

**WOMEN IN LITIGATION LITERATURE: THE  
EXONERATION OF MAYELLA EWELL IN *TO KILL A  
MOCKINGBIRD***

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I. INTRODUCTION

Mayella Violet Ewell did not receive a fair trial. Of course, certainly neither did Tom Robinson, who should never have been convicted.<sup>1</sup> And although Mayella, herself, was not technically on trial,

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1. Judge Royal Furgeson, *The Jury in to Kill a Mockingbird: What Went Wrong?*, 73 TEX. B.J. 488, 488 (2010) (“Scout’s description confirms what history tells us about the composition of juries at that time: All white, all men. I believe it was this lack of diversity that prevented the *Mockingbird* jury from providing Tom Robinson with his guaranteed right to a fair trial ‘by an

this essay argues that she has been maligned unfairly as the primary malefactor in the courtroom, whereas she—like Tom—should also be seen as a victim of multiple societal failures. In contrast with many other critiques of the book, this essay focuses upon Mayella's ordeal in *To Kill a Mockingbird*,<sup>2</sup> particularly from her perspective as a victim of domestic violence and sexual abuse by her father and the willingness of the legal system and society as a whole to turn a blind eye to her situation.<sup>3</sup>

Written by Harper Lee and published in 1960, this novel is often seen as a children's coming-of-age saga<sup>4</sup> or as a commentary on racial injustice in the South in the 1930s.<sup>5</sup> To provide a brief summary, the story is narrated by an adult looking back upon a three-year period of her childhood through her eyes as an elementary school girl, nicknamed Scout, who recounts various encounters with people in her town of Maycomb, Alabama in the 1930s. Scout, her brother Jem, and their friend Dill are fascinated with a recluse called "Boo," Arthur Radley, who lives down the street, and with whom the children develop a tacit relationship. Under the non-confining guidance of their father, Atticus Finch, and African-American housekeeper, Calpurnia, the children

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*impartial jury of the State.'").*

2. HARPER LEE, *TO KILL A MOCKINGBIRD* (1960).

3. See generally Iris Halpern, *Rape, Incest, and Harper Lee's To Kill a Mockingbird: On Alabama's Legal Construction of Gender and Sexuality in the Context of Racial Subordination*, 18 COLUM. J. GENDER & L. 743, 745 (2009) (describing Lee's "condemnation of southern mores regarding femininity and sexuality").

4. Kristin Huston, *The Lawyer as Savior: What Literature Says About the Attorney's Role in Redemption*, 73 UMKC L. REV. 161, 176 (2004) ("*To Kill A Mockingbird* is the coming of age story of Jem and Scout Finch. They are raised, after their mother's untimely death, by their father, Atticus, and a cook, Calpurnia."). See also Gregory J. Sullivan, *Children Into Men: Lawyers and the Law in Three Novels*, 37 CATH. LAW. 29, 36 (1996) ("Set during the 1930s in Maycomb County, Alabama, *To Kill a Mockingbird* traces the coming of age of Jem and Scout Finch, the son and daughter of Atticus Finch, a lawyer and representative in the state legislature who is revered in the community. Roughly the first third of the book depicts scenes of youthful tranquility in a small Southern town. But there are darker aspects and they come to the fore when Atticus defends a black man, Tom Robinson, against an accusation of rape by a white woman, Mayella Ewell.").

5. Emily Richardson, *Lawyers Were Children Once: An Ethical Approach to Strengthening Child Abuse and Neglect Legislation*, 31 J. LEGAL PROF. 357, 357 n. 1 (2007), citing Charles Lamb, *Epigraph to HARPER LEE, TO KILL A MOCKINGBIRD* (Harper & Row 1960) ("Atticus Finch, an attorney in Lee's novel about racial injustice in a small Southern town, agrees to defend Tom Robinson, a black man falsely accused of raping a white woman. The story is told through the perspective of Atticus' daughter Scout, which underscores the vulnerability of children to adults' prejudices and actions."). Robert Gerard, *Aloha for Lawyers-Aloha and Mahalo Atticus Finch*, 45-NOV ORANGE COUNTY LAW. 4, 4 (2003) ("It is hard to imagine that any of us practicing law has not been touched in some way by lawyer Atticus Finch from Harper Lee's 1960 novel *To Kill a Mockingbird*. Of course, it wasn't just Atticus Finch that jumped off the pages of this poignant masterpiece about racial injustice in the 1930s in the Deep South that touched us.").

interact with their neighbors, the independent and open-minded Maudie Atkinson, the gossiping Stephanie Crawford, and the cantankerous yet fiercely brave Mrs. Dubose. Scout, Jem, and Dill are exposed to society's racism and other injustices through the trial of Tom Robinson, and African-American man who was wrongly accused of raping Mayella Ewell. Atticus Finch, the lawyer who defended Tom Robinson, faced significant disapprobation from the bigoted people of Maycomb, including his sister—the children's Aunt Alexandra, who comes to live with them during the period of the trial—for his concerted attempt to secure an acquittal. Although Tom was convicted and then killed by guards in prison while awaiting his appeal, Bob Ewell—Mayella's brutally abusive father who forced her falsely to accuse Tom—sought revenge against Atticus by attempting to murder Scout and Jem. Arthur Radley saved the children, in the process killing Bob Ewell with a kitchen knife. Atticus eventually agreed with the sheriff to deem it a self-inflicted wound, so as not to draw Boo aversely into the limelight.

As indicated above, this essay explores numerous factors constraining Mayella Ewell's actions throughout the novel, particularly with respect to her false accusation of Tom Robinson. Some of the forces bearing down on Mayella include class, gender, race, history, morality, as well as familial, social, and legal dynamics. The jury's verdict convicting Tom Robinson of rape indicates that Mayella received a much more favorable outcome in the trial than she merited.<sup>6</sup> Depictions of Mayella within analyses of the novel have portrayed her in an unfavorable light.<sup>7</sup> However, this essay encourages the reader to dig

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6. Rebecca H. Best, "Panopticism and the Use of "the Other" in *To Kill a Mockingbird*," *The Mississippi Quarterly*, 541 at 547 (Summer-Fall 2009) ("Tom's pity and the racial hierarchy of the 1930s South enable Mayella to scapegoat Tom *with impunity*." (emphasis added).

7. See, e.g., Michele S. Ware, "*Just a Lady*": *Gender and Power in Harper Lee's To Kill a Mockingbird (1960)*, in *WOMEN IN LITERATURE: READING THROUGH THE LENS OF GENDER*, 286, 287 (Jerilyn Fisher & Ellen S. Silber eds., Greenwood Press, 2003) ("Mayella Ewell, who has unjustly accused Tom Robinson of rape, takes the stand and reveals her vicious racism, her ignorance, and the barren poverty of her existence."); MARY MCDONAGH MURPHY, *SCOUT, ATTICUS, AND BOO: A CELEBRATION OF TO KILL A MOCKINGBIRD* 98 (HarperCollins Publishers, 2010) ("Except for the white-trash villains, everybody in the town is sort of good or trying to be."). This vitriolic description of the Ewell family undoubtedly includes Mayella. See also Jochem Riesthuis, *Symbolic Justice: Reading Symbolism in Harper Lee's To Kill a Mockingbird*, in *HARPER LEE'S TO KILL A MOCKINGBIRD: NEW ESSAYS*, 160, 169, (Michael J. Meyer ed., Scarecrow Press, 2010) ("The Ewells are the classic villains of *To Kill a Mockingbird*, with Mayella Ewell as Tom Robinson's accuser"). Jacqueline Tavernier-Courbin, *Humor and Humanity in To Kill a Mockingbird*, in *ON HARPER LEE: ESSAYS AND REFLECTIONS*, 41-42, (Alice Hall Petry ed., University of Tennessee Press 2007) ("Through his cross-examination of the Ewells, his exposure of their lies, their deep ignorance and stupidity, one is able to laugh at them, even if not the monstrosity of their crime, and to view them as both evil and pitiful."); *id.* at 54 (Mayella "and her

more deeply into the assumptions one must make about justice, fairness, and the law as applied to Mayella's circumstances before rendering judgment in her case.<sup>8</sup> Part II of this essay argues that the *de facto* and *de jure* discrimination against women during that time period, both in society and under the law, exonerates Mayella from the charges laid against her in the novel and instead lays the blame squarely at the feet, not only of Bob Ewell, but also of society and the remarkably gender-biased legal system of that time. Part III of the essay then briefly addresses various legal themes as they relate to Mayella's exoneration, such as revenge, justice, process, advocacy, punishment, order, and change.<sup>9</sup> The conclusion highlights that this reexamination of *To Kill a Mockingbird* is intended to foster an increased understanding of women facing violence within the home today. Although, thankfully, much has changed in our current law and society with respect to violence against women, significant challenges remain. Hopefully this essay will encourage readers to further reflect upon and take action to address the obstacles that women living in violent family situations continue to face.<sup>10</sup>

## II. MAYELLA'S TRIAL AND EXONERATION

What was Mayella's trial in *To Kill a Mockingbird*? One might assume it was a "he said/she said" trial about who was making advances upon whom on the evening of Nov. 21, 1934, and what was the outcome of such advances. If the jury believed (or *wanted* to believe) Mayella's

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family are shiftless, ignorant, and contemptible."). Richard Armstrong, "The World in a Fresh Light: *To Kill A Mockingbird*," 35 *Australian Screen Education*, 84, 87 (Winter 2004) ("Whilst the film illustrates Atticus and Scout's relatively affluent family life, we must infer from the court proceedings that Ewell sexually abuses Mayella and beats her when he is drunk. If Mayella is a gibbering idiot, Scout is a well-adjusted little girl, vindicating the liberal democratic ideal of a sensible diet, lots of affection, and a rounded education. One suspects that nobody ever called Mayella 'young lady.'").

8. One commentator has noted that "In its way Mayella Ewell's story is as poignant as Tom Robinson's." Jean Frantz Blackall, *Valorizing the Commonplace: Harper Lee's Response to Jane Austen*, in *ON HARPER LEE: ESSAYS AND REFLECTIONS*, 19 27, (Alice Hall Petry ed., University of Tennessee Press 2007).

9. The bifurcation of this article between the analysis of Mayella's situation in Part II and the relationship between her role and various legal themes in Part III is based upon the original structure of the paper written for a seminar called Legal Themes in Literature taught by Professor William Causey at Georgetown Law.

10. See generally the materials provided by Futures Without Violence at <http://www.futureswithoutviolence.org/>; the National Coalition Against Domestic Violence at <http://www.ncadv.org/>; and the U.S. Department of Justice's Office of Violence Against Women at <http://www.ovv.usdoj.gov/>.

story, they would convict Tom of rape.<sup>11</sup> If they believed Tom's story, they would acquit him. I would assert that Mayella was just as much on trial as Tom and that she potentially faced equally severe consequences.<sup>12</sup> Atticus Finch painted Mayella as a defendant—as “guilty”—first, of breaking the “rigid and time-honored code” prohibiting a white woman from kissing a black man; and second, of trying to “destroy the evidence of her offense,” Tom Robinson.<sup>13</sup> Both of these “offenses” warrant further examination.

The first charge, that Mayella broke the “rigid and time-honored code”<sup>14</sup> prohibiting a white woman from kissing a black man, is in line with numerous laws in place throughout much of the history of the United States forbidding sexual relationships among different races and especially between white women and men belonging to any other racial group.<sup>15</sup> Miss Gates, Scout's school teacher who had taught the students how wrong it was for Hitler to persecute Jews, then turns around and

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11. Ware, *supra* note 7, at 288 (“the all-white jury finds him guilty despite evidence to the contrary”).

12. The novel alludes to the brutal beatings to which her father will subject Mayella as a result of the trial. LEE, *supra* note 2, at 292-293 (referring to Bob Ewell's outrage at the outcome of the trial, Atticus Finch noted that “if spitting in my face and threatening me saved Mayella Ewell one extra beating, that's something I'll gladly take.”). Since domestic violence often escalates to murder, Mayella could potentially be facing death at the hands of her father. The book never indicates how Mayella's mother died, and considering all the circumstances (e.g., his flip comment about the mother's death, which also implied that he subjected her to physical abuse), one could reasonably infer that Bob Ewell may have had something to do with her death as well. LEE, *supra* note 2, at 230 (in response to a question as to whether he is Mayella's father, he replied: “Well, if I ain't I can't do nothing about it now, her ma's dead.” Considering the context portrayed throughout the novel, one could interpret this as implying that he would beat his wife, and perhaps that his violence had contributed to her demise).

13. LEE, *supra* note 2, at 271-72. (“The defendant is not guilty, but somebody in this courtroom is. I have nothing but pity in my heart for the chief witness for the state, but my pity does not extend so far as to her putting a man's life at stake, which she has done in an effort to get rid of her own guilt. I say guilt, gentlemen, because it was guilt that motivated her. She has committed no crime, she has merely broken a rigid and time-honored code of our society, a code so severe that whoever breaks it is hounded from our midst as unfit to live with. . .”).

