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BEYOND ATTICUS FINCH: LESSONS ON ETHICS AND MORALITY FROM LAWYERS AND JUDGES IN POSTCOLONIAL LITERATURE

Renee Newman Knake*

I. INTRODUCTION

This article explores the portrayal of lawyers and judges in postcolonial literature, an intersection between law and literature often ignored in legal scholarship, and asks what these stories offer to our collective understanding of the fundamental disconnect between the rule of law (or one’s role in the law) and individual morality. The failure to adequately consider postcolonial literature is especially true of the Western (i.e. North America and Western Europe) legal academy, which tends to focus heavily on Western literature concerning this sort of inquiry. For example, the mere mention of Atticus Finch from Harper Lee’s To Kill a Mockingbird conjures the image of the ultimate attorney, an ideal frequently praised—and occasionally criticized—in Western commentaries on legal ethics and professionalism. Indeed, the benefits of studying literary lawyers like Finch and others from Western literature are well documented by legal scholars who contend that such study: (1) provides insights about the practice of law and its effects on individuals, (2) enhances our capacity for sensitivity to oppression or injustice through imagination and new experiences, (3) challenges established thought, and (4) adds variety in the law school curriculum, among other virtues. Little attention, however, has

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1. Conceding, of course, the concerns we might have trying to define what is meant by “postcolonial,” in using the term the author refers to literature written in the past half-century by authors from formerly colonized countries who address, in some way, the legacy of colonialism. For further discussion regarding the difficulties of defining the term “postcolonial,” see infra note 52 and accompanying text.

2. As an illustration, a Westlaw search for articles discussing Atticus Finch alone—not to mention other Western legal characters—resulted in 632 documents (search performed July 10, 2007, of Westlaw database TP-All for “Atticus Finch”), compared to 21 articles referencing the general categories of postcolonial literature or postcolonial fiction (search performed July 10, 2007, of Westlaw database TP-ALL for postcolonial w/5 literature fiction).

3. See infra Part II.B.

been devoted by Western legal scholars to the lawyers depicted in post-colonial literature even though, as this article will demonstrate, a number of excellent options exist for such an inquiry.

Four characters from postcolonial fiction are studied here in an effort to uncover the lessons they hold that might be different from the lessons we learn through the Atticus Finches of the literary world. Two of the characters are lawyers and two are adjudicators—a civil magistrate and a judge. Each character represents unique aspects of the colonizing power’s influence—one a bright star in the aftermath of decolonization, one a cynical beneficiary of the colonizer’s purported affirmative action efforts, one a complicit yet conflicted arm of the empire, and one an activist striving to repair the ravages of apartheid in her country. Though the details of the characters’ stories are quite different, the characters share one common theme: the struggle of reconciling the disconnect between obligations to the law and convictions of morality. While not all these literary legal figures necessarily are successful in their efforts to reconcile this disconnect, each character offers lessons for lawyers-to-be, lawyers, and readers generally regarding law and morality.

This study leads to two main conclusions. First, on a broad level, these stories illustrate the failings of law when, at times, the law simply is unable to address completely a particular predicament. Second, the stories offer an alternative perspective, through the lens of postcolonialism, through which to better comprehend and appreciate lawyers’ choices when pursuing justice and when the law conflicts with norms or values. Such findings are important and relevant to both practitioners and students, if they desire to balance legal obligations and ethical duties and if they desire to have meaningful and rewarding careers.

Law and literature scholars advocate for the inclusion of literature in legal study for many reasons. For the purposes of this article literature reveals lessons concerning lawyers who face conflicts between their role in the law and their moral compasses. Part II of this article reviews the study of lawyers portrayed in literature. More specifically, Part II identifies the ways a study of literature can respond to the disconnect between lawyers’ responsibilities to the rule of law and to individual morality, and it examines postcolonial fiction’s lessons about the issue, beyond those provided by the standard Western literary selections. Part III of the article analyzes the stories of four legal figures in postcolonial literature, thereby illustrating the lessons that may be learned from these legal figures’ attempts to reconcile individual values and beliefs with the rule of law and with professional norms. Part IV of the article concludes by observing that postcolonial literature may aid law students, practitioners, and readers as a whole.
II. WHY STUDY LITERARY LAWYERS

Commentators cite numerous justifications for studying law and literature, a complete discussion of which is beyond the scope of this article. As an initial matter, the focus in this article is the study of law in literature (or perhaps more accurately lawyers in literature) as opposed to the study of law as literature. In particular, this article analyzes how literature helps attorneys resolve the divergence between one's role in the law and one's moral compass. To understand literature's role in this regard, the article first examines this disconnect and then explores how literature, especially postcolonial literature, offers an alternative means for exploring, if not resolving, the disconnect.

A. Disconnect and Dissatisfaction: Necessary Consequences of Being a Lawyer?

It is no secret that many lawyers are less than satisfied with their careers. A number of commentators have examined the reasons for lawyer dissatisfaction. One recurring theme seems to be that lawyers, and especially recent law school graduates, feel they are "losing themselves" or must sacrifice their pre-lawyer values and beliefs. The traditional case-book method of law school training provides little, if any, instruction for

5. See infra Part II.B.
6. For an explanation of the differences between the study of law as literature vs. law in literature, see RICHARD A. POSNER, LAW AND LITERATURE: A MISUNDERSTOOD RELATIONSHIP 14-21 (Harvard Univ. Press 1988).
7. Martin E.P. Seligman, Paul R. Verkuil & Terry H. Kang, Why Lawyers are Unhappy, 23 CARDOZO L. REV. 33, 36 (2001) (The authors observe: "Practitioners have increasingly acknowledged that law is a profession in crisis, and the crisis they speak of relates to the widespread disenchantment among even the most talented lawyers. This undercurrent of dissatisfaction cannot be ignored or hidden by the many rueful jokes often told by lawyers about lawyers. Among practitioners responding to a 1992 poll, 52 percent described themselves as dissatisfied, and many are retiring early or leaving the profession altogether.") (citations omitted).
8. See, e.g., Edward D. Re, The Causes of Popular Dissatisfaction with the Legal Profession, 68 ST. JOHN'S L. REV. 85, 91-113 (1994) (describing the causes of dissatisfaction as (1) the hired gun approach to litigation, (2) materialism and billable hours, (3) commercialization, advertising and the contingent fee, (4) lawyer explosion and the media, (5) litigation explosion, and (6) lawyer competence); Patrick J. Schiltz, On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession, 52 VAND. L. REV. 871 (1999) (discussing the widespread depression, anxiety, alcoholism, and other sources of unhappiness among attorneys); Susan Daicoff, Asking Leopards to Change Their Spots: Should Lawyers Change? A Critique of Solutions to Problems with Professionalism by Reference to Empirically-Derived Attorney Personality Attributes, 11 GEO. J. LEGAL ETHICS 547 (1998) (noting the decline of professionalism and public opinion of attorneys, along with increased dissatisfaction and dysfunction among attorneys).
10. See, e.g., Lawrence S. Krieger, The Inseparability of Professionalism and Personal Satisfaction: Perspectives on Values, Integrity and Happiness, 11 CLINICAL L. REV. 425, 426 (2005) (arguing "that depression and unprofessional behavior among law students and lawyers typically proceed from a loss of integrity—a disconnection from intrinsic values and motivations, personal and cultural beliefs, conscience, or other defining parts of their personality and humanity").
lawyers-to-be concerning how to avoid feeling disconnected from one’s former self while becoming a lawyer. Indeed, this method of instruction has been cited as a very cause of the disconnect. The only required law school course that might even begin to approach the topic of attorney dissatisfaction is professional responsibility, but students complain that professional responsibility courses do little to prepare them for the real issues faced in practice, such as situations where the law diverges from morality. Once in practice, lawyers find even fewer opportunities for reflection on ethical dilemmas or career satisfaction.

What exactly is this losing of oneself? What is the disconnect between the individual-self and the lawyer-self? Many are quick to identify the number of hours attorneys work, especially young associates employed by top law firms. Yet, this disconnect may run much deeper than long hours. Instead, it may stem from conflict between legal or professional obligations and moral conscience or identity. It is not uncommon to hear law students and lawyers talk of the dual, competing roles between the self as an individual and the self as a lawyer. Students frequently express this sentiment about their law school experiences generally, and it is evident in several of the mandates placed upon lawyers by the ethical rules and the culture of the profession. For example, the ABA Model Rules of Professional Conduct (Model Rules) in some circumstances allow or require client confidentiality to be maintained at the expense of a third party’s well being. The Model Rules also permit representation of a client whose

11. See, e.g., Note, Making Docile Lawyers: An Essay on the Pacification of Law Students, 111 Harv. L. Rev. 2027, 2029-30 (1998) (concluding that law students become separated from an “initial commitment to use the law to help people and to further a social justice agenda” due to the method of law school instruction, and that students “consequently become alienated from their former ideals”) (citation omitted).

