



THE
JUBILEE CENTRE
FOR CHARACTER & VIRTUES

UNIVERSITY OF
BIRMINGHAM

Moral Glamour

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This is an unpublished conference paper for the 4th Annual Jubilee Centre for Character and Virtues conference at Oriel College, Oxford University, Thursday 7th – Saturday 9th January 2016.
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Abstract

This paper considers the importance of glamorous or 'cool' ethical role models to character education and what makes certain virtue-based behaviour 'cool' or aspirational, that is, a desirable character trait and an alternative indicator of status. Research suggests that people perceive people and products to be 'cool' and therefore desirable when they infer that the object or person is autonomous (i.e. they pursue their own motivations irrespective of the norms and expectations of others) in an appropriate way. This paper focuses on lawyers and considers how the eulogising of 'cool' lawyers who are models of ethical character can contribute to ethics education for the legal profession. The background, motives and character traits of two fictional lawyers (Atticus Finch and Horace Rumpole) and one real lawyer (Bram Fischer) are examined and an attempt made to identify the character traits that make these lawyers 'cool' or not. The ancient (Aristotelian) emotional virtue of emulation is also considered and the author suggests that the presence of 'righteous lawyers' like Finch, Rumpole and Fischer might affect, enable and encourage other lawyers and law students to do the right thing, and thus help create a legal profession as a 'moral community' rather than simply a business community or trade union representing the interests of lawyers.

Glamour and 'coolness' have both been recognised as powerful persuasive phenomena and important aspects of consumer behaviour. The father of capitalism, Adam Smith, identified the delusion of glamour as the 'deception which rouses and keeps in continual motion the industry of mankind'ⁱ, and 'cool' has been called "the central ideology of consumer capitalism".ⁱⁱ I contend that glamour and cool also have an important role to play in representing and conveying moral values. Understanding the reasons why we are attracted to glamorous and cool things and people may help us make morally worthy qualities and lifestyles more attractive and desirable and help make people moral. If we simply dismiss glamour and cool as frivolous, superficial, dumb, false, manipulative and irrational commercial propaganda, we will not understand it and we may inadvertently make virtuous behaviour unglamorous, uncool and unattractive. As Susan Wolf argued, moral saints are, paradoxically for moral philosophy, unattractive and annoying human beings. Wolf says moral saints will have to be 'very, very nice' and she is worried that, as a result, will have to be 'dull-witted or humourless or bland'. She is however relieved to see that when one does look at moral exemplars one discovers 'idiosyncrasies and eccentricities not quite in line with the picture of moral perfection', but she concludes that 'there seems to be a limit to how much morality we can stand.'ⁱⁱⁱ

The Oxford English Dictionary defines 'glamour' as "an attractive or exciting quality that makes certain people or things seem appealing". The qualification ('seem') suggests that glamour is not real and this harks back to its origin, an old Scottish word which originally meant enchantment or magic, or casting a spell over someone. The word's essential meaning is still, therefore, making things look better than they really are. Virginia Postrel has developed a theory and, in a

sense, a defence of glamour and claims it is a powerful form of non-verbal rhetoric and persuasion which produces an emotional response: 'an enjoyable pang of projection, admiration and longing'^{iv}. Postrel, however, recognises the limits of glamour and how easily it can be misused. It is a temporary and transitory phenomenon and the more you know about something the less glamorous it appears. But she argues that this seemingly frivolous and illusory phenomenon can be a force for good.

Postrel's glamour is an imaginative experience which produces a pleasurable feeling: "an enjoyable pang of projection, admiration and longing"^v. It is not envy or Aristotelian emulation, which are both painful emotions. However, Postrel says glamour only works if there is a pre-existing discontent or dissatisfaction. So, in a sense, you can only respond to glamour if you are discontent or dissatisfied and already in some pain or discomfort. Glamour relieves this pain by letting you imagine how happy you would be if you had the glamorous thing, or were the glamorous person. Postrel's glamour is nevertheless different to other pleasurable, 'other praising' emotions like admiration, gratitude, elevation and inspiration. These emotions all feel pleasant and can motivate people to act but they do not involve the projection of the self into the future, into some imagined situation or experience; and they do not concern your sense of self, or self-esteem.

Is Postrelian glamour a moral emotion? Postrel seems to be saying that glamour is essentially amoral. It is merely a means of affective persuasion which excites the imagination and the emotions, and it can be used to arouse moral as well as immoral or even non-moral emotions and action.

One of the oldest forms of glamour, martial glamour, glamourises war and warriors; their courage, strength, sacrifice, sense of purpose and camaraderie. Postrel says the first glamorous Western figure was Achilles, Homer's idealised and romanticised hero who Alexander the Great envied and emulated. Homer had downplayed Achilles' flaws and highlighted his virtues so as to 'preserve the type and yet ennoble it'^{vi}. Aristotle says Homer had created in Achilles 'a likeness which is true to life and yet more beautiful'; in other words, glamorous. Another ancient form of glamour is religious glamour. Religion glamourizes piety, poverty, chastity, cleanliness, order and the religious life and provides us with saints – idealised and simplified religious role models. Catholicism recognised that we tend to mimic other people's attitudes and behaviour but do not get to meet many exceptional moral people "who exhaust our imagination with their good qualities, who strengthen our soul and whose voices we want consciously to adopt to bolster our best impulses"^{vii}. So the Church provided its audience with two and a half thousand saints and provided opportunities (feast days and statues etc.) for believers to connect with the saints in their imaginations.