14. LEE, *supra* note 2, at 271-72.

15. See, e.g., *Loving v. Virginia*, 388 U.S. 1 (1967), a landmark case in which the U.S. Supreme Court invalidated a statute prohibiting interracial marriage and provided a history of anti-miscegenation statutes. See also Ware, *supra* note 7, at 288 (“During the trial, it is clear to everyone that Mayella Ewell is lying, that she has accused Tom Robinson of rape to mask her own social crime of desire for a Black man.”). Tracy Lemaster, “Influence and Intertextuality in Arundhati Roy and Harper Lee,” vol. 56, no. 4, *Modern Fiction Studies*, 788, 794 (Winter 2010) (“Such an attraction from a woman to a man of a lesser social stratum threatens a stable definition of citizen and the circumscribed parameters of women's political and sexual power. . . a white woman's sexual advances toward a black man. . . threaten laws of full citizenship. . . Interracial mixing would subvert the segregation laws of *Mockingbird's* era.”). See generally, Halpern, *supra* note 3.

displays herself as a prime example of intolerance of interracial relationships<sup>16</sup>—an irony that was not lost on Scout.<sup>17</sup> In response to this allegation against Mayella, I posit that she is guilty of nothing because the historical social code forbidding interracial relationships is—itself—morally bankrupt. Concededly, she could be considered to be guilty of making advances toward a *married* man, which in my view should be considered to be a breach of morality and of acceptable social conduct (yet one not worthy of legal intrusion).<sup>18</sup> Yet Atticus does not focus on the fact that Tom is a married man but instead hones in on the fact that he is black and she is white, and this racial distinction is the factor that condemns her overtures.<sup>19</sup>

Perhaps another implied breach is that she, as a woman, was making the romantic advances, which is contrary to traditional gender roles, where man is the pursuer (the subject, the subjugator) and woman the pursued (the object, the objectified).<sup>20</sup> This implied breach is yet another indication of discrimination against women based upon societal and legal reinforcement of gender stereotypes.<sup>21</sup> A woman as the sexual

16. LEE, *supra* note 2, at 331 (“it’s time somebody taught ‘em a lesson, they were gettin’ way above themselves, an’ the next thing they think they can do is marry us.”). *See also*, *Loving v. Virginia*, 388 U.S. 1 (1967). Surely this issue was highlighted in public discussions in the years leading up to the decision, and would undoubtedly have influenced Harper Lee’s treatment of the subject in her 1961 novel.

17. LEE, *supra* note 2, at 331 (“how can you hate Hitler so bad an’ then turn around a be ugly about folks right at home—”).

18. Laura Fine, *Structuring the Narrator’s Rebellion in To Kill a Mockingbird*, in *ON HARPER LEE: ESSAYS AND REFLECTIONS*, 63, 70 (Alice Hall Petry ed., University of Tennessee Press, 2007) (“Tom should be off limits to her as an object of desire simply because he is married.”). Note here, too, a gender-based double-standard. Society allows men considerable leeway with sexual indiscretions, which is perhaps the reason that the fact that Tom was married was not seen as important. However, if the gender roles were reversed and a married woman had been kissed by another man, I would guess that the reaction would have been considerably different.

19. Angela Shaw-Thornburg, *On Reading To Kill a Mockingbird Fifty Years Later*, in *HARPER LEE’S TO KILL A MOCKINGBIRD: NEW ESSAYS*, 113, 121 (Michael J. Meyer ed., Scarecrow Press 2010) (“When acting of her own volition, Mayella violates racial taboos by touching the body of a black man in an intimate way.”).

20. Malcolm Gladwell, *The Courthouse Ring: Atticus Finch and the Limits of Southern Liberalism*, in *HARPER LEE’S TO KILL A MOCKINGBIRD: NEW ESSAYS*, 57, 62 (Michael J. Meyer ed., Scarecrow Press 2010) (“Mayella plotted for a year, saving her pennies so she could clear the house of her siblings. Then she lay in wait for Robinson, in the fervent hope that he would come by that morning. ‘She knew full well the enormity of her offense,’ Finch tells the jury, in his summation, ‘but because her desires were stronger than the code she was breaking, she persisted in breaking it.’ For a woman to be portrayed as a sexual aggressor in the Jim Crow South was a devastating charge.”).

21. Fine, *supra* note 18, at 63 (“As for the church, the main lesson Scout learns when she goes with Calpurnia to attend a black service is that the negative appraisal of women is shared by white and black churches alike. . . . ‘Again, as I had often met it in my own church, I was confronted with the Impurity of Women doctrine that seemed to preoccupy all clergymen.’ [LEE, *supra* note 2,

aggressor steps outside her traditional gender role and is taboo;<sup>22</sup> such a situation cannot be accepted (or believed to be true) by “polite society,” such as that in Maycomb.<sup>23</sup>

The fact that Atticus seems to endorse his community’s anti-miscegenation (and arguably gender-stereotyped) tendencies is quite troubling.<sup>24</sup> Perhaps it is understandable in light of the timeframe in which the story is set and even the timeframe during which the novel was written, if Harper Lee intended the story to be realistic.<sup>25</sup> After all, could Atticus be so much of a civil rights advocate that he would throw off all trappings of racism and approve of interracial relationships, and yet still remain believable as an upstanding citizen of Maycomb in the

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at 162] Here Scout makes casual mention of the fact that the Church, the structure of society that is supposed to shape the morals and values of its congregation, takes as a given that women are evil. The denigration of women cuts across racial lines, and no one in Maycomb besides Scout even seems to notice.”). The paragraph leading up to this quotation indicates that in Calpurnia’s church, the pastor’s “sermon was a forthright denunciation of sin, an austere declaration of the motto on the wall behind him: he warned his flock against the evils of heady brews, gambling, and strange women. Bootleggers caused enough trouble in the Quarters, but women were worse.” LEE, *supra* note 2, at 162. See also LEE, *supra* note 2, at 59 (Maudie Atkinson, Scout’s neighbor who was an independent-minded widow, explained to Scout why members of a certain religious community disliked her: “Thing is, foot-washers think women are a sin by definition. They take the Bible literally, you know.”).

22. LEE, *supra* note 2, at 106 (suggesting that parents are concerned about possible sexual transgressions of daughters but not of sons; for example, in the house at Finch’s Landing, “There were six bedrooms upstairs, four for the eight female children, one for Welcome Finch, the sole son, and one for visiting relatives. Simple enough; but the daughters’ rooms could be reached only by one staircase, Welcome’s room and the guestroom only by another. The Daughters’ Staircase was in the ground-floor bedroom of their parents, so Simon [their father] always knew the hours of his daughters’ nocturnal comings and goings.”). See also, Donna I. Dennis, *Obscenity Law and Its Consequences in Mid-Nineteenth-Century America*, 16 COLUM. J. GENDER & L. 43, 48 (2007) (discussing a publication that “sought to profit from legal prohibitions on female eroticism by disseminating forbidden stories of independent, sexually assertive women to mail-order customers throughout the United States.”)

23. Shaw-Thornburg, *supra* note 19, at 121 (Mayella’s “advances toward Tom are also violations of gendered norms for working-class women, in that she is figured as an aggressor as opposed to being the passive recipient of sexual aggression.”).

24. John Carlos Rowe, *Racism, Fetishism, and the Gift Economy in To Kill a Mockingbird*, in ON HARPER LEE: ESSAYS AND REFLECTIONS, 1, 12, (Alice Hall Petry ed., University of Tennessee Press 2007) (“Mayella’s lie that she asked Tom to break up that ‘chiffarobe’ on this occasion covers up the fact that she invited him into the house to express her sexual desire for him, threatening the southern white taboo against miscegenation.”).

25. Halpern, *supra* note 3, at 750 (“Lee integrates . . . experiential occurrences of race relations into her writing. The characters and plot of her story reference such tragedies as the murder of Emmett Till, a fourteen-year-old African American boy who was viciously mutilated in 1955 for allegedly insulting a white woman. Also alluded to are the horrific Scottsboro trials, where nine illiterate black youths charged with raping two white women received such inadequate legal protections that the Supreme Court reversed and remanded their convictions and death sentences for due process violations, likening the prior proceedings to mob justice.”) (footnotes omitted).

1930s? Perhaps not. Harper Lee was certainly sympathetic to interracial relationships as she portrayed Dolphus Raymond and his loving relationship with the African-American woman with whom he is living and their children quite compassionately.<sup>26</sup> Thus, she must have construed Atticus' biases deliberately.<sup>27</sup>

Perhaps Atticus did not oppose interracial relationships (or women being assertive), but was only playing upon the jury's prejudices as a courtroom tactic. Acknowledging that blame must be meted out by the jurors, perhaps he argued that they must attribute the blame to Mayella for her "unspeakable"<sup>28</sup> conduct in embracing a black man, whereas he would not truly have attributed blame to her, himself. However, that idea goes against the statement made several times in the story that Atticus is the same man at home as he is on the public street, and he is the same in the public street as he is in the courtroom.<sup>29</sup> If so, would he intentionally fan the flames of a manifestation of racism (and sexism)—that he in truth opposed—in support of his client's cause?

I think not. Instead, I believe that Harper Lee is highlighting here the double-standard applied to women and men when it comes to interracial sexual relationships. Dolphus Raymond gets a pass from society, not only because he pretends to be an alcoholic, but primarily because he is a wealthy white man with a black woman, instead of being a poor white woman with a black man.<sup>30</sup> A white woman with a black man is the graver breach of accepted societal norms in large part because women were considered to "belong" to their fathers and to have little agency of their own.<sup>31</sup> A dutiful daughter only married a man who had

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26. See LEE, *supra* note 2, at 214-16, 267-69. See also Riesthuis, *supra* note 6, at 170-172.

27. Teresa Godwin Phelps, *The Margins of Maycomb: A Rereading of To Kill a Mockingbird*, 45 ALA. L. REV. 511, 525 (1994) ("Mayella's sad life is treated in a similar fashion. Atticus uses her narration about her home life to build his case that Mayella enticed Tom Robinson onto the property. Atticus's compassion for Mayella seems feigned and unconvincing and any concern for the Ewell children is completely absent.").

28. LEE, *supra* note 2, at 272.

29. LEE, *supra* note 2, at 61 (in a conversation with her neighbor Maudie Atkinson, Scout remarks that "'Atticus don't ever do anything to Jem and me in the house that he don't do in the yard,' I said, feeling it my duty to defend my parent. 'Gracious child, I was raveling a thread, wasn't even thinking about your father, but now that I am I'll say this: Atticus Finch is the same in his house as he is on the public streets.'"); and at 266 (Scout noted that "'He's the same in the courtroom as he is on the public streets.'").

30. Interestingly, Scout speculated that the difference between Dolphus and Mayella was that he was a wealthy landowner with a respectable background—she did not mention the gender difference between the two. LEE, *supra* note 2, at 257 ("she didn't own a riverbank and she wasn't from a fine old family").

31. The family's (i.e., the male patriarch's) honor was at stake (regarding the daughter's chastity and respectable marriage), as well as his possession, as wives and daughters were legally



gained the approval of her father—the suitor asked *the father* for her hand in marriage, and her father then gave her away in marriage to her husband, as if women were objects to be passed between men.<sup>32</sup> Of course, black women were considered as belonging to their fathers as well, but as between a black father and a white suitor, the white male would invariably prevail (e.g., Dolphus Raymond) under the legal (and other power) systems that were in place at the time.<sup>33</sup> Note that Atticus used the phrase “our women” when refuting “the evil assumption . . . that all Negro men are not to be trusted around our women.”<sup>34</sup> Here the

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considered to be part of a man’s belongings in the not-too-distant past. See Linda Martin Pybas, *The Pig Farmer’s Daughter and Other Tales of American Justice: Episodes of Racism and Sexism in the Courts from 1865 to the Present* by Mary Francis Berry, 1 U. MD. L.J. RACE RELIG. GENDER & CLASS 169, 178 (2001) (reviewing MARY FRANCIS BERRY, *THE PIG FARMER’S DAUGHTER AND OTHER TALES OF AMERICAN JUSTICE: EPISODES OF RACISM AND SEXISM IN THE COURTS FROM 1865 TO THE PRESENT*) (1999). (“Berry notes that in the 1800s the compelling narrative emphasized the protection of ‘the virtue of respectable females,’ the family reputation, and a woman’s continuing eligibility for marriage (‘fallen’ women were no longer marriage material). [*Id.*, quoting MARY FRANCIS BERRY, *THE PIG FARMER’S DAUGHTER AND OTHER TALES OF AMERICAN JUSTICE: EPISODES OF RACISM AND SEXISM IN THE COURTS FROM 1865 TO THE PRESENT* 127-28, 135-37 (1999).] Historically, the woman’s father or husband could bring suit against the alleged seducer for damages to his ‘property.’”) (citations omitted). See also Major Jennifer S. Knies, *Two Steps Forward, One Step Back: Why the New UCMJ’s Rape Law Missed the Mark and How an Affirmative Consent Statute Will Put It Back on Target*, 2007 AUG ARMY LAW. 1, 10 (2007) (“The historic approach to rape as a crime against the father’s or husband’s property has shaped the theory of the law, and remnants of that legacy remain. . . . The crime of rape has been punished throughout history, but it was traditionally a crime against the legal interests of fathers and husbands. For example, Mosaic law codified the rights of a father over his daughter as property. The rape of a daughter, especially a virgin daughter, was viewed as theft from the father because it lowered her monetary value for marriage.”) (citations omitted).

32. LEE, *supra* note 2, at 55 (referencing women as property of their husbands, Scout recounted that Dill “had asked me earlier in the summer to marry him, then he promptly forgot about it. He staked me out, marked as his property, said I was the only girl he would ever love, then he neglected me. I beat him up twice but it did no good, he only grew closer to Jem. . . . I kept aloof from their more foolhardy schemes for a while, and on pain of being called a girl, I spent most of the remaining twilights that summer sitting with Miss Maudie Atkinson on her front porch.” In keeping with her tomboy persona and her propensity for reversing gender roles, Scout “beat up” Dill, highlighting with irony the reversal of husbands abusing wives and the fact that she did not want to be seen as “a girl.”).