12. For a discussion of students’ complaints about the insufficient integration of ethical lessons into the law school curriculum, see Robert Granfield & Thomas Koenig, “It’s Hard to be a Human Being and a Lawyer”: Young Attorneys and the Confrontation with Ethical Ambiguity in Legal Practice, 105 W. Va. L. Rev. 495, 499-500 (2003). Students’ general dislike of legal ethics or professional responsibility courses apparently has not improved over the years. Id. at 500 (quoting Ronald Pipkin, Law School Instruction in Professional Responsibility: A Circular Paradox, 2 Am. B. Found. Res. J. 247, 258 (1979) for his observation that students perceive “legal ethics courses as requiring less time, as substantially easier, as less well taught and as a less valuable use of class time than their other course work”).

13. While it is true that lawyers work long hours, they are not the only professionals with enormous demands on their time. Doctors, teachers, scientists, engineers, and many others all work long hours, often under stressful conditions, and yet we do not hear similar concerns over the loss of self. This is not to say that other professions do not have concerns about work conditions, nor to make generalized stereotypes regarding this point. Instead, it merely seems that lawyers do seem unique in raising this particular concern.

14. ABA Model Rules of Professional Conduct 1.6 (2007) (“A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b), [which provides, in relevant part, that]: A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary: (1) to prevent reasonably certain death or substantial bodily harm; (2) to prevent the client from committing a crime...
political or moral views diverge from that of the lawyer.\textsuperscript{15} That the Model Rules and other legal mandates provide for the protection of dishonest or violent clients is another source of tension.\textsuperscript{16} Sissela Bok calls this tension "going against fundamental moral constraints" and notes that "when lawyers choose or are forced to compromise their scruples by violating such constraints, their trust in themselves can be shaken, both as persons capable of a consistent moral stance and as individuals worthy of trust on the part of others."\textsuperscript{17} Some lawyers are able to move beyond these doubts, but "others find themselves increasingly alienated from the profession."\textsuperscript{18} In fact, Bok notes that many attorneys who leave the practice do so for this reason.\textsuperscript{19}

Some scholars label the process of addressing this tension or disconnect as role morality or role differentiation. In other words, role morality or role differentiation occurs in "a situation in which the occupant of . . . a role must consider the effect of disobedience on undermining various benefits of law . . . .\textsuperscript{20} While this explanation may seem fairly straightforward, in practice an attorney may find role differentiation quite troubling. J. Michael Martinez recognizes that the problem with "role morality is that it requires lawyers to compartmentalize their private and public personas, to ignore their 'off-the-job values . . . .\textsuperscript{21} This compartmentalization weighs heavily on many attorneys. As Martinez explains:

Because rational human beings often make decisions based on a variety of factors including a sense of morality that they might be hard-pressed to articulate, it is questionable whether lawyers can

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\item[15.] ABA MODEL RULES OF PROFESSIONAL CONDUCT 1.2(b) (2007) ("A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.").
\item[16.] Gabriel Lerner makes a similar point in his article, \textit{How Teaching Political and Ethical Theory Could Help Solve Two of the Legal Profession's Biggest Problems}, 19 GEO. J. LEGAL ETHICS 781, 783 (2006): "[T]here is often a dissonance (or at least a perceived dissonance) between how a human being should ethically behave and how a lawyer should ethically behave. Most people want to be decent human beings, yet lawyers, if they make their clients' interests the highest priority, must frequently do things, such as impugn the character of a truthful witness, that would be reprehensible if done by a non-lawyer."
\item[18.] Id.
\item[19.] Id. (referencing sources such as a Maryland State Bar Association survey that documents causes of lawyer dissatisfaction) (citations omitted).
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satisfactorily and consistently divorce their private and public selves, even if this act is considered a desirable component of the lawyer’s role morality. Critics charge that by creating a “moral distance” between “ordinary morality” and professional responsibility, the legal profession has diminished the “moral universe” of the lawyer.22

Not only do attorneys struggle to balance their professional role with their individual values, but society routinely condemns lawyers for engaging in this struggle in the first place.23 Numerous sources—from academic to anecdotal—reveal that the public considers lawyers greedy, immoral, and untruthful.24

Perhaps if we were more willing to examine this disconnect, then fewer law students would find themselves disillusioned, lawyers would be more likely to remain in practice (and to be fulfilled rather than frustrated by the practice), and society would be more understanding of the choices lawyers make. If role differentiation is both a necessary attribute for lawyers and also a potential source for such despair, why is it rarely, if ever, discussed in the classroom or the workplace? The greatest impediment to this discussion may be the fact that law students and practitioners lack an appropriate vehicle for broaching the subject in the first place—the very opportunity that literature readily facilitates.

B. Literature’s Redemptive Role

Law and literature proponents offer numerous reasons to justify the presence of literature in the law school curriculum.25 It has been recognized that “[n]ovels are proven instruments to explore social and moral issues.”26 Literature’s “humanization” of the law is a common theme in

22. Id. (citations omitted).
23. Id. at 698 (observing the “hired gun effect”, where society condemns lawyers as immoral and utterly unredeemable). See also Orrin K. Ames III, Concerns About the Lack of Professionalism: Root Causes Rather than Symptoms Must be Addressed, 28 AM. J. TRIAL ADVOC. 531, 544-48 (2005) (discussing the consequences of role differentiation and the “inherent tension between the lawyer as a person and the lawyer as an advocate”).
24. For an interesting discussion of the declining public perception of lawyers in this regard, see Daicoff, supra note 8, at 551-53.
25. For a concise but thorough summary of justifications beyond those considered in this article, see Kissam, supra note 4. See also Lucia A. Silecchia, Things are Seldom What They Seem: Judges and Lawyers in the Tales of Mark Twain, 35 CONN. L. REV. 559, 566 (2003) (observing that “examining lawyerly and judicial conduct in the fictional setting has much to contribute to our understanding of the modern legal system and its function”); POSNER, supra note 6, at 358-59 (recognizing that law and literature deserves a place in legal teaching and research, and suggesting its inclusion in courses such as law and literature, jurisprudence, legal process, constitutional law, torts, copyright, legal writing, and advocacy).
this regard, meaning that lawyers ought to read literature for its humanizing attributes. As Robin West explains, "[l]iterature helps us understand others. Literature helps us sympathize with their pain, it helps us share their sorrow, and it helps us celebrate their joy. It makes us more moral." West considers this aspect of literature its single greatest contribution to lawyers. Literature allows the reader to enter a world closed off by court opinions and news articles, for through literature we are able to consider a character's internal observations and emotions. This is important because the procedure and technicalities of the legal system frequently discount or exclude subjective emotions like sympathy or passion. Furthermore, reading a work of fiction permits us to venture into areas that the constructs of daily life typically do not permit. Paul J. Heald further contends that the study of literature is relevant to law because it explains how law connects to the way "we should live, even when legal discourse obscures the connection," and "[b]ecause fiction is an undeniably rich collection of studies in the appropriateness of human action. In fact, literature in its various forms may be a unique repository for information capable of enriching legal decision making."

Martha Nussbaum powerfully argues that the study of law and literature particularly is suited for understanding ethical behavior. She suggests that thinking about narrative literature allows for a humanistic conception of the world around us. In her words, the experience of reading

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27. See, e.g., Robin L. West, The Literary Lawyer, 27 PAC. L.J. 1187, 1188 (1996) ("The good lawyering to which we should aspire, on this view, and the aspiration for which we should instill in students, is importantly informed not by economics, but by literary and humanistic inquiry."); William T. Braithwaite, Why, and How, Judges Should Study Poetry, 19 LOY. U. CHI. L.J. 809, 825 (1988) ("Judges should study poetry for the same reason all of us should—because from it we can learn what it really means to be human."); Peter Goodrich, Law By Other Means, 10 CARDozo STUD. L. & LITERATURE 111, 116 (1998) ("Law and Literature offers an alternative method for addressing the epistemic question of how we know the diversity of laws, as well as substantive access to the disparate social forms of legal being, of law in society. At its most radical, it proffers the possibility of law by other means.").