Secular societies also need heroes and saints and opportunities for people to bond with them. Essayist Edward Hoagland said: "It's not as if we don't still need heroes. They dramatize solutions and help to pave the way through new circumstances; they stumble on a stance that

suits nearly everybody...Heroes embody aspirations that we ourselves share, or remember fondly, and to be cored of our heroes is to be cored of aspirations.”^{viii}

In a 2006 interview with *Der Spiegel*, the novelist, Salman Rushdie, proclaimed that ‘terror is glamorous - not only but also’. He claimed that many terrorists “are influenced by the misdirected image of a kind of magic...the suicide bomber’s imagination leads him to believe in a brilliant act of heroism, when in fact he is simply blowing himself up pointlessly and taking other people’s lives”.^{ix} Postrel says jihadi terrorism combines two ancient forms of glamour, the martial and the religious, with the modern allure of media celebrity. It promises to fulfil a host of desires: for purity and meaning, union with God, historical significance, attention and fame, a sense of belonging, even (posthumous) riches and beautiful women...It’s not hard to imagine how appealing all this might be to a bored, alienated, and impressionable person’.^x In other words, terrorism gives some people purpose and meaning and an opportunity to be an ‘agent for social change’. Trying to discourage would-be terrorists by showing the puritanical violence of ISIS, however, only serves to heighten the movement’s allure. Postrel says the way to deglamourize ISIS is to show the drudgery, subordination, infighting, hypocrisy and general messiness of life as a member^{xi}. Understanding the nature of glamour could therefore offer clues to discourage future terrorists. To do this we have to understand not only the illusion but also why it appeals to certain audiences.

The imagination and wishful thinking lie at the heart of glamour and (as we will see) ‘cool’. Seeing and feeling what is not there is what makes glamour such a powerful form of rhetoric. It persuades us that our desires are achievable by showing us them in action. In this respect glamour and cool are similar to fiction.

Another important element of glamour is the conflation of character traits with the role model.

Oprah Winfrey was inspired by Mary Tyler Moore: “I wanted to be Mary. I wanted to live where Mary lived. I wanted Mr Grant in my life. I wanted my boss to be like that.”^{xii} Oprah did not merely want Mary Tyler Moore’s values and virtues; she wanted Mary’s life and experiences.

This type of copycat role modelling or ‘parrot imitation’ has been criticised as “unsophisticated, undemanding and uncritical—almost infantilising—model of emulation, essentially devoid of cognitive content.”^{xiii} Educators have instead been encouraged to focus their students attention on the reasons (ideals) behind the actions of moral exemplars, rather than simply referring the student to the role model; i.e. ‘be generous and selfless’ rather than ‘be like Mother Teresa’. In other words, separate the desired object/attribute from the agent. When experiencing glamour and cool, people do not separate the desired trait or product from the agent; they conflate them in their imagination and long to be Mary Tyler Moore or Mother Teresa. Separating the virtue from the role model is probably necessary in moral philosophy to isolate and better understand the virtue in theory but it may inadvertently reduce or even completely remove the emotional, imaginative and rhetorical power of the virtue. Such an approach fails to appreciate the

associative, experiential and imaginative power of glamour and cool. And, as we shall see, studies on the neurological origins of cool suggest that by separating the virtue or desirable trait from the person or imaginative experience, you are quite literally taking the idea or thought out of the part of the brain that deals with personal experience and imagination and which helps you define your sense of self (the medial prefrontal cortex) and putting it into a different part of the brain that deals with impersonal facts. When you do this you lose the 'experiential flavour'^{xiv} of the thing and people are no longer able to imagine and fantasise about how others might think of them with the trait and consider how it might enhance their social status. In other words, increasing the cognitive element of role modelling may inadvertently decrease the affective element of role modelling.

The expression 'cool' comes out of the jazz club scene of the 1930s when the windows and doors of smoke filled nightclubs were opened to allow some 'cool air' in from the outside and the 'slow and smooth jazz style that was typical of that late-night scene came to be called 'cool''.^{xv} Coolness has since become ubiquitous and has been part of the popular vocabulary in most English speaking countries. Marcel Danesi thinks "the central behavioural trait of teenagerhood is 'coolness'.^{xvi} There are, however, a lot of different theories on what makes things or people cool. However, the literature suggests that the extra quality that differentiates something from merely being liked to being perceived as cool is 'inferred autonomy' which is the extent to which a person or brand follows its own character or motivations irrespective of the norms, beliefs, and expectations of others^{xvii}. In other words, a willingness to do one's own thing, or be one's own person, regardless of the norm, is the extra quality that defines coolness. Marketing research has revealed that consumers perceive a product the design of which diverges from the norm to be cooler than a product the design of which conforms to the norm. However, divergent design and autonomous behaviour only increase perceptions of coolness when the autonomy seems appropriate, and it is only seen as appropriate, and thus cool, when the norm it diverges from is seen as illegitimate, unnecessary, arbitrary or incorrect. Behaviour which diverges from norms which are considered legitimate and necessary is not regarded as cool^{xviii}. Autonomy will also only seem appropriate if it is at least as effective or valuable as the normative behaviour. So, an unusual water bottle design will only seem appropriate if it can still hold and dispense water, and stand upright. People must also not be embarrassed to use the product and it must not "threaten a consumer's identity goals"^{xix}. Consumers prefer things that signal a moderate or bounded level of autonomy that diverge moderately from the norm. Autonomous behaviour appears more appropriate if it is bounded rather than extreme. 'Cool' has therefore been defined as "a subjective and dynamic, socially constructed positive trait attributed to cultural objects (people, brands, products, trends, etc.) inferred to be appropriately autonomous"^{xx}.