33. This double-standard infected rape laws as well, as white men were rarely convicted of raping black women. See, Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139, 157-158 (1989) (“Rape statutes generally do not reflect *male* control over *female* sexuality, but *white* male regulation of *white* female sexuality. Historically, there has been absolutely no institutional effort to regulate Black female chastity. Courts in some states had gone so far as to instruct juries that, unlike white women, Black women were not presumed to be chaste. Also, while it was true that the attempt to regulate the sexuality of white women placed unchaste women outside the law’s protection, racism restored a fallen white woman’s chastity where the alleged assailant was a Black man. No such restoration was available to Black women.”).

34. LEE, *supra* note 2, at 273.

adjective “our” could be interpreted both in the descriptive sense as meaning that the women are white women as opposed to black women and in the possessive sense as meaning that the women are possessions of the men. This reinforces the author’s message about the gender-biased double-standard.

In light of the foregoing, I suggest that Mayella was wrongly charged by Atticus—as well as by her father, society, and the legal system—for her advances toward Tom, at least for the wrong reasons (racial status instead of marital status) and with inappropriate outcomes (both parental and governmental interference).<sup>35</sup> Reacting to his stumbling upon Mayella’s embrace of Tom, Bob Ewell lunges in brutally to eliminate such conduct.<sup>36</sup> His stance opposing his white daughter’s attraction to a black man is legally reinforced by the judicial system—indeed, by Atticus himself, however reluctant he may be.<sup>37</sup> However, his angst appears more to be centered on the fact that she has been abused rather than other gender-discrimination and racial-discrimination issues.<sup>38</sup> In today’s society and legal system, I would

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35. Katie Rose Guest Pryal, *Walking in Another’s Skin: Failure of Empathy in To Kill a Mockingbird*, in HARPER LEE’S TO KILL A MOCKINGBIRD: NEW ESSAYS, 174, 184 (Michael J. Meyer ed., Scarecrow Press 2010) (“Clearly, Mayella’s life is depressing, nearly horrifying. . . With this description, Atticus hopes to show that, because her life is so horrible, it is plausible that Mayella Ewell, although white, would have tried to seduce Tom Robinson. Thus, the evidence about the Ewells that Atticus puts before the jury is primarily designed to disconnect, to squash empathy between the jurors and the accusers.”).

36. LEE, *supra* note 2, at 260 (According to Tom Robinson’s testimony, when Bob Ewell looked through the window and saw Mayella’s advances toward Tom, her father yelled: “you god-damn whore, I’ll kill ya.”); and at 223 (Sheriff Tate explained that he “‘Found her lying on the floor in the middle of the front room. . . She was pretty well beat up’—obviously Bob Ewell had not bothered to help her before running to get the sheriff, but had left her lying unconscious on the floor); and at 251 (in his cross examination of Mayella, Atticus asked “‘who beat you up? Tom Robinson or your father,” to which Mayella gave no answer); and at 272 (noting Mayella’s embrace of Tom, in his closing argument Atticus indicated that “‘Her father saw it, and the defendant has testified as to his remarks. What did her father do? We don’t know, but there is circumstantial evidence to indicate that Mayella Ewell was beaten savagely by someone who led almost exclusively with his left” whereas it came out earlier in the trial that Tom’s left arm was incapacitated by an injury when he was young, and that Bob Ewell is left-handed.).

37. Malcolm Gladwell, “The Courthouse Ring,” vol. 85, iss. 24, *New Yorker*, 26, 31 (August 10, 2009) (“When the defense insinuates that Mayella is the victim of incest at the hands of her father, it is not to make her a sympathetic figure. It is, in the eugenicist spirit of the times, to impugn her credibility . . . The victim, coming from the same inferior stock, would likely share her father’s moral character. ‘I won’t try to scare you for a while,’ Finch says, when he begins his cross-examination of Mayella. Then he adds, with polite menace, ‘Not yet.’ Finch wants his white, male jurors to do the right thing. But as a good Jim Crow liberal he dare not challenge the foundations of their privilege. Instead, Finch does what lawyers for black men did in those days. He encourages them to swap one of their prejudices for another.”).

38. LEE, *supra* note 2, at 251 (during the cross examination, Atticus asked Mayella “‘What did your father see in the window, the crime of rape or the best defense to it? Why don’t you tell

hope that such a charge would no longer be made, but I am afraid that this sentiment may still be a bit too optimistic.<sup>39</sup>

Mayella's second transgression, according to Atticus, was trying to "destroy the evidence of her offense,"<sup>40</sup> Tom Robinson, by fabricating a story about what had happened. Reviewers of the novel have assumed that Mayella bore at least some responsibility for the fabrication, as well as her father.<sup>41</sup> However, I would argue that guilt requires agency (meaning that she must be capable of free will, of acting on her own without coercion), and Mayella unquestionably was *not* a free agent, although she is often portrayed as such.<sup>42</sup> She was dominated and controlled by her father and was frequently subject to his beatings, sexual assaults, neglect, and other forms of abuse.<sup>43</sup> Laws forbidding violence against women and children were practically nonexistent at the time, permitting men to engage in domestic abuse, marital rape and incest, neglect, and other atrocities with utter impunity.<sup>44</sup> The community willfully turned a blind eye.<sup>45</sup> Throughout the novel, Atticus

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the truth, child, didn't Bob Ewell beat you up?' When Atticus turned away from Mayella he looked like his stomach hurt, but Mayella's face was a mixture of terror and fury. Atticus sat down wearily and polished his glasses with his handkerchief.'").

39. MURPHY, *supra* note 7, at 40 ("To Kill a Mockingbird tells a tale that we know is still true," Scott Turow said. "We may live, eventually, in a world where that kind of race prejudice is unimaginable. . . . But the fact of the matter is, in today's America, it still speaks a fundamental truth.'").

40. LEE, *supra* note 2, at 272.

41. Christian Z. Goering & Cindy M. Williams, *A Soundtrack Approach to Teaching To Kill a Mockingbird*, in HARPER LEE'S TO KILL A MOCKINGBIRD: NEW ESSAYS, 36, 41-42 (Michael J. Meyer ed., Scarecrow Press 2010) (Mayella's "willingness to sacrifice her hatred for blacks to alleviate a moment of loneliness supports the fact that her hatred is not innate but learned. Nonetheless, when Mayella's father finds her in this situation, her fear of her father promotes another conflict between her learned hatred of blacks and her ability to tell the truth—something else she has not been taught. While Mayella's accusations seem to be an exaggerated representation of Maycomb's prejudices, it is both Maycomb's and Mayella's willingness to embrace and practice their learned hatred of blacks that ultimately destroys an innocent man."). This quotation indicates that the authors of the essay believe that Mayella had agency in accusing Tom Robinson, instead of being violently forced by her father to do so.

42. Tavernier-Courbin, *supra* note 7, at 56 ("It is thus bitterly ironic that she should hate and destroy the one person who showed her kindness.'").

43. LEE, *supra* note 2, at 40-41, 251, 260, 272, 292-293.

44. Halpern, *supra* note 3, at 768 ("Societal organizing principles arise that focus the cultural and legal gaze on one set of contacts—in this case interracial relationships—while other combinations, often violent, are obfuscated. Mayella is thus driven to fabricate rape charges against a black man instead of making the same accusations against the true perpetrator, a white one."), and at 772 ("White women were themselves rarely "raped" when the assailant was also white, though for considerably different reasons than those pertaining to black women. Lee touches upon just this facet through the sexual abuse that Mayella faces at the hands of Bob Ewell, and by the town's noticeable indifference to her plight."), and generally.

45. Phelps, *supra* note 27, at 524-25 ("During Atticus's cross-examination of Sheriff Tate,

knew about the abuse that Bob Ewell perpetrated against his children, and one can only speculate as to what happened to his wife (with the substantial likelihood that he killed her).<sup>46</sup> Throughout the trial, Mayella was simply acting out the script that her father had forced upon her.<sup>47</sup>

Mayella's situation was a classic example of domestic violence—an extreme form of control by one human being over another.<sup>48</sup> Her isolation from all outsiders, demonstrated through her testimony that she had no friends, highlights a classic component of domestic violence. This is demonstrated during Atticus' cross examination of Mayella:

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Ewell's abusive treatment of Mayella becomes explicit, as does Maycomb's knowing passivity:

'Did you call a doctor, Sheriff? Did anybody call a doctor?' asked Atticus.

'No sir,' said Mr. Tate.

'Didn't call a doctor?'

'No sir,' repeated Mr. Tate.

'Why not?' There was an edge to Atticus's voice.

'Well I can tell you why I didn't. It wasn't necessary, Mr. Finch. She was mighty banged up. Something sho' happened, it was obvious.'

[LEE, *supra* note 2, at 224] The edge in Atticus's voice is because there is no official report of Mayella's injuries. No one in Maycomb seems very concerned (nor does the book seem to acknowledge) that Mayella, who was "mighty banged up . . . beaten around the head," [LEE, *supra* note 2, at 224] received no medical attention. Mayella's injuries become detached from her person and treated as impersonal evidence that can prove Tom Robinson's innocence.<sup>49</sup>

46. LEE, *supra* note 2, at 230 (Bob Ewell responded to a question about whether Mayella Ewell is his daughter with: "'Well, if I ain't I can't do nothing about it now, her ma's dead,' was the answer.", implying that he would act out against the mother, and his flip response raises the question as to why she is dead and whether he had something to do with it); and at 36 (when the children in first grade told their teacher about Burris Ewell, they commented "'Ain't got no mother," was the answer, "and their paw's right contentious.>"). See also, Sara D. Schotland, "Rape Victims as Mockingbirds: A Law and Linguistics Analysis of Cross-Examination of Rape Complainants," 19 *Buff. J. Gender, L. & Soc. Pol'y* 1, 4 (2011) ("By responding with a joke that makes fun of a deceased spouse, Ewell shows a lack of family values and respect for womanhood that undercuts any pretense of parental concern.").

47. Robert C. Evans, *Unlikely Duos: Paired Characters in To Kill a Mockingbird*, in HARPER LEE'S TO KILL A MOCKINGBIRD: NEW ESSAYS, 101, 103-104 (Michael J. Meyer ed., Scarecrow Press 2010) ("Mayella Ewell, the nearly adult woman who accuses Tom (at her father's insistence) of sexually assaulting her. . . Mayella (who in various ways seems a victim of her father) comes to seem a rather corrupt figure by the end of the book. Her corruption is rooted not in her sexual desire for Tom but rather in her willingness (however coerced she may feel by Bob Ewell) to connive in sending an innocent man to potential death. . . one of the tragedies of the book is that Bob Ewell manages to pervert Mayella so thoroughly by the end of the trial that he almost turns her in some ways into a carbon copy of himself. Ewell may or may not sexually assault his daughter (although this possibility is strongly implied. . .), but he clearly helps to corrupt her ethics.") (citation omitted). See also Halpern, *supra* note 3, at 770 ("Bob Ewell is the person who compels Mayella to come forward with rape charges").

48. Rowe, *supra* note 24, at 14, (Alice Hall Petry ed., University of Tennessee Press 2007) ("Cut off from the ruling white society, abused regularly by her father, and socially banned from communication with other marginalized people, such as African Americans, Mayella typifies the social outcast.").

*“Miss Mayella,” said Atticus. . . “a nineteen-year-old girl like you must have friends. Who are your friends?”*

*The witness frowned as if puzzled. “Friends?”*

*“Yes, don’t you know anyone near your age, or older, or younger? Boys and girls? Just ordinary friends?”*

*Mayella’s hostility, which had subsided to grudging neutrality, flared again. “You makin’ fun o’me again, Mr. Finch?”*

*Atticus let her question answer his.*<sup>49</sup>

Indeed, Scout notes that Mayella must have been even lonelier than the reclusive Boo Radley.<sup>50</sup> Mayella’s few attempts to find a reprieve from her dire situation include the comfort that she takes in tending to her red geraniums and her attempts to take care of herself, reflecting her desire to lead a good, happy, and respectable life.<sup>51</sup>

This isolation and suggestion of abuse—psychological and economic, if not physical—is also present in the Radley household, reinforcing the reader’s understanding of the lack of power held by women and children during that time period.<sup>52</sup> Mr. Radley senior, who after his death was replaced by his mirror-image eldest son Nathan Radley, were the only two members to leave the house on their daily walk into town.<sup>53</sup> The elder men of the household had independence and agency, both of which they denied to Mrs. Radley and to the younger son Arthur (“Boo”).<sup>54</sup> Neither Mrs. Radley nor the mentally impaired

49. LEE, *supra* note 2, at 245.

50. LEE, *supra* note 2, at 256 (“[I]t came to me that Mayella Ewell must have been the loneliest person in the world. She was even lonelier than Boo Radley, who had not been out of the house in twenty-five years. When Atticus asked had she any friends, she seemed not to know what he meant, then she thought he was making fun of her. . . [W]hite people wouldn’t have anything to do with her because she lived among pigs; Negroes wouldn’t have anything to do with her because she was white . . . Maycomb gave them Christmas baskets, welfare money, and the back of its hand.”).

