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Recommended Citation

Michael L. Boyer, *Atticus Finch Looks at Fifty*, 12 U. Md. L.J. Race Relig. Gender & Class 356 (2012).

Available at: <http://digitalcommons.law.umaryland.edu/rrgc/vol12/iss2/4>

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ATTICUS FINCH LOOKS AT FIFTY

Michael L. Boyer*

I. INTRODUCTION

Atticus Finch recently turned fifty. America's most popular literary lawyer first captured our imaginations in 1960 and, to this day, has not let go.¹ Harper Lee won the Pulitzer Prize for Literature in 1961 for *To Kill a Mockingbird*, making it an instant critical success, and the 1962 film etched an inescapable image of Gregory Peck as Atticus on the American psyche.² Thirty years after its publication, *To Kill a Mockingbird* would rank second only to the Bible in a survey by the Library of Congress and Book-of-the-Month Club "among books 'most often cited as making a difference' in people's lives."³ *To Kill a Mockingbird* probed the deep currents of race, gender, and sexuality in the American South, making it one of the most challenged novels in public schools.⁴ Of all the characters in the textual microcosm of Maycomb, Atticus Finch has been one of the most explored both in legal and literary scholarship. He still offers insights that can guide members of the legal profession, particularly in charting a course through the economic challenges of providing access to justice. At mid-life, however, Atticus offers a new generation of lawyers an economic, rather than moral or ethical, model for professionalism.

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¹ See generally HARPER LEE, *TO KILL A MOCKING BIRD* (1960).

² *TO KILL A MOCKING BIRD* (Pakula-Mulligan Productions Inc. & Brentwood Productions, Inc. 1962).

³ Christopher Metress, *The Rise and Fall of Atticus Finch*, in *CRITICAL INSIGHTS: TO KILL A MOCKINGBIRD* 85, 85 (2010).

⁴ See, e.g., Banned and/or Challenged Books from the Radcliffe Publishing Course Top 100 Novels of the 20th Century, AM. LIBR. ASSOC., <http://www.ala.org/ala/issuesadvocacy/banned/frequentlychallenged/challengedclasses/reasons banned/index.cfm> (last visited Nov. 2, 2012).

II. MAJOR THEMES IN THE ATTICUS SCHOLARLY DEBATE 1960 TO PRESENT: THE POLARITY – HERO OR HYPOCRITE

The legal and literary scholarship related to Atticus multiplies each time the literary character is re-evaluated. The name “Atticus Finch” plugged into a legal database retrieves numerous law review articles. As Professor Steven Lubet comments, “No real-life lawyer has done more for the self-image or public perception of the legal profession than the hero of Harper Lee's novel”⁵ Prior to the 1990's, Atticus's stock remained relatively high.⁶ However, this period saw harsh re-evaluation of the literary icon, with two camps emerging. Critics, particularly Professor Monroe Freedman of Hofstra Law School, highlighted Atticus's faults while supporters, such as Professor Thomas Shaffer of Notre Dame Law School and Professor Timothy Hall of The University of Mississippi Law School, generally viewed it as unfair to judge Atticus by contemporary standards.⁷ These camps essentially diverged on whether Atticus could serve as a model for the legal profession.⁸ In this regard, Atticus acted as a Rorschach Test; that highly regarded legal scholars could differ so markedly on their readings of Atticus revealed as much about the uncertainty of the role the legal professional in America as it did about the literary character.

The debate continued in the 1990's with the most geographically apt law journal, *The Alabama Law Review*, offering a balanced portrait of the varying views on Atticus,⁹ and closed with a bang. Professor Steven Lubet's *Reconstructing Atticus Finch*¹⁰ remained deferential to Atticus but began to deconstruct some of the moral issues and ask questions of the text and reader that cast shadows on his ideals and standards. Articles, moreover, began to line up along two broad themes; those deferential to the notion of Atticus as a professional

⁵ Steven Lubet, *Reconstructing Atticus Finch*, 97 MICH. L. REV. 1339, 1339 (1999).

⁶ See, e.g., Thomas L. Shaffer, *The Moral Theology of Atticus Finch*, 42 U. PITT. L. REV. 181, 185, 188 (1981) (stressing the honesty and integrity of Finch).

⁷ David Margolick, *At the Bar; To Attack A Lawyer In 'To Kill a Mockingbird': An Iconoclast Takes Aim At A Hero*, N.Y. TIMES, Feb. 28, 1992, at B7.

⁸ *Id.*

⁹ See Timothy Hoff, *Influences on Harper Lee: An Introduction to the Symposium*, 45 ALA. L. REV. 389 (1994); Teresa Godwin Phelps, *The Margins of Maycomb: A Rereading of To Kill a Mockingbird*, 45 ALA. L. REV. 511 (1994); Monroe H. Freedman, *Atticus Finch—Right and Wrong*, 45 ALA. L. REV. 473 (1994).

¹⁰ Lubet, *supra* note 5, at 1340.

model and those skeptical of using Atticus as an ethical roadmap.¹¹ By the end of the decade, Professor Rob Atkinson wrote an in-depth, article that was—at almost 150 pages—perhaps the deepest probe into Atticus and the legal profession, offering a more challenging literary text for the legal profession to use for self-examination.¹²

Although promising new themes emerge in narrative theory, race, and gender in the new Century¹³ the question remained whether Atticus was a moral model or an ethical cautionary tale. The fervent debate seems to have subsided; the two parties agreeing to disagree and moving on to other literary icons for the legal profession.¹⁴ In retrospect, there was no clear consensus on the exact place for Atticus in the ethical typology of literary lawyers, but there was a growing sense that revisiting the literary lawyer and the path of Atticus scholarship was fruitful, producing profound questions about legal ethics and the legal profession. Indeed, at the eve of his fiftieth anniversary, the de-

¹¹ Compare Thomas L. Shaffer, *Growing Up Good in Maycomb*, 45 ALA. L. REV. 531, 532 (1994); Calvin Woodward, *Listening to the Mockingbird*, 45 ALA. L. REV. 563, 566 (1994); MIKE PAPANTONIO, IN SEARCH OF ATTICUS FINCH: A MOTIVATIONAL BOOK FOR LAWYERS (1996); Gregory J. Sullivan, *Children Into Men: Lawyers and the Law in Three Novels*, 37 CATH. LAW. 29, 36 (1996) with John J. Osborn, Jr., *Atticus Finch—The End of Honor: A Discussion of To Kill a Mockingbird*, 30 U.S.F. L. REV. 1139, 1140 (1996).

