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TO KILL A MOCKINGBIRD AND LEGAL ETHICS: ON THE ROLE OF ATTICUS FINCH’S ATTIC RHETORIC IN FULFILLMENT OF DUTIES TO CLIENT, TO COURT, TO SOCIETY, AND TO SELF

Michelle Kundmueller*

ABSTRACT

Atticus Finch, protagonist of Harper Lee’s To Kill a Mockingbird and longtime hero of the American bar, is well known, but he is not well understood. This article unlocks the secret to his status as the most admired of fictional attorneys by demonstrating the role that his rhetoric plays in his exemplary fulfillment of the duties of an attorney to zealously represent clients, to serve as an officer of the court, and to act as a public citizen with a special responsibility for the quality of justice. Always using the simplest accurate wording, focusing on reason over emotion, and speaking in the same manner whether in private or in public, Atticus’s rhetoric exemplifies the ancient Roman style known by students of rhetoric as “Attic.” Using this style to navigate the potential for conflict among his duties, Atticus reveals the power, the elegance, and the ethical necessity of Attic rhetoric. Connecting Atticus’s name to the Attic style of rhetoric for the first time, this article advances several scholarly debates by demonstrating the mutual compatibility of the duties imposed by the Model Rules of Professional Conduct and proffering a powerful tool to attorneys seeking to practice or to teach improved ethical conduct.

KEYWORDS

Atticus Finch, Harper Lee, Ethics, Professional Conduct, Literature

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INTRODUCTION

The Atticus Finch of *To Kill a Mockingbird* has served as a role model for generations of American attorneys¹ and schoolchildren,² but scholarship analyzing this fictional attorney has never focused with sufficient clarity on his use of the most important weapon that a lawyer wields: words. And yet it should be evident that, as an attorney, Atticus's words are an important part of who he is. As renowned scholar of legal writing and speaking, Brian Garner, explains, "There are only two things that lawyers do professionally, and they are to speak persuasively and to write persuasively. That really exhausts the whole gamut of skills that lawyers engage in. Words are our only tools."³ If Professor Garner is correct that effective rhetoric is synonymous with an attorney's skill and power, then Atticus's use of words should provide a superlative source of insight into the power of his character and thereby explain why so many American attorneys have implicitly adopted him as their patron saint. It is natural that Atticus's rhetoric should be the source of his grip on the imagination (such as it is) of the American attorney.⁴

¹ Attorneys have so dearly loved Atticus Finch that in 2010 the American Bar Association playfully removed him from the running for their list of the twenty-five greatest fictional lawyers. Thane Rosenbaum, *ABA Honors "To Kill a Mockingbird" and Atticus Finch*, A.B.A. J., Aug. 10, 2010, at 30, 30–31. An article in the online journal explained that his fellow fictional attorneys could not bear competition with Atticus's "demigod" status: "Since the moment he was introduced 50 years ago in Harper Lee's novel, *To Kill a Mockingbird*, Atticus Finch has represented both an image lawyers crave and a standard that intimidates them. . . . [He is] a legal deity too lofty to allow comparison to a Denny Crane or a Patty Hewes." Richard Sweren, *Farewell, Atticus*, A.B.A. J., Aug. 10, 2010, http://www.abajournal.com/magazine/article/farewell_atticus. Numerous sources confirm Atticus's power to inspire the love and emulation of attorneys and children who will become attorneys. See, e.g., Stephen D. Easton & Julie A. Oseid, Essay, "*And Bad Mistakes? I've Made a Few*": *Sharing Mistakes to Mentor New Lawyers*, 77 ALB. L. REV. 499, 526–28 (2013/14) (describing an "Atticus Finch case" as representation undertaken "not because you think you have a great chance of winning the case, but because it is the right thing to do"); Mary Ellen Maatman, *Justice Formation from Generation to Generation: Atticus Finch and the Stories Lawyers Tell Their Children*, 14 LEGAL WRITING 2017, 208–9 (2008) (describing many ways that Atticus has inspired lawyers and aspiring attorneys); Carrie Menkel-Meadow, *Law and Popular Culture: Can They Do That? Legal Ethics in Popular Culture: of Characters and Acts*, 48 UCLA L. REV. 1305, 1307, 1310 (referring to the virtual "canonization" of Atticus).

² With over forty million copies sold, some estimate that as many as 70 percent of American high school students are assigned the novel. Alexandra Alter, *Harper Lee, Author of "To Kill a Mockingbird," Is to Publish a Second Novel*, N.Y. TIMES, Feb. 3, 2015, at A1; Courtney Crowder, *Marja Mills Addresses Harper Lee Controversy at Literary Event*, CHI. TRIB., July 23, 2014, at 6, §4.

³ AmicusCuriae200, *Bryan Garner's Persuasive Oral Argument*, YOUTUBE (Sept. 3, 2010), <https://www.youtube.com/watch?v=IJRDKRGo-UE>.

⁴ Notwithstanding the prevailing adulation for Atticus, serious challenges have been raised to the character's position as role model—even before the publication of *Go Set the Watchman*. Some of the most highly noted challenges have accused Atticus of sexism, complicity in society's racism, or both. Monroe H. Freedman, *Atticus Finch—Right and Wrong*, 45 ALA. L. REV. 473 (1994); Steven Lubet, *Classics Revisited: Reconstructing Atticus Finch*, 97 MICH. L. REV. 1339 (1999); Malcolm Gladwell, *The Courthouse Ring: Atticus Finch and the Limits of Southern Liberalism*, NEW YORKER, Aug. 10, 2009,

The evidence necessary to support this claim—the claim that Atticus’s speech is worthy of emulation and therefore should be better understood—lies in the power of his speech as it plays out within the novel. But the character’s name gives additional evidence of the importance of Atticus’s use of words, and this evidence proves essential to understanding—rather than merely observing and admiring—the full contribution of Atticus to his fictional town and of Harper Lee to the American attorneys who model themselves after Atticus. This article argues that Lee named Atticus Finch, specifically the Atticus Finch of *To Kill a Mockingbird*, after an ancient school of rhetoric known as Attic. Atticus Finch speaks with all the hallmarks of the Attic orator: he never raises his voice above a polite tone; he uses the same tone and vocabulary at home and in the courtroom; and he employs simple, accurate phrases instead of impassioned eloquence. Atticus’s practice of Attic rhetoric thus presents an important counterpoint to the perennial American fear of the aggressive, threatening, and sometimes abusive trial lawyer—the lawyer least likely to persuade by reason and most likely to prevail through arousal of some passion, whether it be fear, hatred, or mere selfishness. Nonetheless, there is almost no scholarship on *To Kill a Mockingbird* that so much as mentions Atticus’s rhetorical style, very little that considers his oratory from a legal ethics perspective, and none that connects him to the Attic style of oratory.⁵

Atticus’s rhetoric—standing in opposition to the passion-arousing style typically associated with the most negative stereotype of the courtroom attorney—connects the optimistic vein running through *To Kill a Mockingbird* with the integrity of the legal profession and the potential for rational deliberation within the American legal system. The importance of this connection lies in teaching attorneys—and indeed Americans more broadly—why we admire Atticus and intuitively model ourselves after him. To the extent that attorneys voluntarily shape

at 26–32; Deborah Luyster, *Crossing the Bar: The Column of the Legal Education Committee: Lawyering Skills in Law and Literature*, 81 MICH. B. J. 56, 56 (2002); see also Menkel-Meadow, *supra* note 1, at 1316, 1333 (questioning Atticus’s parenting and arguing that he “is no longer the uncomplicated hero that we once thought when we measure him against current standards of complicity with a wrongfully racist society”). Atticus’s detractors elicited a resounding defense of the bar’s most beloved hero, and the 2015 publication of *Go Set the Watchman* has since given rise to a fresh round of debate. Davis Margolick, *At the Bar: To Attack a Lawyer in “To Kill a Mockingbird”*: An Iconclast Takes Aim at a Hero, N.Y. TIMES, Feb. 28, 1992, at B7; Claudia Johnson, *Without Tradition and Within Reason: Judge Horton and Atticus Finch in Court*, 45 ALA. L. REV. 483, 483–87 (1994); Rapping, *supra* note 4. Atticus’s character in *Go Set the Watchman* fueled the anti-Atticus camp; his defenders responded by arguing that the new novel’s Atticus is a draft of a fictional character whose traits Lee evidently determined to alter to create the Atticus of *To Kill a Mockingbird*. Rapping, *id.* at 862–63; Adam Gopnik, *Sweet Home Alabama: Harper Lee’s “Go Set a Watchman,”* NEW YORKER, July 27, 2015, at 66. I side with the latter camp, setting *Go Set the Watchman* aside as a separate literary work whose characters do not bear on the interpretation of *To Kill a Mockingbird*.

⁵ The only exception that the author has been able to find is Brooke Richelle Holland’s *Classical Rhetoric in Atticus Finch’s Speeches*, 105 ENG. J. 78 (2006). Contrary to my argument, Holland argues that Atticus speaks in the low, middle, and high styles described by Cicero. *Id.* at 81–82. Holland does not diagnose Atticus’s exclusive use of the Attic style; much less does she connect this style to Lee’s choice of name for Atticus Finch.

themselves in Atticus's image, rules of ethics, professionalism, and civility become, to a very great extent,⁶ a matter of course. Attorneys who strive to be like Atticus will fulfill many of their obligations without stopping to think about what they ought *not* to do. Of course, there will always be those who refuse to resolve to do the right thing for the right reason, but this article is written in the belief that many attorneys do intend, as the Model Rules of Professional Conduct explain, to carry a "special responsibility for the nature of justice."⁷ For attorneys who embrace this responsibility, understanding (rather than merely intuitively admiring) the logic underpinning Atticus's speech will educate and sharpen the ability to follow his articulate example. If Lee taught attorneys to love Atticus and to wish to be like him, as I believe *To Kill a Mockingbird* shows us that she did, this article seeks to make it a bit plainer how we can imitate him and why it is important for us to do so. And, if Brian Garner is right about the extent of the legal tool kit, nothing could be more important to any upstanding American attorney.

This argument proceeds in three parts. The first part makes the case for why a literary figure should be studied to improve legal ethics and then makes the case for a need in improvement of ethics in the American bar. Even after a century of articulating and rearticulating standards of ethics, professionalism, and civility, legal ethics should turn to literature because the profession continues to struggle with both a perceived decline in ethics and fundamental fault lines that have haunted attorney identity for centuries.

The second part makes the case for Atticus Finch as a salutary literary role model whose specific strengths address both concerns about a decline in general civility and the potential for attorney identity to splinter amidst the sometimes conflicting duties governing an attorney's professional and personal life. Atticus not only carries out the duties imposed by the profession, he does so—without raising his voice—while navigating profound potential for conflict among his duties. As a comparison of his character to the aspirational Preamble of the Model Rules of Professional Conduct demonstrates, Atticus illustrates how the seemingly incompatible expectations placed on an attorney by the traditions of the profession can be fulfilled under difficult circumstances.

The third part connects Atticus's holistic, civil fulfillment of his duties as an attorney to his rhetoric, arguing that analysis and understanding of his rhetorical style reveal both the tools that permit Atticus to successfully fulfill his role as attorney and the underlying beliefs that permit him to do so even under circumstances where it might appear that his duties and interests are in conflict with one another. Lee named Atticus after the ancient, Attic school of rhetoric, so it is not surprising that the characteristics of this school's rhetoric—particularly when compared to more bombastic and passionate styles—unlock the logic behind the character's integrity. Cicero described and critiqued Attic rhetoric at length, describing its simple strengths but also arguing that it lacked the power exhibited in the speech of the greatest orators. Despite his critique, Cicero's descriptions of the clear, rational elegance of Attic rhetoric demonstrate how this style exemplifies the fulfillment of an attorney's simultaneous duties to truth, justice, civility, and his

⁶ This is not to claim that all ethics requirements are intuitive; even Atticus Finch might consult the ABA Model Rules of Professional Conduct for guidance on more technical questions. MODEL RULES OF PROF'L CONDUCT R. 1.5, 5.4 (2013).

⁷ *Id.* pmb. ¶ 1.

or her client's interests. Thus, Atticus's rhetorical style points to a resolution of the seeming conflict between an attorney's duties to client and to the court, justice, and personal integrity.

In closing, I focus on the consistency of Atticus's rhetoric across the many aspects of his life—as an attorney, as a citizen, and as a father. In the final analysis, Atticus's Attic rhetoric—as Cicero's discussion of rhetoric will have made clear—proves a key component of more than his skill as an attorney. His rhetorical style is grounded in honesty and respect for the ultimate deliberative capacity of others. Coupled with the courage for which he has long been admired, Atticus's honest yet restrained use of speech (his greatest weapon) contains a microcosm of the restraint that members of the judiciary and bar should exhibit in relationship to the greater whole—the democracy within which they reside.

I. HOW ATTICUS CAN HELP ATTORNEY ETHICS

A. LITERARY STUDIES IN ETHICS EDUCATION

Attorneys lead their lives amid a forest of duties, not least important among them the duties that guide and control the practice of law itself: the canons, rules, regulations, culture, and expectations that shape the conduct of an attorney. The twentieth century witnessed a great increase in the formality and enforceability of ethical duties governing attorneys, but the extent to which the formal pronouncements, whether enforceable or aspirational, improve attorney behavior is itself a contended issue. Some cheer the articulation of enforceable codes of conduct, arguing that enforcement of detailed rules is the only path to an ethical bar.⁸ Others question the efficacy of formal standards, pointing instead to an underlying defect in the dispositions of attorneys who either believe “churlish” behavior appropriate or simply lack the virtue required to make the right decisions.⁹ Those who question the sufficiency of rules often call for some degree of culture change, citing possibilities as divergent as altering the adversarial nature of the practice of law, training young attorneys in virtue, or enhancing the shouldering of responsibility by firms and individual attorneys.¹⁰

⁸ Heather M. Kolinsky, *Just Because You Can Doesn't Mean You Should: Reconciling Attorney Conduct in the Context of Defamation with the New Professionalism*, 37 *NOVA L. REV.* 113, 117–20 (2012); Amelia Craig Cramer, Linda Drake, & Mariam Diggins, *Civility for Arizona Lawyers: Essential, Endangered, Enforceable*, 6 *PHOENIX L. REV.* 465, 467–68, 503–4 (2013); Eugene R. Gaetke, *Expecting Too Much and Too Little of Lawyers*, 67 *U. PITT. L. REV.* 693, 694, 727–28, 740–41, 748–49 (2006).