Coolness, however, like glamour, is temporary because eventually the masses adopt the deviant behaviour in an attempt to become cool, the deviant behaviour seems less autonomous and loses its coolness and is replaced by the next deviant behaviour; and so on and on. Coolness may not therefore be a good strategy for brands that want to last or appeal to everyone for ever.^{xxi}

In the so-called knowledge economy, rebelliousness has been replaced with what is called 'DotCool'^{xxii}, which is less about rebelliousness and more about unconventionality, creativity, learning and being an 'agent for social change'^{xxiii}. But autonomy is still at the root of cool.

The research on cool has interesting public policy implications. The most common strategy to curb unhealthy behaviours like smoking or drinking and driving is to tell people not to do them because they are bad for your health. The research suggests that this "just say no" strategy may actually exacerbate risky behaviours by making them seem autonomous and, thus, cool. Rather than telling young people not to do something, the research suggests that a more effective strategy may be to position risky behaviours as mainstream or to associate them with conformity^{xxiv}. In other words, make it uncool to be unhealthy and unvirtuous.

Another interesting implication of this research is that coolness could serve as a reward to incentivise socially beneficial change. By bringing status and esteem to people and virtues that diverge from the norm in an appropriate way, the pursuit of coolness may encourage them to innovate, take risks, and challenge potentially outdated norms. In this sense, coolness offers an alternative social hierarchy, providing status to those whose behaviour offers an appropriate alternative to the status quo, rather than exclusively to those with wealth or a prestigious family background^{xxv}

Research by Steven Quartz and Annette Asp on the neurological origins and effects of cool using functional magnetic resonance imaging (fMRI) has shown that the medial prefrontal cortex (MPFC) of the brain responds to products and people they consider 'cool'. Asking people merely

to look at products and people they considered 'cool' sparked a pattern of brain activation in the MPFC. This part of the brain is thought to be involved in daydreaming, planning and ruminating, self-reflection and our sense of self and social esteem. When shown cool products and people the brain responded in a way similar to what happens when people receive praise.^{xxvi} This may mean that there is an intimate connection between the perception of cool and our sense of self;

including imagining and 'experiencing' our future self. This is an important finding because it suggests that coolness, and possibly also glamour, stimulate the part of the brain that deals with experience and imagination and the perception of self. The MPFC is also thought to have something to do with 'episodic memory', that is, memories of previous personal experiences (for example, playing a piano on your birthday) as opposed to memories of impersonal facts (remembering how to play a piano) that helps to define your sense of self. In episodic memories you can picture yourself (or see yourself) in the past and this in turn helps you to think about your future self^{xxvii}. Episodic memory gives us "the experiential 'flavour' of remembering, or recollection, the apprehension of subjectively experienced time, the auto-noetic (self-knowing)

consciousness".^{xxviii} People who have lost episodic memory cannot plan the future or imagine their future self. Cool is therefore related to sensed self. When people are asked about cool products they unconsciously look inside themselves and imagine how others might think of them with the product and consider how the product might enhance their social image and self-esteem. I believe this has important implications for character education. Role modelling has been criticised as being 'merely' experiential or mere imitation. However, it is exactly this, the experiential nature of role modelling, that makes it affective and effective. People are emotionally affected and persuaded by the image and life of certain role models and not by the

traits or virtues or characteristics which make them virtuous. When we are presented with a virtuous person we do what we do when we are presented with cool things; we unconsciously look inside ourselves and imagine how others might think of us with that virtue and we consider how it might enhance or diminish our social image. If we think the virtue or trait will embarrass us, we do not adopt it. If we want virtuous behaviour to flourish we therefore need to make it cool, or at least make sure that it does not have any social stigmas attached to it (for example, that good people are dull, boring and unattractive conformists). The converse is also true. If we want to make unvirtuous behaviour uncool, rather than criticise its excesses (the things that make it cool and glamorous in the first place), we should make it appear boring and mainstream. Market research which suggests that autonomy is the thing that makes products and people cool seems to be borne out by characters in popular legal fiction. Popular fictional lawyers are radically different to the idea of a lawyer promoted by the legal profession. The official approach to ethical issues is 'strongly authoritarian and categorical'^{xxxix} whereas popular fictional lawyers are autonomous, anti-categorical and anti-authoritarian and are committed to the particular circumstances of the case. They have a quality William Simon calls 'Moral Pluck - a combination of resourcefulness and transgression in the service of basic but informal values'.^{xxx} Fictional representations of lawyers romanticise lawyers and make the practice of law look more glamorous and more exciting (and therefore entertaining) than it really is. However, Simon has noted how different the good lawyer in popular culture is to the good lawyer as defined by the profession. A conformist, passive, deferent lawyer who respects authority (especially the authority of judges and their professional organisations) is not attractive to the public whereas this is what the legal profession expects of its lawyers. It is also interesting that fictional legal heroes win individual victories for individual clients but they do not seek to change society or the institutions which made the particular problem possible.^{xxxi}

I now wish to briefly examine the background, motives and character traits of two popular fictional lawyers, Atticus Finch and Horace Rumpole, and one real lawyer, Bram Fischer; and attempt to identify the character traits that make these lawyers 'cool' or not.

