April 10, 2012

Atticus Finch Looks At Fifty

Michael L. Boyer
Atticus Finch Looks at Fifty
Michael L. Boyer

Introduction:

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

---

3 To Kill a Mockingbird (United Artists 1962) (motion picture).
however, Atticus may offer a new generation of lawyers an economic--rather than moral or ethical--model for professionalism.

**Major Themes in the Atticus Scholarly Debate 1960 to Present: The Polarity: Hero or Hypocrite**

The legal and literary scholarship related to Atticus multiplies each time the literary character is re-evaluated. The name “Atticus Finch” plugged into a legal database retrieves numerous law review articles. As Professor Steven Lubet comments on Atticus, “no real-life lawyer has done more for the self-image or public perception of the legal profession than the hero of Harper Lee's novel.”

Prior to the 1990’s Atticus’ stock remained relatively high. However, the 1990’s saw some harsh re-evaluation of the literary icon with two camps beginning to form. Critics, particularly Professor Monroe Freidman of Hofstra Law School, highlighted Atticus’ faults while supporters such as Professor Thomas Shaffer of Notre Dame Law School and Professor Timothy Hall of The University of Mississippi Law School generally viewed it as unfair to judge Atticus by contemporary standards. These two camps essentially diverged on whether Atticus could serve as a model for the legal profession. Atticus even acted as Rorschach Test for the profession. That highly regarded legal scholars could differ so markedly on their readings of Atticus revealed as much about the uncertainty about the role the legal professional in America as it did about the literary character.

---

The debate continued in the mid-1990’s with the most geographically apt law journal, The University of Alabama, offering a balanced portrait of the varying views on Atticus. And the 1990’s closed with a bang for Atticus scholarship. Professor Steven Lubet’s *Reconstructing Atticus Finch* remained deferential to Atticus, but began to deconstruct some of the moral issues and ask questions of the text and reader that cast shadows on the ideals and standards of Atticus; moreover, we saw articles line up along two broad themes, either deferential to the notion of Atticus as a professional model or skeptical of using Atticus as an ethical roadmap. By the end of the decade, getting in the last word in the Atticus decade of debate, Professor Rob Atkinson wrote an in-depth, article that was—at almost 150 pages—perhaps the deepest probe into Atticus and the legal profession, a probe that also offered a more challenging literary text for the legal profession to use for self examination. Moreover, much of the literary scholarship (that has become too vast to cover) across the decade focuses on the legal aspects of the case,

---


12 See Rob Atkinson, *Liberating Lawyers: Divergent Parallels in Intruder in the Dust and To Kill a Mockingbird*, 49 Duke L.J. 601-747 (1999); See also Robert W. Mayhue, Jr., *Crisis of Conscience: Lessons Learned from Legal Literature Through an Analysis of to Kill a Mockingbird and Intruder in the Dust*, 46 S.D. L. Rev. 813 (2001);
so law and literature intersect a great deal in the Atticus Finch studies, revealing a larger interest in the ethical role of lawyers in society.13

The new century would mark some follow-up articles in the major veins or along established paths. However, some promising new themes emerged in narrative theory, race, gender, and other areas.14 But the question remained--was Atticus a moral model or ethical cautionary tale? The fervent debate seems to have subsided; the two parties agreeing to disagree or moving on to new literary icons for the legal profession, perhaps one from William Faulkner (as Professor Atkinson suggests) or one from contemporary legal fiction and film devised by John Grisham. There was not consensus on the exact place for Atticus in the ethical typology of literary lawyers, but in retrospect there was a growing sense that revisiting the literary lawyer and the path of Atticus scholarship was a fruitful, producing profound question about legal ethics and the legal profession. Indeed, at the eve of his 50th anniversary, the debate has attracted the attention of some of the most widely published thinkers, producing increasing more nuanced and insightful readings of Atticus.

13 See, e.g., Claudia Johnson, The Secret Court of Men’s Hearts: Code and Law in Harper Lee’s To Kill a Mockingbird, 19(2) Stud. Am. Fiction 129 (1991); Joseph Crespino, The Strange Career of Atticus Finch, 6 (2) Southern Cultures 9 (2000); Tim Dare, Lawyers Ethics and To Kill a Mockingbird, 25 Phil. & Lit. 127 (2001); Christopher Metress, The Rise and Fall of Atticus Finch, 24 (1) Chattahoochee Rev. 95 (2003). While there is a surprising interest in the legal elements and ethical issues faced by Atticus among literary and humanities scholars, the specific questions about the legal profession as embodied (or disembodied) by Atticus are led most prominently by the legal scholarship and the focus this article.