51. LEE, *supra* note 2, at 228 (“One corner of the [Ewell] yard, though, bewildered Maycomb. Against the fence, in a line, were six chipped-enamel slop jars holding brilliant red geraniums, cared for as tenderly as if they belonged to Miss Maudie Atkinson, had Miss Maudie deigned to permit a geranium on her premises. People said they were Mayella Ewell’s.”); and at 238 (“A young girl walked to the witness stand. . . Mayella looked as if she tried to keep clean, and I was reminded of the row of red geraniums in the Ewell yard.”). See Shaw-Thornburg, *supra* note 19, at 123 for another moving account of Mayella’s geraniums.

52. See Best, *supra* note 6, at 550 (“Through Boo and their quest to understand him and why he stays shut up inside, the children come to understand more of their own society, the society that created Boo by ignoring the abuse to which his father subjected him.”).

53. LEE, *supra* note 2, at 51-53.

54. For a description of Nathan’s violent tendencies, see Thomas L. Shaffer, “Growing Up Good in Maycomb,” 45 Ala. L. Rev. 531, 537 (1994) (referring to Nathan Radley as “Boo Radley’s

Arthur left the premises.<sup>55</sup> According to “neighborhood legend,” which may have been embellished but contained an element of truth, “Mrs. Radley had been beautiful until she married Mr. Radley and lost all her money. . . she sat in the livingroom and cried most of the time.”<sup>56</sup> The implication is that Mr. Radley acquired ownership of all her money and ruled the household with an unyielding hand. Due to the willingness of society to ignore the plight of women and children living in abusive homes, Mrs. Radley and Arthur had nowhere to turn for help.<sup>57</sup> Like Mayella, Mrs. Radley attempted to find some solace in her flowers.<sup>58</sup> Like Mayella, she tried to make the best of her situation, since she had nowhere else to turn.<sup>59</sup>

If Mayella had tried to escape, where would she go? To whom would she run for help? In the present day, this isolation is now recognized by the legal system as a conscientious tactic systematically applied by abusers against their victims.<sup>60</sup> We also now recognize that

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brother and his jailer, a man capable of firing his shotgun at children in his garden”).

55. LEE, *supra* note 2, at 51-53. At least one analysis of the novel portrays Arthur Radley as feminized, highlighting even further the subjugation that females and males who were seen as less-than-men were forced to endure. See Lemaster, *supra* note 15, at 797-798 (“Boo’s domestic seclusion, physical and emotional fragility, and tactile skills feminize a figure whose otherwise asexual representation positions him as a pseudomother for Scout and Jem. . . Boo’s feminization positions him as the absent mother who, unlike Mayella. . . , does not challenge ideological femininity and only exists through the contexts of domesticity, children, fragility, and asexuality.”).

56. LEE, *supra* note 2, at 51-53.

57. LEE, *supra* note 2, at 192 (Scout asked Dill, “‘Why do you recon Boo Radley’s never run off?’ Dill sighed a long sigh and turned away from me. ‘Maybe he doesn’t have anywhere to run off to. . .’”).

58. LEE, *supra* note 2 at 14 (“My memory came alive to see Mrs. Radley occasionally open the front door, walk to the edge of the porch, and pour water on her cannas.”); and at 85 (“Old Mrs. Radley died that winter, but her death caused hardly a ripple—the neighborhood seldom saw her, except when she watered her cannas.”).

59. The isolation and abuse perpetrated against Mayella and Mrs. Radley is reminiscent of Minnie Foster in *A Jury of Her Peers* by Susan Glaspell (1917), another classic piece of literature using the allegory of a trial to point out injustices committed against women in a discriminatory society with discriminatory laws and legal systems. Mayella, Mrs. Radley, and Minnie were cut off from contact with others by men who controlled and abused them. Yet each of them appreciated beauty (Mayella tended her geraniums, Mrs. Radley cared for her cannas, and Minnie tended to her canary and quilting), and all three women did the best they could under the circumstances in which the law, society, and abusive men had trapped them. These characteristics symbolize perseverance – that women are strong, can endure great hardships, and retain their hope that perhaps circumstances (and the law) may improve for them personally and for society as a whole. The one unbroken jar of fruit represents a token of hope for Minnie – that she at least has something, however, small, to hold onto.

60. Jane K. Stoever, *Transforming Domestic Violence Representation*, 101 KY. L.J. 483, 511-12 (2013) (“The Power and Control Wheel is the other widely accepted tool for understanding the dynamics of domestic violence. This model was developed by the Domestic Abuse Intervention

domestic violence is indeed a form of power and control (as opposed to an inability to control one's anger, a side-effect of alcoholism, or any other excuse that has been made to exonerate men from their abusive behavior in the past).<sup>61</sup> However, the previous laws and legal system throughout the United States, both at the time during which the story was set and at the time during which it was written, ignored domestic abuse and treated it as a "private" family matter in which the legislatures and courts—again, both almost entirely controlled by men at the time—had no business inserting themselves.<sup>62</sup> In such instances, privacy has only served to reinforce isolation and abuse. Mayella was trapped,<sup>63</sup> with her father exercising violent control over her with absolute impunity.<sup>64</sup> Indeed, once he saw her embrace of Tom (a brief instance of her defiance of that control), he again subjected her to a terribly severe beating to bring her back into line.<sup>65</sup> What choice did she have but to go along with her father's allegation of rape against Tom and to

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Project in Duluth, Minnesota, based on battered women's descriptions of their experiences of abuse. It reveals the range of abusive actions beyond physical assault and how the abuser's attempts to control a survivor pervade the survivor's entire experience. The words "power and control" are at the center of the Wheel, visually representing that power and control form the core of domestic violence. Spokes break the Wheel into eight segments that categorize interrelated dimensions of the abusive partner's exercise of power and control. The eight categories are: (1) using intimidation; (2) using coercion and threats; (3) using emotional abuse; (4) using economic abuse; (5) using isolation; (6) using minimization, denial, and blame; (7) using children; and (8) using male privilege.") (footnotes omitted).

61. *Id.*

62. See generally Deborah Epstein, *Procedural Justice: Tempering the State's Response to Domestic Violence*, 43 WM. & MARY L. REV. 1843, 1849-56 & n.45 (2002) (examining the evolution of governmental responses to violence against women from treating it as a private family matter to treating it as a criminal matter and public concern).

63. Caged, as Minnie and the canary in *A Jury of Her Peers*. See generally Glaspell, *A Jury of Her Peers*, *supra* note 59.

64. Shaw-Thornburg, *supra* note 19, at 121 (Mayella's testimony "captures the outrage that her father's rape of her should have occasioned in the spectators. . . . In real terms, however, the uncovering of such a story. . . would merely have confirmed for the town of Maycomb and the reader the stigmatype of the Ewell family as 'white trash.'").

65. LEE, *supra* note 2, at 260 (According to Tom Robinson's testimony, when Bob Ewell looked through the window and saw Mayella's advances toward Tom, her father yelled: "you god-damn whore, I'll kill ya."); and at 223 (Sheriff Tate explained that he "Found her lying on the floor in the middle of the front room. . . She was pretty well beat up"—obviously Bob Ewell had not bothered to help her before running to get the sheriff, but had left her lying unconscious on the floor), and at 251 (in his cross examination of Mayella, Atticus asked "who beat you up? Tom Robinson or your father," to which Mayella gave no answer); and at 272 (noting Mayella's embrace of Tom, in his closing argument Atticus indicated that "'Her father saw it, and the defendant has testified as to his remarks. What did her father do? We don't know, but there is circumstantial evidence to indicate that Mayella Ewell was beaten savagely by someone who led almost exclusively with his left' whereas it came out earlier in the trial that Tom's left arm was incapacitated by an injury when he was young, and that Bob Ewell is left-handed).

acquiesce to her father's forcing her to testify to the same?<sup>66</sup>

Moreover, Mayella's isolation and dependence upon her father were exacerbated by the lack of economic opportunities through which she could otherwise have supported herself, had she attempted to escape from her abusive situation.<sup>67</sup> Women—specifically white women who could afford to do so—were expected to stay at home, have tea with other ladies, and conform to their proper gender roles.<sup>68</sup> In general, women at that time had very limited options for paid work outside the home, due in part to pervasive gender-based employment discrimination against hiring women for most positions.<sup>69</sup> Apt examples in *To Kill a Mockingbird* include the positions of judge, lawyer, sheriff, and legislator, all of whom were—and presumably only could be—males. This situation was further compounded for African American women, who were compelled by economic realities to work, but whose employment options were even more limited than those of white women.<sup>70</sup> The societal prohibition against all women—of whatever race

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66. Rowe, *supra* note 24, at 14 (“in the moment her alienation prompts her to recognize in the African American Other a common bond of victimization, she is forced by her father to reaffirm white supremacy and racially demonize Tom Robinson”) citing to Claudia Durst Johnson, *To Kill a Mockingbird: Threatening Boundaries*, Twayne's Masterwork Studies 139, New York: Twayne, 85-88 (1994).

67. Dana Harrington Conner, *Financial Freedom: Women, Money, and Domestic Abuse*, 20 WM. & MARY J. WOMEN & L. 339, 342-43 (2014) (“A consideration of the history of the marital relationship and gender based division of labor is critical to understanding the ways in which money and power within that marital relationship influence male violence against women, as well as the economic challenges women continue to face today.”).

68. LEE, *supra* note 2, at 6 (“Ladies bathed before noon, after their three-o'clock naps, and by nightfall were like soft teacakes with frostings of sweat and sweet talcum.”), at 176 (“I would find the livingroom overrun with Maycomb ladies, sipping, whispering, fanning, and I would be called: ‘Jean Louise, come speak to these ladies.’”). Anca Magiru, “The Literary Text – A Medium for Jurisprudential Debate: Gender and Power in Harper Lee's *To Kill a Mockingbird*,” in ed. Ruxandra Teodorescu, Ramona Mihaila, Onorina Botezat, *Gender Studies: Woman Inside and Outside the Box* (2013) 178, 180 (“An important part of Scout's development is her growing comprehension that she will be forced to enter the world of women, a world that holds no attractions for her. . . Her assessment of what it means to be a woman underscores her dismissal of an apparently useless, decorative existence.”).

69. Maryn Oyoung, *Until Men Bear Children, Women Must Not Bear the Costs of Reproductive Capacity: Accommodating Pregnancy in the Workplace to Achieve Equal Employment Opportunities*, 44 MCGEORGE L. REV. 515, 519 (2013) (“In the early twentieth century, women worked predominantly in the home, while some participated in the labor force. The dominant social view at the time was that women should stay ‘within the home as wives and mothers.’ Even when women did participate in the workforce, their presence remained ‘limited by cultural beliefs [and] social practices . . . that subordinated women to men.’”) (footnotes omitted).

70. LEE, *supra* note 2, at 164 (when Scout asked why Tom Robinson's wife could not work, she reasoned in the narration that “It was customary for fielded Negroes with tiny children to deposit them in whatever shade there was while their parents worked—usually the babies sat in the shade between two rows of cotton. Those unable to sit were strapped papoose-style on their mother's



or class—holding positions of responsibility was seen as normal and correct.

Gender-based employment discrimination was frequently reinforced by the legal system.<sup>71</sup> Indeed, Atticus made a joke about the thought of women serving on a jury when explaining to Scout and Jem why the law in Alabama banned women jurors: “‘I guess it’s to protect our frail ladies from sordid cases like Tom’s. Besides,’ Atticus grinned, ‘I doubt if we’d ever get a complete case tried—the ladies’d be interrupting to ask questions.’”<sup>72</sup> A commentator has noted that “he is by no means outraged that women are denied the right to serve. Worse, he goes so far as to tie that denial of rights to a condescending conception of adult females as chattering and lacking self-control.”<sup>73</sup> However, another scholar has noted that “This seemingly sexist passage may in fact be the opposite; having established clearly that Atticus does not take many Southern codes seriously, Lee recognizes the irony in Atticus’s statement that women, including his own independent-minded daughter, are ‘frail.’”<sup>74</sup> Regardless, Atticus’s closing argument—speaking to an all-male jury—which extolled the virtues of the jury as an equalizing force in society, ironically and very pointedly did not include women as among those who would be treated equally: “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*

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backs, or resided in extra cotton bags.”). This dual discrimination against African American women today is explored in Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139, 156-157 (1989) (“Black women have traditionally worked outside the home in numbers far exceeding the labor participation rate of white women. An analysis of patriarchy that highlights the history of white women’s exclusion from the workplace might permit the inference that Black women have not been burdened by this particular gender-based expectation. Yet the very fact that Black women must work conflicts with norms that women should not, often creating personal, emotional and relationship problems in Black women’s lives. Thus, Black women are burdened not only because they often have to take on responsibilities that are not traditionally feminine but, moreover, their assumption of these roles is sometimes interpreted within the Black community as either Black women’s failure to live up to such norms or as another manifestation of racism’s scourge upon the Black community. This is one of the many aspects of intersectionality that cannot be understood through an analysis of patriarchy rooted in white experience.”).

71. Conner, *supra* note 67, at 343 (“It is the historic oppression of women through physical and sexual abuse which paved the way for male economic dominance over women. Male violence against women, the economic dependence of females on males, and the legal and social justifications for male dominance are so closely linked that it is difficult to consider one without addressing the others.”) (footnote omitted).