¹² See generally Rob Atkinson, *Liberating Lawyers: Divergent Parallels in Intruder in the Dust and To Kill a Mockingbird*, 49 DUKE L.J. 601 (1999).

¹³ See, e.g., Patrick Chura, *Prolepsis and Anachronism: Emmet Till and the Historicity of To Kill a Mockingbird*, 32 S. LIT. J. 1, 1 (2000) (exploring the historicity of *To Kill a Mockingbird*); Nancy L. Cook, *A Call to Affirmative Action for Fiction's Heroes of Color, or How Hawkeye, Huck, and Atticus Foil the Work of Antiracism*, 11 CORNELL J.L. & PUB. POL'Y 603, 604 (2002) (exploring the inherent racism in synonymizing a white character's "acts of doing good" for people of color with heroism as in *To Kill a Mockingbird*); Note, *Being Atticus Finch: The Professional Role of Empathy in To Kill a Mockingbird*, 117 HARV. L. REV. 1682, 1682 (2004) (exploring empathy as the key attribute of professionalism in the legal field, as opposed to moral neutrality).

¹⁴ See, e.g., John B. Owens, *Grisham's Legal Tales: A Moral Compass for the Young Lawyer*, 48 UCLA L. REV. 1431, 1437 (2001) (exploring the street lawyer, a recurring character "work[ing] for the little guy" in Grisham's legal thriller novels as the proper moral icons for lawyers); Richard H. Weisberg, *"The Verdict" is in: The Civic Implications of Civil Trials*, 50 DEPAUL L. REV. 525, 527 (2000) (noting that "[t]he failed idealism of criminal lawyer Atticus Finch was replaced by the civil crusading, or populism . . . of Erin Brokovich and Jay Schlichtmann.") (internal quotation marks omitted).

bate has attracted the attention of some of the most widely published thinkers, producing more nuanced and insightful readings of Atticus.¹⁵

Through Atticus, one can also read about much more than a profession. One can yield insights about a time, place, and political culture. Just as the era of Civil Rights dawned on the South, Atticus Finch captured the literary mind. Atticus taught us lessons, or rather, as a Reader-Response critic might allude, he highlighted something in our collective conscience, a quest for social justice, a rationale for change, the struggle of lonely reason against an unstoppable mob of prejudice taking place inside so many. The country had trials and protests in their psyches, their streets, and their schools. From a situational perspective, Atticus fits the need for a legal role model perfectly. However, it was a model of Atticus as a paternalistic but enlightened southern gentleman that became worn out, one Atkinson calls the “father-knows-best” model.¹⁶ Indeed, Atticus was a part of the system, and his model of the condescending white Anglo-Saxon Protestant is perhaps as completely out of place in today’s society as our great grandparents’ norms and mores. His racial cosmology is inapplicable to post multicultural, post Obama America, immersed in a global economy. One of the most widely published contemporary thinkers, Malcolm Gladwell, even chimed in on the fictional lawyer as his fifth decade of literary life approached.¹⁷ Gladwell offers the nuanced, historical perspective linking Atticus closely to the political culture of Alabama at the time, aligning Atticus with 1950’s era governor Jim Folsom. He examines the political complexities in the 1950’s South with trajectories around race, localism, and “small cliques of power brokers, known as a ‘courthouse ring.’”¹⁸ Gladwell explains that Atticus was a product of the gradual, paternalistic politics of the era; he was not a liberal activist as his goal was to accommodate more than reform.¹⁹ Today, there is less need for racial intermediaries or people who are part of the establishment system, yet visionary enough to bridge divides between races. There are areas, however, where Atticus still offers a model for leadership. These untapped veins are useful for the needs of the legal profession today.

¹⁵ See, e.g., Malcolm Gladwell, *The Courthouse Ring: Atticus Finch and the Limits of Southern Liberalism*, THE NEW YORKER, Aug. 10, 2009, at 26–32.

¹⁶ Atkinson, *supra* note 12, at 601.

¹⁷ See Gladwell, *supra* note 15.

¹⁸ *Id.*

¹⁹ *Id.*

III. A MORAL STALEMATE OPENS THE DOOR TO OTHER VALUABLE INSIGHTS

Even at fifty, Atticus continues to attract the attention of the intelligentsia of America. Despite the consistent attention, the larger debate about race and justice may have crowded out other valuable insights. One of the more poignant cross-disciplinary examinations of Atticus's moral compass--one citing works from both the literary and legal debate about the fictional lawyer--is Professor Metress's piece from the *Chattahoochee Review*.²⁰ In it, he cites noted American literature scholar, Eric J. Sundquist, who notes that "'the novel [is] something of an historical relic,' . . . [and] that the work is an 'icon whose emotive sway remains strangely powerful because it also remains unexamined.'"²¹ In the end, Sundquist avers Atticus is a moral stalemate.²² However, as students learn in the first semester of law school, there are often multiple issues in any case, and deciding just one does not bar further inquiry into the others. That racial justice has been fully debated in the literature does not preclude readers from exploring other issues. Economic justice, for example, stands as one of the major issues facing the profession today. As a moral example of racial justice in the American South, Atticus may have been adjudicated a draw--neither an ethical ideal nor substantially ethically challenged.²³ He was well intentioned, but flawed, and perhaps if we were to delve into authorial intent, this was by design. Harper Lee gave Atticus longevity by making him realistic,²⁴ providing us with a character one author called the "greatest film hero of all time, more popular than Indiana Jones, and even Butch Cassidy and the Sundance Kid."²⁵ Harper Lee

²⁰ See Metress, *supra* note 3, at 90–93.

