

Imagining the Law of the Father: Loss, Dread, and Mourning in *The Sweet Hereafter*

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This essay takes the theme of the 1999 annual meeting of the Law and Society Association, “The Legal Imagination: Taking on Cultural Studies,” as an occasion for trying to promote an engagement between sociological studies and cultural studies. It argues that mass mediated images are as powerful and pervasive as other social forces with which sociological studies is already engaged and that the time has come to move from the study of law on the books and in action to law in the image. This argument is developed by analyzing the significance of the ubiquitous presence of tropes of fatherhood in popular cultural iconography about law. Drawing on psychoanalysis, gender theory, and film studies, this essay presents a close reading of a single film, *The Sweet Hereafter*. This film exemplifies the ways in which fatherhood becomes one of the key terms through which law is mythologized and through which fantasies and anxieties about law are expressed. Exploring the imagination of law in and through mass mediated images, like those contained in *The Sweet Hereafter*, is an important and engaging new frontier for sociolegal studies.

One day the brothers who had been driven out came together, killed and devoured their father and so made an end to the patriarchal horde. . . . The violent primal father had doubtless been the feared and envied model of each one of the company of brothers: and in this act of devouring him they accomplished their identification with him, and each one of them acquired a portion of his strength . . . This memorable deed . . . was the beginning of so many things— of social organization, of moral restrictions and of religion.

—Sigmund Freud (1950:141–42)

Until we become thoroughly cognizant of, and cease to be controlled by, the image of the father hidden away in the authority of the law, we shall not reach that first step in the civilized administration of justice, the recognition that man is not made for the law, but that the law is made by and for men.

—Jerome Frank (1930:252)

A nobleman once asked a Chinese philosopher to bestow a blessing on his family. The famous scholar reflected briefly. Then he said, “Grandfather dies, father dies, son dies.” When the nobleman indicated his distress, the philosopher shrugged his shoulders, “What other way would you have it?” he said.

—Howard Mosher (1991:Y3)

Law is an attempt to palliate the fear of what might happen, and the pain of what has happened.

—Gretchen Craft (1992:542)

This concern for death, this awakening that keeps vigil over death, this conscience that looks death in the face is another name for freedom.

—Jacques Derrida (1995:15)

Mourning is regularly the reaction to the loss of a loved person, or to the loss of some abstraction which has taken the place of one, such as fatherland, liberty, an ideal, and so on.

—Sigmund Freud (1925:164)

If all meaning is mourning, and mourning (or absence) must become our norm (or presence) for there to be morning (dawning or future), and not interminable dying, then all meaning and all mourning belong to the city, to the polis.

—Gillian Rose (1996:103)

A Disclaimer

*Let me start with a disclaimer, or really an explanation, about what I am about to say here. There are, I should say, at least two articles in the pages that follow, one that I care about most deeply, and another, though I also care about it, that touches a more appropriately academic note. The first is about children and parenting, especially about the horrors of losing a child, horrors felt in Kosovo, in Littleton, Colorado, or in the daily tragedy of children who die, who disappear, or who, for reasons that seem inexplicable to those who love them, live—as my children would say—in another space. It is an article about fate and faith and law's dramatic inadequacy in forestalling or responding to the loss of a child. The idea for this article occurred to me, for reasons that remain somewhat unclear, as I listened to David Engel's wonderful Presidential Address at the 1998 meeting of the Law and Society Association (LSA). But I worried that to talk or write about this subject would be too personal, too revealing of my deepest anxieties, too much the talk one shares only with one's closet friends, too much of a melodramatic downer for my ceremonial role in delivering a Presidential Address. Hence, the second article focuses on the way law is mythologized through its metaphorical association with fatherhood and urges an engagement between law and society scholarship and cultural studies. This article takes as its subject a 1997 film, *The Sweet Hereafter*.*

I offer you then two articles for the price of one, the first connecting who we are as persons to law's inadequacies, the second urging a particular movement in our research and our field. Please read through the second to hear the words that self-doubt and ceremonial appropriateness would not let me say directly.

This is an expanded version of the Presidential Address delivered on Saturday, May 29, 1999, at the Law and Society Association annual meeting in Chicago, Illinois. I am grateful to Stephanie Sandler, Amrita Basu, Roger Berkowitz, Cathy Ciepiela, Marianne Constable, Lawrence Douglas, Thomas Dumm, Patricia Ewick, William Felstiner, Peter

I. Introduction

The first time the Law and Society Association (LSA) met in Chicago, Stewart Macaulay (1987:185) used his Presidential Address to call attention to what he called “images of law in everyday life.”¹ Because people learn important lessons about law from a variety of sources, none more important than “film (and) television . . .,” he urged his listeners to join him on a “scouting expedition” and become “participant observers of . . . mass cultures” (Macaulay 1987:185). Like any good cultural studies scholar, he connected our work to what some might still derisively label the “low” or the “popular” in contemporary culture,² and, in this way, helped to decanonize the traditional subjects of law and society research. When he prompted engagement with the imagined world in which law at least partially resides and with the constitution of law in the neglected ethers of our daily lives, Macaulay made a typically forward-looking effort to move our discipline in a new direction.³

The metaphor of an “expedition,” of a journey into uncharted terrain, of a rapid movement forward, was particularly apt in capturing the restlessness that Macaulay’s speech displayed. His restlessness is, I hope and believe, ours.⁴ It is as, if not

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¹ These images, he contended (1987:211), offer “alternative resources from which people fashion their own understandings of what is necessary, acceptable, and just.”

² For a recent example of such criticism, see Brooks 1998. In contrast, Berlant (1998:109) claims “the very ephemerality of an archive makes it worth reading. Its very popularity or its effects on everyday life or its expression of emblematic knowledge makes it important. Its very ordinariness requires reflecting on what is merely undramatically explicit.”

³ According to Macaulay (1987:214), the particular contribution that law and society scholars might make to this effort would be to police images presented on television and in movies to identify those that, when weighed against what we know about the law in action, would seem “oversimplified, garbled, conflicting, or misleading.” In this formulation Macaulay identified yet another of the gaps that sociologists of law so famously ferret out, this time a gap between law in action and law as it is portrayed and imagined in popular culture. For criticisms of this approach see Sarat 1985 and Sarat & Silbey 1988.

⁴ Typical is the kind of description that Jonathan Casper (1998) recently provided of his career, “My own work . . . has been greatly enriched by crossing the boundaries of discipline and method, and the worlds of academy and of policy. In both individual and collaborative work, the experience of working on the terrain of others and the use of methods not commonly taught or used in my own discipline have led me to think about issues to which I would not otherwise have attended, as well as provided an occasion on which to employ a wider variety of methods than I might have otherwise done. At the same time, crossing such boundaries has sometimes felt costly as well. Playing on the

more, characteristic of our field than of any of the others with which I am familiar. Perhaps this is because we feel so “marginal” in our home disciplines (Friedman 1985). Or, perhaps it results from the match between particular personality types and a scholarly association that has yet to settle into a predictable routine, this year Washington, next year San Francisco, next year New Orleans. Whatever its origin, our restless energy unites us and, despite our differences over theory and method, animates our shared enterprise. It is what we recognize and value in each other, and what makes us an important community for people whose expeditionary zeal carries them into previously unmarked territory.

That energy has enabled us to move the study of law not only from law schools to political science, history, sociology, anthropology, and psychology departments, as well as to new interdisciplinary programs, but also from law libraries and appellate courts to the courtrooms and corridors of urban trial courts, from courts to lawyers’ offices and police cars, from state legality to law in communities and neighborhoods, and from the local to the global.⁵ Is there any place a law and society scholar will not go to understand law in its magnificent variety, complexity, and possibility? And, if there is no place far and wide to which we will not go, then why not, as Macaulay (1987) seemed to suggest, add a new venue by settling in somewhat closer to home, to the darkened chamber of our local theater or with our televisions and VCRs?

It is perhaps appropriate then on this brief return to Chicago, an already well-marked territory in the midst of our typically itinerant journey from Glasgow, St. Louis, and Aspen to Miami, Budapest, and beyond, that we should take up Macaulay’s invitation.⁶ It is appropriate that in our continuing restlessness we contemplate a new venue under the rubric of “the Legal Im-

theoretical or substantive ground about which I had received little training has often felt difficult and sometimes uncomfortable and alienating” (82).

⁵ For a discussion of the importance of this movement see Silbey and Sarat, 1987. Also Sarat, et. al., 1998.

⁶ Macaulay (1987) was not alone in our community, even a decade ago, in calling attention to the legal imagination or law as image. Three years after his speech, *Yale Law Journal* published a symposium on “Popular Legal Culture,” which included essays by Friedman (1989), Greenhouse (1989) and Yngvesson (1989) as well as Macaulay (1989) and Sarat and Felstiner (1989).

While that symposium exposed the already flourishing plurality of perspectives and engagements of sociolegal scholars with the legal imagination and law as it is imagined, Friedman (1989:1580), in particular, sought to domesticate this subject for our community. He noted that the “study of popular legal culture is a relatively new field of inquiry . . .” and observed that television and movies would “shrive up and die without cops, detectives, crimes, judges, prisons, guns, and trials” (Friedman 1989:1587, 1588) He sought to reassure his more sociologically inclined readers that “[P]opular culture, and popular legal culture, in the first sense, are (like the sociology of law itself) of fundamental importance in constructing *social* theories of law . . . theories of law whose premises deny, altogether or in large part, any notion of legal autonomy” (Friedman 1989:1580). Like Macaulay (1987), he worried that “quantity is not accuracy . . . and the products of

agination” and a new engagement with cultural studies.⁷ And because Macaulay was the person who first taught me the sociology of law, it seems particularly appropriate to use this occasion to carry on his project, albeit from a different angle and with a different set of concerns than those that motivated him, in an article I call “Imagining the Law of the Father: Loss, Dread, and Mourning in *The Sweet Hereafter*.”⁸

Of course, our current exploration of the legal imagination has numerous sources outside, as well as inside, sociolegal studies.⁹ By the time Macaulay (1987) wrote, Stuart Hall and his colleagues (Hall et al. 1978) had provided a remarkable study of the social life of the images of law, showing in *Policing the Crisis* how images of crime, in general, and mugging, in particular, came to Great Britain from the United States and were disseminated in the mass media. Hall et al.’s work analyzed the role of those images in the construction of a political crisis that articulated, even as it displaced, discontents that they traced to stresses in the reproduction of capitalism.¹⁰ More recently, Young (1997:31) has shown how feminism, psychoanalysis, critical criminology, and film theory can be used to explore law as it “appears and reappears in the cinematic text.” In this effort she asks us to consider not just the representation of law in film, but “how cinema is jurisprudence” (Young 1997:31),¹¹ how law exists both in, as well as outside of, the image.

Notwithstanding the efforts of these and other scholars,¹² it seems safe to say that analysis of the legal imagination is still relatively marginal in law and society circles,¹³ and that cultural stud-

popular culture are wildly off-key with respect to those parts of the legal system that they deal with obsessively” (Friedman 1989:1588).

⁷ For an important statement of what such an engagement might entail see Mezey 1994 and Coombe 1998.

⁸ This article, being the long version of a Presidential Address, takes on the burden of that genre. From my reading of prior Law and Society Presidential Addresses, it seems that to be “presidential” an address (and the article from which it is taken) has to be bigger, grander, more significant than just any ordinary talk. It has to connect seamlessly with the theme of the annual meeting at which it is delivered. It has to comment on the state of the field, all the while evoking what law and society scholars have in common. Finally, it has to respect and honor the traditions of the field, yet point the way toward new directions for scholarship.

⁹ For a review of some of those influences see Coombe 1998.

¹⁰ In contrast to Friedman (1989), Hall (1980:21) describes cultural studies as “the posing of sociological questions against sociology.”

¹¹ As Weber (1996:37) argues, the camera “apprehends (the subject) the way a policeman apprehends a suspect, arresting what seems to be its spontaneous or intrinsic movement and submitting it to a series of operations that have nothing to do with its ‘natural’ inclinations . . .”

¹² To mention just three examples, see Denvir 1996; Sherwin 1996; Chase 1986.

¹³ As Mezey (1994:1859) notes, “Very few articles on popular culture and law have made it into legal scholarship, and even fewer actually use the methodology of cultural studies.” In fact, since Macaulay’s (1987) essay was published in *Law & Society Review* no other articles on television and/or film have appeared there. (There was, however, one article on graffiti published in 1996). The absence of attention to the mediated image has

ies, despite its deep investment in the examination of social forms and social relations (see Johnson, 1986/87),¹⁴ has not been “taken on,” in either sense of the term, in the same way that we have taken on the disciplinary and analytic perspectives of sociology, anthropology, psychology, feminism, and, increasingly, of queer theory.¹⁵ In this article I hope to further a dialogue between law and cultural studies by inviting reflection on the legal imagination and the construction of the image of law in popular culture.

Although cultural studies focuses on the production, representation, and consumption of images and the social forces that shape those activities (see Johnson 1986/87), I provide an example of but one type of cultural studies project, offering a reading of *The Sweet Hereafter*. What brings me to this film is as much substantive as methodological, as much autobiographical as genealogical. I use it to examine how the law of the father, or the conjunction of fatherhood and law, is portrayed in popular culture, as well as to explore society’s recurring, though various and differentially located, desires and anxieties about both.¹⁶

I turn to film because law exists in a world of images whose power is not located primarily in their representation of something exterior, but instead is found in images themselves.¹⁷ As Weber (1996:29) observes in his reading of Heidegger and Benjamin, “the ‘world’ itself has become a ‘picture’ whose ultimate function is to establish and confirm the centrality of man as the being capable of depiction.” In this age of the world as picture, the proliferation of law in film, on television, and in mass market publications has altered/expanded the sphere of legal life itself. “Where else,” Sherwin (1996: 894, 896) asks, “can one go but the

been more than a matter of a single editor’s taste, since during this more-than-ten-year period *Law & Society Review* has had five different editors. It is, however, important to note that over the last decade papers on film and television have made some appearance at the annual meeting of the LSA, but even there they have been few and far between.

