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ESSAY

THE MORAL THEOLOGY OF ATTICUS FINCH*

Thomas L. Shaffer**

The forbearing use of power does not only form a touchstone, but the manner in which an individual enjoys certain advantages over others is a test of a true gentleman.

The power which the strong have over the weak, the employer over the employed, the educated over the unlettered, the experienced over the confiding, even the clever over the silly—the forbearing or inoffensive use of all this power or authority, or a total abstinence from it when the case admits it, will show the gentleman in a plain light. The gentleman does not needlessly and unnecessarily remind an offender of a wrong he may have committed against him. He can not only forgive, he can forget; and he strives for that nobleness of self and mildness of character which impart sufficient strength to let the past be but the past. A true man of honor feels humbled himself when he cannot help humbling others.

—Robert E. Lee***

Atticus Finch was a lawyer in private practice in the rural town of Maycomb, Alabama, for all of his adult life. He was the direct descendant of Simon Finch, an immigrant to Alabama from Cornwall by way of Jamaica and Philadelphia. Simon Finch was trained as a physician and probably practiced his art on his slaves, employees and family, but he made his fortune in farming on a riverside plantation west of Maycomb called Finch's Landing. Atticus Finch was one of three children. His younger brother, Dr. John Hale Finch, was a physician in Tennessee. His sister, Mrs. James (Alexandra)

* Editor's Note:

The *Moral Theology of Atticus Finch* revives the inclusion of works in this Review that do not fall within the traditional definition of an "article." This essay utilizes the literary character of Atticus Finch, the lawyer in *To Kill A Mockingbird*, to illustrate some of the moral and ethical dilemmas that may confront the practicing attorney. The editorial staff believes that works such as *The Moral Theology of Atticus Finch* serve a valuable and worthy function by stimulating thought about the nature of law and its practice. The conversational quotations by the characters of *To Kill A Mockingbird* are not cited to the novel since these quotations are not intended as resource references.

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*** IV D. FREEMAN, ROBERT E. LEE 499 (1935).

Hancock, and her husband lived at Finch's Landing.

Atticus's wife died in 1928, leaving him to raise two children: a son, Jeremy Atticus (Jem), born in 1922, and a daughter, Jean Louise (Scout), born in 1927. Atticus represented Maycomb in the Alabama legislature for several terms. He was a member of the Methodist Church. He did not attend college or law school; he was admitted to the Bar of the Alabama Supreme Court after serving an apprenticeship in a Montgomery law office.

Atticus Finch's law practice was largely civil—the minor disputes and needs for private planning of his rural clients. He did not seek or enjoy criminal cases. His daughter said, "There was nothing [he] could do for his clients except be present at their departure, an occasion that was probably the beginning of my father's profound distaste for the practice of criminal law." Nevertheless, he did some criminal-defense work, as every general practitioner does. The most famous example is his defense of Thomas Robinson, who was convicted of capital rape in 1935 in Maycomb County, in Atticus's fifty-first year.

Our information on the Robinson case comes from an account written by Scout, who was eight years old when the case was brought to trial. She later wrote the story of that case, relating anecdotes and personal impressions from her perspective as the defense lawyer's daughter which give some insight into Atticus's handling of the case.¹ The story of the Robinson case, the anecdotes and the impressions help to explain how Atticus Finch is a hero, and how lawyers become heroes in America. These facts, anecdotes and impressions are also, and therefore, the source of a moral theology.²

It is unlikely that Mr. Robinson committed the rape for which he was convicted. Indeed, it is unlikely that the "victim," Mayella Ewell, was raped at all. In his speech to the jury, Atticus claimed

1. H. LEE, *TO KILL A MOCKINGBIRD* (1960). See H. FOOTE, *THE SCREENPLAY OF TO KILL A MOCKINGBIRD* (1964); *First Novel: Mockingbird Call*, *NEWSWEEK*, Jan. 9, 1961, at 83; *Literary Laurels for a Novice*, *LIFE*, May 26, 1961, at 78A.

2. The methodology I am attempting here is suggested in S. HAUSERWAS, *VISION AND VIRTUE: ESSAYS IN CHRISTIAN ETHICAL REFLECTION* (1974); S. HAUSERWAS, *CHARACTER AND THE CHRISTIAN LIFE: A STUDY IN THEOLOGICAL ETHICS* (1975); S. HAUSERWAS, *TRUTHFULNESS AND TRAGEDY* (1977); J. MCCLENDON, *BIOGRAPHY AS THEOLOGY* (1974); T. SHAFER, *ON BEING A CHRISTIAN AND A LAWYER* ch. 16 (1981); and O. WILLIAMS & J. HOUCK, *FULL VALUE* (1978). See Roberts, *A Theology for Christian Critics*, 45 *J. AM. A. RELIGION* 275 (1977). "When a Jew can provide no answer, he at least has a tale to tell . . . A good story in Hasidism is not about miracles, but about friendship and hope—the greatest miracles of all." E. WIESEL, *FOUR HASIDIC MASTERS AND THEIR STRUGGLE AGAINST MELANCHOLY* 2-3 (1978).

that Miss Ewell had attempted to seduce Mr. Robinson and after failing, or at least after having been interrupted in that design, had accused him of rape. "The defendant is not guilty," Atticus said, "but somebody in this courtroom is . . . 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 is the victim of cruel poverty and ignorance, but I cannot pity her: she is white . . . She was white and she tempted a Negro. She did something that in our society is unspeakable; she kissed a black man. Not an old Uncle, but a strong young Negro man. No code mattered to her before she broke it, but it came crashing down on her afterwards."

Atticus argued that the principal witnesses for the prosecution, Mayella Ewell and her father, were not worthy of objective belief, but "have presented themselves to you . . . in the cynical confidence that you gentlemen would go along with them on the assumption—the evil assumption—that *all* Negroes lie, that *all* Negroes are basically immoral beings, that *all* Negro men are not to be trusted around our women." He concluded his jury summation with a moving appeal to the principle of equality under the law. Nonetheless, the jury convicted Mr. Robinson and sentenced him to death.

The case was remarkable mainly in the way in which Atticus tried it—as an accusation of the white woman who was Mr. Robinson's accuser and, through her, as a confrontation of two conventions: that black men in Alabama in the 1930's were a menace to white women and that black people could not be trusted to tell the truth about encounters with white women (or, for that matter, with white men³).

Atticus was appointed by the court to represent Mr. Robinson, possibly because the judge of the court, John Taylor, was the sort of man a commentator today might call progressive, and possibly because the Supreme Court of the United States had decided, in a similar Alabama case in 1932, that impoverished defendants in capital trials were entitled to the effective assistance of counsel.⁴ It is not clear, however, that Judge Taylor expected Atticus to defend

3. W. FAULKNER, *INTRUDER IN THE DUST* (1948). See J. BRYER, *SIXTEEN MODERN AMERICAN AUTHORS: A SURVEY OF RESEARCH OF CRITICISM* 238-52 (1974); Elias, *Gavin Stevens: Intruder?*, 3 *FAULKNER STUDIES* 1 (1954); Vickery, *Gavin Stevens: From Rhetoric to Dialectic*, 2 *FAULKNER STUDIES* 1 (1953).

4. *Powell v. Alabama*, 287 U.S. 45 (1932).

his client as vigorously as he did, and it is unlikely that the judge expected a defense which would make the remarkable charge that a white woman had tried to seduce a black man and then had lied about it. There were conventions for—limits on—defenses of black people. William Faulkner reported such a conventional defense in his account of an innocent black man accused of the murder of a white man in Mississippi, a few years before the Robinson case, in which defense counsel assumed without asking that his client had killed the victim. Defense counsel, without examining the merits of the case, planned to bargain for a manslaughter plea and prison sentence on the ground that the defendant was old and not well.⁵

Whatever Judge Taylor expected, it seems clear that Mr. Finch's neighbors did not expect a defense which attacked the defendant's white accusers. Scout reported a conversation she had with her father before the trial:

"['T]here's some high talk around town to the effect that I shouldn't do too much about defending this man.'

"'If you shouldn't be defendin' him, then why are you doin' it?'

"'For a number of reasons,' said Atticus. 'The main one is, if I didn't I couldn't hold up my head in town, I couldn't represent this county in the legislature, I couldn't even tell you or Jem not to do something again.'

"'You mean if you didn't defend that man, Jem and me wouldn't have to mind you any more?'

"'That's about right.'

"'Why?'

"'Because I could never ask you to mind me again'

"'Atticus, are we going to win it?'

"'No, honey.'"

On another occasion Scout had to suffer criticism of her father from an elderly woman in the neighborhood. She later complained to her father about it. He said, "When summer comes you'll have to keep your head about far worse things . . . it's not fair . . . I know that, but sometimes we have to make the best of things, and the way we conduct ourselves when the chips are down—well, all I can say is, when you and Jem are grown, maybe you'll look back on this with some compassion and some feeling that I didn't let you down. This case, Tom Robinson's case, is something that goes to

5. See W. FAULKNER, *INTRUDER IN THE DUST* (1948).

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 . . . 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."

Shortly before the trial was to begin, the sheriff warned Atticus that his client would be in danger if he were moved from the Abbottsville jail to the Maycomb jail. Atticus insisted that he be moved anyway. ("You can keep him one night, can't you? I don't think anybody in Maycomb'll begrudge me a client, with times this hard.") The danger was so real, though, that Atticus felt it necessary to station himself during the night in front of the jail to protect his client. In the face of this threat, he told the sheriff, "That boy might go to the chair, but he's not going until the truth's told. And you know what the truth is." His children and their friend, Dill (Charles Baker Harris), waited outside the jail, too. They were all there when the lynch mob came for Mr. Robinson. It was Scout who prevented violence by shaming a member of the mob (a man who had been a client of Atticus's in an unrelated civil matter) who had come to lynch Mr. Robinson. Afterwards, Atticus said, "You children made Walter Cunningham stand in my shoes for a minute. That was enough." Before the trial he said to his sister, "I'm in favor of Southern womanhood as much as anybody, but not for preserving polite fiction at the expense of a human life." These statements are reported by Scout in relation to the Robinson case. Scout also reported an incident in which Atticus killed a mad dog with a single, well-aimed rifle shot. She wrote that she and her brother were impressed with the shooting; until then they thought their father, at the age of fifty, was feeble. His statements and the anecdote illustrate the bravery of Atticus Finch.

Atticus's statements before the Robinson trial indicate that he had little hope of success in the case, although, after the verdict, he indicated that he hoped for success on appeal.⁶ In less optimistic moments he knew that he would only be able to declare the truth of the matter. He was uncommonly devoted to the truth. He would not even lie a little to comfort his client. Calpurnia, the Finches' cook, was asked by a friend of Mr. Robinson why Atticus

6. Compare a similar unwarranted optimism in a similar hero, Judge James Edwin Horton, who presided in the second capital trial of Haywood Patterson, one of the "Scottsboro Boys." See D. CARTER, *SCOTTSBORO: A TRAGEDY OF THE AMERICAN SOUTH* 194-273 (1969); H. PATTERSON & E. CONRAD, *SCOTTSBORO BOY* 46-62, 277-95, 313-20 (1973); T. SHAFER, *supra* note 2, at ch. 14.

had not lifted the spirits of the Robinson family by telling them that Mr. Robinson would be acquitted. "Mr. Finch couldn't say somethin's so when he doesn't know for sure," was the reply. What Calpurnia did *not* know was that Atticus had told his client and his client's wife not to expect acquittal.

Perhaps his client and his client's family and friends understood that truth was more important than comfort. The black people of Maycomb stood silently after the trial as Atticus, disappointed and frustrated, made his way out of the courtroom. "I looked around," Scout wrote. "They were standing. All around us and in the balcony on the opposite wall, the Negroes were getting to their feet. Reverend Sykes's voice was as distant as Judge Taylor's, 'Miss Jean Louise, stand up. Your father's passin'!'"

The townspeople of Maycomb disapproved of Atticus's defense tactics, but he did not become a pariah. "People were content to re-elect him to the state legislature that year, as usual, without opposition," Scout reported. "I came to the conclusion that people were just peculiar." She and at least one other observer, a neighbor, Mrs. Maude Atkinson (Miss Maudie), said that this acceptance—or, rather, this failure to condemn him consistently—was evidence of the town's need for someone to describe the Robinson case truthfully. "We're the safest folks in the world," Miss Maudie said. "We're so rarely called on to be Christians, but when we are we've got men like Atticus to go for us Whether Maycomb knows it or not, we're paying the highest tribute we can pay a man. We trust him to do right. It's that simple." But, she said, it was only "the handful of people in this town with background" who could be expected to understand the point. She distinguished herself from "the old Sarum bunch"—the mob who came to the jail to lynch Mr. Robinson—and, probably, from the jury as well.

According to Scout, her father's principal concern, after the trial and after Mr. Robinson had been killed by policemen in Abbotsville as he was attempting to escape, was that the experience would make his children bitter or, worse, would give them what he called "Maycomb's usual disease." It is important to the understanding of Atticus Finch to see that he was able to tell the truth about his community but still remain fond of his community—a moral quality which General Lee may have encompassed when he said a gentleman is humbled by having to humble others. This is also the moral quality which Reinhold Niebuhr called the ability to

be ironic.⁷ "He liked Maycomb," Scout stated. "He was Maycomb County born and bred; he knew his people and they knew him, and because of Simon Finch's industry, Atticus was related by blood or marriage to nearly every family in the town." Although Atticus shared the rural South's suspicion of the North, "[T]his time," he said, "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."