²¹ *Id.* at 90–91.

²² *Id.* at 91–92.

²³ See O. B. HARDISON, ARISTOTLE'S POETICS 22 (Leon Golden trans., Prentice-Hall, Inc. 1968) (The tragic hero, according to Aristotle, is one "between these extremes . . . a person who is neither perfect in virtue and justice, nor one who falls into misfortune through vice and depravity; but rather, one who succumbs through some miscalculation.") A perfect or depraved Atticus would not have made the American literary canon.

²⁴ See generally, KERRY MADDEN, UP CLOSE: HARPER LEE (2009) (eschewing the academe's disdain for authorial intent in literary criticism and noting that the similarities between some of the characters in *To Kill a Mockingbird* and Harper's Lee's hometown of Monroeville, Alabama was close enough to bring threats of defamation and prompted townspeople to call her father Atticus).

²⁵ See Bill Haltom, *A Fateful Casting Call*, TENN. BAR J., Feb. 2007, at 34. Haltom notes the improbable genesis of Atticus Finch: Harper Lee dropped out of

notes her goal was more universal than a single theme, aiming to write "a novel of man's conscience . . . [about] [w]hat makes human beings act as they do?" giving depth to the character beyond any single topic.²⁶ Thus, we have a character based more on legal realism than legal idealism; yet this may make Atticus more, and not less, relevant.

IV. BACK TO THE FUTURE 2011: ATTICUS ENTERS THE DELOREAN AND FINDS HIS RELEVANCY

Fast forward to 2011, Atticus would smile on a country that would not only hesitate to kill Tom Robbins,²⁷ but also demonstrate a capacity to elect him President.²⁸ While racial inequality still exists, what Atticus might find most problematic are the vast disparities between the rich and the poor and the lack of access to the justice system by lower income Americans of all races.²⁹ This line of thought and interpretation of Atticus was actually explored in two articles by Professor and past American Bar Association President Talbot D'Alemberte.³⁰ However, the trail of scholarship positing Atticus as an economic or *pro bono* role model for the legal profession was lost or overshadowed by the primary ethical debate regarding race and jus-

the University of Alabama Law School in her final semester, worked as an airline ticket agent by day, and wrote by night. *Id.* Her "one and only novel" won a Pulitzer and became a classic motion picture. *Id.*

²⁶ MADDEN, *supra* note 24, at 127–28.

²⁷ See, e.g., *Facts on Post-Conviction DNA Exonerations*, THE INNOCENCE PROJECT, http://www.innocenceproject.org/Content/Facts_on_PostConviction_DNA_Exonerations.php (last visited Oct. 5, 2012) (reporting that 187 of 300 post-conviction DNA exonerations under The Innocence Project were African Americans); *but see*, *Nat'l Stat. on the Death Penalty & Race*, DEATH PENALTY INFO. CTR., <http://www.deathpenaltyinfo.org/race-death-row-inmates-executed-1976> (last visited Sep. 28, 2012) (noting that 126 out of 308 Texas death row inmates are African Americans).

²⁸ The notion of an African American—President Barack Obama—holding the highest political office in the land would have seemed remote or impossible in the depression era South where the novel was set.

²⁹ See, e.g., Michael L. Boyer, *The Economics of Representing the Poor: Debunking the Assumptions Behind Posner's "Free Lawyer" Problem*, 3 ERASMUS L. & ECON. REV., 63, 64 (2007) (examining the dynamic for legal services for poor in the United States).

³⁰ See generally Talbot D'Alemberte, *Atticus Finch and the Movement to Provide Legal Services to the Poor*, 3 U. FLA. J.L. & PUB. POL'Y 19 (1990); Talbot D'Alemberte, *Alexis De Tocqueville, Atticus Finch, and Legal Services for the Poor in the Nineties*, 7 GA. ST. U. L. REV. 397 (1991).

tice.³¹ Perhaps Atticus is still a model of economic justice, most in need today as lawyers face increasing market and economic pressures due to practicing in a highly competitive global economy.³²

A. One Man Maycomb LSC³³ Office: Textual Evidence for Atticus's Role as a Poverty Lawyer

Set in the “supposed end of the Great Depression,” an era that had witnessed dramatically falling income and rising unemployment,³⁴ Atticus Finch has been called “the prototype of the ideal lawyer [who] tries to deal with the problem of racism, and he emerges a folk hero.”³⁵ “Even though he is fictional, perhaps because he is fictional, Atticus serves as the ultimate lawyer.”³⁶ While the novel revolves around Atticus’s valiant defense of Tom Robinson, the role of Atticus Finch as a provider of legal services to the poor has largely escaped critical attention. This deficit occurs even though there is a wealth of textual sup-

³¹ This emphasis is exemplified in David Margolick’s article in the *New York Times* pitching the views of Thomas Schaffer and Timothy Hall, believers in Atticus Finch’s ultimate “goodness” and morality against those of Monroe Freedman, who charges Finch with complicity in racism. See Margolick, *supra* note 7.

³² See generally THOMAS FRIEDMAN, *THE WORLD IS FLAT: A BRIEF HISTORY OF THE 21ST CENTURY* (2007).