Through Atticus, we can also read about much more than a profession as he can yield insights about a time, a place, and a political culture. Just as the era of Civil Rights dawned on the South, Atticus Finch captured the literary mind perhaps in some way aiding the portion of the movement that needed to take place in the mind. Atticus gave us the lessons, or rather as a Reader-Response critic might allude—he highlighted something in our collective conscience, a quest for social justice, a rationale for change, the struggle of lonely reason against an unstoppable mob of prejudice taking place inside so many. The country had trials and protests in their psyches and their streets and schools. From a situational perspective, Atticus fit the needs for a legal role model perfectly for the 1960’s, 1970’s and by the 1980’s and especially 1990’s had his use as a model for the legal profession dimmed. However, it was a model of Atticus as a paternalistic but enlightened southern gentleman that became wore out, one Atkinson calls s “father-knows-best” model.\footnote{See Rob Atkinson, Liberating Lawyers: Divergent Parallels in Intruder in the Dust and To Kill a Mockingbird, 49 Duke L.J. 601-747 (1999).} Indeed, Atticus was a part of the system and his model of the condescending WASP is perhaps as completely out of place as our great grandparent’s norms and mores. His racial cosmology is inapplicable to post multicultural, post Obama America immersed in a global economy. One of the most widely published contemporary thinkers, Malcolm Gladwell, even chimed in on the fictional lawyer as his fifth decade of literary life approached. Gladwell offers the nuanced, historical perspective linking Atticus to closely to the political culture of Alabama at the time, aligning Atticus with 1950's era governor Jim Folsum, a highly nuanced examination of complexities of politics in the 1950's south with trajectories around race, localism, and "small cliques of power brokers, known as a "court
ring." 16

Gladwell explains that Atticus was a product of the gradual, paternalistic politics of the era; he was not a liberal activist; his goal was to accommodate more than reform. 17

There is less need for racial intermediaries today, people who are part of the establishment system, yet visionary enough to offer some bridge divides between races. There are areas, however, where Atticus does still offer a model for leadership, untapped veins most useful for the making into the currency of ideas and needs of the legal profession today.

**A Moral Stalemate Leads to Other Interpretive**

Even at fifty Atticus continues to attract the attention of the intelligentsia of America; despite the consistent attention, the larger debate about race and justice may have crowded out other valuable insights. One of the more poignant cross-disciplinary looks at Atticus' moral compass--one citing works from both the literary and legal debate about the fictional lawyer--is Professor Metress' piece from the Chattahoochie Review. If there were a judge's scorecard at the end of the Atticus debate in the scholarly literature, it might be a draw, split decision, or a "moral stalemate." The Professor Metress notes that perhaps the enigma of Atticus rests in the precise vein that has begun to be mined in legal scholarship and cites Eric J. Sundquist as noting "the novel [is] something of an historical relic,' . . . [and] that the work is an 'icon whose emotive sway remains strangely powerful because it also remains unexamined.'" In the end, Sundquist avers Atticus is a moral stalemate. However, as we learn in the first semester of civil procedure class, there are often multiple issues any case, and deciding just one does not bar further inquiry into

---


17 *Id.*
the others. That racial justice has been fully debated in the literature does not bar readers from exploring other issues. Issues like economic justice, for example, stand as one of the major issues facing the profession today. As a moral example on racial justice in the American South, Atticus may have been adjudicated a draw--neither an ethical ideal nor substantially ethically challenged.\textsuperscript{18} He was a well intentioned but flawed. Perhaps, if we were to delve into authorial intent, this was by design, and Harper Lee gave Atticus longevity by making him real.\textsuperscript{19} Moreover, as the character made the silver screen, we are left with what one author called the "greatest film hero of all time, more popular than Indiana Jones, and even Butch Cassidy and the Sundance Kid."\textsuperscript{20} Harper Lee notes her goal was more universal than a single theme, aiming to write: "a novel of man's conscience . . . [about] [w]hat makes human beings act as they do. . . .," giving depth to

\textsuperscript{18} See generally, Golden, Leon, trans. \textit{Aristotle's Poetics} New Jersey: Prentice-Hall, 1967: The tragic hero, according to Aristotle, is one "between these extremes . . . a person who is neither perfect in virtue and justice, nor one who falls into misfortune through vice and depravity, but rather, one who succumbs through some miscalculation." A trait, at least from as early as Aristotle, to be key in our literary and dramatic characters so that we can relate to them, engage and even experience catharsis. A perfect or depraved Atticus would not have made the American literary canon.