29. See WEST, supra note 27, at 1211.

30. See Silecchia, supra note 25, at 569–73 (discussing lessons that may be drawn from legal fiction).


32. MARTHA NUSSBAUM, POETIC JUSTICE: THE LITERARY IMAGINATION AND PUBLIC LIFE 12 (Beacon Press 1995). In support of her point Nussbaum cites WAYNE BOOTH, THE COMPANY WE KEEP: AN ETHICS OF FICTION 70-77 (Univ. of California Press 1988), in which he "argues that the act of reading and assessing what one has read is ethically valuable precisely because it is constructed in a manner that demands both immersion and critical conversation, comparison of what one has read both with one's own unfolding experience and with the responses and arguments of other readers." Id. at 9. She concludes that thinking of reading "as combining one's own absorbed imagining with periods of more detached (and interactive) critical scrutiny, we can already begin to see why we might find in it an activity well suited to public reasoning in a democratic society." Id.
provides insights that should play a role (though not as uncriticized foundations) in the construction of an adequate moral and political theory; . . . [and that] develop[ ] moral capabilities without which citizens will not succeed in making reality out of the normative conclusions of any moral or political theory, however excellent. . . . [N]ovel-reading will not give us the whole story about social justice, but it can be a bridge both to a vision of justice and to the social enactment of that vision. 33

Similarly, for our purpose here, novel-reading may not provide the whole story about how lawyers differentiate between conflicting beliefs, values, norms, and rules, but it can inspire a vision of how these conflicts may be reconciled and how that reconciliation may be brought to fruition.

Since the birth of the law and literature movement, academics have analyzed the depiction of lawyers in Western literature (i.e. North American and British works). 34 In recent years, a narrower approach has emerged among professional responsibility scholars, who have focused on the lessons that might be learned from lawyers and judges portrayed in literature. The most famous example probably is Atticus Finch, 35 who has

33. Id. at 12.
34. This aspect of the law and literature field is less explored than others, however. See, e.g., POSNER, supra note 6 at 20 (specifically excluding the depiction of lawyers in fiction from his book on law and literature).
35. For examples of works extolling the virtues of Atticus Finch, see Gregory J. Sullivan, Children Into Men: Lawyers and the Law in Three Novels, 37 CATH. LAW. 29, 30, 42 (1996) (examining Atticus Finch among others to discuss one of what he calls the “central tensions in a lawyer’s moral life” – “realism” versus “romanticism”, and concluding that lawyers “would do well to emulate [Atticus Finch’s] moral courage”); Carrie Menkel-Meadow, The Sense and Sensibilities of Lawyers: Lawyering in Literature, Narratives, Film and Television, and Ethical Choices Regarding Career and Craft, 31 MCGEORGE L. REV. 1, 12 (1999) (calling Atticus Finch “[p]erhaps the most revered lawyer in modern literature”); NANCY LAWSON REMLER AND HUGH LAWSON, Situating Atticus in the Zone: A Lawyer and His Daughter Read Harper Lee’s To Kill a Mockingbird, in LITERATURE AND LAW 207–17 (Michael J. Meyer ed., 2004) (revealing the disconnect in understanding of Atticus Finch between a scholar of literature and a jurist); William H. Simon, Moral Pluck: Legal Ethics in Popular Culture, 101 COLUM. L. REV. 421,421–22 (2001) (noting Kenneth Starr’s use of Atticus Finch as an ethical role model); Kristin Huston, Comment, The Lawyer as Savior: What Literature Says About the Attorney’s Role in Redemption, 73 UMKC L. REV. 161, 162 (calling Finch “the ultimate idealized attorney”); Michael Newcity, Why is There No Russian Atticus Finch? Or Even a Russian Rumpole?, 12 TEX. WESLEYAN L. REV. 271 (2005) (considering the possibility that Western culture is unique, leading to a myth of the lawyer as a hero that does not exist in other non-Western cultures); Edwin J. McCready, Atticus Finch or My Cousin Vinny?, 231 N.J. L. W. 5 (2004) (discussing the portrayal of lawyers in popular culture, specifically T.V. and film); Thane Rosenbaum, Introduction, The Myth of Moral Justice: Why Our Legal System Fails to Do What’s Right, 4 CARDozo PUB. L. Pol’y. & ETHICS J. 3 (2006) (pointing to Atticus Finch as an example of someone who does what is morally right, though it is directly counter to what is acceptable in his community); Teresa Godwin Phelps, Atticus, Thomas, and The Meaning of Justice, 77 NOTRE DAME L. REV. 925 (2002) (discussing the meaning of justice in light of Atticus’ defense of Tom Robinson); Thomas L. Shaffer, The Moral Theology of Atticus Finch, 42 U. Pitt. L. REV. 181 (1981) (employing Atticus Finch as the ever-moral lawyer to analyze dilemmas that face real lawyers in modern life). It should be noted, of course, that Atticus Finch is not the only lawyer studied from Western classics. For just two of many examples, see Silecchia, supra note 25 (discussing lessons to be learned from Mark Twain’s literary
“become so embedded in the collective consciousness as the quintessential 'good' lawyer that even a widely-adopted law school textbook treats him as if he were real.”36 (It should be noted, however, that not all commentary on Atticus Finch is entirely enthusiastic.37) Nevertheless, the field of professional responsibility—that is, the ethics of being a lawyer—presents an especially compelling subject for the analysis of literary lawyers.

The standard professional responsibility curriculum focuses almost exclusively upon the Model Rules. Many students complain that this focus lacks the intellectual rigor of other required courses, such as criminal law or contracts. Once in practice, many students further find that an awareness of the Model Rules often is insufficient for resolving the ethical dilemmas they encounter. As Michael E. Wolfson suggests:

Only if students can experience the contextual framework for the kind of significant ethical dilemmas they will face in practice can the subject of professional responsibility rise to a level comparable to classes that students believe, sometimes wrongly, are central to their education and the conduct of their professional lives after law school.38

Literature provides a type of contextual framework. The importance of the images conveyed in literature of lawyers “in action” has been acknowledged by several professional responsibility and legal ethics scholars, perhaps most notably by Carrie Menkel-Meadow.39 Menkel-Meadow explains that, “[n]arratives taken from literature . . . elucidate important ethical choices—at both the macro-level of choices regarding what kind of lawyer to be or career to pursue, and the micro-level of behavioral choices

37. See, e.g., Steven Lubet, Reconstructing Atticus Finch, 97 MICH. L. REV. 1339 (1999) (questioning whether Atticus Finch is really someone other attorneys should strive to be like or if he was simply a product of the time he lived in, or worse, perhaps not the good and moral person we all believe him to be); W. Bradley Wendel, Introduction, Our Love Hate Relationship with Heroic Lawyers, 13 WIDENER L.J. 1 (2003) (focusing on the lawyer as heroic figure, and asking whether the heroic values of Atticus Finch are unrealistic and overplayed).
39. Menkel-Meadow, supra note 35, at 2 (“I believe that the images conveyed by literature—whether in high or popular culture, or in the written word or visual image—of lawyers in action are important to us because they reflect on the ethics and morality of lawyering.”) (citing ROBERT COLES, THE CALL OF STORIES: TEACHING AND MORAL IMAGINATION (Houghton Mifflin 1989), among others for “accounts of how literature and stories illuminate issues of professional ethics”).
regarding what actions to take at specific junctures in one's career." Based upon her own teaching experience, Menkel-Meadow believes that literary lawyers have a critical role in the classroom:

... narrative treatments of lawyers' work have become increasingly significant for those of us who teach legal ethics. The moral challenges faced by the lawyers in John Grisham's or Scott Turow's legal thrillers (or lawyers in Louis Auchincloss' short stories and the less well-known novels by Arthur Solmssen) allow us to examine the decision process, the internal thinking and moral reasoning of the principal actors and those whose decisions are affected by the choices and decisions lawyers make. The context is rich, actions are taken, decisions are made and the reader or viewer can form his or her own judgments about what has occurred—all without any harm having been done to real-world clients.

She further explains that:

Depictions of lawyers' actions in novels... allow us to view (from multiple 'sight-lines') the beginning of the action (what led up to a particular choice point), the action itself, and the consequences of such actions. Thus we are provided multiple ways of seeing (backward, sideways, and forward) the consequences of a lawyer's action, which are often missing from an appellate case as read in the conventional professional responsibility class.