³³ LSC is the single largest provider of civil legal aid for low-income Americans in the nation. Established in 1974, LSC operates as an independent 501(c)(3) nonprofit corporation that promotes equal access to justice and provides grants for high-quality civil legal assistance to low-income Americans. LSC distributes more than 90 percent of its total funding to 134 independent nonprofit legal aid programs with more than 900 offices. LSC promotes equal access to justice by awarding grants to legal services providers through a competitive grants process; conducting compliance reviews and program visits to oversee program quality and compliance with statutory and regulatory requirements as well as restrictions that accompany LSC funding, and by providing training and technical assistance to programs. LSC encourages programs to leverage limited resources by partnering and collaborating with other funders of civil legal aid, including state and local governments, Interest on Lawyers’ Trust Accounts (IOLTA), access to justice commissions, the private bar, philanthropic foundations, and the business community. See generally *Fact Sheet on the Legal Services Corporation*, LEGAL SERV. CORP., <http://www.lsc.gov/about/lsc.php> (last visited Oct. 5, 2012).

³⁴ CLAUDIA DURST JOHNSON, *TO KILL A MOCKINGBIRD: THREATENING BOUNDARIES* 3 (1994).

³⁵ Calvin Woodward, *Listening to the Mockingbird*, 45 ALA. L. REV. 563, 566 n. 4 (1993) (identifying Atticus Finch as the ideal lawyer).

³⁶ Lubet, *supra* note 5, at 1340 (discussing why Atticus Finch is viewed as the ideal lawyer).

port for Atticus's role as a poverty lawyer,³⁷ which may be as meaningful as his courageous criminal defense of Tom Robinson.

The text of the novel informs us of this role. In one key early passage, for example, Scout (Atticus's daughter) introduces a new school teacher to an extremely poor student who has brought no lunch to the first day of school, and, in the process, reveals to the reader much about social stratification and poverty at the time:

Walter Cunningham's face told everybody in the first grade he had hookworms. His absence of shoes told us how he got them. People caught hookworms going barefooted in barnyards and hog wallows. If Walter had owned any shoes he would have worn them the first day of school "Did you forget your lunch this morning?" asked Miss Caroline Miss Caroline went to her desk and opened her purse. "Here's a quarter," she said to Walter. "Go and eat downtown today. You can pay me back tomorrow" Walter shook his head. "None thank you ma'am," he drawled softly. Impatience crept into Miss Caroline's voice: "Here Walter, come get it." Walter shook his head again. When Walter shook his head a third time someone whispered, "Go on and tell her, Scout." . . . [Scout] rose graciously on Walter's behalf: "Ah--Miss Caroline?" . . . [H]e's a Cunningham³⁸

Scout and others in the community knew about the Cunninghams' background. Scout tried to translate this local knowledge to the new teacher.³⁹ Scout was also privileged to deeper insights about the Cunninghams' dire straits. As she informs the reader through her capacity as narrator:

³⁷ See, e.g., Goodwin Phelps, *supra* note 11; Teresa Goodwin Phelps, *Atticus, Thomas, and the Meaning of Justice*, 77 NOTRE DAME L. REV. 925, 925–28 (2002); Lubet, *supra* note 5; Shaffer, *supra* note 11.

³⁸ LEE, *supra* note 1, at 25–26.

³⁹ *Id.* at 26–27. "The Cunninghams never took anything they can't pay back—no church baskets and no scrip stamps." *Id.* at 26. They never took anything off of anybody, they get along on what they have. *Id.* at 26–27. They don't have much, but they get along on it." *Id.* at 27.

My special knowledge of the Cunningham tribe—one branch, that is—was gained from events of last winter. Walter’s father was one of Atticus’s clients. After a dreary conversation in our livingroom one night about his entailment, before Mr. Cunningham left he said, “Mr. Finch, I don’t know when I’ll ever be able to pay you.” “Let that be the least of your worries, Walter,” Atticus said.⁴⁰

This is our textual introduction to Atticus, the poverty lawyer, and an example of professionalism. Atticus is offering professional services without regard to a timely cash payment. Scout inquired further of Atticus:

I asked Atticus if Mr. Cunningham would ever pay us. ‘Not in money,’ Atticus said, “but before the year’s out I’ll have been paid. You watch.” We watched. One morning Jem and I found a load of stovewood in the back yard. Later, a sack of hickory nuts appeared on the back steps. With Christmas came a crate of smilax and holly. That spring when we found a croker-sack full of turnip greens, Atticus said Mr. Cunningham had more than paid him.⁴¹

This is one of the more touching literary descriptions of the payment for legal services in American literature. Atticus explained the payment scenario to Scout and Jem, and, in so doing, further revealed his role as poverty lawyer:

“Why does he pay you like that?” [Scout] asked. “Because that’s the only way he can pay me. He has no money. “Are we poor, Atticus?” Atticus nodded, “We are indeed.” Jem’s nose wrinkled, “Are we as poor as the Cunninghams?” “Not exactly. The Cunninghams are country folks, farmers, and the crash hit them hardest.” Atticus said profes-

⁴⁰ LEE, *supra* note 1, at 27.

⁴¹ *Id.*

sional people were poor because the farmers were poor. As Maycomb County was farm country, nickels and dimes were hard to come by for doctors and dentists and lawyers As the Cunninghams had no money to pay a lawyer, they simply paid us with what they had. “Did you know,” said Atticus, “that Dr. Reynolds works the same way? He charges some folks a bushel of potatoes for delivery of a baby”⁴²

Atticus follows in the historic tradition of a profession, defined as a learned calling pursued in the public interest.⁴³ He is not motivated solely by financial gain, and the value of his services is not always expressed in dollars.⁴⁴ Rather, by serving the needs of the poor farmers, Atticus revealed his adherence to the core elements of a true profession: “holding out to the public, the offer of public service.”⁴⁵ His sliding scale for payment allows clients to retain their integrity and allows him to serve the larger role of the professional in the community. Atticus serves as an ethical and professional guide star for all lawyers. Informed readers cannot overlook the nexus between serving the economically disadvantaged and demonstrating professionalism evident in the text.