\textsuperscript{19} See generally, Madden, Kerry, \textit{Up Close: Harper Lee}. New York: Viking, 2009: This book aimed at youthful readers eschews the academe's disdain for authorial intent in literary criticism and note the similarities between some of the characters in to \textit{To Kill A Mockingbird} and Harper's Lee's hometown of Monroeville, Alabama was close enough to even bring threats of "defamation," and prompted towns people to call her father Atticus and he even began to sign the books simply, "Atticus."

\textsuperscript{20} See Bill Haltom, \textit{A Fateful Casting Call}, Tennessee Bar Journal, Feb. 2007 34-35. Haltom also notes the improbable genesis of Atticus Finch. Harper Lee dropped out of the University of Alabama Law School in her final semester. She worked as an airline ticket agent by day and wrote by night. Her "one and only novel" won a Pulitzer and became a classic motion picture. Also, Universal Studios wanted Rock Hudson to play Atticus (and according to Charles J. Shields' biography, the studio also likely preferred Doris Day as Scout, Ron Howard as Jim, and Don Knotts as Boo Radley). Clearly, this cast could have altered the moral tenor and emotional intensity of the film, impacting its place in the serious debate about the legal profession and race in America.
the character beyond a single topic. We have a character based more on legal realism than legal idealism, yet may makes Atticus more, and not less, relevant.

**Back to The Future 2011: Atticus Enters the DeLorean & Finds His Relevancy**

Brought forward to 2011, Atticus would smile on a country that would not only hesitate to kill Tom Robbins, it has even demonstrated a capacity to elect him President of the United States of America. While racial inequality still exists, what Atticus might find most problematic the vast disparities in rich and poor and lack of access to the justice system by lower income Americans of all races. This line of thought and interpretation of Atticus was actually explored in two early 1990’s articles by Professor (and past American Bar Association President 1991-1992) Talbot D’Alember. However, the trail of scholarship positing Atticus as an economic or pro bono role model for the legal profession was lost or overshadowed by the primary ethical debate regarding race and justice. Perhaps Atticus is still a model of economic justice, a genus and species of role

21 See Madden *infra*, n. 19 at p. 127-128.
22 See, e.g., the DNA project freeing (how many African Americans on DNA evidence); but see Texas death row (web site)…
23 The notion of an African American—President Barack Obama—holding the highest political office in the land would have seemed remote or impossible in the depression era South where the novel was set.
model most in need today as lawyers face increasing market and economic pressures, practicing in a "flat world," a highly competitive global economy.\(^\text{26}\)

**Atticus Finches 21\textsuperscript{st} Century Agenda:**

Most scholarly attention paid to the fictional lawyer from Harper Lee’s 1960 classic *To Kill A Mockingbird* revolves around the timeless (and interrelated) themes of racial injustice and coming of age in the American South. However, less obvious to the general reader (and less studied by legal scholars) are the profound lessons about economics, pro bono work and professionalism tucked squarely away in the novel. Atticus Finch may be a plausible professional role model because his overall actions and economic motivations within the novel cohere with the historical and social role that professionals played in society; that role is the pursuit of the public interest and equality in the distribution of services and not personal profit. In the next fifty years, Atticus may be more a role model based on poverty lawyer than criminal law or champion of racial justice.

One Man Maycomb LSC Office: Textual Evidence for Atticus’ Role as a Poverty Lawyer

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

27 See, generally, http://www.lsc.gov/about/lsc.php Legal Services Corporation: LSC is the single largest provider of civil legal aid for the poor in the nation. Established in 1974, LSC operates as an independent 501(c)(3) nonprofit corporation that promotes equal access to justice and provides grants for high-quality civil legal assistance to low-income Americans. LSC distributes more than 95 percent of its total funding to 136 independent nonprofit legal aid programs with more than 900 offices that provide legal assistance to low-income individuals and families throughout the nation. LSC promotes equal access to justice by awarding grants to legal services providers through a competitive grants process; conducting compliance reviews and program visits to oversee program quality and compliance with statutory and regulatory requirements as well as restrictions that accompany LSC funding; and by providing training and technical assistance to programs. LSC encourages programs to leverage limited resources by partnering and collaborating with other funders of civil legal aid, including state and local governments, IOLTA, access to justice commissions, the private bar, philanthropic foundations, and the business community.

support for Atticus’ role as a poverty lawyer; moreover, this aspect of Atticus Finch may be as meaningful as his courageous criminal defense of Tom Robinson.