¹⁴ “The subject matter of cultural studies,” Appadurai (1991:196) says, “could roughly be taken as the relationship between the word and the world. I understand these two terms in the widest sense, so that word can encompass all forms of textualized expression and world can mean anything from the ‘means of production’ and the organization of life-worlds to the globalized relations of cultural production.” Or, as Berlant (1998:106) puts it, “. . . cultural studies seeks to address and explicate the geopolitical specificity of cultural forms and practices; . . . to track in particular peoples’ ordinary lives the effects of discursive and institutional practices of domination, subordination, and hegemony”

¹⁵ For a useful discussion of current controversies surrounding the question of whether cultural studies should be considered a discipline or a political perspective, see Morley 1998 and Bennett 1998.

¹⁶ Mulvey (1986:201) suggests that studying film provides one device for understanding society’s repressed desires, while Silverman (1990:30) urges that scholars attend to the ways in which “cinema, fiction, popular culture, and other forms of mass representation . . .” draw upon and help shape what she calls a society’s “dominant fiction.”

¹⁷ Of course law also exists in the materialization of state power (see Cover 1986; Sarat & Kearns 1991; 1993) and in the meanings and messages constituted in and by legal doctrine and the actions of legal officials (see Gordon 1984; Sarat & Felstiner 1995)

screen? It is where people look these days for reality . . . Turning our attention to the recurring images and scenarios that millions of people see daily projected on TV and silver screens across the nation . . . is no idle diversion.” Today we have law *on the books*, law *in action*, and now, law *in the image*.

I also turn to the moving image because, as a medium, it reminds us of the contingencies of our legal and social arrangements. It always casts what Morson (1994:117) calls a “sideshadow” on “realities” outside itself, realities with which sociologists of law, like the people we study, may have grown quite comfortable.¹⁸ It is not just a mirror in which we see legal and social realities reflected in some more or less distorted way (Sobchack 1992:17). Instead, it always projects alternative realities that are made different by their filmic invention or by the editing and framing on which the film image always depends. Seeing images projected, no matter what their subject matter, is a reminder that

alternatives always abound, and, more often than not, what exists need not have existed . . . Instead of casting a foreshadow from the future, (moving images cast) a shadow “from the side,” that is from other possibilities . . . Sideshadows conjure (a) ghostly presence . . . (in which) the actual (what we know of the world) and the possible (what film’s show of that or other worlds) are made simultaneously visible . . . A present moment subject to sideshadowing ceases to be Ptolemaic, the unchallenged center of things. It moves instead into a Copernican universe: as there are many planets, so there are many potential presents for each one actualized (Morson 1994:118).

The moving image attunes us to the “might-have-beens” that have shaped our worlds and to the “might-bes” against which it can be judged and toward which it might be pointed. In so doing it contributes to both greater analytic clarity and political sensibility in our treatments of law, whether this clarity or sensibility is in the realm of law and fatherhood or elsewhere.

The film I consider here displays the ubiquitous presence of tropes of fatherhood in popular cultural iconography about law. It reminds us that fatherhood is one term through which law is mythologized and through which fantasies and anxieties about law are expressed (Cunningham 1986). It treats fatherhood and law as complex discursive (and therefore social) productions marked by absence as well as by a haunted and haunting presence. It engenders fear and doubt by examining many of the ways that fathers fail their children, themselves, and the law. In addition, *The Sweet Hereafter* identifies a methodology through which we might re-imagine the law of the father, by focusing on

¹⁸ I am not claiming that film has a unique ability to sideshadow. Indeed, almost any work of fiction might be said to have this property as well.

fragmentation, plurality, and contingency in our relation to fathers and to law.

Cultural studies, if it teaches anything about the way to proceed in such interpretive projects, emphasizes the importance of identity and social location in opening up our angles of vision (see, e.g., Grossberg 1996). People read differently, and that is a social fact of enormous importance for any who would study the legal imagination and the law as image. So, rigor demands a very brief autobiographical observation.

This article brings together three of my life's central preoccupations; namely, law, the "mass mediated" image (meaning that I love movies), and fatherhood. I come to a discussion of *The Sweet Hereafter* as someone who was raised in a fatherless home, who then reared two children (both daughters) as a single father, and who now has a son, being raised in a more-conventional familial arrangement. To say that I am anxious about fatherhood, as well as being one of the world's most anxious fathers, is a considerable understatement. Yet I present these autobiographical tidbits not to initiate a bit of law and society group therapy but to acknowledge the presence of my own experiences as a child and a parent in this reading and to invite yours. I also want to put up front the question of whether in my readings of these films I am, as Suleiman (1985:352–53) asks of her own writing about motherhood, "indulging a purely private pleasure, tracking a private mania, (or) exorcizing private ghosts."

II. Power and Powerlessness: Fathers-in-Law and Legal Thought

Whatever the details of one's biography as a child or as a father, it seems safe to say that fathers and fatherhood have long played an important role in the way we think about law and in how we exemplify the various faces of law's power.¹⁹ Here let me note just two examples, one ancient, one more recent, which capture the desires and anxieties that attach themselves to the law of the father. The first is the biblical story of Abraham and Isaac, the law of the father and the father as law in its original form.

As Genesis tells it, God calls on Abraham to slay his beloved son,²⁰ unpredictably and inexplicably directing him to renounce his love for, and to abandon his child to, a law that shows itself as

¹⁹ For one particularly important recent treatment of law and fatherhood see, Fineman 1999.

²⁰ This, is as Hartman observes (1996:31), surprising: "One might have expected a rebellious Isaac, say, who incurs the wrath of a father ready to slay him, and a God who intervenes to stay the father's hand."

a world commanding will.²¹ Modern readers of Genesis, confronted with such law, wait for Abraham's impassioned, Job-like protest, an anguished cry of love against law, of fatherly protection against the sacrifice of innocence (see, e.g., Bodoff 1993; and Derrida 1995).²² We wait for, and want, Abraham's torment, if not his rebellion (Levenson 1998).²³ We expect fear to overwhelm him at the prospect of his impending loss, but it does not. Abraham is the obedient servant of law, compliant before its overwhelming power, who asks no questions, issues no protests,²⁴ and when Abraham finally does speak he is as bold in asserting his presence before his son as he is meek in relation to the law. "Behold Here I am, my son."²⁵ This phrase, an eerie echo of the Lord's initial announcement of Himself, suggests the ability of the father commanded by the law to become law to his child.²⁶

In the Judeo-Christian tradition, the story of Abraham and Isaac is a paradigmatic exemplification of law's claims and its powers, of the presentation of law as the father but also the father as law. It is also a story of fatherly failure before the law, abandonment of a child, and a father's failure to protect an innocent in the face of an arbitrary and unjust threat. As Derrida (1995:72) notes, "Abraham is . . . at the same time the most moral and the most immoral, the most responsible and the most irresponsible of men, absolutely irresponsible because he is abso-

²¹ "The drama of the Akedah takes place in the narrowest arena, between father and son, father and father, solitary and God. The call that starts it all remains a haunting fact: and where obedience seems to be purest it is also most questionable. A voice out of nowhere commands a murder it calls a sacrifice" Hartman (1996:35).

²² Genesis 22 is what Hartman (1996:32) calls an "ascetic narrative." As such it allows "and even compels the reader to visualize what is recounted, to supply what is withheld, to invent the absent dialogue and imaginatively build upon every sparse detail."

²³ As Kafka (1958:37) puts it, "I could conceive of another Abraham for myself—he certainly would have never gotten to be a patriarch or even an old-clothes dealer—who was prepared to satisfy the demand for a sacrifice immediately, with the promptness of a waiter."

²⁴ Abraham passes God's test because, as the text proclaims, he has not "withheld thy son, thine only son, from me." This reminder of Abraham's willingness to sacrifice innocence before the law is later repeated as a preface to the Lord's blessing of Abraham, His promise to "multiply his seed as in the stars of the heaven . . . because thou hast obeyed my voice." Abraham becomes a father, the father to all Semitic peoples, only as he shows himself willing to sacrifice his son (Bodoff 1993; Gellman 1998).

²⁵ The human voice that is first recorded in the text is not Abraham's. It is instead the voice of Isaac, bewildered at his circumstance, "Behold the fire and the wood"; but "where," Isaac asks, "is the lamb for the burnt offering?" Abraham responds to Isaac's innocent question by assuring him, "My son, God will provide himself a lamb for the burnt offering." His response is either the first parental lie or a reminder of the distance between his relation to law and ours. On the importance of speech and silence in Genesis 22, see Derrida 1995. What Abraham tells his son is a profession of faith and a prophecy. The good father would not sacrifice innocence. The measure of the good Father is to be found in his substitution of the lamb for the child. Child becomes lamb only in the symbolic sense.

²⁶ By becoming law to Isaac, Abraham may be said to become a father. Yet, Abraham is, in one sense, not present to Isaac at all. He appears before Isaac as a servant of a law that is not his own. He is present only to God. His fatherhood fails before a law that models itself the father.

lutely responsible, absolutely irresponsible in the face of men and his family, and in the face of the ethical, because he responds absolutely to absolute duty. . . .” The story of Abraham and Isaac is thus enormously important for the ways this culture imagines law as well as fatherhood. The law that we encounter in Genesis, rather than rescuing us from danger, is its source; rather than preventing loss, it threatens to impose it; rather than allying itself with fatherhood, it exposes the weakness and the vulnerability of all fathers; and rather than providing a structure within which to order and reorder the world, it is itself a profoundly disordering force (see Fitzpatrick 1992).²⁷

More usually, law at least promises to protect innocent life by securing children when fathers turn cruelly against them.²⁸ Yet, unfortunately, it often fails to tame fatherhood’s brutality. This is the familiar rendition of the law of the father that we encounter in the United States Supreme Court’s decision in *DeShaney v. Winnebago* (1989).

In that well-known, if not well-regarded case,²⁹ the Court rejected the claim of Joshua DeShaney and his mother that the Department of Social Services violated his constitutional rights by failing to protect him from his father’s repeated and brutal violence. The Court’s majority opinion, while acknowledging that the state had ample knowledge of the danger to Joshua and indeed had once removed Joshua from his father’s custody, nonetheless held that it acquired no duty to provide adequate protection.³⁰ What draws my attention to this opinion is however, is not its oft-noted doctrinal formalism but rather its rhetorical positioning of the law as a stern, aloof father.

Late in his opinion in *DeShaney* Justice Rehnquist (1989:202) notes that “[j]udges and lawyers, like other human beings, are moved by natural sympathy in a case like this to find a way for Joshua and his mother to receive adequate compensation for the grievous harm inflicted on them.” But, Rehnquist warns, “[B]efore yielding to that impulse, it is well to remember once again that the harm was inflicted not by the State of Wisconsin, but by Joshua’s father.” Rehnquist’s rhetoric points out the dangerous abuses that fathers inflict on their families, even as it enacts the role of the distant, restrained father, unyielding to “natu-

²⁷ “To meet the God of whom it was said not once but several times that ‘He is gracious and merciful, slow to anger, and of great kindness . . .,’ commanding His favorite to offer up as sacrifice that one’s beloved son, is sure to produce . . . fear and trembling” (Goldin 1969:x).

²⁸ For an important discussion of the role of law in regard to paternal power, see Locke 1946.

²⁹ For examples of critical commentary see Bandes 1990; Soifer 1989.

³⁰ It treated family violence as private and suggested that “the distinction between public and private action makes violence, on occasions like this one, beyond public control” (Minow 1990:1668).

ral sympathy,” like Abraham, abandoning innocence in the face of danger.³¹

It is this doubling of fatherly betrayals that again highlights the power of both fatherhood and law. While Genesis treats law as divine violence working its will in, and over, the world, *DeShaney* reverses the narrative, with law giving way, abandoning the child to the world-shattering violence of the father. The former describes the impotence of fathers before the law, while the latter exposes the cruel indifference of law before the father. Together these examples suggest that law and fatherhood are mutually constitutive; law and fatherhood are inseparable, each lives in and as the other. Moreover, Genesis and *DeShaney* frame our recurring doubt and ambivalence about fatherhood and law, the fears and desires that are focused on both.

Just as the biblical narrative and the Supreme Court decision present fathers before the law, fathers as law, and law as the father, so too legal scholars, following Freud (1950), have called attention to the complex associations of paternity and legality.³² They have portrayed a deep-seated longing for paternal power and for the overwhelming power that fathers exercise as basic to legal authority. One of the most famous of these formulations is found in Jerome Frank’s *Law and the Modern Mind* (1930). There, Frank (169–97) suggested that law, like religion, is a projection of a widely shared human need for certainty and security in a world of danger,³³ and he invited us to think of law as the father or, more precisely, as the father-substitute.³⁴ “To the child,” Frank (1949:18) argued, “the father is the Infallible Judge, the Maker of definite rules of conduct. He knows precisely what is

³¹ There is, however, another moment in *DeShaney* that links law and fatherhood in a different way: It is Justice Blackmun’s now famous cry, “Poor Joshua!” This cry, with the biblical resonance of the name it intones, recalls the dread and dismay that one might feel at Isaac’s impending sacrifice and Abraham’s calm compliance. Blackmun raises his voice in pained protest just as we wish Abraham himself would have done. And as Blackmun continues, “[v]ictim of repeated attacks by an irresponsible, bullying, cowardly intemperate father . . .,” he reminds us of the dread that fathers inspire, not just those who inflict violence on their children but also those who stand by unwilling to intervene.