V. A BRIEF HISTORY OF PROFESSIONS: THE VESTIGAL MORAL LIMBS OF LAWYERS

Discussions about the legal profession and the ethical responsibilities of lawyers often take place in the context of model rules, case

⁴² *Id.* at 27–28.

⁴³ Peter Wright, *What is a Profession?*, in 29 CAN. BAR REV. 748, 752–57 (1951), *reprinted in* READINGS IN THE HISTORY OF THE AMERICAN LEGAL PROFESSION 9 (Dennis R. Nolan ed., 1980).

⁴⁴ *See, e.g.*, Clement Eaton, *A Mirror of the Southern Colonial Lawyer: The Fee Books of Patrick Henry, Thomas Jefferson, and Waightstill Avery*, 8 WM. & MARY Q. 520–34 (1951), *reprinted in* READINGS IN THE HISTORY OF THE AMERICAN LEGAL PROFESSION 61–67 (Dennis R. Nolan ed., 1980). Interestingly, Thomas Jefferson “criticized Henry for greed in exacting fees from his clients *Id.* at 67. However, “Henry’s account books refute these charges.” *Id.* In fact, “Patrick Henry often received his fees in kind, such as one hogshead of tobacco . . . [s]undries, pepper, [r]hubarb, 2 doz. Pipes . . . a silver watch, by credit at a country store, [and] . . . 1 Barren Cow.” *Id.* (internal quotations marks omitted).

⁴⁵ Wright, *supra* note 43, at 9.

law, or ethics opinions. The historical roots of professions are an important part of the ethical framework often overlooked in legal commentary. This contextual deficiency in the discourse of professional responsibility leaves us with a distorted picture because the practical rules of professional ethics make more sense when viewed in their historical context.

The rise and fall of the medieval guilds, for instance, is essential to understanding professional ethics today. Our modern professions can be traced to the “guilds of the Middle Ages and Renaissance.”⁴⁶ Medieval guilds were groups of skilled workers organized by occupation that operated through a hierarchy based on seniority and skill.⁴⁷ Masters ran the guild and set the standards for acceptance into the guild, beginners were apprentices, and journeymen were those who had completed their apprenticeship but were not yet masters.⁴⁸ The guilds were self-regulated and financed by membership fees.⁴⁹ Guilds set standards, levied fines against members, and settled disputes.⁵⁰ They also wielded an incredible amount of power and influence. Guilds rose in power due in part to their control over the means of production.⁵¹ They held almost total control of the workshops, tools, and knowledge vital to the technology of the Middle Ages, a factor that also allowed for control of the quality of craftsmanship.⁵² This increase in power led to increased wages and prestige.⁵³ In many cases, the guilds held enough power to convince many towns to grant them a monopoly.⁵⁴ The result was that the guilds challenged the existing social structure; everyday, artisans of the guilds competed with the landed elite and royalty for wealth and social status.

The axiom that power corrupts held true, however, and many guilds became corrupt and abandoned the principles that had allowed them to thrive.⁵⁵ By the 17th Century, guild masters engaged in self-

⁴⁶ Michael J. Polelle, *Who's on First, and What's a Professional?*, 33 U.S.F. L. REV. 205, 210 (1998) (discussing the historical origins of modern-day professions).

⁴⁷ ELLIOTT A. KRAUSE, *DEATH OF THE GUILDS: PROFESSIONS, STATES, AND THE ADVANCE OF CAPITALISM, 1930 TO THE PRESENT 2* (1996).

⁴⁸ *Id.* at 4.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ KRAUSE, *supra* note 47, at 5.

⁵⁴ *Id.*

⁵⁵ *Id.* at 6–7.

dealing and granted their own sons special routes for advancement.⁵⁶ Guild masters also began to hire non-guild workers, and, in so doing, were able to undercut other guilds by paying less.⁵⁷ These were all serious offenses in the self-regulating guild system.⁵⁸ Guild corruption gave birth to competition among guilds, and capitalism took hold in medieval society.⁵⁹ The guilds' power eroded, and soon the free market—not the guilds—determined the allocation of resources.

In the rising tide of early capitalism, one guild did survive: the scholar's guild associated with early European universities. This guild was composed of professors (i.e., masters) and their students (i.e., apprentices), and it weathered the rise of capitalism because it was well insulated from market forces.⁶⁰ Today our universities retain many of the characteristics of medieval guilds including lifetime tenure, faculty governance, a self-regulating disciplinary system, and specialized educational requirements.⁶¹ In addition, the professions of law, medicine, clergy, and teaching were spawned in the protective university guilds and retain many ancient guild characteristics today.⁶²

The “professions” were thus sheltered from capitalism in religious universities and took on a notably spiritual dimension. The word “profession” stems from the Latin *profession-em*, which means a “declaration, promise, or vow made by one entering a religious order.”⁶³ The most common context for such a declaration was the vow in the religious context (e.g., vows of poverty, chastity, etc.), but the concept of a vow is applicable to other professions as well: “The semantic linkage was established because, at various stages in their academic career, the students in these secular disciplines had to take oaths of loyalty to the church doctrine, to the discipline of the university, and to the ethics of the learned occupation.”⁶⁴ Today, the priesthood, law, and medicine still entail taking an oath before admission and retain a number of guild-like traits. However, today our professions—especially law and medicine—no longer remain sheltered from the storms of capitalism and market forces. Large commercial law firms act as adjuncts

⁵⁶ *Id.* at 4.

⁵⁷ *Id.* at 7.

⁵⁸ *Id.* at 4.

⁵⁹ KRAUSE, *supra* note 47, at 6–7.

⁶⁰ *Id.* at 9.

⁶¹ However, the rise of corporate owned, online for-profit education, poses a threat to fixed faculty and the traditional university model.

⁶² See KRAUSE, *supra* note 47, at 9–11.

⁶³ OXFORD ENGLISH DICTIONARY 1427 (1933).