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

“Walter Cunningham’s face told everybody in the first grade he had hookworms. His absence of shoes told us how he got them. People caught hookworms going barefooted in barnyards and hog wallows. If Walter had owned any shoes he would have worn them the first day of school... ‘Did you forget your lunch this morning?’ asked Miss Caroline... Miss Caroline went to her desk and opened her purse. ‘Here’s a quarter,’ she said to Walter. ‘Go and eat downtown today. You can pay me back tomorrow’... Walter shook his head. “Nome thank you ma’am, he drawled softly. Impatience crept into Miss Caroline’s voice: “Here Walter, come get it.” Walter shook his head again. When Walter shook his head a third time someone whispered, ‘Go on and tell her, Scout.’... [Scout] rose graciously on Walter’s behalf: ‘Ah--Miss Caroline?’... he’s a Cunningham...”

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

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

---

33 Id. at 20: “The Cunninghams never took anything they can’t pay back—no church baskets and no scrip stamps. They never took anything off of anybody, they get along on what they have. They don’t have much, but they get along on it.”
34 Id. at 20
This is our textual introduction to Atticus the poverty lawyer and an example of professionalism. Atticus is offering professional services without regard to a timely cash payment. Scout inquired further of Atticus:

I asked Atticus if Mr. Cunningham would ever pay us. ‘Not in money,’ Atticus said, “but before the year’s out I’ll have been paid. You watch.” We watched. One morning Jem and I found a load of stovewood in the back yard. Later, a sack of hickory nuts appeared on the back steps. With Christmas came a crate of smilax and holly. That spring when we found a crokersack full of turnip greens, Atticus said Mr. Cunningham had more than paid him.35

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

‘Why does he pay you like that?’ [Scout] asked. ‘Because that’s the only way he can pay me. He has no money. ‘Are we poor, Atticus?’ Atticus nodded, ‘We are indeed.’ Jem’s nose wrinkled, “‘Are we as poor as the Cunninghams?’ ‘Not exactly. The Cunninghams are country folks, farmers, and the crash hit them hardest.’ Atticus said professional people were poor because the farmers were poor. As Maycomb County was farm country, nickels and dimes were hard to come by for doctors and dentists and lawyers . . . As the Cunninghams had no money to pay a lawyer, they simply paid us with what they had. ‘Did you know,’ said Atticus, ‘that Dr. Reynolds works the same way? He charges some folks a bushel of potatoes for delivery of a baby . . . .’36

Atticus follows in the historic tradition of a profession, defined as a learned calling pursued in the public interest.37 He is not motivated solely by financial gain, and the value of his services is not always expressed in dollars.38 Rather, by serving the needs

35 Id. at 20-21.
36 Id. at 21.

38 The type of payment a lawyer would accept has also been examined in the historical context. See, e.g., Clement Eaton, A Mirror of the Southern Colonial Lawyer: The Fee
of the poor farmers, Atticus revealed his adherence to the core elements of a true profession: “holding out to the public the offer of public service.” 39 His sliding scale for payment allows the client to retain their integrity and serve the larger role of the professional in the community. Atticus serves as an ethical and professional guide star for all lawyers; informed readers can’t overlook the nexus between serving the economically disadvantaged and professionalism evident in the text.

III. A Brief History of Professions: The Vestigal Moral Limbs of Lawyers

Discussions about the legal profession and the ethical responsibilities of lawyers often take place in the context of model rules, case law or ethics opinions, all very important practical rules that a lawyer must follow to avoid sanctions. However, the historical roots of professions are an important part of the ethical framework often overlooked in the commentary on the legal profession. This contextual deficiency in the discourse on professions and professional responsibility leaves us with a somewhat distorted picture because the practical rules of professional ethics actually make much more sense when viewed in the historical context. The rise and fall of the medieval guilds, for instance, is essential to understanding professional ethics today.

Books of Patrick Henry, Thomas Jefferson, And Waightstill Avery, 8 William & Mary Quarterly (Third Series) 520-034 (1951) in Dennis R. Nolan, Readings in the History of the American Legal Profession, pp. 61-69 (1980). Interestingly, “Jefferson criticized Henry for greed in exacting fees from his clients. . . Henry’s account books refute these charges . . .” Notably “Patrick Henry often received his fees in kind, such as “one hogshead of tobacco,” “sundries, pepper, Rhubarb, 2 doz. pipes” “a silver watch” “credit at a country store” “one barren cow,” 10 gallons of peach brandy” 1 pair breeches”.