³² As Althusser (1971:212) puts it “. . . any reduction of childhood traumas to a balance of ‘biological frustrations’ alone is in principle erroneous, since the Law that covers them, as a Law, abstracts from all contents . . . and the infant submits to this rule and receives it from his first breath. This is the beginning, and has always been the beginning, even when there is no living Father (who is Law), of the Order of the human signifier, i.e., of the Law of Culture.”

³³ “The psychoanalytic foundational fiction of the origin of the law and civilization is tormented by the dilemma of positing simultaneously that its myth ‘really happened’ and that its ‘memory’ is instituted by an unconscious explanation of unnatural restraints on individual will.” See Buyarin 1997:350.

³⁴ Fitzpatrick (1997:155) emphasizes that the law of the father is an “impossible joining of determination and what is ever beyond determination.” He reads Freud’s *Totem and Taboo* to suggest that “[t]he power of the primal father is complete, it is unlimited and unrestrained, yet the second father ‘becomes stronger’ than the first ever was. . . . Radically different as the second father—the father of the law—may be from the savage first father, they are hardly unacquainted” (154).

right and what is wrong and . . . sits in judgment and punishes misdeeds. The Law . . . inevitably becomes a partial substitute for the Father-as-Infallible-Judge. . . .”³⁵ Exploring similar themes, Peter Goodrich (1997:1047) recently noted that “Freud and those who follow him depict a law that is modeled upon the power of the father. They elaborate a symbolic order that is patriarchal in its norms and methods. To some extent that account of the legal order reflects an institution embedded in a history of homosocial power and continuing male privilege.”

But other readings of Freud suggest that there is another side to fatherhood, and perhaps of law, a side associated with loss, lack, inadequacy. Mythologically law is fate, an all-powerful force, operating unpredictably, incomprehensibly, unaccountably, imposing loss without explanation. This law is God commanding Abraham, for seemingly no reason at all, to slay his innocent son; law is fate entrapping Oedipus in a tragic drama from which he cannot extricate himself.

The law with which we live, the positive law, is a mere shadow of law as fate, awesome in the power it can deploy, but shackled by the need to justify the power it deploys and unable to forestall or undo the fate that befalls Abraham, Oedipus, or we less-storied figures. And what is true for law is also true for fatherhood. Here, the so-called dream of the burning child is instructive. As Freud (1965) tells it, a father whose child has recently died dreamed that “*his child was standing beside his bed, caught him by the arm and whispered reproachfully: ‘Father, don’t you see I’m burning?’*” (547–48, italics in original). The burning child in the dream plays out a traumatic repetition of the death of the child; the one who speaks stands in for the one who is forever silent. As Caruth (1996) puts it, this “dream is no longer about a father sleeping in the face of an external death, but about the way in which . . . the very identity of the father . . . is bound up with, or founded in, the death that he survives. What the father cannot grasp in the death of his child, that is, becomes the foundation of his very identity as father (92). The very consciousness of the father as father . . . is linked inextricably to the impossibility of adequately responding to the plea of the child in its death” (103). On this reading, it is a failed grasp and a failure to “respond adequately” that makes fathers who we are.³⁶

³⁵ “Despite advancing years,” Frank (1930) argues, “most men are, at times, the victims of the childish desire for complete serenity and the childish fear of irreducible chance. They then will to believe that they live in a world in which chance is only appearance, not reality” (19). “Driven by fear of the vagueness, the chanciness of life,” he continues, man “has need of rest. Finding life distracting, unsettling, fatiguing he tries to run away from unknown hazards” (196).

³⁶ While this failure is particularly important to the constitution of the identity of fathers, it is not exclusive to fathers. For an important treatment of this same theme in regard to the mother see Yalom (1989: chap. 4).

But perhaps this is not just another side of the law of the father. As feminist theorists such as Kaja Silverman (1992) have pointed out, because the law of the father conjures a mythical fullness and plenitude, it simultaneously marks a void, an absence. In this sense there is no other side to the story. As Silverman notes (1990:110), in going from Freud to Lacan we see that “what might be called a man, the male speaking being, strictly disappears as an effect of discourse . . . by being inscribed within it . . . as castration.” The phallic legacy is constituted by lack and the intense effort to avoid its recognition.³⁷

While Silverman’s (1992) invitation to rethink male subjectivity is helpful for what it can tell us about the fragility and vulnerability of both law and patriarchy,³⁸ it neither denies, nor apologizes for, the power and privileges of men or the significance of the symbolic equation of law and the father. Instead, it demythologizes and humanizes men and their power. It opens a conversation about the symbolic processes through which the phallic legacy is conveyed and through which processes of adequation occur.

The Sweet Hereafter (1997) is itself a symbolic process as well as a film about symbolic processes. It provides images of fathers as dread-inspiring presences and yet fragile beings,³⁹ as likely to feel fear as to inspire it, as likely to suffer loss as to impose it. It dramatizes what Silverman (1990:53) calls “the vulnerability of conventional masculinity.”⁴⁰ Moreover, it reveals part of the imagined landscape of law with its markers of law’s temporality and its power, its jurisdictional reach and its limits. It shows law, like fatherhood, to be at once powerful and powerless, potent and yet vulnerable, failing as well as succeeding to work its will in the world. It positions law and fatherhood between fate and faith as it marks both law and fatherhood as sites of loss.

This film also creates a juridical space in which the law of the father can be subject to judgment. Though it is not a film about a trial, it puts law and fatherhood on trial and invites its viewers to participate as judges and jurors.⁴¹ While *The Sweet Hereafter* is law-

³⁷ I am indebted to the work of Silverman and others, who by moving feminist scholarship from sex to gender, have pointed out how the social construction of maleness elides this recognition.

³⁸ “Male subjectivity,” Silverman suggests (1990:114), “is a kind of stress point, the juncture at which social crisis and turmoil frequently find most dramatic expression.”

³⁹ In this, it provides an important contrast with the film’s more traditional portrayals of fatherhood. See Lyons 1998.

⁴⁰ In my view, this film does not contribute to what Silverman (1990:113) sees as “a massive cultural disavowal of the lack upon which (male subjectivity) rests.” Instead it demonstrates the “ways in which it (male subjectivity) is (variably) articulated.” See also Cohan & Hark 1993; Penley & Willis 1993; and Rattigan & McManus 1992.

⁴¹ What Clover (1998) claims is true of much cinema is, I am arguing, also true of *The Sweet Hereafter*. Clover (1998:99–100) says that “the plot structures and narrative procedures . . . of a broad stripe of . . . popular culture are derived from the structure and procedures of the Anglo-American trial; that this structure and these procedures are so

like in its marshaling of evidence, the status of the evidence it presents—as well as the processes of judgment that it enables—do not merely mimic the law as it exists outside of the film. Instead, it offers different, if not new, possibilities of judgment in a world devoid of anything but appearances, of judgment in the face of rigorous and unresolvable indeterminacy.

This film also offers viewers the chance to contemplate the value of “lost” children, or of childhoods that are lost, and, at the same time, to occupy a childlike identity.⁴² Sitting in a darkened room the spectator is herself another lost child.⁴³ By helping us take on this identity, *The Sweet Hereafter* exposes the complex structure of desire and anxiety that is attached to law and fatherhood.⁴⁴ In it we see our continuing search for good fathers and good law as well as our fear that we will find neither and our hope that the law of the father will be a protective one, as well as the worry that it will not be.⁴⁵ We love the protection that fathers and law sometimes provide, but fear the power that lies behind it. As Freud puts it in *Totem and Taboo* (1950), speaking of the attitudes of the sons who, by slaying their father, bring a new law into the world, “The violent primal father had doubtless been the feared and envied model” (142). Each of the sons, Freud says, “hated their father, . . . but . . . loved and admired him too” (143). Living with images of fathers such as Abraham and Randy Deshaney, and of a law that endangers as well as protects us, we all may derive some satisfaction from seeing the vulnerabilities and occasional inadequacies of both fathers and law.

That this film was written and directed by a man is of no little significance. There is no doubt that, from one angle, it can be read as the mere whining of the privileged, since it is preoccupied not only with the vulnerabilities of children in relation to their fathers but also the vulnerabilities of fathers in relation to

deeply embedded in our narrative tradition that they shape even plots that never step into a courtroom.” For a different examination of the viewer as juror phenomenon see Gewirtz (1996).

⁴² The complexity and perplexity of this identification is heightened since, as it turns out, children, as they are portrayed in *The Sweet Hereafter*, are both priceless and commodified.

⁴³ Unlike Mulvey (1986:201), who argues that “the extreme contrast between the darkness in the auditorium . . . and the brilliance of the shifting patterns of light and shade on the screen helps to promote the illusion of voyeuristic separation,” I am suggesting that the position of the viewer creates a structure of identification with the child on the screen.

⁴⁴ Silverman (1992:52) surveys a number of films which, in her words, “attest with unusual candor to the castrations through which the male subject is constituted.” While she focuses on particular historical moments as being conducive to such representations, it is my contention that continuing anxieties about law also provoke them. On the theme of ambivalence about law portrayed in popular culture, see Chase (1986).

⁴⁵ “When we watch a film it is as if we were somehow *dreaming* it as well; our unconscious desires work in tandem with those that generated the film-dream.” See Flitterman-Lewis 1992:211. And, as Goodrich (1996:33) notes, “Images . . . are distortive forms both of recollection and representation; they are the affects, the symptoms, the intensities or condensations of the desire that law hides.”

their children. Yet, by focusing on these subjects, first, it registers the loss, dread, and mourning that is inevitably and inexorably attached to the law of the father. Second, it speaks to our anxiety and conflicted desires in the face of paternal power (see Benson 1968; Griswold 1993; McKee & O'Brien 1982; May 1997),⁴⁶ and it uses fatherhood to express similar ambivalence and uncertainty in our desires and anxieties about law. And, third, it exposes the diverse and contingent possibilities of law and of fatherhood, the different ways that both exercise power and deal with loss, dread, and mourning.

By dread I mean "the fear of the unknown, the apprehension of a future heavy with the possibility of danger" (Craft 1992:521).⁴⁷ Dread is indeed the anticipation of loss, a kind of preparatory closing off, because of which loss can perhaps be avoided.⁴⁸ It is both an "expectation of trauma, and on the other hand a repetition of it in a mitigated form" (Freud 1959:92); and trauma is precisely that loss that is unanticipated, one that is not the object of a preexisting anxiety. Finally, dread, in Freudian terms, is closely coupled with male lack, with fears and fantasies of castration, which are repeated in the face of any prospective "object-loss" (Freud 1959:56).⁴⁹

And if dread is the preface to loss or its accompanying narrative, mourning is its afterwork, work performed because of an insufficiency of dread. If dread is part of our experience of law and of what we experience before the father and perhaps as fathers, then can mourning not also be the work that both law and fatherhood entails?⁵⁰ What is the connection of loss to mourning that law calls on us to remember and revisit? Is the work of

⁴⁶ It is only, Silverman (1992:74) claims, "through imaginary inscriptions . . . that we can come to believe in male lack. (Such inscriptions) dismantle the defensive mechanisms upon which conventional male subjectivity depends (and) provide us with images in which we recognize-misrecognize male castration."

⁴⁷ "The future that is known, or surmised," Phillips (1995:53) explains, "in states of fear is a repertoire of possibilities from the past. The object of fear is a future set in the past. In fear, the imagined future joins up with the unpleasure of the past. Tell me what you fear and I will tell you what has happened to you." Derrida (1995:54) explains that "[w]e tremble in that strange repetition that ties an irrefutable past . . . to a future that cannot be anticipated; anticipated but unpredictable; *apprehended*, but, and this is why there is a future, apprehended precisely *as* unforeseeable, unpredictable . . . I tremble because I am still afraid of what already makes me afraid, of what I can neither see nor foresee."

⁴⁸ As Freud (1975:402) says, dread is "the 'readiness' for danger, which expresses itself in heightened sensorial perception and in motor tension. This expectant readiness is obviously advantageous; indeed, absence of it may be responsible for grave results."

⁴⁹ It is, as Freud (1959:92) says, "an admission of helplessness" in the fear of danger.

⁵⁰ One might also ask whether law can aide that work and facilitate its completion. Or, was Hayim Bialik (1981:512–13) correct, after a pogrom in Kishinev in 1903, when he wrote:

Cursed be the man who says:
Avenge!
No such revenge—
revenge for the blood of a little child—
has yet been devised by Satan.

mourning, as Rose (1996:122) contends, “the spiritual-political kingdom—the difficulty sustained, the transcendence of *actual* justice”? Or, is Goodrich (1996:39) correct when he asserts that “mourning, and specifically images of the other through which mourning internalizes loss, marks a certain desire, it marks the limit, and in a sense, the failure of law.”

