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***To Kill a Mockingbird* (1962): Lawyering in an Unjust Society**

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Few American films present the lawyer as the ideal American man, tolerant, moral, and ethical. Atticus Finch, the protagonist in the film *To Kill a Mockingbird*, is an exception. Perhaps the rarity of such legal images explains why Finch, the lawyer, has attained immortal status among legal writers. More likely, it is the blurring of the lines between fiction and reality that elevates Atticus Finch from film hero to legal icon. Courtroom dramas like *To Kill a Mockingbird*, the film classic, *Judgment at Nuremberg* (1961) or *The Accused* (1988) are a popular film genre. Some people even think that these films accurately represent reality, but film makers seldom portray legal reality. In this regard, *To Kill a Mockingbird* is no exception.

While Atticus Finch, the fictional lawyer, does more than many real southern lawyers might have done in the 1930s to defend Tom Robinson, a black man accused of raping a white woman, in the end, Finch simply does his job as a lawyer. Finch's actions in securing a fair trial for Tom Robinson, in the face of community resistance, while laudable, are demanded by the rule of law. What may resonate in the minds of those who revere him as legal icon is his ordinariness. Atticus Finch may really represent the decent, ordinary "every lawyer," not the ideal lawyer.

ATTICUS FINCH: ICON OR ORDINARY MAN

At the time of its release in 1962, *To Kill a Mockingbird*, won critical acclaim. Gregory Peck, won an Oscar for best actor for his portrayal of Atticus Finch. Horton Foote, who wrote the screenplay, also won an Oscar. The film, based on Harper Lee's 1960 Pulitzer Prize-winning novel of the same name, has a timeless quality, despite its focus on southern racism in the 1930s. Some film critics even suggest that *To Kill a Mockingbird* is "one of the finest family-oriented dramas ever made. . . powerfully resonant in present-day America with its advocacy of tolerance, justice, integrity, and loving, responsible parenthood."¹ Certainly, the film withstands the test of time, even in the twenty-first century. Yet, it is Atticus Finch's role as a lawyer that captures the minds of legal writers.

In *To Kill a Mockingbird*, Atticus Finch, a widower and small-town Alabama lawyer practicing in the 1930s, struggles to instill in his two children—a daughter, Jean Louise (Scout), and a son, Jeremy (Jem)—a sense of tolerance, integrity, and justice. The film uses two characters to illustrate these lessons: Boo Radley, a mysterious neighbor, and Tom Robinson, a client. Finch's reputation as a highly moral lawyer stems from his representation of Tom Robinson, a black man.

Atticus Finch, by putting on an earnest defense in Tom Robinson's case, was breaking the rules of his racially segregated society. As one commentator writes, *To Kill a Mockingbird* teaches us "to be courageous in the face of our community's prejudice."² Perhaps, this is what resonates with many people who tout Finch as the ideal lawyer.

By the 1990s the Atticus Finch of novel and film had become a "new ethical role model for lawyers."³ Writers hail Atticus Finch as a highly moral and ethical lawyer because he advocates equal justice for a black man in the Jim Crow South. Race is a key factor in the film, and perhaps accounts for Finch's status as a legal icon.

Robinson, accused of beating and raping a white woman, is an unpopular client. Both his race and the crime work against him. The icon status of Atticus Finch may also be a result of his race. Finch, a white man, is a respected member of his Maycomb, Alabama community. In representing a black client, he risks social isolation. Suggestions of possible social unease with Finch's representation of Robinson are present in the film. Bob Ewell, father of the white woman, calls Finch

a n*****-lover because he represents Robinson. A schoolmate taunts Scout, saying her father represents n*****, implying, perhaps, that adequate legal representation should not be afforded black criminal defendants. Finch also acknowledges that "there's been some high talk around town to the effect that I shouldn't do much about defending" Robinson.

In many respects, *To Kill a Mockingbird* is not very different from other courtroom dramas. The film falls into the social change genre of courtroom films like *Philadelphia* (1993), where Denzel Washington, a black heterosexual lawyer, represents Tom Hanks, a white gay lawyer fired by his firm because he is infected with the HIV/AIDS virus. In a sense, Washington, by representing a gay man with a stigmatizing disease, is breaking some unspoken rules of a heterosexist society. This analogy, however, is somewhat imperfect because Washington, as a black man, is an outsider in society, unlike the insider Atticus Finch.