39 Peter Wright, What is a Profession? 29 Canadian Bar Review 748, 752-57 (1951) in Dennis R. Nolan (ed), Readings in the History of The American Legal Profession, (1980
Our modern professions can be traced directly to the “guilds of the Middle ages and Renaissance.” Medieval guilds were groups of skilled workers organized by occupation; the guilds operated through a hierarchy based on seniority and skill. Masters ran the guild and set the standards for acceptance into the guild; beginners were apprentices; and journeymen were those who had completed their apprenticeship but were not yet masters. The guilds were self regulated and financed by membership fees. Guilds set standards, levied fines against members, and settled disputes. They also took on amazing power and influence in the Middle Ages. Guilds rose in power due in part to their control over the means of production. The various guilds held almost total control of the workshops, tools and knowledge vital to the technology of the Middle Ages, a factor that also allowed for control of the quality of craftsmanship. This increase in power led to increased in wages and prestige. In many cases, the guilds held enough power to convince many towns to grant the guilds a monopoly status. The result was that the guilds challenged the existing social structure, and everyday artisans of the guilds competed with the landed elite and royalty for wealth and social status.

The axiom that power corrupts held true, however, and many guilds became corrupt and abandoned the principles that had allowed them to thrive. By the 17th century,

42 Id.
43 Id.
44 Id.
45 Id.
46 Id.
47 Id.
guild masters engaged in self-dealing and granted their own sons special routes towards becoming masters in the guild.\textsuperscript{48} Guild masters also began to hire non-guild workers, and in so doing they could undercut other guilds by paying less, all serious offenses in the self-regulating guild system. Guild corruption gave birth to competition among guilds and capitalism took hold in medieval society.\textsuperscript{49} The guilds power eroded, and soon the free market--not the guilds--determined the allocation of resources. But in the rising tide of early capitalism, one guild did survive: the scholar’s guild associated with early European universities. This guild was composed of professors (masters) and their students (apprentices), and it weathered the rise of capitalism because it was well insulated from market forces.\textsuperscript{50} Today our universities retain many of the characteristics of medieval guilds including lifetime tenure, faculty governance, a self-regulating disciplinary system, and specialized educational and knowledge requirements.\textsuperscript{51} In addition, the professions of law, medicine, clergy, and teaching were spawned in the protective university guilds and retain many ancient guild characteristics today.

The “professions” thus were sheltered from capitalism in the religious universities and took on a notably spiritual dimension. The word “profession” stems form the Latin \textit{profession-em} which meant a “declaration, promise, or vow made by one entering a religious order; any solemn declaration promise or vow.”\textsuperscript{52} The most common context for such a declaration was the vow in the religious context (vows of poverty, chastity, etc.), but the concept of a vow is applicable to other professions as well: “the semantic linkage

\textsuperscript{48} Id.
\textsuperscript{49} Id.
\textsuperscript{50} Id.
\textsuperscript{51} However, the rise of modern, for-profit, online education run by corporations without fixed faculty pose a major threat to the modern university.
\textsuperscript{52} Oxford English Dictionary 1427 (1987).
was established because, at various stages in their academic career, the students in these secular disciplines had to take oaths of loyalty to the church doctrine, to the discipline of the university, and to the ethics of the learned occupation.” 53 Today, the priesthood, law and medicine still entail taking an oath before admission, and both retain a number of guild-like traits. However, today our professions—especially law and medicine—no longer remain sheltered from the storms of capitalism and market forces. Large commercial law firms act as adjuncts to business enterprises, and for-profit Health Maintenance Organizations (HMOs) dominate the landscape for professional medical services. Medical and legal fees have skyrocketed astronomically and professionals command salaries comparable to business leaders. For profit universities now make billions of dollars as publicly traded companies. Altruistic behavior is exception to the rule in the professional services marketplace. It is becoming increasingly difficult to find real life professionals like Atticus Finches and Dr. Reynolds.54

IV. Definitions of a Profession and Poverty Law

Definitions of a “profession” vary widely across disciplines and cultures.55 In addition, there is a popular notion that a professional is just someone who is not an amateur. The term “profession” carries with it a host of denotations as well as connotations. First, there is the legal definition of a profession and the concomitant

53 Polelle, supra note 40, at 211-212.
54 To be fair, today’s professionals also face enormous malpractice liability risks (thus costly malpractice insurance premiums), mounting educational debts, and rampant competition. They’re not in mid-century Maycomb County anymore.
55 See, eg., Herbert M. Kritzer, The Professions are Dead, Long Live The Professions: Legal Practice in the Postprofessional World, 33 LSOCR 713, 716-20 (1999). Professor Kritzer outlines various conceptions of professions, cites relevant historical and sociological works, and looks across national settings.
standard of care. This represents the ethical minimum that a professional must achieve to avoid legal liability. Second, there is the more inspiring definition of what professionals should strive to be—based partly on historical, social and philosophical factors; we might call this the aspirational definition. How we define “profession” is telling because it determines what actions or course of conduct will warrant the distinction. For example, there no legal requirement professionals serve the poor, so one could work solely for profit and legally be a professional. However, public interest or pro bono work is a customary trait of the aspirational definition of a profession, without which there can be no profession in the traditional sense.