Atticus Finch, the lawyer in Harper Lee's 1960 book, *To Kill a Mockingbird*^{xxxii}, is the fictional lawyer most commonly regarded in the United States as the model of the "good lawyer" and is probably the greatest legal hero in literature and film (I have not considered the 'other' Atticus Finch in Harper Lee's other book, *Go Set a Watchman*, because I regard him as a completely different character). Many well-known lawyers say Atticus is the reason they became lawyers: including Liberty's Shami Chakrabarti.^{xxxiii} Atticus's daughter, Scout, however, says he did not do anything that could possibly arouse the admiration of anyone and had many shortcomings as a parent, and she couldn't therefore understand why in spite of Atticus's shortcomings, people were content to re-elect him to the state legislature that year, as usual, without opposition. Scout tells us that Atticus is poor, old (50), nearly blind in one eye, a Methodist, doesn't play football, served for years in the state legislature, elected each time without opposition, calm and amiable ('Atticus was proceeding amiably, as if he were involved in a title dispute. With his infinite capacity for calming turbulent seas, he could make a rape case as dry as a sermon'), never raised his voice 'except to a deaf woman', always polite, respectful and courteous (even to opposing

counsel and witnesses he cross-examined), consistent ('He's the same in the court-room as he is on the public streets'); quietly stubborn, did not take pride in his marksmanship (because it was a gift of God and he realised that God had given him an unfair advantage over most living things); and compassionate ('if you can learn a simple trick, Scout, you'll get along better with all kinds of folks. You never really understand a person until you consider things from his point of view until you climb into his skin and walk around in it.'). He is a man of conscience but he is not a radical. When his son Jem asks him whether he is a radical he "was so amused I was rather annoyed, but he said he wasn't laughing at me. He said, 'You tell Cecil I'm about as radical as Cotton Tom Heflin"; James Thomas Heflin also known as 'Cotton Tom' was a leading advocate for white supremacy who served as Congressman and Senator. He is respectful of others' opinions but stands up for his principles. He prevents his neighbours from lynching his client and he defends Robinson even though most of Maycomb want to string him up. He says to Scout, 'before I can live with other folks I've got to live with myself. The one thing that doesn't abide by majority rule is a person's conscience'.

He is therefore principled and respects the law but he is not categorical. He says to Scout, 'sometimes it's better to bend the law a little in special cases. In your case the law remains rigid. So to school you must go'. And he agrees with Jem that hunting out of season is '..' against the law, all right, ... and it's certainly bad, but when a man spends his relief checks on green whisky his children have a way of crying from hunger pains. I don't know of any landowner around here who begrudges those children any game their father can hit'. Jem says Atticus is a gentleman, 'just like me'. And perhaps that is the best description of him; a gentle, wise, decent Southern soul in the 1950s. And it is this basic, quiet decency that makes Atticus the powerful character he is. Atticus is, therefore, autonomous in a contextually (i.e. the South in the 1950s) appropriate way. He pursues his own motivations irrespective of the norms and expectations of others. Were he a radical, progressive political activist actively campaigning for civil rights it is unlikely that he would be as popular, and effective as a moral exemplar, as he is. As Shami Chakrabarti says, 'I wasn't the first led into law by Atticus Finch, and I won't be the last. I realise it [the book, *To Kill a Mockingbird*] is less admired by scholars than by fans ("sugar water served with humour", wrote one critic). But it is this simplicity and lack of pretension that helps it pack its considerable punch. It is accessible, touchingly human and intimate; it also tackles enduring questions of discrimination and injustice.'^{xxxiv}

Whereas Atticus is the quintessential American legal hero, Sir John Mortimer QC's character, Horace Rumpole, is the quintessential English legal hero. Like Atticus, Rumpole is old (about 50), has one bad eye and is relatively poor, being a 'junior' criminal barrister living off legal aid briefs in London's Central Criminal Court, the Old Bailey. He lives in a small flat in Frobury Mansions, Gloucester Road. He is a very skilled trial lawyer (with particular skills in cross examination and extensive knowledge of bloodstains and typewriters) but he has not been

promoted by his profession to Queens Counsel (or as he refers to them, 'Queer Customers'), even though, as he likes to boast, he single handedly won the Penge Bungalow Murders without a leader. He mostly acts for poor, petty criminals, the underdogs of society, and often acts for different generations of the same criminal families, such as the Timson clan. He is openly contemptuous of judges and his clients: "I could win most of my cases if it weren't for the clients. Clients have no tact, poor old darlings, no bloody sensitivity. They will waltz into the witness box and blurt out things that are far better left... unblurted." He is clever, funny, sarcastic, full of cynical reposts, and loves to recite bits of the Oxford Book of English Verse and Wordsworth. He is fiercely independent and wonderfully irreverent and believes a barrister should always show a healthy contempt for the trial judge. He is the quintessential, portly, gruff and scruffy English eccentric who loves cheap claret ("Chateau Thames Embankment" or "Chateau Fleet Street"), cheap cigars and steak and kidney pudding. When Hilda, his wife, who he secretly calls 'She Who Must Be Obeyed', tells him that his own son doesn't know him, he says: "Horace Rumpole. What on earth was he on about? Everybody knows me, down the Old Bailey; an amiable eccentric who spills cigar ash on his waistcoat and tells the time with a gold hunter and calls everybody 'Old sweetheart' and I read Wordsworth in the loo."

He says the Old Bailey has blunted his sensitivity: "When I was young (if I can remember) I used to suffer with the accused. I used to cringe and suffer with them and go down to the cells full of anger. Now I hardly listen to the years pronounced and I never look at the dock. I never watch their faces when sentence is passed." He is anti-authoritarian and anti-establishment but like Atticus, he is not a radical or political activist and does not try to change the justice system or save the poor. One of his famous quips is "crime doesn't pay, but it's a living." He thinks the politically and socially conscious solicitors who brief him are idealistic and naive: 'they can't tell a dodgy car salesman from a political prisoner'. He is not interested in black letter law (or reforming it) and is more interested in exposing police lies and in the evidence (bloodstains etc.) He is a curmudgeon, a misanthrope and a cynic and in court most of his battles are with lying policemen and cruel and cold upper class judges who believe in the presumption of guilt and try to stop Rumpole badgering the witnesses.