After the trial he said to his sister, "This is our home . . . We've made it this way for them, they might as well learn to cope with it." Reflecting on the verdict he said, "I don't know [how the jury could do it], but they did it. They've done it before and they did it tonight and they'll do it again, and when they do it—seems that only children weep." He told his son, "I won't live to see the law changed, and if you live to see it you'll be an old man." Weeks later he said he thought that Jem would not, after all, be embittered by the experience. "What he was really doing was storing it away for a while, until enough time passed. Then he would be able to think about it and sort things out." Atticus seemed to want to bequeath both his society and his irony to his children.⁸

One other anecdote from this family account of Atticus's life—or, rather, of the year of the Robinson case—illustrates the qualities of character which made it possible for him to see the Robinson case as he did, to fashion and present the defense as he did, and lose the case without becoming bitter about his community. The anecdote involves the elderly woman who most loudly denounced him for his defense of Mr. Robinson—the widow of Henry Lafayette Dubose.

On the second or third occasion when Mrs. Dubose called to the children from her front porch to denounce their father, Jem Finch stormed into Mrs. Dubose's flower garden and destroyed her camellias. He was called to account for this act by his father; in settlement, Jem agreed to read aloud to Mrs. Dubose from *Ivanhoe*. "She's an old lady and she's ill. Just hold your head high and be a gentleman. Whatever she says to you, it's your job," Atticus told his son, "not to let her make you mad." As it turned out, the destruction of the camellias was only part of the reason for the reading of *Ivanhoe*. Jem and Scout were required to go to Mrs.

7. R. NIEBUHR, *THE IRONY OF AMERICAN HISTORY* (1952).

8. See Shaffer & Rodes, *Law for Those Who Are To Die*, in *NEW MEANINGS OF DEATH* 291 (H. Feifel ed. 1977).

Dubose's house daily, for several hours, in order to help her through the pain of withdrawal from morphine addiction. Atticus had learned of the addiction when he interviewed Mrs. Dubose before drafting her will. Mrs. Dubose said she was dying, and she intended to overcome the addiction before she died. Atticus, explaining this to the children after Mrs. Dubose died, said: "I wanted you to see what real courage is, instead of getting the idea that courage is a man with a gun in his hand" (an allusion perhaps to the mad-dog incident). "It's when you know you're licked before you begin but you begin anyway and you see it through no matter what. You rarely win, but sometimes you do. Mrs. Dubose won, all ninety-eight pounds of her. According to her views, she died beholden to nothing and nobody. She was the bravest person I ever knew."

In this analysis of the moral theology of Atticus Finch, I suggest that his heroism centers in his insistence on telling the truth. This truth telling was:

- (I) an expression of the person he was and of the community he sought for his children and neighbors;
- (II) an expression of the virtue of courage and also (and therefore) the expression of a theology;
- (III) a political act; and
- (IV) a professional act.

In these ways Atticus Finch's story is the story of a hero who is an American, a Southerner, and a lawyer—all of these and a Christian as well.

I. TELLING THE TRUTH IN THE COMMUNITY

Atticus insisted on, and lived by, telling the truth. He is remarkable not because others in Maycomb were liars or because they lived in an especially dishonest culture. Rather, he is extraordinary because others—the children excepted—were, more than Atticus, bound to the conventional cultural delusions of Maycomb; they, more than Atticus, had "Maycomb's usual disease."⁹ Atticus, more than others in the town, saw what the truth was and told the truth. He concluded that his seeing and telling of the truth justified risk: risk to his own welfare, risk to the welfare of his children, and risk

9. See S. HAUERWAS, *VISION AND VIRTUE: ESSAYS IN CHRISTIAN ETHICAL REFLECTION* 30-45 (1974), discussing Iris Murdoch and Simon Weil, explaining this in terms of delusion (self-deception) and convention.

to the maintenance of civility in Maycomb—which especially valued civility—and therefore risk to the preservation of Maycomb's culture. My view is that Atticus insisted on telling the truth, more so than others, because seeing and telling the truth was the way Atticus could know who he was and what his community was.¹⁰ His telling the truth also permitted him to imagine the sort of community he sought to protect for his children and neighbors.¹¹ Because he told the truth, because he had a relatively clear idea of himself and his community, and because he was brave, he was able to confront the conventional, cultural untruth. In doing so, Atticus offered his life (as he did in front of the jail facing the lynch mob), the lives of his children, and the security of his neighbors. His confrontation was in aid of who he was, and also in aid of what his community was. In both respects, Atticus was integrating and protecting what was, and what was good.¹²

This view of Atticus's character rests on more than the momentous occasion of the trial. Atticus's telling of the truth takes on heroic proportions in the trial scenes, but the results of his insistence on truth there are, in a sense, tragic.¹³ Truth telling was futile for Tom Robinson and perilous for Atticus's children, who were sickened during the trial and almost murdered afterwards. The trial scenes tell more about what happens to a truthful person than they tell about how Atticus came to be a truthful person. The scenes which show how he came to be the person he was are not in the trial, but in his daily routine and habits. Disposition,¹⁴ more

10. P. TILICH, *MORALITY AND BEYOND* 13-30 (1963).

11. Hauerwas & Shaffer, *Hope in the Life of Thomas More*, 54 NOTRE DAME LAW. 569 (1979). See T. SHAFFER, *supra* note 2, at ch. 18-19, for a revised version of the 1979 article.

12. See S. HAUERWAS, *supra* note 9. Hauerwas calls into question both delusion and convention. See also S. HAUERWAS, *CHARACTER AND THE CHRISTIAN LIFE: A STUDY IN THEOLOGICAL ETHICS* 125 (1975) (thought and belief determine action). J. GUSTAFSON, *CHRIST AND THE MORAL LIFE* 255 (1968), shows how the "excessive scrupulosity" of the liberal conscience also helps to explain the personal and cultural evils which I am attributing to delusion and convention. In either case the behavior is, as Hauerwas and I analyze it, a failure to hope, and in both cases loyalty to the community is erroneously used to guide moral life. See Hauerwas & Shaffer, *supra* note 11. See also I. B. HARING, *THE LAW OF CHRIST* 273 (1963) (conventional—and, in Haring's point, civil authority—are not entitled to a presumption of justice).

13. Tragedy is, in this sense, though, the triumph of meaning over power. S. HAUERWAS, *TRUTHFULNESS AND TRAGEDY* (1977). See T. SHAFFER, *supra* note 2, at ch. 14; Shaffer, Book Review, 23 AM. J. JURIS. 245 (1978).

14. J. GUSTAFSON, *CHRIST AND THE MORAL LIFE* 120-30, 238-71 (1968), uses the term "disposition" to describe what the Thomistic tradition calls virtue or good habit and what Luther described as the effect of the law of love on routine interpersonal behavior.

than the crisis, illustrates how it is that virtue is a matter of seeing with the self and learning to see with the self, and how moral life—and heroism, too—are revealed in the ordinary. In ordinary truth telling Atticus trained himself for momentous truth telling.¹⁵ An example is the answers Atticus gave to his children when they asked him about the law. He explained the law of entailments to Scout as he would have explained it to Judge Taylor. He gave Scout a textbook definition of rape when she asked about the charge against Tom Robinson. Scout asked her Uncle Jack what “whore” means, and the physician evaded her question; when Atticus learned of the evasion he was angry with his brother. “When a child asks you something, answer him, for goodness’ sake. But don’t make a production of it. Children are children, but they can spot an evasion quicker than adults, and evasion simply muddles ’em.” He wanted his children to know the truth and, more than knowing the truth, to know how to tell the truth. When I suggested, above, that he sought to leave his children with his love of the community *and* with his irony, this is what I meant.¹⁶

Truth to Atticus was a matter of being himself. To understand that this is so, and how it is so, is to begin to understand why he is a hero. A hero is a clear, memorable person, but he is also a person in a place, a person among persons. A hero shows his community what its values cost. Atticus’s values were Maycomb’s values—otherwise he would have been only a brave eccentric. Truth is how Atticus understood who he was, both personally and as a citizen of Maycomb, so that not telling the truth would have caused him to lose his grasp on who he was, to lose control of himself, to suffer personal disintegration, *and* to lose his way among the people with whom he lived.¹⁷ However, in Scout’s account there is at least one

Gustafson relates his term to the Pauline phrases “manner of life” and “mind among yourself, which was in Christ Jesus.” *Philippians* 1:27, 2:5.

15. S. HAUERWAS, *CHARACTER AND THE CHRISTIAN LIFE: A STUDY IN THEOLOGICAL ETHICS* (1975). In the screenplay, Scout says: “There just didn’t seem to be anyone or thing Atticus couldn’t explain. Though it wasn’t a talent that would arouse the admiration of our friends, Jem and I had to admit he was very good at that, but that was all he was good at, we thought.” H. FOOTE, *supra* note 1, at 50.

16. Irony is not despair; Jews and Christians believe that truth can be found. H.R. NIEBUHR, *RADICAL MONOTHEISM AND WESTERN CULTURE* 68-73 (Harper Torchbooks ed. 1960).

17. See note 11 *supra*. Part of the idea is expressed in Trollope’s novel *Ralph the Heir* as “a want of reality in character.” The Jewish theologian Martin Buber would have added that one finds his personality in relation with another person. T. SHAFFER, *supra* note 2, at ch. 3. Protestant moral theology emphasizes that God speaks concretely (and directly) in the

situation in which Atticus decided not to tell the truth.

If truth telling was the central value for him, he did not live at the center of his life without struggle. His explanations to his children and his clients did not cause struggle because he had trained himself to tell the truth and to do it as a matter of habit—that is, of virtue. The public defense of Tom Robinson did not cause him struggle either because he had trained himself to accept that truth exacts a high price. (He also trained his children to accept that fact.) Perhaps when Atticus did finally struggle with *whether* to tell the truth, he struggled as one who was contending with what was most important to him. His was then a spiritual trauma, a struggle to save his idea of who he was, as one in physical trauma struggles for life and is stunned and dulled in the process of concentrating his energy on survival. Atticus, when his crisis came, did not deal with a manifest need to lie as if he were balancing interests or interpreting a principle; he struggled as one who *may not survive*.¹⁸ This is the theme which gives Scout's account its title.

Robert Ewell, the father of the rape "victim" in the Robinson case, was humiliated and saw his daughter humiliated by Atticus in the trial. The community, which knew the truth but could not tell the truth, knew that Mayella was not raped; it knew but would not say that she attempted to seduce a black man and then lied about it, that her father lied, too, and that her father was willing to see Tom Robinson die to protect him and his daughter from a public certification of the truth. The community knew all of this in a way that it would not know if Atticus had not proclaimed the truth in the trial.

Robert Ewell became obsessed with his humiliation and with the idea that Atticus was the source of his humiliation. He stalked the Finch children, attacked them, and nearly killed them. The murder attempt occurred at night on the road between the Finch home and the school. In the aftermath of the murder attempt, Ewell was dead, mysteriously killed; Jem was unconscious, injured, and being cared for in the Finch home; Atticus, Sheriff Heck Tate, Scout, and an unidentified neighbor were gathered around Jem's

relation Buber called "I-Thou." J. GUSTAFSON, *supra* note 14, at 11-60; S. HAUERWAS, *supra* note 9, at 1-8.

18. See P. TILlich, *supra* note 10. Gustafson illustrates how almost all Christian moralists teach that a moral choice made in faith is also made in freedom and in trust; it is made by one who can endure making a mistake. "Extreme scrupulosity" in such matters is a sin against hope. J. GUSTAFSON, *supra* note 14, at 255.

bed. The neighbor was Arthur (Boo) Radley, a recluse the children knew about but had never seen. It gradually became clear that Radley, who had been watching and invisibly befriending the children for months, heard or saw Ewell's attack and came to the defense of the children with a kitchen knife. Radley killed Ewell, but Scout, who was entangled in her costume from a school play, and Jem, who was unconscious, did not know that Radley killed Ewell—or even that Radley was there.

Sheriff Tate knew the truth but proposed to explain Ewell's death with a lie; he proposed to say that Ewell killed himself by falling on his own knife. The sheriff was not acting to conceal a crime; Radley's act was undoubtedly justifiable and Radley was in no danger of prosecution. He was in danger, though, of being made a public figure ("All the ladies in Maycomb includin' my wife'll be knocking on his door bringing angel food cakes"). The sheriff thought that this exposure would destroy the frail survival Radley had built for himself, hidden in an old house. "There's a black boy dead for no reason, and the man responsible for it is dead. Let the dead bury their dead this time, Mr. Finch," the sheriff said. "To my way of thinkin' . . . taking the one man who's done you and this town a great service an' draggin' him with his shy ways into the limelight—to me, that's a sin. It's a sin and I'm not about to have it on my head."

Atticus initially resisted the lie, refused to be involved in it, and insisted that the truth be told. Finally, he changed his mind.

"Scout," he said, "Mr. Ewell fell on his knife. Can you possibly understand?"

"Yes, sir, I understand."

"What do you mean?"

"Well, it'd be sort of like shootin' a mockingbird, wouldn't it?"

Atticus thus decided to join in the sheriff's lie to Maycomb. "Atticus put his face in my hair and rubbed it," Scout said. "Then he got up and walked across the porch into the shadows, his youthful step had returned. Before he went inside the house, he stopped in front of Boo Radley. 'Thank you for my children, Arthur,' he said."

