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CRITICAL ISSUES OF OUR TIME

**THE MYTH OF THE
MORAL ATTORNEY**
THANE ROSENBAUM



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THE MYTH OF THE MORAL ATTORNEY: WHAT WOULD ATTICUS FINCH DO?¹

Thane Rosenbaum

To a great extent and to the even greater consternation of legal laymen around the Western World, ethics and the law have very little to do with one another. It's quite possibly even worse than that: Legal ethics may actually be a misnomer.

Yes, law schools in America teach courses in legal ethics. State bar associations require graduating law students to pass a separate legal ethics exam before obtaining their license to practice law. And practicing lawyers are obligated to take continuing legal education courses, specifically in ethics, to maintain their accreditation. And, yet, despite all these efforts to instill an ethos of ethics in the minds of attorneys, the actual ethical rules that govern the practice of law bear little resemblance to public morality, which is precisely what laypersons believe legal ethics to be.

And for this reason like so many others, lawyers and laymen speak a different language. It sounds a lot like English, and yet neither quite understands what the other is saying.

When regular people (you know: those who never attended law school and did not end up marrying a lawyer) think of ethical lawyers—to the extent that they consider them at all—most are reminded of Harper Lee's Atticus Finch, portrayed by Gregory Peck in the film version of Lee's iconic novel, *To Kill a Mockingbird*. In his defense of the innocent man, Tom Robinson, it

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wasn't so much that readers and audiences believed that Finch was observing the rules of legal ethics that were in effect in the State of Alabama in the 1930s. Most people never think of formal rules governing ethics—whether in Alabama or in any other state.

What most people do remember about Finch, however, is his moral judgment and discretion, his determination to defend Tom Robinson without regard to personal cost and consequence. All of Maycomb County believes Tom Robinson to be guilty of raping Mayella Ewell (or they can't tolerate the idea that an innocent black man can trump the accusation of a white southerner, regardless of how lowly in social status that white man happens to be). Atticus knows that this will not be a career-making case. And he realizes that his open defiance of the community standards that shape the racist attitudes of the Jim Crow south will not endear him to his fellow citizens. He'll be ostracized and might never get retained as an attorney again. His children will be teased and taunted at school. And he nearly gets himself lynched. And, even more absurdly, he knows he's going to lose; his client will not receive a fair trial and will surely be found guilty.

And yet he represents Tom Robinson anyway. What kind of a lawyer would do that? Well, he or she would be the moral attorney, the one who, like Atticus, tells his children that if he failed to represent Tom Robinson, if he simply ignored the fact that an innocent black man will end up guilty of murder while he stood on the sidelines, indifferently witnessing the injustice like all the other white people, he wouldn't be able to raise his children properly, or regard himself as honorable and true.

Atticus Finch embodies the deeply moral principle that there should be no split between the way people conduct themselves at work and how they carry themselves at home with their families and in their communities. There are no two standards or ethical double speak: the moral father, congregant, neighbor and citizen; and the ethically deviant businessman and professional. Moral perfection and accountability applies even while one is at work, all throughout the hours between 9 a.m. and 5 p.m., or whenever one happens to be at work. And that concept, the idea that the professional sphere of life is not divided or stands separate from the private realm, that moral scrutiny operates at all times and during all hours and is never on hiatus, is exactly why Atticus Finch is one of the world's great fictional heroes.

In fact, when the American Film Institute released its list of the top 100 movie heroes of all time, James Bond was number 3, Indiana Jones was number 2, and Atticus Finch surprised everyone who likes their heroes to be super and invincible by coming in at number 1. In the minds of movie-goers, a man who neither wears a cape nor leaps tall buildings in a single bound, a

mere, humble country lawyer with a ferocious morality streak, embodies all the best virtues of heroism and honor. Atticus Finch never needed to take a legal ethics course. He always answered to a higher authority—his own moral conscience and conviction.

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Yet, ordinary people know that moral behavior should not be so easily suspended with the push of a pause button. And that's precisely what the public understands legal ethics to be, or better yet, ought to be—moral behavior that is completely impervious to remote controls or evil inclinations. For an attorney to behave ethically in the minds of most citizens, he or she

would have to conduct himself or herself in a manner no different from what is so universally beloved about Atticus Finch. And the fact that most people have neither seen nor heard of any lawyers who embody the true human qualities of Atticus Finch, is also the reason why there is such widespread disbelief that the legal profession holds itself bound to something called legal ethics and monitors its enforcement among the attorneys licensed to practice law.