72. LEE, *supra* note 2, at 296.

73. Fine, *supra* note 18, at 71.

74. Dean Shackelford, “The Female Voice in *To Kill a Mockingbird*: Narrative Strategies in Film and Novel,” *Mississippi Quarterly*, Vol. 50, Iss. 1, (Winter 1996-1997) 101, 110.

the equal of an Einstein, and the ignorant *man* the equal of any college president. That institution, *gentlemen*, is a court. . . 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. . . A court is only as sound as its jury, and a jury is only as sound as the *men* who make it up.”<sup>75</sup> Atticus made no assertion anywhere in the novel that women are considered to be equal—in the courts, the legal system, or otherwise. Consider *Bradwell v. Illinois*,<sup>76</sup> decided only 50 years prior to the story, in which the U.S. Supreme Court upheld the Illinois Supreme Court’s refusal to admit Myra Bradwell to the bar because she was a woman:

[T]hat God designed the sexes to occupy different spheres of action, and that it belonged to men to make, apply, and execute the laws, was regarded as an almost axiomatic truth. In view of these facts, we are certainly warranted in saying that when the legislature gave to the court the power of granting licenses to practice law, it was not with the slightest expectation that this privilege would be extended to women.<sup>77</sup>

Indeed, in more recent times, even Supreme Court Justices Sandra Day O’Connor and Ruth Bader Ginsburg had difficulty finding a job after law school, despite being at the top of their classes at Stanford and Columbia, because law firms, governmental agencies, and judges openly admitted that they would not hire women as lawyers.<sup>78</sup> Interestingly, male lawyers had no problems with female secretaries, and thus did not have compunctions against women in the workplace—only with women in positions of prominence in the workplace.<sup>79</sup> During the course of history in this country, a woman’s legal personality merged with that of her husband (which then predominated) upon marriage under the historic legal fiction of coverture.<sup>80</sup> Women have needed permission from

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75. LEE, *supra* note 2, at 274 (emphasis added). Interestingly, an article published in 1927 addressed “how the various states in a legal way discriminate against women.” Mark W. Podvia, *The Dickinson Law Review: A Brief History*, 108 PENN ST. L. REV. 747, 755 (2004), citing R. W. Lyman, *Is It Self-evident that “All Men Are Created Equal,”* 31 DICK. L. REV. 221, 222 (1927).

76. *Bradwell v. Illinois*, 83 U.S. 130 (1873).

77. *Id.* at 132-133.

78. Justice Ruth Bader Ginsburg, *A Conversation with Associate Justice Ruth Bader Ginsburg*, 84 U. COLO. L. REV. 909, 912-13 (2013).

79. Magiru, *supra* note 68 at 179-180 (“According to Scout, power and authority are masculine attributes; to be a girl is to be marginalized and excluded.”).

80. Candice Marie Reder, *Framing Preglimony: Exploring the Implications of Pregnancy Support Models Through Family Law Values*, 20 DUKE J. GENDER L. & POL’Y 325, 332, (2013) (Discussing “the passage of the Married Women’s Property Acts in the 1850s. Before their passage, a woman’s personal property, legal rights, and even legal existence were all transferred to her husband upon marriage under the doctrine of coverture. The Married Women’s Property Acts

husbands to work,<sup>81</sup> to enter into contracts<sup>82</sup> (except for the telling “sewing machine exception”),<sup>83</sup> and to apply for and receive credit.<sup>84</sup> Moreover, women were denied access to many opportunities for higher education (e.g., Yale College refused to admit women until 1969), prohibiting them from even entering the pipeline for many jobs.<sup>85</sup> The limited employment options for women during the setting for the book tended toward low-paying pink-collar jobs, such as telephone operator,<sup>86</sup>

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allowed married women to hold property separately from their husbands. Nonetheless, remnants of coverture remained into the 1970s, when voter registration rules and other requirements denied women certain rights and privileges for refusing to adopt their husband’s surnames.” (footnotes omitted).

81. “Women’s formal marital status in the United States under the unity theory began to change with the implementation of Married Women’s Property Acts, which gave women the right to own property, sue and be sued, and work outside the home without their husband’s permission.” Michelle J. Anderson, *Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates*, 54 HASTINGS L.J. 1465, 1481, n. 47 (2003), citing Katherine M. Schelong, *Domestic Violence and the State: Responses to and Rationales for Spousal Battering, Marital Rape & Stalking*, 78 MARQ. L. REV. 79, 91 (1994); Reva B. Siegel, “*The Rule of Love*”: *Wife Beating as Prerogative and Privacy*, 105 YALE L.J. 2117, 2128 (1996).

82. Reeder, *supra* note 80, at 332, n.48, citing to Lisa J. McIntyre, *The Civil Contract and Family Life in the United States*, in AMERICAN FAMILIES PAST AND PRESENT: SOCIAL PERSPECTIVES ON TRANSFORMATIONS 159 (Susan M. Ross ed., 2006) (“[T]he [Married Women’s Property Acts] were deemed not to erode the husband’s right to control the family assets; nor did they provide married women the right to control their own earnings or to contract without their husband’s consent.”).

83. Barbara W. Sharp, *Losing Sticks from the Bundle: Incompatibility of Tenancy by the Entireties and Drug Forfeiture Laws*, 8 BYU J. PUB. L. 197, 206, n. 61 (1993) (“Pennsylvania’s devotion to women’s equality in law is exemplified by the following statute passed in 1872 as part of the state’s Married Women’s Property Acts: ‘From and after passage of this act, all contracts made by married women, in the purchase of sewing machines for their own use, shall be valid and binding, without the necessity of the husband joining in the same.’ PA. STAT. ANN. tit. 48, § 33 (1964) *repealed by* Act of Feb. 11, 1982, P.L. 31, No. 19, §1.”).

84. Cokie Roberts, quoted in Women’s Law and Public Policy Fellowship Program Outreach Newsletter, 4 (Fall/Winter 2006), <http://www.law.georgetown.edu/academics/centers-institutes/wlppfp/upload/WLPPFP-Fall-Winter2006-Newsletter.pdf> (“My mother [was widowed in 1972]. . . and had the experience, that so many women at the time did, that not only did she lose her spouse, but she also lost her credit. . . So when she came to Congress. . . [and the majority leader asked her what committee assignment she wanted], she said ‘I want Banking.’ And as she tells the story, they were writing up an equal credit bill that outlawed discrimination on the basis of race, national origin or creed. She went into the back room and wrote in longhand ‘or sex or marital status,’ Xeroxed it and passed it around to her colleagues, and said in her oh-so-sweet southern way, ‘I’m sure this was just an omission on your part.’ And that’s how we got equal credit, ladies.”).

85. Miranda McGowan, *Stop the Fight for Women’s Equality Gender Equality: Dimensions of Women’s Citizenship*, 28 CONST. COMMENT. 139, 195, n. 194 (2012) (reviewing LINDA C. MCCLAIN & JOANNA L. GROSSMAN, *GENDER EQUALITY: DIMENSIONS OF WOMEN’S EQUAL CITIZENSHIP* (2012)) (“The military academies began admitting women in 1976 after Congress authorized women’s admission in 1975; Columbia College first admitted women in 1983, Dartmouth in 1972, Brown in 1971, Princeton and Yale in 1969. Harvard merged admissions with Radcliffe in 1977 and the two institutions formally merged in 1999.”).

86. LEE, *supra* note 2, at 86.

teacher,<sup>87</sup> nurse,<sup>88</sup> waitress,<sup>89</sup> seamstress,<sup>90</sup> photographer's assistant,<sup>91</sup> and the like. Therefore, the deck was stacked against Mayella economically as well, through discrimination against women's employment by society and under the law. This factor also inhibited her from testifying freely during Tom's trial, since she knew she could not walk away from her abusive father and survive.<sup>92</sup>

Furthermore, men in the 1930s generally owned the real property (e.g., all the Finches who inherited Finch's Landing were males, until Aunt Alexandra interrupted this tradition).<sup>93</sup> Women historically gained real property ownership through widowhood.<sup>94</sup> Examples in the novel include Mrs. Dubose<sup>95</sup> and Miss Maudie,<sup>96</sup> who were neighbors of

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87. *Id.* at 21.

88. *Id.* at 308.

89. *Id.* at 135.

90. *Id.* at 339.

91. LEE, *supra* note 2, at 8.

92. Conner, *supra* note 67, at 343-44 ("In early American history a woman was not permitted to own property and was, in fact, the property of the men in her life; first her father or brother, later her husband. A colonial man was permitted to 'chastise' his wife through corporal punishment. The husband controlled a woman's experiences with and in connection to the local economy. He was the decision-maker, holding all the power. As a result, much of a woman's life experience depended greatly on the man she married. If she married a perpetrator of intimate partner violence, she was at great risk of suffering abuse with little protection or avenue of escape. Her abuser had the ability to control her life and work experiences unrestrained.") (footnotes omitted).

93. See LEE, *supra* note 2, at 4-5, 28. See also Stephanie B. Casteel, *Planning and Drafting Premarital Agreements*, ST042 A.L.I.-A.B.A. 771, 775 (2012) ("Prior to the 20th century, married women were deemed incapable of managing their own income and real property. Men held and controlled property individually and on behalf of their wives and children. . . . But even after the enfranchisement of women in 1920, little changed to improve the economic condition of married women. In the event of divorce, property continued to be divided by title, which was typically held by men.") (footnotes omitted).

94. Claudia Zaher, *When a Woman's Marital Status Determined Her Legal Status: A Research Guide on the Common Law Doctrine of Coverture*, 94 LAW LIBR. J. 459, 460 (2002) (discussing legal traditions from England: "Widows and unmarried adult women could own property, collect rents, manage shops, and have standing in court, but by virtue of her marriage, the married woman enjoyed none of these privileges, and her person as well as her personal and real property belonged to her husband.") (footnote omitted). See also Conner, *supra* note 67, at 346-47 ("Although law reform provided women with some property rights beginning in the mid-1800s, according to Evan Roberts ownership did not give women the power to control property, only title to it. Without the power to actually control her property, a married woman remained at the mercy of her husband despite many well intended laws. In fact, there may have been a disincentive for a married woman to enter the paid labor force, despite new laws, given the likelihood that she would have little control over her own property. In addition, 'marriage imposed a set of rights and responsibilities on men and women that were unequal and hierarchical, within the household.' The subordination of a wife to her husband was supported by society, as well as our courts.") (footnotes omitted).

95. LEE, *supra* note 2, at 132.

96. *Id.* at 56.

Atticus, Scout, and Jem. Children had even less of a claim upon the family's property and were also economically locked into their relationship with their abusive fathers. Thus, Mayella and her siblings presumably had no legal claim to their property while Bob Ewell was living (and perhaps not even after his death). Not only could Mayella not leave due to the economic constraints noted above, but she also could not force her abuser to leave.<sup>97</sup> Fortunately, in many states the laws concerning domestic violence have now changed so that the perpetrator of the abuse must normally leave the home, not the victim.<sup>98</sup> Yet Mayella knew that she had no choice but to remain in the same home with her father and to continue to be subject to his abuse.<sup>99</sup> Therefore, she testified as her father forced her to do in an attempt to continue to survive.

Additionally, *To Kill a Mockingbird* seems to present a quadruple-indictment of the manner in which rape was then treated by the law. First, it subtly condemns the fact that incest was ignored (and, therefore, allowed) by the law.<sup>100</sup> Tom testified that: "She reached up an' kissed me 'side of th' face. She says she never kissed a grown man before. . . *She says what her papa do to her don't count.*"<sup>101</sup> (emphasis added). No

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97. Robin R. Runge, *An American Concept with Distinctly Chinese Characteristics: The Introduction of the Civil Protection Order in China*, 88 N.D. L. REV. 871, 892-93 (2012) ("many victims in the U.S. . . . face a system that either assumes that they will leave their home if it is shared with the perpetrator or requires them to do so in exchange for access to the protections provided by the legal system.").

98. *Id.* at 893 ("Training of judges and lawyers has improved their response to victims coming forward to seek assistance. In addition, the focus of the anti-domestic violence advocacy community has broadened from attempting to ensure that there are sufficient emergency and transitional housing options for victims when they leave, to supporting victims who may choose to stay in their home and with the abuser after obtaining a civil protection order. Civil protection order statutes have been amended to include a 'kick out order' as a possible remedy, requiring the abuser to vacate the shared home instead of the victim. Like the amendments to the statutes broadening the categories of individuals eligible to seek a civil protection order, these are reflective of an evolution in thinking about domestic violence in the U.S. and about the role of law in ending it.").

99. Shaw-Thornburg, *supra* note 19, at 122 ("those parts of her story—desire for Tom, rape by her father—that are not remotely audible in Maycomb in 1935, because they violate the boundaries of white identity so thoroughly. Her sexual desire and Mayella as a subject of rape are both unspeakable, and she maintains her silence on these issues, perhaps in the interest of self-preservation, given that when the trial is over, she will return to the bounded space of the cabin where she lives with her father and siblings.").

100. See generally Renee R. Hollander, *No Proof of Force Needed: Changing Texas Policy Regarding Adolescent Victims of Intrafamilial Aggravated Sexual Assault*, 5 SCHOLAR 293 (2003).

101. LEE, *supra* note 2, at 260. See also Kathryn Lee Seidel, "Growing Up Southern: Resisting the Code for Southerners in *To Kill a Mockingbird*," ON HARPER LEE: ESSAYS AND REFLECTIONS (Alice Hall Petry ed., University of Tennessee Press 2007) at 87 ("According to Atticus's definition of it ('carnal knowledge of a female by force and without consent' . . .), Mayella has indeed been raped by her father, since he beats her if she does not comply.").

one seemed to care about this statement indicating that she had been a victim of incest by her father, nor did anything about it.<sup>102</sup> This stance follows the legally reinforced adage that a man's home is his castle, and whatever he does within his own home (including terrorizing his own family) is his own business and not the business of the state.<sup>103</sup> Moreover, wives and children were considered under the law to be the property of their husbands and fathers, and a man was entitled to do whatever he wanted with his own property.<sup>104</sup> This concept is reflected in Scout's description of her relationship with Dill: "He staked me out, marked as his property, said I was the only girl he would ever love, then he neglected me."<sup>105</sup> Therefore, the government offered little, if any, protection to women and children against sexual abuse (or violence, neglect, and so on).