A. The Legal Definition of Professional: An Ethical Floor

The legal definition of a profession today encompasses many more groups than those spawned by the original university guild. What is considered a profession today is based more on shared characteristics than any rigid requirement that one be a member of a given profession like law or medicine. Courts and society have fairly unanimously held the following are professions: doctors, dentists, lawyers, educators, clergy, engineers, architects, accountants, veterinarians, and psychiatrists. However, courts vary when it comes to other fields. Whether those in certain areas—like social workers,

\[56\] See Polelle, supra note 40, at 207: What is or isn’t considered a profession --and the requisite standard of care—is not a purely academic question. The question is of great practical importance in tort cases. If an occupation is considered a profession, a reasonable professional standard (rather than a reasonable person standard) of care governs the case. In addition, “a malpractice plaintiff must normally find another professional to establish, as an expert witness at trial, what the peer negligence standard was in a particular case and whether it was breached.”

\[57\] See, e.g., Polelle, supra note 40 at 212-213. Educators will pleased to note that, although education has always been held to be a profession, courts have been unwilling to allow claims for educational malpractice.
counselors and nurses--are legally treated as professionals depends upon the law of the relevant jurisdiction.\textsuperscript{58} In addition, there is some disagreement between and even within states as to whether paraprofessionals, who generally work under professionals, (like paralegals, veterinary assistants, dental hygienists) should fall inside or outside the professional umbrella. What is legally considered a “profession” varies substantially across the United States.” This is due to “”varying, inconsistent and frequently conflicting methods of analysis for determining which occupations merit protections . . .”\textsuperscript{59} The Restatement (Second) of Torts does not distinguish clearly between a trade and profession.\textsuperscript{60} There are some clear distinctions, however. For example, doctors and lawyers are held to a professional standard of conduct in any jurisdiction in the country. The discussion of legal liability for professionals can be distracting because the professional standard required to avoid legal liability is an ethical minimum.\textsuperscript{61} Professionals should strive to do more than stay out of court. Beyond the narrow context of a malpractice action, the definition of a profession has more important philosophical and social importance. There are thing professionals should aspire towards, namely serving the poor and the public interest.

\textsuperscript{58} Courts and legislatures across the country vary widely. See Polelle, \textit{supra} note 40, at 215-229. Professor Polelle surveyed the bewildering legal landscape of what is or isn’t legally a “profession” in American law. The landscape is not any clearer today. In \textit{John’s Heating Service. v. Lamb}, 46 P3d. 1024 (2002), the Alaska Supreme Court held a heater repairman was a professional and malpractice actions could be pursued against the learned trades and further blurring the distinction between trades and professions.\textsuperscript{59} Polelle, \textit{supra}, note 40 at 212.\textsuperscript{60} See Restatement (Second) of Torts 299. (1977).\textsuperscript{61} This is odd considering that most scholarly work on the legal profession is about “staying out of trouble.” The required course in law school on the legal profession is about codes, cases, canons, and rules. The emphasis is on “what not to do” and avoiding lawsuits and sanctions. There is much room for discussion of what professionals “ought to do.”
B. Becoming Atticus: The Aspirational Definitions of a Profession & the Ethical Ceiling of Public Service

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

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

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

3) Training & Education: The third element, according to Wright, is training and education. The education requirement ensures competence and protects society, but it also underscores an implicit clause in the social contract between professionals and society. It could be argued that professionals who possess the benefit of specialized

---

63 Id.
64 Id. at 9.
65 Id. at 9.
66 Id. at 10.
education (which is often state-subsidized) owe a corresponding duty of public service to society.

4) **State Recognition:** The fourth element of a profession is state recognition of a group or the granting of an exclusive privilege to a group.\(^6^7\) But Wright notes that governments also recognize and grant privileges to all sorts of occupations that may not be professions. For example, notary, hairdresser, and day care worker require licenses but are not be “professions.” \(^6^8\) State recognition also has another aspect related to the social contract theme. Professions granted a license by the state often secure a monopoly for members of that profession on a particular service in the state. Therefore, professionals may owe some duty to the public in exchange for the valuable monopoly granted to them by the state.