⁹ Thomas Gibbs Gee & Bryan A. Garner, *The Uncivil Lawyer: A Scourge at the Bar*, 15 *REV. LITIG.* 177, 190 (1996); Mark Neal Aaronson, *Symposium: Race, Gender, Power, and the Public Interest: Perspective on Professionalism: Be Just to One Another: Preliminary Thoughts on Civility, Moral Character, and Professionalism*, 8 *ST. THOMAS L. REV.* 113, 114–19 (1995).

¹⁰ Austin Sarat, *Enactments of Professionalism: A Study of Judges' and Lawyers' Accounts of the Ethics and Civility in Litigation*, 67 *FORDHAM L. REV.* 809, 834–35 (1998); Aaronson, *supra* note 9, at 143–45, 153–55; Cramer, Drake, & Diggins, *supra* note 8, at 468–69.

Culture shifts and virtue-enhancing attorney education may initially appear hopelessly unattainable, but advocates point to the potential for firm mentoring and shadowing programs, stress-management training, and expanded law-school and continuing-legal-education curricula.¹¹ Among the suggestions for how to expand legal education are interdisciplinary studies—such as the study of literature and rhetoric.¹² Law and literature studies are not new, and indeed such scholarship has forayed into many corners of practice.¹³ Not surprisingly, more than one scholar has underscored the potential for literature to play a role in narrowing the gap between actual practice and good ethics.¹⁴ Like mentoring programs, the study of literature circumnavigates some of the common complaints against both mandatory and aspirational rules. Perhaps most importantly, studying legal ethics through literature does not establish minimum standards. Rather, it focuses attention on understanding and creating the best resolution to any dilemma. Furthermore, the solution offered comes in the format most familiar to common-law-trained attorneys: embedded in a particular factual scenario and ready to be analyzed, distilled, and critiqued—like any judicial opinion. Moreover, like mentoring, the study of literature requires no formal structure: it is well suited to individual pursuit, informal discussion, law-school classrooms, and continuing legal education through bar programs.

¹¹ Aaronson, *supra* note 9, at 116, 125; Mark D. Nozette & Robert A. Creamer, *Expecting Too Much and Too Little*, 79 TUL. L. REV. 1539, 1553–56 (2006); Susan Daicoff, *Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes*, 11 GEO. J. LEGAL ETHICS 547, 569–73 (1998); Brenda Smith, *Comment, Civility Codes: The Newest Weapons in the “Civil” War over Proper Attorney Conduct Regulations Miss Their Mark*, 24 DAYTON L. REV. 151, 182–84 (1998).

¹² Aaronson, *supra* note 9, at 125.

¹³ Literature may, for example, help legal scholars grapple with complex scientific and medical issues that are accompanied by legal quandaries. David Caudill, *Law and Literature, Literature and Science, and Enhancing the Discourse of Law/Science Relations*, 27 J. LEGAL PROF. 1, 3 (2003); Jennifer Bard, Thomas Mayo, & Stacy Tovino, *Three Ways of Looking at a Health Law and Literature Class*, 1 DREXEL LAW REV. 512 (2009). Analysis of the popular perception of attorneys and the judicial system also lends itself to television and film studies. Naomi Mezey & Mark Niles, *Screening the Law: Ideology and Law in American Popular Culture*, 28 COLUM. J.L. & ARTS 91 (2005); Steven Stark, *Perry Mason Meets Sonny Crockett: The History of Lawyers and the Police as Television Heroes*, 42 U. MIAMI L. REV. 229 (1987); Kimberlianne Podlas, *Cross-Examination: The Great (?) Engine: Article: Impact of Television on Cross-Examination and Juror “Truth,”* 14 WIDENER L. REV. 479 (2009); Kimberlianne Podlas, *Guilty on All Accounts: Law and Order’s Impact on Public Perception of Law and Order*, 18 SETON HALL J. SPORTS & ENT. L. 1 (2008); Adam Shniderman, *Ripped from the Headlines: Juror Perceptions in the Law & Order Era*, 38 LAW & PSYCHOL. REV. 97, 97–133 (2014); Diane Klein, *Ally McBeal and Her Sisters: A Quantitative and Qualitative Analysis of Representations of Women Lawyers on Prime-Time Television*, 18 LOY. L.A. ENT. L.J. 259, 259–305 (1998).

¹⁴ Philip Kissam, *Disruptions of Literature: Disturbing Images: Literature in a Jurisprudence Course*, 22 LEGAL STUD. FORUM 329, 347–48 (1998); Menkel-Meadow, *supra* note 1, at 1307; Caudill, *supra* note 13, at 2; *but see* Jane Baron, *Law, Literature, and the Problems of Interdisciplinarity*, 108 YALE L.J. 1059 (1999) (critiquing the internal coherence, utility, and theoretical grounding of law and literature studies).

Even more than mentoring relationships, literature by its very nature translates theory and maxim to concrete application.¹⁵ This is particularly valuable to the common-law lawyer, whose education and professional habits have trained the mind to weave ceaselessly between general rule and particular application. Literature, however, offers something that the casebook cannot: it follows attorney, judge, client, and whoever else may inhabit the story beyond the immediate purview of the legally relevant and into both the broader public arena¹⁶ and the narrower private stories of the characters' personal and inner lives. As literature follows a lawyer into the private sphere, it unearths the interplay between professional and private self,¹⁷ thereby exploring a connection that escapes the rules of professional conduct. Because the fictional attorney's underlying ethical choices are normally expressed in novel form through professional speech, attorney rhetoric—with all its ethical implications—is simultaneously under the glass and ready for examination.¹⁸

Given these advantages to studying law through fiction, to say nothing of the pleasure thereby afforded, it is not surprising that a literature both deep and wide has developed.¹⁹ Legal scholarship of recent years alone boasts forays into the philosophical Franz Kafka,²⁰ the perennial favorite Shakespeare,²¹ and the fanciful and popular Harry Potter world.²² *To Kill a Mockingbird* and Atticus

¹⁵ Luyster, *supra* note 4, at 56 (arguing that literature shows how abstraction of a legal rule works in the context of the particulars of human lives). Menkel-Meadow argues that the concrete application that occurs in literature is central to the enthusiasm with which her students respond to studying legal ethics in literature, *supra* note 1, at 1325–26.

¹⁶ Literature can assist in the formulation of what “law” is, helping attorneys to explore the “tension between positive law and natural law.” Luyster, *supra* note 4, at 56. Because attorneys act at the intersection between law as it actually is and law as it ought to be, the choices of “a lawyer of good character” exhibit the “tension” between “commitment to law and commitment to justice.” Menkel-Meadow, *supra* note 1, at 1324. While the resulting, tension-ridden stories can produce “disturbing images of lawyers’ ethics,” (Kissam, *supra* note 14, at 347), these images provide insights about the impact of law in a society as a whole (Bruce Rockwood, *The Good, the Bad, and the Ironic: Two Views on Law and Literature*, 8 YALE J.L. & HUMAN. 533, 534 (1996) (book review)).

¹⁷ Legal scholars have noted that literature provides an opportunity to study the relationship between the public and private lives of attorneys. Menkel-Meadow, *supra* note 1, at 1308–9 (2001); Kristin Huston, Comment, *The Lawyer as Savior: What Literature Says about the Attorney’s Role in Redemption*, 73 UMKC L. REV. 161, 164 (2004). Thomas Morawetz draws the interesting observation that whether a story ultimately shows the practice of law to ennoble or dehumanize an attorney will depend on the author’s estimation of the law. Review Essay, *Ethics and Style: The Lessons of Literature for Law*, 45 STAN. L. REV. 497, 502 (1993).

¹⁸ More generally, some argue that literary theory offers legal reasoning a rich resource for understanding how texts mean and how they can legitimately be interpreted. Gary Minda, *Law and Literature at Century’s End*, 9 CARDOZO STUD. L. & LIT. 245, 245 (1997); Morawetz, *supra* note 17, at 497; Cathren Page, *Not So Very Bad Beginnings: What Fiction Can Teach Lawyers about Beginning a Persuasive Legal Narrative Before a Court*, 86 MISS. L.J. 315 (2017).

¹⁹ Menkel-Meadow, *supra* note 1, at 1307–8.

²⁰ Patrick Glen, *Franz Kafka, Lawrence Joseph, and the Possibilities of Jurisprudential Literature*, 21 S. CAL. INTERDIS. L.J. 47 (2011).

²¹ Frank Kermode, *Justice and Mercy in Shakespeare*, 33 HOUS. L. REV. 1155 (1996).

²² Scott Hershovitz, *Harry Potter and the Trouble with Tort Theory*, 63 STAN. L. REV. 67 (2010); Jeffrey Thomas, *The Power of Stories: Intersections of Law, Literature, and Culture: Harry Potter; Law and Culture: Harry Potter and the Law*, 12 TEX. WESLEYAN

Finch, of course, appear with relative frequency, and more often than not the theme relates in some way to legal ethics—given a broad understanding of the subject: Atticus's name is invoked as an example of attorney courage,²³ in support of the importance of pro bono work,²⁴ and to illustrate the extralegal role that attorneys play in the lives of their families and greater communities.²⁵ Before delving deeper into why Atticus has been selected as the object of study in this article, the following section sketches the contemporary ethical landscape within which he is analyzed.

B. ENDURING TENSIONS AND NEW RULES IN LEGAL ETHICS

Scholarship on the origins of American legal ethics tends to commence with one particular landmark figure, George Sharswood, author of *An Essay on Professional Ethics*.²⁶ During the nineteenth century, Sharswood and other American legal scholars debated the ethical limitations that ought to guide attorney behavior.²⁷ During this period, state bar associations made efforts to impose ethics duties through the adoption, first of the Field Code, and later of the 1887 Alabama Code of Ethics, which would serve as the model for new codes in ten additional states.²⁸ By the twentieth century, the American Bar Association took the lead in the development of three additional promulgations that would be followed across the nation.²⁹ The 1908 Canons of Ethics was modeled on the Alabama Code, and this was followed by the 1969 Model Code of Professional Responsibility and the 1983 Model Rules of Professional Conduct.³⁰

Since the adoption of the Model Rules of Professional Conduct, legal ethics has seen two additional movements take shape: in addition to the ethics norms found in the professional rules, some jurisdictions have developed professionalism and civility standards.³¹ Overlap does exist among the areas of ethics, professionalism,

L. REV. 427 (2005); Aaron Schwabach, *Harry Potter and the Unforgivable Curses: Norm-formation, Inconsistency, and the Rule of Law in the Wizarding World*, 11 ROGER WILLIAMS U. L. REV. 309 (2006).

²³ Caudill, *supra* note 13, at 2.

²⁴ Menkel-Meadow, *supra* note 1, at 1329.

²⁵ Huston, *supra* note 17, at 179.

²⁶ Carol Rice Andrews, *Ethical Limits on Civil Litigation Advocacy: A Historical Perspective*, 63 CASE W. RES. 381, 382–83, 404–12 (2012) (providing an overview of prominent nineteenth-century Anglo-American statements of legal ethics); Russell G. Pearce, *Rediscovering the Republican Origins of the Legal Ethics Codes*, 6 GEO. J. LEGAL ETHICS 241 (1992) (detailing the contribution of Sharswood's work to the substantive content of contemporary rules of legal ethics).

²⁷ Andrews, *supra* note 26, at 384, 412–19; Pearce, *supra* note 26, at 260, 241–45.

²⁸ Andrews, *supra* note 26, at 384, 412–19 (2012); Pearce, *supra* note 26, at 260, 241–45 (1992).

²⁹ Andrews, *supra* note 26, at 419–20 (2012).

³⁰ *Id.* at 419–20, 435–39 (2012) (concluding that the primary contours of the ethical limitations on attorneys has been largely constant despite minor adjustments between the various American statements of legal ethics); *see also* Pearce, *supra* note 26, at 246–47.

³¹ David A. Grenardo, *Making Civility Mandatory: Moving From Aspired to Required*, 11 CARDOZO PUB. L. POL'Y & ETHICS J. 239, 245 (2013) (explaining that “civility is also linked to professionalism and ethics”); Thomas E. Richard, *Professionalism: What Rules Do We Play By?*, 30 S.U. L. REV. 15, 18 (2002) (“Although some argue professionalism and legal ethics are synonymous, they differ significantly” (citations omitted)).

and civility, and sometimes the terms are even used synonymously.³² Nonetheless, broad distinctions can be discerned. Ethical duties, doubtless the most familiar to practitioners, are considered synonymous with the state rules of professional conduct that regulate attorney conduct.³³ These rules of professional conduct are a “matter of law” and are therefore enforceable.³⁴ Professionalism norms, in contrast to the rules of professional conduct, result from attempts to “establish lofty standards that attorneys *should* follow.”³⁵ Professionalism does not therefore lend itself to clear codification; rather, it is a realm of conscience in which reasonable minds will differ.³⁶ Civility, in contrast to the broad reach of professionalism, relates specifically to the “truth seeking process” through the adoption of a “just, dignified, courteous, and efficient manner.”³⁷ At the heart of civility is found the rejection of hostility, combativeness, rude comportment, and degrading behavior.³⁸ In their place, advocates of civility insist on the role

³² Grenardo, *supra* note 31, at 245–46 (“Civility and professionalism are sometimes used interchangeably in the legal profession. Similarly, civility is also sometimes considered ‘an element or characteristic of professionalism.’ Civility and ethics can overlap as well” (citations omitted)); Richard, *supra* note 31, at 17–19 (arguing that professionalism is inclusive of ethics and civility but that satisfaction of the standards of ethics and civility does not include the standards of professionalism); N. Lee Cooper & Stephen F. Humphreys, *Beyond the Rules: Lawyer Image and the Scope of Professionalism*, 26 CUMB. L. REV. 923, 924–25 (1995/96) (noting reform efforts under the headings of ethics, professionalism, and civility and calling for “broader” definitions and “a more expansive and less compartmentalized discussion” of the standards that ought to guide the practice of law). Disagreement exists over the precise contours of their respective subject areas. Douglas S. Lang, *Professionalism: Core Values: Can Courts Require Civil Conduct?*, 78 TEX. B. J. 718, 718 (2015) (chronicling current Texas and national debate on boundaries and resulting respective governing authority on ethics, professionalism, and civility); see also Grenardo, *supra* note 31, at 244–47; Richard, *supra* note 31, at 17–19.