Lawyers portrayed in fiction help us learn more about who we are and who we will become. As James R. Elkins observes, "[l]awyers in film and in fiction become part of the rich storied world in which we try to imagine, think, act, and live a role, but a role in which we bring who we are as a person to the work we do, and a life in which the work we do gives the person we are a meaning it could not otherwise have." In this way, literary lawyers become a form of role model (to emulate or avoid, depending on the circumstances) and a way of testing strategies with the benefit of reflection and knowledge from others and ourselves. David

40. Id. at 6.
41. Id. at 4-5 (citations omitted).
44. Id.
M. Spitz also identifies these benefits, noting that in their humanity lawyers are

often confronted with situations requiring them to either adhere to ethical canons or follow their natural instincts. . . . In fiction, lawyers are deliberately placed in these positions to "test their commitments to themselves, their clients, and to the adversary system," and viewers are ultimately being asked to judge their character. 46

Those who teach professional responsibility find that "images of lawyers in . . . literature offer unique opportunities to teach and explore professionalism[,]" and that literature "elicits powerful responses about the morality, purpose, role, and identity of lawyers, in addition to traditional questions of legal ethics. The responses prompt students to reflect on career choice, professional persona in the legal world, and their development as human beings within a web of professional commitments." 47 Clearly, the study of lawyers as depicted in literature has a place in the law school curriculum, through law and literature course offerings and through courses like professional responsibility.

Yet the practice of directing students and practitioners (as well as non-law readers) to literary lawyers, such as Atticus Finch, as a source of instruction or guidance is not without criticism. 48 Indeed, there is some skepticism concerning the accuracy of the depiction of lawyers and judges by non-lawyer authors. There is also concern that lawyers lack the literature scholar's ability to draw insights from literature. Moreover, an enhanced morality or resolution of internal conflict may not be achieved by every reader. These concerns cause scholars like Jane Baron to question whether literature is even an appropriate source of education on matters like human nature and moral judgment, and if so, how society ought to

resolution of difficult problems as we examine with hindsight, foresight and peripheral vision what happens in books to other people.


48. For a discussion of literature's utility (or lack thereof) to lawyers and legal interpretation, see Jane B. Baron, Law, Literature, and the Problems of Interdisciplinarity, 108 YALE L.J. 1059 (1999). See also Daniel H. Lowenstein, The Failure of the Act: Conceptions of Law in the MERCHANT OF VENICE, BLEAK HOUSE, LES MISERABLES, and Richard Weisberg's POETICS, 15 CARDOZO L. REV. 1139, 1241 (1994) (concluding that "[t]o generalize about law or legal questions from the way they are treated in works of fiction is likely to be futile") and DIETER PAUL POLLOCZEK, LITERATURE AND LEGAL DISCOURSE: EQUITY AND ETHICS FROM STERNE TO CONRAD 13 (Cambridge Univ. Press 1999) ("On the one hand, there are academic lawyers who remain confident that both fields can learn from one another. On the other hand, literary critics and legal scholars continue to disagree on questions concerning the law's legitimacy.").
determine which works warrant selection. These concerns, however, do not suggest that literature's potential contributions to the study and practice of law should be ignored completely. If anything, such arguments serve as guides for discerning what works to consider and the weight accorded to these works, rather than an outright rejection of literature as a resource. Criticism like Baron's supports a broadening of the law and literature canon to include postcolonial works. For these reasons, and given the number of quality postcolonial novels depicting lawyers and judges, this article suggests that it is time for the legal academy to recognize such works within this body of scholarship.

C. The Postcolonial Perspective

Examining the depiction of lawyers in postcolonial fiction offers at least two elements beyond the lessons presented in Western literature. First, the works expose the reader to otherness, an experience foreign to many lawyers (and readers). This exposure enhances the readers' ability to identify and reconcile conflicting obligations and emotions. Second, while the feminist or black perspective in Western literature also may offer the perspective of otherness, postcolonial works familiarize the reader with the concerns and perspectives of the global community. These two elements combine to form an interesting backdrop for addressing the disconnect between law and morality.

"Postcolonial" as a category is not easy to define, and indeed, the very act of attempting to formulate a definition arguably undermines its

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49. Baron, supra note 48, at 1066–67. Baron observes:
Within each strand of law and literature, there are deep problems and divisions. Let us begin with the moral uplift theme of humanist law-and-lit. First, nothing guarantees that reading literature will actually help attain the goals of the moral uplift project. Surely many an insensitive brute has read great books without becoming one whit less insensitive or brutish. And even if it were true that lawyers could learn something from literature about human nature, nonrational understanding, and moral judgment, it is not clear that literature is the only—let alone the best—source of education on these matters.

Even assuming both that the moral uplift is worthwhile and that literature can provide it, there is a question about which books, exactly, should be read... Suffice it to say that the more the canon excludes the voices of outsiders and women, the less enriching and emancipatory the cross of literature with law is likely to be.

Id. (citations omitted).

50. A comprehensive survey of texts used in law and literature courses by 135 law schools reveals that postcolonial texts are used rarely, if ever. See Elizabeth Villiers Gemmette, Law and Literature: Joining the Class Action, 29 VAL. U. L. REV. 665 (1995). For additional observations regarding the canon of law and literature, see Baron, supra note 48, at 1067.

51. For further background on the postcolonial perspective, see Sandra Ponzanesi, Beyond Postcolonial Theory? Paradoxes and Potentialities of a Necessary Paradigm, in TOWARDS A TRANSCULTURAL FUTURE: LITERATURE AND SOCIETY IN A 'POST'-COLONIAL WORLD 37-64 (Geoffrey V. Davis, et. al., eds., 2004).
meaning. Nevertheless, it is relevant for purposes of this discussion to describe the category of postcolonial literature while conceding the problems inherent in defining such a term. "Postcolonial" as used in this article refers to works written in the past half-century by native writers from formerly colonized countries, that is, literature representative of resistance rather than privilege. To generalize, postcolonial literature articulates the identity of formerly colonized people and reclaims their past despite an inherent otherness. By exposing the incompetence or corruption of a particular fictionalized empire, postcolonial literature allows us to consider the shortcomings of our own state and exposes the injustice of its failings. A number of scholars identify the domination of law in postcolonial narratives and focus on the resistance to imperial law as a whole. This article, by contrast, centers on the portrayal of lawyers and judges and on their efforts to reconcile their individual morality with their roles in the legal system, whether as the colonizer or in the aftermath of the colonial regime.

Focusing on this category of literature, especially the experiences of colonialism or apartheid, reveals further lessons regarding how to reconcile the disconnect between morality and the rule of law. Kristin Czarnecki explains:

Postcolonial theory interrogates [issues of class, race, and gender] particularly well by acknowledging that throughout history white Western culture and values have been imposed on people of color, most viciously in the colonization of Africa, India, and Native America. Postcolonial theory, then, examines how colonizer people resist their colonization, either by rejecting it outright or, more often, by manipulating the colonized under the guise of submis-

52. On the difficulties associated with defining the term postcolonial, see DEEPIKA BAHRI, NATIVE INTELLIGENCE: AESTHETICS, POLITICS, AND POSTCOLONIAL LITERATURE 1-32 (Univ. of Minnesota Press 2003). Bhari notes that "various and often mutually contradictory impulses characterize postcolonial theory and criticism, making the term postcolonial notoriously indefinable and definitive claims virtually impossible . . . ." Id. at 1.


Postcolonial perspectives emerge from the colonial testimony of Third World Countries and the discourses of "minorities" within the geopolitical divisions of east and west, north and south. They intervene in those ideological discourses of modernity that attempt to give a hegemonic "normality" to the uneven development and the differential, often disadvantaged, histories of nations, races, communities, peoples. They formulate their critical revisions around issues of cultural difference, social authority, and political discrimination in order to reveal the antagonistic and ambivalent moments within the "rationalizations" of modernity.

Id.

