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MORAL ICONS: A COMMENT ON STEVEN LUBET'S *RECONSTRUCTING ATTICUS FINCH*

*William H. Simon**

Atticus Finch's conduct would have been justified by the bar's conventional norms even if he had known Tom Robinson to be guilty. That fact, however, is not the source of the admiration for him that *To Kill a Mockingbird* has induced in so many readers. That admiration depends on the clear premise of the novel that Finch plausibly believes that Tom Robinson is innocent. Thus, the bar's invocation of Finch as a sympathetic illustration of its norms is misleading. The ethics of the novel are quite different from those of the bar.

Steven Lubet does a good job of showing that the novel's ethics are somewhat out of step with contemporary liberal sentiment. In order to be confident of Robinson's innocence, we have to take for granted aspects of Harper Lee's portrayal of his accusers that today smack of gender and class bias. I differ somewhat with Lubet over the significance of this failing for ethical discussion in two respects.

First, if we treat the novel as a professional responsibility hypothetical, then I think Finch's conduct is ethically plausible — not just in terms of the bar's norms, but in terms of the more ambitious conceptions of justice that the novel and Lubet invoke — as long as he had any doubts about Robinson's guilt. Unless Finch knew for certain that Mayella Ewell was testifying truthfully, he would have viewed his cross-examination as an effort to test her credibility (or if he was certain she was lying, to expose her). Yes, he did traumatize and humiliate her. This is a major injury, and in many situations it might be unconscionable to inflict it. But in 1930s Alabama, an accusation of rape by a white woman against a black man was tantamount to a demand for the man's death. Even a truthful rape victim should understand that the stakes in this situation warrant efforts that may be painful to her to assure the soundness of the verdict.

Second, if we treat the novel as a depiction of an exemplary moral figure, my strongest objection is more general than the one Lubet raises. Lubet doesn't like it that Lee reduces her villains to "stereotypes." On the other hand, his principal disappointment is

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that she fails to make Finch into a fully consistent stereotype (“icon”) of virtue. Up until the ending of the novel, Lee clearly tries to do this, and her effort no longer succeeds for the reasons Lubet mentions. But there is a serious question as to whether icons of virtue are what we should look for in novels. Uncomplicated goodness is what romantic and escapist fiction offer us. More ambitious novels give us more complex, less perfect role models. Romantic fiction can inspire us, but it can also make us smug and unreflective. Ambitious fiction is less intoxicating in its inspiration, but it urges us to confront a broader range of experience.

There is one point in *To Kill a Mockingbird* where the novel starts to cross the boundary between romantic and ambitious fiction. This is at the very end, which is curiously ignored by those who invoke the book on behalf of conventional professional norms. The ending is the only point at which Atticus is portrayed as less than perfect. He loses an argument with the sheriff, and he collaborates on a project which today could only be called “obstruction of justice.” He agrees with the sheriff to encourage the children to lie about Bob Ewell’s death to make it appear an accident, when in fact, they think Finch’s son has killed him. The killing was clear self-defense, but the sheriff’s point is that the local system of justice has not proven itself so reliable that it can be trusted to vindicate him. Here is a portrayal of virtue that is intentionally complex (unlike the trial, where the complexity Lubet explicates is unintentional). Our role model was initially wrong (for resisting the sheriff’s plan), even now is not certain he’s doing the right thing, and is doing something that, though it seems likely to be the right thing, involves violation of the law. This tentative and compromised kind of virtue seems more interesting, and the portrayal of it more valuable, than the iconic virtue Finch has heretofore shown because it seems the only kind possible in many of the most morally compelling situations lawyers face in life.