⁶⁴ See Polelle, *supra* note 46, at 211–12.

to business enterprises, and for-profit health maintenance organizations dominate the landscape for professional medical services. Medical and legal fees have skyrocketed astronomically, and professionals command salaries comparable to business leaders. For-profit universities now make billions of dollars as publicly traded companies.⁶⁵ Altruistic behavior is an exception to the rule in the professional services marketplace, and it is becoming increasingly difficult to find real life professionals like Atticus Finch and Dr. Reynolds.⁶⁶

VI. DEFINITION OF A PROFESSION AND POVERTY LAW

Definitions of a “profession” vary widely across disciplines and cultures.⁶⁷ There is also a popular notion that a professional is just someone who is not an amateur. The term “profession” carries with it a host of denotations as well as connotations. First, there is the legal definition of a profession and the concomitant standard of care⁶⁸ which represents the ethical minimum that a professional must achieve to avoid legal liability. Second, there is the more inspiring definition of what professionals should strive to be based partly on historical, social, and philosophical factors, the aspirational definition. How we define “profession” is telling because it determines what actions or course of conduct will warrant the distinction. For example, there are no legal requirements that professionals serve the poor,⁶⁹ so one could work solely for profit and still legally be a professional. However, public interest or *pro bono* work is a customary trait of the aspirational definition of a profession, without which there can be no profession in the traditional sense.

⁶⁵ Osamudia R. James, *Predatory Ed: The Conflict Between Public Good and For-Profit Higher Education*, 38 J.C. & U.L. 45, 50 (2011) (identifying the increasing revenue of for-profit universities from 2000 [\$9 billion] to 2010 [\$29.2 billion]).

⁶⁶ To be fair, today’s professionals also face enormous malpractice liability risks (thus costly malpractice insurance premiums), mounting educational debts, and rampant competition. They’re not in mid-Century Maycomb County anymore.

⁶⁷ See, e.g., Herbert M. Kritzer, *The Professions are Dead, Long Live the Professions: Legal Practice in a Postprofessional World*, 33 L. & SOC’Y REV. 713, 716 (1999) (examining various conceptions of “professions” by examining and citing the relevant historical and sociological works).

⁶⁸ See Pollelle, *supra* note 46, at 206–09.

⁶⁹ MODEL RULES OF PROF’L CONDUCT R. 6.1 (2009) (providing that each lawyer should *aspire* to render 50 hours of pro bono legal services per year, not that it is required.)

A. The Legal Definition of Professional: An Ethical Floor

The legal definition of a profession today encompasses many more groups than those spawned by the original university guild. What is considered a profession today is based more on shared characteristics than any rigid requirement that one be a member of a given profession like law or medicine.⁷⁰ Courts and society have generally held the following occupations professions: doctors, dentists, lawyers, clergy, engineers, architects, veterinarians, and educators.⁷¹ Whether individuals in certain fields—like social workers, counselors, and nurses—are legally treated as professionals depends upon the law of the relevant jurisdiction.⁷² In addition, there is some disagreement between and even within states as to whether paraprofessionals, who generally work under professionals, (e.g., paralegals, veterinary assistants, and dental hygienists) should fall inside or outside the professional umbrella.⁷³ What is legally considered a profession varies substantially across the United States. This fact is due to “the varying, inconsistent and frequently conflicting methods of analysis for determining which occupations merit protections”⁷⁴ Although the Restatement (Second) of Torts does not distinguish clearly between a trade and profession,⁷⁵ there are some clear differences. Doctors and lawyers, for example, are held to a professional standard of conduct in every jurisdiction in the country. The discussion of legal liability for professionals can be distracting because the professional standard required to

⁷⁰ See Polelle, *supra* note 46, at 207. Whether an occupation is considered a profession is not a purely academic question; rather, it is of great practical importance in tort cases because it may determine which standard of care is applicable—a reasonable person standard or a reasonable professional standard. In addition, “a malpractice plaintiff must normally find another professional to establish, as an expert witness at trial, what the peer negligence standard was in a particular case and whether it was breached.” *Id.*

⁷¹ *Id.* at 212–17. Educators will be pleased to note that courts have been unwilling to allow claims for educational malpractice. *See id.* at 212.

⁷² Courts and legislatures across the country vary widely. *See id.* at 215–19 (examining the inconsistencies in the definition of what constitutes a profession); *John’s Heating Serv. v. Lamb*, 43 P.3d. 1024, 1037 (Alaska 2002) (holding a heating repairman to a standard of professional negligence). The decision further blurs the distinction between trades and professions.

⁷³ See generally Christine Beck Lissitzyn, *What’s in a Name? Should Paralegals Be Liable for Legal Malpractice*, 77 CONN. B. J. 86 (2003).

⁷⁴ Polelle, *supra* note 46, at 212.

⁷⁵ *See*, RESTATEMENT (SECOND) OF TORTS § 299(A) (1965).

avoid legal liability is an ethical minimum.⁷⁶ Professionals should strive to do more than stay out of court. Beyond the narrow context of a malpractice action, the definition of a profession has more philosophical and social importance.

B. Becoming Atticus: The Aspirational Definitions of a Profession and the Ethical Ceiling of Public Service

In a 1951 article aptly entitled, “What is a Profession?”⁷⁷ Peter Wright states that the “idea [of professions] is found in Plato and Lucian, as it is found in Coleridge and Sir William Osler. Its significance and distinction is part of Western Civilization.”⁷⁸ To be a true profession, Wright asserts that six elements must be met.

1) Public Service: “The first element is the holding out to the public the offer of public service.”⁷⁹ The entrance to a profession often entails a “public avowal” similar to the vow taken by the “priest and parson.”⁸⁰ Wright adds that public service entails a “moral duty not to refuse the client without cause or an explanation.”⁸¹

2) Special Skill: The second element is “special skill.”⁸² A member of a profession must be skillful and able to competently render the service one is holding out to the public.⁸³ This aspect of a profession is mirrored in the duty of competency that exists in many professional codes of ethics.