Central to any consideration of these questions is, of course, Freud’s (1925) classic essay “Mourning and Melancholia.” It treats mourning as a predictable occurrence, a “reaction to the loss of a loved person” (164); a “pain [that] seems natural to us” (166).⁵¹ It is, in Freud’s view, a type of “work” in which the libido is “withdrawn from its attachments” to a lost object (165–66).⁵² The mourning process, as Bronfen (1993:106) explains,

involves an identification between the living mourners and the newly deceased in that both are situated ‘between the world of the living and the world of the dead’. . . . The interest of the mourners is either to kill the dead a second time as quickly as possible, so as to leave their shared position of liminality, or to preserve the dead and prolong their stay in the realm in between. Mourning inspires ambivalence toward the deceased, a merging of love and hatred that, because of the identification between the dead and the living, can also be turned against the surviving self.⁵³

Yet Freud (1925) argues that every act of mourning has a distinct beginning and end; that unlike neurosis, there is movement rather than repetition. When the work of mourning is “completed . . . the ego becomes free and uninhibited again” (166).

And, in addition to the loss of persons, mourning may also accompany “the loss of some abstraction, such as fatherland, liberty, an ideal, and so on” (Freud 1925:164). While Freud (1925) does not pursue that suggestion, he invites us to ask whether we can mourn the loss of law as a child mourns his or her father. Or, if not law itself, can we mourn a particular condition, type, or relation to law?⁵⁴

⁵¹ In mourning, we see “feelings of pain, loss of interest in the outside world—in so far as it does not recall the dead one—loss of capacity to adopt any new object of love, which would mean a replacing of the one mourned . . . turning from every active effort that is not connected with thoughts of the dead” Freud (1925:165). So easy is it to explain mourning that, as Freud (165) puts it, “although grief involves grave departures from the normal attitude to life, it never occurs to us to regard it as a morbid condition and hand the mourner over to medical treatment.” For another and quite different view, see Emerson, 1983:473.

⁵² Derrida (1996:172) asserts that “when one works on work, on the work of mourning, when one works at the work of mourning, one is already, yes, already doing such work, enduring this work of mourning from the very start, letting it work within oneself, and thus authorizing oneself to do it, according it to oneself, according it within oneself, and giving oneself this liberty of finitude, the most worthy and the freest possible.”

⁵³ Or, as Cole (1985:1) puts it, “Mourning . . . is a performance of ambivalence on behalf of an absent presence.”

⁵⁴ And if law can be mourned, can that work ever be completed? Would the completion of mourning in this instance be meaningful as an instance of “political, or cultural, as much as psychic self-protection”? (Rose 1998:1).

Freud turned to mourning in the hope that it would shed some light on “the nature of melancholia.” Indeed, he began his analysis by drawing a parallel between dreams and mourning in their power to instruct the analyst about mental disorders.⁵⁵ Just as Freud calls attention to mourning for what it tells us about something extrinsic to itself, I turn to mourning for a similar purpose; namely, for the light it sheds on the way we imagine the being of fathers and of law.⁵⁶

III. Where Have All the Children Gone: *The Sweet Hereafter*

On September 21, 1989, at 7:40 in the morning in a small Texas town, a Coca-Cola truck, its brakes failing, ran a stop sign and hit a school bus (see *Los Angeles Times*, May 29, 1990, Sec. E, 1). The bus, loaded with children on their way to school, was knocked from the road into a rain-filled gravel pit, killing twenty-one children. Newspapers all over the country reported the accident and its aftermath, which included the filing of numerous wrongful-death suits (see, for e.g., *New York Times*, September 22, 1989, A-12; and *San Diego Union-Tribune*, September 23, 1989, A-3).

Yet, that was only the beginning of a nightmarish legal morass. Lawyers swarmed over the grieving town, signing up, then stealing, each other’s clients. Members of the community accused each other of trying to profit from its collective tragedy.⁵⁷ And all of this led to more litigation, with the town suing the

⁵⁵ In the binarism—mourning versus melancholia—while the former is about work and completion, the latter is a pathology focused on “ambivalence in love-relationships” (Freud 1925:172), which needs treatment. “Mourning,” Goodrich (1996:21) writes, “stands between the subject and melancholia either by virtue of separating the subject from the object or by reinterpreting the history of the subject so as to incorporate the loss of the loved object.”

⁵⁶ In this effort, I draw on work by Gillian Rose (1996) and Peter Goodrich (1996). For me, if not for them, the effort to think about law in relation to loss, dread, and mourning expresses, if only partially, some of the unity of the human experience. As Rigoberta Menchu, Guatemalan activist for indigenous people’s rights, said on learning that she had been awarded a Nobel Peace Prize, “I hope this is a contribution so that we Indian peoples of America can . . . demonstrate that the wound we feel is a wound of all humanity” (Golden 1995:A5). In her reference to humanity’s wounds, “Menchu expressed a vision of human identity centered on shared vulnerability and on an empathetic solidarity arising from shared vulnerability” (Kiss, 1995:377). It recognizes that “we are all needy, fragile beings, vulnerable to ill fortune and to the brutalities and cruel indifference of the powerful in our midst” (Kiss 1995:377).

⁵⁷ “In many communities,” The *Chicago Tribune* (May 27, 1990, Sec. 1, 23) reported, tragedies draw people closer together. In this clannish rural community near the Mexico border, the school bus accident that killed 21 children last fall did not simply split the town, but splintered it. First by grief, then by greed. In the eight tumultuous months since the accident, Alton has been jolted by death threats, brawls, a fast-proliferating spate of lawsuits, city financial probes, a mayoral recall drive, charges of ambulance-chasing against prominent Hispanic leaders, the suspension of the entire 30-man volunteer fire department—even accusations of witchcraft.

state for failing to put up guardrails, with rescue workers suing for the emotional distress incident to their efforts to save children at the scene of the accident, with lawyers suing other lawyers, and lawyers being prosecuted for barratry, and with residents of the town being sued for slander.⁵⁸

In 1991, Russell Banks turned tragedy into fiction in his critically acclaimed novel *The Sweet Hereafter*. Using four different characters as narrators, this book tells the story of life and death in a small town. However, in Banks's account, the accident has no obvious cause. Inexplicably, the bus leaves the road, crashes through a guardrail, and then sinks slowly into a freezing lake.

Six years later, the novel was turned into a film, its plot intact. The film, like the book, conjures the mythical presence of law as fate, and by chronicling a lawyer's intense, sometimes frantic, efforts to enlist some of the bereaved parents as plaintiffs in a wrongful-death suit, it asks whether either our law or our fathers are adequate to forestall or respond to the dangers of the worlds in which we live.

In fact, the film *The Sweet Hereafter*, focuses on three fathers, the most important of whom is the lawyer, Mitchell Stephens. Running alongside the story of his efforts to generate a lawsuit on behalf of the victims of the bus accident is his own troubled relationship to his drug-addicted daughter, Zoe. In him, law and fatherhood come together, and through him the film portrays the inadequacies and vulnerabilities of both. And it is Stephens that we are asked to judge.

The Sweet Hereafter uses two other characters who are differently situated in relation to the bus accident and the ensuing litigation to provide other imaginings of fatherhood. In doing so, it makes sideshadowing, a formal property of film, into an important part of its own visual and narrative work. This film fragments, pluralizes, and denaturalizes fatherhood. Fatherhood is given many faces, many histories, and many ways of exercising paternal power and of dealing with loss, dread, and mourning. While watching this film we confront the contingencies and possibilities of fathers before the law and the law in its relation to fatherhood.

Sam Burnell, the father of one of the few children (Nicole) who survives the accident, is an eager client of Stephens and his spiritual ally in the film. However, he is also guilty of sexually molesting his daughter. That act of incest and the way Nicole comes to terms with it play's out as a parallel, and ultimately intersecting, narrative with the story of the accident and the law-

⁵⁸ For some examples of this litigation, see *Perez v. Kirk & Carrigan* (1991); *Lopez v. State of Texas* (1992); *State of Texas v. Sandoval* (1992); and *Murillo v. Valley Coca-Cola Bottling* (1995).

suit.⁵⁹ Sam's character reminds viewers of the monstrous possibilities of fatherhood. But the third father, Billy Ansel, is the quintessential good father, who nonetheless loses his two children in the accident. He is, in addition, Stephens's greatest adversary as Stephens tries to convince the grieving parents to sue.

The Sweet Hereafter offers its viewers another parallel, this time between Stephens's effort to convince the citizens of the small town to litigate, and Sam's incestuous seduction of his daughter. It is drawn in many ways, the most powerful of which involves the use of a fable—"The Pied Piper of Hamelin"—which is narrated gradually and intermittently, often in voiceover, by Nicole. Both the suit and the seduction, the film seems to suggest, pose a danger to the town and its children. Together they locate law and fatherhood as sources of dread, both acting powerfully to sacrifice innocents.

Yet, *The Sweet Hereafter* also shows fatherhood itself to be a site of loss, dread, and mourning. It is a film about "life after loss: the way your mind keeps circling back until time becomes spongy; the way the present moment seems to pass at a slight remove, just beyond the dead space that surrounds your body." (Klawans 1997:35) It calls attention not only to the mourning of fathers but also to film watching as a practice of mourning and memory (Russell 1995; de Lauretis 1986) by its occasional and fleeting focus on photographs of the children who perished in the bus accident.⁶⁰ These framed images are displayed in the homes of their parents and in one full screen, photograph-like closeup of Stephens's daughter, Zoe, as a child. They are at once technologically produced artifacts that record life's happy moments and reminders that we can never know when and how those moments will end. Photographs, Barthes (1981) says, and perhaps film also,⁶¹ are sites in which viewers confront the image of something lost, something coming back to haunt us, calling us to the work of mourning.

The photographs signal fatherhood's vulnerability and fragility, some of which seems clear in its origins, but much of which is inexplicable both to the fathers portrayed in the film and to the film's viewers. Showing no respect for differences of profession or socioeconomic circumstance, showing no regard for the quality of their connection to their children, fathers in *The Sweet Hereafter* are made to suffer the special agony associated with the loss

⁵⁹ As Atom Egoyan (1997:21), the film's screenwriter and director, put it, "There are two primary scenes of 'catastrophe' in *The Sweet Hereafter*. The first, an image of incest between Nicole . . . and Sam . . . is almost completely sublimated. . . . The school-bus accident, in contrast to the incest scene, is the catastrophe that the viewer of *The Sweet Hereafter* must anticipate."

⁶⁰ In Russell's (1995:23) words, "Both death and film are negotiations with absence."

⁶¹ For a useful comparison of the still photograph and the moving image see Heath 1986:385.

of a child.⁶² That they are able to exert little control over this agony is suggested visually by memories coming back to them unpredictably in flashbacks, with which the film is intercut, to the periods before, during, and after the accident.

Here, too, children haunt fathers and law. Two children in particular, Zoe and Nicole, succeed, though in different ways, in rendering paternal power impotent. Thus Stephens is tied to Zoe by a cell phone, which he carries with him everywhere, lest he (or we) miss any of her taunting, terrorizing calls. We listen in on their conversations as the phone periodically and unexpectedly pulls him from the domain of law back to the demands of fatherhood. Law provides him with no armor or protection, no escape.⁶³

While the cell phone marks the history and dominant fiction to which this film speaks, it is also a striking visual reminder of the way the present is linked to the past, the way absence is made present. As Ronell (1989:91) notes, “[T]he . . . voice calls in the telephone principally as the effect of a prior loss whose recuperation can be partially accomplished.” The cell phone is a powerful symbol of the loss that Stephens has suffered and the incomplete mourning that continues to torment him.

And, indeed, Zoe is the figure of loss for whom her apparently powerful father is in mourning, a loss that he can neither fully recuperate from nor with which he can finally come to terms. Nicole, in turn, also helps to define the vulnerability and fragility of fathers and of law by refusing to forget Sam’s abuse and, eventually, by playing a key role in derailing the litigation concerning the bus accident. She is a kind of Oedipus in reverse, punished for the sins of her father, but also exacting revenge on him for his violation of the incest taboo.

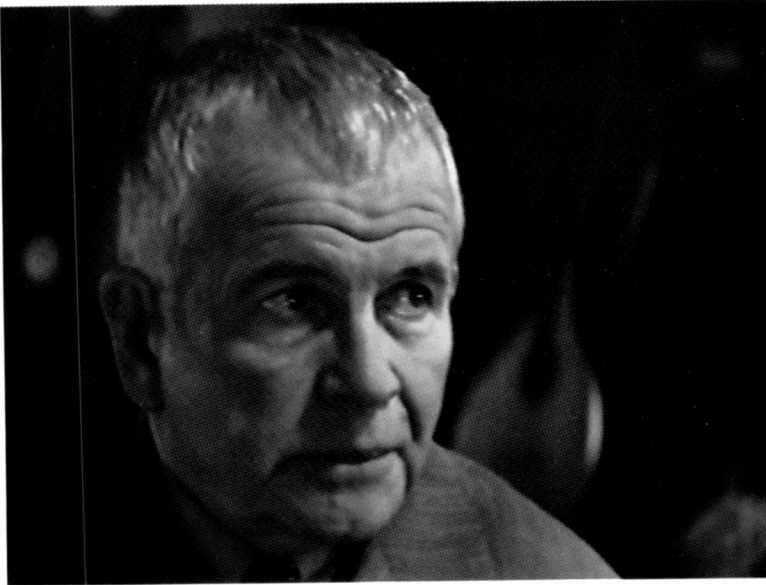
Let me now discuss the varied way in which each of the fathers in *The Sweet Hereafter* is portrayed, remembering two of the points discussed earlier; namely, that while fatherhood is inescapably a site of loss, dread, and mourning, the relation of fathers to each is contingent and particular.