Yoking together issues of empire, ethnicity, and cultural production, postcolonial theory compels readers to question what is valued in different cultures and why.55

One potential risk associated with a postcolonial analysis is that focusing on a story’s ethnic stereotypes may reinforce the stereotypes for white readers. Nevertheless, Czarnecki argues, “that a postcolonial context fosters better comprehension of a dominant culture’s effects on the marginalized.”56 Furthermore, as Patrick Lenta observes “[t]hese novels articulate the experiences of [the colonized] reacting to the social conditions facilitated by [the colonizer’s purported legitimacy] in a way that is untranslatable into legal or academic idioms.”57 Christine Matzke and Suzanne Muhleisen make a similar point, noting that “postcolonial texts moreover suggest that power and authority can be investigated through the magnifying glass of other knowledges, against the local or global mainstream, past and present, or against potential projections of a dominant group and a (neo-)imperial West.”58

Another risk in suggesting that postcolonial works be considered alongside Western texts is that the reader will “transpose the text into [his or her] own cultural milieu without attempting to recognize those contexts must necessarily deracinate those texts.”59 There is a concern that a reader unfamiliar with the historical and cultural context of a postcolonial work will “privilege[] British or American texts over [postcolonial texts] . . . simply because the reader cannot comprehend the full resonances of the text.”60 This risk, however, is outweighed by the benefits that an expansion of the traditional canon of law and literature can offer. Kristin Brandser Kalsem addresses this concern in the context of what she calls “outlaw texts”, that is “[n]ovels . . . written by and about women” which “bring perspectives and experiences to the study of law that are absent from official legal sources.”61 She argues that

56. Id. at 112.
57. Patrick Lenta, The Tikoloshe and the Reasonable Man: Transgressing South African Legal Fictions, 16 LAW & LITERATURE 353, 358 (2004) (Postcolonial novels “confront the law with ‘an ethics of emotion and a phenomenology of relationship’ absent from either the sterile, unimaginative, and monological narratives of the . . . pretensions to objectivity of traditional academic accounts.” (internal punctuation and citation omitted)).
58. CHRISTINE MATZKE AND SUSANNE MUHLEISEN, POSTCOLONIAL POSTMORTEMS: CRIME FICTION FROM A TRANSCULTURAL PERSPECTIVE 5 (Rodopi 2006).
59. JUDITH L. TABRON, POSTCOLONIAL LITERATURE FROM THREE CONTINENTS 17 (Peter Lang Publishing 2004).
60. Id.
[o]utlaw texts are sources from which we can learn about the agency and resistance of those whose voices have been excluded from dominant legal discourse.

\ldots

The study of outlaw texts has broader implications for the study of law than its potential impacts on certain specialized fields. Whether a judge is relying on precedent, a legal scholar is engaging in doctrinal analysis, or a law student is preparing for tomorrow’s class, it is important that all of us who study law be aware of and critically analyze the significance of the historical exclusion of certain voices and experiences from traditional legal texts. It also is crucial to study the signifying practices that have been used to challenge and resist official legal doctrine.\textsuperscript{62}

Her argument applies with equal force to justify the inclusion of postcolonial works within the canon of law and literature.

As will be evident in the discussion of the four novels in Part III, postcolonial literature particularly is suited to assist in efforts to understand how lawyers succeed (or fail) in resolving conflicts between obligations to the law and their personal moral values. The experience of otherness, or colonization, that is faced by the characters in these novels highlights the need to resolve this conflict and proposes a means for doing so. Perhaps if more law students and lawyers explored the duality of their role in the context of postcolonial literature, they would be more comfortable, or at least prepared, reconciling the disconnect in their work and life. Also, if more readers considered the duality inherent in lawyers’ work via the context of postcolonial literature, the readers may be more understanding of the seeming contradictions.

III. THE LITERATURE

A. Hamilton Motsamai from Nadine Gordimer’s The House Gun

Hamilton Motsamai is a lawyer in Nobel Prize winner Nadine Gordimer’s post-apartheid South African novel The House Gun. Motsamai, who is black, is hired by Harald and Claudia Lindgard, a white professional couple (he a business executive, she a medical doctor), to defend their son Duncan. Duncan, charged with murder, confessed to shooting his former male lover, Carl Jespersen, whom he found in the

\textsuperscript{62} Id. at 323–24.
arms of Natalie. Natalie is pregnant with a child that might be Duncan’s or Jespersen’s.

Duncan selects Motsamai as his lawyer because Motsamai is considered one of the best lawyers in the country. The reader learns of Motsamai’s training and credentials early on—though much of the description is tainted with racial overtones. From humble beginnings—poor, uneducated parents—Motsamai trained in the 1960’s at the University of Fort Hare, one of South Africa’s oldest educational institutions, and later in England, after being exiled from South Africa for political activity. Proving himself via appearances at the Old Bailey and through membership in the prestigious Gray’s Inn, Motsamai returned to South Africa in 1990. When Harald Lindgard asks a fellow board member about Motsamai’s reputation, the colleague is quick to describe his virtues, explaining that Motsamai “is known as eminently capable” with “the kind of aggressive spirit—controlled, mind you, by strong intelligence—that puts him on a high level of competence . . . Very clever—some would say exceptional. . . . in fact, Motsamai is providential . . . a star was needed and he appeared in our constellation.”

Ilene Durst finds the presence of a well-regarded attorney like Motsamai a refreshing change from most fiction portrayals of attorneys, as most portrayals typically depict lawyers as morally corrupt. She is quick and generous with her praise:

[Motsamai] maintains an exemplary professionalism and achieves his client’s legal ends while incorporating an ethic of care into his

63. As just one example of such overtones, consider the following passage:
What they wanted from him was wiliness, a special kind of shrewd ability a lay individual could not have and that people whose generalized prejudices they used to find distasteful attributed to lawyers who belonged to certain races. Jewish or Indian lawyers, those were the ones. Would a black lawyer have the same secret resources? Was it a sharpened edge that could be acquired in legal practice and training? Or was it in the making of a racial stereotype brought about originally by the necessity of those certain races to find ways of defeating laws that discriminated against them? In which case, why shouldn’t Hamilton have developed every natural instinct of life-saving wiliness and shrewdness, who better? Why should he be presumed to have forgone it forever in exchange for the lofty professional rectitude of an Aryan member of the Bar who had never lived on the Other Side? Was it there in his chambers, slyly, under the gaze of the framed photographs . . . .


64. Id. at 37. The real Fort Hare counts a number of influential leaders amongst its alumni (including Nelson Mandela), many of whom were expelled for their involvement during apartheid. See History of the University, Fort Hare University website, http://www.ufh.ac.za/?about=history (last visited Jan. 15, 2008).


66. Id.

67. Ilene Durst, The Lawyer’s Image, the Writer’s Imagination: Professionalism and the Storyteller’s Art in Nadine Gordimer’s THE HOUSE GUN, 13 CARDOZO STUD. L & LITERATURE 299, 312–13 (2001). Incidentally, Durst’s article is one of the very few law journal articles located in my research devoted entirely to a work of postcolonial literature. For the others, see supra note 57; infra note 108.
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practice, thereby shielding the client and his parents to the extent possible from the emotional trauma, dissociation and damage done by civilian encounters with the violence of the criminal justice system. Motsamai is empathetic, engaged, and ethical and he respects and graces the institution and society his conduct affects. He possesses all the desirable traits of the model attorney, which rarely appear, let alone shine, in literary lawyers of North American and Western European fiction.  

Indeed, it is refreshing to see this positive example (particularly in a non-Western literary source); yet the greater meaning of Motsamai’s story is found in a careful study of how he synthesizes his role as lawyer with his self-identity and how he reconciles the rule of law with his own morality.

Gordimer immediately sets the stage for this study by using the name “Hamilton” when Motsamai is acting as a non-lawyer and by using the name “Motsamai” when he is acting as a lawyer. Gordimer further provides several distinct examples regarding how this differentiation influences Motsamai’s practice and life. Whether intentional or not, Gordimer is intimately concerned with Motsamai’s role differentiation, and Motsamai has a unique ability to reconcile his role in the law with his personal value system. Gordimer attributes this ability to a “confidence” and an “empathy” gained from Motsamai’s experience on the “Other Side” (i.e. living under apartheid).

The reader sees this confidence in Gordimer’s description of the Lindgards’ situation. She writes:

They were two creatures caught in the headlights of catastrophe. Nothing between [their son] and the judge, passing sentence, but Motsamai and his confidence. The embrace of his confidence—wasn’t it the expression of the man, rather than the lawyer, compassion that was on the Other Side, inner side, of his patronizing command, that shell of ego he had had to burnish to get where he was, granted as the best available for this case, among a choice of white Senior Counsel.  

As for the empathy, Gordimer states that Motsamai is “[t]he man who brings from the Other Side the understanding of people in trouble.” Not only does he fulfill the traditional duties of a lawyer, but he also, “is there to support, to help [the Lindgards] accept in themselves, between them-

68. Durst, supra note 67, at 299.
69. GORDIMER, THE HOUSE GUN, supra note 63, at 128.
70. Id. at 207.
selves and himself, the natural expression of emotions" experienced by parents whose son stands accused of murder. Motsamai empathizes with his clients because he too has experienced otherness, but he keeps the empathy in check.  

The success of Motsamai’s defense (he obtains the most minimum sentence ever rendered in a case like this) is attributed to the confidence drawn from his experience on the other side. As Gordimer explains, “he was, he made himself, the focus of the court. . . . [F]rom all the years he had been shut out on the Other Side of the law he claimed the right to arrogant bearing of its dignity.”  