If lawyers ever got tired of hearing lawyer jokes, there's one simple solution to ending all the ridicule and stopping the cynicism about their profession: Go to your office and when confronted with ethical questions and close calls, repeat the following question throughout the day—"What would Atticus Finch do?"

Would Atticus defend a guilty person whom he knew to be guilty? Would he humiliate an eyewitness through cross-examination whom he knew was telling the truth, making the witness appear not credible if not outright lying? Would Atticus argue an alternative theory to

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the jury in his closing summation that he knew to be completely bogus? Would he blow so much smoke and confusion into the courtroom that a jury would never be able to discover the truth? Would he seek to win a case at all or at any cost even if it meant engaging in ruthless, unconscionable behavior? Would Atticus deliberately lie? Would he conceal evidence? Would he behave boorishly and gruffly, lacking all civility and common decency, and erupt with the volatility and combustion so common among raw-meat-eating litigators? Would he enable, through the clever and cynical use and misuse of the law, the strong and well heeled to trample over the defenseless and weak?

In all likelihood, Atticus would not agree that the best defense possible is achieved only by winning at any cost, and that a lawyer's moral obligation to society is so easily subordinated to the ethical duty to represent clients zealously. There is no conflict; it is not a close call—the moral responsibility to do what's right and what is true should always supersede mere legal duty.

Legal ethics establish the rules of the game—the game that lawyers themselves establish and abide by. It's about the administration of justice and the relationship between attorneys and their clients—always maintain client confidences, do not commingle client funds. And it deals with the relationship among lawyers and judges. But legal ethics most assuredly do not concern public morality—the simple question of whether lawyers are expected to be good people. Balancing the scales of justice have very little to do with ensuring that the moral compass of practicing attorneys is ever pointed in the right direction.

I have written widely about the legal system, but mostly as a moral critique of the way justice—or generally what passes for justice—doesn't feel morally or emotionally correct to most people. In examining the rituals and practices of the law under moral criteria—its obsessive focus on zero-sum contests, its dedication to cold rules and procedural technicalities over human emotion, its failure to acknowledge the spiritual pain of those who come before it and to create an atmosphere where apologies, reconciliation, and the restoring of moral balance to relationships is possible, its preference for judicial economy over truth, the way in which secrets are privileged and lies are never punished, and the failure to impose a duty to rescue and the effect that has on fostering indifference—I have written an indictment of the legal system for smugly believing that the correct

legal result is necessarily consistent with the right moral outcome.

Evidence and procedural rules, attorney-client privileges, settlements and plea bargains, the hostility of adversarial proceedings, all severely undermine the story-telling, truth-seeking dimensions of what people expect when they come before the law. And this failure is at the heart of why moral justice is merely a myth, and why one of my books is entitled: *The Myth of Moral Justice*.² A legal system that cares mainly about applying the law in mechanical, overly technical, and soulless ways to the exclusion of other values is not a legal system that is interested in making sure that its judgments make moral or emotional sense to those who look to the law for wisdom, guidance, and resolution.

But more broadly, despite its focus on developing a unifying theory of justice, the book speaks to something that transcends the law and the legal system. What I perhaps did not realize when I first conceived the book was that the legal system was only one facet of an even deeper underlying social criticism. *The Myth of Moral Justice* challenges society to engage in a moral conversation about the legal system. That, to my mind, is its best contribution to reform. But that conversation applies equally, or at least should apply equally, to other professions, institutions, and patterns of human behavior. The audacity of the book is not that it takes on the legal system, but that it does so on moral grounds, subjecting the law to moral scrutiny.

Most people are not comfortable having moral conversations, or framing issues in moral terms. There is a misperception that morality only applies to religious people, as if vegetarians who refuse to eat meat on moral grounds must, by definition, be religious. There is an even more disturbing assumption that moral arguments are devoid of reason and logic that they appeal only to the emotions. But having a moral center and living according to a moral code is neither subject to religious monopoly nor practiced only by impassioned, unlearned people.

Invoking moral issues and adopting it as part of the public discourse is not something American society—or at least a particular segment of society—is comfortable doing. Whether acknowledged or not, there is, indeed, a split between the legal and the moral in the American legal system. And it's not even a conscious split. The moral issue is simply not part of the picture, and no one seems to be alarmed by its absence. That's because

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legal decision-making and moral consciousness and conviction are not the same things, and no one is particularly troubled by the lack of their integration.