A. “It Is Important That We Talk”: Where Does the Father End and the Lawyer Begin?

Throughout *The Sweet Hereafter* it is hard to tell where Mitchell Stephens the lawyer ends and where Mitchell Stephens the father begins, and whether it is possible to separate the lawyer’s public duty, his “job,” the law itself, from the private agony that

⁶² Such a loss is, as Toni Morrison (1987:274) writes, “a loneliness that can be rocked. Arms crossed, knees drawn up; holding, holding on, this motion, unlike a ship’s, smooths and contains the rocker. It’s an inside kind—wrapped tight like skin.”

⁶³ Listening to phone conversations is a pleasure similar to the kind of voyeuristic satisfaction that Mulvey (1986:201) suggests is key in viewing film. On the nature of that satisfaction, see Metz 1982:261.



1. Mitchell Stephens.



2. Billy Ansel confronts Mitchell Stephens.



3. Zoe speaking with her father.



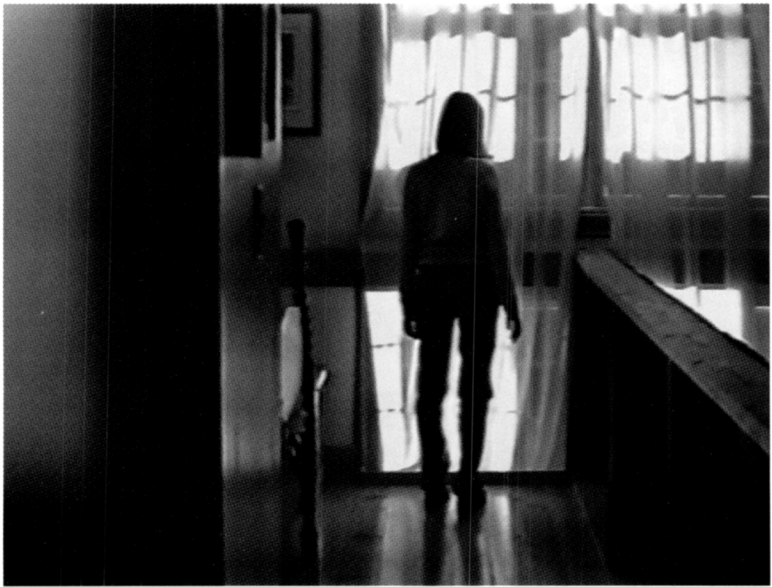
4. Mitchell Stephens, his wife, and Zoe.



5. Zoe and the knife.



6. Billy Ansel as the bus is removed.



7. Nicole, in Billy Ansel's bedroom.

marks his life as a father (see Photo 1). The line he repeatedly uses with the town's grieving parents, "It is important that we talk," has special resonance in a film in which he rarely speaks with his own daughter and in which he is haunted by the occasional ringing of his cell phone and the painful conversations it brings. "It is important that we talk" echoes his daughter's insistence that he talk to her any time she wants.

The Sweet Hereafter invites its viewers to judge why this apparently well-off lawyer came to an unattractive, out-of-the-way, snow-covered town to harangue grieving parents to file a wrongful-death suit. Is his effort to find an explanation for the tragedy they have experienced, to channel their anger into blame, and to assign responsibility merely a displacement of his continuing search for an explanation of his daughter's drug addiction? Does this displacement or substitution signal an end to his mourning or its incompleteness? Does he sacrifice a bereaved community on the altar of his own needs and desires? Does his intervention in that community parallel the intervention of his daughter's infrequent and disruptive phone calls?

And what kind of lawyer is he? What kind of law does he represent? Stephens is law's primary image and voice. He, and we with him, enter a fallen world, a much-less-than-perfect world, a town in mourning; but the law that he embodies, the law of personal injury litigation, is already fallen and discredited (see Rhode 1999). The history and dominant fiction that frames this film is represented by a town populated by 1960s leftovers, hippies, families built around interracial adoptions, disabled people, and Vietnam veterans turned into single fathers and Allman Brothers "wanna-bes." In this town we see the aspirations of our age, to collect such differences and forge community out of them (see Sarat & Berkowitz 1994; Greenhouse et al. 1994). We see a place comfortable with its plurality and open to the possibilities that that plurality opens up. But, as the film suggests, such aspirations and comfort are indeed quite fragile.

Stephens brings another history to this community. His history and its present collide as he tries to introduce the town to law's response to loss. His is the alien presence of legality, with its habits of assigning guilt and constructing hierarchy. While the community survives the tragedy of the bus accident itself, it is endangered by this presence, by law's invitation to turn grief into greed. A dread-inspiring legality threatens to pit people against one another and transform difference into advantage for some and disadvantage for others. Instead of providing closure, it promises to prevent the healing of the psychic wounds left behind after the accident. And, Mitchell Stephens continuously obsesses about his drug-addicted daughter, as he cajoles, pleads, and even gets down on his knees trying to convince the parents of the dead and injured children to act as if what Shklar (1990:1)

calls “misfortune” was really injustice.⁶⁴ How do we imagine the law of the father through such an icon?

This icon is unnervingly polyvocal and chameleon-like. What Stephens says and how he presents himself shifts as he moves from place to place, from potential plaintiff to potential plaintiff.⁶⁵ He is a seducer of the weak, preying on the human vulnerabilities and needs that his finely tuned legal sensibilities can sniff out in a minute. Nonetheless, these attributes work, like the film’s three faces of fatherhood, to remind us of plurality and possibility, which, in this case, may sit just below the surface of a dread-inspiring, community-destroying legality.

To some of the town’s parents he offers dignity and status, treating them as the embodiment of the community’s values, its respectability, even as he invites them to gossip about their neighbors’ debts, their defects, their criminal records.⁶⁶ To other people he holds out different hopes, and he promises different benefits, if they, like the children of Hamelin, join his “cause.” Some of his promises and ploys are predictable; others seem surprising, even counterintuitive. But this only marks our distance from him, the gap between common sense and the sharply honed legal mind, and it arouses fear of a law that can see through us and identify precisely our needs and vulnerabilities.⁶⁷ To the Ottos, the hippie parents of an adopted child, he promises to give voice to their anger. Through law, he says, the

⁶⁴ A misfortune is “a dreadful event . . . caused by the external forces of nature.” An injustice, in contrast, is an event brought about by an “ill-intentioned agent” (Shklar 1990:1).

⁶⁵ In this Stephens appears, at first, to have mastered a Rehnquist-like separation of public and private, of role from person. In this he appears to exemplify one of law’s legitimating claims. And, it is his distance and aloofness that allows him to be many things, to shift voices and appeals.

⁶⁶ “Of these people who you’ve told me about whose kids were killed, who do you consider to be good, upstanding neighbors, people who can help us in our cause?” Stephens sifts and sorts the grieving parents, looking for those who would make attractive and sympathetic plaintiffs, remarking on learning that one of the children killed in the bus was an attractive, adopted Native American child, “Good, judges like adopted Indian boys.” That he does so reminds us of law’s strategic, calculating side, of its artifice and its attention to social distinctions (see Black 1989), and of the way it honors the mourning of some while ignoring the mourning of those whose lives mark their mourning as unworthy. In this way, it turns difference into hierarchically marked distinctions.

⁶⁷ Thus Stephens offers money to Sam, which Sam, ready now to profit from his daughter’s pain, is eager to obtain. To Nicole he suggests that the lawsuit will turn her from pitiful victim to agent, that it will enable her to act in a way that will stop people from seeing her only as a “cripple.” He makes this pitch by identifying himself with those who see her only that way. “I don’t like to think about the accident,” Nicole tells Stephens. “I don’t even remember it happening. Besides, it just makes people feel sorry for me,” she says. “You hate that,” Stephens replies, “People can’t help it. They see you in this wheelchair and they are going to feel sorry for you. I didn’t even know you and how exciting your life was before the accident and even I feel sorry for you.”

To Dolores, the good-hearted woman who for fifteen years had driven the bus before the accident, he holds out the hope that the lawsuit will change her in the eyes of the town, this time from blameworthy agent to suffering victim. “People,” Stephens says, “have to know *your* suffering, and they won’t understand until I clear your name, once and for all. Will you let me do this? Will you let me do my duty?”

inexplicable can be explained, the mysterious can be made humanly comprehensible, and misfortunes can be turned into injustices.⁶⁸ “That’s why I’m here, to give your anger a voice, to be your weapon against whoever *caused* that bus to go off the road.” In these lines the film invites us to ask whether a lawsuit could do for the victims of the bus accident what Stephens’s own efforts have not done for him; namely, assign responsibility for the loss of a child by identifying causes and effects.⁶⁹

And, in a monologue that might have been addressed to his own life,⁷⁰ to the dreadful question of why Zoe, in spite of all the advantages brought by wealth and two apparently loving parents, became a drug addict, he tells the Ottos,

There is no such thing as an accident. The word doesn’t mean anything to me. Somebody somewhere made a decision to cut a corner, some corrupt agency or corporation, who counted the cost variance between a 10 cent bolt and a million dollar out-of-court settlement. And they decided to sacrifice a few lives for the difference . . . I’ve seen it happen so many times before.

“There is no such thing as an accident”; surely this is one of law’s most powerful stories, comforting in its assurance that cause and effect always can be identified, blame assigned, fair compensation assessed.⁷¹ Law offers its own distinctive forms for responding to pain; it refuses fate and promises to make the mysterious comprehensible. It asks us to substitute reason for faith and to act in this world against forces that threaten to overwhelm us. But perhaps, *The Sweet Hereafter* suggests, there are some fates and some mysteries in the presence of which our law is rendered powerless, as well as some understandings and some consolations that are available to us only in another life.

And if there is no such thing as an accident, is Stephens himself responsible for his daughter’s drug addiction? Did this father on trial in the distinctive juridical space of the moving image cut

⁶⁸ Law turns random events into accidents with causes, blameworthy agents, structures of responsibility (see Felstiner, Abel, & Sarat 1980–81). In law, Craft contends (1992:536–37), “the unpredictability of actual life is forced into an order that identifies cause and effect, innocence and blameworthiness.” Law provides the solace of a simplifying narrative. While many criticize law for its distancing, formal quality, for flattening the experience of dread, of loss, of mourning, Craft (1992) praises law for precisely this quality, for providing dignity in the face of pain and suffering, for providing coherence in the face of disorder.

⁶⁹ Some might suggest that in Stephens we have an instance of melancholia rather than mourning, that what really is displaced is the blame and reproach that he feels for the way Zoe has turned out. Yet, Stephens does not display what Freud (1925:155) says is characteristic of melancholia; he does not “represent his ego . . . as worthless, incapable of any effort and morally despicable; he reproaches himself, vilifies himself and expects to be cast out and chastised.”

⁷⁰ Stephens is tormented by the question of why Zoe turned out as she did. This monologue invites the film’s viewers to ask what or who is responsible for her fate.

⁷¹ Exploring the significance of the discourse of responsibility in the face of death, Derrida (1995:16) notes that some believe that “‘The reign of responsibility and, along with it freedom’ consists perhaps of a triumph over death, in other words a triumph of life.”

corners in the way he raised Zoe? Is he more like the good father (Billy), whose child is inexplicably, unfairly taken from him, or, like Sam, who “loses” his child because of his own bad acts? Or is he caught up in the conventionally defined roles of fatherhood, the contingency of which is made visible in the multiple characterizations of fatherhood that the film provides? Is he so bound by them that the way he fathers mirrors the way he practices law?

While the film does not show enough to allow us to provide settled answer’s those questions, it nonetheless invites judgment of both law and fatherhood. It does so by demonstrating the way private lives shape public acts, the way the life of law intersects with the lives of fathers, and the way Mitchell Stephens’s story is intertwined with those whose lives were shattered by the bus accident.⁷² It speaks to our ambivalence about fathers and law by showing his vulnerability as a father, even as it allows its viewers to watch him, as a lawyer, prey on the vulnerabilities of others.

This blurring of the line between law and father, with its Freudian resonance, becomes clearest when Stephens tries unsuccessfully to enlist Billy Ansel as a plaintiff. In a pivotal scene, Billy returns to his gas station and auto repair garage, where the salvaged bus is being kept, to find Stephens moving around inside it, video camera in hand. Oblivious to what it represents, Stephens treats the bus as just another piece of evidence that needs to be preserved for use in future litigation; walking around in it, he defiles the tomb in which the dead children’s spirits reside.

Billy, on the other hand, approaches the bus reverentially, taking off his hat, staring at the smashed-in backdoor from which his kids waved every morning as he followed the bus to school. Discovering Stephens (see Photo 2), he orders him to “get the fuck away from the bus,” and announces his intention to “beat you (Stephens) so bad until you piss blood and can’t walk for a month.”

At this point Stephens’s cell phone rings, but he does not answer. Instead, he uses the fact of the call to appeal to Ansel by trying to identify with him as a father in mourning. “It’s my daughter,” he says, “or it may be the police to tell me they have found her dead. She’s a drug addict.” Whatever its meaning to

⁷² In so doing it calls into question treatments of law that are found in some discussions of the differences between law and literature (see, e.g., Craft 1992; Getman 1988; Weisberg 1988). In those discussions law is described as a cool, detached, formal, “bloodless and narrow” tool of closure (Craft 1992:527), whereas literature is said to be passionate, engaged, broad gauged, and open-textured. If we allow film to stand in for literature, in *The Sweet Hereafter* law appears passionate and engaged, and, as we will see, it hardly seems to be a tool of closure. And the film itself seems surprisingly distanced, dispassionate, even cool. A movie that promises to be a tearjerker is oddly chilly. The camera often moves up and away, always moving back and returning to the snow-covered landscape, at seemingly crucial moments, moments when we might find ourselves overwhelmed by the tragedy it documents. This film then displays precisely the kind of detachment which Craft (1992:528–529) says is characteristic of law.