Atticus Finch might not have attained his status as a legal icon, however, had Denzel Washington, rather than Gregory Peck, played him. Unlike Gregory Peck's Finch, a black Atticus Finch would be an outsider in the segregated South who would not be risking the loss of status by representing a black client. Instead, a black lawyer during this era in the South might be risking physical injury, or death by representing a black man accused of raping a white woman.

RACE AND SOUTHERN LAWYERS: A BACKDROP ON REALITY

For many reasons, however, it is hard to imagine Atticus Finch as a black lawyer representing a black criminal defendant in Alabama during the 1930s. First, it is unlikely that there would have been a black lawyer in a small Alabama town. During most of the 1930s, there were only four black lawyers practicing in Alabama, and all were practicing in major cities.⁴

Second, black lawyers were seen as threats to the South's social order so, it is unlikely that the judge would appoint one to represent a black criminal defendant in a rape trial. In the late nineteenth century, black lawyers were run out of Alabama towns for merely establishing a law practice, or representing black clients against white complainants.⁵ Lawyering was still dangerous in the late 1930s and early 1940s. During this time, Arthur Davis Shores, a black Alabama lawyer noted for filing

civil rights cases, was physically assaulted in the courthouse corridor while trying a case.⁶ Further, because of their precarious existence in the South, some southern black lawyers avoided controversial or inflammatory cases, limiting their practice to civil matters or non-litigation legal work.

White lawyers who represented black clients during this period faced similar difficulties. In the film, Finch's children are assaulted by Bob Ewell, the alleged victim's father, because Finch represents the black defendant. This scene suggests that white lawyers, and their families, also risked physical violence when advocating for black criminal defendants.

In real life, the few local white lawyers who represented black clients often suffered economic loss as well as social isolation. Merely speaking out for equal justice was fraught with danger. In 1927, the internationally renowned criminal defense lawyer, Clarence Darrow, was run out of Alabama for giving a speech to an all-white audience in which he condemned lynching.⁷ Thus, black criminal defendants in the South had difficulty obtaining adequate assistance of counsel, an essential component of a fair trial.⁸ Despite these obstacles, members of black southern communities found brave lawyers to represent a few black criminal defendants during the 1930s. Notably, blacks in Alabama sought legal assistance for the Scottsboro boys, nine young men accused in 1931 of raping two white women in a train freight car.⁹

Finally, it also may be hard to imagine Atticus Finch as a black man because film portrayals of black lawyers before the 1990s are so rare. Aside from early films designed for all-black audiences, the first black lawyer in a film aimed at a white audience does not appear until 1955 when Juano Hernandez, an Afro-Latino, plays the judge in *Trial* who is determined to give a Mexican youth a fair trial.¹⁰ Black lawyers do not appear in mainstream American films until the late 1970s and 1980s. Even when present in film, black lawyers, like Laurence Fishburne in *Class Action* (1991), often appear in secondary positions.

Given the context of Finch's lawyering, should we hail Finch's actions as highly moral and ethical? More importantly, how are we to judge Atticus Finch since ethical standards vary with the times? In 1953, nine years before the film's release, Henry Drinker, author of the American Bar Association's first book on the Canons of Professional Ethics, wrote about the difficult ethical dilemma posed in determining whether a lawyer convicted of lynching a black man committed a crime involving moral turpitude which warranted disbarment.¹¹ Applying only

Drinker's standards, Finch was a highly ethical lawyer for his time. Yet the characterization of Atticus Finch as moral and ethical legal icon warrants closer examination.

ATTICUS FINCH: MORAL LAWYER IN AN IMMORAL LEGAL REGIME?

Atticus Finch's icon status as the ethical model for lawyers in the 1990s troubled legal ethics scholar, Monroe Freedman. Although writing about the Finch of Harper Lee's novel, not the more sanitized film portrayal, Freedman argues that Atticus Finch is not a good moral example for contemporary lawyers because, as a community leader in a segregated society, Atticus Finch lives "his own life as the passive participant in that pervasive injustice."¹² Freedman reminds us, that Finch did not volunteer to represent Tom Robinson. He is appointed counsel and becomes Robinson's lawyer only when asked by the local judge to take the case.¹³ Thus, Atticus Finch had no choice in real life. If he refused to represent Robinson, he would be held in contempt of court.