3) Training & Education: The third element, according to Wright, is training and education.⁸⁴ The education requirement ensures competence and protects society, but it also underscores an implicit clause in the social contract between professionals and society.⁸⁵ It could be argued that professionals who possess the benefit of specialized education, which is often state-subsidized, owe a corresponding duty of public service to society.

⁷⁶ This may strike one as odd given the fact that the required law school course as well as the majority of scholarly work on the “legal profession” is concerned with “staying out of trouble.” This emphasis leaves much room for discussion regarding what legal professionals “ought to do.”

⁷⁷ Wright, *supra* note 43.

⁷⁸ *Id.* at 9.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Wright, *supra* note 43, at 10.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

4) State Recognition: The fourth element of a profession is state recognition of a group or the granting of an exclusive privilege to a group,⁸⁶ although Wright acknowledges that governments also recognize and grant privileges to occupations that may not be professions.⁸⁷ Notaries, hairdressers, and day care workers, for example, require licenses but are not “professionals.”⁸⁸ State recognition also has another aspect related to the social contract theme. Professions granted a license by the state often secure a monopoly for members of that profession on a particular service in the state.⁸⁹ Therefore, professionals may owe some duty to the public in exchange for the valuable monopoly granted to them by the state.

5) Self-Discipline: The fifth element of a profession is the “self-disciplined group,” or self regulated entity.⁹⁰ The requirements for admission and sanctions for professional misconduct are generally governed by the profession itself, which signals that the profession’s standards exceed or are in addition to those required by law.

6) Motivation Beyond Personal Gain. Motivation beyond personal gain is the sixth and probably most important element of a profession.⁹¹ According to Wright, lofty motivations are “the touchstone of the true profession and truly the professional life.”⁹² He writes:

There must be a measure of unselfishness or freedom from purely personal considerations. For a calling to be a profession, it must have an unselfishness aspect of public service. For persons to be professional men and women they must be governed by moving considerations other than those of personal advantage. The priest or minister, the doctor, the lawyer, the teacher, the social worker, the soldier . . . , [t]he

⁸⁶ *Id.* at 11.

⁸⁷ *Id.*

⁸⁸ The implication here is not that those outside the traditional professions use substandard skill; the term profession is used here simply to denote a special class that has increased responsibilities to the public interest beyond profit in delivering their services.

⁸⁹ *See, e.g.,* ARIZ. CT. R., 31(b) (granting exclusive privilege to “active member[s] of the state bar” to be the sole providers in the practice of law).

⁹⁰ Wright, *supra* note 43, at 11.

⁹¹ *Id.* at 12.

⁹² *Id.*

“main purpose of their calling is not themselves or their pay.”⁹³

The key determinant of professionalism for Wright is one’s impetus for pursuing a given calling.⁹⁴ Under this definition, a law firm ran solely for profit may not properly be called a profession; it is simply a profitable business vocation. This is not to say a professional cannot charge “reasonable fees.” The fee should just not be the primary motivation for offering the services. The professional must ultimately be motivated by the service to the public no matter the area of law. Moreover, the professional ought to be able to articulate the manner in which their services further the public interest. Today, it is common to assess contributions to society in dollars and cents, which, combined with other factors, has placed professions in peril. Even in 1951, Peter Wright foresaw this threat:

The modern age is a commercial age. Its values are measured in money The future of a profession depends today upon how its members face this arid and pervasive assessment of a man’s life work. If in the secret hearts of its members, they know that they pursue their profession not for what they get out of it but first for the service of others, it can be a true profession. The sincerity of the fellow workers in a profession is the best security for its status.⁹⁵

This observation was particularly prescient since today, the most pressing dilemmas in the professions stem from the flood of money into the professions. This is why a professional example, even a literary one like Atticus, is so important.

VII. ATTICUS FINCH, THE DEFINITION PROFESSIONALISM, AND EQUALITY

Atticus Finch meets the elements of a professional, especially the most important factor—“motivation beyond personal gain.” His selflessness in accepting non-cash payment was emblematic of the

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ Wright, *supra* note 43, at 12.

greater purpose of the representation. Atticus's motivations went far beyond collecting a fee, and the story offers support for this proposition. Regarding the plight of Mr. Cunningham, Atticus explained:

Entailment was only a part of Mr. Cunningham's vexations. The acres not entailed were mortgaged to the hilt, and the little cash he made went to interest. If he held his mouth right, Mr. Cunningham could get a WPA job, but his land would go to ruin if he left it, and he was willing to go hungry to keep his land and vote as he pleased. Mr. Cunningham, said Atticus, came from a set breed of men. As the Cunningham's had no money to pay a lawyer, they simply paid us with what they had.⁹⁶

Atticus is empathetic and his motivations run deeper than any fee he might receive. He understands the perspective of the client and the larger interests at stake. He sees the role of his services in saving more than a heavily mortgaged farm. Atticus knows his client could take a government job but would have to sacrifice his land and personal and political independence. Perhaps he also sees the social and economic consequences that would flow from uprooting the Cunninghams and others like them, that the rural economy would suffer and a way of life could end. Atticus tailors the fee to the client in order to serve the greater goal of preserving the client's independence and livelihood. The in-kind payments of firewood and nuts seem a touching afterthought, a secondary motivation for the rendering of professional services. Peter Wright's article is again instructive:

We call ourselves a learned profession. Let me remind you that we are also a liberal profession. The difference between a trade and a profession is that the trader frankly carries on his business primarily for the sake of pecuniary profit, while the members of a profession profess an art, their skill in which they no doubt place at the public service for remuneration, adequate or inadequate, but which is truly an end in itself. The professional man finds his highest rewards in

⁹⁶ LEE, *supra* note 1, at 21.

his sense of mastery of his subject, in the absorbing interest of the pursuit of knowledge for its own sake, and in the contribution which, by reason of his attainments, he can make to the promotion of the general welfare.⁹⁷

Atticus Finch's work was marked by clear professionalism because his services were not measured or motivated by pecuniary gain. Those engaged in the areas of law falling under the umbrella of public interest law, for example, follow in this tradition of professionalism as do those who engage in *pro bono* work.⁹⁸ The lack of economic incentive leads one to conclude a strong sense of altruism motivates those who practice poverty law, making them the real life Atticus Finches.