Doesn't that mean Atticus's moral theology should be described in some way other than as telling the truth? I don't think so. But his decision to tell a lie cannot be explained as the ordinary consequence of a desire—a desire which is to be expected in a gentleman—to avoid suffering for Boo Radley. Atticus did not evade

the truth to avoid suffering for himself, or for his children, or for his client and his client's family, or for the community. There is more to his regard for Boo Radley than the gentleman's wish that others not suffer. If the truth must be told, the angel food cakes must be borne. Nor will it do to say that this lie was not Atticus's lie. Atticus's view of what was truth did not rest on casuistry.¹⁹ He is among the American "republican" lawyers whose professional idea traces to the first generation after the Revolution²⁰ and to such things as General Lee's definition of a gentleman. If a lie is told it will be his lie, too. If it is possible to regard Atticus as a hero whose character is built on telling the truth, and at the same time to explain his decision not to kill the mockingbird, the explanation will have to come from a look at who he was rather than at his analytical prowess.

I claim that the decision to protect Boo Radley shows something about truth telling rather than something about some other moral value. That, surely, was Scout's purpose in including the story in her account of the Robinson case; she did not, after Boo Radley returned to his house, elaborate another definition of Atticus and of Maycomb. Her account up to that point is a story about telling the truth; she was not being cynical, nor was she telling some other story, when she ended with Atticus telling a lie. But the decision in the Radley dilemma does show that Atticus's truth telling was not a matter of principle, of obeying a rule. His insistence on the truth in the Robinson case—even though the truth did Robinson no good, and Atticus knew it would do him no good—illustrates a commitment which is deeper in the sinews and in the culture than are principles.²¹ Again, this is so of Scout's

19. See, e.g., W. FRANKENA, *ETHICS* 13-14, 26, 55-56 (2d ed. 1973). A tragic choice, in Hauerwas's sense, was possible. S. HAUERWAS, *TRUTHFULNESS AND TRAGEDY* (1977). But see P. TILICH, *supra* note 10. Wiesel says that Rabbi Pinhas of Koretz taught:

When telling lies would be considered as grave a transgression as adultery, the Messiah would appear . . . Summoned to testify on behalf of a man whose innocence he doubted . . . Rebbe Raphael spent all night weeping: he could not bring himself to tell a possible lie. He cried and cried. And died at dawn.

E. WIESEL, *FOUR HASIDIC MASTERS AND THEIR STRUGGLE AGAINST MELANCHOLY* 18-20 (1978). These may be extreme views of the duty to tell the truth, but if so, they were applied in specific reference to Atticus's decision to protect Boo Radley with a lie. The Roman Catholic Legion of Decency rated the film version of the story as unacceptable for adolescents until the moviemakers revised the last scene. Ostling, Coutu & Cronin, *A Scrupulous Monitor Closes Shop*, *TIME*, Oct. 6, 1980, at 70. See notes 22 & 32 *infra*.

20. Bloomfield, *David Hoffman and the Shaping of a Republican Legal Culture*, 38 *MD. L. REV.* 673 (1979). See note 79 *infra*.

21. It illustrates character and what Gustafson calls "disposition." See notes 14-15

story is a cynical story. If truth telling was a principle for Atticus, his decision to protect Boo Radley was a decision against principle. Either truth telling was for Atticus something more than a matter of principle or the principle which directs truth telling was less important to Atticus than some other principle.²²

Scout's account provides a contrast which shows that an analysis of competing principles is not adequate to explain what Atticus did. A few minutes before Atticus's decision to protect Boo

supra. Miss Lee said in 1964 that Atticus's "view of life was the heart of the novel." H. FOOTE, *supra* note 1, at v. I make a similar argument with respect to Judge Horton. See note 6 *supra*.

22. T. SHAFFER, *supra* note 2, at ch. 9. With respect to Dean Freedman's argument that lying is sometimes morally necessary for lawyers, see note 77 *infra*. The law of love as Martin Luther analyzed it might defend Atticus's lie. J. GUSTAFSON, *supra* note 14, at 114-69. A similar argument is possible in Roman Catholic moral theology. I B. HARING, *THE LAW OF CHRIST* 270-73. (1963) One way to fashion the argument would be to focus on moral responsibility rather than the duty to tell the truth. A. JONSEN, *RESPONSIBILITY IN MODERN RELIGIOUS ETHICS* 124-25, 140 (1968); H.R. NIEBUHR, *THE RESPONSIBLE SELF* (1963); H.R. NIEBUHR, *RADICAL MONOTHEISM AND WESTERN CULTURE* 78 (1960). Levinson, *The Specious Morality of the Law*, *HARPERS*, May 1977, at 42, provides a useful analogy: "We no longer care that Lincoln might have behaved most dubiously . . . because his memorable vision of what this country was truly about, which involved transcending the existing constitutional structure and its support for slavery, has prevailed and become part of our ordinary political consciousness." *Id.* Herbert Fingarette, in a private communication, associated himself with these schools of moral thought about truth telling:

I dissent . . . when you say Atticus's decision to go along with the sheriff's lie was a mistake. You say it was a mistake. You give no argument. I do not have a clear argument on the other side. But I do have two notions that may give the feel of where I would go on the issue.

(1) You take "truth" and "lie" in what might be called a very literal way—but I think it would be better to say: You wrongly treat the virtue of honesty and truthfulness in terms of an abstract principle to be understood as a logical universal. This seems to me to be incompatible with the spirit of responding to particular human beings, rather than living a moral life conceived ultimately in terms of abstract principle. I do not think the view I'm pushing here is merely a casuistical device for not noticing lies. Of course it is readily *used* this way, by any of us. But then all things with the power of right are vulnerable to corruption in the service of evil.

(2) Related to this—this necessity to deal with persons as such, and not in terms of abstractions—is the necessity to be humble, to realize that we cannot rely on logical formulae, and that in turn we may therefore cop out and rationalize a self-serving act as one based on "moral intuition." Nevertheless, that's our dilemma. And Atticus's is that he, a man for whom truth is so central in existence as a human being, is in this case—for reasons that may be obscure—doing right to forego "telling the truth." It is his humbling burden. It would be so satisfying if he could live a life of truthfulness by always telling the truth. No such luck. Truth is more mysterious.

Letter from Herbert Fingarette to Thomas Shaffer (Sept. 1980). It is not necessary for me to dispute such compelling moral arguments here. I want instead to explore Atticus's behavior, to see if I can learn what it is, even if it is not self-deception or convention, that causes an honest man to lie. See note 29 *infra*.

Radley, at a time when only Sheriff Tate and Arthur Radley knew who killed Ewell, Atticus thought that the sheriff's story was a contrivance to protect *Jem*; Atticus thought, at first, that it was Jem who killed Ewell. (Jem was still unconscious.)

"Mr. Finch, Bob Ewell fell on his knife. He killed himself."

"Heck, if this thing's hushed up it'll be a simple denial to Jem of the way I've tried to raise him. Sometimes I think I'm a total failure as a parent, but I'm all they've got. Before Jem looks at anyone else he looks at me, and I've tried to live so I can look squarely back at him . . . if I connived at something like this, frankly I couldn't meet his eye, and the day I can't do that I'll know I've lost him. I don't want to lose him and Scout, because they're all I've got."

"Mr. Finch, Bob Ewell fell on his knife. I can prove it."

"Heck, can't you even try to see it my way? You've got children of your own, but I'm older than you. When mine are grown I'll be an old man if I'm still around, but right now I'm—if they don't trust me they won't trust anybody. Jem and Scout know what happened. If they hear of me saying down town something different happened—Heck, I won't have them any more. I can't live one way in town and another way in my home . . . I won't have it."

"God damn it, I'm not thinking of Jem!"

This comparison illustrates that Atticus joined in the lie (or as Scout put it, decided not to kill the mockingbird) with struggle and reluctance. If one focuses on the struggle it may be possible to say that Atticus's willingness to lie for Boo Radley, and his refusal to lie for Jem, were not so much decisions between principles as they were proofs of his idea of himself, of his son, and of the community. If Atticus had been merely deciding between principles which indicated inconsistent choices, he would have tipped the balance for his son as readily as he tipped it for his reclusive neighbor.

When Atticus refused to lie to protect Jem he felt that the issue was whether he would, in some real way, cease to exist for his son if he lied to protect him.²³ "I couldn't meet his eye, and the day I can't do that I'll know I've lost him." But when he joined in the lie to protect Boo Radley he did not cease to exist; he became a

23. Buber would understand this literary point; relationships for him were ontological. See note 17 *supra*.

sharper, more memorable person—as a matter of literature, if nothing else—both to Maycomb and to those of us who are in need of lawyer heroes. The struggle illustrates how a person obeys the “moral imperative” even when he makes a mistake (as his lie to protect Boo Radley may have been). Obedience to the “moral imperative,” to the impulse or the grace that tells us to do good and avoid evil—that is, to take moral notions seriously—is what gives a person identity.²⁴ It is the moral act which made Atticus a person rather than merely an individual. In this view, complicity in the sheriff’s lie was not an “antimoral” act. It was not an act which disregarded the “moral imperative,” but an act which showed how much Atticus valued his ability to see the truth and to tell it, because he valued the truth so much that he would not lie to protect his son.

The struggle is an instance of how a person faces the “moral imperative” in a confused and confusing world—how a hero is not someone who understands every issue clearly but a person who is able to deal with moral issues as if they mattered.²⁵ Atticus’s moral heroism lies both in what he did and in his seeing that it was important to do right even if he ended up doing wrong. He decided with doubt but with responsibility.²⁶ He became, in the Radley episode, a clearer and therefore a better person; the episode tells us how a good man makes a doubtful choice—that more is involved than whether the choice was sound in principle.²⁷

This is not to say that Atticus’s mistake in the Boo Radley matter—if we are to regard it as a mistake (and I think we should)—is unimportant. I do not argue that the moral life is merely a matter of being conscientious.²⁸ The present claim is that his moral mistake—assuming it is a mistake—does not diminish

24. See P. TILICH, *supra* note 10. To Buber, moral means interpersonal, as it does in most of Christian ethics. M. BUBER, *THE KNOWLEDGE OF MAN* (1965).

25. See P. TILICH, *supra* note 10. Tillich thus distinguishes between “immoral” and “antimoral.”

26. See A. JONSEN, *RESPONSIBILITY IN MODERN RELIGIOUS ETHICS* (1968); H.R. NIEBUHR, *THE RESPONSIBLE SELF* (1963); see also I. B. HARING, *THE LAW OF CHRIST* 35-59 (1963); H.R. NIEBUHR, *RADICAL MONOTHEISM AND WESTERN CULTURE* 36-38 (1960).

27. Such decisions are free, somewhat irrational, and influenced by faith. See, e.g., Gustafson, *Mongolism, Parental Desires, and the Right to Life*, 16 *PERSPECTIVES BIOLOGY & MED.* 529 (1973).

28. S. HAUSER, *supra* note 9, at 93-194. But “[e]very effort to make a closed system of Christian ethics stumbles finally on the richness and openness of Christian life.” J. GUSTAFSON, *supra* note 14, at 99. “God, if you recall, did not warn his people against dirty books. He warned them against high places.” W. PERCY, *LOVE IN THE RUINS* 64 (1971).

him as a hero. His mistake makes his distinctness as a person more vivid than it would be without the mistake. It makes him more human—more like the rest of us—and it highlights his virtue so we can study his virtue more clearly, and so the mistake itself becomes interesting.²⁹ A mistake which occurs despite a person's moral earnestness shows how life is for those who are morally earnest. The mistake is, in this sense, inspiring and instructive. The study of a life which is the product of more persistent delusion (as, say, Albert Speer's³⁰ was and Roger B. Taney's³¹ may have been) is also instructive, but the persistently deluded life does not stand out from the culture in which it is lived; it only *typifies* its culture. The hero stands out, and one reason he stands out is that his mistakes are made despite himself; his mistakes *probe* the culture.

The final point about mistakes in the life of a hero is that they are ethically significant. The heroic life invites those who think about ethics to discover the source of their own mistakes. The evil in a life which is persistently deluded (Speer, again, or the S.S. colonel in *The Holocaust*) is a grim warning; the mistakes in a hero's life illustrate why we need heroes—in order to be inspired in our study of virtue, not merely warned, so that we can find virtue worthwhile and discover how a good person stumbles and, even though he stumbles, remains a hero.³²

It remains for me to relate Atticus's character to his community, to show how his behavior, including his behavior toward Boo

29. Interesting, that is, for a student of ethics. There is at least an analytical difference between ethics and morals. J. GUSTAFSON, *supra* note 14, at 1-41, 115; P. TILICH, *supra* note 10, at 22.

30. Hauerwas & Burrell, *Self-Deception and Autobiography: Reflections on Speer's Inside the Third Reich*, in S. HAUERWAS, *TRUTHFULNESS AND TRAGEDY* 82 (1977).

31. B. STEINER, *LIFE OF ROGER BROOKE TANEY* (1922) (Greenwood Press ed. 1970). See C. Carey, *Roger Brooke Taney: The Story of a Lawyer's Conflicting Roles Between Honesty and Faithfulness* (1978) (unpublished paper, Notre Dame Law School).