Granted, Finch could have represented Robinson without earnestly trying to establish his innocence, but Finch chose to do his job—providing his client with a credible defense. Simply putting on a credible defense, however, may not be enough to transform one into an ideal lawyer. Atticus Finch is lawyering in an immoral legal regime, and for many reasons, that is problematic. The film clearly portrays southern justice as inherently biased. Black criminal defendants cannot expect to get justice, even with adequate representation of counsel. At the trial, Finch's cross examination of Mayella Ewell, the complaining witness, and her father, Bob Ewell, poor whites, casts doubt on Robinson's guilt. Yet, Finch never directly challenges the legal system that tries and convicts Tom Robinson. Granted, Finch stands off a mob assembled before the jail ready to lynch Robinson, but it is his daughter Scout, not Finch, who ultimately defuses the situation by shaming the mob.

Finch allows Robinson to be tried before an all-white jury, questionable even in the 1930s. By 1935 the United States Supreme Court in *Norris v. Alabama*, had ruled that the systemic exclusion of blacks from the jury violates the equal protection clause of the Fourteenth Amendment.¹⁴ True to southern justice in the 1930s, the all-white, all-male jury convicts Tom Robinson.

More importantly, Finch is not surprised that the jury convicts Robinson, despite strong evidence of his innocence. In the book, but not in the movie, Finch tells Scout when he takes the case that Robinson's conviction is a foregone conclusion. Rather than outrage at this injustice, there is even a sense of triumph for Finch in the defeat. The black community, confined to the balcony by Jim Crow laws, stands in respect as he walks out of the courtroom.

Subsequently, Finch is saddened, but not surprised, to learn that Robinson has been killed trying to escape from jail. For simply doing his job, providing his client with a bona fide defense, Finch gets redemption and immortality. Defending Tom Robinson redeems Finch for living comfortably in a racially segregated society. This is a familiar scene. Blacks become vehicles for whites' racial redemption in other films with civil rights or social justice overtones, such as *Mississippi Burning* (1988), *Cry Freedom* (1987), and *A Dry White Season* (1989).

Finch's character in the film is not as fully developed as the novel; therefore, the filmgoer does not see the extent of Finch's complicity in maintaining the racially segregated regime in which he lives. We do not get the feeling in the film that Finch, as Thomas Shaffer argued in 1981, risks everything in order to tell the truth.¹⁵ Also, we do not see Finch tell his children that the Ku Klux Klan is a "political organization more than anything."¹⁶ Freedman reminds us that in the novel Finch eats at a segregated restaurant, "drinks from segregated water fountains, rides on segregated buses, and sits in a park that may well have a sign announcing 'No Dogs or Colored Allowed'."¹⁷

The harsh realities of a racially segregated society are unspoken, and merely alluded to in the movie. We only see the segregated courtroom. Even that place becomes integrated in the film, when Scout squeezes into the overcrowded balcony occupied by members of the town's black community. The token integration of the balcony symbolizes the gradual changes to come in the South.

Perhaps the film's screenwriter, Horton Foote, muted the reality of southern racial segregation, and focused on only a small portion of the novel—Tom Robinson's trial—using the trial as an allegory for the racial injustice blacks experienced under de jure segregation. The movie was released two years before Congress enacted the Civil Rights Act of 1964 outlawing racial segregation in employment, education, public accommodations, and a number of other areas.¹⁸ Segregation, although still a reality in many southern states, was under attack, even in Alabama. By the mid 1950s, Dr. Martin Luther King was leading the

Montgomery bus boycott, and Aurtherine Lucy was attempting to desegregate the University of Alabama. In the early 1960s freedom riders were beginning to arrive in the deep South to test desegregation.

More troubling, when assessing Finch's status as a legal icon, is his inconsistent application of the rule of law in the film. When Boo Radley kills Bob Ewell as he attacks Jem, Finch acquiesces in allowing the killer to go untried. Sheriff Tate, the legal officer in this racially segregated town, decides to tell the public that Ewell fell on his knife. Tate protects Boo Radley, a mentally impaired white man, invoking Tom Robinson's death as justification. Tate tells Finch: "There's a black man dead for no reason, and now the man responsible for it is dead. Let the dead bury the dead this time." Sheriff Tate's willingness to dismiss, and even cover up Boo Radley's crime, stands in stark contrast to his treatment of the charge against Tom Robinson. Once more in the film, a black man serves as a source of redemption for a white man, in this instance Boo Radley.