Distorting and manipulating the truth, perpetuating lies, confusing administrative justice with fundamental notions of what's just, subjecting legal outcomes to

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a hostile knock-down, drag-out sporting contest where the goal is to destroy one's adversary, silencing victims and the aggrieved from speaking to their losses, injury, and betrayal, bargaining away truth for either money or a sum-certain jail sentence, creating an atmosphere of implacable defensiveness and unapologetic self-righteousness rather than one of true human encounter and moral repair, are not examples of a moral system of justice. But these practices are perfectly legal and, in fact, they are the preferred way that our legal system operates.

The split between the moral and the legal plays itself out in the wider world, which perhaps explains why the legal system only mirrors the surrounding culture rather than leads it by example. Doing the right thing, as a governing philosophy, is not part of the professional mindset, or something that professionals believe in. Indeed, most people, when it comes to their conduct at work and the fruits of their labor, do not evaluate themselves according to moral criteria. We believe, or have been led to believe, that our moral and private spheres of existence stand separate and apart from our professional and public lives. Our lives as workers, our professional tasks, and our interactions in the public square, are rarely subject to moral scrutiny—until people are caught violating the law.

We regard them instead as, essentially, what we do away from the home. Indeed, they are the very essence of why we leave the home during the workday. Making money is seen as the antithesis of doing what's moral. For apparently bizarre reasons, what we do away from

the home, the manner with which we win bread for our families and secure our futures, is not deemed a moral enterprise, or covered by moral rules. We are expected to conduct ourselves as moral men and woman only within the thresholds of our private lives, within our homes and inside our picket fences, among our families, and inside the temples, churches, and mosques of our religious communities. As long as we are faithful spouses, as long as we read to our children at night, as long as we remain caring and respectful of our parents, as long as we are kind neighbors and charitable with our religious institutions, our moral rectitude and reputation remains secure.

Seemingly, it's perfectly fine to engage in all manner of unethical, immoral and vulgar conduct during the workweek, perpetrated remorselessly against the suckers and strangers among us—our business competitors, customers and classmates, those who we deem to be fair game or road kill—as long as we are good people at home. Home is the center of our moral universe. Morality and moral agency is incumbent upon us only when we sit inside pews and contemplate the awesomeness of the almighty, or when we seek to teach moral lessons to our children. Morality, however, is optional everywhere else. It is merely an extracurricular and discretionary impulse outside the home. In short, morality doesn't apply to one's day job.

In fact, taking your children to work is never a good way to impart moral lessons in America, because apparently the workplace is the last place where professionals and businessmen display their moral fiber or exert any moral muscle. Morality is deemed without material value as a consumer good. It can't be monetized or sold at auction. There are very few bidders when it comes to moral currency.

We don't apply moral criteria to our jobs, which enables us to perform all kinds of unspeakable moral lapses as long as it is in the service of work. Yes, surely there are people like Atticus Finch. But they are the moral attorneys—operating pursuant to conscience and not what they learned in law school or experienced as standard operating procedure when they became lawyers. The same could be said of Enron executives and the partners at Goldman Sachs. While at work they are only thinking professionally, not morally. Perhaps it's not entirely their fault. After all, no one ever required them to integrate their moral and professional spheres of conduct, to find some coherence and intersection between the bottom line and the moral high ground.

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Instead, their default position is always to maximize their wealth and minimize the moral balance sheets of their lives.

The critically acclaimed TV series *The Sopranos* was largely about this idea—although in this case, in addition to the pile-up of money, there was also dead and hacked-up bodies. Tony Soprano is the head of a Mafia crime family. His crew is comprised of professional hit men. Ruthlessness and emotional detachment are a requirement of their job. Yet most of the show was dedicated to Tony's quite ordinary domestic concerns as a husband, father, nephew, and son. He managed to compartmentalize his day job and keep it separate from his home life—a home life not without its struggles and betrayals, but at least it also involved some moral agency.

In fact, throughout the entire run of the series Tony is in analysis with a psychologist. And, quite surprisingly, he proves to be an assiduously reflective man for a hardened killer. Yet he never seems to reflect on the moral implications of what it means to be a member of the Mafia, and the many decisions he makes that raise the bar on the despicable. But when it comes to friends, family and his many mistresses, he is often overwhelmed by guilt, second thoughts, and moral quandary. How is it possible that his often quite refined speculations about the moral universe never penetrated his life as a Mafia Don?

