

FATHERS IN LAW: VIOLENCE AND REASON IN *12 ANGRY MEN*

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Judges and lawyers, like other humans, 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 upon them. But before 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.

Chief Justice William Rehnquist, *DeShaney v. Winnebago*<sup>1</sup>

Why do men seek unrealizable certainty in law? Because . . . they have not relinquished the childish need for an authoritative father and unconsciously have tried to find in the law a substitute for those attributes of firmness, sureness, certainty and infallibility ascribed in childhood to the father.

Jerome Frank, *Law and the Modern Mind*<sup>2</sup>

## INTRODUCTION

*12 Angry Men*, directed by Sidney Lumet, remains, fifty years after its debut, a classic jury film. Largely staged within the confines of a single room it raises profound and vexing questions about the nature and value of jury deliberation.<sup>3</sup> It is, in addition, rightly viewed as a film in which some of its era's best actors came together to stage, for a mass audience, a celebration of civic virtue and the seeming triumph of reason over passion and prejudice.<sup>4</sup>

Nonetheless, for me, *12 Angry Men* is as much a film about fatherhood and law as about juries and civic virtue.<sup>5</sup> It is a powerful

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1. 489 U.S. 189, 202–03 (1989).

2. JEROME FRANK, *LAW AND THE MODERN MIND* 22 (Anchor Books 1963).

3. See Phoebe C. Ellsworth, *One Inspiring Jury*, 101 MICH. L. REV. 1387 (2003); see also Stephen A. Armstrong & Robert C. Berg, *Demonstrating Group Process Using 12 Angry Men*, 30 J. SPECIALISTS GROUP WORK 135 (2005); David Buchanan & Andrzej Huczynski, *Images of Influence: 12 Angry Men and Thirteen Days*, 13 J. MGMT. INQUIRY 312 (2004).

4. See Bill Nichols, *The Unseen Jury*, 30 U.S.F. L. REV. 1055 (1996); David Ray Papke, *Law, Cinema, and Ideology: Hollywood Legal Films of the 1950s*, 48 UCLA L. REV. 1473, 1483–84 (2001); Jeanine Young-Mason, *The Dangers of Moral Mediocrity: Reginald Rose's 12 Angry Men*, 13 CLINICAL NURSE SPECIALIST 248 (1999).

5. Here I am following in the footsteps of Frank Cunningham, *Sidney Lumet's Humanism: The Return of the Father in Twelve Angry Men*, 14 LITERATURE/FILM Q. 112 (1986). I have analyzed other

presentation of sons subject to paternal brutality, of fathers tormented by their sons, and of the very real possibility of sons murdering their brutal fathers. This film thus deploys complex images of fatherhood, as a site and source of violence and anger. By presenting those images it reminds us of law's own complex relationship to reason and violence.<sup>6</sup>

But, it also offers up an era's image of idealized fatherhood, with its potential to redeem law itself.<sup>7</sup> Just as Chief Justice Rehnquist's opinion in *Deshaney v. Winnebago* presents an image of duty triumphing over desire, of the good judge as one who does not give in to "impulse[s],"<sup>8</sup> so the film's heroic Juror #8 (played by Henry Fonda) earns the admiration of the film's imagined audience by enacting another kind of fatherhood as well as by scrupulously and unquestioningly adhering to law's existing rules and conventions and submitting to the image of the good judge as one who separates public and private, reason from emotion.<sup>9</sup>

### I. IS/CAN LAW BE THE SURROGATE FATHER?

Fathers and fatherhood have long played an important role in the way we think about law, and in exemplifying the various faces of law's power.<sup>10</sup> Imagining law as a father or the law of the father rightly arouses both desire and anxiety, hope and fear. Here let me note just two examples, one ancient, one more recent, which capture the desires and anxieties which attach themselves to the law of the father. The first is the biblical story of Abraham and Isaac, the law of the father, the Father as law in its original form.