Despite these obvious flaws in Atticus Finch's character, there was strong reaction to Professor Freedman's column condemning Finch as an inappropriate ethical model for lawyers in the 1990s.¹⁹ Several respondents accused Freedman of judging Finch by contemporary standards of morality, not those of the 1930s.²⁰ David Margolick of the *New York Times*, while conceding that Finch had his ethical lapses, joined in the attack on Freedman for sullyng Finch's image.²¹ Margolick quotes, approvingly, the words of two law professors who accuse Freedman of requiring lawyers to be perfect and stand by their oppressed clients even if this means "separat[ing] themselves entirely from all agents of oppression."²²

In a subsequent column, Freedman retracted his eulogy of Atticus Finch, concluding: We're left with the immortal Atticus Finch, a lawyer who didn't do pro bono work, who justified the actions of an attempted murderer, and who found little fault with the Ku Klux Klan. Finch may live on as a mythical figure, but we should ask why some members of the legal profession find him worthy of deification and why they are so vociferous in his defense.²³

Margolick and others suggest that lawyers practicing in an immoral legal regime should not be required to separate themselves from that society to represent clients oppressed by that society. Given that position, should a lawyer be an ethical and moral lawyer in Freedman's sense when practicing in an immoral legal regime? Does a different standard apply to judges in these immoral legal regimes?

CONTRASTING LEGAL MODELS: LAWYERS AND JUDGES

Few commentators compare and contrast the legal images in *To Kill a Mockingbird*. While Atticus Finch tries to present a credible defense, Judge Taylor, the trial judge, fails to uphold even the basic tenets of the law. Perhaps, these contrasting legal models also make Finch appear highly moral and ethical. In courtroom-drama films, the ambivalence of the legal system toward the injustice often is just as important as who committed the crime. Just as the lawyers in these films seldom are portrayed in a positive light, similarly, the judges, with few exceptions, are portrayed negatively.

Too often the judges in these films are not wise upholders of the truth, who are willing to take a lonely stand for justice. In films like *12 Angry Men* (1957), *Kramer vs. Kramer* (1979), and *Philadelphia*, the judge is invisible, or almost silent. In other films, such as . . . *And Justice for All* (1979) and *Presumed Innocent* (1990), the judge is corrupt. In this regard, Judge Taylor's indifference in *To Kill a Mockingbird* is no different from other negative portrayals of judges in courtroom dramas.

In *To Kill a Mockingbird*, Atticus Finch knows that the southern legal system is rigged against blacks, yet he conducts Tom Robinson's defense within the bounds of this unjust system. Judge Taylor, who presides over the case, remains impassive, and perhaps not even neutral, watching the injustice transpire. A judge in an immoral regime, like a lawyer, also has an obligation to uphold the rule of law. How each carries out this obligation has been the subject of dispute in a more contemporary Jim Crow society—South Africa under apartheid.

A small body of literature among South African legal scholars in the 1970s and 1980s discusses the appropriateness of judicial neutrality in an unjust society. These scholars debated two issues: first, whether it is immoral for white lawyers to advocate on behalf of their non-white clients in a legal system rigged against these clients solely because of their race; and second, whether it is immoral for judges, who in theory represent judicial neutrality, to remain neutral in an unjust society like South Africa during the apartheid era. Both questions are worth considering when passing on the morality of Atticus Finch and Judge Taylor in *To Kill a Mockingbird*.

Throughout the 1970s, John Dugard, a South African law professor and human rights advocate, wrote that the lawyers and judges in South

Africa were influenced by the "twin tenets of Austinian positivism, namely that law is a command[,] and . . . law and morality should be rigidly separated."²⁴ Judges justify applying unjust apartheid laws by narrowly construing their role as simply determining the legislative will. As a result, Dugard argued, the status quo is preserved at the expense of human rights.

The position of South African judges under the apartheid regime is analogous to the position adopted by U.S. Supreme Court justices like Joseph Story, John McLean, and Lemuel Shaw in *Dred Scott v. Sanford*.²⁵ These justices opposed African slavery, but voted in *Dred Scott* to uphold the Fugitive Slave law, denying citizenship to blacks, and reinforcing the notion that enslaved blacks were "chattel personal." According to Dugard, these justices rationalized their seemingly contradictory positions by saying they were simply following the law, while "denying any moral, personal responsibility for its application."²⁶ He concludes that lawyers and judges are inextricably linked to the legal regime in which they function. Thus, they cannot avoid responsibility for morally bankrupt systems by invoking jurisprudential notions like the rule of law.