32. My friend and colleague Professor Andrew W. McThenia provided this useful metaphor. It is also possible to see the "mistake" here as less a compromise with truthfulness than a failure to regard Boo Radley as a person. Atticus did not, after all, ask Boo Radley what he wanted to do; nor, for that matter, did he propose to consult Jem about what Jem wanted to do. This point, which was suggested to me by Professor Robert A. Burt, is not only a point about appropriate regard for other persons; it is a recognition of the fact that the highest moral good I can wish for another is not that his decisions be right, but that he (not I) make right decisions and that he thereby become more virtuous. See T. SHAFFER, *supra* note 2, at 10-11. I think either "mistake" can be seen as a consequence of Atticus's and Maycomb's commitment to the gentleman's ethic of benevolent protection of the weak, including protection of the weak who aren't even weak. See notes 36-38 *infra* and accompanying text.

Radley, is behavior in and for Maycomb. My claim is that Atticus's behavior is illustrated by what he said to his sister: "This is our home. We've made it this way for them, they might as well learn to cope with it." Maycomb valued honesty; Atticus's expression of the value of honesty was a supra-cultural devotion to telling the truth. But his devotion was an expression of something he took from the culture of Maycomb and offered back to it, and Maycomb, or at least the moral leaders in Maycomb ("people with background," in Miss Maudie's phrase), understood him.³³ He is not a cosmic hero bringing virtue out of Heaven. He is, rather, the sort of hero Jesus was: he showed his neighbors what their values were;³⁴ he showed them the consequences of their values; and he showed them that repentance meant telling the truth.³⁵ His virtues are an insight into what the values of Maycomb were and what they meant. He also showed Maycomb how expensive its values were. Atticus's truth telling was a specification in his own person of what General Lee and the culture of Maycomb might have called honor—and of how expensive honor is. Miss Maudie said this when she said, "We're paying the highest tribute we can pay a man. We trust him to do right."

That's one social side of the Boo Radley episode. The other social side, the side General Lee stressed more clearly, is that Maycomb values the protection of the weak. (Gavin Stevens of Jefferson, Mississippi, admitted that he valued the protection of the

33. D. SHRIVER & K. OSTROM, *IS THERE HOPE FOR THE CITY?* (1977), and Roof, *Traditional Religion in Contemporary Society: A Theory of Local-Cosmopolitan Plausibility*, 41 AM. SOC. REV. 195 (1976), make this point empirically. Buber argues that truth is known only in relationships. M. BUBER, *supra* note 24. See D. BONHOEFFER, *CREATION AND FALL* 60-61 (J. Fletcher & K. Downham trans. 1976) (the limits of life can be borne because of relationships); D. BONHOEFFER, *ETHICS* 45-54 (N. Smith trans. 1955) (institutional guilt is derivative); H.R. NIEBUHR, *supra* note 16, at 64-77. Schudson makes a useful distinction between "community" and "society," arguing, I think, that public morality is unlikely in what he calls a modern society. Schudson, *Public, Private, and Professional Lives: The Correspondence of David Dudley Field and Samuel Bowles*, 21 AM. J. LEGAL HIST. 191 (1977).

34. K. BARTH, *THE HUMANITY OF GOD* 85-87 (T. Wieser & J. Thomas trans. 1960); K. BARTH, *THE WORD OF GOD AND THE WORD OF MAN* (D. Horton trans. 1978); R. SCHNACKENBERG, *THE MORAL TEACHING OF THE NEW TESTAMENT* (1965).

35. See J. GUSTAFSON, *supra* note 14, at 166-171, in which Kierkegaard is discussed. Reinhold Niebuhr said:

The power of God over man . . . is recognized by the eyes of faith as the point where the heavens are opened and the divine mystery is disclosed and the love of God toward man shines down upon him; and man is no longer afraid, even though he knows himself to be involved in the crucifixion.

Id. at 141.

weak who weren't even weak.³⁶) The two values are related; truth is valued more when it protects the weak, and protection of the weak is valued more when it tells the truth.³⁷ Atticus said to Sheriff Tate that he would not accept the sheriff's lie if it were told to protect Jem. The highest protection Atticus could give to his son was to show him how to tell the truth, and then to care for him as he endured the consequences of telling the truth. "I can't live one way in town and another way in my home."³⁸

This is truthful protection of the weak. One way to test such a generalization about Maycomb would be to ask how it provided protection without truth and truth without protection. Whom did it shelter with its lies? Whom did it leave naked to his enemies? *Protection without truth* was what adult Maycomb (with the exception of Miss Maudie and, possibly, Judge Taylor) gave to Mayella Ewell. It was also what adult Maycomb expected from Atticus when it tapped him to defend Tom Robinson. In one possible analysis, Maycomb did not expect even a conventional defense. It expected Atticus to be absent when the lynch mob came to the jail; there was not to be any defense. Atticus was to protect his client without telling or even seeming to know the truth (which means he was not to protect him at all). Stevens described, in his account of the Beauchamp case in Mississippi, how the burghers stood aside for the lynch mob, but then stood ready to feed and shelter the

36. W. FAULKNER, *THE TOWN* 88-96 (Vintage ed. 1961). The moral alternative is not a Darwinian jungle but a culture which provides protection when it is needed, as in the Nigerian custom that a man may return to his mother's family:

It's true that a child belongs to its father. But when a father beats his child, it seeks sympathy in its mother's hut. A man belongs to his fatherland when things are good and life is sweet. But when there is sorrow and bitterness he finds refuge in his motherland. Your mother is always there to protect you. She is buried there. And that is why we say that mother is supreme.

C. ACHEBE, *THINGS FALL APART* 138-39 (1959). See Elias, *supra* note 3, at 2-3, who argues that Faulkner's answer to the delusions of patronage in the South was the vision (and implications) of "a society with a common purpose, common standards . . . a community . . . responsible for the Negro's full freedom." *Id.*

37. See C. ACHEBE, *supra* note 36. The difference between Jefferson, Mississippi, and Achebe's culture is that one has learned skills for finding out when protection is needed and one has not. See J. GUSTAFSON, *supra* note 14, at 552; Elias, *supra* note 3.

38. Atticus here attacks an old and difficult tradition in Christian moral thinking, the one Karl Barth calls "the syndrome of the two kingdoms." K. BARTH, *EVANGELICAL THEOLOGY: AN INTRODUCTION* (G. Foley trans. 1965). See D. BONHOEFFER, *ETHICS* 55-78 (N. Smith trans. 1955); G. EBELING, *LUTHER: AN INTRODUCTION TO HIS THOUGHT* 175-91 (R. Wilson trans. 1977); J. GUSTAFSON, *supra* note 14, at 120-30. Hauerwas and I argue that Robert Bolt's *Thomas Cromwell* illustrates the evil in making a distinction between town and home. See Hauerwas & Shaffer, *supra* note 11.

lynch victim's family. "It proves again," he said, "how no man can cause more grief than that one clinging blindly to the vices of his ancestors."³⁹

Atticus did not accept the dispensation from responsibility which Maycomb offered him; he provided protection with truth even though he knew that, in the end, his client would suffer as much as, and maybe more than, he would have if Atticus had stayed away from the jail or had been conventional.

But Atticus was also the child of Maycomb, even as he confronted its conventions. He was capable of protection without truth, too. His was a groping kind of heroism. "As you grow older," he told Jem, "you'll see white men cheat black men every day of your life, but let me tell you something and don't you forget it—whenever a white man does that to a black man, no matter who he is, how rich he is, or how fine a family he comes from that white man is trash There's nothing more sickening to me than a low-grade white man who'll take advantage of a Negro's ignorance." *Atticus, for all his righteous vehemence, missed the point.* The truth was that the social and economic system in Maycomb made it impossible for black people to cope. The protection Atticus proposed for them was protection from the truth of their continued slavery. The real price which had to be paid was not black rebellion at the white man's duplicity, but the price of freeing the slaves—a price which is being paid now, sooner perhaps than Atticus thought it would be, and toward a different result than Atticus predicted. The truth was that black people needed the strength to face and to deal by themselves with the "low-grade white man." They no longer needed the protection of aristocrats.⁴⁰ Atticus's protection of them was patronage, a part of the Maycomb story, and a part of the story Faulkner's Gavin Stevens tells about Jefferson, Mississippi. Atticus did not offer to his black neighbors the

39. W. FAULKNER, *INTRUDER IN THE DUST* 49 (1948). This point is also made, with grim clarity, in a much earlier Faulkner story. W. FAULKNER, *Dry September*, in *COLLECTED STORIES OF WILLIAM FAULKNER* 169-83 (1934).

40. This was and is true of the elderly, for example, who are, in Galsworthy's phrase, "at the mercy of care and love," J. GALSWORTHY, *MAN OF PROPERTY* 337 (Scribner ed. 1969); of women, and particularly of women in the church, Herman, *Loving Courtship or the Marriage Market? The Ideal and Its Critics 1871-1911*, 25 *AM. Q.* 235 (1973); and of black people in the North. In R. STOUT, *DOUBLE FOR DEATH* (1939), a black servant is the most proximate and most likely suspect, but the sleuths in the story—including one who says, "I've never seen or heard anything yet that I wasn't curious about"—assume that the black man is simple, loyal, and innocent; one detective even says, "We'll count Luke out on sentimental grounds."

protection *with truth* which he offered his son Jem. The moral leaders of Maycomb and of Jefferson were able to say, as Gavin Stevens said, "[N]othing can hurt you if you refuse it;"⁴¹ but that message was reserved for white gentlemen and their sons. Atticus's choice with respect to Boo Radley, too, although it was an act of high moral integrity and even an act which shows how deeply he valued the truth, was a way of saying that Boo Radley needed protection *from* the truth, and not—as with Jem—protection *with* the truth.⁴²

Truth without protection also occurred in Maycomb. Atticus was appointed to defend Robinson because the Supreme Court of the United States had said, three years before, that courts such as the Maycomb County Circuit Court could not deny lawyers to impoverished capital defendants.⁴³ Prior to that change, I suppose, some black defendants in Judge Taylor's court had been left to face the truth of their racist culture with little protection—as black prisoners had been left to face the lynch mobs without the protection of jailers. It is revealing, on this point, that the black prisoner in Faulkner's account is saved not by a law enforcement officer but by an eccentric old white woman who is recognized, even by the mob, as the black prisoner's patron (because the black man's mother-in-law had been the white woman's nanny).⁴⁴ The lynch mob, even if it was a small and deviant part of the population of Maycomb County, and of Yaknapatawpha County in the Mississippi story, could function only because the respectable citi-

41. See note 36 *supra*. Wall Street lawyer culture deals with the issue differently but also aristocratically. "Half the crooked things men do are done because they're afraid to be disagreeable to their so-called 'pals.' Learn to *hate* the man who asks you to do a wrong thing, Beeky. And then you'll find that your simple duty becomes your simple pleasure!" L. AUCHINCLOSS, *THE PARTNERS* 113 (1974).

42. Maimonides said, "The highest form of charity is not to give alms but to help the poor to rehabilitate themselves." Posner, *Charity: In the Talmud and Rabbinic Literature*, 5 *ENCYCLOPEDIA JUDAICA* col. 343. See note 36 and 37 *supra*.

43. *Powell v. Alabama*, 287 U.S. 45 (1932).

44. When Faulkner's *Intruder* was published, Edmund Wilson analyzed it as a "civil rights" argument. He said Southern white patronage "appears in Faulkner's work as a force more humane and more positive than almost anything else one can find in the work of even those writers of our more mechanized society who have set out to defend human rights." *THE NEW YORKER*, Oct. 23, 1948, at 120. Wilson has been criticized for assuming Gavin Stevens's point of view is that of Faulkner. See J. BRYER, *supra* note 3; Elias, *supra* note 3. It is important to understand that a significant community delusion is bound to be attractive, even noble, and that telling the truth about it is a necessary base both for worthwhile social ethics and for repentance—for being, in Reinhold Niebuhr's phrase, "completely known and forgiven." J. GUSTAFSON, *supra* note 14, at 141.

zenry stood aside until the violence was over, and then provided protection to black survivors.

Maycomb and Jefferson also provided a different and more subtle sort of truth-without-protection to the innocent. Both towns illustrate a cultural respect for the innocence and clearheadedness of children, old white women, and "ignorant" black people; but the culture of Maycomb and of Jefferson expected the innocent to learn that their protection could not continue unless they accepted or at least countenanced those delusions which supported the subjection of black people. The difference between Scout and Atticus is that Atticus had learned his way out of innocence. Scout's account illustrates innocence and the loss of innocence in a scene involving the children, who are sickened at the treatment they have seen Tom Robinson receive on cross examination, and a scruffy white farmer named Dolphus Raymond. Raymond had moved to the country, married a black woman, and fathered mixed-race children. He had survived in Maycomb County, despite this irregularity in his life, by pretending that he was a demented alcoholic. In words Scout borrowed from one of her father's explanations of the law, "[H]e deliberately perpetrated fraud against himself." Raymond told the truth to the children (the truth being that the beverage in his brown paper sack was Coca-Cola) "because you're children and you can understand it." But then Raymond saw that the children's friend Dill had been shattered and disillusioned in the Maycomb County courtroom, and he said to Scout and Jem, "Things haven't caught up with that one's instinct yet. Let him get a little older and he won't get sick and cry. Maybe things'll strike him as being—not quite right, say, but he won't cry, not when he gets a few years on him." That—of the children as of the mock alcoholic Dolphus Raymond—is truth without protection.⁴⁵

Protection without truth and truth without protection are re-

45. See note 40 *supra*. Tom Stoppard, defending his literary claim that public morals are private morals, said:

People are so clever that, paradoxically, they can be persuaded of almost anything. For example, if one were to say to an intelligent child the following: 'Life in East Germany is very agreeable, and there's a wall around it to keep people in' the child would say, 'There's something wrong here.' But if you said it to a professor of political science or of political history, you'd have a much better chance of persuading him that what you said isn't nonsensical.