³³ Grenardo, *supra* note 31, at 246.

³⁴ Michael Ariens, *Lost and Found: David Hoffman and the History of American Legal Ethics*, 67 ARK. L. REV. 571, 620–24 (2014). Hence the rules of ethics, today embodied in the state-specific rules of professional conduct, have been viewed by many as providing only “minimum standards that lawyers must follow.” Richard, *supra* note 31, at 18; see also Cooper & Humphreys, *supra* note 32, at 929–30 (“These efforts to streamline the professional code of ethics from moral generalizations into more specific guidelines, important as they may be, cannot stand alone. Otherwise they can have the unintended consequence of narrowing the scope of ethical consideration and diminishing the urgency of our remaining ethical mandate”).

³⁵ Richard, *supra* note 31, at 18 (emphasis added); see also Lang, *supra* note 32, at 718. In the lofty view of advocates for professionalism, the “attorney who embraces the ideals of professionalism meets or exceeds aspirational ideals established by common sense and common courtesies.” Richard, *supra* note 31, at 18; but see Gaetke, *supra* note 8, at 699 (noting the lack of agreement over the meaning of “professionalism” and offering diverging definitions).

³⁶ Richard, *supra* note 31, at 18–19.

³⁷ Grenardo, *supra* note 31, at 251; but see Amy R. Mashburn, *Professionalism in the Practice of Law: A Symposium on Civility and Judicial Ethics in the 1990s: Professionalism as Class Ideology: Civility Codes and Bar Hierarchy*, 28 VAL. U. L. REV. 657, 681 (1994) (arguing that the civility codes embody the “escapism and conservatism of the normative vision” of class hierarchy).

³⁸ Grenardo, *supra* note 31, at 244–45; Jonathan J. Lerner, *Putting the Civil Back in Civil Litigation*, N.Y. ST. B.A. J. 33, 35–36 (2009).

of respect, courtesy, and sometimes even kindness in the daily conduct of the practice of law.³⁹

Despite the efforts at improvement illustrated by this history of near-constant standard scrutiny and rule writing, the bar continues to struggle to maintain ethical, professional, and civil standards of behavior.⁴⁰ The question of whether attorney behavior has actually deteriorated (or increased in its rate of deterioration) sparks much debate, but it is certainly true that attorneys have a long record of believing that their standards are in decline.⁴¹ Today's increasingly large, mobile, and diverse bar,⁴² although emphatically to be celebrated in many respects, has brought with it the end to a relatively homogenous, close-knit bar that shared informal norms with little effort.⁴³ Lack of implicitly shared informal norms may well account for a

³⁹ Grenardo, *supra* note 31, at 244–45; *but see* Cramer, Drake, & Diggins, *supra* note 8, at 471 (noting the difficulty of defining “civility”); Donald E. Campbell, *Raise Your Right Hand and Swear to Be Civil: Defining Civility as an Obligation of Professional Responsibility*, 47 GONZ. L. REV. 99, 107–9 (2012) (noting the distinctiveness of individual state civility codes while arguing that they are unified by ten core concepts of civility).

⁴⁰ Kolinsky, *supra* note 8, at 115 (noting the divergence between how attorneys can and should behave); Bronson D. Bills, *To Be or Not to Be: Civility and the Young Lawyer*, 5 CONN. PUB. INT. L.J. 31, 32–33 (2005) (listing an array of improper behavior, including foul and profane language, “Rambo” tactics, name calling, and belligerent behavior); Hon. Marvin E. Aspen, *Litigation Ethics and Professionalism Symposium: A Response to the Civility Naysayers*, 28 STETSON L. REV. 253, 253–55 (1998) (listing justices, judges, and attorney surveys observing deterioration in the civility of the bar); Daicoff, *supra* note 11, at 549 (listing as evidence of a decline in professionalism the increase in complaints against attorneys, lowered public opinion of attorneys, and decreased attorney satisfaction with the practice of law); Gee & Garner, *supra* note 9, at 178 (exploring why “courtesy and restraint in personal conduct toward others . . . strike many observers today as almost laughable when one is speaking of the bar”); Aaronson, *supra* note 9, at 114 (confirming recent observation of the systemic lack of civility in the bar).

⁴¹ Pearce, *supra* note 26, at 249–50 (dating the debate over the role of ethics in practice to the mid-nineteenth century); Robert Hornstein, *The Role and Value of a Shadow Program in the Law School Curriculum*, 31 MISS. C. L. REV. 405, 405–11 (2013) (dating the debate over legal education, including professional values, to the 1930s); Gaetke, *supra* note 8, at 694 (arguing that the bar has engaged in 100 years of periodic efforts to improve attorney conduct). Even scholars finding distinctive qualities in the contemporary developments faced by the bar admit that the question of the actual decline in attorney behavior is subject to debate. Daicoff, *supra* note 11, at 547; Sarat, *supra* note 10, at 809–10 (1998); Campbell, *supra* note 39, at 103.

⁴² Gee & Garner, *supra* note 9, at 181–82 (noting the increased size and mobility of the bar and observing that a “related source of the incivility problem . . . is the downside of what most of us probably view as a salutary civic development: the opening of the profession to all social and economic classes”); Aaronson, *supra* note 9, at 121 (arguing that it has been convincingly demonstrated that “whether under the community reputation based reviews of much of the nineteenth century or the formalized character screening procedures of the last 100 to 115 years, the main impact of character fitness requirements within the American bar has been the exclusion of women, racial and religious minorities, and political dissenters”).

⁴³ Pearce, *supra* note 26, at 260, 270–72 (underscoring the assumption of shared norms in informal nineteenth-century American legal ethics and noting the difficulty of maintaining such norms with a larger, more mobile, and more diverse bar).

related change in legal culture: the decline of the “lawyer-statesman” ideal in favor of the promotion of a rather narrowly understood self-interest.⁴⁴

But scholars focused on the longstanding nature of ethics concerns have pointed to more fundamental, centuries-old tensions within the practice of law in the adversarial system, a system that limits—but also requires—advocacy on behalf of litigants.⁴⁵ Arising from the very nature of an adversary system, an enduring source of conflict over attorney ethics hovers over the potential for conflict between an attorney’s duty of client loyalty and zealous representation and an attorney’s duty to the common good.⁴⁶ Indeed, this underlying tension in the identity of the attorney as advocate and as officer of the court predates the establishment of the American legal system.⁴⁷

The term “common good,” chosen above as a kind of generic placeholder, may be understood to entail any or all of a set of professional and personal duties that can be in competition (or seeming competition) with the interests of a client. They can include, for example, the judiciary, justice, and personal integrity. Indeed, duties owed to the court generally have placed a limit on some duties, like zealous advocacy, owed to the client.⁴⁸ Given the tension that lies between these two sets of duties, it is not surprising that zealous advocacy is often blamed for the failure to follow informal norms.⁴⁹ Similarly, some scholars point to a more profound tension between an attorney’s duties to a client and the attorney’s moral well-being, arguing that loyalty to the client either destroys or is perceived to destroy an attorney’s ability to follow any preexisting personal moral compass.⁵⁰ Yet critique of zealous advocacy and client loyalty is far from unanimous: others argue that ultimately these duties serve the interests of justice⁵¹ and that any unhealthy incentives are

⁴⁴ Daicoff, *supra* note 11, at 560–61; *see also* Benjamin V. Madison, III & Larry O. Natt Grant, II, *Methods of Teaching and Forming Professional Identity: The Emperor Has No Clothes, But Does Anyone Really Care? How Law Schools Are Failing to Develop Students’ Professional Identity and Practical Judgment*, 27 REGENT U. L. REV. 339, 342 (2014/15) (arguing that contemporary law schools are failing to develop professional ethical identity).

⁴⁵ Russell G. Pearce, *supra* note 26, at 261–67 (1992); Andrews, *supra* note 26, at 435–37.

⁴⁶ Gaetke, *supra* note 8, at 695 (“Thoughtful commentators pointedly assert that lawyers tend to act unethically by pursuing their clients’ objectives too single-mindedly, without concern for the negative impact of these efforts on other interests, including those of adversaries, third persons, the judicial system, and society”); Pearce, *supra* note 26, at 249–50; Andrews, *supra* note 26, at 435–37.

⁴⁷ Andrews, *supra* note 26, at 435.

⁴⁸ *Id.* at 435–38.

⁴⁹ *Id.*; Gaetke, *supra* note 8, at 718–720; Allen K. Harris, *The Professionalism Crisis—The “z” Words and Other Rambo Tactics: The Conference of Chief Justices’ Solution*, 53 S.C. L. REV. 549, 568–69 (2002); *see also* Paula Schaefer, *Harming Business Clients with Zealous Advocacy: Rethinking the Attorney Advisor’s Touchstone*, 38 FLA. ST. U.L. REV. 25 (2011) (arguing that the duty of zealous advocacy encourages attorneys to damage even their client’s own interests).

⁵⁰ Daicoff, *supra* note 11, at 561–63; Andrew L. Reisman, *Comment, An Essay on the Dilemma of “Honest Abe”: The Modern Day Professional Responsibility Implications of Abraham Lincoln’s Representations of Clients He Believed to Be Culpable*, 72 NEB. L. REV. 1205, 1226–28 (1993).

⁵¹ Pearce, *supra* note 26, at 256–57.

curbed by the importance of reputation within the legal community.⁵²

Whatever the root cause of the behavior problems, scholars have united in arguing that failures in attorney comportment threaten the bar's ability to fulfill its social and political function—the facilitation of peaceful, just dispute resolution. Rational deliberation is at the heart of law, and rational deliberation requires the moderate, civil use of language.⁵³ More than merely manners, attorney behavior bears on the legal system's ability—through the discernment of the judge and often through negotiation between the parties—to find the facts and properly apply the law thereto.⁵⁴ When attorneys flout the norms of civil, professional, and ethical decision-making that govern (formally or informally) the practice, they contribute to conflict rather than to the resolution of conflict.⁵⁵ Such behavior obscures justice in an individual case and undermines the perception of justice within the judiciary as a whole,⁵⁶ arguably discouraging the use of the legal system for the resolution of myriad social problems. In this regard, ethics and civility work hand in hand, for how attorneys speak and write is inextricably bound to how and whether they fulfill their ethical duties—and thereby to the merit of the profession within both the society and the polity.⁵⁷

In the argument that follows, “ethics” will be employed in its broadest sense to include both the enforceable ethics rules and the aspirational norms (sometimes articulated in rules of professionalism and civility, sometimes left implicit and expressed through the opinions and behavior of members of bench and bar) that regulate the practice. The thesis of this article is that the rhetoric of Atticus Finch provides an example that meets our expectations for an ethical attorney. Moreover, because of his particular circumstances, he reveals how the seeming tensions or conflicts among attorney duties can be reconciled through the use of a particular way of employing speech—Attic rhetoric. Also through his Attic rhetoric, his character's performance as an attorney underscores the value of civility to the judiciary and to the ability of the judiciary to play its role within our polity.

Before arguing *how* to become like Atticus, however, I must make the case for *why* one might wish to do so. Part II, therefore, argues that Atticus is indeed an emulation-worthy example of ethical attorney conduct. To be more specific, his example shows that it is possible to overcome the tensions and temptations that may cause lesser attorneys to succumb to uncivil, unethical behavior.

II. ATTICUS FINCH AS A ROLE MODEL

The preamble of the American Bar Association's Model Rules of Professional Conduct sets forth the three primary identities of an attorney: advocate, officer of the court, and citizen. The preamble then indicates—albeit in germ form—the potential for conflict between duties to client, to court, to society, and also to self—the same conflicts that scholars point to as the source of tension in attorney duties.

⁵² Ronald J. Gilson & Robert H. Mnookin, *Disputing through Agents: Cooperation and Conflict between Lawyers in Litigation*, 94 COLUM. L. REV. 509, 512 (1994).

⁵³ Aaronson, *supra* note 9, at 116–18.

⁵⁴ Harris, *supra* note 49, at 574–78.

⁵⁵ Cramer, Drake & Diggins, *supra* note 8, at 467.

⁵⁶ Campbell, *supra* note 39, at 106.

⁵⁷ Gee & Garner, *supra* note 9, at 188–90.

The preamble thus provides a standard that is both generally accepted and sensitive to the potential for ethical tensions.

According to the preamble an American attorney is and should be “[1] a representative of clients, [2] an officer of the legal system and [3] a public citizen having special responsibility for the quality of justice.”⁵⁸ The preamble then elaborates on each of these aspects of attorney identity before underscoring the role of conscience and addressing the potential for conflict among duties.⁵⁹ In *To Kill a Mockingbird* Atticus, as described by the narrator—his young daughter Scout—fulfills all three aspects of attorney identity. More to the point, he does so under circumstances that require extraordinary rhetorical skill to avoid the potential for conflict among the duties inherent in each aspect of his identity. In so doing, he follows his conscience while providing an excellent role model of ethical, professional, and—most particularly—civil attorney conduct.

A. REPRESENTATIVE OF CLIENTS

According to the preamble, as a representative of clients, an attorney has two functions: an attorney (1) “zealously asserts a client’s position under the rules of the adversary system” and (2) serves as an advisor counseling a client about legal rights and “their practical implications.”⁶⁰ Atticus is more often shown in the first of these functions, zealously advocating for his client as the court-appointed defense attorney for Tom Robinson—a poor African American man accused of raping a poor white woman.⁶¹ Atticus’s zealous advocacy for his client is evident in his comments as he prepares for trial and during Tom’s trial. Atticus appears in his role as advisor later and more briefly in the novel when he advises his client after the guilty verdict and through his ruminations after Tom’s death.