The Jim Crow South portrayed in *To Kill a Mockingbird* is like South Africa under apartheid. South Africa was a legal regime whose general policies were discriminatory and oppressive; and Maycomb, Alabama was a legal regime that discriminated against non-whites based on race. Under Dugard's rationale, Atticus Finch, by not challenging the existing legal regime which permitted all-white juries and segregated courtrooms, reinforced, rather than challenged, Maycomb's morally bankrupt judicial system.

The Honorable Mr. Justice J.M. Didcott took issue with Professor Dugard's claims that the legal profession in South Africa was "collaborating with[,] and lending respectability to a fundamentally illegitimate process."²⁷ He concedes, however, that practicing law under the apartheid regime involved some personal compromise, but countered that working within an unjust system does not necessarily lend that system respectability. Didcott cites, as an example, the civil rights lawyers in the United States who used law and the legal system as vehicles for social change.

American civil rights lawyers also learned that working within a corrupt legal system meant making frequent compromises. By providing legal services to persons in distress, Justice Didcott argues, lawyers working within the legal system for social change have an opportunity to

influence and change the laws. The actions of civil rights lawyers, he contends, do not necessarily lend respectability to the existing legal regime.

Even applying Justice Didcott's more generous standard for moral lawyering, Atticus Finch fails to measure up. In representing Tom Robinson, Finch was not working for social change. Providing Robinson with adequate counsel, even in the 1930s, is not the same as lawyering for social change. Finch's lawyering is different from the lawyering of Samuel Leibowitz, who represented the Scottsboro defendants in the 1930s. Leibowitz challenged the systemic exclusion of blacks from the jury, and took the cases to the United States Supreme Court.

Perhaps it was easier for Leibowitz to challenge the system in Alabama than for Atticus Finch. Unlike Finch, Leibowitz, a leading criminal lawyer from New York, was an outsider. Thus, his social status was not threatened by his representation in the Scottsboro case. Yet there were local whites who risked social isolation and ostracism by advocating equal rights under the law for black criminal defendants.

It is possible that Finch did more than the film suggests. He indicates a willingness to appeal Robinson's conviction. Since we do not see the beginning of the trial, we do not know whether Finch challenged the legality of the all-white jury. If so, then his advocacy might go beyond simple advocacy for his client, and seem more like lawyering for social change. Yet, the viewer does not see Finch do any of these things in the film. Without more evidence, the portrait of Atticus Finch in the film does not measure up to real life civil rights lawyers of the period.

As mentioned previously, Judge Taylor is a far worse legal model than Finch because his actions clearly reinforce the immoral legal regime. In the mid 1980s Raymond Wacks, another South African law professor, saw a difference between judges and lawyers who work in an immoral legal regime.²⁸ Judges, he argues represent the state, whereas lawyers who represent the downtrodden in an immoral legal system have a stronger argument for their presence. Therefore, Wacks wrote, judges should resign if they find the law morally indefensible.

His comments created quite a stir in South African legal circles. Dugard countered saying that he advocates judicial activism, not resignation on principle.²⁹ He concedes that under apartheid judicial discretion is reduced, but argues that apartheid laws must be construed in a way consistent with notions of equality, liberty and reasonableness inherent in liberal Roman-Dutch law. Thus, he concludes that lawyers and judges can do more to change the legal system from within than by

withdrawing and "thereby depriving it of some measure of legitimacy."³⁰ The liberal principles to which Dugard refers, Wacks responded, have been replaced by principles of a legal regime that accepts the white minority as its constituency.³¹

Dugard's characterization of South African law's liberal underpinnings apply to law in the United States. Both Dugard and Wacks might even agree that the judge in *To Kill a Mockingbird* had fewer legal impediments under Jim Crow laws to prevent him from treating Tom Robinson fairly than judges in South Africa under apartheid.