But he never, as a matter of principle, pleads guilty, and he believes that the presumption of innocence is the 'Golden Thread of British Justice'. He is also a faithful member of the ancient traditions of the Bar; traditions such as the cab rank rule ("I'm a black taxi, plying for hire") which requires barristers, if available, to accept a brief from anyone.

He is fearless and tenacious in his defence of his clients and stands up to authority. He is charming and amusing and respected by his colleagues for his forensic skill in court. He is down to earth and has more in common with his clients than he does with the other members of his profession, his chambers and the judges. But he also has some posh tastes and attributes traditionally associated with the upper classes; like his love of cigars and his flowery language.

His creator, Mortimer, who was accused of being a champagne socialist, said "Rumpole can say the things which if I said them they sound rather trendy and left-wing and objectionable. If he

says them they sound rather crusty and conservative and totally acceptable". In other words, contextually appropriate and showing bounded autonomy.

Leslie Moran^{xxxv} says Rumpole is "decidedly at the bottom end, the unglamorous end of the legal professional pecking order. His very name, Rumpole, is a play on his lowly status: Rump-ole, "ass-hole"^{xxxvi}. This is correct if by glamorous you mean thin, handsome, rich, stylish and expensively dressed. However, as Postrel has shown, glamour has a much wider meaning and even according to the dictionary meaning, Rumpole's character (and yes, even the cheap wine and cigars and the short, portly/podgy and dishevelled exterior) has 'an attractive or exciting quality that makes certain people or things seem appealing'. Rumpole is very glamorous and cool in his own, very distinct, loud and dishevelled way and many barristers forego lucrative commercial work and go to the criminal bar in the hope that they will be like him. Rumpole is also, in some respects, like many of the Catholic saints: he offers solace and comfort to many poorly paid legal aid barrister believers. He glamourises poorly paid legal aid work and makes it cool to be an Old Bailey Hack.

And then there is Bram. Abram Louis Fischer was a member of the Afrikaner aristocracy; his family had been one of the leaders of the rebellion against the British and had a proud tradition of resistance. He was the grandson of the Prime Minister of the Orange Free Colony and the son of the judge president of the Orange Free State. He was first in school at the Afrikaner version of Eton college, Grey College, Bloemfontein. He played scrum half for Grey's first team against the visiting All Black rugby team, he obtained a BA and a LLB cum laude, he was a Rhodes Scholar to Oxford and became one of the most respected Queen's Counsel at the Johannesburg Bar. He was on retainer to the powerful white-owned mining houses. He was married to the niece of former President Jan Smuts. He helped look after his young son who suffered from cystic fibrosis. He was also leader of the South African Communist party but such was his reputation and personality that he was elected by his colleagues as the Chairman of the Johannesburg Bar Council nevertheless. He helped organise the underground anti-apartheid movement when Nelson Mandela and other leaders of the then-banned African National Congress (ANC) were arrested and put on trial. He then led the defence for Nelson Mandela and the leadership of the ANC at the famous Rivonia trial, and saved them from being hanged. One of his clients^{xxxvii} described him as follows: He was "sturdily built, fresh-complexioned, with a gentle, almost boyish face, despite his now greying hair. But that gentle face was deceptive, for underneath Bram was indomitable, one of the most brilliant of advocates. He could pursue his way with a Crown witness just as relentlessly as Vernon [Berrange, another, more flamboyant advocate]: silver tongued, he won the confidence of the witness with gentle skill. He didn't chase his witness into a corner and pin him down, indeed he never raised his voice, but in the end somehow, the witness turned to have said just what Bram wanted him to say. We marvelled at his unerring technique. I think the Crown did, too, when they realised the fatal concessions their witnesses were making so unsuspectingly."^{xxxviii}

He sounds a lot like Atticus, another Southern gentleman. But unlike Atticus, he was a 'radical' and a 'purist'^{xxxix}. During the Rivonia trial the prosecutor handed him a prosecution exhibit, a

document supposedly written by one of the accused which Bram recognised as his own handwriting. He cross examined one of the state witnesses who knew that he, Bram, had attended some of the meetings that the accused attended and the witness did not give him away. He smuggled out some of the prosecution papers from the court and gave them to the banned ANC. After the trial he lost his beloved wife, Molly, in a car accident on their way to visit Nelson Mandela on Robben Island but he still consulted with Mandela and did not tell him about Molly's death so that they could concentrate on the preparation of Mandela's appeal. He was then arrested for being a member of the banned Communist party. At the time of his arrest he was the longest serving member of the Johannesburg Bar Council. He was granted bail so that he could appear in the Privy Council in London. He returned to stand trial and he then jumped bail and went into hiding under the pseudonym, Mr Black, for nine months, to avoid witnesses being tortured into giving evidence against him at his trial. While he was on the run the press called him the 'Red Pimpernel' (Mandela was called the 'Black Pimpernel' when he was on the run). And then his beloved profession turned on him and the Bar Council successfully applied to have him struck off the roll of advocates for conduct "unbefitting a member of the Bar and the Society" in jumping bail. He was then caught and tried in the same courtroom in which his most famous client, Nelson Mandela, had made his famous speech in which he said that, if needs be, he was prepared to die for the ideal of a democratic and free society in which all persons could live together in harmony and with equal opportunities.

In his own powerful speech from the dock, Bram explained why he became a communist: "...it was always members of the Communist Party who seemed prepared, regardless of cost, to sacrifice most; to give of their best, to face the greatest dangers, in the struggle against poverty and discrimination." And why he broke the law and jumped bail: "when the laws themselves become immoral and require the citizen to take part in an organised system of oppression - if only by his silence and apathy - then I believe that a higher duty arises. This compels one to refuse to recognise such laws".^{x1}

He was sentenced to life imprisonment at the age of 58 and treated with unusual cruelty by the prison authorities. When his son passed away he was refused permission to attend his funeral and he was also refused medical treatment for cancer and was refused painkillers for 13 days after falling and fracturing his femur. He was nursed in prison by one of the men he defended and saved from being hanged. He was released shortly before his death to his brother's house which was temporarily declared a prison. His body was then taken away by the state, cremated and his ashes never recovered.