From the start Atticus evinces the intent to live up to the zealous advocacy standard by doing everything legally permissible for a client who faces dishonest accusers and a stubbornly prejudiced jury.⁶² When questioned by his daughter about his determination to defend Tom, Atticus explains that retaining his self-respect required accepting the appointment.⁶³ Later he tells his brother that he will do his utmost to shake the jury out of their prejudices but that his more realistic hopes are pinned on the appeal.⁶⁴ Knowing that a guilty verdict is a near certainty

⁵⁸ MODEL RULES, *supra* note 6, at pmbl. ¶ 1.

⁵⁹ *Id.* at pmbl.

⁶⁰ *Id.* at pmbl. ¶ 2.

⁶¹ HARPER LEE, *TO KILL A MOCKINGBIRD*, 100, 117, 223–24, 230–34 (Mass Paperback ed., Grand Central Publishing, 1982) (1960).

⁶² Elizabeth Keyes remarks that Atticus’s example of zealous advocacy motivates “anyone who ever wanted to become a lawyer while reading *To Kill a Mockingbird*.” *Zealous Advocacy: Pushing Against the Borders in Immigration Litigation*, 45 SETON HALL L. REV. 475, 475 (2015).

⁶³ LEE, *supra* note 61, at 100–101. Jonathan A. Rapping concludes that, while there is nothing to indicate that Atticus sought Tom’s case, there is no support for the conclusion that “Atticus was reticent to take on the representation,” *supra* note 4, at 855. Implicit in Atticus’s explanation to his daughter of his defense of Tom is the fact that Atticus (like other Maycomb attorneys) has defended other African American clients. LEE, *supra* note 61, at 99–100.

⁶⁴ LEE, *supra* note 61, at 117 (“Before I’m through, I intend to jar the jury a bit—I think we’ll have a reasonable chance on appeal, though”). Later, Atticus explains his position

because of the ingrained racism and inflamed passions of his town, Atticus obtains a postponement in the hopes that the town's initial outrage will subside and permit a more rational mindset by the time of trial.⁶⁵ Atticus thus asserts the right of his client to the most favorable trial that the rules of the adversary system permit, all the while keeping his sights on the appeal stage—when he knows Tom will be most likely to prevail.⁶⁶ This is zealous advocacy.

Atticus maintains this zeal in the face of high personal costs and a distaste for the type of litigation that Tom's defense entails. Much less does this case offer Atticus a particular legal or intellectual appeal to counterbalance its obvious downsides: since his very first case ended with the execution of his clients, he has suffered from a "profound distaste" for criminal law.⁶⁷ The postponement that Atticus obtains to protect his client's interest will certainly multiply the financial and emotional costs born by Atticus and his family. In the midst of the Great Depression, Atticus is paid in firewood and nuts by some of his clients.⁶⁸ Cash poor already,⁶⁹ the financial impact of zealously defending such a popularly hated client must increase with the lengthening of the period before trial.⁷⁰ Atticus has a group of core friends who support his resolution, but this defense will likely alienate potential clients.⁷¹ Apart from the financial implications, over the course of the months leading up to trial, his children are taunted at school, and he is faced with the difficult task of explaining to them why their neighbors and fellow citizens call them names and hate their father.⁷² He must explain to Scout that "there's been some high talk around town to the effect that I shouldn't do much about defending this man."⁷³ He instructs her in full knowledge that the day's incident at school will be the first among many: "You might hear some ugly talk about it at school, but do one thing for me if you will: you just hold your head high and keep those fists down."⁷⁴ In truth, Atticus and his children also face derision and resistance from citizens on the streets and from within their own family.⁷⁵ In the midst of this turmoil, Atticus seems most deeply concerned about the impact on the emotional well-being and moral development of his children.⁷⁶ Although he is sensitive to the

to those outside the family circle when a fellow citizen asks him, "Don't see why you touched it in the first place ... you've got everything to lose from this, Atticus. I mean everything." *Id.* at 195. Atticus retorts, "Link, that boy might go to the chair, but he's not going till the truth's told And you know what the truth is." *Id.*

⁶⁵ *Id.* at 100–101, 117, 194.

⁶⁶ *Id.*

⁶⁷ *Id.* at 5.

⁶⁸ *Id.* at 26–28.

⁶⁹ Some of Atticus's clients are rural farmers with no cash because of the Great Depression. Therefore Atticus, like other professionals in town, is also "cash poor." *Id.*

⁷⁰ His sister, Alexandra, and his friend, Miss Maudie Atkinson, discuss how other professionals who agree with Atticus will not take public steps similar to his for fear of losing the business of those who disagree. *Id.* at 316.

⁷¹ *Id.*

⁷² *Id.* at 99–101.

⁷³ *Id.* at 100.

⁷⁴ *Id.* at 101.

⁷⁵ *Id.* at 110, 139, 180, 195.

⁷⁶ *Id.* at 116–119. Atticus confides his fears about the impact on his children to his brother Jack: "I hope and pray I can get Jem and Scout through it without bitterness, and most

price that his children are paying for Tom's zealous defense, he shows no signs of wavering in his determination.

When Tom's trial commences, Atticus continues to make evident that he is not merely going through the motions of providing legal representation. To identify Atticus's zeal at trial, one must distinguish between volume and effectiveness. Although Atticus retains his calm and courteous manner, his daughter—who has frequently observed him in the courtroom—recognizes the indications of his zeal operating within his characteristic self-control. Two stages of the trial bear particularly clear signs of Atticus's zeal: his cross-examination of the alleged rape victim, Mayella Ewell, and his closing statement.

During his cross-examination of Mayella, Atticus persists (despite his own, more delicate inclinations) in revealing the witness's dishonesty.⁷⁷ He questions Mayella thoroughly, effectively, and calmly, although it is equally evident that he finds this particular aspect of the trial nearly sickening.⁷⁸ Nonetheless, he persists: "Atticus reached up and took off his glasses, turned his good right eye to the witness, and rained questions on her."⁷⁹ By the time he finishes questioning her, Atticus "looked like his stomach hurt."⁸⁰ Scout, in her youthful innocence, can only conclude that somehow "Atticus had hit her hard in a way that was not clear to me, but it gave him no pleasure to do so."⁸¹

During her father's closing arguments, Scout discerns how the gravity of his client's situation has propelled Atticus to appeal, still calmly, but profoundly to the fellow citizens who have prejudged his client: she describes him standing as if "stark naked," his "voice having lost its aridity, its detachment, and he was talking to the jury as if they were folks on the post office corner."⁸² The initial impression created by this description of Atticus's courtroom zeal is confirmed when she reports that, after closing and turning away from the jury, Atticus mouths to himself, "In the name of God, believe [Tom]."⁸³

of all, without catching Maycomb's usual disease. Why reasonable people go stark raving mad when anything involving a Negro comes up, is something I don't pretend to understand. . . . I just hope that Jem and Scout come to me for their answers instead of listening to the town. I hope they trust me enough."

⁷⁷ *Id.* at 242–51.

⁷⁸ *Id.*

⁷⁹ *Id.* at 250.

⁸⁰ *Id.* at 251.

⁸¹ *Id.* at 252. Some have argued, on the contrary, that Atticus intentionally disgraces Mayella or that his compassion for her is feigned. Lubet, *supra* note 4, at 1361 (1999); Teresa Godwin Phelps, *The Margins of Maycomb: A Rereading of To Kill a Mockingbird*, 45 ALA. L. REV. 511, 524–26 (1994). Others find that Atticus does his duty with distaste and that he treats her with as much compassion as possible consistent with his client's position. Ann Althouse, *Classics Revisited: Reconstructing Atticus Finch? A Response to Professor Lubet*, 97 MICH. L. REV. 1363, 1365–66 (1999); Randolph N. Stone, *Atticus Finch, in Context*, 97 MICH. L. REV. 1378, 1378–79 (1999); Thomas L. Shaffer, *Growing Up Good in Maycomb*, 45 ALA. L. REV. 531, 548 (1994). Atticus's personal sympathy for Mayella is supported later in the novel. When insulted and spat upon by Mayella's father (her probable rapist and chronic physical abuser) he remains passive: "If spitting in my face and threatening me saved Mayella Ewell one extra beating, that's something I'll gladly take. He had to take it out on somebody and I'd rather it be me than that houseful of children out there." LEE, *supra* note 61, at 290–93.

⁸² LEE, *supra* note 61, at 271.

⁸³ *Id.* at 275.

Despite his zeal, the predictable verdict arrives after only a few hours' deliberation.⁸⁴ The trial now lost despite Atticus's efforts, the novel shows Atticus as an advisor fulfilling his duty to inform his client of his rights and their practical implications. As he must to preserve his client's rights and autonomy, Atticus advises Tom that his chances will improve on appeal, but he makes no promises.⁸⁵ His client's despair must tempt Atticus to promise more, but Atticus counsels his client as his duties require—honestly.⁸⁶ Accordingly, before Tom leaves the courtroom, Atticus can provide only qualified hope.⁸⁷

Knowing that the success of his appeal is uncertain, Tom is soon killed while attempting to escape from prison.⁸⁸ Atticus, reeling in response to this news, remembers but does not second-guess his decision to provide an honest assessment to his client: "'We had such a good chance,' he said. 'I told him what I thought, but I couldn't in truth say that we had more than a good chance. I guess Tom was tired of white men's chances and preferred to take his own.'"⁸⁹ Tom's fate illustrates the high cost of honesty with a despairing client and highlights one reason why fulfilling this duty can be difficult for a well-intentioned attorney who genuinely wishes to protect a client. Despite the outcome in this instance, it is important to remember that Atticus's determination to counsel his client honestly reveals respect for Tom; rather than withhold information from his client (which would effectively treat him as a child), Atticus gave his client information with which to make his own decisions. Another way of stating this: Atticus, having lost after zealously asserting Tom's position under the trial rules, honestly advised Tom of his right to an appeal and its likely practical implications.

B. OFFICER OF THE COURT

As an officer of the court, conformity to the law is requisite in all facets of an attorney's life: legal, professional, and personal.⁹⁰ The preamble indicates that as an officer of the court an attorney ought to "demonstrate respect for the legal system and for those who serve it."⁹¹ Hence, while an attorney may have the duty to challenge "official action," there is simultaneously a duty to "uphold legal process."⁹²

Atticus, an attorney whose client will not prevail despite the justice of his defense, is the most sympathetic of attorneys when it comes to the difficulty of fulfilling the function of an officer of the court. His client's cause is just, but his client will lose the trial and very likely his life. What greater temptation exists for overstepping the bounds of the law and of respect for the law? Nonetheless, Atticus expresses the utmost respect for the court and the judge. Yet he does not gloss over the injustice dealt his client. Rather than make either of these opposing mistakes, Atticus's speech—in and out of the courtroom—analytically identifies the source

⁸⁴ *Id.* at 281–82.

⁸⁵ *Id.* at 313–15.

⁸⁶ *Id.*

⁸⁷ *Id.* at 282.

⁸⁸ *Id.* at 314–15.

⁸⁹ *Id.* at 315.

⁹⁰ MODEL RULES, *supra* note 6, at pmb1. ¶ 5.

⁹¹ *Id.*

⁹² *Id.*

and even the dire degree of injustice while affirming the strengths of the judiciary that do deserve respect.

Atticus demonstrates respect for the judge and upholds process in the courtroom through his eminently civil bearing and speech. Unlike the prosecutor—who uses acrimony in an attempt to sway—Atticus proceeds steadily, inflecting little emotion and no acrimony into his voice: “So far, things were utterly dull: nobody had thundered, there were no arguments between opposing counsel, there was no drama.”⁹³ Atticus proceeds through the trial “amiably,” using language no more complex or challenging than what Scout hears from him during daily life.⁹⁴ Far from working the jury into an emotional turmoil, he behaves as if he were in the midst of a real-estate dispute and uses “his infinite capacity for calming turbulent seas” to “make a rape case as dry as a sermon.”⁹⁵ His manner is alternately casual, genial, mild, gentle, and detached.⁹⁶ Comments from both Scout and the judge indicate that this is how Atticus generally carries himself in court.⁹⁷

Yet Atticus is not complacent. In his closing, he educates the jury about the critical nature of their role in the workings of the justice system. Supporting legal process (both Tom’s trial and the jury’s more general respect for the judiciary) without flinching in the face of the jury’s greatest weakness (the individuals on whose integrity that process must rely) Atticus manages to simultaneously challenge the injustice about to occur and affirm the justice system within which it is about to occur.

“I’m no idealist to believe firmly in the integrity of our courts and in the jury system—that is no ideal to me, it is a living, working reality. Gentlemen, a court is no better than each man of you sitting before me on this jury. A court is only as sound as its jury, and a jury is only as sound as the men who make it up.”⁹⁸

Not only does Atticus show marked respect for the trial, the judge, and the witnesses, but when the verdict threatens his children’s respect for the legal system he teaches them to understand its flaws without scorning its underlying principles. When they first hear the verdict, Atticus concedes to his son, Jem, that Atticus does not understand how the jury could convict Tom: Atticus admits that “they’ve done it before and they did it tonight and they’ll do it again.”⁹⁹ Then he reminds his son that the appeal may reach a different result.¹⁰⁰ Days later, discussing the conviction again with his children, Atticus explores the death penalty, rape statutes, circumstantial evidence, and juries, showing his children that—while the law on any particular point may be debatable—the deeper problem is the prejudice that the jury brought with it into the legal system.¹⁰¹

⁹³ LEE, *supra* note 61, at 226.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.* at 234–35, 245, 270.

⁹⁷ *Id.* at 229, 242–43.

⁹⁸ *Id.* at 274. Claudia Durst Johnson concludes that Atticus is “grieved” that the jury will not live up to its intended role. CLAUDIA DURST JOHNSON, *TO KILL A MOCKINGBIRD: THREATENING BOUNDARIES* 95 (1994).

⁹⁹ LEE, *supra* note 61, at 285.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 239–98.