While Wacks would require Judge Taylor to resign, Dugard would condemn Judge Taylor, the trial judge in *To Kill a Mockingbird*, for not using the law to protect Robinson's rights. Judge Taylor seems unconcerned when the jury convicts despite strong evidence of Robinson's innocence. There is no medical evidence of rape. Robinson's withered left arm makes it impossible for him to beat Mayella. Finch's cross examination of the Ewells raises the strong possibility that Mayella's father, not Robinson beat her. Mayella's and Robinson's testimonies also raise the possibility that Mayella tried unsuccessfully to seduce Tom Robinson. Judge Taylor allows Robinson's conviction to stand, unlike Judge James Horton, the Alabama judge who presided over the trial of Haywood Patterson, one of the nine Scottsboro boys. Judge Horton threw out the jury's verdict and ordered a new trial when the evidence presented by the prosecution failed to support the rape claim.³²

CONCLUSION

Given the problematic portrayals of legal figures in *To Kill a Mockingbird*, what accounts for its enduring praise, especially in legal circles? The film targeted a white audience at the dawning of the modern civil rights era. It conveys the message that moral and ethical lawyers follow the rule of law, even when they represent unpopular clients. This was an important message, especially for southern audiences less than a decade after *Brown v. Board of Education*.³³ Massive resistance to desegregation was still the rule in most southern states. Thus, *To Kill a Mockingbird* was an appeal to decent, moral white Americans to accept racial integration.

In the end Atticus Finch represents the ideal, decent, ordinary every lawyer who follows the rule of law rather than cleave to social convention. That he attains immortality for this feat says much about the power

of race and racial subordination in shaping our responses and reactions to racial injustices. In 1963 a reviewer in *The New Republic* characterized *To Kill a Mockingbird* as "a sort of soft-caramel *Intruder in the Dust*."³⁴ Atticus Finch's heroism as a lawyer in *To Kill a Mockingbird* seems no greater than the heroism of John Gavin Stevens (David Brian), the white lawyer in *Intruder in the Dust* (1949). Yet, John Gavin Stevens is not revered like Atticus Finch.

There are strong parallels between the films, but also important differences. *Intruder in the Dust*, like *To Kill a Mockingbird* was set in the Jim Crow South. Both Finch and Stevens represent black men in hostile southern settings, and both lawyers serve as moral role models for young relatives. Perhaps the lack of adulation for John Gavin Stevens stems from the less sentimental portrayal of Stevens as a decent, but flawed man who follows the rule of law.

Intruder in the Dust, adapted from William's Faulkner's novel, also is a more complex drama about racial justice in the Jim Crow South. While there is no courtroom scene, John Gavin Stevens, the white southern lawyer, plays an active role in securing his client's release. Unlike Atticus Finch, Stevens is successful in persuading the disbelieving sheriff that the black defendant, Lucas Beauchamp, did not commit the murder. He also mobilizes forces to protect Beauchamp from a possible lynch mob. In addition, Beauchamp, unlike the passive and submissive Tom Robinson in *To Kill a Mockingbird*, is actively involved in securing his freedom.

Unlike Atticus Finch, who admits few if any flaws, John Gavin Stevens admits his personal flaws. Near the film's end, he acknowledges how his own racial prejudice hindered his ability to represent his black client. Finally, *Intruder in the Dust* also normalizes the lynching of blacks accused of crimes against whites as society-wide events. In contrast, *To Kill a Mockingbird* suggests that only poor whites are responsible for lynching. Thus, *Intruder in the Dust* seems closer to southern reality of the 1930s than *To Kill a Mockingbird*.

Like most films about racial justice in the United States, *To Kill a Mockingbird* has its flaws. Nevertheless, its message about tolerance, morality, and ethics resonates with all people. Atticus Finch, the film's protagonist is a brave southern man, but he is simply a man, not a legal icon. He should not be touted as the ideal lawyer in his era, nor in more contemporary times.