Henninger, *Theater: Tom Stoddard and the Politics of Morality*, Wall St. J., Feb. 1, 1980, at 17, col. 1.

solved either in delusion (the assumption that black people are wrong in and lie about their encounters with white people) or in violence (the lynch mobs, the killing of Tom Robinson). Protection with truth depends, in that culture or in any other, on heroes such as Atticus who are no longer innocent but still truthful, who are able to see the culture's delusions, as Atticus often did, but who are also implicated in the culture's delusions. Atticus was more ironic than either pathetic or tragic: he was not pathetic because he was noble; if he were not noble he would be somebody else. He was not tragic, either, because the fates he encountered were fates in which he held membership; he was, in and of Maycomb, his own fate.⁴⁶ Atticus was patronizing toward black people, and he could rail against the spectral North as much as any Alabama country lawyer who ever saw advantage in doing so; but he risked everything in order to tell the truth, and would not allow an innocent lie to protect his son. The point is not to see Atticus as less than a hero, but to see him as a real hero. A real hero is best studied when he is among his neighbors, bearing moral witness to them but also suffering among them, suffering even by believing the delusions they believe. This is an important point for us American lawyers. Our profession tends to insist on a hagiography of purified lawyers rather than the sobering study of legitimate lawyer-heroes.⁴⁷ As a result we have suffered more cynicism than we need to have suffered. We have not learned where to find our heroes or what to do with them. We have not learned that our heroes are among us, and always have been, and that the moral failures of an honest, brave person are ethically important.

In the last scene in Scout's account, Atticus struggled with an example of truth telling so pristine that he was willing to see pain come to his broken, bedridden, teen-aged son rather than tell a lie; he saw protection of the weak so pristine that it seemed to demand from him surrender of his honesty. His resolution of the dilemma

46. See R. NIEBUHR, *THE IRONY OF AMERICAN HISTORY* (1952).

47. Graham Greene notices that people who lack prejudices also lack ideals. G. GREENE, *THE HUMAN FACTOR* 112 (1979). There is a tendency in American law reform to suppose that anyone who makes money cannot be a reformer, let alone a hero. See, e.g., Neely, *Your Moral Obligation To Make Money*, *JURIS DOCTOR*, Feb.-Mar. 1979, at 46. The use of biography as theology is a search for legitimate heroes who have prejudices and who may make money. See J. McCLENDON, *BIOGRAPHY AS THEOLOGY* 170-203 (1974); see also Schudson's discussion of the views of Louis D. Brandeis. Schudson, *Public, Private, and Professional Lives: The Correspondence of David Dudley Field and Samuel Bowles*, 21 *AM. J. LEGAL HIST.* 191, 210-11 (1977).

expresses devotion to both of these values, both of which he learned from his family and his neighbors. In an odd, sad way, he honored both values in what he did. In a sense which "people with background" in Maycomb no doubt understood, he compromised neither truthfulness nor care. But, to understand that, one has to understand first where Atticus came from and where he was, and how much it meant to him to be where he was. It is this cultural quality, taken with his nobility, which gives "ultimate seriousness"⁴⁸ to what he did, and which made the outcome of the Boo Radley incident a part of Atticus's personality and a part of his hope for Maycomb.

II. TELLING THE TRUTH AS COURAGE

A hero's truth telling seems to involve courage at two points—in seeking truth, and in facing the truth when it is found. The example of courage that Atticus related to his children is Mrs. Dubose's unpromising confrontation with her morphine addiction. Atticus told his children the ill-tempered, bigoted old woman was the bravest person he ever knew. There must have come a time when Mrs. Dubose discovered that her physician, in an effort to ease the pain of her terminal illness, had been giving her morphine. If Scout had described that time, we might have asked why Mrs. Dubose had to be told, or why she had wanted to discover the truth of her addiction. Truth hurts; it is not frivolous to wonder whether it would be better at times not to know, and not want to know, the truth. The courage with which a hero refuses to be deceived is the courage of a person who wants to know the truth, even when the truth is ugly and destructive.

It also takes courage to face the truth once it is known. Truth is often so destructive that we can understand a person's seeking to evade what he knows. That is what Maycomb—including Mrs. Dubose—did with the truth about Mayella Ewell. Those who objected to Atticus's defense of Tom Robinson contended, plausibly, that Atticus would cause great harm, and no apparent good, in publicly insisting that Mayella Ewell tried to seduce a black man. Two years before the Robinson trial, in Decatur, Alabama, when Judge James Edwin Horton overturned a verdict of guilty in another rape case, that part of the state was so upset that five lynch-

48. See P. TILICH, *supra* note 10.

ings of black prisoners were attributed to Horton's ruling.⁴⁹ The black defendant in Horton's case, Haywood Patterson, was tried again (before a different judge) and sentenced to death. Judge Horton's telling the truth gained no more for Haywood Patterson than Atticus's telling the truth gained for Tom Robinson. The Boo Radley incident also illustrates that Atticus knew how the truth could cause harm without evident benefit. It takes courage to choose to face the consequences of the truth being told, as it takes courage to want to learn the truth in the first place.

Courage in these instances seems to involve both bravery *and* a point of view. Mrs. Dubose's courage involved both; there was a reason behind her wish to be "beholden to nothing and nobody." A point of view provides the hero with a reason—an intellectual defense—for seeking and telling the truth. Bravery without a point of view doesn't seem to have a way to esteem truth more than it esteems benign falsehood. (Esteem for benign falsehood is illustrated by Atticus's behavior toward Boo Radley.) Bravery alone would not explain Atticus Finch, who was brave but who lived not so much by bravery as by telling the truth—or, rather, who lived by knowing⁵⁰ the truth with courage, and who therefore sought the truth and told the truth. Atticus's courage depended upon a point of view. His point of view is what I call his moral theology. My claim is that his skill in being a hero and a truth teller—that is, his practice of courage as a virtue—was present in his point of view before it became present in his bravery.

Atticus gave three reasons for his decision to tell the truth in the defense of Tom Robinson:

(1) "If I didn't I couldn't hold up my head in town, I couldn't represent this county in the legislature, I couldn't even tell you or Jem not to do something" I have discussed that aspect of the story in explaining that Atticus cannot be understood apart from Maycomb. I shall return to this reason again to explain Atticus's courage as political and as professional.

(2) "Do you think I could face my children otherwise? . . . I

49. See H. PATTERSON & E. CONRAD, *SCOTTSBORO BOY* (1973).

50. The Book of Job invites meditation in this regard. Herbert Fingarette says that Job can be explained as having integrity—wholeness—and the ability to face the truth in suffering. See Fingarette, *The Meaning of Law in the Book of Job*, 29 HASTINGS L.J. 1581 (1978). Karl Barth contends that the biblical figure is not so much a hero as one who testifies to sickness. See K. BARTH, *THE WORD OF GOD AND THE WORD OF MAN* 77-79 (D. Horton trans. 1978).

hope and pray I can get Jem and Scout through it without bitterness, and most of all without catching Maycomb's usual disease." This reason explains Atticus's two ways of protecting the weak; it appears, in reprise, toward the end of the account, when he explained that he must train Jem (but not Boo Radley) to face (and endure) the truth. This reason illustrates that nothing can hurt a gentleman so long as he can refuse it.⁵¹

(3) "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 . . . before I can live with other folks I've got to live with myself." (Scout added that Atticus "liked to be by himself in church.") This reason is expressly theological; it claims an intellectual grounding for the way Atticus practiced law in the relationships between Atticus and God; it can be understood as drawing on the Christian heritage which Atticus had, through being a descendant of the stubborn Methodist émigré Simon Finch (who left Cornwall because he was afraid of being corrupted by it), and it draws on Atticus's sense of himself as a Southern Protestant Christian, and a citizen of a town which was less pluralist than other towns in America were in 1935 and more explicitly Christian in its culture than any town in America is now.⁵²

The Christian theology of Maycomb had two branches, white and black. Scout described the white branch mainly in social terms; she did not connect Atticus's private faith with such things as meetings of the women in his church. Nevertheless, there were connections; part of Miss Maudie's plain-spoken defense of Atticus, for instance, occurred at a meeting of the white Methodist missionary circle. The heroism Atticus represents—the semi-governmental heroism of a lawyer and a gentleman—is explained without elaborate reference to theology, even though it is evident that a theology is present and is important.

The other branch of Maycomb's Christian theology is the black church. Scout tells of the day she and Jem accompanied their surrogate mother Calpurnia to the Sunday worship services of the black church in Maycomb; she also describes how Rev. Sykes, the pastor of that church, led the black people of the town

51. See Vickery, *Gavin Stevens: From Rhetoric to Dialectic*, 2 *FAULKNER STUDIES* 1, 151, 206, 210 (1953).

52. See M. MARTY, *RIGHTEOUS EMPIRE: THE PROTESTANT EXPERIENCE IN AMERICA* 133-43, 210-20 (1970).

as they watched Tom Robinson's trial—Rev. Sykes leading the black Christians, Atticus standing in for the white Christians. These stories help to explain how Alabama's black churches could have been the birthplace of the civil rights movement twenty years later. They were the least racist places in America, but they were also rallying centers for the spirit and patience of black Southerners. They were the source of what Dr. Martin Luther King, Jr., described with Christian religious symbolism.⁵³ Their faithful commitment to and celebration of the religious symbol of reconciliation, of the story of Moses (exodus from slavery), and of the "revolutionary subordination" of Jesus Christ (suffering servanthood), and their sense—which the white church in the South has always shared—of God's acting in the world,⁵⁴ gave Maycomb a point of view. That is the importance of Atticus's theological reason for defending Tom Robinson by telling the truth; it evidences Maycomb's point of view. It was doubtless an important part of Atticus's definition of himself and of his community. I suggest that it is the intellectual content in his courage.

The principal symbol for Christians is the Cross.⁵⁵ In the Cross the separated church in Maycomb was united. To the extent it was not united in the Cross, it was not the church.⁵⁶ All of the other symbols—suffering servanthood (which can be found both in slavery and in General Lee's description of the gentleman), exodus, and reconciliation—are gathered together under the Cross.⁵⁷ The

53. J. McCLENDON, *BIOGRAPHY AS THEOLOGY* 65-86 (1974). McCleendon argues that the Christian hero will usually experience a confrontation with Jesus, *Id.* at 170-203. The black church provided confrontations for Atticus, for Maycomb, and for Dr. King's Alabama. Such confrontations in *Mockingbird*, though, are mostly off stage.

54. *Id.* at 112-39. See K. BARTH, *THE FAITH OF THE CHURCH* 43-52 (G. Vananien trans. 1958).

55. See J. McCLENDON, *supra* note 53, at 87-92; J. YODER, *THE POLITICS OF JESUS* (1972).

56. Unbar the door! unbar the door!
We are not here to triumph by fighting, by stratagem, or by resistance,
Not to fight with beasts as men. We have fought the beast
And have conquered. We have only to conquer
Now, by suffering. This is the easier victory.
Now is the triumph of the Cross

T. ELIOT, *MURDER IN THE CATHEDRAL* 71-72 (1935).

"I didn't go to religion to make me happy. I always knew a bottle of Port would do that. If you want a religion to make you feel really comfortable, I certainly don't recommend Christianity." C. LEWIS, *GOD IN THE DOCK* 58 (1970). See H. THIELICKE, *CHRIST AND THE MEANING OF LIFE* 39, 61 (J. Doberstein trans. 1962); Barry, Book Review, 88 *YALE L.J.* 629, 643, 648-50 (1977) (reviewing C. FRIED, *RIGHT AND WRONG*).

57. See, e.g., McCLENDON *supra* note 53, at 39-64 for a description of the theology in

Cross says to Christians who wonder whether they should seek and tell the truth, "[H]e that doeth the truth cometh to the light, that his deeds may be made manifest, that they are wrought in God."⁵⁸ The God of the Cross is, in two words, love and sovereign: Love triumphs; one need not fear the truth.⁵⁹ The symbol of the Cross carries with it all of the ugliness of Mrs. Dubose's addiction and disease, and all of the hopelessness of Tom Robinson's having to suffer because of what people do to one another in the name of the law. But those who are gathered together under the Cross can deal with the truth because the Cross points beyond itself to triumph, to the open tomb on Easter.⁶⁰ "Long live God," as the chorus sings in *Godspell*. Christian appeal to the Cross as a dominant symbol for the church—and thus to the symbols implicit in the Cross, of reconciliation, exodus, and suffering servanthood—provided Atticus a point of view which said that he and Maycomb could bear the truth. It is important to search for Atticus's (and thereby for Maycomb's) point of view because bravery alone cannot explain what he did; his courage depended upon a direction and purpose aside from bravery. One does not talk about the courage of those who joined the lynch mob.

I identify this theology of Cross, reconciliation, suffering servanthood, and exodus as the most likely in this case; it is a more likely explanation of the substantive side of Atticus's courage than a classically tragic view of his situation would be. Atticus is more likely to have seen himself as in the hands of God than as an antagonist of the gods.⁶¹ The Christian theological point of view is more likely to have been what he drew from his family and his

the life of Dag Hammarskjöld.

58. *John* 3:21.