In addition to demonstrating respect for the judiciary and upholding legal process, being an “officer of the court” entails maintaining actual lawful behavior.¹⁰² Atticus’s adherence to the law is not generally in question, but there is one scene in which he might be interpreted as failing to live up to this standard in his personal life. Near the conclusion of the novel, Mayella’s father, Bob Ewell, attacks and nearly kills Scout and her brother Jem.¹⁰³ During the attack they are saved by their reclusive neighbor, Boo Radley.¹⁰⁴ Discussing the incident and the investigation that will follow with Sheriff Tate, Atticus initially insists that he and Sheriff Tate must report what Atticus believes to be the truth—that Jem killed Bob Ewell in self defense.¹⁰⁵ When Sheriff Tate states his intent to report that Bob Ewell fell on his knife, Atticus protests, “Nobody’s hushing this up. I don’t live that way.”¹⁰⁶ As Atticus and Sheriff Tate debate, each man maintains his position.¹⁰⁷ Atticus explains to Sheriff Tate, “I can’t live one way in town and another way in my home.”¹⁰⁸ Finally, however, Atticus defers.¹⁰⁹ Has Atticus lied, just this once, to save his son from a criminal investigation?

Atticus does not lie to save Jem. He agrees to the proposed deception (on his part a deception by silence) only after Sheriff Tate convinces him that it is Boo Radley—not Jem—who killed Bob Ewell and thus saved his children.¹¹⁰ Hence, his silence is motivated by the desire to protect his neighbor, not his son. Moreover, to fully convince him, the sheriff must also persuade the still-hesitant Atticus that an investigation would bring acute suffering to Boo Radley. Tate argues as follows:

“I never heard tell that it’s against the law for a citizen to do his utmost to prevent a crime from being committed, which is exactly what [Boo Radley] did, but maybe you’ll say it’s my duty to tell the town all about it and not hush it up. Know what’d happen then? All the ladies in Maycomb includin’ my wife’d be knocking on his door bringin’ angel food cakes. To my way of thinkin’, Mr. Finch, 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.”¹¹¹

As the scene draws to a close, Lee has made clear that Atticus consents to silence for the sake of Boo Radley, the man who saved his children. Moreover, Lee has

¹⁰² MODEL RULES, *supra* note 6, at pmb1. ¶ 5.

¹⁰³ LEE, *supra* note 61, at 357.

¹⁰⁴ *Id.* at 362.

¹⁰⁵ *Id.* at 365.

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 365–67.

¹⁰⁸ *Id.* at 367.

¹⁰⁹ *Id.* at 370.

¹¹⁰ *Id.* at 368–70; Shaffer, *supra* note 81, at 554 (supporting the interpretation that Atticus changes his position to protect Boo Radley rather than to protect his son); *see also* THOMAS L. SHAFFER, AMERICAN LEGAL ETHICS: TEXT, READINGS, AND DISCUSSION TOPICS 14–15 (1985) (arguing that Atticus’s lie to protect Boo may be a moral mistake but concluding that Atticus’s approach to solving this moral dilemma shows him to be a hero because he takes right actions seriously).

¹¹¹ LEE, *supra* note 61, at 369–70.

made equally clear that Sheriff Tate, the official who will investigate Bob Ewell's death and come to his own conclusion, cannot be shaken by Atticus's preference for honesty. As a practical matter, there is little that Atticus can accomplish, and his comportment as an officer of the court remains at least reasonable in its most questionable moment.

C. PUBLIC CITIZEN HAVING SPECIAL RESPONSIBILITY FOR THE QUALITY OF JUSTICE, THE ROLE OF CONSCIENCE, AND RESOLVING POTENTIAL CONFLICT AMONG DUTIES

An attorney has duties as a public citizen with a special responsibility for the quality of justice: "As a public citizen, a lawyer should seek improvement of the law, access to the legal system, the administration of justice and the quality of services rendered by the legal profession."¹¹² As a public citizen a lawyer should also "cultivate knowledge of the law beyond its use for clients."¹¹³ Clearly, Atticus works to improve the law and justice by serving in the state legislature¹¹⁴ and by defending a client who requires a court appointment for counsel.¹¹⁵ He fulfills the educational component of his duties by working to prevent his children from adopting the racism of the town and by setting a public example of defense of equal legal rights.¹¹⁶

When one asks why Atticus takes on these duties as a public citizen, the following paragraph of the preamble provides a clear answer echoed by the novel: an attorney must be guided by conscience.¹¹⁷ The zealous defense of Tom costs Atticus a considerable price, not least of which is anxiety for his children and risk to their personal safety as they respond to the slurs, bullying, and stares in the schoolyard and in town.¹¹⁸ Scout asks her father why he defends Tom despite popular opinion, despite the fact that "most folks seem to think that they're right and you're wrong."¹¹⁹ Atticus's answer to his daughter twice refers to his conscience as the reason why he must proceed.

"[I]t's not fair to you and Jem, 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 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."¹²⁰

¹¹² MODEL RULES, *supra* note 6, at pmb. ¶ 6.

¹¹³ *Id.*

¹¹⁴ LEE, *supra* note 61, at 7, 100, 154–55, 171, 326.

¹¹⁵ *See supra* Part II.a.

¹¹⁶ LEE, *supra* note 61, at 116–19, 293–98.

¹¹⁷ MODEL RULES, *supra* note 6, at pmb. ¶ 6.

¹¹⁸ LEE, *supra* note 61 at 110, 139, 180, 195.

¹¹⁹ *Id.* at 139.

¹²⁰ *Id.*

“[B]efore 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.”¹²¹

As Atticus’s situation illustrates and the preamble concedes, “In the nature of law practice . . . conflicting responsibilities are encountered.”¹²² Or, in Atticus’s words, “simply by the nature of the work, every lawyer gets at least one case in his lifetime that affects him personally.”¹²³ The preamble proceeds to describe what *To Kill a Mockingbird* shows: “Virtually all difficult ethical problems arise from conflicts between a lawyer’s responsibilities to clients, to the legal system, and to the lawyer’s own interest in remaining an ethical person while earning a satisfactory living.”¹²⁴ For Atticus these conflicts are first evident in the tension between his role as zealous advocate for his client and his role as officer of a legal system that he knows will fail that client.

But the potential for conflict among an attorney’s duties is even more profound than revealed by the rule’s reference to earning a satisfactory living: Atticus struggles to obey his conscience (which demands that he defend Tom zealously) without sacrificing the emotional wellbeing and safety of his children. Hence, without wavering from his decision to zealously defend Tom as his conscience dictates, Atticus suffers at the prospect of the potential damage to his children: he teaches them to deal with the playground bullies and snubbing neighbors,¹²⁵ fears that they will contract the disease of racism plaguing their town,¹²⁶ and clings to the belief that above all they need a father with integrity to survive the conflict whole.¹²⁷

The tensions among Atticus’s duties are most acute, however, when he steps beyond the role of client representative and—as a public citizen—takes personal responsibility for Tom’s safety. Warned by Sheriff Tate of the potential for a lynch mob, Atticus sits and reads—apparently unarmed—in front of the jail.¹²⁸ To fulfill his duty as a public citizen he puts his life between Tom and citizens bent on lynching.¹²⁹ When the anticipated lynch mob comes forward, Atticus coolly faces it, willing and able to confront the would-be murderers with only his ability to use language as a defense.¹³⁰

But then Scout steps into the circle of menacing farmers, followed by Jem and their friend Dill, and Atticus’s face shows the “plain fear” that he had not beforehand displayed.¹³¹ Before his voice had remained unchanged; now Scout can see his hands tremble.¹³² With their lives hanging in the balance, Atticus exhibits fear; still, he stands commanding and then pleading his disobedient son to take

¹²¹ *Id.* at 140.

¹²² MODEL RULES, *supra* note 6, at pmb1. ¶ 9.

¹²³ LEE, *supra* note 61, at 101.

¹²⁴ MODEL RULES, *supra* note 6, at pmb1. ¶ 9.

¹²⁵ LEE, *supra* note 61, at 99–102, 139–40.

¹²⁶ *Id.* at 116–17, 295.

¹²⁷ *Id.* at 366–68.

¹²⁸ *Id.* at 201–02.

¹²⁹ *Id.*

¹³⁰ *Id.* at 201–03.

¹³¹ *Id.* at 203.

¹³² *Id.* at 202–03.

Scout home.¹³³ Despite the terror he has now betrayed, Atticus shows no sign of leaving Tom defenseless for the sake of rescuing the children.¹³⁴

Ultimately, the situation is diffused when Scout manages to strike up a conversation with one of the would-be lynchers.¹³⁵ When the men leave, Atticus's relieved body language betrays the turmoil of the moments before: he "had gone to the jail and was leaning against it with his face to the wall."¹³⁶ As he gathers himself to head home, Atticus produces "his handkerchief, [gives] his face a going-over and [blows] his nose violently."¹³⁷ In a more demonstrative man, these actions might be meaningless. For Atticus, these are the outward indications of a man who has just withstood the greatest trial of his life.

Insofar as Atticus zealously represents his client and remains within legal bounds while demonstrating respect for the law under difficult circumstance (at considerable emotional and financial cost), he is a sound role model. Insofar as he does this while simultaneously speaking the truth about and attempting to repair the injustices within the system, he is that much more worthy a model. But his actions as the representative of his client and an officer of the court do not fully explain the degree of admiration rightly directed to Atticus. His fulfillment of the public-citizen aspect of attorney identity sets him apart from the crowd of potential examples. As a public citizen—not as a client representative or an officer of the court—Atticus risks the lives of his children to improve the quality of justice in Maycomb.

All this, and he never once raises his voice.

III. CICERO'S COMMENTARY ON ATTIC—AND THEREFORE ATTICUS'S—RHETORIC

Lee's naming of her hero indicates that one should focus on his rhetoric to understand how he is able to navigate tension so admirably. Attic rhetoric adheres to simple, rational, and restrained techniques, techniques that reveal the honesty and therefore the integrity of the speaker across venues, between audiences, and over time. After exploring Attic oratory more fully, it will be possible to trace its effectiveness for Atticus.

A. DEFINING ATTIC RHETORIC

Attic rhetoric is notable for its simplicity, its focus on reason and evidence rather than passion, and its adherence to the same word choice and expression regardless of audience. In sum, Attic rhetoric—named after the Attic Greeks but practiced by a minority of both Ancient Greek and Roman orators—eschews the arousal of the passions, favoring instead concise and controlled communication. David Hume's *Essays* briefly describes Attic rhetoric, providing an introduction of its major features to the modern reader while indicating the most important ancient

¹³³ *Id.* at 203–04.

¹³⁴ *Id.*

¹³⁵ *Id.* at 203–06.

¹³⁶ *Id.* at 206.

¹³⁷ *Id.*

figure—Cicero—to those seeking to learn more.¹³⁸ According to Hume, Attic eloquence in rhetoric is “calm, elegant, and subtle.”¹³⁹ Attic eloquence “instructed the reason more than affected the passions, and never raised its tone above argument or common discourse.”¹⁴⁰

Hume’s description should not be mistaken for praise: he critiques this style for failing to incorporate—when the audience or situation called for it—either the pathetic or the sublime.¹⁴¹ In contrast to the Attic orators, Hume praises Cicero’s and Demosthenes’s command over the passions and thus the resolutions of their audiences.¹⁴² Hume himself waxes poetic on the vigor of these ancient orators.

With what a blaze of eloquence must such a sentence be surrounded to give it grace, or cause it to make any impression on the hearers? And what noble art and sublime talents are requisite to arrive, by just degrees, at a sentiment so bold and excessive: To inflame the audience, so as to make them accompany the speaker in such violent passions, and such elevated conceptions: And to conceal, under a torrent of eloquence, the artifice, by which all this is effectuated!¹⁴³

These ancient paragons created “vehemence of thought,” in part, by accompanying their passionate appeals with violent gestures, including stomping their feet.¹⁴⁴ Hume argues that Cicero’s rhetoric had more command over the “resolution” of his audience because, “on proper occasions,” he would invoke the pathetic and the sublime.¹⁴⁵

Taking a cue from Hume, one finds in Cicero’s prolific writings a wealth of elaboration on the features and importance of Attic rhetoric.¹⁴⁶ Cicero wrote on this subject to distinguish and defend his own more passionate and elaborate rhetoric relative to the Attic rhetoric of his day.¹⁴⁷ Calling themselves the Attici,

¹³⁸ DAVID HUME, *ESSAYS: MORAL, POLITICAL, AND LITERARY* 108 (Liberty Fund ed., Liberty Fund Books 1985) (1777).

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² *Id.* at 99–101, 106.

¹⁴³ *Id.* at 101.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 108.

¹⁴⁶ Cicero was a Roman philosopher, orator (and sometimes litigator), and politician in the first century B.C. Rex Stem, *Cicero as Orator and Philosopher: The Value of the Pro Murena for Ciceronian Political Thought*, 68 *REV. POL.* 206, 206–8 (2006) (providing a brief sketch of Cicero’s multifaceted pursuits); Gesine Manuwald, *The Speeches to the People in Cicero’s Oratorical Corpora*, 30 *RHETORICA: J. HIST. RHETORIC* 153 (2012) (providing an overview of some of Cicero’s oratorical involvement in Roman politics). For a more detailed, broader biography, see Catherine Steel, *Introduction*, in *THE CAMBRIDGE COMPANION TO CICERO* 1–6 (Catherine Steel ed., 2013).

¹⁴⁷ Cecil W. Wooten, *Cicero and the Quintilian on the Style of Demosthenes*, 15 *RHETORICA: J. HIST. RHETORIC* 177, 178 (1997); Eric Laughton, *Cicero and the Greek Orators*, 82 *AM. J. PHILOLOGY* 27, 29–31 (1961); Erich S. Gruen, *Cicero and Licinius Calvus*, 71 *HARV. STUD. CLASSICAL PHILOLOGY* 215, 226 (1967); Sean Gurd, *Cicero and Editorial Revision*, 26 *CLASSICAL ANTIQUITY* 49, 59–60 (2007).

