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**“isms” and Ulterior Motives in Ellen Feldman’s  
*Scottsboro***

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## ***Abstract***

Scottsboro is one of the most significant criminal cases of the twentieth century. Set in the Deep South of the 1930s, the false allegation of rape from two white women against nine black men brought America's prejudices into the global spotlight. A number of historical accounts have been written over the years, but Ellen Feldman's novel, *Scottsboro*, provides readers with a closer look at the personal lives, thoughts and feelings of those involved in the case. Through this the modern audience is able to delve deeply into three key themes: race, class, and ulterior motives. Readers from all backgrounds will find the novel to be an important reminder of the dangers of prejudice - especially prevalent at a time when instances of racial animosity are seen in the news on a daily basis. For lawyers and law students, *Scottsboro* provides insight into the nature of the legal profession, and the lengths a lawyer may go to in order to protect his or her career.

***Key words:*** law and literature, legal history, Scottsboro trials

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## ***I Introduction***

Scottsboro is one of the greatest legal injustices in American history. The conviction and imprisonment of nine black teenagers, based on a fabricated rape allegation from two white women, is imprinted in the minds of people both in the U.S. and overseas. Numerous historical accounts have been recorded over the years, but literature provides us with an even deeper understanding of such important legal events. It enables authors to delve into social and legal themes, shedding light on the nature of the law, lawyers, and legal systems. In the words of Robin West, “Literature helps us understand others” - it teaches us empathy.<sup>1</sup>

Ellen Feldman’s *Scottsboro* blends together accurate historical facts with fictional elements. The author is drawn to “monumental events” and the intersection of those events with the personal lives of those involved.<sup>2</sup> Accordingly, Feldman chose Scottsboro as subject matter because it is “iconic in American lore”.<sup>3</sup> The case is important in what it tells us about America’s fault lines. It encompasses so many of the “isms”: racism, first and foremost, but also sexism, anti-Semitism and Communism.<sup>4</sup> Feldman’s two white female narrators provide the starting point for an examination of these “isms”: Ruby, one of the real-life accusers, and Alice, a fictional character based on real journalists who covered the trials in the 1930s.<sup>5</sup>

This essay will begin with an overview of the case’s history, and then focus on three intertwining themes. Firstly, questions of race went to the heart of the case. Deeply entrenched stereotypes of black male sexual depravity meant that a white woman’s accusation of rape against a black man was essentially a death sentence. While both the accusers and the accused were impoverished, to most white Alabamians even the poorest white person was superior to a Negro. As well as the issues between black and white

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<sup>1</sup> Robin West “Economic Man and Literary Woman: One Contrast” (1988) 39 Mercer L. Rev. 867 at 877-878.

<sup>2</sup> Alice O’Keeffe “Ellen Feldman” (15 July 2011) The Bookseller <[www.thebookseller.com](http://www.thebookseller.com)> and “Ellen Feldman, Scottsboro” (1 May 2008) The New York Society Library <[www.nysoclib.org](http://www.nysoclib.org)>.

<sup>3</sup> The New York Society Library, above n 2.

<sup>4</sup> The New York Society Library, above n 2.

<sup>5</sup> The New York Society Library, above n 2.

Americans, the fact that the defendants' lawyers were Jewish meant that anti-Semitic attitudes were also brought to the foreground.

Class is the second theme that will be explored. The brutal economic conditions of the Great Depression meant that the trials were being carried out at a time when many white Southerners were feeling hard done by, and primed to direct their frustrations at an alleged black rapist. The female accusers' own poverty is what encouraged them to cry rape in the first instance, and also affected how they were treated throughout the trials. In contrasting the lives of the two narrators, Feldman highlights the influence of class in the Scottsboro case.

Finally, Feldman examines the ulterior motives of the many parties who were involved in the trials. The class issues above drew the attention of the Communist Party, changing the course of the defendants' future and adding a distinct political agenda to the case. A number of individuals involved in the trials, both real and fictional, also saw Scottsboro as a way of furthering their own interests. The author begs the question, can ulterior motives in relation to a criminal trial ever be morally or ethically sound?

## ***II History***

On March 25th, 1931, a train was on its way from Chattanooga to Memphis. Shortly before Paint Rock, a small town in Alabama, the station master was told that a fight had broken out between a number of black and white youths.<sup>6</sup> After stopping in Paint Rock, police searched the train and found nine black boys, along with one white boy and two white girls (Victoria Price and Ruby Bates).<sup>7</sup>

Victoria soon told the deputy sheriff that she and Ruby had been raped by the nine boys. It is believed she did this to prevent her and Ruby from being arrested themselves, for vagrancy or some other offence. The boys were Haywood Patterson (18), Clarence Norris (19), Charlie Weems (19), brothers Andy Wright (19) and Roy Wright (12), Olen

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<sup>6</sup> Dan T. Carter *Scottsboro: A Tragedy of the American South* (Louisiana State University Press, Baton Rouge, 1969) at 3. This text was Feldman's key source in writing *Scottsboro*, with some elements of the novel being a direct reflection of Carter's work.

<sup>7</sup> At 5.

Montgomery (17), Ozie Powell (16), Willie Roberson (16) and Eugene Williams (13). None except Andy and Roy had met each other before.<sup>8</sup> Most had been hoboing in an attempt to find work in another state or town.<sup>9</sup>

The group were then sent off to Scottsboro, another town in Alabama. The girls were examined by two physicians, and the boys were sent to jail.<sup>10</sup> News of the incident spread quickly, the details becoming increasingly violent and graphic. By dusk, a white mob numbering in the hundreds had gathered outside the jail.<sup>11</sup> Eventually the National Guard was called to prevent the mob from breaking in and lynching the boys themselves.<sup>12</sup>

In the meantime, Victoria had begun interviews with the press. She vividly described how the Negroes had knives and pistols, beat her, and held a knife to her throat as they raped her. Her story was confirmed by Orville Gilley, the white boy from the train and the only other witness. Ruby remained silent.<sup>13</sup>

Judge Hawkins announced that a grand jury would meet to consider the indictments of the defendants.<sup>14</sup> He assigned all seven members of the Scottsboro bar to represent the boys, however all but one (Milo C. Moody) found an excuse to withdraw.<sup>15</sup> Moody was nearly seventy, “doddering” and unreliable.<sup>16</sup> He was joined by Chattanooga attorney Stephen R. Roddy - unfamiliar with Alabama law, and an alcoholic.<sup>17</sup>

By March 30th, all nine defendants were indicted for rape.<sup>18</sup> Beginning with Haywood, eight were tried, convicted, and sentenced to the electric chair.<sup>19</sup> Roy was granted a mistrial, as he was only twelve and the jury had refused to consider life imprisonment as a lesser penalty than death.<sup>20</sup>

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<sup>8</sup> Carter, above n 6, at 6.

<sup>9</sup> At 6.