NOTES

1. Jeff Shannon, "Editorial Reviews," *Amazon.com Essential Video*, <<http://www.amazon.com>>.
2. Teresa Godwin Phelps, "The Margins of Maycomb: A Rereading of 'To Kill a Mockingbird,'" 45 *Ala. L. Rev.* 511, 529 (1994). (writing about the book).
3. Monroe Freedman, "Atticus Finch, Esq., R.I.P.," 14 *Legal Times* 20 (Feb. 24, 1992).
4. Charles H. Houston, "The Need For Negro Lawyers," *African Americans and the Legal Profession in Historical Perspective*, ed. Paul Finkelman, (New York: Garland 1992) p.149.
5. J. Clay Smith, Jr., *Emancipation: The Making of the Black Lawyer 1844-1944* (Phil. Pa. U. Penn Press 1993) p. 272.
6. *Id.* at 275.
7. "Darrow Forced To Flee After Anti-Lynch Speeches, *Chicago Defender*, Mar. 12, 1927," *One Hundred Years of Lynching*, ed. Ralph Ginzburg (New York: Lancer 1962) pp. 178-79. During the early twentieth century, white southerners publicly lynched blacks as a means of social control. "Where law and custom were not regarded as sufficient to sustain the Southern racial code, white Southerners resorted to violence. Violence was more of an extralegal than illegal method of keeping blacks in subordination, for rarely was any white person arrested for inflicting violence on blacks, and even more rarely convicted." Arnold H. Taylor, *Travail and Triumph: Black Life and Culture in the South since the civil War* at 41 (Westport, CT: Greenwood press 1986).
8. During the 1930s, the National Association for the Advancement of Colored People (NAACP) filed suit or intervened in southern criminal cases against Black defendants. 1923 Supreme Court ruling ordering a new trial for an Arkansas black defendant; discuss the NAACP's intervention in the Scottsboro case in the 1930s. Taylor, *Travail and Triumph*, p. 58.
9. In 1923 the United States Supreme Court ordered a new trial for a black Arkansan because blacks were excluded from the defendant's jury. The NAACP also intervened in the Scottsboro case in the 1930s. Taylor, *Travail and Triumph* at 58.
10. Cheryl Smith-Khan, "African American Attorneys in Television and Film: Compounding Stereotypes," 22 *Legal Forum* 119, 130 (1998).
11. Monroe Freedman, *Atticus Finch, Esq., R.I.P.*, p. 26 (citing Henry Drinker, *Legal Ethics* at 44-45 (New York: Columbia 1953).
12. *Id.*
13. As Professor Thomas Schaffer points out, the United States Supreme Court in *Powell v. Alabama*, 287 U.S. 45 (1932) ruled the indigent

- criminal defendants in capital cases were entitled to court appointed counsel. Thomas L. Schaffer, "The Moral Theory of Atticus Finch," 42 *Pitt. L. Rev.* 181, 183 (1981).
14. See *Norris v. Alabama*, 294 U.S. 587 (1935) holding that the systemic exclusion of blacks from the jury violates the equal protection clause of the Fourteenth Amendment.
 15. Thomas L. Schaffer, *The Moral Theory of Atticus Finch*, p. 188.
 16. Harper Lee, *To Kill a Mockingbird* (New York: Lippincott 1960) p. 147.
 17. Freedman, *Atticus Finch, Esq., R.I.P.*, p. 20.
 18. *Civil Rights Act of 1964*, 78 Stat. 243.
 19. Monroe Freedman, "Finch: The Lawyer Methologized," 14 *Legal Times* 25 (May 18, 1992).
 20. *Id.*
 21. David Margolick, "Chipping at Atticus Finch's Pedestal," *New York Times*, 28 February, 1992 p. B1.
 22. *Id.* at B9.
 23. Freedman, *Finch: The Lawyer Methologized*, p. 25.
 24. John Dugard, "Some Realism About The Judicial Process And Positivism—A Reply," 98 *South African L. J.* 372, 373–74 (1981).
 25. *Scott v. Sanford*, 60 U.S. 393 (1856).
 26. Dugard, *Some Realism About The Judicial Process And Positivism*, p. 377 (citing Robert Cover, *Justice Accused: Antislavery and the Judicial Process* (New Haven: Yale 1975)).
 27. Justice J.M. Didcott, "Reflections on the Stare Decisis Rule in Natal, Lawyers 'Lending Respectability to the System', and Judges and the Judicial Process," 98 *South African L. J.* 351, 352 (1981).
 28. Raymond Wacks, "Judging Judges: A Brief Rejoinder to Professor Dugard," 101 *South African L. J.* 295, 299 (1984).
 29. John Dugard, "Should Judges Resign?—A Reply to Professor Wacks," 101 *South African L. J.* 286 (1984).
 30. *Id.*, p. 293.
 31. Wacks, *Judging Judges*, p. 297.
 32. Dan T. Carter, *Scottsboro: A Tragedy of the American South* (Baton Rouge: Louisiana State University Press 1969) pp. 264–69.
 33. *Brown v. Board of Education*, 347 U.S. 483 (1954).
 34. Stanley, Kauffman, "Good Feelings and Bad Spirit," *The New Republic* (Feb. 2, 1963) p. 30.