And then 27 years after being imprisoned, Nelson Mandela was released and became the first president of a democratic South Africa. Mandela said when he was voting for the first time he felt as if Bram was holding his hand when he made his cross. And the junior barrister who helped him defend Mandela, Arthur Chaskalson, to whom he gave his gown and desk, became the first President of the South African Constitutional Court which in its first judgement declared capital punishment unconstitutional. And then the Johannesburg Bar Council supported a successful application for him to be posthumously readmitted to the roll of advocates. In his autobiography, *Long Walk to Freedom*, Mandela said: "In many ways, Bram Fischer, the grandson of the prime minister of Orange River Colony, had made the greatest sacrifice of all. No

matter what I suffered in my pursuit of freedom, I always took strength from the fact that I was fighting with and for my own people. Bram was a free man who fought against his own people to ensure the freedom of others.”^{xli}

Bram’s story is an unbelievable story. Harper Lee and Sir John Mortimer QC could never have imagined a hero like Bram. Even John Grisham would find it difficult to imagine a character or a story like this. A hero like Bram inspires blind, unthinking, hero-worship. His legacy evokes admiration, levitation and even “an imaginative experience which creates an enjoyable pang of projection, admiration and longing”.

However, at this year’s Bram Fischer Memorial Lecture in Oxford^{xliii}, Judge Edwin Cameron, who Nelson Mandela hailed as “one of South Africa’s new heroes”, argued that Bram’s legacy should not make us feel warm and good. Instead, it should evoke a much more challenging emotion: a deep discomfort which, in my opinion, can best be described as Aristotelian emulation. In his speech Cameron recognised that, “[l]ike Mandela, Bram is celebrated with a saint-like quality” but in his lecture he reflected on what he called “the shadows and complexities of Bram’s legacy”. He called him “a hero of contradictions and compromise” who struggled “for justice under law in conditions of imperfection”. He sought to show “where complexity intrudes” and the “the grey area in between rationalisation and justification” were in Bram’s life, and said “to fit his acts in mere right or wrong invites oversimplification. There are no clear paths”.

Bram’s life, he said “illustrates the cost and importance of dissent – especially dissent from within. While his life had emblematic contradictions, and while he remained in important respects within the establishment, the principal feature of his life was his radical opposition to that establishment... We admire him. But too easily we forget that most of us are members of a different, evolved, even new establishment. His life calls on those of us in the new South African elite to shed comfort: on what should we be speaking out? What should we be challenging? And from what should we be dissenting?”

Cameron said there are few easy lessons, either personal or political, from Bram’s life; but, one of them is that “we must humble ourselves before the complexity of our history, and the nuances of its lessons to us. One of those is the cost of compromise. We must not seek our heroes only in those whose feet are not of clay. To fail to recognise this is to over- simplify our history and the cost the struggle for justice exacted. And it is to disrespect the complexity of the life Bram Fischer led.”

Another lesson Cameron drew from Bram’s life was that “none of us live lives of moral perfection, and we should not ask moral perfection of ourselves. Our task is to seek justice and improvement in the world not because we are perfect, but despite our failure to meet that unattainable standard.” Cameron said Bram’s life called us to continue the struggle, in conditions of imperfection, to make just laws, and to make law just. One of the legacies of Bram Fischer’s

life, he said, “is the continuing phenomenon of dissent within South African society – its brave, principled activists; and an alert, sceptical, uncowed citizenry. Its fertile off-spring are social movements, which hold the Constitution as key to a demand for a better life, through the law, and through hard fought-for political spaces. It was the tradition of brave dissent, combined with the belief in the virtue of law when not subordinated to the vicious ideology of Apartheid, that left the legacy on which our constitutional principles are founded.”

And then Cameron said the following:

“We look back and admire Bram’s prescience and courage. Well, we should, shouldn’t we? His vision of non-racialism and democracy has been vindicated. The vindication of his courageous life should make us feel warm and good – not so? No. It is too comfortable. Bram Fischer’s life shouldn’t comfort us. It challenges us. Specifically, it asks: what do his acts of courage suggest about our lives, and about our capacity for action?...Bram Fischer would have been deeply troubled by fracture in our society, by the dispossession, the accumulation of elite privileges, the fraying of democratic institutions...So his life calls us to ask ourselves: have we exhausted our moral outrage? And have we employed our full array of constructive responses? Do we have figures of integrity and stature who employ enough principled, courageous, strategic dissent against injustice?...Bram Fischer’s courageous life invites each of us to ask ourselves: what is the ambit and the power of my challenge to injustice? What is the issue of my dissent?” It is not good enough to look back in comfort. That backward glance, at Bram Fischer’s courageous stand for justice, should induce in us deep discomfort.”

This deep discomfort Cameron speaks of is the pain Aristotle called emulation (*zelos*). It is caused by seeing the presence, in persons whose nature is like our own, of good things that are highly valued and are possible for ourselves to acquire. We feel pain not only because we do not have Bram’s courage and integrity; we also feel it because we could have them and we choose not to. Perfect saints are too far above us to be imitated and we do not have to worry too much about not living up to their standards. We can easily dismiss them as freaks of nature and get on with our compromised lives. It is when we are in a position to do what Bram did, or even in a better position than he was in (i.e. with a constitution and good laws), and at less cost to ourselves and our families, that it becomes really uncomfortable because then we have to face up to the horrible fact that we have consciously chosen not to be virtuous, and we are fully responsible for that decision. We realise that it would be relatively easy for us to change and make a difference but we choose not to.