5) **Self-Disciplined:** The fifth element of a profession is the self-disciplined group,” or self regulated entity. \(^6^9\) The requirements for admission and sanctions for professional misconduct are generally governed by the profession itself. This is a signal that the profession’s standards exceed or are in addition to those required by law.

6) **Motivations Beyond Personal Gain.** Motivations beyond personal gain are the sixth and probably most important element of a profession.\(^7^0\) According to Wright, such

\(^{6^7}\) *Id.* at 11.

\(^{6^8}\) The implication here is not that those outside the traditional professions use substandard skill; the term profession is used here simply to denote a special class that has increased responsibilities to the public interest beyond profit in delivering their services.

\(^{6^9}\) *Id.* at 11

\(^{7^0}\) *Id.* at 12
lofty motivations are “the touchstone of the true profession and truly professional life.” 71

He writes:

There must be a measure of unselfishness or freedom from purely personal considerations. For a calling to be a profession, it must have an unselfishness aspect of public service. For persons to be professional men and women they must be governed by moving considerations other than those of personal advantage. Wright says of the “priest, doctor, the lawyer, the teacher, the social worker, the soldier . . .,” [t]he “main purpuse of their calling is not themselves or their pay.”72

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

Even in 1951, Peter Wright foresaw this threat to professions:

“[t]he modern age is a commercial age. Its values are measured in money . . . the future of a profession depends upon how its members face this arid and pervasive assessment of a [life’s] work. If in the secret hearts of its members, they know that they pursue their profession not for what they get out of it but first for the service of others, it can be a true profession. The sincerity of the fellow workers in a profession is the best security for its status.” 73

71 Id. at 12
72 Id. at 12.
73 Id. at 12.
This observation was prescient, for today the most pressing dilemmas in the professions stem from the flood of money into the professions. This is why a professional example, even a literary one like Atticus, is so important.

V. Atticus Finch, the Definition Professionalism, and Equality:

Atticus Finch met the elements of a profession, especially the most important factor—“Motivations Beyond Personal Gain.” The unselfishness in accepting non-cash fees was emblematic of the greater purpose of the representation. Atticus’ motivations went far beyond collecting a fee, and the story offers support for this proposition.

Regarding the plight of Mr. Cunningham, Atticus explained:

Entailment was only a part of Mr. Cunningham’s vexations. The acres not entailed were mortgaged to the hilt, and the little cash he made went to interest. If he held his mouth right, Mr. Cunningham could get a WPA job, but his land would go to ruin if he left it, and he was willing to go hungry to keep his land and vote as he pleased. Mr. Cunningham, said Atticus, came from a set breed of men. As the Cunningham’s had no money to pay a lawyer, they simply paid us with what they had.74

Atticus is empathetic and his motivations run deeper than any fee he might receive. He understands the perspective of the client and the larger interests at stake. He sees the role of his services in saving more than a heavily mortgaged farm. Atticus knows his client could take a government job but would have to sacrifice his land and personal and political independence. Perhaps he also sees the social and economic consequences that would flow from uprooting the Cunninghams and others like them, that the rural economy would suffer and a way of life could end. Atticus tailors the fee to the client in order to serve the greater goal of preserving the independence and livelihood of the

74 Lee, supra note 2, at 21.
client. The in-kind payments of firewood and nuts seem a touching afterthought, a secondary motivation for the rendering professional services. Peter Wright’s article is again instructive:

We call ourselves a learned profession. The difference between a trade and a profession is that the trader frankly carries on his business primarily for the sake of pecuniary profit, while the members of a profession profess an art, their skill in which they no doubt place at the public service for remuneration, adequate or inadequate, but which is truly an end in itself. The professional man finds his highest rewards in his sense of mastery of his subject, in the absorbing interest of the pursuit of knowledge for its own sake, and in the contribution which, by reason of his attainments, he can make to the promotion of the general welfare.\textsuperscript{75}

Atticus Finches’ work was marked by clear professionalism because his services were not measured or motivated by pecuniary rewards alone, and there are many who follow in a similar tradition today. Those engaged in the areas of law falling under the umbrella of public interest law, for example, follow in this tradition of professionalism as do those engaged in \textit{pro bono} work.\textsuperscript{76} The lack of economic incentive leads one to conclude a strong sense of altruism and a desire to work in the public interest motivate those who practice poverty law, making them the real life Atticus Finches.