Billy, this speech reflects Stephens's own grief, bewilderment, and vulnerability as a father. "Why am I telling you this, Mr. Ansel? Because we've all lost our children. They're dead to us. They're killing each other in the streets. They wander comatose through shopping malls."

As Ansel, unmoved, puts on his hat and walks away, Stephens turns his eyes skyward, addresses himself to a different audience, and continues, "Something terrible has happened. It has taken our children away. It is too late. They're gone." In this moment the distinction between law and the father completely disappears; the lawyer is just another father in mourning, vulnerable to the very loss to which his professional work is now responding. Just as he can do nothing for the children who died or for their surviving parents, he is overwhelmed by the fear that Zoe too is "gone," that it is "too late" for her as well. Stephens mourns a daughter not yet literally dead, though one who is "dead to him," and in that mourning fearfully anticipates a death that he knows himself powerless to prevent, just as the townspeople were unable to prevent the deaths of their children. Here he momentarily acknowledges the weakness of law and of fathers before a fate whose workings he can neither understand nor control.

His mourning for a lost child, for all lost children, quickly dissipates and turns to dread when the cell phone rings again. The voice of his child, like a specter, comes back to torment him, reminding us that "the story of the father . . . (is always) constitutively bound up with the address of a dead child" (Caruth 1996:102). In this call, the third in a series that punctuate's the film, Zoe wants to tell her father what she labels some "big news." At first he seems unable to respond, as if he were on the verge of dying. "News" he mutters in a barely audible voice.

His seeming indifference sends Zoe into a rage. "You always think you know what I'm going to say before I say it, don't you Daddy? You always think you are one step ahead of me, the lawyer (said sarcastically)." At this moment we see the law of the father through a lost child's eyes. For Zoe, just as God's command transformed Abraham from a loving father to a potential killer, the force of law has transformed her father from loving presence to absent judge. Through her eyes we confront the possibility that Stephens fathers, against his own self-perception, indifferently, coldly, from a distance, that he is guilty of paternal neglect of the conventionally accepted kind, trading the closeness of his early connection to Zoe for a successful career; sending money, always seeming to be available to her, but never really having the time, or perhaps the inclination, to hear her out.

She tells him that she has been trying to sell her blood, but that she has been unable to do so, and she continues to attack, this time mocking his supposedly superior interpretive abilities. "They wouldn't take my blood. You know what *that* means

Daddy? Does it register?” Of course it does. It must register in our era, marking, as it does, the powerful confluence of drugs, sexuality and disease, and the loss, dread, and mourning to which they are attached.

Later Zoe demands more money from him, and money is now all that really connects them. Stephens sends it to her on the pretense that she needs it for doctors, clinics, treatments, knowing that Zoe will use the money to support her drug habit.⁷³ She is an outlaw on the run, aided and abetted by the lawyer-father.

When this time Stephens initially resists her demand and asks “What for?” Zoe accuses him of not believing what she said to him about the blood test. Against his meek, and transparently false, protestations that he does believe her, she delights in flaunting her castrating power over him. “I like it,” Zoe says, “when you don’t believe me Daddy. It’s better that you don’t believe me, but *have* to act like you do.”

As they talk, she in a phone booth (see Photo 3), he on a cell phone, connected by a technology that makes it possible “to reach out and touch somebody” while being constantly in motion, the camera closes in on her face, with its dark circles shadowing shrunken eyes and her pallid, almost gray, skin, with its suggestion of a vitality that has long since departed. She is the talking ghost of the child her father once deeply loved. She is a daughter over whom he once exercised both paternal power and responsibility. Now his very respectability makes him a prisoner to her disinterest in reputation;⁷⁴ his inability to cut her off, no matter what she says or threatens, makes him a prisoner to her desperation.⁷⁵

Throughout this conversation Stephens tries to shut down, knowing that he cannot win, that whatever he says will be turned into another castrating verbal attack by his daughter. When Zoe tells him that she has tested HIV positive, he seems broken, finally reduced to pleading with her to direct *him*. “What do you want me to do, Zoe? I’ll do whatever you want,” he says, surrendering once and for all whatever remains of his paternal power and position.

That the film first introduces its viewers to Mitchell Stephens stuck in a car wash inside his expensive car, unable to get help,

⁷³ That he has become an accomplice in her illicit life is suggested early in the film when we see in the background of one of her calls a drug buy being interrupted by the flashing red lights of an onrushing police car. Zoe quickly hangs up the phone and runs to a car, which speeds off just before the police arrive.

⁷⁴ At one point, he describes his efforts to rescue Zoe by saying that he had spent a lot of time “kicking down doors, dragging her from rat-infested apartments. I would explain to someone that it couldn’t possibly be my daughter that they saw in a porn flick.”

⁷⁵ Stephens’s continuing investment in the image of himself as a good father also makes him Zoe’s prisoner. After all the abuse is done, he utters a father’s ritual words, “I love you Zoe. I’ll soon be there. I’ll take care of you. No matter what happens, I’ll take care of you.” But what kind of love and care can the now-powerless father offer the castrating daughter?

foretells the weakness and vulnerability that is now fully on display. In his surrender to Zoe this father has been finally slain, no rescuing angel coming to his aid. At this moment *The Sweet Hereafter* touches our anxieties and desires, our fear of paternal power and our wish to identify its fissures and fragility. It does so by showing us the special vulnerabilities of fathers to their children, thereby connecting the law of the father to loss, dread, and mourning. It does so by reminding us of what Caruth (1996:103) says of the father in the “dream of the burning child”: “The very consciousness of the father as father, as the one who wishes to see his child alive so much that he sleeps in spite of the burning corpse, is inextricably linked to the impossibility of adequately responding to the plea of the child in its death.”

But is Zoe the child for whom Stephens mourns, or is he a father still holding on to a daughter who was once, and promised to be, something quite different? The difference, the daughter for whom Stephens genuinely mourns, is registered visually as well as verbally in the character of Allison, a charming, successful, blonde woman who sits next to Stephens in an airplane two years after the bus accident. This scene is intercut after the scene in which he has his first meeting with the town’s grieving parents. Is it a dream in which he, like them, confronts “the ineradicable gap between the reality of death and the desire (not to acknowledge the loss of the child) that cannot be overcome . . . except in the fiction of a dream” (Caruth 1996:95)? Is he imagining the future, or remembering the past? Such shifts in time play a big part in this film, which moves almost seamlessly from past to present and back, showing us life before and after the bus accident, and thereby playing out the work of memory as various characters mourn what they have lost. In this scene, and elsewhere, *The Sweet Hereafter* highlights in its narrative and visual technique the very kind of “sideshadowing” that Morson (1994:117) describes. It thus is able to both reflexively consider the operation of film itself and remind viewers of the life Stephens did not have.

Allison, it turns out, was a childhood friend of Zoe. She works as a lawyer for her father, who, we are told, was once one of Stephens’s partners. It is as if Zoe and Allison were twins, and Allison is now substituted for Zoe.⁷⁶ Allison is Zoe’s ghost, returned to Stephens’s consciousness in an idealized form. In this substitution Stephens confronts his projected desire for what Zoe might have become. “The actual,” as Morson (1994:118) puts it, “loses some temporal legitimacy. It can no longer be regarded as inevi-

⁷⁶ Later in the film we find Allison asleep in her seat and Stephens quietly pulling up a blanket over her, tucking in the daughter he would like to have. The pain of his still incomplete mourning for Zoe is measured in part by the gentle companionship that Allison offers him. Stephens is made vulnerable by his desires as well as his memories, his projections as well as his past.

table, as so firmly enconced that it does not even make sense to consider alternatives.”

It is to Allison that Stephens confesses his anger, resentment, and confusion about the person Zoe has become, as well as the way she uses and torments him.⁷⁷ He tells her about Zoe’s descent through “clinics, halfway houses, treatment centers, detox units,” insisting that he “did everything the loving father of a drug addict is supposed to do. “I sent her to the best hospitals. She saw the best doctors.”⁷⁸ When she wanted to come home, Stephens explains, he would send money, but “she never came home.” And in another revelation of the incomplete mourning of the castrated father, he explains, “I was always at the airport, but she was never there.”

But was he ever “there” for Zoe in other than the most minimal sense? Was he there for her at a time in her life when it might have made a real difference, or was he so caught up in the law so as to have abandoned her, all the while proclaiming his love; so caught up helping others deal with their tragedies, all the while creating his own? Was he as much of a chameleon-like presence in her life as we know him to be in the lives of his clients? And, is he as blind to the kind of father he is as he is deaf to the meaning behind the words in Zoe’s calls? The film raises these questions even as it shows Stephens struggling, tormented by memories, in an effort to make sense of it all. It provides a juridical space in which judgment is inexorably tied to identification and in which Stephens’s struggle becomes our struggle as well.

In one of these efforts he tells Allison the story behind the image with which the film opens. This image of a young man, woman, and child, each half-naked, lying side-by-side asleep in a shared bed, is exquisitely filmed from overhead in a traveling shot (see Photo 4). It suggests the comforting and protective shield that parents try to provide for their children. But it is at once a scene of pristine innocence and, in its accompanying music and film style, one that is erotically charged.⁷⁹

This retrieved image is Stephens’s memory of an event, his experience of how he remembered it. While the characters sleep, the camera looks straight down on them, passing overhead like a

⁷⁷ “Enough rage and helplessness and your love turns to something else,” he explains. “What does it turn to?” Allison somewhat naively asks. “It turns,” he replies, “to steaming piss.” In this moment Stephens reveals the “ambivalence in love-relationships” that Freud (1925:161; 1965b) argues is characteristic of melancholia.

⁷⁸ Money, not love, is what connects Stephens and Zoe now; it is money that stands as the hollowed out symbol of their relationship and as the basis of their continuing connection. “I wonder what would happen,” Stephens wonders aloud, “if I didn’t send her money.”

⁷⁹ As Freud (1977:323) reminds us, the innocence of children is quite complicated. It is always intertwined with desire; “[T]he smallest babies have a sexual life.” This scene is one place in which *The Sweet Hereafter* calls attention to the erotic component of all parent-child relations, even as it reminds us of the distinction between eros and sexual abuse. See Shelton 1995.

“watchful ghost” (Klawans 1997:36), or perhaps like a guardian angel, protecting them from harm. Yet, as he narrates the story behind the image, we are again reminded of the vulnerability of even the most protected children and the powerlessness of even the most protective parents in the face of fate, accident, or a God who suddenly demands the sacrifice of innocence.

“It was,” Stephens says, forgetting that the Zoe he loved was long ago lost “a time when we almost lost her.” Zoe, it seems, received a venomous bite from a spider that had been hidden in the mattress in which he, Zoe, and his wife slept. This tale reveals a father’s dread in a world where danger could take up residence even in a site of love and happiness, and from which he was powerless to protect his child. The story proceeds by alternating between Stephens’s “detailed verbal recollection . . . and selected moments from his memory of watching it” (Egoyen 1997:23). It serves to further connect Stephens’s biography as a father, his loss, dread, and mourning, to the fathers whose children were killed on the school bus. It also highlights the possibility of loss that always haunts the law of the father.

Because their cottage was 40 miles from the nearest hospital, Stephens called a doctor and was told that Zoe might not make it that distance. The doctor told him that he must be prepared to puncture her throat if her breathing stopped, in order to perform an emergency tracheotomy. At this moment, *The Sweet Hereafter*, in a visually arresting scene, shows a full screen, extreme close-up of Zoe’s blue-eyed, blonde-haired childhood innocence side-by-side with a knife, as her father holds both of them during the ride to the hospital (see Photo 5).

This shot recalls Genesis 22, with Abraham’s knife poised above Isaac, only in this film the father is ready to save his child from, rather than sacrifice her to, an arbitrary and cruel fate.⁸⁰ When Allison asks, “What happened?” Stephens responds matter of factly, “Oh, nothing. We got to the hospital in time.” But like Abraham, providing some after-the-fact, dread-inducing explanation to Isaac, Stephens assures Allison, “I did not have to go as far as I was prepared to go. But I was prepared to go all the way.”

These words locate fatherhood in a different relation to dread, this time as both its source and its site, with a fearful father prepared to do a fearsome deed. This scene again marks fatherhood as an anxious presence anticipating the loss of a child. It also provides a benchmark against which to measure the descent of a father, reduced from a time when he had a child’s

⁸⁰ What work does or should the change of the child’s gender do in this image? Here Derrida (1995:75) asks a couple of important questions. “Would the logic of sacrificial responsibility,” he asks, noting the absence of women in the story of Abraham and Isaac, “within the implacable universality of the law . . . be altered, inflected, attenuated, or displaced, if a woman were to intervene in some consequential manner? Does the system of sacrificial responsibility . . . imply at its very basis the exclusion or sacrifice of women?”

life literally and figuratively in its hands to the present moment of his own powerlessness, and this descent, in turn, reminds viewers of the vulnerability and fragility that always sits just below the surface of paternal power. Yet the pathos that attaches to Stephens as father and as lawyer, is that, throughout the film, despite his frantic efforts, he is able neither to comprehend nor control the fate that has befallen himself and his prospective clients. He lives without faith in a world in which reason is inadequate.