Unlike glamorous and cool role models who make us feel better about ourselves, real moral exemplars like Bram demand things from us, humble us and challenge us and make us realise how much more we could do and be. So what started out as a defence of the powerful, superficial, temporary and persuasive pleasures of glamour and coolness has ended, with the help of Bram Fischer and Edwin Cameron’s powerful evocation of his legacy, with a fuller appreciation of the equally affective and effective, although more nuanced, complicated and deeper discomfort of Aristotelian emulation. And this deeper and more challenging approach to role modelling need not be gloomy and depressing (or deflating) or even uncool and

unglamorous; because Bram's life is also uplifting because it shows us what we are capable of, in our different ways, if we choose to live moral lives.

Atticus, Rumpole and Bram are all affective and effective legal role models who have inspired many lawyers. They have many complex and contradictory virtues, many 'idiosyncrasies and eccentricities not quite in line with the picture of moral perfection' that Susan Wolf would find attractive, and they have Moral Pluck (sensu Simon). They follow their principles and conscience irrespective of the norms, beliefs, and expectations of others. However, whereas Atticus and Rumpole are glamorous and cool because they diverge moderately from the norm and are not 'radical'; and they make things look better than they are and thereby invoke an

'enjoyable pang of projection, admiration and longing'; Bram is not. He shows us how messy and difficult a moral life is and how high the personal costs are if you are truly radical and diverge from norms your community considers legitimate and necessary.

Aristotle understood the power of image, longing, envy and emotion. He understood that artistic imitation - glamour and coolness if you like - could help develop character and a moral society and that perfect artistic images could produce an image of perfection and truth that would inspire and affect people emotionally. But he also understood that a moral role model must not only affect us experientially and give us pleasure but must also challenge and unsettle us morally and intellectually. Cameron does not suggest we copy Bram. Instead he says his life invites each of us to ask ourselves what the ambit and the power of our own challenge to injustice is and to find the issue of our own dissent. In this respect he agrees with Nietzsche's ^{xliii} idea of the true role of the moral exemplar: it is to show us that we are all capable of being better and doing more, and then it is for us to find our own way of doing more. Cameron is therefore advocating Aristotelian role modelling which takes account of the affective element of emulation by trying to evoke in moral learners an inwardly experienced, emotionally driven demand for self-transformation and ^{xliiv}by reminding them of the truth that no one can construct it for you. But this experience is not pleasant because the moral life is not easy.

However, what the research on glamour and cool and Bram's, Atticus' and Rumpole's amazing 'lives' also hopefully shows is that virtuous qualities and principles are too abstract and remote from our lives, experiences, memories and desires to inspire real passion and emotion. Disembodied virtuous qualities do not, in themselves, have the emotional or persuasive power that role models possess. Character education would be simple if we merely had to identify, isolate, list and teach the relevant principles; or get lawyers to recite an oath incorporating these principles. Marketing would also be simple if all you had to do was to list the technical specifications of the particular product. Advertisers and marketing researchers have known for years that this approach does not work. If it did work advertisers would simply list the technical specifications of their particular product and consumers would then compare them in a rational way with their requirements and the technical specifications of other products and buy the one that best suited their practical requirements and budget. Consumer research has shown that people don't think this way; they worry about what they will look like when driving or wearing the product. It is the same with virtue. People want to see the virtue in action and, in Atticus' words, walk around in someone else's skin for a while, before deciding to adopt it. We can only

make people really care about virtuous ideals if we embody these virtues in role models that they can relate to and which appeal to their imagination. And this form of experiential learning does also not have to be superficial, simplistic or intellectually undemanding. As Cameron's lecture on Bram, and the complex characters of Rumpole and Atticus show; role models can lead complex and difficult lives which provide difficult, instructive and thoughtful lessons.

The research on glamour and cool also suggests that glamorous and cool things are transitory, they continually change and are not necessarily related to real needs. Nevertheless, lives like Atticus', Rumpole's and Bram's show us the value of making deep commitments to principles and people, and the price you pay for doing so. Cameron's in-depth study of Bram's life also shows us that the more we know about a role model does not necessarily make them less glamorous or cool. The more we find out about Bram's life the more extraordinary he becomes and the more we discover about the contradictions and compromises in his life, the more we can relate to him and feel for him.

Atticus, Rumpole and Bram also provide an alternative route to status, comfort and to an appropriate alternative lifestyle for lawyers. They are like the architects of 'rebel cool' in the 1950s.^{xlv} As the massification, industrialisation, commodification and systemisation of the legal profession (now called legal services) increases, there will be fewer opportunities for lawyers to be creative and autonomous within firms. More lawyers and law students will probably start to reject the deadening, bland and dreary conformity of the mainstream corporate factory-like law firm. And they may be prepared to swap the status, coolness, glamour and money offered by large, impersonal corporate City law firms for the different glamour and coolness of a small, meaningful and personal practice; which combines the old rebel coolness of autonomy with the new 'DotCool' of unconventionality, creativity and learning; and where they feel they can actually make a difference to people's lives and be an 'agent for social change'. And 'patron saints' like Atticus, Rumpole and Bram will comfort and fortify them when they earn less money and question their decision to rebel against Big Law.