His success is attributed to his empathy as well, for example as he “shepherd[s] the parents [to visit their son in his jail cell after the sentence is handed down and the Lindgards reflect that they could not] have done without [Motsamai] this one last time.” While we might expect an opposite effect, Motsamai’s endurance of injustice during apartheid fuels his confidence and empathy rather than embittering him. Motsamai’s combination of confidence and empathy serves as a resource that he draws upon when faced with the duality of conflicting legal and moral concerns.

Attorneys often are questioned about their justification for defending a violent or morally repugnant client, and the Lindgards share this concern, even though it involves their own son. They ask Motsamai, “Is a lawyer obliged to take a brief for someone who has said he is guilty? Already judged himself. What is there to defend?”  

They simply cannot comprehend how one “could take . . . on representation of a self-confessed murderer[,]” echoing a criticism frequently levied against lawyers. Gordimer explains that Motsamai “did not see, or pretended not to see, that they thought they were making some challenging disguised demand for him to do something, anything unethical (as they saw it) in defence of their son.” Motsamai tells them:

> Of course a lawyer must take such a brief! The individual has the right to be judged according to many factors in relation to his confessed act. Circumstances may affect vitally the weight of circumstantial evidence. The accused may judge himself, but he cannot sentence himself. Only the judge can do that. Only on the verdict of the court. In terms of the kind of sentence likely to be im-

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71. _Id._ at 275.  
72. _Id._ (“Hamilton has to control his empathy, which exists along with his professional satisfaction in an extremely dubious case well defended by one of the best advocates available.”)  
73. _Id._ at 231.  
74. GORDIMER, _THE HOUSE GUN_, _supra_ note 63, at 274.  
75. _Id._ at 60.  
76. _Id._ at 145.  
77. _Id._
posed, this is the beginning of the case, man! What we concentrate on is ensuring that the sentence is not going to be a day longer, not a degree more punitive than mitigating factors allow.\textsuperscript{78}

Harald further voices society’s criticism of lawyers when he is troubled by what he considers inconsistencies in Motsamai’s treatment of clients in his office versus in the courtroom. As discussed in Part II of this article, it is not unusual for attorneys to be labeled as inconsistent or deceptive as a result of this sort of role shifting. After witnessing Motsamai greet the prosecutor and exchange words followed by laughter, Harald questions whether justice is merely a performance. “Harald sees Motsamai is enjoying himself, Duncan’s life is material for a professional performance. The man who brings from the Other Side the understanding of people in trouble, the man in whose hands there is the succoring glass of brandy, is left behind in chambers.”\textsuperscript{79} In the end, however, Harald and Claudia understand that Motsamai’s demeanor in the courtroom is a necessary part of the process and they are thankful they have placed their trust in Motsamai.\textsuperscript{80}

Over the course of the representation, Motsamai strikes an interesting balance in his relationship with Harald and Claudia, strategically allowing them to see beyond his lawyer persona:

It was not always necessary or desirable to keep the relationship with clients formal. Taking on a brief means establishing the confidence of human feeling, some sort of give-and-take, with the family of the life to be defended, even while retaining professional objectivity. This white couple didn’t have the resilience that blacks have acquired in all their generations of being people in trouble by the nature of their skins. He knows how to handle these two: they’ll feel they’re able to do something for him; that aside about wanting advice on a career for an ambitious son.\textsuperscript{81}

On one level Motsamai invites the Lindgards to his home to build trust and gain their confidence. Motsamai puts the Lindgards at ease by suggesting that Claudia might provide some career advice for his son who is considering becoming a doctor. Motsamai invites them into his home to take their minds off the circumstances of their son. On another level, however, extending a dinner invitation to the Lindgards reconciles Motsamai’s own

\textsuperscript{78} Id. at 60.
\textsuperscript{79} GORDIMER, THE HOUSE GUN, supra note 63, at 207.
\textsuperscript{80} Id. at 248. (“It’s a good thing you trusted him. There’s so much it’s difficult for people like us to understand—about the process, I mean.”)
\textsuperscript{81} Id. at 163.
feelings of disconnect. He opens our minds to consider creative ways of engaging with clients that may make practice more fulfilling and that may allow lawyers to merge their humanity with their lawyer-selves.

Consider Motsamai’s strategy. He anticipates and addresses the emotions of his clients, and he acts on their behalf when they cannot act for themselves. Motsamai allows them to see beyond his lawyer-self, but assumes the role of lawyer when necessary and appropriate. He does not ignore injustice; he confronts it. In crafting a successful defense, Motsamai avoids rationalizations or technicalities. These are the choices Motsamai makes in his pursuit of justice, choices rooted in confidence and empathy borne from his experience of otherness and choices that enable him to reconcile legal obligations with his morality.

B. The Judge from Kiran Desai’s The Inheritance of Loss

Let us now consider, in contrast to Motsamai, the judge from Kiran Desai’s Inheritance of Loss, for which Desai won the 2006 Man Booker Prize for Fiction. Although the judge plays a lesser role in the novel, the internal struggle to balance his individual sense of justice with his position in the law is a dominant thread in the work (and parallels the plight of J.M. Coetzee’s magistrate in various important ways as discussed in Part III.B.). The reader meets the judge as an embittered, elderly man at the end of his career. He is living in a run down home in the Himalayas with his granddaughter and a cook. His life is exposed through a series of flashbacks. The judge recalls, as a child, the oppression and injustice felt by his family as Indian nationals living under British rule. Yet his father actually encourages the judge to serve as an arm of the British Empire and sends him to school to secure a position with the Indian Civil Service (ICS).82

The judge’s upbringing, like that of Motsamai, is an experience of otherness. The judge similarly receives his legal education in England, attending Cambridge, which he finds demoralizing and isolating. He studies twelve hours a day, going for entire days without speaking a word and finding that his “mind had begun to warp; [growing] stranger to himself than he was to those around him, [finding] his own skin odd-colored, his

82. His father’s encouragement is somewhat ironic, given that as a child his “father owned a modest business procuring false witnesses to appear in court. (Who would think his son, so many years later, would become a judge?)” KIRAN DESAI, THE INHERITANCE OF LOSS 64 (Grove Press 2006).

83. The ICS administered British colonial policy in India during the British Raj (that is, the British rule between 1858 and 1947). Only a small number of Indians were admitted into the exclusive ICS. While these positions were powerful, during the 1930’s Indian members found themselves conflicted between the required loyalty to the British Empire and the Indian movement for independence. For a detailed history of the ICS, see The Indian Civil Service, FRASER’S MAGAZINE, Oct. 1873, at 433-46.
own accent peculiar."\(^{84}\) Despite diligent study, the judge fails to achieve a sufficient exam score for admission to the ICS, but after an affirmative action effort to "Indianize" the service he makes the cut, barely.\(^{85}\) As a result, the judge is one of the first Indians to become a member of the ICS during the last days of the British regime. The judge fulfills his family's collective dream of a better life, welcomed home by brass band and fireworks, now a part of the very regime that oppressed his ancestors.\(^{86}\)

Initially, the judge believed that the power of his position would ameliorate the experience of otherness his family and he endured. Desai tells us that "he relished his power over the classes that had kept his family pinned under their heels for centuries. . . ."\(^{87}\) Yet, unlike Motsamai, who harnesses his experience on the other side to become the best possible defense counsel, the judge allows his experience of otherness to corrode him rather than command. For the judge, his role in the law is valuable only for the calming factor of "the tight calendar" of a "touring official in the civil service" and the "constant exertion of [his] authority."\(^{88}\)

The judge sees injustice and internally loathes it, but he does not actively intervene to stop the injustice. For example, witnessing the beating of another Indian boy while he studied in England, "the future judge, walking by, on his way home with a pork pie for his dinner—what had he done? He hadn't said anything. He hadn't done anything. He hadn't called for help. He'd turned and fled."\(^{89}\) He tries to rationalize his inaction, observing that:

In this life . . . you must stop your thoughts if you wished to remain intact, or guilt and pity would take everything from you, even yourself from yourself.

This was why he had retired. India was too messy for justice; it ended only in humiliation for the person in authority.\(^{90}\)

His inaction in the face of injustice continues once he becomes a judge and presides over cases:

[H]e heard cases in Hindi, but they were recorded in Urdu by the stenographer and translated by the judge into a second record in English, although his own command of Hindi and Urdu was tenu-

\(^{84}\) Desai, supra note 82, at 45.  
\(^{85}\) Id. at 129.  
\(^{86}\) Id. at 181.  
\(^{87}\) Id. at 69.  
\(^{88}\) Id. at 69.  
\(^{89}\) Desai, supra note 82, at 228-29.  
\(^{90}\) Id. at 289.
ous; the witnesses who couldn’t read at all put their thumbprints at the bottom of “Read Over and Acknowledged Correct,” as instructed. Nobody could be sure how much of the truth had fallen between languages, between languages and illiteracy; the clarity that justice demanded was nonexistent.  

