP stepped in with its fantastic demands and shoddy ideas of government – can you blame the South for resenting being told what to do about its own people by people who have no idea of its daily problems?”
Atticus’s Ethical Dilemma

• Calpurnia’s grandson, Frank, has been arrested after driving drunk and killing a white pedestrian.

• The sheriff calls Atticus to bail him out, and Hank tells the sheriff that Atticus would not take the case.

• Atticus responds:
Atticus’s Ethical Dilemma, cont’d

“You shouldn’t have done that, Hank. . . . Of course we’ll take it. . . . I suspect when we know all the facts in the case the best that can be done for the boy is for him to plead guilty. Now, isn’t it better for us to stand up with him in court than to have him fall into the wrong hands? . . . The NAACP-paid lawyers are standing around like buzzards down here waiting for things like this to happen---”
Atticus’s Ethical Dilemma, cont’d

“They watch and wait, just for some felony committed by a Negro against a white person . . . [I]n they come and . . . demand Negroes on the juries in such cases. They subpoena the jury commissioners, they ask the judge to step down, they raise every legal trick in their books . . . to force the judge into error. Above all else, they try to get the case into a Federal court where they know the cards are stacked in their favor.”
“[We can] stem the tide a little bit this way. . . . [It’s a] good thing he asked for one of the Maycomb lawyers . . . “
Tennessee Rule of Professional Conduct

1.7

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

. . .

(2) there is a significant risk that the representation of one or more clients will be materially limited by . . . a personal interest of the lawyer.
Comment

[8] Even where there is no direct adversity between clients, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client.
The mere possibility of subsequent harm does not itself require disclosure and consent. The critical questions are: what is the likelihood that a difference in interests will eventuate and, if it does, will it materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client?
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. . . .

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What Is the Verdict on Atticus Finch as a Paragon of Legal Ethics?