Second, the book highlights the realities of the legal system at the time, which reflected that, in order for an incident of sexual assault to be considered a crime, a woman must be beaten terribly and demonstrate that she struggled to the utmost before the act would be considered a

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102. Fine, *supra* note 18, at 72, quoting Diann L. Baecker, *Telling It in Black and White: The Importance of the Africanist Presence in To Kill a Mockingbird*, 36 S. Q. 124, 129 (1998) ("The incestuous relationship of a white trash man with his white trash daughter is part of the novel often glossed over by scholars. . . . Atticus's conception of those in need of protection does not include girls being sexually abused by their own fathers. . . . That sexual abuse is simply a nonissue to Atticus."). Phelps, *supra* note 27 at 526 ("it seems that the reader, like Maycomb, is not supposed to respond to this short, chilling line."). Halpern, *supra* note 3 at 770 ("The allusion to incest and rape is drawn from the dialogue where Bob Ewell's abuse is made evident, and Mayella's silence in response to questioning at trial is suspiciously telling."). However, not all commentators believe that Mayella had been raped by her father. See Schotland, *supra* note 46, at 15 ("there is scant support for the charge of incest").

103. See generally Cheryl Hanna, *Behind the Castle Walls: Balancing Privacy and Security in Domestic Abuse Cases*, 32 T. JEFFERSON L. REV. 65 (2009); Beverly Balos, *A Man's Home is His Castle: How the Law Shelters Domestic Violence and Sexual Harassment*, 23 ST. LOUIS U. PUB. L. REV. 77 (2004).

104. "Although society historically viewed women and children as property, and viewed familial abuse as a private matter, the law's response to child abuse and domestic violence between intimate partners evolved separately." Sharon N. Clarke, *Strictly Liable: Governmental Use of the Parent-Child Relationship as a Basis for Holding Victims Liable for Their Child's Witness to Domestic Violence*, 44 FAM. CT. REV. 149, 151 (2006) (citing Susan Schechter, *The Battered Women's Movement in the United States: New Directions for Institutional Reform*, in FUTURE INTERVENTIONS WITH BATTERED WOMEN AND THEIR FAMILIES (Jeffrey L. Edleson & Zvi. C. Eisikovits eds., 1996) and Susan Schechter & Jeffrey L. Edleson, *In the Best Interest of Women and Children: A Call for Collaboration Between Child Welfare and Domestic Violence Constituencies*, Minnesota Center Against Violence and Abuse (1994), available at <http://www.mincava.umn.edu/documents/wingsp.pdf>). See also Richardson, *supra* note 5 at 357 ("There is reason for optimism, however, as our legal system transforms its current view of children as property of their parents to rights-based citizens increasingly empowered to assert their own unique expectations and needs") (footnote omitted).

105. LEE, *supra* note 2, at 48.

rape. For example, Scout noted that: “we were subjected to a lengthy review of the evidence with Jem’s ideas on the law regarding rape: it wasn’t rape if she let you, but she had to be eighteen—in Alabama that is—and Mayella was nineteen. Apparently you had to kick and holler, you had to be overpowered and stomped on, preferably knocked out stone cold. If you were under eighteen, you didn’t have to go through all this.”<sup>106</sup> The very restrictive conceptualization of rape largely gave men free rein to force women to have sex as long as they did not knock their victims unconscious or leave too much evidence of a physical struggle.<sup>107</sup> It ignored the fact (now recognized under the legal approach to rape in many states) that women may be in even greater danger of severe physical harm or murder if they resist, and sometimes it is safer to submit to the assault rather than risk being killed. It also ignored the reality of further ways in which men force women to have sex other than physically overpowering women, such as verbal threats (e.g., a threat to kill the victim or her children if she resists the sexual assault).

Third, the trial of Mayella Ewell in *To Kill a Mockingbird* hints at the problem of re-victimization of rape victims through the trial process and making the victims and their veracity the focus of the trial.<sup>108</sup> This point is subtle, since the real perpetrator of sexual assault (Bob Ewell) is not himself on trial, and the reader knows that Mayella is not telling the truth about who committed the assault. Yet the novel seems to perpetuate the assumption that women in general cannot be trusted when it comes to allegations of sexual assault.<sup>109</sup>

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106. See LEE, *supra* note 2, at 279.

107. Although Atticus provided Scout with the legal definition of rape as “carnal knowledge of a female by force and without consent,” LEE, *supra* note 2 at 180, Jem’s version replicated the typical jury’s interpretation and application of this definition in practice.

108. Steven Lubet, *Reconstructing Atticus Finch*, 97 MICH. L. REV. 1339, 1354-1355 (1999) (“The ‘she wanted it’ defense, in its several iterations, is ultimately an advocacy tool. It is a rhetorical device utilized in the hope that it will prevail. The lawyers who employ the defense are not pro-rape zealots. They are, instead, amoral technicians, doing their best to assemble and present the arguments and pleas most likely to result in an acquittal. This does not soften the impact of the defense on the victims, however, nor does it justify the humiliating ‘second rape,’ the tradition of character assassination, that seems to be the stock in trade of so many defense lawyers.”) (citations omitted).

109. Steven Lubet, *Reconstructing Atticus Finch*, 97 MICH. L. REV. 1339, 1350-1351 (1999) (“There seems little doubt that Atticus Finch shared this mistrust of women, or at least those who claimed to have been sexually assaulted. He twice told the jury that Mayella’s testimony was uncorroborated. Later, after the verdict, he told his children that he had ‘deep misgivings when the state asked for and the jury gave a death penalty on purely circumstantial evidence,’ adding that there should have been ‘one or two eyewitnesses’... Of course, Mayella’s testimony was corroborated and there were two eyewitnesses. But in Atticus Finch’s view, Mayella and Bob Ewell were not simply inadequate witnesses; they apparently did not count at all.”).

These three factors made it extremely difficult for women to bring rape charges and for those allegations ultimately to result in conviction.

Fourth, the book provides a stark condemnation of the vastly different standard applied to charges of rape against black men versus white men, particularly when the alleged victim is a white woman. The legal system ignored the fact that Bob Ewell was raping Mayella. In fact, Atticus alluded to this situation, not to elicit sympathy for Mayella, but “to impugn her credibility,”<sup>110</sup> or perhaps to demonstrate her motivation to put the blame on someone other than her father. This double standard made it extremely easy to obtain a conviction of black men who were accused of rape, even when no crime was committed. In contrast, with the difficulty of proving the crime of rape when the victim and perpetrator are of the same race (see the first three points above), the racial prejudice within the application of the law is even more apparent.

The first three points about the rape laws lend themselves to exonerating Mayella. She was helpless to protect herself against rape and other forms of abuse by her father so she had no other choice but to comply with his demands regarding the Robinson trial. The fourth point facilitates Bob Ewell’s manipulation of the legal system and therefore facilitates his manipulation of Mayella due to the legal system’s failure to protect her.

### III. LEGAL THEMES REGARDING MAYELLA’S EXONERATION

The previous pages have explained why Mayella should be exonerated from the two charges that Atticus made against her during Tom’s trial. The remainder of this essay briefly addresses various legal themes, including revenge, justice, process, advocacy, punishment, order, and change, as they relate to Mayella’s exoneration in *To Kill a Mockingbird*.

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110. Gladwell, *supra* note 20, 63-64 (“When the defense insinuates that Mayella is the victim of incest at the hands of her father, it is not to make her a sympathetic figure. It is, in the eugenicist spirit of the times, to impugn her credibility. . . . *The victim, coming from the same inferior stock, would likely share her father’s moral character.* “I won’t try to scare you for a while,” Finch says, when he begins his cross-examination of Mayella. Then he adds, with polite menace, “Not yet.”. . . Finch wants his white, male jurors to do the right thing. But as a good Jim Crow liberal he dare not challenge the foundations of their privilege. Indeed, Finch does what lawyers for black men did in those days. He encourages them to swap one of their prejudices for another.”). *See also*, Schotland, *supra* note 46, at 5 (“Atticus accomplishes several goals: he underlines that Mayella is afraid of what he will do to her in cross-examination, or afraid of her father’s reaction to her testimony, or both.”).



### A. *Revenge*

The obvious theme of revenge in this book is that which Bob Ewell seeks against Atticus for defending Tom Robinson against the charges that have been brought against him and for humiliating Bob Ewell on the witness stand.<sup>111</sup> However, another manifestation of revenge is that which Bob Ewell, and society through the legal system, inflicts upon Mayella for breaking a social taboo (for her temerity in kissing a black man). Bob Ewell takes revenge against Mayella in the form of more beatings for humiliating him in public (implicitly admitting on the witness stand that he beats her).<sup>112</sup> Society takes its revenge upon Mayella through her humiliation on the witness stand during the trial, as evidenced by her reaction to Atticus as she left the witness stand.<sup>113</sup>

### B. *Justice*

The book seems to imply that no justice will be available for Mayella, even though “her side” technically won the trial. As detailed above, the narrative suggests that Mayella will continue to be victimized by Bob Ewell after the trial.<sup>114</sup> Atticus expresses a rather hollow hope that Bob’s spitting on him may prevent another beating for Mayella, which is inevitable since she alluded to her father’s prior transgressions in open court.<sup>115</sup> The novel implies that no one will do anything to help Mayella and that the legal system is impotent to address domestic violence or incest.<sup>116</sup> One might consider that Bob Ewell’s death at the

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111. LEE, *supra* note 2, at 290 (“Mr. Bob Ewell stopped Atticus on the post office corner, spat in his face, and told him he’d get him if it took the rest of his life.”).

112. LEE, *supra* note 2, at 245 (during the trial, Atticus asks Mayella if her father “is good to you, is he easy to get along with?” Mayella responds that “He does tollable, ‘cept when—” Mayella falters, then Atticus pauses and follows with “‘Except when he’s drinking?’ asked Atticus so gently that Mayella nodded.”).

113. LEE, *supra* note 2, at 252 (“I never saw anybody glare at anyone with the hatred Mayella showed when she left the stand and walked by Atticus’s table.”).

114. See footnote 12, above.

115. LEE, *supra* note 2, at 290.

116. Phelps, *supra* note 27, at 524 (“Yet if the law fails to protect Burris, it fails even more miserably in its protection of Mayella Ewell. Although it is clear that Mayella perjures herself and accuses Tom Robinson of a rape he did not commit, it is equally clear that Mayella is the victim of both violence and incest. Tom Robinson may not have inflicted the bruises on Mayella, but someone did. As they do with Burris’s truancy, the citizens of Maycomb (including the Finches) choose to look the other way. Among the extralegal “privileges” they afford Bob Ewell are the privileges of beating and raping his daughter.”). It is doubtful that the government would have stepped in to assist Mayella Ewell and the other Ewell children even if Mayella had told the truth, contrary to what some commentators have optimistically surmised. See MitziAnn Stiltner, “Don’t Put Your Shoes on the Bed: A Moral Analysis of *To Kill a Mockingbird*”, *Electronic Theses and Dissertations*. Paper 722. <http://dc.etsu.edu/etd/722>, p. 45 (2002) (“The Ewell children could have

end of the story provides some sort of justice for Mayella, yet this is by no means a certainty.<sup>117</sup> On one hand, with her father's death, she and her siblings might inherit the property,<sup>118</sup> possibly giving her relative safety and her own home. Yet considering the violent tendencies displayed by Burris Ewell on Scout's first day of school, Mayella and the younger siblings may end up facing abuse from the male siblings as they continue to grow up.<sup>119</sup> Note that the family had been living in squalid conditions for generations past, and with the implication that they will continue to do so for generations to come.<sup>120</sup> Moreover, the responsibility for raising her seven siblings will likely now fall to Mayella, as social services seem to be almost entirely deficient, and in light of her limited economic options, it seems unlikely that she will be able to raise them out of poverty however hard she might try. It is troubling that the end of the book completely ignores their fate.<sup>121</sup> It would have been preferable that Lee remind the readers of their plight and what Bob Ewell's death meant for them, for better or worse.

### C. Process

The legal process in the trial presented Mayella with the untenable situation of having to testify in open court with the abuser (Bob Ewell) directly intimidating her.<sup>122</sup> In certain jurisdictions, modern attempts to address this issue have modified the procedures in the courtroom so that

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received help from social services if Mayella had told the truth.”).

117. LEE, *supra* note 2, at 357.

118. Although the children's inheritance of the property is not a given under the inheritance laws at the time.

119. See LEE, *supra* note 2, at 37. See also Phelps, *supra* note 27, at 523 (“Everything about the child Burris differs from the other children: his appearance—he is dirtier than the worst of them; his demeanor—he slouches and shuffles; his language—he swears and uses words as weapons; his hope for an education. The law, designed to protect just such children from their parents' neglect, utterly fails him.”). Evans, *supra* note 47, at 109 (“Burris responds with a kind of vulgar anger that foreshadows the later conduct of his father, whose worst traits Burris is obviously in the process of adopting as his own.”).