59. See Hauerwas & Shaffer, *supra* note 11. See also Hauerwas, *Jesus: The Story of the Kingdom*, 26 *THEOLOGY TODAY* 303 (1978). Karl Barth's discussion of the point evidences the openness and trust in a theology that is sometimes described as gloomy and Calvinistic. Conscience, Barth says, causes one to know a will which is "straight and pure, and which, when it once prevails, must have other, wholly other, issues than these we see today." K. BARTH, *supra* note 50, at 13. The enemies from whom God will save us, he says, include those we create with our disobedience. K. BARTH, *THE GREAT PROMISE* 68 (H. Freund trans. 1963).

60. K. BARTH, *DOGMATICS IN OUTLINE*, 101-07 (G. Thompson trans. 1959). The suffering is *legally* caused and the triumph a triumph *over the law*. Barth even says that Jesus triumphs over Pilate because Pilate does God's will. *Id.* at 108-13.

61. "What lies ahead in the future is open worthy of trust." J. GUSTAFSON *supra* note 14, at 252. Gustafson, discussing Gabriel Marcel, argues that capitulation to fate (and, I suppose, defiance of fate) is the opposite of hope. *Id.* at 160. See J. ELLUL, *THE PRESENCE OF THE KINGDOM* (O. Wyon trans. 1967); H.R. NIEBUHR, *supra* note 16, at 38-48.

neighbors, what he held up to them when he insisted on the truth and on the cost of holding to the values Maycomb held. I argue this as the most likely inference from the history and ethos of that time and place; I argue it also in a confessional way—that is, as one who understands that the Christian point of view is adequate to explain Atticus's commitment to truth—but I don't doubt that other points of view might have been adequate. Atticus is a Christian hero as a matter of fact, and he should be studied as a Christian hero if one proposes to learn from him about the virtue of courage. *My argument is that a hero cannot be studied usefully when his faith is ignored.*

This intellectual side of Atticus's courage has implications from and for his community. The community or social side here is that Atticus's courage—his theology, from which he knew that he need not fear to seek and to state the truth, *and* his bravery—made it possible for him to see the truth where his neighbors had learned not to see the truth. Communities carry their heroes' point of view, but communities also deceive themselves and train their young in the skills of self-deception. "Things haven't caught up with that one's instinct yet," said Dolphus Raymond about Dill outside the Maycomb courthouse. "Let him get a little older and he won't get sick and cry." Maycomb, doubtless, had conventional explanations for the subjection of black people; Scout spares us the discomfort of reading them, probably because we all know what they were. Its conventional explanations not only had hidden the real reasons but also had hidden the fact that real reasons were hidden. The community had made this process of "reduplication" a habit and then a policy.⁶² What this cultural development meant, finally, was that Maycomb had to shape a world which was consistent with its policy; it had to proclaim its policy as a virtue and to exact commitments—*moral commitments*—from its citizens, both to protect its untruthfulness and to give itself order, to explain its history and a way of life which it had come to consider, for the wrong reasons, as valuable and fragile.

The arresting thing about this insight into Maycomb's collective delusions, and into our own, is that people of integrity are more vulnerable to cultural delusion than are scoundrels and hypocrites.⁶³ Cultural delusions are the delusions of our leaders, espe-

62. See Hauerwas & Burrell, *supra* note 30, at 86-88, which builds on the insights of H. FINGARETTE, *SELF-DECEPTION* (1969).

63. See Hauerwas & Burrell, *supra* note 30, at 87. It is moral man, Barth says, who

cially of our moral leaders. That is why the missionary circle sounds so ugly in Scout's story; it is why Jesus is so hard on the Pharisees. A community moves away from its delusions, if it ever does, when one of its own seeks and tells the truth more clearly than is usual, and is willing to contemplate the price he and the community will pay for telling the truth. Among other things, this means that he seizes upon something in the community's theology which will allow him to describe the community—and himself in the community—in a way that is more truthful than the conventional descriptions of the community. Characteristically, this new "master image" is uncomfortable because it demands a relatively clear look into what the community is doing. It gives the community a relatively new way of looking at itself, ordering itself, and explaining its past.⁶⁴ (An example is the Letter to the Hebrew Christians, in the New Testament.) While this new look invites the community to accept responsibility for the truth (which is what "repentance" means), it also has an understanding of, and a compassion for, the community which permits the community to go on being a community; it is purifying rather than destructive.⁶⁵ In reference to places such as Maycomb and Jefferson, Mississippi, the prophets of the culture (prophets as different from one another as Faulkner and King) tended to believe that the black Southerner would succeed in the twentieth century where the white Northerner had failed in the nineteenth. This painful but ultimately benign social effect ensues because the truth-telling hero comes from the community and suffers as it suffers, *and* because he is flawed, as the community, before, during, and after its awakening, is flawed. The hero says, "I am a man of unclean lips, and I dwell in the midst of a people of unclean lips . . . Here am I; send me."⁶⁶

III. TELLING THE TRUTH AS POLITICAL

Atticus told the truth to Maycomb and for the benefit of Maycomb. I argued in Part I that his reverence for truth and his

makes us ashamed of men. K. BARTH, *supra* note 50, at 147.

64. See K. BARTH, *THE FAITH OF THE CHURCH* (G. Vananien trans. 1958); J. McCLENDON, *supra* note 53.

65. General Lee, after the war, practiced this sort of reconciliation. F. GAINES, *LEE: THE FINAL ACHIEVEMENT* (1978). See Hauerwas, *Jesus: The Story of the Kingdom*, 26 *THEOLOGY TODAY* 303 (1978). It is in hope for such personal and heroic moral witness that a society can be talked about as "self-transcending." H.R. NIEBUHR, *THE RESPONSIBLE SELF* 87-88 (1963).

66. *Isaiah* 6:5,8.

gentleman's or "republican" sense of public responsibility were learned from his neighbors and his family. I argued in Part II that the courage which caused him to see the truth, and then to tell it, depended on what he had learned in the church and on a theology which he shared with Maycomb, to which he could appeal in a way Maycomb understood. I now make a third argument: Atticus's telling of the truth was political as well as social. I say this because the morals of Maycomb as a "state"⁶⁷ depended on the morals of persons; because the secular tradition of Atticus's leadership as a lawyer, legislator and gentleman identify public and private morals;⁶⁸ and, finally, because Maycomb had unwittingly commissioned him to tell it the truth, or at least to try, and thereby to free the town from its delusions. From these three indications of truth-telling as political, my conclusions are that Atticus, although he exceeded his priestly⁶⁹ commission, nonetheless remained faithful to Maycomb, and that his actions were theological in their politics and political in their theology.

A. *Source of Public Morals*

Public morals in Maycomb were the morals of specific persons.⁷⁰ Sheriff Tate knew that it was up to *him* (and, he insisted, him alone) whether the death of Robert Ewell was to be officially accounted for with a lie. He decided as he did because he believed that to tell the truth would be a *sin*; his position on that issue was the position of Maycomb. (Atticus's behavior can be accounted for—although not adequately—on the ground that Atticus knew

67. I use Jacques Maritain's distinction between "state" and "community." See J. MARITAIN, *MAN AND THE STATE* (1951).

68. See note 79 *infra*.

69. T. SHAFFER & R. REDMOUNT, *LAWYERS, LAW STUDENTS, AND PEOPLE* ch. 1 (1977), explains this secular use of "priestly" to describe American lawyers; it is usually attributed to Toqueville.

70. Tom Stoppard's character, Pavel Hollar, says: "The ethics of the State must be judged against the fundamental ethic of the individual. . . . The human being, not the citizen. I conclude there is an obligation, a human responsibility, to fight against State correctness. Unfortunately, that is not a safe conclusion." Henninger, *Theater: Tom Stoppard and the Politics of Morality*, Wall St. J., Feb. 1, 1980, at 17, col. 1. Martin Buber argued that one must know a *thou* before one can know a *we*, and that all morality is interpersonal. See K. BARTH, *supra* note 50, at 273; Friedman, *Introduction to M. BUBER, THE KNOWLEDGE OF MAN* (1965). Bonhoeffer said that the problem of the Pharisee was his need for *order*, which took precedence over persons and therefore over morals. D. BONHOEFFER, *ETHICS* 142-76 (N. Smith trans. 1955). See generally J. HARTT, *A CRITIQUE OF CHRISTIAN CULTURE* (1967), for an argument that the church cannot be the church when it allows itself to become a subculture.

that and knew he could do nothing about it.) Persons were the source of public morals in Maycomb; if it ran a risk—and it did—the risk was the tyranny of tyrants, not the tyranny of “value free” experts.⁷¹ It could afford the risk of tyranny because it had not yet become a pluralistic society; it still had a common source of thinking about morals (a theology, I think) and was able to have, as a pluralistic society cannot, the notion that there is a common good.⁷² These facts have a number of implications, implications which can be generalized by noting that in Maycomb private morals were the source of public morals; the town understood and believed, as Atticus did, that there was not one set of morals for official life and another set for life at home. (The moral consensus included significant moral delusions.) A leader there—whether he wielded authority formally, as the sheriff did, or informally, as Atticus did—could not escape from the public and even official burden of his relationships; he could only choose whether or not to be responsible in his relationships. (The patronage system for taking care of Boo Radley, the elderly, black people and women is an am-

71. “When I was in power,” John Updike’s Felix Ellellou, a fallen tyrant, says, “I found that experts can’t be trusted. For this simple reason: unlike tyrants, they are under no delusion that a country, a people, is their body. Under this delusion a tyrant takes everything personally. An expert takes nothing personally. Nothing is ever precisely his fault.” J. UPDIKE, *THE COUP* 280 (1978). LeCarre’s George Smiley says: “I think it safer to stay with institutions In that way we are spared the embarrassment of personalities. After all, that’s what institutions are for, isn’t it?” J. LECARRE, *THE HONOURABLE SCHOOLBOY* 53 (Bantam ed. 1977). But in old age Smiley says, “I invested my life in institutions . . . and all I am left with is myself.” J. LECARRE, *SMILEY’S PEOPLE* 152 (1980). Poets are more vivid on this point than theologians, but see W. Kaufmann’s note in M. BUBER, *I AND THOU* 65 (1972); M. NOVAK, *IN PRAISE OF CYNICISM* 15-17 (1975); A. MacIntyre, *Patients as Agents*, in *PHILOSOPHICAL MEDICAL ETHICS: ITS NATURE AND SIGNIFICANCE* 197-212 (S. Spicker & H. Engelhardt eds. 1977); Sobran, *Zigging, Zagging Morality*, *Wash. Post*, Nov. 7, 1979, at A.19, col. 1.

72. “Society,” George Smiley said, “is an association of minorities.” J. LECARRE, *SMILEY’S PEOPLE* 88 (1980). See H.R. Niebuhr’s argument that pluralism is henotheistic. H.R. NIEBUHR, *supra* note 16, at 75. Professor Geoffrey Hazard laments the loneliness of the modern American lawyer. Hazard, *Conscience and Circumstance in Legal-Ethics*, in 1 *SOCIAL RESPONSIBILITY: JOURNALISM, LAW, MEDICINE* 42-44 (L. Hodges ed. 1975), but defends the adversary ethic on the ground that it supports autonomy and privacy. G. HAZARD, *ETHICS IN THE PRACTICE OF LAW* 120-35 (1978). Hauerwas argues that pluralism cannot nourish the common good. S. HAUERWAS, *supra* note 9, at 222-40. Robert E. Rodes, Jr., argues to the contrary, but he can also be interpreted as saying that modern American culture is less pluralistic than it (or Hauerwas) thinks. Rodes, *Pluralist Christendom and the Christian Civil Magistrate*, 8 *CAP. U.L. REV.* 413 (1979). Compare Hauerwas’s discussion of John Howard Yoder’s theory of how the church influences secular values: “[B]y osmosis . . . moral values are slowly accepted by the world at large even though it has no basis for such a commitment.” HAUERWAS, *supra* note 9, at 212.

biguous example.⁷³) Justice, if anyone in Maycomb had bothered to describe it, would have been described as an interpersonal virtue. The failure to provide justice (across the back fence or in the courthouse) would have been described, as I think Dolphus Raymond did describe it, as an interpersonal failure. This state of affairs is a promising, if not necessary, condition for political moral witness; that is, whether or not the public morals of a community always are individual, this was the case in Maycomb, and therefore it was possible in Maycomb to confront each citizen with the moral failing of the community—to confront him as if that failing were his own.⁷⁴

B. *Secular Tradition*

Atticus was apparently as much a Jeffersonian as was General Lee. He saw the rectitude of his society, and specifically the rectitude of its government, as his responsibility. He exercised responsibility in every direction: for the reclusive Boo Radley (who lived with his parents); for a dying old woman (who was implacably independent, well provided for, and in the care of a competent servant); for the Robinson family (who suffered at Robert Ewell's hands after Tom Robinson was taken to prison); and for anyone who might encounter a mad dog in the public street. The considerations he took with him to the legislature were those he took to court and those he took to his home and from it.⁷⁵ The difference in his treatment of Jem and Boo Radley (on the truth of who killed Ewell) was, in this sense, not attributable to Jem's being his son so much as to Jem being in training to assume Atticus's duties. This tradition speaks, as General Lee did, to a moral way to use power and advantage; it explains the patronage out of which Atticus sought to protect *categories* of weak people, whether they were weak or not;⁷⁶ it also

73. See note 40 *supra*.

74. T. SHAFFER, *supra* note 2, at ch. 13.

75. About half of Judge George Sharswood's essay on legal ethics—the source of modern codified American legal ethics—is an admonition to legislators not to trifle with property rights. This emphasis may not implicitly respect the identity of public and private morals, but it implies the identity of law office morals and legislator's morals. G. SHARSWOOD, AN ESSAY ON PROFESSIONAL ETHICS (Philadelphia 1854), reprinted in 32 REP. A.B.A. 9 (1907). Bloomfield argues that Sharswood was not a republican. Bloomfield, *supra* note 20.