\textbf{VII. Conclusion: “If You Want To Help Your Fellow Man . . . Start With What’s In Your Hand”}\textsuperscript{77}

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{75} Wright, supra note 35, 10-11. Here Wright quotes Lord Macmillan who, in an address to Scottish law agents on “Law and History,” aptly explains the concept of a profession in terms of the professional’s goals and motivations:
\item \textsuperscript{76} Poverty lawyers, generally, can be defined as those who work on behalf of low-income client and, more specifically, working for a Legal Services Corporation (LSC) funded entities.
\item \textsuperscript{77} Yusuf Islam (formerly Cat Stevens) \textit{In The End}, on Another Cup (Atlantic, 2006), also reminding us in melody of larger karmic truths “everything little thing you do, you know it comes back to you . . . you can’t bargain with the truth . . . you’re gonna’ know the real score in the end.”
\end{itemize}
\end{footnotesize}
Atticus is a fictional embodiment of professionalism remarkable in the legal culture of America. That he may have been a public interest lawyer is of great symbolic significance. There are few literary examples of poverty lawyers, and also a limited number of practitioners who embody those traits. Today, for example, one would be hard pressed to get legal in exchange for a sack of nuts. Yet our society needs professionals like Atticus Finch. The gap between rich and poor is growing in America, and we risk having a system in which lawyers only serve one class. An insightful article by Professor David Luban explores the facts related to the funding and availability of legal services for the poor. Professor Luban effectively debunks “[o]ne of America’s persistent myths . . . that the rich get richer, the poor get lawyers and the middle class gets squeezed.”

Professor Luban writes:

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

---

78 But see, e.g., John Grisham, The Street Lawyer (1999) in which the protagonist leaves a big law firm and generous salary and finds himself immersed in poverty as well as other intrigue. The theme of an escape from the large corporate firm to more meaningful work is becoming more common. As the protagonist is told: "You don't do it for the money. You do it for your soul." The Michael Brocks may be the Atticus models for the next generation of lawyers.

79 David Luban, Four Ways the Law Keeps Poor People from Getting Heard in Court, Legal Affairs May-June 2002, page 54.

80 Id. at 54.

81 Id. at 54.
The logistical factors alone—one legal aid lawyer per 10,000 poor in America—make it clear that “most people who can’t afford a lawyer can’t get one.” The ratio of legal aid lawyers to potential clients is just one factor. Geography, language, and education barriers are others factors that can preclude the poor from receiving free legal services. Despite these barriers, legal-aid lawyers diligently serve the nation’s poor every year, and, perhaps just as important, they keep the light of hope and possibility lit. The poor at least have some opportunity to access to the legal system. Without poverty lawyers, millions of Americans would simply be forced to forfeit their legal rights or—worse—be forced to take matters into their own hands.

Our society is changing rapidly, and some scholars posit that we are entering a post-professional era. But poverty law will likely remain a professional niche that holds true to the ancient historical, social, and philosophical dimensions of a profession. The picture for the legal profession at large remains mixed. Just as the craft guilds gave into commercialization and lost control of their specialized goods, legal professionals are slowly losing control of their specialized services. Lawyers themselves may be partly responsible for this change. By focusing on income and exclusivity, the legal profession priced vast majority of Americans out of the market. However, the ideal Atticus still exists. Pro bono efforts are being emphasized more strongly than ever by state and national bar associations, and such efforts may be crucial to the profession’s survival.

---

82 Id. at 54
83 Herbert M. Kritzer, The Professions are Dead, Long Live the Professions: Legal Practice in a Postprofessional World, 33 LSOCR 713, 716-20 (1999).
84 Id.
85 See, e.g., Lawrence M. Friedman, The History of American Law, 634-660 (1985). The bar in the US has historically adapted in order to “resist conversion of the profession into a ‘mere’ business or trade.” For example, the “bar association movement” in the 1870’s
The Legal Services Corporation (LSC), founded as a vital aspect of Lyndon Johnson’s war on poverty, has survived several decades of attacks, and the regional organizations funded by LSC continue to be bastions of professionalism that often attract top notch lawyers.\textsuperscript{86} There are still many places to pursue a legal profession in the truest sense, places where the ghost of Atticus Finch haunts the law office and literary imagination of tomorrow’s practitioners.

\textsuperscript{86} See J. Dwight Yoder, \textit{Justice or Injustice for the Poor?: A Look at the Constitutionality of Congressional Restrictions on Legal Services}, 6 WMMMBRJ 827 (1998)