Cicero's stylistic critics had adopted a "plain and lucid style with a minimum of rhetorical ornament, a studied neglect of rhythm, and an infrequent use of emotional appeal."¹⁴⁸ Their number included prominent orators of the day, among them Brutus and Calvus.¹⁴⁹ Modeling and naming themselves after great speakers of the Attic period in ancient Greece, the Attici understood the orator to be a type of instructor.¹⁵⁰ Therefore, rather than refining the art of persuasion above all else, they considered themselves focused on logic.¹⁵¹ Their Greek models included Lysias, Thucydides, and Xenophon.¹⁵²

Cicero responded to the Attici by pointing to the superlative example of Demosthenes—a Greek of the Attic period with whom Cicero's rhetorical style was more consistent.¹⁵³ Cicero's recurring use of Demosthenes as a counterexample to the Attic style reveals a complicating factor in the debate between Cicero and the Attici: the term "Attic" refers to both a period of time in a specific place (Attic Greece) and to a specific school of rhetoric.¹⁵⁴ Hence, the passionate and elaborate Demosthenes, for example, was most definitely an Attic Greek but not an Attic orator; by the same logic, the Roman Attici (like Brutus) were Attic orators but not Attic Greeks.¹⁵⁵

Looking past complications in nomenclature, the debate between Cicero and the Attici produced something most useful to the modern scholar: a reason for Cicero to dwell on the distinctions between Attic rhetoric and his own style (and that of Demosthenes). In sum, Cicero's aggregate portrait of Attic rhetoric has three key features: (1) a spare, simple word choice, (2) a preference for restrained, even-toned, logical argument over elaborate, passionate appeal, and (3) a uniformity in style regardless of topic, audience, or occasion.

¹⁴⁸ Jeffrey Henderson, *Introduction, in CICERO: BRUTUS, ORATOR* 297, 297–98 (Loeb Ed., Jeffrey Henderson ed., G. L. Hendrickson & H. M. Hubbell trans., 1962) (46 B.C.).

¹⁴⁹ Laughton, *supra* note 147, at 29–31 (1961); Gurd, *supra* note 147, at 58–62; Gruen, *supra* note 147, at 226.

¹⁵⁰ Henderson, *supra* note 148, at 297–98.

¹⁵¹ *Id.*

¹⁵² *Id.*; Wooten, , note 147, at 178; Laughton, *supra* note 147, at 29–31.

¹⁵³ Henderson, *supra* note 148, at 297–98. There is some disagreement over whether Cicero genuinely modeled his oratory after Demosthenes or perhaps merely found this iconic Attic a useful figure in his debate with the Roman Attici. Wooten, *supra* note 147, at 178, 181 (arguing that Cicero used his portrayal of Demosthenes, which may have been inaccurate, as a vehicle for defending his own techniques); Laughton, *supra* note 147, at 35 (supporting Cicero's genuine admiration of Demosthenes). Cicero wrote of Demosthenes in *Orator*, "Among orators, certainly among Greek orators, it is amazing how one man has pre-eminence over all." Cicero, *Orator in CICERO: BRUTUS, ORATOR* 297, ii.6 (Loeb Ed., Jeffrey Hendrickson ed., G. L. Hendrickson & H. M. Hubbell trans., 1962) (46 B.C.).

¹⁵⁴ CICERO, DE OPTIMO GENERE ORATORUM IV.7-15 (Loeb ed., Jeffrey Henderson ed., H. M. Hubbell trans., 1949) (90 B.C.).

¹⁵⁵ *Id.* Pointing to Attic orators who did not use what the Roman Attici called an Attic style (like Demosthenes), Cicero argued that the Attici had inappropriately co-opted the title for their specific method. While still insisting that Demosthenes could only be classed as Attic because of his period and origin, Cicero also often refers to the plain, simple style as Attic. This adds an unavoidable layer of complexity to understanding Cicero's descriptions of the various styles of rhetoric.

I. Simple, Accurate Word Choice

In his *Tusculan Disputations* and in *De Optimo Genere Oratorum*, Cicero described Attic rhetoric as spare, simple—eschewing anything grand or ornate.¹⁵⁶ By comparison to his own oratory prowess, Cicero considered Attic orators to “prefer their own poverty stricken bareness to rich luxuriance.”¹⁵⁷ Lysias, for example, used great simplicity and therefore “seems excessively meager.”¹⁵⁸ Unlike Demosthenes, it is unclear whether Lysias could speak “with great passion” even when a situation called for it.¹⁵⁹ The Attici admired Lysias’s choice of words as the “perfect model,” but Cicero heard instead “old fashioned plainness.”¹⁶⁰ The Attic style thus makes “intelligence consist in fastidiousness of taste in oratory and take[s] no pleasure in anything lofty and magnificent.”¹⁶¹

Notwithstanding its rejection of anything grand and ornate, however, there is “refinement” in the “plain” Attic style.¹⁶² Cicero concedes, for example, that Lysias can justly be admired for his “correctness and purity of diction.”¹⁶³ Although “meager” or “lean,” Lysias’s speech also wields a kind of “muscular strength.”¹⁶⁴ The Attic orator thus achieves a limited degree of success: “Those who have attained only to this may be considered sound and spare as far as that goes, but may be compared to athletes who are fit to promenade in the gymnasium, but not to seek the prize at Olympia.”¹⁶⁵ Moreover, through their relatively simple use of words, Attic orators avoided the potential pitfalls associated with using grand style and ornate speech poorly—Attic orators do not risk “inappropriate, harsh, and far-fetched” effect.¹⁶⁶ In other words, better to be a solid Attic speaker than to attempt without the requisite skill to be Cicero or Demosthenes.

Nonetheless, Cicero’s critique of the minimalism of Attic speech is firm. Continuing the athletic analogy, he argues that the “prize-winners, though free from all diseases, are not content with mere good health, but seek strength, muscles, blood, and even as it were an attractive tan.”¹⁶⁷ More than a matter of taste, Cicero embraces a richer approach to language as the more effective and therefore more practical method of persuasion.¹⁶⁸ In terms of the application of his conclusions to

¹⁵⁶ CICERO, *TUSCULAN DISPUTATIONS* II.i.2–4 (Loeb Ed., Jeffrey Henderson ed., J. E. King trans., 1945) (45 B.C.); CICERO, *DE OPTIMO GENERE ORATORUM*, *supra* note 154, at III.7–8.

¹⁵⁷ CICERO, *TUSCULAN DISPUTATIONS*, *supra* note 156, at II.i.2–4.

¹⁵⁸ CICERO, *DE OPTIMO GENERE ORATORUM*, *supra* note 154, at III.7–8.

¹⁵⁹ *Id.*

¹⁶⁰ Laughton, *supra* note 147 at 30.

¹⁶¹ CICERO, *DE OPTIMO GENERE ORATORUM*, *supra* note 154, at III.12.

¹⁶² *Id.*

¹⁶³ Laughton, *supra* note 147, at 31. Cicero appears to have formed a similarly qualified positive opinion of one of the leading Roman Attici, Calvus: according to Cicero, Calvus’s choice of style limited his power to reach all except the most learned of audiences, but Cicero gave him credit for learning and discrimination. Gruen, *supra* note 147, at 226.

¹⁶⁴ Laughton, *supra* note 147, at 31.

¹⁶⁵ CICERO, *DE OPTIMO GENERE ORATORUM*, *supra* note 154, at III.12.

¹⁶⁶ *Id.* at III.7–8.

¹⁶⁷ *Id.* at III.8.

¹⁶⁸ Andrew M. Riggsby, *Pliny on Cicero and Oratory: Self Fashioning in the Public Eye*, 116 *AM. J. PHILOLOGY* 123, 128 (1995); CICERO, *DE OPTIMO GENERE ORATORUM*, *supra* note 154, at III.7–8.

contemporary speech, it is important to note that Cicero's opinions are premised on the "middlebrow" needs of a speaker in a republican context.¹⁶⁹ According to Cicero's observations of political life, Attic reserve simply does not generate sufficient power in a democracy; instead, adroit technique must be employed because "republican government plays itself out in a popular theatre designed for broad effects and capable of, at best, middlebrow artistry."¹⁷⁰

2. Logical Argument, Not Passionate Appeal

Cicero's *Orator* and *Brutus* reveal a second purported deficiency in Attic rhetoric: a lack of passionate appeal. Rather than appealing directly to the passions, Attic rhetoric is refined and scrupulous.¹⁷¹ Speaking in a restrained tone,¹⁷² an Attic orator has no need for strong lungs.¹⁷³ Avoiding rhythm altogether, instead the Attic orator's speech has "something agreeable about it and show[s] a not unpleasant carelessness on the part of a man who is paying more attention to thought than to words."¹⁷⁴ Words flow in a manner that is "loose but not rambling; so that it may seem to move freely but not to wander without restraint."¹⁷⁵ At times the result may be "rough and unpolished," but the good Attic speaker remains "precise and discriminating."¹⁷⁶ In essence, the Attic orator appeals to the reason without distracting the audience from the content of a speech.

Cicero admitted that the restrained Attic style had its own charm. Indeed, because of its simplicity, even those who cannot employ it effectively will have the impression that they can imitate the Attic style with success.¹⁷⁷ Imitation of the precision, clarity, and resulting simplicity in this method, however, proves far more difficult than apparent.¹⁷⁸ While all embellishment—in tone, gesture, and organization—is avoided in Attic presentation, there remains an elusive charm—an "elegance and neatness"—that is like the beauty of a woman who is more attractive without ornament.¹⁷⁹ To this extent the charm of Attic speech may be considered contrived—just insofar as the Attic speaker commands elegance with the knowledge of the spare beauty that results from the avoidance of ploy.

In contrast to the precision and restraint of the Attic orator, Cicero argues that the best orators vary their voices to move their audiences: "The perfect orator ... will use certain tones according as he wishes to seem himself to be moved and to sway the minds of his audience."¹⁸⁰ Commanding his voice with greater skill, the best orator varies his voice to better convey the feeling of his speech, striving to "speak intensely with a vehement tone, and gently with a lowered voice, and to show

¹⁶⁹ Robert Hariman, *Political Style in Cicero's Letters to Atticus*, 7 RHETORICIA: J. HIST. RHETORIC 145, 149–50 (1989).

¹⁷⁰ *Id.*

¹⁷¹ Cicero, *Orator*, *supra* note 153, at viii.28.

¹⁷² *Id.* at xxiv.82.

¹⁷³ *Id.* at xxvi.85.

¹⁷⁴ *Id.* at xxiii.77.

¹⁷⁵ *Id.*

¹⁷⁶ *Id.* at viii.28.

¹⁷⁷ *Id.* at xxiii.76.

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at xxiv.79.

¹⁸⁰ *Id.* at xviii.55.

dignity in a deep voice, and wretchedness by a plaintiff tone.”¹⁸¹ Cicero further elaborates, explaining that “the superior orator will therefore vary and modulate his voice; now raising and now lowering it, he will run through the whole scale of tones.”¹⁸² Indeed, Cicero once boasted to a friend that he could “boom away,” joking that his friend might have heard the “reverberations” in another town.¹⁸³ Similarly, Cicero’s gestures show no restraint; he admits that “we are wont to use it so piteously that we have even held a babe in our arms during the peroration, and in another plea for a noble defendant we told him to stand up, and raising his small son we filled the forum with wailing and lamentation.”¹⁸⁴

Compared to this visceral appeal lauded by Cicero, the Attic orator’s “style lacks the vigor and sting necessary for oratorical efforts in public life.”¹⁸⁵ He accuses the Attic orators of conversing with scholars, preferring to soothe minds than to arouse passions.¹⁸⁶ They instruct rather than captivate.¹⁸⁷ Describing the approach of philosophers and Attic speakers together, he claims that their speech is “gentle and academic; it has no equipment of words or phrases that catch the popular fancy . . . there is no anger in it, no hatred, no ferocity, no pathos, no shrewdness; it might be called a chaste, pure and modest virgin.”¹⁸⁸ Put another way, the Attic speaker uses a refined but conversational approach.¹⁸⁹

The divergence between the two styles in their focus on reason versus passion is particularly prominent in *Brutus*, in which Cicero portrays a conversation between himself and two Attici friends. One of his interlocutors, Brutus, confirms the strong Attic identification of sound thought with good rhetoric, claiming that “no one can be a good speaker who is not a sound thinker.”¹⁹⁰ As Brutus sees it, “whoever devotes himself to true eloquence, devotes himself to sound thinking.”¹⁹¹ By contrast, Cicero’s comments reveal that it is not clarity or power of thought that he values most highly. According to Cicero the “proper and legitimate functions of the orator” are “to digress from the business in hand for embellishment, to delight his listeners, to move them, to amplify his theme, to use pathos.”¹⁹² Indeed, directly comparing the two approaches, Cicero finds inflaming the passions far more important: “One may conclude, that of the two chief qualities which the orator must possess, accurate argument looking to proof and impressive appeal to the emotions of the listener, the orator who inflames the court accomplishes far more than the one who merely instructs it.”¹⁹³ Numerous passages in *Brutus* evaluate famous

¹⁸¹ *Id.* at xviii.56–57.

¹⁸² *Id.* at xviii.59.

¹⁸³ Hariman, *supra* note 169, at 150.

¹⁸⁴ Cicero, *Orator*, *supra* note 153, at xxxviii.131.

¹⁸⁵ *Id.* at xix.62–63.

¹⁸⁶ *Id.* at xix.63.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at xix.64.

¹⁸⁹ *Id.*

¹⁹⁰ Cicero, *Brutus*, in *CICERO: BRUTUS, ORATOR 1*, vi.23 (Loeb Ed., Jeffrey Hendrickson ed., G. L. Hendrickson & H. M. Hubbell trans., 1962) (46 B.C.).

¹⁹¹ *Id.*

¹⁹² *Id.* at xxi.82.

¹⁹³ *Id.* at xxiii.89. A similar contention is repeated near the end of the *Brutus*, when Cicero argues that “the one supreme characteristic of the orator” is to “sway his feelings in whatever direction the situation demanded.” *Id.* at xciii.322. Note that Cicero refers to swaying feelings and not to engaging the judge’s reason.

Roman Attic orators and reinforce Cicero's preference for emotional appeal over logic and reason: he critiques their ability to persuade while offering qualified praise of the bare, lucid, straight, calm, restrained, and scholarly virtues of Attic speakers.¹⁹⁴

Through skillful employment of voice and word choice, the best orators persuade by commanding the passions of their audience.¹⁹⁵ Indeed, the passion-oriented aspect of Cicero's approach directs more than the use of the voice: it permits the orator—with a good end in mind, to be sure—to abandon truth for the sake of persuasion.¹⁹⁶ Where the Attic orator focuses on using evidence and logic to win over the audience's reason, the Ciceronian approach employs the combined force of elaborate organization, distracting gesture and varied voice, intermixed with emotional ploys to the end of persuading the listener's passions. This distinction in method—and the distinction in mindset that creates this distinction in method—reveals why Cicero judged the Attic orator less powerful.