<sup>10</sup> At 7.

<sup>11</sup> At 7.

<sup>12</sup> At 8-9.

<sup>13</sup> At 14.

<sup>14</sup> At 16.

<sup>15</sup> At 17.

<sup>16</sup> At 18.

<sup>17</sup> At 19.

<sup>18</sup> “The Scottsboro Trial: A Timeline” (2 April 2001) American Experience <[www.pbs.org](http://www.pbs.org)>.

<sup>19</sup> Carter, above n 6, at 43 and 48.

<sup>20</sup> At 48.

The Communist Party soon issued a statement condemning the trials.<sup>21</sup> It swiftly recognised the case as a recruitment opportunity, and a protest movement was set in motion.<sup>22</sup> A battle to represent the defendants broke out between the National Association for the Advancement of Colored People (NAACP) and the International Labor Defense (ILD - the legal wing of the Party).<sup>23</sup> The ILD was successful, and lawyers Joseph Brodsky and George W. Chamlee were appointed as counsel.<sup>24</sup>

The Alabama Supreme Court upheld the convictions of seven of the defendants. Eugene was granted a new trial as he was a juvenile at the time of conviction.<sup>25</sup> By this point the defendants had been in jail for nearly one year. Then, in *Powell v Alabama*, the U.S. Supreme Court ruled that the defendants were denied the right to counsel, in violation of the 14th Amendment.<sup>26</sup> The cases were remanded to the lower court.<sup>27</sup>

In January 1933 New York lawyer Samuel Leibowitz was appointed as counsel.<sup>28</sup> He had established a reputation as a superb criminal defence attorney, having won 77 out of 78 murder cases (the 78th being a hung jury).<sup>29</sup>

The defendants' re-trials were moved to Decatur, and presided over by Judge Horton.<sup>30</sup> During Haywood's trial, Leibowitz famously brought in a purpose-built replica of the train the boys had been riding.<sup>31</sup> He also stunned the Court by bringing out Ruby as a witness for the defence - she was now denying the rape had occurred.<sup>32</sup> Despite this Haywood was again convicted and sentenced to death. However, convinced of the defendants' innocence, Horton set aside the conviction and granted a new trial.<sup>33</sup>

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<sup>21</sup> Carter, above n 6, at 49.

<sup>22</sup> Michael J. Klarman "Scottsboro" (2009) 93 Marq. L. Rev. 379 at 388.

<sup>23</sup> Carter, above n 6, at 92, Klarman, above n 22, at 387, and Lashawn Harris "Running with the reds: African American Women and the Communist Party during the Great Depression" (2009) 94 *The Journal of African American History* 21 at 30.

<sup>24</sup> Carter, above n 6, at 53-54.

<sup>25</sup> American Experience, above n 18.

<sup>26</sup> *Powell v Alabama* 285 US 45 (1932).

<sup>27</sup> American Experience, above n 18.

<sup>28</sup> American Experience, above n 18.

<sup>29</sup> Carter, above n 6, at 181.

<sup>30</sup> American Experience, above n 18.

<sup>31</sup> Carter, above n 6, at 205.

<sup>32</sup> At 234.

<sup>33</sup> American Experience, above n 18.

The cases were moved to the court of Judge Callahan. Haywood and Clarence were again sentenced to death.<sup>34</sup> In 1934, the Alabama Supreme Court denied the defence motion for new trials.<sup>35</sup> In 1935, Leibowitz appeared before the U.S. Supreme Court in *Norris v Alabama*.<sup>36</sup> In this historic case, the Court found that the exclusion of black people from Alabama jury rolls deprived black defendants of their right to equal protection under the law, as guaranteed by the 14th Amendment.<sup>37</sup>

In the end, Haywood, Clarence, Andy, Charlie, and Ozie were again found guilty and sentenced to prison, for terms ranging from twenty years to life. Charges were dropped against Olen, Willie, Eugene, and Roy. Clarence, “the last of the Scottsboro boys”, was pardoned by Alabama governor George Wallace in 1976.<sup>38</sup>

### ***III Race***

#### ***A “The flower of Southern white womanhood”***

At the beginning of the twentieth century, widespread unemployment drove many African Americans to return to the South, where industry was rapidly expanding.<sup>39</sup> Of course, it was not only African Americans who were affected by the economic climate. Competition for jobs was steep. The largest industrial employers in the South at this time were textile manufacturers - who denied black men jobs on the basis that they would pose a threat to the white women and girls who were already working there.<sup>40</sup> The sudden influx of black workers had served to fuel the South’s fear of the black male rapist.<sup>41</sup> It is this fear which lay at the heart of the Scottsboro case.

The first time she visits Scottsboro, Alice attends a meeting to discuss the case. One of the

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<sup>34</sup> American Experience, above n 18.

<sup>35</sup> American Experience, above n 18.

<sup>36</sup> *Norris v Alabama* 294 US 587 (1935).

<sup>37</sup> American Experience, above n 18.

<sup>38</sup> American Experience, above n 18.

<sup>39</sup> David Brown and Clive Webb “The White Supreme’: Race Relations in the Jim Crow South” in *Race in the American South* (Edinburgh University Press, Edinburgh, 2007) 180 at 183.

<sup>40</sup> At 183.

<sup>41</sup> At 199.

attendees is George Huddleston, an Alabama representative in Congress. Huddleston says to Alice, "You outsiders cannot understand how we southern gentlemen feel about this question of relations between Negro men and white women".<sup>42</sup>

Racial stereotypes concerning black men had existed in the U.S. and particularly in the South for centuries. Literature on racial degeneracy painted black men as primitive, animalistic, and sexually aggressive.<sup>43</sup> Some even argued that the emancipation of slaves had unleashed black sexual desires for white women, characterized as a form of "revenge" against white slave owners.<sup>44</sup>

The culture of lynching which had developed in the U.S. in the nineteenth century is the most obvious reflection of this fear of black men. Lynching culture is an underlying theme in Feldman's novel, though it is not dealt with directly. In chapter seven a prison guard jokes to Haywood that the first thing to burn on the electric chair was the black penis. Feldman writes, "He had hit on the secret no one would admit... the source of fear, the cause of the lynchings...the black penis was at the heart of it all".<sup>45</sup>

The most common reason for lynching was the rape of a white woman, and ninety per cent of lynch mobs were targeted against black men.<sup>46</sup> Lynching was justified as a form of swift revenge for rape, which spared the alleged rape victim from having to testify in court.<sup>47</sup> Guilt, innocence, and legality mattered little - allegation alone was sufficient excuse to kill.<sup>48</sup> As a South Carolina governor stated in 1912, "Whenever the constitution of my state steps between me and the defence of the virtue of the white woman, then I say 'to hell with the Constitution!'"<sup>49</sup>

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<sup>42</sup> Ellen Feldman *Scottsboro* (W. W. Norton & Company, New York, 2008) at 47.