As Genesis tells it, God calls on Abraham to slay his beloved son,<sup>11</sup> unpredictably, inexplicably directing him to renounce love for, and to

law/fatherhood films elsewhere. See Austin Sarat, *Imagining the Law of the Father: Loss, Dread, and Mourning in The Sweet Hereafter*, 34 *LAW & SOC'Y REV.* 3 (2000); Austin Sarat, *Living in a Copernican Universe: Law and Fatherhood in A Perfect World*, 43 *N.Y.L. SCH. L. REV.* 843 (1999).

6. See Austin Sarat & Thomas R. Kearns, *A Journey Through Forgetting: Towards a Jurisprudence of Violence*, in *THE FATE OF LAW* 209, 268-69 (Austin Sarat & Thomas R. Kearns eds., 1991).

7. As Cunningham puts it, in this film "Lumet interweaves . . . a motif of fathering that becomes an important visual correlative to the theme of the necessity for personal responsibility in an increasingly depersonalized, bureaucratized world." Cunningham, *supra* note 5, at 115.

8. 489 U.S. 189, 202 (1989).

9. This image is discussed in Susan Bandes, *Introduction to THE PASSIONS OF LAW* 1, 6 (Susan A. Bandes ed., 1999).

10. For one particularly important recent treatment of law and fatherhood, see Martha Fineman, *Law of the Father* (1999) (unpublished manuscript).

11. This is, as Hartman observes, surprising. "[O]ne 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." Geoffrey H. Hartman, *The Blind Side of the Akedah*, 16 *RARITAN* 28, 31 (1996).

abandon his child to, a law that shows itself as a world-commanding will.<sup>12</sup> 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.<sup>13</sup> We wait for, and want, Abraham's torment if not his rebellion.<sup>14</sup> We expect fear, at the prospect of his impending loss, to overwhelm him.

But it does not. Abraham is the obedient servant of law, compliant before its overwhelming power, who asks no questions, issues no protests,<sup>15</sup> 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."<sup>16</sup> 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.<sup>17</sup>

In the Judeo-Christian tradition, the Abraham and Isaac story is a paradigmatic exemplification of law's claims and its powers, of the

12. "The drama of the Akedah, then, 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 . . ." *Id.* at 35.

13. See JACQUES DERRIDA, *THE GIFT OF DEATH* (David Wills trans., 1995); see also Lippman Bodoff, *The Real Test of the Akedah: Blind Obedience Versus Moral Choice*, 42 JUDAISM 71 (1993). Genesis 22 is what Hartman 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." Hartman, *supra* note 11, at 32.

14. Jon D. Levenson, *Abusing Abraham: Traditions, Religious Histories, Modern Misinterpretations*, 47 JUDAISM 259 (1998). As Kafka 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 . . ." Franz Kafka, *Parables and Paradoxes* 41 (Schocken Books 1958).

15. Abraham passes God's test because, as the text proclaims, he has not "withheld thy son, thine only son, from me." *Genesis* 22:16. 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." *Genesis* 22:17–18. Abraham becomes a father, the father to all Semitic peoples, only as he shows himself willing to sacrifice his son. See Bodoff, *supra* note 13; see also Judah Goldin, *Introduction to SHALOM SPIEGEL, THE LAST TRIAL: ON THE LEGENDS AND LORE OF THE COMMAND TO ABRAHAM TO OFFER ISAAC AS A SACRIFICE: THE AKEDAH*, at vii (1969).

16. *Genesis* 22:7. The human voice that first is 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 . . ." *Genesis* 22:7–8. 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, *supra* note 13. 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.

17. 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.

presentation of law as the Father but also the father as law. It is also a story of fatherly failure before the law, of the abandonment of a child, of a father's failure to protect an innocent in the face of an arbitrary and unjust threat. As Derrida 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 absolutely 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 . . .<sup>18</sup>

The story of Abraham and Isaac is thus enormously important for the ways this culture imagines law as well as fatherhood. The Law which we encounter in Genesis, rather than rescuing us from danger, is its source, rather than preventing loss, threatens to impose it, rather than allying itself with fatherhood, exposes the weakness and vulnerability of all fathers, and rather than providing a structure within which to order and reorder the world is itself a profoundly disordering force.<sup>19</sup>

More usually, law at least promises to protect innocent life by securing children when fathers turn cruelly against them.<sup>20</sup> 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*.<sup>21</sup>

In that well-known if not well-regarded case,<sup>22</sup> 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.<sup>23</sup> What draws

18. Derrida, *supra* note 13, at 72.

19. See generally PETER FITZPATRICK, *THE MYTHOLOGY OF MODERN LAW* (1992). "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, *supra* note 15, at x.