120. LEE, *supra* note 2, at 40.

121. Phelps, *supra* note 27, at 526 (After the trial, “To Kill a Mockingbird never again refers to the Ewell children and their living conditions. They have been used to develop the plot and explicate the conflict and then tossed back on the dump. Burris, at seven or eight years of age, and Mayella, at nineteen, have no hope for anything else. They, like Scout and Jem, must live up to their birthright. They will stay on the margins of Maycomb, outside the reach of its laws.”). See also Teresa Godwin Phelps, “Atticus, Thomas, and the Meaning of Justice,” 77 NOTRE DAME L. REV. 925, 931 (2002) (“The novel wastes little time or sympathy on the unpleasant but helpless child Burris Ewell or the clearly abused Mayella Ewell.”).

122. LEE, *supra* note 2, at 245-46 (when Atticus asked Mayella about her relationship with her father during the trial, “Mayella looked at her father, who was sitting with his chair tipped against the railing. He sat up straight and waited for her to answer.”).

victims of domestic violence or sexual assault, especially minor children, do not have to testify in front of an abuser, but can testify through the use of video conferencing.<sup>123</sup> Of course, Bob Ewell was not on trial; therefore, the judge could reasonably have removed him from the courtroom during Mayella's testimony, so she would be less likely to be intimidated. It is not clear why Atticus did not ask for this accommodation for Mayella. Perhaps this is another critique of his handling of the case,<sup>124</sup> or perhaps such a technique to prevent the intimidation of witnesses was not widely utilized during that time period. Another process flaw in the law enforcement system to which Atticus did not draw enough attention is the fact that Sheriff Tate did not ensure that Mayella had a medical examination to help collect evidence as to whether or not a rape had actually occurred, although he did touch upon this issue.<sup>125</sup> Another failure of the legal process at the time was the prohibition against women serving as jurors. Having all white male jurors may have prejudiced the jury against Tom Robinson because of race, but could also have prejudiced the jury against Mayella Ewell because of her gender. Atticus Finch was well aware of this, and attempted to argue his case to appeal to the gender biases held by the jurors against women—particularly against those who raised a claim of sexual assault.<sup>126</sup>

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123. “[T]he precedent on the use of video conferencing in child sexual abuse cases is abundant.” Katharine E. O’Dette, *Annual New York State Constitutional Issue, Confrontation Clause: Court of Appeals of New York*, 27 *TOURO L. REV.* 785, 796 (2009) (citing Cathleen J. Cinella, *Compromising the Sixth Amendment Right to Confrontation—United States v. Gigante*, 32 *SUFFOLK U. L. REV.* 135, 159 (1998) (noting that courts frequently use the Confrontation Clause exception in child abuse cases)).

124. And as an aside, why did Atticus not corroborate Tom Robinson’s story about Mayella sending the children for ice cream, who otherwise were ubiquitously present, to ensure that they were out of the way while she made her advances? LEE, *supra* note 2, at 250, 256, 258. Surely the salesperson at the ice cream shop would remember having served seven Ewell children, and townspeople would remember having seen them. What about calling the other children to the witness stand (although Atticus probably felt they would be just as intimidated as Mayella and would corroborate the story imposed upon all of them by their father)? Why did Atticus not call upon character witnesses, such as Link Deas, to testify on behalf of Tom? *Id.* at 261. What about people who would corroborate Tom’s story that he helped Mayella periodically (for example, if he had mentioned it to others such as Link Deas, Reverend Sykes, or others whom the jury might find credible)?

125. *Id.* at 224, 271.

126. Steven Lubet, *supra* note 108, at 1351 (Atticus “knew that the case had to be pitched to their prejudices, understanding that ‘we generally get the juries we deserve’ (p. 234). Perhaps Atticus thought he was speaking only of race, but can there be any doubt that the all male jury was prejudiced against women as well?”).

#### D. Advocacy

No one in the book advocated on behalf of Mayella or her siblings, despite the community's full knowledge of their deplorable situation.<sup>127</sup> The children had no one who could (or would) adequately stand up for their rights, their safety, their dignity, their education, their health, and possibly even their lives.<sup>128</sup> This was a tremendous failure of the legal system. Admittedly, Mayella was no longer a minor at the time of the story, but where was the justice system for her when she was a minor? For her siblings? For her now as a young adult (such as legal services and other programs that are available today)? The school truancy officer and public health officers were entirely ineffective in providing meaningful services for, or advocacy on behalf of, the Ewell children.<sup>129</sup> Perhaps it could be presumed that there was no guardian *ad litem* system in place in Maycomb to represent the interests of minor children in the legal process (or that it was ineffective), which may have been a reason that Atticus did not call them to testify.<sup>130</sup> Although Mayella was over

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127. Phelps, *supra* note 27, at 525 (Noting that various passages “from the trial depict neglect and abuse so compelling that one wonders how one could have been blind to it.”). Sadly, abuse and neglect of children still run rampant throughout the United States and remain woefully unaddressed by the legal system. See Richardson, *supra* note 5 (“studies and case law across the country reveal an equally urgent public need that remains tragically unaddressed: consistent, zealous representation of minor children by qualified attorneys in abuse and neglect proceedings. The quiet crisis of violence and mistreatment, cycling through shielded home environments into which policymakers are reluctant to intrude, is exacerbated by the legal profession’s failure to provide effective services to the majority of America’s four million children reported abused and neglected each year.”).

128. Alice Hall Petry, *Introduction*, in ON HARPER LEE: ESSAYS AND REFLECTIONS, xv, xxvii (Alice Hall Petry ed., University of Tennessee Press 2007) (“while the reader applauds the death of Bob Ewell, who apparently raped his daughter Mayella and tried to kill the Finch children, that sense of closure is (or should be) marred by the realization that ‘after Bob Ewell’s death, no one’—not even Atticus—raises the issue of the now-orphaned Ewell children”) quoting Teresa Todwin Phelps, “The Margins of Maycomb: A Rereading of *To Kill a Mockingbird*,” 45 ALA. L. REV. 511, 530 (1994).

129. LEE, *supra* note 2, at 227 (“Every town the size of Maycomb had families like the Ewells. No economic fluctuations changed their status—people like the Ewells lived as guests of the county in prosperity as well as in the depths of a depression. No truant officers could keep their numerous offspring in school; no public health officer could free them from congenital defects, various worms, and the diseases indigenous to filthy surroundings.”).

130. See generally Deborah L. Roden, *The Heavy Burden of a Guardian Ad Litem*, 36-DEC WYO. LAW. 30 (2013); Katherine Hunt Federle & Danielle Gadomski, *The Curious Case of the Guardian Ad Litem*, 36 U. DAYTON L. REV. 337, 346-347 (2011) (noting that in the early 20<sup>th</sup> century, “The juvenile court thus assumed the mantle of guardian for those children appearing before it, just as probate court officials had in the preceding century. The juvenile judge was likened to a “wise and merciful father,” who functioned as the “defender” of the juveniles brought before the court. Attorneys for children (and their parents) were not simply unnecessary—they were counterproductive. Although guardians could be appointed in some juvenile courts, primarily in adoption matters, there is no evidence that juvenile courts routinely—or ever-appointed independent

nineteen, the younger Ewell children should probably have been represented, since legal issues concerning the children arose during the trial and because their interests (and possibly their testimony, had they been called as witnesses) may have been adverse to their father's interests.

Also regarding the lack of advocacy in the story, it is ironic that the Missionary Society ladies were so concerned with the lack of a "sense of family" by the "Mrunas"<sup>131</sup>—a tribe in Africa that a white missionary was attempting to convert to Christianity—and yet they did not bother to see the breakdown of the Ewell family or to raise a finger to help Mayella and her siblings. This is presumably because the Ewells were already Christians, but possibly also because the ladies did not actually want to reach out to others personally—they merely wanted to make themselves feel superior by *talking* about what they considered to be the miserable situation of others. They wanted to gossip about others' lives, but none of them bothered to try to assist Mayella when she actually could have used their help (in more ways than one). This segment is dripping with hypocrisy, which Harper Lee obviously detested.<sup>132</sup>

#### *E. Punishment*

As described above, Mayella Ewell had been subjected to lifelong punishment by her father, including violence, sexual abuse, neglect, and virtual imprisonment. She had no friends, no social life through school or work and was trapped by her father and by the legal system that ignored her plight. She was also effectively punished by the legal system, both throughout her life (by its lack of assistance for her and her siblings) and particularly throughout the trial. Note also the allusions to

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guardians to represent the interests of juveniles in neglect cases. The assumption was that the courts would protect the interests of children.") (footnotes omitted).; Cynthia Grover Hastings, *Letting Down Their Guard: What Guardians Ad Litem Should Know About Domestic Violence in Child Custody Disputes*, 24 B.C. THIRD WORLD L.J. 283 (2004). Although policymakers have attempted to improve the legal system's protection of children, problems with the guardian ad litem system continue to persist. Richardson, *supra* note 5, at 358 ("More specifically, the Child Abuse Prevention and Treatment Act ("CAPTA"), which provides federal funding to states that improve the availability of legal services to abuse and neglect victims, requires states to mandate the appointment of guardians ad litem (GALs) in every case resulting in a judicial proceeding. Although CAPTA guidelines have been adopted in whole or in part by each state since their federal ratification in 1974, lackluster enforcement of GAL appointment mandates and inadequate GAL training in the complex area of juvenile law continue to expose numerous victims to the threat of ongoing harm.") (footnotes omitted).

131. LEE, *supra* note 2, at 305.

132. Ware, *supra* note 7, at 288 (Scout "witnesses the veiled but brutal and hypocritical pronouncements of racist white women intent on their so-called Christian duty.").

further violence to which Bob Ewell would submit her after the trial, as described earlier in this essay. Indeed, the punishment of Mayella is seen pervasively throughout the novel.

#### F. Order

The legislature, courts, and executive branch of government function to bring order in society. They helped structure society in the 1930s by generally staying out of a person's private family life except when a person broke a major social taboo (such as interracial relationships), in which case the community believed it had every right to interfere and apply legal sanctions. It is disturbing that under Maycomb's vision of societal order, a white woman kissing a black man is considered to be greatly immoral, and yet a father's infliction of severe violence, sexual assault, and neglect upon his children does not rise to a level of immorality requiring the state to step in to protect the children. The town was willing to bend the rules for the Ewell children by only requiring them to go to school one day per year.<sup>133</sup> Atticus implied that being in school would not have benefitted them and, therefore, that this leniency was for the children's own good.<sup>134</sup> But was this really in the children's best interests, or was this perhaps an example of classism at its worst—and that it is more likely that the town finds them to be beneath the law and beneath their concern?<sup>135</sup> From the issues that she raises in her novel, it seems that Harper Lee's vision of societal order and the law would require the opposite result, which is fortunately more widely reflected in the legal system today.

#### G. Change

Despite the discrimination women faced in the 1930s as revealed in *To Kill a Mockingbird*, particularly through the character of Mayella Ewell, Harper Lee does not paint an entirely bleak portrait of the evolutionary legal and social status of women.<sup>136</sup> Indeed, she fostered

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133. LEE, *supra* note 2, at 40 (“Sometimes it’s better to bend the law a little in special cases. . . . There are ways of keeping them in school by force, but it’s silly to force people like the Ewells into a new environment—”).

134. Jeffrey B. Wood, *Bending the Law: The Search for Justice and Moral Purpose*, in HARPER LEE’S TO KILL A MOCKINGBIRD: NEW ESSAYS, 81, 86-87 (Michael J. Meyer ed., Scarecrow Press 2010) describing Atticus’s explanation of the town’s willingness to bend the rules for the Ewell family as benevolent.

135. I am grateful to my Burtness Scholar Research Assistant, Kendra Olson, for this insight.

136. Ware, *supra* note 7, at 288 (“Lee’s portrayal of Scout ends not in defeat but in a triumphant expansion of her knowledge, understanding, and sympathy.”).

this evolution through her novel, by subtly yet persistently breaking down gender stereotypes throughout the book.<sup>137</sup> Consider Jean Louise Finch, otherwise known as “Scout,” who is portrayed as a tomboy wearing overalls,<sup>138</sup> running around with the boys,<sup>139</sup> shooting guns<sup>140</sup> and getting into fights,<sup>141</sup> while largely ignoring girls’ pastimes (tea parties,<sup>142</sup> clothing,<sup>143</sup> sewing, cooking),<sup>144</sup> much to her aunt’s chagrin.<sup>145</sup> Indeed, even her nickname, Scout, signifies adventure, exploration, and a role as a lookout, spy, or pathfinder, which were traditionally reserved for males. Several times throughout the novel, she expressed her distaste for acting like a girl or being a lady, as did her compatriots—her brother Jem and their friend Dill.<sup>146</sup> Contemplating

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137. See generally Ware, *supra* note 7.

138. LEE, *supra* note 2, at 108 (according to Scout, “the only time I ever heard Atticus speak sharply to anyone was when I once heard him say, ‘Sister, I do the best I can with them!’ It had something to do with my going around in overalls.”).

139. Claudia Johnson, “The Secret Courts of Men’s Hearts: Code and Law in Harper Lee’s *To Kill a Mockingbird*,” vol. 19, No. 2 *Studies in American Fiction*, 129, 134 (Fall 1991) (“One of the keys to the benevolence of Atticus’ law is that it blurs the lines that mark out gender and race, diminishing the superficial barriers thrown up to hamper and privilege. In the novel, the limitations of gender run parallel to the more obvious limitations of race. Scout, whose very nickname is boyish, is allowed to be herself, an adventurous tomboy whose customary attire is overalls, who rarely dons a skirt, who plays and fights with boys and is given a gun instead of a doll for Christmas.”).