And finally, these cool, unconventional, creative, knowledgeable, and ethical individuals will help create a legal profession as a moral community rather than simply a professional body somewhat akin to a business community or trade union representing the interests of lawyers. The Truth and Reconciliation Commission's report on the role played by the South African legal profession during Apartheid found that the legal profession 'actively contributed to the entrenchment and defence of Apartheid through the courts'. And one of the examples they gave was: "Students who chose to be blinded by the glamour and material returns of the conventional mainstream of the profession, neglecting his or her potential role as a fighter for justice for all in South Africa".^{xlvi}

Hopefully the Moral Glamour of role models like Atticus, Rumpole and Bram will persuade future lawyers to take an alternative route.

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- ⁱ Adam Smith, *The Theory of Moral Sentiments*, 1790, chapter IV.1.10
- ⁱⁱ Joseph Heath and Andrew Potter, *The Rebel Sell*, Harper Perennial, 2004.
- ⁱⁱⁱ Susan Wolf, *Moral Saints*, *The Journal of Philosophy*, Vol. 79, No.8 (Aug., 1982), 419-39.
- ^{iv} Virginia Postrel, *The Power of Glamour: longing and the art of visual persuasion*, Simon & Schuster, 2013
- ^v Postrel, 2013, p18.
- ^{vi} Aristotle, *Poetics*, Chapter 16
- ^{vii} Allan De Botton, *Religion for Atheists*, Hamish Hamilton, 2012, p 91.
- ^{viii} Edward Hoagland's essay, *Where have all the Heroes gone*, in *The New York Times Magazine*, March 10, 1974.
- ^{ix} Der Spiegel interview, August 28, 2006. (<http://www.spiegel.de/international/spiegel-interview-with-salman-rushdie-terror-is-glamour-a-433969.html>)
- ^x Postrel, 2013, pg. 220
- ^{xi} Virginia Postrel article in *Bloomberg View*, January 6, 2015. (<http://www.bloombergview.com/articles/2015-01-06/the-glamour-of-islamic-state>)
- ^{xii} Postrel, 2013, pg 67.
- ^{xiii} Kristjan Kristjansson, *Emulation: An Aristotelian Virtue for the Young*, in *Aristotle, Emotions and Education*, pg. 102
- ^{xiv} Endel Tulving, *Episodic Memory: From Mind to Brain*, 2002, *Annual Review of Psychology*, 2002, 53:1-25.
- ^{xv} Marcel Danesi, *Cool: the signs and meanings of adolescence*, University of Toronto Press, 1994, 37.
- ^{xvi} Danesi, 1994, Preface.
- ^{xvii} Caleb Warren and Margaret Campbell, *What makes things cool? How autonomy influences perceived coolness*, *Journal of Consumer Research*, Volume 41, August 2014, p544.
- ^{xviii} Warren and Campbell, 2014, p557
- ^{xix} *Ibid*, p545
- ^{xx} *Ibid*, p544.
- ^{xxi} *Ibid*, p558.
- ^{xxii} Steven Quartz and Anette Asp, *Cool: How the brain's hidden quest for cool drives our economy and shapes our world*, Farrar, Straus and Giroux, 2015, pg. 127.
- ^{xxiii} Article by Andrew Adam Newman in the *New York Times*, 'A Less Deviant Take in a Campaign to Curb Smoking by Teenagers', *NYT*, August 10, 2014; <http://www.nytimes.com/2014/08/11/business/a-less-defiant-tack-in-a-campaign-to-curb-smoking-by-teenagers-.html>.
- ^{xxiv} Warren and Campbell, 2014, p558.
- ^{xxv} *Ibid*, p559, and Heath and Potter, 2004.
- ^{xxvi} Quartz and Asp, 2015, p70

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- ^{xxvii} Quartz and Asp, 2015,p71
- ^{xxviii} Endel Tulving, Episodic Memory: From Mind to Brain, 2002, Annual Review of Psychology, 2002, 53:1-25.
- ^{xxix} William H. Simon, Moral Pluck: Legal Ethics in Popular Culture, Columbia Law Review, Vol.101,No.2 (Mar.2001), pp 421-448).
- ^{xxx} Ibid.
- ^{xxxi} Ibid.
- ^{xxxii} Harper Lee, To Kill a Mockingbird, 1960; Arrow Books, 2006 edition.
- ^{xxxiii} 'To Kill A Mockingbird made me a lawyer', Article in the Guardian on 11 July 2015
- ^{xxxiv} Ibid.
- ^{xxxv} Cause Lawyering 'English Style': Reading Rumpole of the Bailey, in The Cultural Lives of Cause Lawyers, edited by Austin Sarat and Stuart Scheingold, Cambridge University Press, 2008.
- ^{xxxvi} Ibid, p298.
- ^{xxxvii} Helen Joseph, If this be Treason, 1963.
- ^{xxxviii} Ibid, p31.
- ^{xxxix} Nelson Mandela, Long Walk to Freedom, 1994, p561.
- ^{xl} <http://www.sahistory.org.za/archive/i-did-what-was-right-statement-dock-bram-fischer-after-conclusion-rivonia-trial-1966>
- ^{xli} Nelson Mandela, Long Walk to Freedom, 1994, p562.
- ^{xlii} http://files.www.rhodesscholarshiptrust.com/news/2015-bram-fischer-memorial-lecture/Bram_Fischer_Oxford_lecture_as_delivered_Tuesday_16_June_2015.pdf
- ^{xliiii} In his essay on Schopenhauer as translated and interpreted by Conant 2001 and referred to by Kristjansson in Chapter 7, Emulation: An Aristotelian Virtue for the Young, in Aristotle, Emulation and Education, p102.
- ^{xliiv} Kristjansson, 2007, p111
- ^{xlv} Quartz and Asp, p126.
- ^{xlvi} TRC Final Report, volume 4, chapter 4, subsection 3, paragraph 34 (g); <http://sabctrc.saha.org.za/reports/volume4/chapter4/subsection3.htm>.