<sup>43</sup> Estelle B. Freedman "The Racialization of Rape and Lynching" in *Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation* (Harvard University Press, Cambridge, 2013) 89 at 94.

<sup>44</sup> At 95.

<sup>45</sup> Feldman, above n 42, at 104.

<sup>46</sup> William I. Hair and Amy Louise Wood "Lynching and Racial Violence" in Thomas C. Holt, Laurie B. Green and Charles Reagan Wilson (eds) *The New Encyclopedia of Southern Culture* (University of North Carolina Press, Chapel Hill, 2013) 87 at 88 and 91.

<sup>47</sup> Freedman "The Racialization of Rape and Lynching", above n 43, at 100-101.

<sup>48</sup> Klarman, above n 22, at 382.

<sup>49</sup> Bryant Simon "The Appeal of Cole Blease of South Carolina: Race, Class, and Sex in the New South" (1996) 62 *The Journal of Southern History* 57 at 83.

Based on data gathered since 1882, eighty percent of all lynchings took place in the South, most commonly in rural communities and small towns.<sup>50</sup> Alice works at a New York left-wing journal, the type of publication which would be especially damning of lynchings. But the dichotomy of a racist South and a liberal North can only go so far. Racist stereotypes of black men's propensity for rape were not unique to the South, with the New York Times describing rape as "a crime to which negroes are particularly prone" in 1894.<sup>51</sup>

Lynchings decreased in the twentieth century, however they were often replaced with so-called "legal lynchings": speedy trials that reliably produced guilty verdicts and death sentences.<sup>52</sup> This idea is illustrated in the first chapter of the book, as Alice and Abel are discussing the news of the boys' arrest. Alice notes that while the lynch mob had been unsuccessful at the Scottsboro jail that first night, "Everyone knew how it worked. If you put away the rope...we guarantee a trial so fast it will make your head spin and a sentence that will warm your heart".<sup>53</sup>

That the defendants each escaped a real-life lynching even became a source of pride for the white Alabama community. When Alice first visits Scottsboro, she speaks to two white women: "Most towns...would not have bothered with legal proceedings and just lynched the niggers, but that was not the Scottsboro way".<sup>54</sup> Southern newspapers lauded the town's behaviour, with the Chattanooga Daily Times praising Scottsboro for setting the rest of the South an impressive example in "self-restraint".<sup>55</sup>

The belief that Southern white womanhood needed aggressive protection was influential on all of the judges involved in the case, but to differing extents. According to the theories of Ronald Dworkin and Raymond Wacks, the function of a judge is to find the objectively "right" answer to each case, by reference to the "community morality".<sup>56</sup> But what should a judge do when the community morality is utterly unjust?

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<sup>50</sup> Hair and Wood, above n 46, at 88 and Brown and Webb, above n 39, at 199.

<sup>51</sup> Freedman "The Racialization of Rape and Lynching", above n 43, at 95.

<sup>52</sup> Klarman, above n 22, at 381-382.

<sup>53</sup> Feldman, above n 42, at 28.

<sup>54</sup> At 43-44.

<sup>55</sup> Klarman, above n 22, at 390.

<sup>56</sup> Raymond Wacks "Judges and Injustice" (1984) 101 S. African L.J 266 at 272.

In chapter two Feldman writes, “The boys had to die for the good of the community”.<sup>57</sup> For the citizens of Scottsboro, “the good” meant removing the threat of the black defendants and thereby protecting white women. Whatever community morality existed at the time dictated that if a black man was accused of rape by a white woman, he must be found guilty.

Judge Horton, who presided over the first trials in Decatur, is characterized as being quite sympathetic to the boys’ plight. He is uncomfortable with the accuracy of the allegations. Yet when one of the doctors who examined the accusers confesses that he does not believe they were raped, Horton does not force the doctor to testify.<sup>58</sup> To do so would ruin their reputations in Alabama, and “[b]oth men understood that the idea of practising medicine or law or any other profession anywhere else was unthinkable”.<sup>59</sup>

Ultimately Horton set aside Haywood’s conviction, granting him a new trial. This could be an example of a judge going against community morality, instead reaching a conclusion that accords with his personal sense of justice. Alternatively, Horton was simply doing his job as a judge: applying an objective sense of justice, and finding the defendant innocent.

In contrast Horton’s replacement, Judge Callahan, had no qualms about enforcing the community morality. In his instructions to the jury he spoke of the “very strong” presumption that a white woman would never “yield voluntarily to intercourse with the defendant, a Negro”.<sup>60</sup> This was so regardless of the class or moral virtue of the woman in question. In short, the word of a white woman was adequate proof of interracial rape.<sup>61</sup> Community morality was therefore central to Callahan’s decisions. Even further, unlike Horton whose personal sense of justice was in conflict with the community morality, for Callahan the community morality was also *his* morality. He, and his decisions, was a product of his time.

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<sup>57</sup> Feldman, above n 42, at 48.

<sup>58</sup> Carter, above n 6, at 214-215.

<sup>59</sup> Feldman, above n 42, at 241.

<sup>60</sup> Estelle B. Freedman “Scottsboro and Its Legacies” in *Redefining Rape: Sexual Violence in the Era of Suffrage and Segregation* (Harvard University Press, Cambridge, 2013) 253 at 261.

<sup>61</sup> At 261.

## **B**     *Black vs. white poverty*

As we will see, race was not the only important factor in the Scottsboro trials. The intersection between *class* and race was perhaps even more influential. The Great Depression affected people of all races (although African Americans to a worse extent).<sup>62</sup> Yet while poverty was in that sense colour-blind, the people it was affecting were not. In chapter four Victoria states, “All my life I been trash, but I ain’t been so low that coloured folk could treat me like trash”.<sup>63</sup> In Victoria’s mind, and the minds of most white southerners, you could be the poorest of the poor but you would still be superior to a black person.

In chapter five, Ruby recalls an incident at a “hobo jungle” (a place where the homeless slept). Victoria, Ruby, and their friend Lester Carter were in the jungle when Victoria complained that a group of black hobos had harassed her and Ruby. She urged Carter to reprimand them, and he confronts them, making a point to address them as “boys”. Ruby reminisces: “Sometimes I reckon they’re the sweetest words in a white man’s mouth, when he’s shouting them at a coloured”. She remembers how Carter, who had done time on a chain gang, used to be called “boy” by the white prison guard. “...but now he was saying them to a nigger, and he was a white man again.”<sup>64</sup> In this way Feldman reinforces the crucial difference between being a poor white and a poor black. Carter had been incarcerated and demeaned as a convict. But by addressing the black hobos as “boys”, he could bolster his self-esteem and assert his superiority as a white man.

