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COMMENT ON STEVEN LUBET, *RECONSTRUCTING ATTICUS FINCH*

Rob Atkinson*

Professor Lubet has joined a growing list of revisionists who question Atticus's standing as the paragon of lawyerly virtue.¹ But Professor Lubet takes revisionism in a distinctly postmodern direction, if not to a radically new level. Atticus's previous critics have wondered how he could have overlooked, perhaps even condoned, the pervasive racism, sexism, and classism of the Depression-era South. They have even occasionally censured his paternalism toward his pro bono client, the working-class black rape defendant Tom Robinson. But they have never questioned either Tom's claim of innocence or the propriety of Atticus's advocacy of that claim. Professor Lubet questions both.

Early on, he asks, "What if Mayella Ewell [the accusing witness] was telling the truth? What if she really was raped (or nearly raped) by Tom Robinson? What do we think then of Atticus Finch?"² Professor Lubet suggests we may — indeed, should — interpret the story so that Mayella and her father are not so evil, nor Tom so pure, nor Atticus so wise as they appear to be — as, indeed, both Scout, the narrator, and Lee, the author, would have us believe they are. He cites textual evidence in support of this admittedly novel reading,³ but I can return no better than a Scots' verdict: not proved. Unreliable narrators and inconsistent perspectives are, of course, standard features of sophisticated fiction and film. But Lee gives us no hint of Scout's being anything other than right about Tom Robinson's innocence and Atticus's wisdom. *To Kill a Mockingbird*, Pulitzer Prize and Academy Awards notwithstanding, is no *Rashomon*.⁴ Contrary to Lubet's suggestion, there are not three accounts (Scout's, Tom's, and Mayella's), each plausi-

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1. For a representative sampling of revisionist thinking, see *Symposium, To Kill a Mockingbird*, 45 ALA. L. REV. 389 (1994). The earliest and most sympathetic, but also arguably the most perceptive Atticus critic is Thomas L. Shaffer. See THOMAS L. SHAFFER & MARY M. SHAFFER, *AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION passim* (1991).

2. Steven Lubet, *Reconstructing Atticus Finch*, 97 MICH. L. REV. 1339, 1340 (1999).

3. See *id.* at 208-11.

4. *RASHOMON* (RKO Radio Pictures, Inc. 1952).

bly vying for the reader's credence.⁵ There are only two, Tom's truth and Mayella's lie, each revealed to us for precisely what it is by a virtually omniscient, firm but fair father through the eyes of an innocent child, all in open court.

Professor Lubet's answer to such text-based skepticism about Mayella's testimony is an invitation to rewrite the book in the name of "responsible reading," unbound by, if not indifferent to, the author's obvious intent.⁶ If we cannot believe the characters as they appear in the story, if they strike us as stock figures or stereotypes,⁷ then we should revise the story to suit ourselves, to better fit our take on normative and descriptive reality external to the story. That approach may have many modern — more properly speaking, post-modern — defenders; I am emphatically not among them.

My preference⁸ is a very different approach. Let's take the story on its own terms and wonder why we, as a culture, particularly a legal culture, have been so willing, for so long, to believe in something so childishly simplistic: a satisfied, subservient Black — literally and figuratively a "Tom" — is abused by congenitally and incorrigibly evil white trash, only to be rescued by a rustivating, classics-reading, glasses-wearing but (literally!) straight-shooting father-who-knows-best. If Lubet were right — if Tom were guilty or Atticus mistaken, if there were even any question on either point — Harper Lee's open love letter to her father would be a much more complex and morally challenging book.

But it isn't.⁹ And that isn't as much a criticism of its characters, or even their creator, as it is of us. Harper Lee has given us the Gospel According to Atticus in the words of his chief disciple. Scout, as Professor Lubet implies, seems a thinly veiled stand-in for Lee herself.¹⁰ But we are the ones who have included her story in our canon and who continue to work and worship Atticus's golden image. I suspect — indeed, I have argued at length¹¹ — that we polish that image so earnestly because we see ourselves reflected in it so exactly. Lubet says that readers overlook the flaws in Lee's

5. See Lubet, *supra* note 2, at 1341-45.

6. *Id.* at 1346.

7. See *id.* at 1355 (describing Atticus, Tom, and Mayella as "didactic characters, almost stick-figures").

8. I choose "my preference" for the full force of its subjectivity; I deeply share the "post-modern" doubt that I can invoke any objective standard dispositively to prove my approach is better than Professor Lubet's, aesthetically or ethically.

9. In moments of more conventional, less postmodern criticism, Lubet himself says as much. See Lubet, *supra* note 2, at 1355. ("We know, of course, what Harper Lee intended, and the flaws in Tom's defense are really just weaknesses in the author's storytelling.")

10. See *id.* at 1346.

11. See Rob Atkinson, *Lawyers and Liberation: Diverging Parallels in To Kill a Mockingbird and Intruder in the Dust*, 49 DUKE L.J. (forthcoming Dec. 1999).

narrative because they “are anxious for Tom’s vindication.”¹² True enough — but we are the readers, and we are also anxious that our role model do the vindicating, and thus vindicate us, too.¹³ As Professor Lubet points out, Harper Lee knew her audience well;¹⁴ the makers and marketers of icons invariably do. True prophets seldom present as lovely an image of their compatriots, and they are seldom as loved in their own countries.¹⁵

12. Lubet, *supra* note 2, at 1355.

13. Lubet makes almost precisely this point at the outset, only to subordinate it to his theme that Atticus may not “really” be as good as he seems. *See id.* at 1340 (“So Atticus Finch saves us by providing a moral archetype, by reflecting nobility upon us But what if Atticus is not an icon?”). To paraphrase (and pun) Shakespeare’s Cassius in *The Tragedy of Julius Caesar*, the fault lies not in our star, but in ourselves.

14. *See* Lubet, *supra* note 2, at 1355.

15. In the words of the Gospels, “A prophet is not without honour, but in his own country, and among his own kin, and in his own house.” *Mark* 6:4 (King James); *see also Matthew* 13:57; *John* 4:44.