20. For an important discussion of the role of law in regard to paternal power, see JOHN LOCKE, *Of Paternal Power*, in *SECOND TREATISE OF CIVIL GOVERNMENT AND A LETTER CONCERNING TOLERATION* 27 (J.W. Gough ed, 1946).

21. 489 U.S. 189 (1989).

22. For examples of critical commentary, see Susan Bandes, *The Negative Constitution: A Critique*, 88 MICH. L. REV. 2271 (1990); Aviam Soifer, *Moral Ambition, Formalism, and the "Free World" of DeShaney*, 57 GEO. WASH. L. REV. 1513 (1989).

23. 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." Martha Minow, *Words and the Door to the Land of Change: Law, Language, and Family Violence*, 43 VAND. L. REV. 1665, 1668 (1990).

my attention to this opinion is, however, not its oft-noted doctrinal formalism but rather its rhetorical positioning of the law as a stern, aloof father.

Late in this opinion, Chief Justice Rehnquist notes that “Judges 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, he warns, “before 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.”<sup>24</sup> 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 “natural sympathy,” like Abraham, abandoning innocence in the face of danger.<sup>25</sup> And, like Rehnquist, *12 Angry Men* celebrates the separation of duty and desire, role and person, and positions the idealized father as distant, deliberative, strong, but slow to anger.

It is the doubling of fatherly betrayals that again highlights both fatherhood’s and law’s power. 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, as well as *12 Angry Men*, suggest that law and fatherhood are mutually constitutive; law and fatherhood are inseparable, each lives in and as the other. Moreover, Genesis, *DeShaney*, and the film frame our recurring doubt and ambivalence about fatherhood and law, the fears and desires that are focused on both.

Just as the biblical narrative, the Supreme Court decision, and the film present fathers before the law, fathers as law, and law as the father, so too legal scholars, following Freud, have called attention to the complex associations of paternity and legality.<sup>26</sup> They have portrayed a deep-seated

24. *DeShaney*, 489 U.S. at 203.

25. 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!” *Id.* at 213 (Blackmun, J., dissenting). 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, “Victim 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. *Id.*

26. See SIGMUND FREUD, *TOTEM AND TABOO* (James Strachey trans., 1950). As Althusser puts it, [A]ny 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

longing for paternal power and 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*.<sup>27</sup> There Frank suggested that law, like religion, is a projection of a widely shared human need for certainty and security in a world of danger,<sup>28</sup> and he invited us to think of law as the father or, more precisely, as the father-substitute.<sup>29</sup> "To the child," Frank argued, "the father is the Infallible Judge, the Maker of definite rules of conduct. He knows precisely what is 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."<sup>30</sup> Exploring similar themes, Peter Goodrich 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 in its methods. To some extent that account of the legal order reflects an institution embedded in a history of homosocial power and a continuing male privilege.<sup>31</sup>

But other readings of Freud suggest that there is another side to fatherhood, and perhaps of law, a side associated with loss, lack, and 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

beginning, and has always been the beginning, even when there is no living Father (who is Law), hence of the Order of the human signifier, i.e. of the Law of Culture.

LOUIS ALTHUSSER, *Freud and Lacan, in LENIN AND PHILOSOPHY AND OTHER ESSAYS* 189, 212 (Ben Brewster trans., 1971) (footnote omitted).