76. Simon Finch, a British Methodist émigré who came to Alabama to avoid corruption, would perhaps have understood the blend of Jeffersonian aristocracy and Christian suffering servanthood that I find in General Lee's admonition to gentlemen and in Atticus's care for the insufferable Mrs. Dubose. John Wesley said:

Thy neighbor, . . . every child of man . . . not excepting him whom thou knowest to

explains his identification of public and private morality ("I can't live one way in town and another way in my home"). Atticus would probably have agreed with the quaint, disappearing breed of American lawyers who refuse their profession's claim of dispensation from public responsibility.⁷⁷ Atticus would not have lied for a client or have helped a client to lie;⁷⁸ he might not even have agreed to argue the innocence of a dangerous criminal. Twentieth century lawyers assume that their profession has always been relieved of responsibility for those whom the adversary system leaves free to harm others; that is not the case, and my guess is that Atticus would stand with the old-fashioned "republicans" on the question.⁷⁹ Thus, Atticus's insistence on the truth in court was not significantly different from his insistence on the truth in answers to the questions of children. He believed that the government of Maycomb should know and tell the truth because he was aware that a gentleman is a governor, but not aware that he was, as governor, a different person than he was at home or when he sat by himself in church.⁸⁰

be evil and unthankful, him that still despitefully uses and persecutes thee: him thou shalt love *as thyself*; with the same invariable thirst after his happiness in every kind; the same unwearied care to screen him from whatever might grieve or hurt either his soul or body.

H. CARTER, *THE METHODIST HERITAGE* 202 (1950).

77. The idea that professionals claim circumstantial dispensation from responsibility is attributable to Hauerwas. See S. HAUERWAS, *TRUTHFULNESS AND TRAGEDY* 195-97 (1977); see also Wasserstrom, *Lawyers as Professionals: Some Moral Issues*, 5 *HUMAN RIGHTS* 1 (1975). The charge against lawyers is also suggested in S. HAUERWAS, *supra* note 9, at 48-89, and H.R. NIEBUHR, *THE RESPONSIBLE SELF* 17-18, 33-36 (1963). The dispensation is claimed and defended in M. FREEDMAN, *LAWYERS' ETHICS IN AN ADVERSARY SYSTEM* (1975).

78. See notes 107-08 *infra*.

79. See Bloomfield, *supra* note 20; M. Silver, David Hoffman and the Rationalization of Legal Study (1979) (unpublished paper, University of Chicago Law School). The prototype on which Bloomfield and Silver rely is D. HOFFMAN, *Professional Deportment*, in *A COURSE OF LEGAL STUDY* (Baltimore 1817). The article was revised and expanded in a two-volume edition of *A COURSE OF LEGAL STUDY* published in 1836. The latter article is the source of Hoffman's *Resolutions in Regard to Professional Deportment*. In my view, much of this "republicanism" survives in Sharswood's essay, see G. SHARSWOOD, *supra* note 75, but Bloomfield does not agree with me. Wherever one places the change in American legal ethics, from the morals of public responsibility to the morals of client loyalty, it was established by the 1870's when modern bar associations were organized. Schudson, *Public, Private, and Professional Lives: The Correspondence of David Dudley Field and Samuel Bowles*, 21 *AM. J. LEGAL HIST.* 191 (1977).

80. See note 38 *supra*.

C. *Community Commission*

Miss Maudie's argument that Atticus, in telling the truth and in his bravery, acted for the community ("we've got Atticus to go for us . . . we trust him to do right") suggests that he acted with a moral commission which was parallel to his commission as court-appointed defender of Tom Robinson, sheriff's sharpshooter, and member of the legislature. That moral commission was a commission to tell the truth; Miss Maudie's words were a defense of Atticus after the trial, a defense to the charge that he should not have brought out the truth about Mayella Ewell. For two reasons, a community needs to commission someone to tell it the truth. First, otherwise its people will not be free; none of them will be free. In a society which continues to believe its lies about itself, the governor who markets untruth is as much a prisoner as the citizen who hears untruth.⁸¹ Such a society either dies or manages somehow to find a prophet.⁸² Second, since a society defines itself, through its state, by identifying and in some way excluding the law-breakers who live in it, the premises on which "the administration of justice" rests must be seen to be relatively open, honest premises;⁸³ if not, no one is safe; everyone is in the situation of the accused in a novel by Kafka.

Incidentally, the commission of which Miss Maudie spoke—like the Jeffersonian tradition which General Lee honored—seemed to limit Atticus's choices. Atticus could not have dissociated himself from his community's treachery. He could not have renounced it as, say, Don Quixote renounced the pain in his community or Camus's Jean-Baptiste, the "judge penitent" of *The Fall*—a lawyer, by the way—turned away from the pain of others in an effort to deal only with his own evil.⁸⁴

81. [Varro] indicates that he does not publish all things, because they would not only have been contemptible to himself, but would have seemed despicable even to the rabble, unless they had been passed over in silence. I should be thought to conjecture these things, unless he himself . . . had openly said . . . that many things are true which it is not only not useful for the common people to know, but that it is expedient that the people should think otherwise, even though falsely . . . In this he no doubt expresses the policy of the so-called wise men by whom states and peoples are ruled. Yet by this crafty device the malign demons are wonderfully delighted, who possess alike the deceivers and the deceived . . .

ST. AUGUSTINE, *THE CITY OF GOD* bk. IV, ch. 31 (Modern Lib. ed. M. Dods trans. 1950).

82. See T. SHAFFER, *supra* note 2, at ch. 10.

83. *Id.* at ch. 13.

84. See H. FINGARETTE, *SELF-DECEPTION* 57-65, 140-44 (1969); E. BUSCH, *KARL BARTH: HIS LIFE FROM LETTERS AND AUTOBIOGRAPHICAL TEXTS* 226-43, 257, 261, 273, 358 (J. Bowden

D. Faithfulness

The most plausible charges against Atticus were charges of disloyalty. Similar charges were made against Gavin Stevens in Jefferson and against Judge Horton in Decatur. Those charges are part of a curious phenomenon in the lives of truth tellers as they act politically. They are curious because the charges of disloyalty are plausible; Gavin Stevens did—despite himself—exonerate a black man whom white men charged with the murder of a white man; Atticus and Judge Horton did show what the press in the North and what the communists said was true—an Alabama criminal jury in 1933 or 1935 could not fairly try a black man accused of raping a white woman. All three of these lawyer-heroes brought pain to their communities. They were all disloyal—and loyalty is important to a community's survival. Jesus was disloyal to the embattled, occupied people of Judea. His actions made them vulnerable to disorder and thereby to repression from the Romans. It really was "expedient . . . that one man should die for the people, and that the whole nation perish not,"⁸⁵ as it was expedient for Judge Horton to lose office and Stevens and Finch to be ineffective in their defenses of black men. The phenomenon of disloyalty by truth tellers requires at least that we find another word—I have suggested "faithfulness"⁸⁶—for the lawyer-hero, prophet, or savior whose disloyalty threatens the community which hears the truth.

trans. 1976); S. HAUERWAS, *supra* note 9, at 241-60. When he sees what Jefferson, Mississippi, wants either to do or to allow to be done to Lucas Beauchamp, Faulkner's Chick Mallison longs to get on his horse and leave the community, but he does not leave. He learns instead to remain and struggle and, as his uncle says, to refuse the evil. Thus Chick learns from his uncle, and from his community, both conscience and consciousness. See Elias, *supra* note 3.

85. *John* 11:50.

86. See T. SHAFFER, *supra* note 2, at ch. 8. M. BUBER, *THE KNOWLEDGE OF MAN* 86 (1965), suggests that faithfulness—as, perhaps, distinguished from loyalty—turns on the truth. See also K. BARTH, *EVANGELICAL THEOLOGY* 146-47 (G. Foley trans. 1965), on God's attitude toward His people as the model of faithfulness (but hardly of loyalty). The biblical concept of faithfulness implies endurance and trust, J. GUILLET, *THEMES OF THE BIBLE* (A. LaMothe trans. 1960); H.R. NIEBUHR, *supra* note 16, at 42-48; M. STEINBERG, *BASIC JUDAISM* 57 (1947). See the reference to Job at note 50 *supra*. American lawyers have learned to define their interpersonal professional obligations in terms of who has employed them, a habit which sometimes creates problems where there need be none, and thereby causes lawyers to define moral dilemmas poorly. See Kaplan, *Legal Ethics Forum: The Case of the Unwanted Will*, 65 A.B.A.J. 484 (1979); Patterson, *A Preliminary Rationalization of the Law of Legal Ethics*, 57 N. CAR. L. REV. 520 (1979).

E. Politics as Theology

The phenomenon of disloyalty by heroes also explains how the hero who tells the truth with courage is saying two political things to his community: (1) that its sense of its own power is exaggerated, and (2) that its sense of alternatives is too narrow. If my analysis of Atticus's point of view is accurate, both of those points about his story are theological.⁸⁷ If the dominant symbol is the Cross—which implies reconciliation,⁸⁸ Jesus's teaching on suffering servanthood ("revolutionary subordination"⁸⁹), and the lessons of the Exodus—then any worldly government is limited, and limited especially in its ability to work things out. Maycomb's religious symbols, the stories they represent, and the theology of the stories mean that the temple priests who argued in *John* 11 were not able to prevent Roman suppression whether or not they sacrificed the agitator and that Pharaoh was not able to prevent the escape of Moses's people. God is Lord of all, and those who wield worldly power either wield His power—in which case they had best act truthfully—or they have no power.⁹⁰

Once this is seen—and Maycomb needed to *see* this, even if it already knew it—alternatives to official falsehood can be seen, too. In Alabama the alternatives to official falsehood became clearer under the leadership of a Baptist preacher, Martin Luther King, Jr. King's point of view was professionally and habitually theological. He preached that the truth of the theological symbols of traditional Alabama black, *and* white, Christianity required social change. King's life illustrates—and, I think, Atticus's life does, too—how the hero who courageously tells the truth acts politically.

IV. TELLING THE TRUTH AS PROFESSIONAL

The political identification of public and private morality, the burdens of the gentleman as General Lee described them, and the faith which is implied in the Christian religious symbol of suffering servanthood came together for Maycomb in the Robinson case. Perhaps they had come together for the national government in

87. See Hauerwas & Shaffer, *supra* note 11.

88. See H.R. NIEBUHR, *supra* note 16.

89. See J. YODER, *supra* note 55, at 163-92.

90. Most of modern Christian ethics is based on a radical assertion of this point. J. GUSTAFSON, *supra* note 14, at 11-60; J. YODER, *supra* note 55, makes the even more radical claim that this assertion is political.

1932 when the Supreme Court decided *Powell v. Alabama*.⁹¹ The Court expressed all three of these pieces of professional truth telling when it said,

[I]n a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law. . . .⁹²

Alabama had to correct its refusal to provide effective white lawyers for black defendants in rape cases—in the Patterson case, which Judge Horton tried in 1933,⁹³ and in the Robinson case in which Judge Taylor appointed Atticus to defend Tom Robinson.

Atticus's behavior in the Robinson defense was evidently professional, including his insistence on the truth. An historically familiar way to put this is to say that Atticus accepted appointment to a priestly office, in the sense that American lawyers are the priests of our civil religion⁹⁴ and in the sense that Miss Maudie said Maycomb had commissioned Atticus to tell it the truth. The two senses in which the office was priestly are different, though; it seems to me that Atticus exceeded the first (advocacy) and honored the second (truth telling) when he insisted on the truth and thereby refused the circumstantial dispensation from responsibility⁹⁵ which another trial lawyer might have claimed in the case. His telling of the truth, even if excessive, was nonetheless a professional act, an act which throws into question any lawyer professionalism which rests on untruth.

A lawyer has a choice in defining his function to himself. He can define it with criteria which come from within the profession itself, arguing that the function of the profession is useful to the state which licenses lawyers and that his behavior in any circumstance can be determined by reference to this function. The "adversary ethic" is that sort of definition of the function of lawyers. Its failure as an ethic is its argument (often implicit) that the purposes of the state are self-evidently good. The "adversary ethic" in Maycomb had no way to confront the racism built into "the ad-

91. 287 U.S. 45 (1932).

92. *Id.* at 71.

93. See note 6 *supra*.

94. See note 67 *supra*.

95. See T. SHAFFER, *supra* note 2, at chs. 1-3; see also note 77 *supra*.

ministration of justice" there. It won't do to say that it could have appealed, ethically, to the purposes of another level of government, e.g., the national state, which was able to invoke more clearly than Maycomb doctrines on due process of law. However useful that appeal might have been as a monetary tactic for the lawyers in *Powell v. Alabama*, it will not work as a moral argument because it has no way to judge the purposes of the national state as it uses concepts such as due process of law. The American national state in 1935 was not pure, as is evident from the *Powell* Court's limitation of the right to counsel to the weak, the stupid and the "feeble minded." If America was relatively purer in 1935 than, for example, the national state in Germany, it is legitimate to note that both national states proved themselves capable of terrifying immorality.