140. LEE, *supra* note 2, at 119.

141. *Id.* at 184.

142. LEE, *supra* note 2, at 175-176.

143. For example, Mrs. Dubose criticizes Scout for refusing to wear a dress. LEE, *supra* note 2, at 135 (Mrs. Dubose said, “‘And you—’ she pointed an arthritic finger at me—‘what are you doing in those overalls? You should be in a dress and camisole, young lady! You’ll grow up waiting on tables if somebody doesn’t change your ways—a Finch waiting on tables at the O.K. Café—hah!’”). See also, LEE, *supra* note 2, at 170 (When Aunt Alexandra was moving in, she announced that “‘We decided that it would be best for you to have some feminine influence. It won’t be many years, Jean Louise, before you become interested in clothes and boys—’ I could have made several answers to this: Cal’s a girl, it would be many years before I would be interested in boys, I would never be interested in clothes. . . but I kept quiet.”).

144. Ware, *supra* note 7, at 286-87 (“According to Scout, power and authority are masculine attributes; to be a girl is to be marginalized and excluded. An important part of Scout’s development is her growing comprehension that she will be forced to enter the world of women, a world that holds no attractions for her.”).

145. LEE, *supra* note 2, at 108 (“Aunt Alexandra was fanatical on the subject of my attire. I could not possibly hope to be a lady if I wore breeches; when I said I could do nothing in a dress, she said I wasn’t supposed to be doing things that required pants. Aunt Alexandra’s vision of my deportment involved playing with small stoves, tea sets, and wearing the Add-A-Pearl necklace she gave me when I was born; furthermore, I should be a ray of sunshine in my father’s lonely life. I suggested that one could be a ray of sunshine in pants just as well, but Auntie said that one had to behave like a sunbeam, that I was born to be good but had grown progressively worse every year.”).

146. LEE, *supra* note 2, at 54 (“Jem told me I was being a girl, that girls always imagined things, that’s why other people hated them so, and if I started behaving like one I could just go off and find some to play with.”); at 50 (“‘I swear, Scout, sometimes you act so much like a girl it’s

her future vocation, Scout imagines, “Nurse? Aviator?”,<sup>147</sup> conflating—or contrasting—traditional gender roles in vocations. Lee portrays Maudie Atkinson, the widowed neighbor of the Finch family, as an independent figure adopting both masculine and feminine traits.<sup>148</sup> Calpurnia, who works as the housekeeper and cook for the Finch family, serves as a strong, female role model for Scout.<sup>149</sup> Harper Lee, when writing the novel over three years during the late 1950s would certainly have been influenced by the well-publicized and heroic efforts of African American women to overcome racial and gender discrimination.<sup>150</sup> Even Stephanie Crawford’s mocking remarks to Scout about becoming a lawyer raises the notion in the reader’s mind of women in a traditional male profession.<sup>151</sup> Moreover, normally

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mortifyin’.” Said Jem, when he, Scout, and Dill were playing); at 69 (Jem said “Scout, I’m tellin’ you for the last time, shut your trap or go home—I declare to the Lord you’re gettin’ more like a girl every day!”); at 135 (“Come on, Scout,” [Jem] whispered. ‘Don’t pay any attention to her, just hold your head high and be a gentleman.’); at 105 (In response to Scout’s swearing, her Uncle Jack chided: “‘Scout, you’ll get in trouble if you go around saying things like that. You want to grow up to be a lady, don’t you.’ I said not particularly.”). It is troubling, yet not surprising, that children so young—of both genders (Scout as well as Jem and Dill)—have already been socialized to see girls as being negative; they have already internalized negative gender stereotypes.

147. LEE, *supra* note 2, at 308. Recall Amelia Earhart’s 1928 transatlantic flight, which would have sparked the imagination and dreams of girls at the time during which the story was set.

148. Ware, *supra* note 7, at 287 (“When Jem and Dill eventually exclude her from their play, Scout discovers female companionship with Miss Maudie Atkinson, their iconoclastic neighbor, a widow who defies convention by tending her garden ‘in an old straw hat and men’s coveralls’ . . . Miss Maudie successfully balances an independent spirit with traditional gender roles and therefore becomes a strong potential role model for Scout.”) (citation omitted). See LEE, *supra* note 2, at 56 (“Miss Maudie. . . was a widow, a chameleon lady who worked in her flower beds in an old straw hat and men’s coveralls, but after her five o’clock bath she would appear on the porch and reign over the street in magisterial beauty.”).

149. LEE, *supra* note 2, at 154 (Scout noted of Calpurnia, “She seemed glad to see me when I appeared in the kitchen, and by watching her I began to think there was some skill involved in being a girl.”). See also, Ware, *supra* note 7, at 287 (“Calpurnia teaches the Finch children about their shared common humanity with their African-American neighbors, and she acts as both a moral guide and an example of female authority for Scout.”). See also Blackall, *supra* note 8, at 30 (“Calpurnia’s remarks instruct Scout in what it really means to be a lady, in contrast with her Aunt Alexandra’s rituals of dress and how to pass a plate of tea biscuits. . . . Being a lady means being self-effacing, courteous, adaptable, and forbearing.”) (citation omitted).

150. Johnson, *supra* note 139, at 130 (“In 1955, only months before Harper Lee began committing her fiction to paper, two of the most startling events in Alabama history had jarred the state, wrenching it irreversibly in a radically different direction. The central figures in both events were black women: Rosa Parks, who on November 30, 1955, refused to give up her bus seat to a white passenger; and Autherine Lucy, who, on February 3, 1956, presented herself for registration in the racially segregated University of Alabama where Harper Lee had been enrolled as a student of law a decade earlier.”).

151. LEE, *supra* note 2, at 307-308. Harper Lee, herself, had enrolled in law school in 1947. Joseph Crespino, “The Strange Career of Atticus Finch,” vol. 6, no. 2, *Southern Cultures*, 9, 13 (Summer 2000).



conventional Aunt Alexandra asserts that men should learn how to cook and help take care of their wives when they are sick.<sup>152</sup> Other examples abound. Harper Lee does not hit the reader over the head with these concepts.<sup>153</sup> For example, she softens Alexandra's progressive comment by Scout saying "I don't want Dill waitin' in me . . . I'd rather wait on him,"<sup>154</sup> and by the fact that Alexandra normally displays quite the opposite of feminist tendencies throughout the book. Moreover, when propriety prescribes that Scout act like a lady for virtuous reasons, she follows the lead of Aunt Alexandra and Miss Maudie.<sup>155</sup> But these subtle breaks with traditional gender stereotypes are unmistakably there (e.g., see the "Morphodite" allusions).<sup>156</sup> Lee also acknowledges several times in the novel that efforts to bring about positive change from negative situations often entail a slow, arduous process, and take enormous determination and courage by the people striving to bring

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152. LEE, *supra* note 2, at 109 (Scout's cousin Frances remarked:

"'Grandma's a wonderful cook,' said Francis. 'She's gonna teach me how.'

'Boys don't cook.' I giggled at the thought of Jem in an apron.

'Grandma says all men should learn to cook, that men oughta be careful with their wives and wait on 'em when they don't feel good,' said my cousin.")

153. Halpern, *supra* note 3, at 757 ("Lee's insights into gender tropes are subtler than her observations on race. . . Explicitly linking her critique of gender (or sexuality) with the racial politics of the era would have radicalized the novel to the point of alienating her mainstream target audience, so Lee obnubilated these subtexts, expositing their prominence in the politics of the time period discretely while making primarily legible her protests against dominant white imaginaries of African Americans. Lee's choice explains why *Mockingbird* was initially celebrated for its overt commentaries on race, and it is only now that critical assessors have begun to focus on the role gender and sexuality played within her book and critiques of racism."), and at 761 ("Reinforcing her critique, Lee conversely narrates those white characters in the novel who contest dominant conceptions of gender and sexuality as the most enlightened individuals in terms of the South's overarching race problem. A host of positive white characters reinforce Lee's argument that gender and its behaviors are socially constructed.").

154. *Id.*

155. Thomas L. Shaffer, "Growing Up Good in Maycomb," 45 ALA. L. REV. 531, 537 (1994) (when Atticus interrupts the missionary society meeting to ask Calpurnia to accompany him to tell Tom Robinson's wife that he has been killed, "No one tells the other ladies at the meeting what has happened. No doubt that is because Atticus, his sister, and his neighbor know (and Scout learns) that decency requires that the widow learn first. And so the meeting, the fans, the rocking, and the cool water, go on as if nothing has happened—except that Scout and Aunt Alexandra have to take over Calpurnia's duties as well as their own. Scout then describes her duties: 'I carefully picked up the tray and watched myself walk to Mrs. Merriweather. With my best company manners, I asked her if she would have some. After all, if Auntie could be a lady at a time like this, so could I.'). Nonetheless, even in this instance, under Scout's dress, she continues to wear her overalls—symbolizing her continuing refusal completely to conform to prescribed gender norms. *Id.* ("The fact that she wears bib overalls under her dress when Aunt Alexandra drafts her into service at the missionary-circle meeting shows how she has begun to figure out how to wear ladies' clothing and at the same time accept and practice what she learned when she wore overalls.").

156. *Id.* at 91, 98.

about those positive changes, but that these changes can and do occur.<sup>157</sup> In this manner, perhaps the author's portrayal of Mayella Ewell, in conjunction with the evidence leaning toward her exoneration discussed above, may have helped shape the evolution of the law and society regarding women's rights in a small way that is reflective of the profound influence that *To Kill a Mockingbird* had upon the law and society regarding civil rights.<sup>158</sup> Scout personifies the positive changes occurring in society that began to modify the negative forces that had borne down upon Mayella regarding class, gender, race, history, morality, and the interwoven familial, social, and legal dynamics under which Mayella was compelled to live. Due in part to her relative privilege, Scout—in resisting those forces—helps foster their gradual evolution, alleviating some of the injustices that marginalized groups have faced throughout our nation's history.

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157. LEE, *supra* note 2, at 149 (“I wanted you to see what real courage is. . . It’s when you know you’re licked before you begin but you begin anyway and you see it through no matter what. *You rarely win, but sometimes you do.* Mrs. Dubose won, all ninety-eight pounds of her. According to her views, she died beholden to nothing and nobody. She was the bravest person I ever knew.” Atticus discussing Mrs. Dubose’s weaning herself from her morphine addiction before she died.) (emphasis added); at 101 (Atticus explained why it is important to defend Tom Robinson even though racial prejudice would likely prevail and he would probably lose, stating “Simply because we were licked a hundred years before we started is no reason for us not to try to win.”); at 316 (discussing Atticus’s attempts to defend Tom with Maudie Atkinson, his sister Alexandra says “It tears him to pieces. He doesn’t show it much, but it tears him to pieces. . . this town. They’re perfectly willing to let him do what they’re too afraid to do themselves. . . They’re perfectly willing to let him wreck his health doing what they’re afraid to do.” Maudie responds “Whether Maycomb knows it or not, we’re paying the highest tribute we can pay a man. We trust him to do right. It’s that simple. . . The handful of people in this town who say that fair play is not marked White Only; the handful of people who say a fair trial is for everybody. . . The handful of people in this town with background.”). See also Halpern, *supra* note 3, at 763 (“By presenting inconsistencies, [Lee] illustrates the malleability of identity and thus allows for the possibility of a changed future—an impossible trajectory without recognition of the potential for human agency, consciousness, and capacity for transformation. Thus, there are instances when her characters transgress the tropes originally assigned to them.”), and 765 (“Mrs. Dubose’s victory over drug addiction just prior to her death fulfills Lee’s second ambition—to prove the existence of free will and the potential for positive change within even the most entrenched players.”).

158. Discussing the injustice of racism, one commentator notes “Lee suggests that the best way to achieve long-lasting legal reform is also a process of bending the law, a process that must be undertaken with care and understanding, particularly the understanding that flows from standing in others’ shoes. The resulting changes in the law will of necessity be incremental and will occur over time, as society itself adapts and recognizes the need for such changes. Thus, the law will bend and will ultimately be reshaped by revisions and reforms that will preserve the highest and best aspects of jurisprudence, community, and culture, while correcting and attempting to eliminate its evil and its unjust failures. Lee’s hope seems to be that the law will ultimately redeem itself, and therefore *To Kill a Mockingbird* is full of hope and expectation for this redemption.” I would suggest that Lee’s optimism for legal and societal change extended to the trend toward gender equality as well as the trend toward racial equality. Wood, *supra* note 134, at 82.

#### IV. CONCLUSION

This essay has explored various factors leading to the conclusion that Mayella Ewell experienced an unfair trial in *To Kill a Mockingbird*. It argues that the domestic violence and sexual abuse Bob Ewell perpetrated against his daughter, and the blind eye that society and the legal system turned toward Mayella's suffering, are to blame for Mayella's comportment in the story instead of the young woman herself. An examination of various legal themes that thread through the novel, including revenge, justice, process, advocacy, punishment, order, and change, supports this interpretation of the book. Since this novel continues to have such a wide readership and is examined in high school and college classes, hopefully this reexamination of Mayella's place within the story will help foster broader conversations about domestic violence and sexual assault in this country.<sup>159</sup> Such discussions may further assist in creating enduring legal and societal changes to reduce—and eventually eliminate—such scourges that still plague far too many people across the United States and indeed throughout the world.

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159. *See generally*, Kristen Bowers, Common Core and NCTE/IRA Standards-Based Literature Guide for *To Kill a Mockingbird* by Harper Lee, Secondary Solutions (2007).