VIII. CONCLUSION: "IF YOU WANT TO HELP YOUR FELLOW MAN . . . START WITH WHAT'S IN YOUR HAND"⁹⁹

Atticus is a fictional embodiment of professionalism that is remarkable in the legal culture of America. That he may have been a public interest lawyer is of great symbolic significance. There are few literary examples of poverty lawyers,¹⁰⁰ and also a limited number of practitioners who embody those traits. Today, for example, one would be hard pressed to get legal representation in exchange for a sack of nuts. Yet, our society needs professionals like Atticus Finch. The gap between the rich and the poor is growing in America and we risk having a system in which lawyers serve only one class. An insightful article by Professor David Luban explores the facts related to the funding

⁹⁷ Wright, *supra* note 43, 10–11 (quoting Lord Macmillan who, in an address to Scottish law agents on "Law and History," aptly explains the concept of a profession in terms of the professional's goals and motivations).

⁹⁸ Poverty lawyers, generally, can be defined as those who work on behalf of low-income client and, more specifically, working for LSC funded entities.

⁹⁹ YUSUF ISLAM, *In The End, on ANOTHER CUP* (Atlantic 2006), (reminding us in melody of larger karmic truths "everything little thing you do, you better know it comes back to you . . . you can't bargain with the truth . . . you're gonna' know the real score in the end").

¹⁰⁰ *But see, e.g.*, JOHN GRISHAM, *THE STREET LAWYER* (1999) (detailing a story in which the protagonist leaves a big law firm and generous salary and finds himself immersed in poverty as well as other intrigue). The theme of an escape from the large corporate firm to more meaningful work is becoming more common. As the protagonist is told: "You don't do it for the money." *Id.* at 106. "You do it for your soul." *Id.* The Michael Brocks may be the Atticus models for the next generation of lawyers.

and availability of legal services for the poor.¹⁰¹ Professor Luban effectively debunks “[o]ne of America’s persistent myths . . . that the rich get richer, the poor get lawyers and the middle class gets squeezed.”¹⁰² Professor Luban writes:

In fact, of the \$100 billion spent on legal services in the United States each year, less than 1 percent goes to delivering civil legal services to low-income Americans. About 5,000 legal-aid lawyers in the country serve 50 million Americans who qualify for free legal services The numbers add up to one civil legal-aid lawyer for about 10,000 low-income clients—compared to one private lawyer for about 240 middle- and upper-income clients. To put the numbers in perspective, the American Bar Association found that in 1992 about half of low-income households confronted a legal problem. That’s roughly 5,000 cases a year for each lawyer—100 a week, 20 a day. The numbers mean that most people who can’t afford a lawyer don’t have a prayer of getting one for free.¹⁰³

The logistical factors alone—one legal aid lawyer per 10,000 poor in America—make it clear that most people who can’t afford a lawyer can’t get one.¹⁰⁴ The ratio of legal aid lawyers to potential clients is just one factor. Geography, language, and education barriers are other factors that can preclude the poor from receiving free legal services. Despite these barriers, legal-aid lawyers diligently serve the nation’s poor every year, and perhaps just as important, keep the light of hope and possibility lit. The poor at least have some opportunity to access the legal system. Without poverty lawyers, millions of Americans would simply be forced to forfeit their legal rights or—worse—be forced to take matters into their own hands.

Our society is changing rapidly, and some scholars posit that we are entering a post-professional era.¹⁰⁵ But poverty law will likely

¹⁰¹ See David Luban, *Four Ways the Law Keeps Poor People from Getting Heard in Court*, LEGAL AFFAIRS May–June 2002, at 44.

¹⁰² *Id.* at 54.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ See Kritzer, *supra* note 67, at 715.

remain a professional niche that upholds the ancient historical, social, and philosophical dimensions of a profession. The picture for the legal profession at large remains mixed. Just as the craft guilds gave into commercialization and lost control of their specialized goods, legal professionals are slowly losing control of their specialized services.¹⁰⁶ Lawyers themselves may be partly responsible for this change. By focusing on income and exclusivity, the legal profession is pricing a vast majority of Americans out of the market. The ideal that Atticus Finch represents is not lost. *Pro bono* efforts are being emphasized more strongly than ever by state and national bar associations, and such efforts may be crucial to the profession's survival.¹⁰⁷ The LSC, founded as a vital aspect of Lyndon Johnson's war on poverty, has survived several decades of attacks, and the regional organizations funded by LSC continue to be bastions of professionalism that often attract top notch lawyers.¹⁰⁸ There are still many places to pursue a legal profession in the truest sense, places where the ghost of Atticus Finch haunts the law office and literary imagination of tomorrow's practitioners.

¹⁰⁶ *Id.*

¹⁰⁷ See generally LAWRENCE M. FRIEDMAN, *THE HISTORY OF AMERICAN LAW* (2005). The bar in the US has historically adapted in order to "resist conversion of the profession into a 'mere' business or trade." *Id.* at 484. For example, the "bar association movement" in the 1870's was in response to the "hot breath of competition." *Id.* at 496. Today, a nationwide movement on a similar scale designed to ensure accessibility to legal services for all Americans might renew professionalism into the legal profession.

¹⁰⁸ See J. Dwight Yoder, *Justice or Injustice for the Poor?: A Look at the Constitutionality of Congressional Restrictions on Legal Services*, 6 WM. & MARY BILL RTS. J. 827, 833-42 (1998).