From the moment of arrest until Clarence’s pardon in 1976, the defendants were characterised as “boys”.<sup>65</sup> This label was adopted by the global media, and even today we refer to the defendants as “The Scottsboro boys”.<sup>66</sup> Miller et al. argues that this label had two effects. On one hand it reinforced the image of the South as a place where black men were permanently infantilized. On the other hand, it held connotations of innocence

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<sup>62</sup> John L. Robinson “Great Depression” in *The New Encyclopedia of Southern Culture* (University of North Carolina Press, Chapel Hill, 2006) 110 at 112.

<sup>63</sup> Feldman, above n 42, at 69.

<sup>64</sup> At 82-83.

<sup>65</sup> James A. Miller, Susan D. Pennybacker and Eve Rosenhaft “Mother Ada Wright and the International Campaign to Free the Scottsboro Boys, 1931-1934” (2001) 106 *The American Historical Review* 387 at 406.

<sup>66</sup> See, for example, the 2010 musical “The Scottsboro Boys”. “The Scottsboro Boys” by David Thompson, music by John Kander and lyrics by Fred Ebb, 2010, Off-Broadway.

(including sexual innocence), which served to separate the defendants from the usual stereotypes of black men and their sexual appetite for white women.<sup>67</sup>

Yet Feldman chose to title her novel simply as “Scottsboro”. By using the name of the town in which the original trials took place, and removing any reference to the defendants themselves, she frames the case within a broader context. The novel is not only about the individual defendants, but about the wider impact of the case in the history of the U.S.

### **C      *Leibowitz and anti-Semitism***

The most obvious racial dichotomy in the Scottsboro case is that between African Americans and white Americans. However, there is a second dichotomy which was influential: white (Protestant) Christians versus Jews. In a similar way to discrimination against African Americans, for white Christians discrimination against Jews was a way of defending the religious and racial purity of America.<sup>68</sup>

Though legal discrimination against Jews had declined, social forms of discrimination left the twentieth century the most anti-Semitic in US history.<sup>69</sup> There was a rise in anti-Semitic religions, violence against Jews, and negative stereotypes.<sup>70</sup> The majority of these stereotypes focused on Jews creating economic competition for jobs, wealth and social status.<sup>71</sup> Because of this, anti-Semitism naturally peaked during the Great Depression.<sup>72</sup>

Anti-Semitism is tackled in the novel through the character of Leibowitz, the New York attorney who took over the defendants’ cases in 1933.<sup>73</sup> In chapter fourteen, Feldman alludes to the discrimination Leibowitz faced within the legal profession itself. Conversing with Alice, Leibowitz describes how his status as a Jew had prevented him from going into more “respectable” specialties like real estate law. Alice ponders the fact that “The law

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<sup>67</sup> Miller et al, above n 65, at 406.

<sup>68</sup> John Corrigan and Lynn S. Neal “Anti-Semitism” in *Religious Intolerance in America* (University of North Carolina Press, Chapel Hill, 2010) 147 at 148.

<sup>69</sup> At 148 and 150.

<sup>70</sup> These built upon historical stereotypes, such as the character of Shylock in Shakespeare’s “The Merchant of Venice”. Corrigan and Neal, above n 68, at 148 and Ronald H. Bayor “Klans, Coughlinites and Aryan Nations: Patterns of American Anti-Semitism in the Twentieth Century” (1986) 76 *American Jewish History* 181 at 182.

<sup>71</sup> Corrigan and Neal, above n 68, at 150.

<sup>72</sup> Bayor, above n 70, at 182.

<sup>73</sup> Joseph Brodsky, another of the defence lawyers, was also Jewish. Carter, above n 6, at 235.

says every defendant is entitled to competent defense. But the profession looks down its nose at those who do the defending".<sup>74</sup>

The white community in Alabama was very hostile toward Leibowitz. In chapter eighteen, after he questions the honesty of the white jury commissioner, the public gallery goes wild. "The Jew lawyer from New York was calling one of them a liar. To listen to him, you'd think they were on trial instead of those damn niggers".<sup>75</sup> The notion of a Northern Jew putting the Southern way of life "on trial" was unthinkable for many white Alabamians.

Hostility towards Jews was so strong that Leibowitz's presence may have been to the defendants' detriment. During the Decatur re-trials the prosecution targeted Leibowitz: in his summation for the court, the prosecutor appealed to the jury to "show them that Alabama justice cannot be bought and sold with Jew money from New York."<sup>76</sup> In chapter twenty-four, when Haywood has just been declared guilty, the court guard says to him, "It's your own fault, boy...If you got yourself a good God-fearing Christian lawyer from hereabouts instead of that JewlawyerfromNewYork, you could've got off easy with life".<sup>77</sup> These examples illustrate the paradigms white Southerners held of Jewish people (particularly those from the North), and imply how such paradigms may have affected the outcome of the trials.

Leibowitz had an outstanding reputation and track record, with a nearly 100% acquittal rate. But in the context of white, Christian, poor Alabama, his identity as a Jew from New York may have made him a liability.

An impoverished South was also one of the worst possible environments for the defendants to have been found on a train with two white women. The next section will explore how class issues impacted upon the Scottsboro case.

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<sup>74</sup> Feldman, above n 42, at 150-151.

<sup>75</sup> At 212.

<sup>76</sup> Carter, above n 6, at 235.

<sup>77</sup> Feldman, above n 42, at 281.

## *IV Class*

Under a class-based analysis of Scottsboro, poverty becomes a crucial factor. Poverty is what brought the nine defendants (and their accusers) on to the train, searching as they were for any work they could find in another state.<sup>78</sup> Poverty is what aggravated the white community in Alabama, encouraging them to condemn the Scottsboro defendants so readily. Poverty also defined how the accusers were treated in the course of the trials and by the media.

### *A Poverty in the South*

When Alice first hears of the defendants' imprisonment in chapter one, she does not think it will be news - "in 1931, a lynching or two in Alabama did not make headlines."<sup>79</sup> For Alice, the economic conditions of the country at this time were explanation enough for racial violence in the South. Scottsboro would not stop the presses because "sixteen million American men could not find work" and "more than a quarter of the population was trying to survive without any income at all".<sup>80</sup> From the first chapter, Feldman is highlighting the significance of poverty and class.

The Southern states were hit particularly hard by the Great Depression.<sup>81</sup> Scottsboro, for example, was overwhelmingly composed of farmers.<sup>82</sup> The agriculture of the region had been hit hard by the Wall Street crash of 1929, and furthermore had suffered the most severe drought ever recorded in 1930 and 1931.<sup>83</sup> What did this mean for the Scottsboro defendants? At several points in the novel, Feldman implies that the economic hardships of the time encouraged white Southerners to scapegoat: to find suitable objects to which they could direct their hatred and own suffering.

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<sup>78</sup> John Lennon "The Interracial Boxcar" in *Boxcar Politics: The Hobo in US Culture and Literature* (University of Massachusetts Press, Amherst, 2014) 131 at 140.

<sup>79</sup> Feldman, above n 42, at 26.