The judge is annoyed by this charade of justice, but does nothing to remedy it. Rather, he plays along with the system all the way to a seat on the high court, becoming ever-more miserable, with “[h]is photograph, . . . thus annoyed, . . . was still up on the wall, in a parade of history glorifying the progress of Indian law and order.”  

Again rationalizations fail him as “[h]e realized truth was best looked at in tiny aggregates, for many baby truths could yet add up to one big size unsavory lie.” As he ages, the judge wallows in his detachment and cynicism, feeling affection only for his dying dog, Mutt. When Mutt’s life comes to an end, the judge reflects:

A man wasn’t equal to an animal, not one particle of him. Human life was stinking, corrupt, and meanwhile there were beautiful creatures who lived with delicacy on the earth without doing anyone any harm. “We should be dying,” the judge almost wept. . . . The judge had lost his clout. . . . A bit of “sir sahib huzoor” for politeness’ sake, but that was just residual veneer now; he knows what they really thought of him. He remembered all of a sudden why he had gone to England and joined the ICS; it was clearer than ever why—but now that position of power was gone, frittered away in years of misanthropy and cynicism.

The judge’s unhappiness at the end of his life stems directly from the choices he made when he assumed his power in the law.

The judge’s story illustrates both a circumstance where the law alone fails to achieve justice and a revelation about the consequences when one charged with responsibilities to administer the law fails to act upon his or her humanity. We learn that the desire for power, alone, cannot sustain a meaningful or satisfying career in the law. More significantly, we see that adherence to the rule of law, rather than one’s conscience, at times can result in the very injustice that the law is supposed to redeem. The judge allows himself to be silenced by the system he loathes, though he intended for the position of power to give him, his family, and his people a voice.

91. Id. at 69–70.
92. Id. at 70.
93. Id. at 71.
94. DESAI, supra note 82, at 320.
The disconnect the judge experiences is palpable and cannot be ignored. Desai permits her readers to see beyond the formal portrait of the judge hanging in the wall in the high court. From this vantage point, the readers are able to consider how the judge's end can be avoided in their own law practices and lives.

The judge and Motsamai both endure life on the other side, an experience not shared by the majority of law students, lawyers, or readers generally. Through their stories, however, the readers are able to imagine what it would be like to exist in their world and are able to learn from the choices they make without having to go through the same process themselves. This is not to say that one must experience injustice like that endured under apartheid or colonization or that reading about it could possibly replicate the experience. But students and practitioners alike may find inspiration in these stories as they develop a personal philosophy about the kind of lawyer they will become.

C. The Magistrate from J. M. Coetzee's Waiting for the Barbarians

The character of the civil magistrate from Nobel Prize winner J. M. Coetzee's Waiting for the Barbarians parallels in many ways the experiences of the judge in Desai's Inheritance of Loss, though we might not expect this at first glance because the magistrate is a member of the dominant, colonizing class. Stationed in an isolated frontier outpost, he is in theory (though perhaps not in practice) an arm of the Empire. He considers himself "a responsible official in the service of the Empire, serving out my days on this lazy frontier, waiting to retire."95 His responsibilities include collecting tithes and taxes, administering communal lands, providing for the garrison, supervising junior officers, overseeing trade and presiding over court twice weekly.96 Despite rumors about the beginnings of a war with the barbarians, he is content to live "a quiet life in quiet times," and privately mocks the idea that the barbarian tribes are arming.97 The magistrate's peaceful existence begins to unravel, however, when he is visited by Colonel Joll from the Third Bureau (the "most important division of the Civil Guard nowadays"), a brutal inquisitor who relies on torture to obtain truth.98

Joll uses his interrogation techniques on a group of harmless nomads and fishermen rounded up as his so-called prisoners; afterwards, the magistrate visits them in the barracks hall used as a jail and is horrified to find

96. Id.
97. Id. ("Of this unrest I myself saw nothing. In private I observed that once in every generation, without fail, there is an episode of hysteria about the barbarians.")
98. Id. at 2.
them "sick, famished, damaged, terrified." The magistrate is disgusted at his role as servant to the Empire, torn by his values of human rights. His gut reaction, like that of Desai's judge, is to retreat to ignorance. He fantasizes about the solace it might bring, but it is too late—he says:

I know somewhat too much; and from this knowledge, once one has been infected, there seems to be no recovering. I ought never to have taken my lantern to see what was going on . . . . On the other hand, there was no way, once I had picked up the lantern, for me to put it down again.

The magistrate cannot close his mind to the plight of the prisoners, so when Joll leaves, he "order[s] that the prisoners be fed, that the doctor be called in [and] . . . that arrangements be made to restore the prisoners to their former lives as soon as possible, as far as possible." Realistically, however, little can be done, and the magistrate takes no significant action to prevent future abuse. Like Desai's judge, he turns to rationalizations to ease his conscience. The magistrate tells himself that he is doing all he can given his position as magistrate and that the law is not always just. He considers resigning but does not because "someone else will be appointed to bear the shame of office, and nothing will have changed." As he lectures to a peasant boy who fled his criminal sentence of army service to visit his mother and sister:

"We cannot just do as we wish," I lectured him. "We are all subject to the law, which is greater than any of us. . . . You feel that it is unjust, I know, that you should be punished for having the feelings of a good son. You think you know what is just and what is not. I understand. We all think we know. . . . But we live in a world of laws . . . a world of the second-best. There is nothing we can do about that. We are fallen creatures. All we can do is uphold the laws, all of us, without allowing the memory of justice to fade."

After the lecture, the magistrate sentences him and then feels "uneasy shame" which he tries to rationalize away: "When some men suffer unjustly . . . it is the fate of those who witness their suffering to suffer the shame of it." These excuses ultimately fail him.

99. Id. at 24.
100. COETZEE, supra note 95, at 21.
101. Id. at 25.
102. Id. at 139.
103. Id. at 138-39 (internal punctuation omitted).
104. Id. at 139.
The magistrate cannot ignore the torture, but he cannot rationalize his role in the Empire that allows it. He tries confronting Joll directly but to no avail:

"Those pitiable prisoners you brought in—are they the enemy I must fear? Is that what you say? You are the enemy, Colonel!" I can restrain myself no longer. I pound the desk with my fist. "You are the enemy, you have made the war, and you have given them all the martyrs they need—starting not now but a year ago when you committed your first filthy barbarities here! History will bear me out!"

[Joll dismisses him impassively:] "Nonsense. There will be no history, the affair is too trivial."  

The magistrate questions Joll, "How do you find it possible to eat afterwards, after you have been . . . working with people?" He struggles to understand how Joll functions:

"Do not misunderstand me, I am not blaming you or accusing you, I am long past that. Remember, I too have devoted a life to the law, I know its processes, I know that the workings of justice are often obscure. I am only trying to understand. I am trying to understand the zone in which you live. I am trying to imagine how you breathe and eat and live from day to day. But I cannot! That is what troubles me!"  

He accomplishes a degree of satisfaction in the confrontation, but it is not enough. The disconnection between his role in the Empire’s law and his value system renders him impotent.

On the surface the magistrate’s actions (or inaction) are less than inspiring. Yet his internal struggle is in many ways prescient. The magistrate holds at his core an admirable set of beliefs, including a:

. . . belief in the power and efficacy of the judiciary system; belief in “civilisation” [sic] and the continual progress of humankind; an abhorrence of violence, accompanied by an attitude of tolerance and rationality; a capacity for fairly ruthless self-scrutiny and a sense of guilt that can be incapacitating; and, more significant than

105. COETZEE, supra note 95, at 114.  
106. Id. at 126.  
107. Id.
all of these, a belief in individual autonomy and freedom of choice.  

Of course the problem is that "[d]espite the magistrate's various attempts to set himself in opposition to Joll and his kind, [the magistrate's] passive acceptance of their sadistic practices renders him complicit with their crimes." The magistrate's moral compass does not comport with the rule of law he is charged to uphold and enforce. He ought to be able to use the authority of his position in the law to stop the injustice he witnesses, but he fails to take action.