27. FRANK, *supra* note 2.

28. *Id.* at 196–97. "[T]he psychoanalytic foundational fiction of the origin of the law and civilization is tormented by the dilemma of positing simultaneously that its origin myth 'really happened' and that its 'memory' is instituted by an unconscious explanation of unnatural restraints on individual will." See Jonathan Boyarin, *Another Abraham: Jewishness and the Law of the Father*, 9 YALE J.L. & HUMAN. 345, 350 (1990).

29. Fitzpatrick emphasizes that the law of the father is an "impossible joining of determination and what is ever beyond determination." Peter Fitzpatrick, *'In the Exigency of His Longing': Freud's Discovery of Law and Fiction in Totem and Taboo*, 32 NEW FORMATIONS 143, 155 (1997). He reads Freud's *Totem and Taboo* to suggest that "The power of the primal father is complete, it is unlimited and unrestricted, 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." *Id.* at 154.

30. FRANK, *supra* note 2, at 19. "The law is a near substitute for that father, a belief in whose infallibility is essential to the very life of the child." *Id.* at 264. He continues, "Despite advancing years, 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 . . ." *Id.* at 20. "[D]riven by fear of the vaguenesses, the chanciness of life," he argues, man "has need of rest. Finding life distracting, unsettling, fatiguing, he tries to run away from unknown hazards." *Id.* at 210–11.

31. Peter Goodrich, *Maladies of the Legal Soul: Psychoanalysis and Interpretation in Law*, 54 WASH. & LEE L. REV. 1035, 1074 (1997).

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 fate that befalls Abraham, Oedipus, or us 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 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?’*”<sup>32</sup> 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 says, 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. . . . [T]he 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.<sup>33</sup>

On this reading, it is a failed grasp and a failure to “respond adequately” that makes fathers who we are.<sup>34</sup>

But perhaps this is not just another side of the law of the father. As feminist theorists like Kaja Silverman have pointed out, because the law of the father conjures a mythical fullness and plenitude, it simultaneously marks a void, an absence.<sup>35</sup> In this sense there is no other side to the story. As Silverman notes, 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.’”<sup>36</sup> The phallic legacy is constituted by lack and the intense effort to avoid its recognition.<sup>37</sup>

32. SIGMUND FREUD, *THE INTERPRETATION OF DREAMS* 547–48 (James Strachey trans., 1965).

33. CATHY CARUTH, *UNCLAIMED EXPERIENCE: TRAUMA, NARRATIVE, AND HISTORY* 92, 103 (1996).

34. 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 IRVIN D. YALOM, *LOVE’S EXECUTIONER & OTHER TALES OF PSYCHOTHERAPY* 118–43 (1989).

35. See KAJA SILVERMAN, *MALE SUBJECTIVITY AT THE MARGINS* (1992).

36. Kaja Silverman, *Historical Trauma and Male Subjectivity*, in *PSYCHOANALYSIS & CINEMA* 110, 110–11 (E. Ann Kaplan ed., 1990).

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.

While Silverman's invitation to rethink male subjectivity is helpful for what it can tell us about the fragility and vulnerability of both law and patriarchy,<sup>38</sup> 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.

*12 Angry Men* 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,<sup>39</sup> as likely to feel fear as to inspire it, as likely to suffer loss as to impose it. It dramatizes both the aspirations of 1950s manhood as well as what Silverman calls "the vulnerability of conventional masculinity. . . ."<sup>40</sup>

This film creates a juridical space in which fathers are cast in the role of jurors and in which law of the father can be subject to judgment. It puts law and fatherhood on trial and invites its viewers to participate as judges and jurors.<sup>41</sup>

This film also offers viewers the chance to contemplate the plight of "lost" children, or of childhoods that are lost, and, at the same time, to occupy a childlike identity. Sitting in a darkened room the spectator is herself another lost child.<sup>42</sup> By helping us take on this identity, *12 Angry Men* exposes the complex structure of desire and anxiety that is attached to law and fatherhood.<sup>43</sup> In it we see our continuing search for good fathers and good law as well as our fear that we will find neither, our hope that the

38. "Male subjectivity," Silverman suggests, "is a kind of stress point, the juncture at which social crisis and turmoil frequently find most dramatic expression." Silverman, *supra* note 36, at 114.