<sup>80</sup> At 26.

<sup>81</sup> John L. Robinson "Great Depression" in *The New Encyclopedia of Southern Culture* (University of North Carolina Press, Chapel Hill, 2006) 110 at 110.

<sup>82</sup> Carter, above n 6, at 12.

<sup>83</sup> Robinson, above n 81, at 110.

In chapter two Alice speaks to a shopkeeper in Scottsboro, who laments the cost of the trials “when so many poor white folks were on hard times”, noting that “thirty cents of rope would have done the job just as well.”<sup>84</sup> It was not only racial prejudices which drove violence against black men, but economic conditions. Lynchings were a way of reinforcing white male patriarchy, uniting men who would otherwise be divided by class by focusing on their shared racial superiority.<sup>85</sup> It was mostly the lower socioeconomic classes - those who were in direct economic competition with black men - who actually carried out the lynchings.<sup>86</sup> But it was the wealthy (business leaders, ministers, judges and lawyers) who lent legitimacy to the practice, either by remaining silent or vocally supporting the lynchings.<sup>87</sup>

Lynchings also served as public rituals, sometimes drawing crowds of thousands, including women and children.<sup>88</sup> In chapter one, Alice imagines the mob that gathered outside the Scottsboro jail the first night the defendants were imprisoned: “In the back of the crowd, women held babies to breasts heaving with excitement, and children’s eyes grew wide at the imminent thrill.”<sup>89</sup>

In chapter six Alice is in conversation with Ruby. She emphasises that it is not the boys who are Ruby’s enemies, but “the mill bosses, the owners, and the people who have all the things you don’t”. She explains that “as long as poor white people are crying rape against poor Negroes”, no one is complaining about low wages, or bad working conditions, or trying to unionize.<sup>90</sup> For the wealthy white classes, a rape case against nine black men was the perfect way to distract the poor from their own troubles. Furthermore, for those employed at the textile mills (like Victoria and Ruby), pushing to improve wages, hours and working conditions was almost impossible as workers were so easily replaced.<sup>91</sup>

Marxist theories are at play here. For Marx, everything in society was tailored for the benefit of the capitalist classes (those who control the means of production, in this case

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<sup>84</sup> Feldman, above n 42, at 44.

<sup>85</sup> Brown and Webb, above n 39, at 180.

<sup>86</sup> Hair and Wood, above n 46, at 90.

<sup>87</sup> Hair and Wood, above n 46, at 90 and Brown and Webb, above n 39, at 201.

<sup>88</sup> Brown and Webb, above n 39, at 180 and Hair and Wood, above n 46, at 90.

<sup>89</sup> Feldman, above n 42, at 27.

<sup>90</sup> At 89.

<sup>91</sup> Robinson, above n 62, at 112-113.

people such as the mill bosses and mill owners).<sup>92</sup> Workers like Ruby and Victoria (as well as the nine defendants) were therefore subjugated, while also being fooled into thinking that the system is good and right. Under a Marxist analysis, the Scottsboro trials kept the poor in their place by discouraging them from complaining about their own issues. By allowing poor whites to believe that it was poor blacks, and black rapists, who were the source of all problems, the wealthy white classes would be kept safe.

In chapter twenty-one however, Feldman illustrates how poor white Southerners were not only a risk for the *black* community. Alice and her white colleague Abel are harassed by a mob while on an evening walk in Decatur. A group of men had apparently met to “put an end to the insults against their community and the outsiders who were making them”.<sup>93</sup> For them, it was not only black people, but anyone who was alien or an “outsider” who was a target. But Alice soon realizes that this was nothing more than a “mob of ordinary men, impoverished, frustrated, emasculated by the conditions and time in which they lived...I cannot think of a more dangerous bunch.”<sup>94</sup>

Feldman hones in on an important point. During times of suffering, attacking those who are different acts almost as a coping mechanism. We can only wonder whether, and how, the case may have differed had it occurred during a time of economic prosperity.

### ***B Poverty and the accusers***

When Victoria calls herself “trash” in chapter four, she is using a term that had appeared in the U.S. as early as 1821.<sup>95</sup> White trash southerners in the mid-1800s were considered a kind of degenerate “race”, and for some critics were considered even lower than African slaves on the scale of humanity.<sup>96</sup> But by the time of Scottsboro, it was clear to Victoria (and to most of the South) that even “white trash” were superior to black people.

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<sup>92</sup> Dingping Guo “Marxism” in Bertrand Badie, Dirk Berg-Schlosser, and Leonardo A. Morlino (eds.) *International Encyclopedia of Political Science* (SAGE Publications, Thousand Oaks, 2011) 1495 at 1497.

<sup>93</sup> Feldman, above n 42, at 252.

<sup>94</sup> At 253.

<sup>95</sup> Feldman, above n 42, at 69 and Nancy Isenberg *White Trash: The 400-Year Untold History of Class in America* (Viking, New York, 2016) at 135.

<sup>96</sup> Isenberg, above n 95, at 136.

That being said, Feldman does not ignore the clear class distinctions within 1930s white America. Ruby, like Victoria, was working at the Margaret Cotton Mill and living in an impoverished, mixed-race area of Huntsville, Alabama. In 1931 Victoria was being paid only \$1.20 per day for three days - every second week.<sup>97</sup> Alice is the complete opposite: college-educated, with a trust fund, and working at a socialist journal in New York. “When I was twelve I was falling out of love with horses, and discovering Trollope, and accompanying my mother to my first meeting of the Women's International League for Peace and Freedom” ponders Alice, after Victoria tells her that as soon as she turned twelve, she had to go work in the mill by law.<sup>98</sup>

Feldman characterizes Alice as trying her best to understand the differences between herself and the accusers, to realize exactly what brought them into the midst of the Scottsboro trials. In chapter eight, Alice is writing an article on Victoria and Ruby. The final line reads, “If racial hatred threatens death to those boys, class oppression stole every hope of a decent life from those girls.”<sup>99</sup>

Yet Alice can never truly understand what it is like to be “white trash”. In chapter five Alice visits Ruby at her home, and suggests they go for a walk together. When Ruby warns Alice that her nice shoes will get ruined by the yards, Alice says, “there are more important things in the world than shoes”. Ruby’s response sums up Alice’s ignorance to the realities of poverty. She replies, “Not if you ain’t got them”.<sup>100</sup>

Alice’s inability to comprehend Ruby’s situation is also seen in chapter eleven. Alice visits Ruby again, seeking a confession that the rape never occurred. Alice pushes too far, and Ruby breaks down. She cries that if she told the truth she would go to jail, she and her mother would never find work in the mills again, and they would never receive charity. “If you don’t think that’s something to be afraid of, you’re dumber than I reckoned when you ruined them nice shoes”.<sup>101</sup> Alice is only seeking the truth. But she does not understand how much higher the stakes are for Ruby. Once the ball was set rolling with the first allegation of rape, Ruby became trapped by circumstance. To save herself, she had no

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<sup>97</sup> Carter, above n 6, at 82.