B. “It’s a Blessing She Can’t Remember”: Incest and the Sacrifice of Innocence

Sam is the second father whose story is told in *A Sweet Hereafter*. What echoes in the film’s portrait of this character is fatherhood again as a source of dread, of men like Randy DeShaney abusing their children or exploiting them for their selfish pleasure. Sam offers a glimpse of the most monstrous possibilities of fatherhood and, in so doing, provides one frame within which viewers might see aspects of Stephens’s relationship with his child.⁸¹

We are first introduced to Sam as he is seen through the eyes of his teenaged daughter, Nicole.⁸² Through her gaze we are invited to see a father before the fall.⁸³ That gaze also provides a measure of her own vulnerability when later in the film she follows him to the place where she will become the victim of incest, which is presented to her and to us in the imagery of seduction.⁸⁴ Incest is, however, always much different from seduction, involving as it does the violent disruption of the trust between parent

⁸¹ The distance that Stephens keeps from his own inner life requires the film to provide external points of reference, such as Sam, through whom we might try out different answers to the questions that Stephens himself is barely able to confront.

⁸² Her physical appearance connects her visually both to the Zoe we see in Stephens’s recollection and to Allison; in so doing, suggesting childhood in the midst of an uncertain trajectory.

⁸³ We first see that gaze when she is on stage, singing in a rehearsal for a performance at the county fair. She watches Sam adoringly, though at first it is not clear, given his own youthful appearance, whether he is her father or her teenaged boyfriend. That ambiguity is dissolved when Nicole, completing her song, rushes to him, eagerly soliciting his approval, and exclaims, “I’m so happy, Daddy. Let’s get some ice cream, Daddy.”

⁸⁴ We see only one scene of physical contact between them, in the loft of a barn, surrounded by candles, with her guitar poised at the boundary of the screen.

and child,⁸⁵ the dread-inspiring law of the father turning child into lover.⁸⁶

However, *The Sweet Hereafter* never lets us linger too long in contemplating fatherhood's power. In fact, Sam's power over, and abuse of, Nicole ends with the crash of the bus that leaves Nicole, in words that she speaks to Sam, "a wheelchair girl now." This event ends his incestuous desire, but it also turns Sam from a source of dread into a fearful, anxious father. After the accident, Nicole's memory shifts the balance of power between them. Aping Sam's desire, the film invites its viewers, just as Sam invites Nicole, to sublimate the incest and to focus instead on the accident.⁸⁷

But Nicole refuses this invitation. Thus, when Sam and she are later briefed by Stephens about a forthcoming deposition, she almost too eagerly volunteers, "I won't lie. . . . No matter what I'm asked, I'll tell the truth." The camera then cuts quickly to Sam as his eyes, registering his uncertainty and anxiety about the meaning of her promise, dart in Nicole's direction.⁸⁸

The fear of the father who transgressed the boundaries of paternal privilege and the accompanying empowerment of Nicole reaches its apex when she gives her deposition in the bus accident litigation. We watch her with Sam and Stephens as a defense lawyer asks questions about her recollection of the accident. When she responds, "I'm remembering pretty clearly now,"

⁸⁵ This is emphasized by the voiceover selection of verses from the Pied Piper that Nicole recites as she follows her father.

All the little boys and girls, with rosy cheeks and flaxen curls . . . tripping and skipping ran merrily after the wonderful music. . . . When lo as they reached the mountainside, it opened wide . . . and the Piper advanced and when all were in to the very last . . . Did I say all? One was lame and could not dance the whole of the way. And in after years if you would blame his sadness, he used to say . . . I can't forget that I'm bereft of all the pleasant sights they see . . . where waters gush and flowers put forth a fair hue, and everything was strange and new.

As Egoen (1997:20) explains, "While the image we see on screen suggests Nicole's acquiescence—even complicity—in the incest, the reading of the poem, with its intimations of manipulation and annihilation, reveals her feelings of surrender and confusion."

⁸⁶ As Silverman (1992:40) observes, "The incest taboo is lived as paternal prohibition and erotic displacement—as the necessity to substitute erotic objects outside the family for those within."

⁸⁷ That memory is the enemy of fathers who abandon or abuse their children is suggested when we next see Nicole, this time in a hospital surrounded by her doctor, her mother, and Sam. When the doctor says that accident victims typically don't remember what they experience, Sam urges Nicole, referring to both the accident and the incest, "Don't even try and remember." But quickly we see that remember she does, the one if not the other. We see her memory becoming a haunting threat to the law of the father.

⁸⁸ Still later, Sam's fear is registered when they talk in her room. Nicole's monosyllabic non-responses to his questions lead him to note that she "seems distant." Her distance, her withdrawal, empowers her just as it unnerves him, and it plays out its own version of the kind of stern, aloof judgment that we saw in Rehnquist's opinion in *DeShaney v. Winnebago* (1989). Nicole exercises her dread-inspiring power when she evokes the scene of incest by calling on Sam to "[r]emember, Daddy, the beautiful stage you were going to build for me? You were going to light it with nothing but candles."

memory again exerts its power, only this time wrapped in a falsehood. "I remember it clearly now," Nicole asserts, "See, we were going too fast down the hill and I was scared. . . . The speedometer was large and easy to read from where I was sitting. . . .(Mrs. Driscoll) was going 72 miles an hour."

Because her testimony, which the viewer knows to be a lie, places blame on the person with the shallowest pocket, it effectively ends the suit. It serves not only both (for us if not for Nicole) as a satisfying act of revenge against Sam, depriving him of the money he so desperately wants, but also as a way of exposing the vulnerability of law. Sam substitutes for Stephens, Nicole for Zoe, and all of Stephens's legal acumen, all of his work, is defeated and derailed by a teenaged girl, who, like Stephens himself, works out a private conflict in a public setting. This time the child who can no longer walk is one step ahead of the father and of the law.

Nicole's lie transforms her and the law of the father. This transformation marks another of our era's hopes, the empowerment of society's victims. Its power is registered in the incredulity and incomprehension of Sam's response. "I don't know what she was doing in there," he tells Stephens in a statement that seems willfully clueless. When they discuss the meaning and consequences of Nicole's lie, highlighting a new object for their shared fatherly mourning, Stephen's intones, "The lawsuit is dead. Everyone's lawsuit is dead. . . . It's over."

Stephens, announcing Nicole's symbolic castration of him and Sam, says, "Right now," "the thing you've got to worry about is why she lied. Any kid who would do that to her father is not normal, Sam."⁸⁹ He shows that he shares Sam's all-consuming egotism. Nicole has "done something" to the father. They see themselves as victims and cannot see the pain they have caused their daughters. And, if Sam is a mirror of Stephens, is the latter again registering, unknowingly, both his own unfulfilled search for explanations and his own inadequacy as a father?

C. "Leave Us Alone": Fatherhood's Opposition to Law

Billy Ansel, Vietnam veteran, garage mechanic, widowed parent of two, seems to be the film's classic embodiment of certain traditionally male virtues. He is sturdy, unrefined, and self-reliant. Yet he is so devoted to his children, so eager to protect them, that every day he follows the school bus, waving to them until they reach their destination. His fathering provides another frame for viewers to use in understanding and judging Stephens.

⁸⁹ Sam indeed has to worry about why she lied, and to live, a hostage, to that worry. When their car pulls away from the community center with Sam behind the wheel and Nicole sitting directly behind him, viewers are left with the strong suggestion that she, not her monstrous father, is now really in the driver's seat.

And his vulnerability, his loss, and his way of mourning, as I have already suggested, provides connections to, as well as striking points of contrast with, both Stephens and Sam.

The Sweet Hereafter goes out of its way to show that Billy's qualities as a father afford him no protection against fatherhood's vulnerabilities. It is through his eyes that we first see the accident. We watch as he helplessly watches the bus skid off the road and slide down a hill into the frozen lake.⁹⁰ We register the horror of the sound of ice cracking and the sight of the bus slowly sinking as he registers it.⁹¹ Then the camera sweeps skyward marking the ascent of souls departing for the sweet hereafter and suddenly cuts to the ethereal image of the sleeping family with which the film began. This cut is unsettling because it marks the short and uncertain distance from sleeping innocence to unfathomable human tragedy. It provides a visual link between Billy's fathering, with its vulnerability, loss, and distinctive approach to mourning, and Stephen's fathering, inviting us to use the former as a way of understanding and judging the latter.

But this is not Billy's first confrontation with loss. Because his wife earlier died of cancer, Billy becomes an example of what Silverman (1992:155;1996) claims to be true of male characters in other films. As a result of his confrontation with his own "lack . . . (he) acquires the capacity to become something other than what the male subject has classically been" (Silverman 1992:155). He becomes "other," the caring, nurturing, child-focused icon of a fathering that is feminized, a way of being a father available to the post-Vietnam generation of men. But he is also a father living in dread, who compulsively follows his children to school. This repetition is critical in constituting one aspect of the loss, dread, and mourning that is associated with the law of the father. As Bronfen (1993:103) observes,

Repetition is inscribed by the death drive; in fact, it serves as one of its forms of articulation. At the same time, repetition can be seen as an attempt to counteract absence, loss, and death. Repetition suggests that, as a double of the lost object, the first object can return in a new form, thus questioning the uniqueness of the first term and implying that the loss is not irrevocable. . . . If Freud was right to claim that all love objects are refound, then love is based not only on repetition but also on loss.⁹²

⁹⁰ This shot provides one example of the way the camera focuses attention upon "the look rather than its object," and in so doing "brings the look emphatically within the spectacle" (Silverman 1992:131).

⁹¹ "I felt," Egoyen (1997:23) explains, "that it was imperative to shoot the accident from the vantage point of the widower Billy Ansel . . . as he *experienced* it. I believed that this would . . . situate it—like the incest scene—within a primary character's point of view."

⁹² Bronfen (1993:106) also notes that "[a] paradox, then, seems to be inextricably embedded in an economy of love based on repetition . . . The repeated event, action, or term always contradicts its predecessor because, though similar, they are never identical;

Unlike Stephens, this father is strong enough to confront that loss and, like Abraham, to live and grieve in a world he can neither fully understand nor control.⁹³ Billy refuses to believe that law can aid mourning or that it can make the irrational rational or the accidental have a cause.⁹⁴ His strength is a measure of the law's weakness. Thus he alternately threatens Stephens and implores him to "leave the people of this town alone." And when Stephens cajoles him by saying, "I can help you," Billy replies, "Not unless you can raise the dead."

The contrast between this father and Sam is highlighted when Billy tries to talk Sam out of pursuing the suit. In this conversation, we see Billy's dread before the law, his desperate desire to avoid entanglement with it, and its traumatic repetition.⁹⁵ Through Billy, law is shown to contain its own excesses and to stand in the way of the healing that comes with the completion of mourning.⁹⁶ "I don't want a darn thing to do with it . . . Lawyers are suing lawyers . . . (and) people are pointing fingers at each other and making side deals and dickering over percentages. He (Stephens) is going to force me to testify in court. . . . I was driving behind the bus and I saw it happen. He's going to force me to go over all this again. Then all those other lawyers are going to line up behind him and try to do the same thing."⁹⁷

Billy is finally unable dissuade Sam.⁹⁸ The good father turns out to be powerless before the Pied Piper of law; but Nicole is not. Billy is, in her eyes, the embodiment of the good man and the good father she does not have. Moreover, earlier in the film

and though recalling the unique, singular, and original quality of the former event, the second emphasizes that it is more than one. . . . Repetition describes a longing for an identity between two terms even as it stages the impossibility of literal identity."

⁹³ What Derrida (1995:54) says about Abraham is also true of Billy Ansel. They both recognize that "[e]ven if one thinks one knows what is going to happen, the new instant of that happening remains untouched, still inaccessible, in fact unlivable."

⁹⁴ He resists Stephens's efforts to convince his neighbors that there is an identifiable cause of the accident, asking one of them why she believed the lawyer's theories about an inadequate bolt or a faulty guardrail. "You believe that?" he asks. "I have to," she answers. "Well, I don't," he insists.

⁹⁵ Trauma is "the response to an unexpected or overwhelming violent event or events that are not fully grasped as they occur, but return in repeated flashbacks, nightmares, and other repetitive phenomena" (Caruth 1996:91).

⁹⁶ For a different view of the capacity of law to help the healing process after traumatic events, see Minow 1998:61–70.

⁹⁷ Saying, "I saw it happen," Billy reminds us that we too saw it happen. This reminder provokes viewers to retrieve their own experience of witnessing the bus go off the road and to imagine the dread of having to relive that event over and over in a rhythm and manner that—while it may stand in the way of completing the work of mourning—is nonetheless what law requires.

⁹⁸ Billy appeals to Sam as one good father to another, as one respected citizen to another, "If you would drop your case," he pleads, "then the others would come to their senses. You are good, sensible parents. People respect you." When that fails, he responds to Sam's greed by offering to give him the "money I got for my kids." And, when even that does not work, he appeals to what he mistakenly thinks will be a shared longing to restore the order of their community, but that too falls on deaf ears.

we see her trying on the clothes left behind by Billy's dead wife; trying on, if only in fantasy and imagination, another, very different, relationship with him.