3. *Unvaried Rhetoric, Regardless of Audience or Occasion*

In his descriptions and praise of the best oratory, Cicero argues that optimal persuasion requires adjustment for topic, audience, and occasion.¹⁹⁷ As discussed above, the Attic orator has a narrow repertoire: there is little or no variation in tone, gesture, organization, word choice, or other device. This is important within a single speech—where Attic rhetoric will seem plain in comparison to the dramatic highs and lows of a Cicero. But the Attic adherence to simple and straightforward presentation also creates a necessary uniformity in all speeches, making it impossible for the speaker to adjust argument and style to changing audiences, topics, and times. In other words, with uniformly simple word choice and a logical, passion-eschewing focus, the Attic orator necessarily lacks the quality that Cicero thinks most important for a great orator.

Cicero elaborates on this quality of the best orators throughout the *Orator*. As he understands it, the orator's judgment must be shaped by the judgment of the audience: "The eloquence of orators has always been controlled by the good sense of the audience, since all who desire to win approval have regard to the goodwill of their auditors, and shape and adapt themselves completely according to this and to their opinion and approval."¹⁹⁸ Hence, in contrast to the unvarying presentation of the Attic orator, Cicero argues that the best orators will exercise judgment to determine which words and delivery will be most effective in a particular context and on a particular topic.¹⁹⁹ In his opinion, this requires "rare judgment and great endowment," showing the wisdom of the superior orator.²⁰⁰ This approach rests on the observation that the orator's potential to persuade is bound by the beliefs and

¹⁹⁴ *Id.* at lxxxv.262, lxxx.276–279, ixxxii.283–84.

¹⁹⁵ Michael Frost, *Ethos, Pathos & Legal Audience*, DICK. L. REV. 85, 94–98 (1994).

¹⁹⁶ Gary Remer, *The Classical Orator as Political Representative: Cicero and the Modern Concept of Representation*, 72 J. POL. 1063, 1072 (2010).

¹⁹⁷ Frost, *supra* note 195, at 92, 98–99.

¹⁹⁸ Cicero, *Orator*, *supra* note 153, at viii.24.

¹⁹⁹ Daniel J. Kapust & Michelle A. Schwarze, *The Rhetoric of Sincerity: Cicero and Smith on Propriety and Political Context*, 110 AM. POL. SCI. R. 100, 103 (2016).

²⁰⁰ Cicero, *Orator*, *supra* note 153, at xxi.70.

values of the audience; hence, he concludes that the speaker—to be effective—must make appeals bound by the community's beliefs.²⁰¹

As a practical matter, this approach dictates that the orator shift style “in any way which the case requires.”²⁰² The best approach alters depending on both the speaker's and the audience's condition, rank, position, and age.²⁰³ The topic itself will also require tailoring, so the orator “can discuss commonplace matters simply, lofty subjects impressively, and topics ranging between in a tempered style.”²⁰⁴ Nothing less than “wisdom” guides the great orator to adapt to occasion and audience so that a “rich subject will not be treated meagerly, nor a grand subject in a paltry way, nor *vice versa*, but the speech will be proper and adequate to the subject.”²⁰⁵

These are not tactics that the Attic orator is willing to embrace. They defy the very definition of Attic rhetoric. As Cicero views it, the Attic orator's insistence on simple, accurate language and rational discourse undermines the orator's very purpose—persuasion. Without either the ability or the willingness to use the most powerful weapons of persuasion, Attic orators opt instead for a reserve that dooms them to make futile—if accurate, reasonable, and honest—appeals to their audiences.

B. THE ATTIC RHETORIC OF ATTICUS FINCH

Throughout *To Kill a Mockingbird*, Lee presents her Attic orator—Atticus Finch—speaking in the same tone and employing the same unembellished but precise phrases and logical arguments regardless of the context and audience. In other words, the story's narrator, Scout, describes her father as a thoroughly Attic orator without ever making the reference openly. Scholarly literature on Atticus Finch has not yet connected his name to the school of rhetoric that he employs, and consideration of the character's name—to date—has focused on either the word's Greek origin and Roman use or on a potential connection with a Roman known as Atticus (discussed below). One might expect that Lee, whose novel surely elicited its share of public interest, might have spoken publicly to her unusual choice of name. Therefore, before detailing the textual evidence for the connection between Atticus and Attic rhetoric, I briefly examine the scant—and ultimately inconclusive—clues left by Lee.

²⁰¹ Remer, *supra* note 196, at 1072.

²⁰² Cicero, *Orator*, *supra* note 153, at xxi.70.

²⁰³ *Id.* at xxi.71.

²⁰⁴ *Id.* at xxviii.100–101.

²⁰⁵ *Id.* at xxxv.123–xxxv.124. Cicero expresses the same opinion in several of his works; CICERO, *DE OPTIMO GENERE ORATORUM*, *supra* note 154, at III.8–IV.10 (praising Demosthenes because he could speak with passion or calmly and critiquing the Attic Lysias because he could not speak passionately); CICERO, *DE PARTITONE ORATORIA* v.15 (Loeb ed., H. Rackham trans., 1942) (54 B.C.) (“the prudent and cautious speaker is controlled by the reception given by his audience—what it rejects has to be modified”).

I. Lee's Extra-Textual Indications

Analysis of Lee's intent invariably runs into a serious obstacle: She shunned public view, and she seems to have left as little external evidence about her book as possible.²⁰⁶ She never approved of a biography,²⁰⁷ her attorney had her will sealed from public view,²⁰⁸ and indeed she never conducted any public interviews after the mid-1960s.²⁰⁹ Her very rare public comments after the last public interview did not directly relate to her first famous novel: in recent years she denounced the last biography published before she died²¹⁰ and then endorsed publication of *Go Set the Watchman* in the year before her death.²¹¹ Of course, her reticence to come into public view only raised the stakes: efforts have been made to capture her life and the connections between her life and her characters. Because she never chose to participate, however, these efforts amounted to extensive excavation with little result—if result is measured in terms of clear illumination of her novel and its conscious influences.²¹²

²⁰⁶ Garrison Keillor, *Good Scout: A Biography of Harper Lee, a Writer Comfortable with Her Accomplishment*, N.Y. TIMES BOOK REV., June 11, 2006, at F11 (book review) (“[S]he didn’t enjoy the limelight. So she backed away from celebrity, declined to be interviewed or to be honorifically degreed and simply lived her life”); Julia M. Klein, “*The Mockingbird Next Door*” by Marja Mills, BOS. GLOBE (July 12, 2014), <https://www.bostonglobe.com/arts/books/2014/07/12/review-the-mockingbird-next-door-life-with-harper-lee-marja-mills/EwniyOr6IgcXVH0rXkPp4O/story.html> (book review) (Lee “shunned reporters and biographers, and encouraged her close associates not to talk to outsiders”).

²⁰⁷ The author of the last biography published in Lee's lifetime, Marja Mills, claimed to have Lee's approval, but Lee publicly released a letter with the following blanket statement: “Rest assured, as long as I am alive any book purporting to be with my cooperation is a falsehood.” Steven Levingston, *Harper Lee: New Portrait is a “Falsehood,”* WASHINGTON POST, July 16, 2014, at C01; Julie Bosman, *Author of Memoir About Harper Lee Insists She Had Lee's Cooperation*, N.Y. TIMES, Apr. 30, 2011, at C3; Dwight Garner, *To Kill A Friendship*, N.Y. TIMES, July 18, 2014, at C19.

²⁰⁸ Jennifer Crossley Howard, *Judge Seals Harper Lee's Will from Public's Scrutiny*, N.Y. TIMES, Mar. 5, 2016, at A11. When reporters from the *New York Times* succeeded in having the will unsealed, Alabama papers reported that the will, signed a week before her death, placed the bulk of her fortune in a trust shielded from public view. Editorial, *Harper Lee's Unwanted Attention*, ANNISTON STAR (ALA.), Feb. 28, 2018, at editorials. No public announcements have been made regarding the disposition of any personal papers that Lee may have saved.

²⁰⁹ Bosman, *supra* note 207 (reporting that, as of 2011, Lee had not given a public interview in forty-five years).

²¹⁰ Howard, *supra* note 208.

²¹¹ Alexandra Alter & Serge F. Kovaleski, *In Statement, Harper Lee Backs New Novel*, N.Y. TIMES, Feb. 5, 2015, at A13; Alexandra Alter & Serge F. Kovaleski, *After Harper Lee Novel Surfaces, Plots Arise*, N.Y. TIMES, Feb. 8, 2015, at A1.

²¹² For example, the first and the best known biography, Charles J. Shields's *Mockingbird: A Portrait of Harper Lee*, paints a thorough backdrop of her life (through the date of its completion), but—lacking access to Lee or her papers (if they exist)—he cannot convincingly do more than guess about the connections between the author's life events and her novel's content. CHARLES J. SHIELDS, *MOCKINGBIRD: A PORTRAIT OF HARPER LEE* (2007); see also Meghan O'Rourke, *One-Hit Wonder: The Life Story of the Woman Who Wrote One of America's Most Beloved Novels*, WASHINGTON POST, July 23, 2006, at

In one obscure interview, given in 1962 to the *Birmingham Post Herald*, Lee dropped her most direct statement indicating an inspiration for Atticus.²¹³ In an awkwardly written, partially quoted and partially paraphrased statement, she indicated that the inspiration for her character's name was "the Greek known by that name – 'wise, learned and humane man.'"²¹⁴ This most likely refers to a Roman who lived in Greece, Titus Pomponius Atticus, a close friend of Cicero.²¹⁵ Most of our knowledge of this historical Atticus comes from letters that he and Cicero exchanged (nearly all surviving letters in their voluminous correspondence are Cicero's) and a brief biography by Roman historian Cornelius Nepos.²¹⁶ Little is known about how Lee learned about Atticus: she may well have encountered him independently in her own reading. On the other hand, while the universities she attended have not released details, she may have been introduced to Cicero, Atticus, or some other author who referred to one of them through her undergraduate studies at the University of Alabama, her year of law school, or a summer literature program that she attended at Oxford University.²¹⁷

Among those who have attempted to explain the origin of Atticus's name, there seem to be two opinions. Some vaguely tie the name to its ancient origins, connecting the character to the republican principles either of Attic Greece or of Rome.²¹⁸ Others, inspired by Lee's 1962 interview comment, point to Cicero's friend, the Roman named Titus Pomponius Atticus.²¹⁹ Titus Atticus, a boyhood friend of Cicero, studied law alongside Cicero but never practiced.²²⁰ Instead, he choose to live in Greece—in Attica—and pursue literary and business affairs in a life of relative retirement compared to the political turmoil of Rome.²²¹ Thus, while

BW15 ("In the absence of reliable data from which to forge a coherent narrative, Shields follows his research down many a cul de sac and pads out trivial details"). Marja Mill's *The Mockingbird Next Door*, the most famous of the biographies, was renounced by Lee herself, effectively removing it from candidacy as a trustworthy source. See *supra* note 207. Most recently, Joseph Crespino has released *Atticus Finch: The Biography*, a detailed portrait of Lee's father that purports to tell the fuller story of Atticus Finch, but—once again—while many interesting facts have been unearthed, conclusive evidence remains beyond our grasp because we simply do not know the intent with which Lee translated life to novel. JOSEPH CRESPIANO, *ATTICUS FINCH: THE BIOGRAPHY* (2018).

²¹³ Ramona Allison, "Mockingbird" Author is Alabama's "Woman of Year," BIRMINGHAM POST-HERALD, Jan. 3, 1962, at 12.

²¹⁴ *Id.*

²¹⁵ *Pomponius Atticus, Titus*, OXFORD CLASSICAL DICTIONARY (4th ed. 2012).

²¹⁶ *Id.*

²¹⁷ Shields, *supra* note 212, at 83–111. I contacted officials at the University of Alabama and Oxford to request details about the programs pursued by Lee. Neither institution was able to provide any information.

²¹⁸ Maureen E. Markey, *Natural Law, Positive Law, And Conflicting Social Norms in Harper Lee's To Kill A Mockingbird*, 32 N.C. CENT. L. REV. 162, 170–71 (2010); William J. Chriss, *The Noble Lawyer Paradigm*, 75 TEX. B. J. 50, 52–53 (2012).

²¹⁹ Calvin Woodard, *Listening to the Mockingbird*, 45 Ala. L. Rev. 563, 573–74 (1994); SHIELDS, *supra* note 212, at 114; CRESPIANO, *supra* note 212, at xiv.

²²⁰ Steel, *supra* note 146, at 10–13; Harry L. Levy, *Cicero the Lawyer as Seen in His Correspondence*, 52 CLASSICAL WORLD 147, 150 (1959); Mary Bradford Peaks, *Cicero and American Lawyers*, 22 CLASSICAL J. 563, 570 (1927).

²²¹ Steel, *supra* note 146, at 10–13. One enticing fact about Titus Atticus's potential role as a source for Atticus Finch is that Titus's slaves, even his footmen, were literate. *Id.* at 12.

the Atticus of history does not undermine Lee's respect for the figure, his biography hardly provides a full explanation of his connection to Atticus Finch.

Some see in Lee's father, Amasa Coleman Lee, a model for the character of Atticus. Shortly after the publication of *To Kill a Mockingbird*, Lee noted that she wrote Atticus as she thought of her father, as someone "who has genuine humility and 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."²²² The identification of Lee's father as a possible source for Atticus Finch also rests on similarities between Atticus and Amasa, including the fact that both were lawyers in Alabama, both had defended African American clients accused of felonies, and both men effectively served as single parents to precocious children.²²³ Most recently, Joseph Crespino's *Atticus Finch: A Biography* retells the story of Atticus Finch by starting with the story of Amasa.²²⁴ In his retelling, Crespino focuses on points of similarity between Amasa and Atticus while gliding quietly past significant points of difference.²²⁵

In sum, both Amasa Coleman Lee and Titus Pomponius Atticus appear to claim rightful status as partial sources from which Lee created the Atticus Finch of *To Kill a Mockingbird*. Nonetheless, neither provides so neat a fit that those seeking to understand the literary character ought to cease seeking for additional insight. Indeed, the oft repeated references to her father and the ancient Roman provide very little insight into the inner workings of Atticus: this may be why—Crespino's biography aside—these links often garner very little attention in literary and legal (as opposed to historical) analyses of *To Kill a Mockingbird*. The schoolchild who reads *To Kill a Mockingbird* knows that Lee portrays Atticus as a man she loves and respects. Adding the information that he was modeled on a noble Roman and Lee's father supports this conclusion, but it does not enrich it. Much less does it help schoolchildren and lawyers understand what steps to take to integrate Atticus's admirable qualities into their own lives and professional pursuits.