The same question could be asked of the Nazi doctors who paradoxically practiced medicine in concentration camps. Robert J. Lifton's, *The Nazi Doctors*³ reported that many of these men of science who were trained by the ethics of their profession to do no harm, as embodied in the Hippocratic Oath, somehow managed to pledge their allegiance to another oath that required them to supervise over mass death. And, yet, at the end of a workday, many composed poetry to their wives, listened to classical music, and treated one another with the utmost respect as if they were still real doctors rather than highly skilled barbarians.

What's good for Nazis and the Mafia seems to work just fine for more ordinary professions that don't trade in death. The same kind of dissociative split between the moral and the professional spheres of our existence is going on all the time. Very few careers are spared. A great deal of moral abandonment is justified as long as it is in the service of professional duty.

So in a very real sense, much of my writing that challenged the legal system to evaluate its practices according to moral criteria might as well have been asking all professions to do the same thing—all in the spirit of doing the right thing. Is the split between the legal and the moral, and between the moral and professional, inevitable and immutable? Is it not possible to introduce moral concerns into our professional and public lives, not unlike the way in which we insist that morality guide our private and religious selves? What if we were to no longer tolerate any separation, no further excuses for immoral behavior outside of the home? What would happen if we expected the same conduct everywhere, all the time, 24-7 around the clock, always on display, just like clockwork? (Of course, I realize that many people are immoral even inside the home, and so obviously they have much more work to do.)

And, of course, this would apply to lawyers, as well, so that the more common understanding of ethics and the law would begin to resemble something closer to morality and the law. Lawyers would no longer believe that legal ethics entailed merely the rules of the game, the boundaries by which an attorney is bound to his or her client, the bright lines that define an attorney's obligations to his or her client, and how attorneys and judges must comport themselves in courtrooms and in their representative capacities. Most people would say: "Anyone could have told lawyers to do that! What about the hard stuff, what about the personal codes of morality that drive the redemptive, crusading lawyers, the lawyers of our dreams rather than our nightmares?" Well, those renegade lawyers are on their own. To the extent they even exist, they are traveling below radar or practicing law without a net. These are the idiosyncratic attorneys, for whom legal ethics are merely starting points, the beginning of negotiations that will result in harder ethical bargains and moral choices that most others will laughingly choose to ignore.

I pointed out in *The Myth of Moral Justice* that moral justice does not depend on religious guidance. Moral justice does not take its direction from religious authorities or divine law. The fact that people make this assumption is part of what's wrong with the quality of public debate in America.

We have capitulated the moral ground entirely to religious institutions, as if morality is the province only of the religious world rather than something that is innately human and ultimately an expression of our humanity. One doesn't have to be religious, or even

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to believe in God, in order to be moral and to engage in moral acts. And morality does not only have to be defined in religious terms. Atheists are quite capable of being moral, and as I mentioned earlier, vegetarians who refuse to eat animals on moral grounds don't have to identify themselves as religious in order to justify this moral mindset. In fact, most religions impose no prohibition on the eating of animals. Does that mean that atheists can't have a moral basis for declining to eat meat since religions apparently have no moral qualms about doing so?

Doing the right thing is a democratic impulse, and an infectious one, as well. It can be done by everyone, without regard to religious conviction or commandment. We should not, and we must not, confuse religious morality with something that is much more basic and commonly understood: the simple distinctions between right and wrong. These distinctions are not necessarily connected to religious teachings, but have far more to do with human agency—the interior spark of our moral impulses.

The problem is we have banished moral conversations from our public discourse. Morality is not just the language of religious people; it applies to the secular world, as well. Moreover, we have treated morality not only as if it has no real-world, practical implications, but that it also cannot be supported by a concrete, absolute truth.

Morality, we are told, is what inflexible, narrowly-minded religious zealots believe in, those who are too comfortable with their blind faith and who are unwilling to subject their ideas to reason, logic, and the rigor of scientific analysis. These are people too set in their ways, obsessed with the certainty of absolute judgment and eternal damnation, and who wield their morality like a weapon. The problem with them, we are reminded, is that they don't seem to realize that there is no one absolute truth.

Given this bias against religious people and the surrendering of morality into hands of anti-intellectuals, no wonder morality has a bad name in America, having been demonized as the creepy thinking of fringe fanatics, those who are implacably judgmental, intolerant, and too intoxicated by God for their own good. But this banishment of morality into the land of zealots is completely unfair and not entirely honest. Yes, we live in a time where we are taught to respect the differences among us, to realize that morality is subject to great

diversity within cultures, and that morality sometimes has its own inner logic.