<sup>98</sup> Feldman, above n 42, at 63.

<sup>99</sup> At 114.

<sup>100</sup> At 73.

<sup>101</sup> At 135.

choice but to maintain the charade. Had she been the same class as Alice, her situation may have been different. Indeed, in chapter ten Alice compares the Scottsboro case with another rape case, where the alleged victim was wealthy. She notes that people would sympathize far more with that victim than with Ruby, an “Alabama girl so sordid and shabby she barely seemed human.”<sup>102</sup>

We have already seen that Scottsboro’s status as a rape case reflects attitudes about black men and their sexual depravity. But it also raises issues concerning the sexuality and morality of the alleged victims of the rape. During Alice’s visit to Ruby in chapter four, a social worker says “These mill folk have no sense of morality. Lots of them are nothing but prostitutes...they just about have to be, I reckon.”<sup>103</sup>

This sentence is based on a quote from a real social worker commenting on Ruby’s family.<sup>104</sup> It illustrates two sides of a discourse on class and women’s sexual promiscuity. On one hand, prostitutes and white trash in general were considered to be immoral. For many people “raping a prostitute” was conceptually impossible.<sup>105</sup> On the other hand, it was class conditions and poverty which forced women such as Ruby and Victoria into prostitution.<sup>106</sup> As a journalist wrote when reporting on Scottsboro, “Promiscuity means little where economic oppression is great”.<sup>107</sup>

During the 1933 re-trial of Haywood, Leibowitz deliberately tried to undermine Victoria’s credibility as a witness by targeting her alleged prostitution and promiscuity, and her previous conviction for adultery.<sup>108</sup> Judge Horton gave credit to these arguments, instructing the jury that they could take into account the fact that the accusers were “of easy virtue”.<sup>109</sup> Later, when overturning Haywood’s conviction, Horton wrote that

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<sup>102</sup> Feldman, above n 42, at 123.

<sup>103</sup> At 59.

<sup>104</sup> Lennon, above n 78, at 136.

<sup>105</sup> The poet Langston Hughes wrote in an essay on Scottsboro, “who ever heard of raping a prostitute?”. Langston Hughes “Southern Gentlemen, White Prostitutes, Mill-Owners, and Negroes” *Contempo* (Chapel Hill, 1 December 1931).

<sup>106</sup> Freedman “Scottsboro and Its Legacies”, above n 60, at 259.

<sup>107</sup> At 262.

<sup>108</sup> At 260. Undermining the credibility of the rape victim by focusing on their alleged promiscuity is a common tactic, used to this day.

<sup>109</sup> At 260.

“women of the character shown in this case are prone... to make false accusations [of rape]... for ulterior purposes.”<sup>110</sup>

Both Leibowitz and Horton seemed to understand where the natural justice of the case lay. But in order to achieve their desired result, which was to acquit the defendants of a rape which never happened, they resorted to undermining the character of the alleged rape victims themselves.

Judge Callahan took a very different approach. He strongly believed that a white woman’s virtue must be protected regardless of class or status. It did not matter, in his opinion, “whether she be the most despised, ignorant and abandoned woman of the community, or the spotless virgin and daughter of a prominent home of luxury and learning.”<sup>111</sup> Callahan was therefore upholding the notion of “the flower of Southern white womanhood”, discussed above.

The views held by each of these characters are clearly problematic. Aggressive protection of white women’s virtue had been used for decades as an excuse to torture and kill innocent black men. But emphasising the immoral character of poor white women, and implying that they were lying and “could not be raped”, only propagated a similarly harmful myth: what feminist writer Susan Brownmiller calls “the rape lie”.<sup>112</sup> Brownmiller argues that Scottsboro convinced the American public (and the globe) not only that white rape victims were liars, but also that they were directly responsible for the unjust punishment of black men.<sup>113</sup>

Overall, class determined society’s expectations for women and their sexual behaviour. In chapter six, Alice notes that for her, “Free love in a Greenwich apartment” was “a political and social and philosophical statement”. But for Ruby and Victoria and those like them, sex was “a furtive economic act”.<sup>114</sup> Even further, class affected how an alleged rape victim might be characterized and treated, both in court and by the public.

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<sup>110</sup> Freedman “Scottsboro and Its Legacies”, above n 60, at 260.

<sup>111</sup> At 261.

<sup>112</sup> Susan Brownmiller *Against Our Will: Men, Women, and Rape* (Simon and Schuster, New York, 1975) at 230.

<sup>113</sup> At 230.

<sup>114</sup> Feldman, above n 42, at 89.

## *V      Ulterior motives*

In chapter one, Alice muses, “We did not set out to exploit...But we also managed to appropriate the story for our own ends”.<sup>115</sup> Aside from the obvious issues of race and class, Feldman’s book also focuses on another theme: the ulterior motives of the many people involved in the Scottsboro case. Rather than solely seeking justice for the defendants (whether that be by acquitting them or sending them to the electric chair), these people used the case as a means to an end.

Through this theme, the author asks: how can legal events such as criminal trials be used to further the ends of others? Can ulterior motives ever affect the outcome of such trials? And is there ever a situation where ulterior motives can be considered ethical, and morally sound?

## *A      The Communist Party*

The influence of the Communist Party was both positive and negative for the Scottsboro defendants. The Party provided crucial funding and legal representation, as well as building an entire movement dedicated to drawing awareness to the defendants’ plight. But the involvement of the Communists also created backlash, due to the American (and particularly Southern) phobia of Communism. This phobia aggravated white Southerners’ pre-existing hatred for the defendants. It is uncertain exactly how this may have affected the outcome of their trials. While each of them managed to escape the electric chair, we will never know how the outcome may have changed had, for example, the NAACP represented the defendants rather than the ILLD.

The socialist magazine *The New Order* (where Alice is employed), and its publisher Harry Spencer, are fictional elements of the novel which are used to reference the Communist Party’s involvement in the trials on a smaller and more personal level. Harry in particular seems to epitomise the perfect Party member - he is struck by the injustice of the Scottsboro case, and in the words of Alice, sees it as “a rallying point for the revolution”.<sup>116</sup>

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<sup>115</sup> Feldman, above n 42, at 25-26.

<sup>116</sup> At 37.

Furthermore, because Alice's coverage of the trials is published in the magazine, her entire narrative is underpinned by this context of Communism/socialism.