Motsamai, the judge, and the magistrate all profess, to a certain extent, similar idealistic principles, but only Motsamai succeeds in making them an authentic part of his practice. So, what lessons might be learned from a character like the judge or the magistrate? In the words of one writer, "Coetzee's tale is the story of all of us: complicit, but asleep. We worry that if we pick up the lantern, we won't be able to put it down." We examine the judge's and the magistrate's endeavors to ignore, rationalize, and confront in the face of injustice, and we learn how these efforts fail them. We see how power may impinge upon one's ethical faculties. Motsamai, disenfranchised, employs his experience to justify his reliance on personal values in successfully reconciling his role in the law with his morality. The judge and magistrate, in positions of authority, fail to act on their internal moral compass, and consequently, become powerless in the wake of their cynicism and complicity. Ultimately, their stories force the reader to confront the consequences of not acting on one's inner voice or convictions.

D. Vera Stark from Nadine Gordimer's None to Accompany Me

The attorney in Nadine Gordimer's novel, None to Accompany Me is a contrast to Motsamai, the magistrate, and the judge. Vera Stark is a white lawyer living in South Africa. Stark is similar in position to the magistrate, as she is a member of the colonizing class and is morally outraged at the plight of the colonized. Yet Stark makes very different choices in acting on her outrage, choices that enable her to reconcile her role in the law and her morality in a fashion similar to Motsamai. Stark left a "promising
position in a prosperous legal firm” to oppose the apartheid regime.\textsuperscript{111} She is described as “a fixture at the Legal Foundation. Although she has refused to take the executive directorship which has been offered to her, preferring—selfishly, she says—not to spend time on administration, no one can imagine the Foundation running without her.”\textsuperscript{112} Not a typical legal aid organization, the Foundation “came into existence in response to the plight of black communities”\textsuperscript{113} under apartheid “looking for the legal loopholes that [would] delay or frustrate or—occasionally—win out”\textsuperscript{114} over the process of systematic, race-based removal of people from their homes.\textsuperscript{115} In the aftermath of apartheid, the Foundation began to assist “communities whose removal [it] had been unsuccessful in stalling ... to present the case for having restored to them the village, the land, their place, which was taken from them and allotted to whites.”\textsuperscript{116} Stark is appointed to serve on the Technical Committee on Constitutional Issues as the country rewrites its constitution.\textsuperscript{117} Stark is a powerful woman in post-apartheid South Africa, but, unlike the judge, power is not her motivation or her guide.

As with Hamilton Motsamai, Gordimer again permits the reader to know both Vera, the individual, and Mrs. Stark, the professional. Stark allows her work at the Foundation to become all-consuming, in part because of her passion for correcting the wrongs of apartheid and in part because she wishes to avoid her failing marriage. Gordimer states that “[t]hrough the will to formulate the Foundation’s understanding of the meaning of land [that belonged to those displaced during apartheid], her own life was gathered in. She had no thought, no space in herself for anything else.”\textsuperscript{118} Yet, throughout the course of the novel, Stark is on a constant search for truth, both as a lawyer for the Foundation and in her personal life. Stark acknowledges that this is a continual process, as she explains to her daughter that what she wants is “[t]o find out about my life. The truth. In the end. That’s all. . . . I’m getting there. . . . Working through—what shall I say—dependencies.”\textsuperscript{119}

Like the other characters discussed in this article, Stark reflects and searches for meaning in her life and her work under the law. The reconciliation between her role in the law and her individual values is one of

\textsuperscript{111} NADINE GORDIMER, NONE TO ACCOMPANY ME 17 (Penguin Books 1995) (1994) [hereinafter GORDIMER, NONE TO ACCOMPANY ME].
\textsuperscript{112} Id. at 11-12.
\textsuperscript{113} Id. at 12.
\textsuperscript{114} Id. at 13.
\textsuperscript{115} Id.
\textsuperscript{116} GORDIMER, NONE TO ACCOMPANY ME, supra note 111, at 13.
\textsuperscript{117} Id. at 277.
\textsuperscript{118} Id. at 164.
\textsuperscript{119} Id. at 313.
realistic hopefulness. Stark embodies progress. Through Stark, Gordimer compels the reader to confront difficult ideas:

Gordimer's strength, here and elsewhere, is that she confronts bold and dangerous questions and gives them form without offering a ready answer. How can one keep one's hands clean while working against a dirty regime that does not shrink from using any means at its disposal? Does freedom consist in losing the past bit by bit? Why is there always someone who cannot afford to remember and others who are incapable of forgetting, however much they want to?120

Toward the novel's end we find Stark alone in her home, reflecting on:

Everything that had come and gone within and around her, Mrs. Stark[] and Vera; men, the children she bore them, the communities she saved or failed to save from removal, the deaths of and the death-threats to companions, . . . the return of faces from prison and exile . . . the [constitutional] committee she came home from where the needs and frustrations and ambitions of more than three centuries were meant to be reconciled and achieved on paper in some immutable syntax.121

She knows that no law can ever bring justice to wrongs committed against her clients. She has no illusion about politics or her part in it.122 At the same time, Stark is equally realistic and hopeful, finding purpose in the process, whether she is advocating for her clients, rewriting the country's constitution, or in her words, "moving alone towards the self."123 Unlike the magistrate, Stark does not worry about being unable to put the lantern down; instead, she uses it to light her way. Rather than becoming overwhelmed by the senseless violence and injustice of colonialism—which leaves the judge cynical and the magistrate impotent—Stark is inspired by it.

IV. CONCLUSION

When the law collides with moral values the consequences are profound. Practitioners experience disillusionment and dissatisfaction. Stu-

121. GORDIMER, NONE TO ACCOMPANY ME, supra note 111, at 304.
122. Id. at 305.
123. Id. at 306.
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students feel disconnected from their pre-lawyer selves. Non-lawyers perceive the profession as dishonest and deceitful. As this article has revealed, postcolonial literature presents one possible tool in our effort to identify and reconcile the tension between lawyers’ obligations to the law and lawyers’ own moral compasses. Through postcolonial literature the reader is able to witness how the characters “make their moral choices behind private doors and in the public sphere.” Why is postcolonial literature especially appropriate for such a pursuit? The stories of these postcolonial literary, legal figures offer meaningful contributions to the discourse concerning the general depiction of lawyers in literature. Gordimer, in reflecting on her own writing, says that postcolonial fiction can “‘encompass all the things that go unsaid among other people and in yourself . . . .” Likewise, postcolonial authors like Coetzee do not seek to speak with [their] readers; nor do[] [they] offer comforting, . . . moral certainties. Instead, perhaps, [they] seek[] to encourage the reader to self-critique in the performative process of the act of imagination that is reading.” The inclusion of postcolonial works among the canon of law and literature expands the reader’s perspective into other cultures and worldviews. The reader bears witness to the experience of otherness, which in turn refines the reader’s perception of the world and the responsibilities of lawyers. Moreover, the unique attributes of postcolonial literature offer an especially compelling depiction of the disconnect attorneys face between the rule of law and their individual morality. This portrayal inevitably invites dialog about reconciling the law and the reader’s morality—a much-needed conversation that has been silenced by the law school curriculum and by the culture of legal practice.

The most important contribution provided by postcolonial works, like the novels discussed in this article, is that they offer a viable means for identifying and exploring (and perhaps, at least in some cases, reconciling) the disconnect between law and individual morality. Postcolonial literature shows that the impact of colonization can inspire or immobilize both the colonizer and the colonized. What seems to separate the inspired are the qualities of confidence, empathy, hopefulness, and progression, as observed in Motsamai and Stark. Yet all four stories provide a frame for discussing and imagining how their lessons might apply in the reader’s own life and practice. In doing so, the lawyers may become more capable

124. Wastberg, supra note 120, at 34.
125. Id. at 43 (quoting Nadine Gordimer in Nadine Gordimer and Stephen Clingman, The Future is Another Country, TRANSITION 132 (1992)).
127. Moreover, such works provoke necessary but difficult conversations that belong in the law school classroom and in the workplace.
of reconciling the disconnect, and non-lawyers may become more understanding, if not forgiving, of the seemingly contradictory nature of the law and those who practice or administer it.

Though very different in background and situation, Motsamai, the magistrate, the judge, and Stark all offer lessons to lawyers, lawyers-to-be, and readers generally regarding reconciling the law and individual morality in the pursuit of justice, whether as examples to emulate or as examples to avoid. Each character reveals that the rule of law alone does not equate necessarily with justice; at times lawyers and readers must act upon their own humanity. Students, practitioners, and scholars would do well to incorporate the lessons offered by these postcolonial literary figures into their law studies and practice.