In any event, Atticus did not argue from the clearer values of another level of government; he argued from Maycomb County's moral theology, from the idea (which Maycomb had dishonored) of common good in a Christian community. He excised his view on equality from an equality assured by the federal government (he was, of course, alert to the feelings of his listeners): "Thomas Jefferson once said that all men are created equal, a phrase that the Yankees and the distaff side of the Executive branch in Washington are fond of hurling at us. There is a tendency in this year of grace, 1935, for certain people to see this phrase out of context, to satisfy all conditions But . . . 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 . . . a living, working reality. Gentlemen, a court is no better than each of you sitting before me on this jury In the name of God, do your duty."

Atticus's arguing from Maycomb's moral theology was as much a professional act as his argument from the Constitution, the Declaration of Independence or the egalitarian example of Mrs. Roosevelt; his moral witness in the Robinson case was as theological as it was professional. He did not define his professional function from criteria within the profession, but from the same criteria he used when he talked to his children. He saw lawyering as part of an order which was broader than the legal enterprise⁹⁶—and this

96. Unless one defines the legal enterprise as participation in God's lordship. See R.

had a number of consequences in the way he acted as a lawyer, leader and gentleman in Maycomb.

For one thing, his argument on the treatment of black people was not an argument from *fairness* (as the Supreme Court's was), but was, rather, a substantive argument. An appeal to fairness was unlikely in a community which systematically suppressed an entire race of people; if fairness was the criterion in Maycomb, the very law of the community had to be put on trial. To the extent that the legal system in Maycomb rested on notions of fair procedure which did not challenge its racism—and Atticus alluded to that possibility in his jury speech—the system would not have led Atticus to insist on the truth. Coping with that system as it was, and in conventional lawyer terms (fairness), would have required systematic untruth. An example is Gavin Stevens' planned defense of Lucas Beauchamp in the Jefferson, Mississippi, murder case. On the facts, Beauchamp either murdered the dead white farmer or he did not kill him at all. Stevens did not believe Beauchamp when the accused said he had not killed the farmer; Stevens proposed to represent his client by officially claiming that Beauchamp had done the deed but that the deed was manslaughter, an implausible theory given the facts of the case.⁹⁷

Atticus insisted on telling the truth, either knowing that the truth would not free his client or not knowing what would happen if the truth were told. (He seemed, in his jury speech, to have a momentary optimism that the truth would lead to acquittal, but his later reflections on the trial show that he knew there was no basis for his optimism.) It seems to me that the best explanation for his behavior is the theological explanation. One could say that Atticus defined his task—a professional task which he defined professionally—according to the law of love;⁹⁸ that his course was determined out of the relationship he had with Tom Robinson, out of a response to Tom Robinson himself as a truthful person—so that

RODES, *THE LEGAL ENTERPRISE* (1976).

97. W. FAULKNER, *INTRUDER IN THE DUST* 81 (1948). Gavin Stevens is a real hero—that is, a flawed hero—too. See note 95 *infra*. See also A. VORSPAN, *GIANTS OF JUSTICE* (1960), a remarkable collection of stories of American Jewish leaders—all flawed, all eccentric, and all heroes.

98. Martin Luther would have defined it this way, and John Wesley might have, too. G. EBELING, *LUTHER: AN INTRODUCTION TO HIS THOUGHT* (R. Wilson trans. 1977). H. CARTER, *supra* note 76, at 88 discusses Methodism being the origin of British socialism. See also K. BARTH, *DOGMATICS IN OUTLINE* 28-34, 42-58 (G. Thompson trans. 1959); S. HAUERWAS, *supra* note 9, at 111-26; Gustafson, *Introduction* to H.R. NIEBUHR, *THE RESPONSIBLE SELF* (1963).

in demanding that the truth be told, Atticus's case was his client and his client was his case.⁹⁹ Another way to theologically define his function would be to say that he told the truth in hope: that is, in an optimism born of his defining his client and himself (including his professional life) in reference to the Cross. God is love and God is Lord; even a doomed defendant and his lawyer can bear to find and to tell the truth. The consequence of Atticus's thinking of himself as a lawyer in these terms is that professional skill becomes hope (that is, both optimistic and truthful). His ability, as Scout reported it, to proceed through the awful testimony and to challenge the terrifying lies told there with civility ("with his infinite capacity for calming turbulent waters, he could make a rape case as dry as a sermon") is not only the practice of a lawyer's technique; it is the practice of hope—hope as skill and skill as hope.¹⁰⁰

Atticus did not define what he was doing by reference to professional function; he defined what he was doing by reference to what I have called his moral theology.¹⁰¹ His theology was professional as well as political. His theology, as his own and as that of his community, was also his theology as a lawyer. The sources of this theology were his faith (Cross, reconciliation, exodus), his community (which had unwittingly commissioned him to be its truth teller), and his sense of himself as responsible for the weak

99. See T. SHAFFER, *supra* note 2, at ch. 8; M. BUBER, *THE KNOWLEDGE OF MAN* 127 (1965). Compare the common experience of clients of law-reform lawyers who find that the theories their lawyers use tend to leave behind the moral notions which convinced the clients to litigate. See, e.g., Harris, *Annals of Law: A Scrap of Black Cloth*, *THE NEW YORKER*, June 17, 1974, at 82-84.

I can think of examples in which the fashioning of advocacy in this theological way will promise less by way of judicial result than would a craftier strategy. See note 97 *supra* and accompanying text. In the Robinson case, perhaps Atticus's jury speech should have emphasized more than it did the prosecution's failure to prove the *corpus delicti*. The screenplay includes an argument on this point. H. FOOTE, *supra* note 1, at 96. Defense counsel in the Patterson case, see note 6 *supra*, declined to make that argument although the prosecution failed to prove that a rape had occurred. I think these choices were tactical, and thus neither case presents facts on which to clearly compare the prophetic defense with the crafty defense. To the extent that the choice was present in Maycomb, it was a matter for moral discourse between Atticus and Tom Robinson. T. SHAFFER, *ON BEING A CHRISTIAN AND A LAWYER* ch. 3 (1980). I doubt that Mr. Robinson would have chosen to forego the telling of the truth—which was that Mayella Ewell had attempted to seduce him and then lied about it—or that Atticus would have wanted him to do so.

100. See Hauerwas & Shaffer, *supra* note 11. See also HAUERWAS, *supra* note 9, at 30-45, 117, discussing Iris Murdoch and Simon Weil, and using the artist as a paradigm.

101. See S. HAUERWAS, *CHARACTER AND THE CHRISTIAN LIFE: A STUDY IN THEOLOGICAL ETHICS* 218-26 (1975).

(even those who were not weak; those who were, out of delusions Atticus shared, captive in weakness). These strains in his character are expressed in General Lee's description of a gentleman. Lee's idea suggests Jefferson's vision of America as a community of strong, self-sufficient and independent land owners,¹⁰² but Lee's idea was tempered by his realization that America had people who were weak, unresourceful and dependent. To Lee, I think, the moral way to live as a Jeffersonian gentleman was to accept responsibility for the weak and to exercise advantage and power with restraint and compassion.¹⁰³ In other words, Lee expressed the Jeffersonian notion with greater realism than the first Jeffersonians had (Jefferson referred to America as "God's new Israel"), but Lee expressed the Jeffersonian notion as it had to be expressed by one who had the faith of the Cross, reconciliation and suffering servanthood.¹⁰⁴ The gentleman is not an aristocrat so much as he is a person who cares for the needs of others, and cares as well for their feelings; the source of that idea for Atticus is not only Jeffersonian democracy but also Christian faith. Of course, there were delusions in that tradition, horrible delusions which caused Maycomb to insure in economic and social custom that the weak would remain weak, but our need for lawyer-heroes—and Atticus is a lawyer, always a lawyer—is a need for real heroes. Real heroes are only a little less deluded than their antagonists.

CONCLUSION

Heroes are identified by the needs of those who choose them.¹⁰⁵ For every Thomas More, who was a lawyer-hero even before he died, there are dozens (John Adams, St. Ives and Clarence Darrow

102. "Civil morality and self-determination were closely linked in republican thought, and the theme of a virtuous and productive citizenry permeated much of the literature and art of the new nation." Bloomfield, *supra* note 20, at 673. See note 79 *supra*.

103. See Gustafson, *Introduction* to H.R. NIEBUHR, *THE RESPONSIBLE SELF* 39 (1963). Harper Lee is a descendant of General Lee through her lawyer-father, Amasa Lee. "My father," she said, "is one of the few men I've known who has genuine humility, and it lends him a natural dignity. He has absolutely no ego drive, and so he is one of the most beloved men in this part of the state." *Literary Laurels for a Novice*, *LIFE*, May 26, 1961, at 78A. The part of the state to which she referred is Monroeville, Monroe County, in southwest Alabama. Monroeville had a population just under 3,000 when *To Kill A Mockingbird* was published. HAMMOND'S *AMBASSADOR WORLD ATLAS* 113, 303 (1954).

104. See R. NIEBUHR, *THE IRONY OF AMERICAN HISTORY* 25 (1952). Jefferson regarded the New Testament as important morally but not as a theological document. See J. GUSTAFSON, *supra* note 14, at 189-95, 235-36.

105. See J. McCLENDON, *supra* note 53, at 170-203.

are perhaps lawyer examples) who are returned to the storehouse of noble lives when the needs of a generation change. The question in conclusion is why Atticus Finch, a self-educated, Depression-era, Alabama country lawyer whose story is available only in the loving account of his daughter, is a lawyer-hero appropriate in 1981. My claim in this respect is that the American Bar has a need for a hero who knew how to see and tell the truth and whose sense of himself as a lawyer was not a compartment of his life but was the same sense he had of himself as a person.

In some ways, Atticus was a throwback to the "Golden Era" of American lawyers, those who built a legal system out of a revolution in the decades before 1830; it is in that sense that I have called him a republican. Those lawyers identified public and private morals. But as early as 1854, Judge Sharswood (chief justice, law dean and eminent lawyer) could draw a working distinction between what a lawyer had to do and "the high and pure morality which breathes through the Sermon on the Mount."¹⁰⁶ No doubt, by then most American lawyers had begun to practice the distinction in their professional lives; certainly the idea that professional function defines professional morals has long been standard catechism for lawyers and law students in America. The claim that a lawyer must obey his conscience (and that his conscience is one conscience, at home or in town) fades a little more every time the profession recodifies its rules of professional behavior. Atticus was pre-Sharswood; if the Sermon on the Mount meant something to him—as I think it did—it was no less applicable in Judge Taylor's court than it was when he took Jem by the hand and led him to Mrs. Dubose's front porch. The argument Atticus has to make to modern lawyers is that it is better to bear the discomfort of trying to be a Christian (or a Jew) and a lawyer at the same time than it is to pretend that the symbols of faith have nothing to do with law offices, law schools or courts.¹⁰⁷

Atticus's belief that the truth can be borne, and therefore can be sought and then revealed, is equally quaint in the face of the strident argument of some leading trial lawyers that attorneys must, out of devotion to procedures suggested in the Constitution, lie to courts and assist clients who want to lie to courts.¹⁰⁸ A pres-

106. See note 75 *supra*.

107. See Brazil, *The Attorney as Victim: Toward More Candor About the Psychological Price Tag of Litigation Practices*, 3 J. LEGAL PROFESSION 107 (1978).

108. See M. FREEDMAN, *LAWYERS' ETHICS IN AN ADVERSARY SYSTEM* (1975); see

tigious, broadly representative commission of the American Bar Association, appointed to revise the ethical guidelines which American lawyers are required to follow, suggested in 1980 that a lawyer's decision whether to assist clients who propose to lie must be determined by reference to the needs of the government; if the government decides that it must countenance the lies of its suitors, then lawyers must lie, too.¹⁰⁹ Atticus would not have understood that devotion to the Constitution requires the untruthful practice of law. Even less would he have understood that a lawyer's morals are to be determined by the government. He might have noticed that a position such as that of the A.B.A. draft could have led him to support rather than defy the racist delusions of Maycomb. (And it would have reduced the moral strength of his complaint to the jury in the Robinson case, that the prosecution's witnesses were liars.)

Scout began her story of the mad dog by saying that "Atticus was feeble; he was nearly fifty." Lawyers and law students who have read this far may decide that Atticus's moral witness is similarly feeble in "the real world" of law practice. It is a paradox, perhaps, that he remains popular—in hardcover, paperback, screenplay and film, even on the late show. Like Maycomb, we lawyers have a way of honoring heroes who should embarrass us; as Scout said when Atticus was re-elected to the legislature, people are just peculiar.¹¹⁰

Ordovery, *The Lawyer as Liar*, 2 AM. J. TRIAL ADVOCACY 305 (1979).

109. ABA MODEL RULES OF PROFESSIONAL CONDUCT § 3.1 (Tent. Draft Feb., 1980). See T. SHAFFER, *LAW FOR THE INNOCENT* ch. 9 (1980); *Proposed Ethics Rules: A Try for Balance*, 66 A.B.A. 277, 279 (1980).

110. I am grateful for the assistance of friends at Notre Dame, at Washington and Lee, at home, and elsewhere, especially Joseph Bauer, Robert A. Burt, Herbert Fingarette, Stanley Hauerwas, Frederick Lee Kirgis, Lewis H. LaRue, Andrew W. McThenia, David Owen, Charles E. Rice, Robert E. Rodes, Jr., Brian C. Shaffer and Nancy J. Shaffer.