The Party's ulterior motive was using Scottsboro as propaganda: to spread the Party's influence (both locally and globally), attract new members, and raise money.<sup>117</sup> As soon as news of the defendants' arrests reached newspapers, the ILD approached the defendants' families and offered its legal services.<sup>118</sup> Scottsboro "defence committees" were formed, demonstrations were organized all over the country, and letters of protest flooded the Alabama governor's office.<sup>119</sup>

For the Party, defending the Scottsboro boys was part of a wider battle. It was a fight against capitalism and the national oppression of the African American people.<sup>120</sup> When Ruby switched to the defence and began denying the rape, the ILD took her on as part of their campaign. Feldman describes a march on Washington, led by Ruby and Ada Wright (Roy and Andy Wright's mother).<sup>121</sup> Prior to the march Ruby makes a speech at Union Square, and when asked why she said she had been raped, she stated, "I lied. I lied on account of I was excited by the ruling class of the South".<sup>122</sup> Ruby, who would have never heard of the Communist Party before Scottsboro, was now "the darling of the Northern liberals" - a symbol of class oppression and a worker herself.<sup>123</sup>

The fight for the Scottsboro boys reached international levels. At the height of the campaign, workers and activists were rallying in Latin America, Asia, the Middle East, Africa, across Europe, parts of the British Empire, and in Russia.<sup>124</sup> In March 1932, the ILD sent Ada Wright on a speaking tour of Europe, accompanied by its general secretary Louis Engdahl.<sup>125</sup> Her speeches were sometimes prepared by Engdahl himself, and often linked Scottsboro to the need to mobilize "the masses against the imperialist war".<sup>126</sup> In a

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<sup>117</sup> Klarman, above n 22, at 385.

<sup>118</sup> Robin D. G. Kelley "In the Heart of the Trouble: Race, Sex, and the ILD" in *Hammer and Hoe* (University of North Carolina Press, Chapel Hill, 2015) 78 at 78.

<sup>119</sup> At 79.

<sup>120</sup> Carter, above n 6, at 137.

<sup>121</sup> Feldman, above n 42, 288-291.

<sup>122</sup> At 289.

<sup>123</sup> The New York Society Library, above n 2.

<sup>124</sup> Miller et al., above n 65, at 388.

<sup>125</sup> At 401.

<sup>126</sup> Harris, above n 23, at 31.

similar way to Ruby and all the defendants, the speaking tour enabled the Party to use the image of the poor, Southern “worker” to further their own political agenda.<sup>127</sup>

In the midst of this national and international campaign, Feldman takes care not to forget the defendants themselves. In chapter eighteen Alice muses on current events. People in “Paris and Berlin and Moscow” are protesting on behalf of the boys, and President Roosevelt wonders how he can best handle the situation to his advantage.<sup>128</sup> Yet meanwhile the defendants are still sitting in prison. All they cared about was whether any of them “stood a chance in heaven, or hell, of being saved.”<sup>129</sup> The author is compelling us not to get caught up in the bigger picture, in the campaigning and media coverage and propaganda, but to remember the real people behind criminal trials.

The Party’s ulterior motives were successful. Writer and editor William Maxwell stated that Scottsboro made Communism “a household word”, particularly in the black communities of the U.S, and also overseas.<sup>130</sup> But the Communists were not without criticism. In chapter eight Alice’s colleague Abel asks, “if you were a party recruiter, which would you rather have, nine new Negro members, or nine dead Negro martyrs?”<sup>131</sup> Abel is questioning the motives of the Party. Were they really trying to save the boys’ lives, or was it better for their campaign to let them be sent to the electric chair?

The involvement of the Party in the Scottsboro trials also generated public backlash, especially in the South. Alabamians in particular had a phobia of Communism, using “anti-Communism” as an excuse to fend off unwanted and undesirable people.<sup>132</sup> “Progressive” Alabamians even insisted that the animosity in the Scottsboro case was not directed at the boys’ skin tone, but at their “red backers”.<sup>133</sup> Judge Hawkins, who presided over the first trials in Scottsboro, once said that he did not “really think the boys should be put to death but...the Communists are more of an issue than are the facts of the case.”<sup>134</sup>

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<sup>127</sup> Harris, above n 23, at 31.

<sup>128</sup> Feldman, above n 42, at 205.

<sup>129</sup> At 206.

<sup>130</sup> Lennon, above n 78, at 141.

<sup>131</sup> Feldman, above n 42, at 108.

<sup>132</sup> Carter, above n 6, at 120.

<sup>133</sup> At 119.

<sup>134</sup> At 119

There was also an underlying assumption that Communism was somehow linked to sexual promiscuity and miscegenation.<sup>135</sup> The idea of “Commune-ism” had explicit sexual connotations, bringing to mind images of free love and communal living.<sup>136</sup> There was a belief that the Communists intended to make all women public property. Black men were therefore drawn to Communism, because it meant having access to society’s greatest treasure - white women.<sup>137</sup> In this way Communism, as well as black men, was a direct threat to “the flower of Southern white womanhood”.

There is thus a question of whether the Communist involvement in Scottsboro made things worse for the defendants. The statement from Judge Hawkins suggests that yes, it may have - at least for the initial trials. The main criticism raised against the Communists could be that, blinded by their political aspirations, they neglected to realize that the South’s phobia of Communism could be detrimental to the defendants they were trying so hard to save. Feldman herself has suggested that the defendants may have only been sentenced to life imprisonment had there not been so much protest in the North.<sup>138</sup>

On the other hand, without the intervention of the Party the defendants may have never had access to competent defence. Furthermore, the Communist-led protest movement became a symbol of hope for African Americans across the nation. In the words of a Southern miner, “When we heard of Scottsboro, that meant freedom. From then on we knew we could win.”<sup>139</sup>

### ***B Lawyers, judges, journalists***

The Communist Party represents the idea of ulterior motives on the largest scale. But there were also a number of individuals who saw Scottsboro as an opportunity, whether intentionally or subconsciously. For judges and lawyers, this illustrates how the reputation of legal professionals can be affected by the cases they are involved in, for better or for worse. For journalists, it shows how good coverage of important criminal trials can bolster their career. For some of the individuals involved, such as Thomas Knight, (one of the

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<sup>135</sup> Kelley, above n 118, at 79.

<sup>136</sup> At 79.

<sup>137</sup> At 79.

<sup>138</sup> The New York Society Library, above n 2.

<sup>139</sup> Hugh T. Murray, Jr “Aspects of the Scottsboro Campaign” (1971) 35 Science & Society 177 at 191.

prosecutors during the Decatur re-trials), we see the unethical or immoral side of ulterior motives. On the other hand, characters such as Alice and Judge Horton are possible examples of ulterior motives being morally acceptable.

In chapter nineteen Knight invites Alice and several others back to his hotel room in Decatur. As the conversation flows it becomes very apparent that Knight believes the Scottsboro trials will be his ticket to “the governor’s mansion”. Indeed, he brags to the group that he has already been offered the lieutenant governorship.<sup>140</sup> Knight, as he is portrayed by Feldman, therefore exemplifies the concept of ulterior motives - his motives are very intentional, and he barely tries to conceal them.