2. Lee's Atticus Finch

Looking to the book she left to the public—rather than prying into the life she clearly tried to shield from public view—one finds a more important connection between character and real-world inspiration. With the features of Attic rhetoric in mind, one has the power to unlock Atticus's ability to wield the most important tool of the lawyer with the utmost power, integrity, and respect for others. Atticus Finch uses Attic rhetoric to represent and counsel his client, to serve as a respectful but challenging officer of the court, and—with the lives of three children in the balance—to defend one man's right to trial in the face of a lynch mob. Through Atticus, Lee demonstrates that Attic rhetoric is more than useful: it is necessary in the moments when attorney duties are in tension with each other. Through Attic

Calpurnia, Atticus's housekeeper and nanny, estimates that only about four individuals in her African American congregation can read; Calpurnia and her grown son, Zeebo, account for half this number. Lee, *supra* note 61 at 165–66.

²²² Talmage Boston, *Who Was Atticus Finch?*, 73 TEX. B. J. 484, 484–487 (2010).

²²³ *Id.*

²²⁴ CRESPINO, *supra* note 212, at xvii.

²²⁵ The first chapter, where Crespino covers Amasa's early career, is a good example of this quality. *Id.* at 3–30.

rhetoric an attorney uses his most fundamental tool to navigate ethical duties to client, to court, and to justice—and thus also to his own conscience. Through Attic rhetoric an attorney has a path to wholeness.

Lee underscores the Attic qualities of Atticus's speech throughout the novel, but the character's Attic qualities become most apparent when one compares how his accurate, rational approach pervades his speech regardless of topic, audience, and occasion. Whether with his children or in court, he uses his legal vocabulary, but in both contexts he refrains from embellishment, distraction, and drama. His tone is conversational and level in both contexts, and no listener could doubt that logic and accuracy bear more of his attention than delivery. A man who thus speaks accurately, simply, calmly, and rationally as father and defense attorney can hardly help but qualify as an Attic orator. Cicero would doubtless disagree, but *To Kill a Mockingbird* shows that Atticus's rhetorical style is key to his ability to remain simultaneously true to himself and to his ethical duties.

Atticus's lawyerly word choice when speaking to his children may at first seem to defy categorization as Attic. For example, when he refuses to spit-shake with his daughter after they reach a compromise, he tells her, "We'll consider it sealed without the usual formality."²²⁶ Similarly, when he asks her not to tell her teacher about their plan to read together at night, his answer when Scout asks for an explanation seems unduly complex. Atticus explains, "I'm afraid our activities would be received with considerable disapprobation by the more learned authorities."²²⁷ Indeed, Scout explains that Atticus often speaks to his children in the same "last will and testament diction" that he uses as an attorney.²²⁸ In perhaps the most extreme example, when seven-year-old Scout asks what rape is, he gives her the precise legal definition: "carnal knowledge of a female by force without her consent."²²⁹

Atticus speaks to his children using his professional language, but can this style be described as simple, accurate, and rational? Although it may not immediately be evident, the answer to this question is "yes" because Atticus explains the world to his children in the simplest possible *accurate* terms. When Atticus explains the world to his children, he does not evade or lie even in the face of the most difficult questions. Because he thereby refuses to sacrifice accuracy to youth, the result is word choice that is advanced relative to the age of his audience. But the result is also a sometimes startling degree of honesty. As he explains to his brother Jack, "When a child asks you something, answer him, for goodness' sake Children are children, but they can spot an evasion quicker than adults and evasion simply muddles 'em."²³⁰ Accordingly, Atticus explains the logic and failings of family, neighbors, town, trials, and the law to Jem and Scout as they question him over the course of the book.

Because he speaks to his children as if they were adults, Atticus is able to honestly explain the realities of life in their racist town, the dictates of his conscience, and the complexities of the law to his children with only the complexity that reality

²²⁶ LEE, *supra* note 61, at 42.

²²⁷ *Id.*

²²⁸ *Id.* For example, Atticus tricks his son, Jem, into confessing disobedience using "the oldest lawyer's trick on record." *Id.* at 66.

²²⁹ *Id.* at 181.

²³⁰ *Id.* at 116.

requires. He never diverts their youthful attention or sacrifices honesty to innocence. Hence, Atticus's lawyerly speech with his children supports his categorization as an Attic orator because his speech bears the hallmark adherence to the simplest accurate style regardless of audience, topic, and context. As Scout explains to her neighbor, Miss Maudie, Atticus's behavior is the same in private and public: "Atticus don't ever do anything to Jem and me in the house that he don't do in the yard."²³¹ Miss Maudie immediately agrees with Scout's observation, explaining that "Atticus Finch is the same in his house as he is on the public street."²³²

Once Atticus steps into the courtroom his simple accuracy and focus on logic—which can be difficult to grasp in the context of conversation with a child—becomes apparent. As a litigator, Atticus is the model of simplicity, restraint, precision, and logical appeal. As detailed in II.B., he refuses to thunder, employing the language and tone of his daily life.²³³ He approaches the rape trial at the center of the novel, the focal point of personal and political turmoil and injustice, with as much restraint as any real estate transaction.²³⁴ No more in court than at home has Scout ever heard Atticus raise his voice. Scout reports of herself and Jem, "We acquired no traumas from watching our father win or lose. . . . I never heard Atticus raise his voice in my life, except to a deaf witness."²³⁵ The judge confirms Scout's account, explaining to one overwrought witness that "we've done business in this court for years and years, and Mr. Finch is always courteous to everybody. . . . he's trying to be polite. That's just his way."²³⁶

By the end of the trial, Scout has shown us a concise, sometimes detached, reasonable man handling what he has earlier told his daughter will be the most trying case of his life. In his closing argument, he remains—as he has been throughout—moderate, logical, and straightforward.

Atticus was speaking easily, with the kind of detachment that he used when he dictated a letter. He walked slowly up and down in front of the jury, and the jury seemed attentive: their heads were up and they followed Atticus's route with what seemed to be appreciation. I guess it was because Atticus wasn't a thunderer.²³⁷

Atticus Finch is an Attic orator through and through. In the moment when his address to the jury becomes the most impassioned (if one can even use that word), it simply becomes more like his private tone: "'Gentlemen,' he said. Jem and I again looked at each other: Atticus might have said, 'Scout.'"²³⁸ In his conversational address to the jury, Atticus consistently conveys a prioritization of thought over delivery.

Atticus's simple, direct, and even-toned speech is also logical, precise, and wise. If ever Atticus reveals the elegance and spare beauty of the Attic approach, it

²³¹ *Id.* at 61.

²³² *Id.*

²³³ *Id.* at 226.

²³⁴ *Id.*

²³⁵ *Id.* at 229.

²³⁶ *Id.* at 242.

²³⁷ *Id.* at 270.

²³⁸ *Id.* at 271.

is in his closing statement when he patiently instructs the jury on the necessity of equality in the courtroom. Knowing full well the bigotry of the jury, he nonetheless looks these fellow citizens in the eye and addresses them as rational human beings—as peers who can reason their way through the logical explanation that he sets before them in black and white.²³⁹

We know all men are not created equal in the sense that some people would have us believe—some people are smarter than others, some people have more opportunity because they're born with it, some men make more money than others, some ladies bake better cakes than others—some people are born gifted beyond the normal scope of most men.

But there is one way in this country in which all men are created equal—there is one human institution that makes a pauper the equal of a Rockefeller, the stupid man the equal of an Einstein, and the ignorant man the equal of any college president. It can be the Supreme Court of the United States or the humblest J.P. court in the land, or this honorable court which you serve. Our courts have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal.²⁴⁰

Of course, Atticus's honest logic loses the trial at the heart of *To Kill a Mockingbird*: the jury convicts innocent Tom Robinson. Atticus pins his hopes on the rationality of the appeals process, but should he have employed the full spectrum of rhetorical skills that Hume and Cicero praise to save his client? Or, to describe the choice in concrete terms, should he have played on the jury's passions to convince them, using every tone and embellishment that Cicero could muster, that Mayella was a "loose woman" and then shed pathetic tears over Tom's children? Perhaps if he had thundered a bit (surely a man of his education and training could have intimidated and frightened a girl who had never seen the inside of school), Mayella might have broken. Or maybe he could have convinced the already-racist jury that Tom was too cowardly to have committed the crime. And Tom might have walked.

This difficult question is at the heart of the tension between an attorney's simultaneous duties of zealous advocacy and as an officer of the court and as a citizen with responsibility for the quality of justice. No less, this question strikes at the heart of democratic deliberation and the potential for reason to prevail over passion. It also touches on the potential for an attorney to maintain integrity and honesty while serving the client's best interests. Faced with a situation like that of Atticus, attorneys can make the legal system better by appealing to reason and trusting the rational capacity of their fellow citizens. Or they can make it worse by stirring vicious passions, feeding on human bias, and failing to maintain honesty with the court and all present. What Atticus told the jurors in his plea to their reason—that the integrity of the system depends on those who make it up—is no

²³⁹ *Id.*

²⁴⁰ *Id.* at 273–74.

less true for attorneys than for jurors.²⁴¹ When Atticus adheres to appeals to reason, he takes a necessary but insufficient step—a prerequisite step—to a jury’s ability to listen to reason rather than passion. Atticus’s Attic appeal is not sufficient for the not-guilty verdict dictated by reason, but—like his presence at the jail in the face of the lynch mob—it is a necessary preliminary step before a rational deliberation process can occur.

Lee confirms this interpretation by revealing the conversion of the one juror won over by Atticus Finch.²⁴² As Atticus explains, the only juror to argue for acquittal was a member of the Cunningham family and a relative to Walter Cunningham—the would-be lyncher who at Scout’s prompting led the mob to abandon their intention and head for home.²⁴³ The Cunningham juror, standing alone, had argued for acquittal for hours.²⁴⁴ By drawing a connection between these two Cunninghams, Lee suggests a relationship between Atticus’s ability to persuade the leader of the dissolution of the lynch mob and Atticus’s persuasion of the one juror who attempted to bring the jury to a not-guilty verdict.

Atticus loses the trial, but—because he is the same man in and out of court, before his children and before the town and jury—he wins the mind of one juror, one citizen, and one neighbor to his side of the issue. Atticus’s integrity, an integrity incompatible with the passionate, ever-changing persuasion of the Ciceronian orator, changes one citizen and thereby makes Maycomb that much closer to a just society. Nonetheless, as advocates, as officers of the court, and as citizens, we are left asking whether this is enough. The answer that each individual gives to this question dictates their rhetorical choices and the extent to which they find the courage not only to admire but also to emulate the Attic rhetoric of Atticus Finch.

This interpretation is further confirmed by consideration of Lee’s own literary choices in the style of *To Kill a Mockingbird*. This novel adopts so restrained—so Attic—a style of rhetoric that one might be tempted to dismiss it as an important contribution to justice. But, like Atticus, Lee used this rhetorical style to win slow, long-term gains. In her case, generations of schoolchildren have been persuaded to adopt one pivotal idea: that all humans ought to be equal before the law. Lee forwarded this moderate (but essential) proposition without raising her literary voice, without invective, and in rational language equally well suited to children and adults. The moderation of her rhetoric ought not to blind us to the inestimable importance of winning the minds of future voting citizens to beliefs foundational to basic rights (and therefore to even greater strides). Indeed, the moderate nature of her rhetoric, far from being a sign of weakness, ought to be understood for the powerful tool that she showed it to be: Lee won over and continues to win over her fellow citizen without polarizing, preserving the potential for friendship and community—prerequisites for rational discourse and future persuasion between citizens. Not least of all, her hero—Atticus Finch—has inspired generations of lawyers to be better advocates, officers of the court, and citizens.

²⁴¹ *Id.* at 274–75.

²⁴² *Id.* at 297–98.

²⁴³ *Id.*

²⁴⁴ *Id.*

CONCLUSION

Finding the origin of Atticus's name does more than solve the mystery of the hero's unusual title. Atticus Finch's Attic rhetoric is key to understanding how he so inspiringly fulfills an attorney's ethical obligations while retaining his own self-respect. It provides the logic underpinning Lee's many descriptions of Atticus's words and demeanor so that Atticus's position as a model attorney can be more justly reevaluated. As an attorney, Atticus is "a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice." His Attic example demonstrates the mutual compatibility of these constituent elements of an attorney's identity. Similarly, Atticus's speech allows him to harmonize the duties of honesty and integrity that coexist with the duties of zealous advocacy for his client. As an individual, the integrity dictated by his Attic approach to speech enables him to navigate treacherous times without sacrificing his conscience to practical expediency. Atticus's speech shows us how all this is possible. Never overwhelming the intellect of his listener with passionate appeal, reasoning honestly and equally with all, and humbly offering his client (and his children and neighbors) the benefit of his razor-sharp intelligence, Atticus's Attic rhetoric is the answer to many seeming quandaries about the ethical boundaries of the lawyer's life.

Cicero and Hume dismissed the Attic orator's logic as relatively weak, recommending instead reliance on the orator's ability to play skillfully on the passions of the audience. But Atticus reveals that Attic orators are necessary if the judiciary is to function as intended: as a rational dispute-resolution process. Atticus thereby serves as a role model for those attorneys who wish to pursue the common good with honesty and integrity. Even-toned Atticus thus provides a healthy counterpoint to the profession's fears of ethical incoherence. His Attic rhetoric offers us a path to issue-focused, rational, and respectful dialogue between adversaries.