Moral relativism stands for the principle that morality is, indeed, relative, and therefore it can't be imposed against those who have a different conception of what is moral. But somewhere along the way we have relativized

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morality to the point where it has no meaning. If everything is relative, then nothing can be deemed principled. All we do is account for difference, and tolerate all kinds of bad behavior.

But the fact is, the world of moral relativism shares at least equal space with moral realism. There are some truths that are absolute, virtues that we know to be obvious: kindness, compassion, mutual respect and dignity, telling the truth, accepting responsibility for one's actions and undertaking meaningful gestures of repair, acknowledging the pain of our fellow citizens as well as the pain that we either inflict on others or allow to take place through our indifference and neglect.

These are the golden rules, the prime principles. It's hard to argue with them, because they make so much emotional

and moral sense. Internally, spiritually, ethically—no matter what the criteria—they feel right. There is no issue of moral relativism here. If there is, then morality is pointless, and there is even less hope for humanity. Even religious authorities agree on these same principles, moral concepts that are easily accepted as basic, fundamental truths. Moral justice does not only exist on the polar extremes of human complexity. Yes, abortion is a tough call, because both sides can make a moral argument on behalf of their impassioned positions. Each side can justifiably claim to be doing the right thing.

But most everything in life takes place in the middle, and not at the margins. Most moral questions are not as red hot and inflammatory as is abortion, or whether

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gays should be allowed to serve in the military. Most areas of conflict have the potential for a moral resolution because the truth is not elusive, but rather known, internally felt as true.

Excusing bad behavior on the pretense that what constitutes good behavior is either relative or unknowable is the most pathetic example of moral laziness and intellectual dishonesty. Why insist on having our children tell the truth or apologize when they are wrong if adults won't live up to these same standards? What if children cynically invoked relativized thinking every time they sought to slip out of a time out? Parents would clamor for the return of corporeal punishment.

Doing the right thing is usually not such a mystery; it's not brain surgery or advanced physics. People can do it, and should be expected to do it. But the impulse toward relativizing truth and morality is great, and castigating morality as a byproduct of religious mediocrity is even greater.

This isn't helped by the fact that with all of the recent Blue and Red state geographic alignments and Tea Parties where, paradoxically, no actual tea is ever served, intellectuals see red as the enemy and regard morality as the language of religion. Liberals and progressives treat morality like a foreign language, spoken fluently only among red state inhabitants. So this implacable polar divide truly is one that transcends the Electoral College, and becomes lodged inside America's central nervous system. One segment of our population is comfortable framing issues in moral terms, while the rest of America, over-represented at universities and inside magazines, believe that invoking morality in any setting—particularly as the inspiration for public policy—lacks intellectual rigor and panders to the dumbing down of America.

Of course, a majority of Americans thought otherwise in 2004, and the re-election of President George W. Bush was, curiously, not just a presidential election, but also a referendum on morality in America. And to some extent the same thing could be said about the election of Barack Obama in 2008, a man whose oratory swelled with a message of hope and transformative change, channeling a prophetic voice more commonly heard in places of religious worship. Obviously, given the outcome of the 2008 presidential election, a majority of Americans actually desire moral conversations and wish for their elected officials to exercise moral leadership—whether they are capable of doing so or not.

The question is: Have liberals and progressives, democrats and relativists, professionals and public servants, heard this mandate? Because, at least in my view, doing the right thing, whether in actuality or aspiration, should not only be what Republicans believe. Democrats, too, should be capable and willing to conceptualize ideas and justify public policy without surrendering the moral ground. And religious leaders should not permit their congregants to engage in a morality of convenience—an easy escape hatch from moral duty, the sugar pill of virtue that is maintained only in one's private life with the blind eye to all the hell that can break loose in the professional, business world.

The moral issue is always the elephant in the room, but Americans somehow pretend that it's not there, or that it simply does not apply if it stands in the way of getting something done. Many simply give up, believing that we are who we are. We are all fully formed and nothing can be done to change us. This has a kind of Kantian appeal to it—the law involves external conduct, not internal excellence. We can't make people moral by passing laws that require them to behave morally. We can applaud the moral men and women among us, and we can morally censure those who prove to be moral failures, but the law can't make us more moral. Morality is a genetic gift, or a function of environmental breeding, but it's not something that everyone can do easily.