During the course of the night Knight also alleges that Horton thinks the case will take him to the Supreme Court, though through the novel we come to understand that this is speculation only. Whatever ulterior motives Horton may have had seem to be almost subconscious. In chapter twenty-five for example, Horton proposes to Knight that they pardon Haywood and cease proceedings against all the other defendants. Knight responds that doing that “would be committing political suicide”, and Horton asks, “What does that have to do with the case?”<sup>141</sup> Overall, Horton is painted as a likeable and honest character by the author, especially when compared to Knight.<sup>142</sup> But Horton is also an unfortunate example of how an unpopular decision might be enough to end your career: he was removed from the case in October 1933, and the following year he lost his bid for re-election.<sup>143</sup>

At the end of the chapter Alice compares herself to Knight. She declares, “Tom Knight and I were not alike. His success necessitated the sacrifice of nine innocent boys. Mine was merely a by-product of trying to save them, and Ruby.”<sup>144</sup> Alice is indeed successful over the course of the book, covering other important stories, and even building a relationship with the First Lady, Eleanor Roosevelt.<sup>145</sup> Is she deluding herself when she says that her

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<sup>140</sup> Feldman, above n 42, at 221.

<sup>141</sup> At 294.

<sup>142</sup> The real-life Horton has often been compared to Harper Lee’s character of Atticus Finch in *To Kill a Mockingbird*, a novel which bears similarities with the Scottsboro trials in that it is set in Alabama in the 1930s, and concerns a rape allegation. See generally Claudia Johnson “Without Tradition and Within Reason: Judge Horton and Atticus Finch in Court” (1994) 45 Ala. L. Rev. 483.

<sup>143</sup> Carter, above n 6, at 273.

<sup>144</sup> Feldman, above n 42, at 222.

<sup>145</sup> See, for example, Feldman, above n 42, at 137 and 296-298.

and Knight are so different? Certainly, Feldman's characterisation of Alice makes us inclined to think that *her* benefitting from the case is acceptable, whereas what Knight was doing is not.

Is it possible to draw a line between what is ethical and what is not? Where there is clear injustice, and a person is fighting on the side of injustice like Knight, we are quick to condemn them for wanting to further their personal interests. We see that as being profoundly unethical - even though Knight was only doing his job as prosecutor. By contrast there are some situations in which we *will* accept a lawyer or journalist aiming to improve their career through a particular trial. Leibowitz, for example, definitely had something to gain through his involvement in the trials. As noted above, as a Jew he was the target of hostility, and believed he could never really achieve the same status and reputation as a Christian lawyer. While his ulterior motive may have simply been respectability within the profession, Alice observes that "The man who returned from Decatur had won canonization".<sup>146</sup> Arriving at Pennsylvania Station after the (unsuccessful) re-trials, Leibowitz was greeted by a crowd of more than 3000, being lifted and carried over their heads.<sup>147</sup> Later he spoke to a crowd of 4000 at a black church in Harlem, being hailed as "a new Moses" by the Reverend.<sup>148</sup>

Most people will find Leibowitz's ulterior motives more palatable than those of Knight. Perhaps it is because we know that he himself was the subject of hatred and discrimination, making him a more sympathetic character. But mostly, it is because Leibowitz was fighting on the "right" side, on the side of justice, and defending the innocent. Leibowitz was also undoubtedly *deserving* of respectability, given that, from a modern perspective at least, he was already a very successful criminal lawyer. By contrast, Knight hardly seems to "deserve" the governor's mansion in sending nine innocent defendants to the electric chair. This sense of deserving one's success seems to determine our reactions to ulterior motives.

As with the Communist Party, Feldman again encourages us not to forget the real people and real stories behind legal events. In chapter twenty-four as Haywood is convicted again in Decatur, the courtroom goes wild as Knight and Leibowitz begin to shout, reporters rush

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<sup>146</sup> Feldman, above n 42, at 287.

<sup>147</sup> Carter, above n 6, at 285.

<sup>148</sup> At 287.

to their side, and members of the public start shoving and racing out the door. Feldman writes of Haywood, “He was non existent. The world had forgotten him.”<sup>149</sup>

## ***VI Conclusion***

Literature such as Feldman’s *Scottsboro* has the power to affect our understanding of history. It brings one of the most significant moments in American legal history to the attention of a 21st century audience, nearly eighty years after that fateful day on the train in Paint Rock. Feldman gives us insight into what the real-life actors involved in the trials may have been thinking and feeling. The reader is presented with an opportunity to explore the underlying themes of the book even more deeply.

The history of Scottsboro demonstrates how racist attitudes, especially those which have existed for generations, affect both the public’s reception of certain crimes as well as judges’ treatment of such crimes. Feldman grapples with these issues of race through her characters: Judge Horton, who is a product of his time but yet is sympathetic toward the defendants’ plight. Thomas Knight, painted as a rather unlikeable character, but who epitomises Southern beliefs about black men and their sexual desire for white women. The white community of Alabama as a whole, whose animosity towards Jews may have affected the very outcome of the case.

The economic hardship of the 1930s also meant that the Scottsboro trials were occurring perhaps at the worst possible time (with the exception of the 19th century, when the nine defendants would have almost surely been lynched before reaching a court of law). The fostering of a climate of hatred towards the defendants pitted the poor against the poor, leaving the wealthy untouched. The Communist Party sought to reveal this truth (and increase Party membership) by “marketing” Scottsboro as a question not only of race, but of class and the relationship between workers and capitalists.

Class issues were also crucial to the way the accusers were portrayed both in and out of court. Feldman uses the two female narrators of the book to highlight differences in class more generally, as well as the influence of class in society’s attitudes about rape.

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<sup>149</sup> Feldman, above n 42, at 281.

Problematic beliefs concerning “white trash” and their supposed promiscuity have coloured historical understandings of the two accusers, in that many people today would jump to the conclusion that Victoria and Ruby were simply wicked people. But the author implores us to remember that they were, at least to some extent, trapped by their economic circumstances.

Perhaps the most interesting insight for the lawyer is in the ulterior motives of the judges, lawyers, and journalists involved in the case. Feldman’s exploration of this theme questions whether legal events should ever be used “strategically” to further one’s career, or whether to do so is utterly unconscionable. We might wonder whether ulterior motives are really a problem, so long as the lawyer is doing their best for their client (and, presumably, is adhering to some code of ethics). What in our minds is the difference between Knight, who we condemn, and Leibowitz, who we find a hero? Is it really fair to condemn Knight, when he was fulfilling the necessary role of prosecutor?

In reading *Scottsboro*, lawyers and law students are encouraged to think upon the nature of the legal profession - to ask themselves how far *they* would go to protect or further their career. For readers of all backgrounds, *Scottsboro* provides us with an important warning amidst the police shootings and white supremacist rallies of 2018. It is a reminder of the dangerous nature of prejudice, and of judging people based on things that they cannot change.

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