Overhearing his futile efforts to get Sam to drop the suit, she is, in a sense, forced to choose between these fathers. The lie that kills the lawsuit, then, is not only an act of revenge, it is also an act of love. Nicole, unlike Abraham, is able to rescue love from law. Through her lie she saves Billy from the law he so deeply dreads, and she asserts the priority of ethics over duty (see Derrida 1995:61). She is at one and the same time the Pied Piper, exacting vengeance in response to the "sins" of fathers, and the lame child, saving Billy, her village, and ultimately herself, from the Piper.⁹⁹

But even more important, her lie speaks the truth to power that neither law nor fathers want to hear. It names the truth that blame can and should be assigned to fathers who abuse their power and injure their children as it points out yet another of the failings of the law. The lie effectively substitutes Sam, who several times during the film is shown driving his car, for Dolores, the woman who drove the bus; the lie about one driver called forth to tell the truth about the other.¹⁰⁰

Emphasizing Nicole's empowerment and the importance of her voice and vision in helping us re-imagine the law of the father, *The Sweet Hereafter* concludes its dialogue with Nicole speaking, again in voiceover, first to Stephens and then to Billy. Her words provide yet another perspective on loss, dread, and mourning by painting a vision of recovery. As Stephens sits in a limousine at an airport, looking straight into the camera, we hear her say, pointing out his continuing bewilderment, "[t]wo years later I wonder if you realize something. I wonder if you understand that all of us—Dolores, me, the children who survived, the children who died . . ."

Then, cutting to Billy's garage, the camera captures a crane gently raising the damaged bus, the end of the lawsuit having finally freed the dead children to make a long-delayed journey to heaven. With the bus suspended in midair in the background, Billy stands, at first with his back to the camera, hat in hand, in a gesture of respect and mourning. He turns away from this symbol of death, and looks straight at us (see Photo 6), reminding us

⁹⁹ Over closeups, first of the lips of her father and then of Stephens, we hear her voice, again reciting the fable, "And why I lied he only knew. But from my lie this did come true. Those lips from which he drew his tune were frozen as a wintry moon."

¹⁰⁰ When the film substitutes Sam for Dolores and shows the truth behind the lie, *The Sweet Hereafter* calls to mind Freud's (1965b:106) own reluctance to accept the truth of the stories his patients told him of being seduced by their fathers. "In the period in which the main interest was directed to discovering infantile sexual traumas, almost all my female patients told me that they had been seduced by their father. I was driven to recognize in the end that these reports were untrue and so came to understand that hysterical symptoms are derived from phantasies and not from real occurrences." For a discussion of this problem in Freud, see Masson 1992.

that he (and we) “saw it (the bus accident).” Billy has heard the call of “the dead child, the child in its irreducible inaccessibility and otherness, . . . (saying) to the father: *wake up, leave me, survive . . .*, survive no longer simply as the father of a child, but as one who must tell *what it means to see*” (Caruth 1996:105). His work of mourning is now complete.¹⁰¹

Then the camera moves from a closeup of his face to that of Nicole, who continues, enveloping him in her vision, “we are all citizens of a different town now, a place with its own special rules, its own special laws, a town of people living in the sweet hereafter.” The last word in this film then is given neither to law nor to a father, but to a child’s hope for a resolution of this culture’s ambivalence about law and fatherhood. From the film’s diverse images of fathers in mourning she has chosen a new father. What neither law nor fatherhood can do—namely, recuperate or transform itself—can be done, if at all, only by their victims and only in the dreams of a female child.¹⁰²

Nicole’s words point to a transformation of our desires and anxieties as a new town rises from the tragedy of the old. “The passing on of the child’s words,” Caruth (1996) remarks, commenting on the “dream of the burning child,” “transmits not simply a reality that can be grasped in these words’ representation, but the ethical imperative of an awakening that has yet to occur” (122). This new town will bring with it new rules and new law, which will be neither violent nor indifferent and which will no longer seduce the innocent with false promises and empty hopes.

But is this only a child’s innocent hope? Can it be realized in a less-than-perfect world, or only in “the sweet hereafter”? That this is a child’s vision, with its fleeting temporality, is suggested by the visual climax of the film, in which the camera slowly closes in on Nicole’s smiling face, returning to the expression that we first saw on her face, now framed by a sign of childhood pleasure, a spinning Ferris wheel. Her gaze is now directed at Billy, in a visual notation of the substitution that her work has made possible. Like the film’s viewers, she has been shown what fathers do and what fathers can be. Her choice sideshadows the law of the father with which we live.

However, suggesting that such resolution is an uncertain possibility at best, the camera flashes back to a time before the incest and the accident, when Nicole babysat for Billy’s children. Or, is it the future in a heavenly world? We see her closing the book *The Pied Piper* and gently kissing Billy’s sleeping (now dead) children, each seemingly safe in bed. She shuts out their lights and

¹⁰¹ “Mourning,” Freud (1959:98) says, “occurs under the influence of reality testing; for the latter function demands from the bereaved person that he should separate himself from the object, since it no longer exists.”

¹⁰² It is important to note that the voice we hear is a female voice. Nicole stands in for a female imaginary, operating in a complex relationship to male power and desire.

walks, freed from her wheelchair future, her back to the camera, into Billy's bedroom. The camera provides a fleeting glimpse of a wooden floor and a bed, revisiting the opening shot of Stephens and his family, leaving us to wonder what role Nicole would play in this bedroom,¹⁰³ and leaving open the possibility that, like a female Oedipus, *she* has been condemned for her own desire to slay one father and sleep with another.

And, just before the screen goes to black, Nicole moves slowly away from us toward, a window now caught in the glare of the highlights of an approaching vehicle (see Photo 7). Is this Billy's truck, bringing him home to her? Or, is it Sam's car, coming to pick her up and return her to the moment of incest? Is this a moment of domestic bliss preserved in a future that rewrites the past? Or is it a passing memory of a time that we know will soon be shattered?¹⁰⁴ *The Sweet Hereafter* leaves these questions unanswered, calling on us to consider law and fatherhood in a different narrative, but one that, like law itself (Fitzpatrick 1997), "is caught between the lives we lead and those we wish for, for ourselves and those we love?"

IV. Conclusion

Law lives in images that today saturate our culture and that have a power all their own. In these images law and fatherhood are symbolically joined, the one often becoming a substitute for the other. They remind us of a dread-inspiring power wielded by fathers over innocents.¹⁰⁵ We are also called to remember, as Frank (1930:249) observes, that "[a]ll children have a dual attitude toward the father. The child needs a belief in an all-powerful, all-wise parent. Yet that parent ever and again takes on the aspect of a harsh tyrant. . . ." The all-powerful father who becomes a harsh tyrant captures an ambivalence rooted in the recognition that accompanying law's power to protect is the horrifying possibility that its power can be exercised willfully, cruelly, and wantonly against all, or any, of us, and that our fathers may

¹⁰³ The film is framed by two images of parental bedrooms. And this one, like the opening shot of Stephens sharing a bed with his wife and young daughter, serves as another reminder of the erotic dimensions of the parent-child bond. However, in this last scene viewers are invited to contemplate that bond through the fantasy of the child, a child powerful enough to "slay" one father in order to be with another.

¹⁰⁴ This is an instance of what Morson (1994:13) calls "backshadowing." It is a form of "foreshadowing after the fact: the past is treated as if it had inevitably led to the present we know and as if signs of our present should have been visible to our predecessors."

¹⁰⁵ What Denver says in Toni Morrison's *Beloved* (1987:205), speaking about how she lives with the knowledge of her mother's murder of Beloved, captures a widely shared, if not conscious, anxiety, doubt, and dread about parents and about law and fatherhood in a world of Abraham's God and in a world of Abrahams, of Joshua's father, and the Court that did not come to Joshua's rescue: "All the time," Denver says, "I'm afraid the thing that happened that made it all right for my mother to kill my sister could happen again. I don't know what it is, I don't know who it is, but maybe there is something else terrible enough to make her do it again."

well abandon us to that power.¹⁰⁶ As a result, we seem to be trapped in a recurring cycle of desire and anxiety. We invest both law and fathers with a burden they cannot possibly bear—providing security against threats, some predictable, most totally unpredictable, that hover over us. At the same time we want to believe that it is possible to escape from the companion threats posed by investing so much power in them. We want to imagine that their power is less dangerous than we know it to be. Thus we want both also to be fragile and fallible, lest we—like Isaac before Abraham and Joshua DeShaney before his father—be ever vulnerable to them (see McKee & O'Brien 1982). My exploration of the image of the law of the father in film, with all of the conflicted desires and anxieties associated with it, provides, I have tried to suggest, a reminder of the vulnerability of fathers and of law, of both as a site of "lack." It also opens us up to the contingency contained in any age and holds out possibilities for re-imagining law in its complex relations to fatherhood. Film gives testimony to the fact that, as Morson (1994:115) says about narrative, time is always "*a field of possibilities*, (and that) each moment has a set of possible events . . . that could take place in it." It quite literally restores vision and brings the field of possibility into view. It "recreates the *fullness of time* . . ." When we watch the moving image we have the chance to confront what was, what is, what might be, multiply, fluidly, and often in ways that are hard for us to grasp.

But is this our work? Is it the work that law and society scholars can and should do? Should we belatedly take up Macaulay's (1987) invitation to explore law in the image? What would be the consequences for our work if we did?

Exploring the legal imagination in and through mass mediated images, exploring law as image, is, I believe, the next frontier for our work. The time is long overdue for us to join Macaulay's (1987) expeditionary force. Mass mediated images are as powerful, pervasive, and important as the other social forces (e.g., globalization, neo-colonialism, structural disempowerment of the poor) with which our work is already engaged. Like our engagement with these critical end-of-the-century phenomena, reading film or taking on cultural studies may leave us less in place by leading us to new places in our understanding of law. It will, if taken seriously, challenge some of the key assumptions of our work even as it calls on us to develop new competencies. We will be impoverished if we allow ourselves to ignore the imagined world of law, or if we too quickly reassure ourselves that our fa-

¹⁰⁶ Hartman (1996:30) observes that the episode described in Genesis 22 "does not imply an authoritative rule of conduct that can be learnt . . ." He argues that because the cause of God's command to Abraham is unmotivated, readers will be inspired by a fear of God's unknowable, unpredictable side. "Something in us," he says, "is never sure about the sacrifice not taking place, once its possibility has been suggested" (34).

miliar, comfortable questions and tools will be adequate as we confront that world.

I am confident that whatever one's attitude toward the mediated image or one's position on the question of whether, or how, to take on cultural studies, the only thing with which we can rest easy is our restlessness, our energetic insistence on pushing the boundaries of legal scholarship as it is conventionally defined. The task for the Law and Society Association is regularly to challenge its own doggedly conventional assumptions about what is worth studying, about the theories and methods that we use, and about what counts as sociolegal scholarship.¹⁰⁷ We need to be ever alive to our own taken-for-granted and to always move, insofar as we are able, to unearth them, putting ourselves and them under critical scrutiny. We should insist on this as fathers, and in those whom we call our fathers, as well as in the work we do and the attitudes we bring to law and society research. As Dumm (1990:48) suggests, studying law is a "constant reminder of the father who must be killed, one more time, always one more time, if the children are to be free."

I have held out *The Sweet Hereafter* as one powerful example in which popular culture highlights this need and focuses attention on what Stuart Scheingold calls "paradoxes of power" as they emerge in both fatherhood in law.¹⁰⁸ While this film invites our pleasure in witnessing the failures of fatherhood, as well as of law, and the occasional, though perhaps fleeting, triumphs of their victims over them, it portrays an ongoing quest for a law that tries, even if it does not succeed, to avoid the sacrifice of innocents and for fathers who will neither abuse nor abandon their children. But it also reconfigures our position as viewers inviting us into its own distinctive juridical framework, marking a place where law exists inside of, not outside of, the image.

The law that we find there hardly seems to be an antidote to fate. It is vulnerable to excess or indifference, to lies, and to loss. And fathers hardly fare much better. They abuse their power and/or abandon their children. Even when they do try to protect them, they are unable to do so. *The Sweet Hereafter* points the way to an imperative of judgment grounded in appearances and to a methodology as we seek to re-image the law of the father. It does both in its plural and temporally located images of law and fatherhood and in a narrative style that shows the same events from many different angles. It asks us to see the law of the father through the lens of childhood innocence and its sacrifice, but also through fatherhood's eyes. In so doing it shows us that, as

¹⁰⁷ Doing so through research on the mediated image provides the special pleasure of being able to watch movies and call it work, and of thinking that we are doing so for "the benefit of the law and society movement" (Macaulay 1987:214).

¹⁰⁸ This phrase was contained in a note from Scheingold to the author.

powerful as fathers appear to their children, their powers are not limitless. They too live in a world of loss, dread, and mourning.

Yet *The Sweet Hereafter* makes the contingencies and possibilities of law and fatherhood available to us. It holds out the possibility that we need no longer live, if we ever had to, in the world of Abraham's solitary encounter with a unified, omnipotent, commanding law, or in the world in which Joshua DeShaney finds himself caught between an abusive father and an indifferent legality. Neither the law nor the fathers that we dread, this film suggests, are the law or the fathers that we *must* be or *must* have. It shows law to be fragmented, contested, polyvocal. And, it contains many imagined fathers: some who are kind, some who are not; some who are attentive, some who are not; some who are confused, some who are not; some in defeat, some perhaps on the way from mourning to redemption. While law and fatherhood will always be sites for registering loss, dread, and mourning, the nature of the losses they impose, the depth of the dread they inspire, and the occasions of the mourning they entail, as well as the losses, dread, and mourning they endure, are contingent and variable.

While we may not live in the sweet hereafter, we need not remain inert in the world in which we find ourselves, or with the fathers or the law that we find there. Much stands between us and the world that the title of this film names, but foremost is the need to speak and write about, even on ceremonial occasions and in the pages of scholarly journals, the horrible prospect and pain of losing a child and about law's dreadful inadequacy in the face of such a loss.

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