Yet, indifference is the worst moral insult of all. We have an obligation to ourselves and to each other to apply moral reasoning to the decisions we make. And we should always strive to remain morally accountable. We all know this to be true, but we have either forgotten, or we have grown complacent, or the people with whom we surround ourselves are such poor role models.

As a law professor, novelist, and someone who teaches law and literature, I have been told, anecdotally, that when it comes to law school applications, there are a surprising number of essays that cite *To Kill a Mockingbird*—both the novel and film—as having influenced the decision to apply to law school and to become a lawyer. I have taught this novel for years, and it's clear that the affection for this book among prospective lawyers (and not only the general public, as I discussed earlier) is mostly traceable to the character of Atticus Finch.

Atticus Finch, the model of the moral attorney, chooses to do the right thing, able to walk the streets with his head held high and his dignity intact.

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So what happened to all these lawyers who read the novel or watched the movie and became inspired to one day practice law? Did they somehow lose their inner Atticus Finch? I don't think the answer is that they forgot the fictional character that once inspired them. I think something else—other values and principles that are endemic to lawyers but foreign to ordinary people—simply intervened and obliterated whatever inspiration they once drew from the novel.

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When *The Myth of Moral Justice* was published, it received considerable critical attention in major newspapers and magazines, and on radio and television. Not all of it was laudable. Many thoughtful people had severe reservations about its underlying premises. But the one thing that never happened, the one thing that completely surprised me, is that no one chose to defend the legal system on moral grounds. No one challenged the central premise of the

book: that when the legal system pursues justice legally, that doesn't mean that it is succeeding morally. Moral justice is a myth largely because our legal system does not feel burdened in any way to provide moral relief. Yet the critics of the book didn't feel that it was necessary to defend the legal system on moral grounds. They never proclaimed that justice is moral, and that moral justice is entirely real and not a myth at all.

Everyone seemed to buy into my central premise. They surrendered the one point that I felt no one would or could accept—that the legal system is decidedly not moral. Instead, critics uniformly defaulted to a secondary defensive position—claiming that my ideas were impractical, or that morality itself is so illusory and relativistic that it can't be applied to conflict resolution, or that I was seeking to impose religious law on an otherwise secular society.

But no one defended the legal system as a moral enterprise. Why? I don't know. Either they felt that such a defense was indefensible given the severe moral deficiencies of the legal system, or that the people who review books are the same type of people who generally disdain having any kind of moral conversation. Ironically,

they weren't about to attack my book by resorting to the very language they refuse to speak.

But that, too, was a mistake. Even my critics missed an opportunity to take the book on its own terms, and address the challenge that the book raises without surrendering the moral ground that *The Myth of Moral Justice*, so dishearteningly, mythologizes.

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End Notes

- 1 A portion of this essay appears in the Introduction to the In-Print Symposium: "The Myth of Moral Justice: Why Our Legal System Fails to Do What's Right," 4 *Cardozo Public Law, Policy and Ethics Journal*, 3 (2006).
- 2 Thane Rosenbaum, *The Myth of Moral Justice: Why Our Legal System Fails to Do What's Right* (Harper Collins Publishers, 2004).
- 3 Robert Jay Lifton, *The Nazi Doctors: Medical Killing and the Psychology of Genocide* (Basic Books, 1986).

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About the author



Thane Rosenbaum is a novelist, essayist, and law professor. He is the author of the novels *The Golems of Gotham* (Harper Collins, 2002) (San Francisco Chronicle Top 100 Book), *Second Hand Smoke* (St. Martin's Press, 1999), and the novel-in-stories, *Elijah Visible* (St. Martin's Press, 1996). His articles, reviews, and essays appear frequently in *The New York Times*, *Wall Street Journal*, *Los Angeles Times*, *Washington Post*, and the *Huffington Post*, among other national publications. He is the John Whelan Distinguished Lecturer in Law at Fordham Law School, and directs the Forum on Law, Culture & Society. He is the author of book *The Myth of Moral Justice: Why Our Legal System Fails to Do What's Right* (Harper Collins, 2004) (San Francisco Chronicle Best Books of 2004), and the editor of the anthology, *Law Lit, from Atticus Finch to "The Practice": A Collection of Great Writing about the Law* (The New Press, 2007). His forthcoming book is entitled *Revenge and its Rewards* (University of Chicago Press).