39. In this it provides an important contrast with film's more traditional portrayals of fatherhood. See Donald Lyons, *The Long Goodbye: Fathers and Sons and American Cinema*, *FILM COMMENT* July-Aug. 1998, at 54.

40. SILVERMAN, *supra* note 35, at 53; see also *MALE TROUBLE* (Constance Penley & Sharon Willis eds., 1993).

41. What Clover claims is true of much cinema is, I am arguing, also true of *12 Angry Men*. Carol J. Clover, *Law and the Order of Popular Culture*, in *LAW IN THE DOMAINS OF CULTURE* 97 (Austin Sarat & Thomas R. Kearns eds., 1998). Clover 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 deeply embedded in our narrative tradition that they shape even plots that never step into a courtroom . . ." *Id.* at 99-100.

42. See Laura Mulvey, *Visual Pleasure and Narrative Cinema*, in *NARRATIVE, APPARATUS, IDEOLOGY* 198, 201 (Philip Rosen ed., 1986).

43. Silverman surveys a number of films which, in her words, "attest with unusual candor to the castrations through which the male subject is constituted . . ." SILVERMAN, *supra* note 35, at 52. While she focuses on particular historical moments as being particularly 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 Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 *WIS. L. REV.* 527.

law of the father will be a protective one as well as the worry that it will not be.<sup>44</sup> We love the protection fathers and law sometimes provide, but fear the power that lies behind it. As Freud puts it in *Totem and Taboo*, 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 . . . .”<sup>45</sup> Each of the sons, Freud says, “hated their father, . . . but . . . loved and admired him too.”<sup>46</sup> Living with images of fathers like 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. *12 Angry Men* delivers such satisfaction for its viewers.

That this film was written and directed by men and contains no female characters is of no little significance. There is no doubt that, from one angle, it can be read as both an idealization of masculinity and the whining of the privileged since it is preoccupied with not only the vulnerabilities of children to their fathers but also the vulnerabilities of fathers in relation to their children. Yet by focusing on these subjects it first 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,<sup>47</sup> 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.

44. “[W]hen 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.” Sandy Flitterman-Lewis, *Psychoanalysis, Film, and Television*, in CHANNELS OF DISCOURSE, REASSEMBLED: TELEVISION AND CONTEMPORARY CRITICISM 203, 211 (Robert C. Allen ed., 1992). And as Goodrich 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 . . . .” PETER GOODRICH, OEDIPUS LEX: PSYCHOANALYSIS, HISTORY, LAW 33 (1995).

45. FREUD, *supra* note 26, at 142.

46. *Id.* at 143.

47. See LEONARD BENSON, FATHERHOOD: A SOCIOLOGICAL PERSPECTIVE (1968); ROBERT L. GRISWOLD, FATHERHOOD IN AMERICA: A HISTORY (1993); THE FATHER FIGURE (Lorna McKee & Margaret O’Brien eds., 1982). It is only, Silverman 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 . . . .” SILVERMAN, *supra* note 35, at 74.

## II. FATHERS, SONS, AND VIOLENCE

At the outset I confess to a philosophical bias against people who take the law into their own hands and execute their supposed tormentors. I am particularly opposed to patricide.

Judge Brown, *Jahnke v. State*<sup>48</sup>

Because the jurors in *12 Angry Men* are asked to determine the guilt or innocence of a boy on trial for the murder of his father, the film reminds its viewers of the crucial connection between filial violence and the origins of law. Thus it references the Freudian notion that law had its genesis in the guilt stemming from the murder of a powerful patriarch: after the tyrannical father is killed, the sons continue to follow the patriarchal dictates by which they have always lived. According to the Freudian myth, “[o]ne day, the brothers who had been driven out came together, killed and devoured their father and so made an end of the patriarchal horde.”<sup>49</sup> In a single sentence Freud thus summed up the “memorable and criminal deed” that served as the foundation and chief precondition of psychoanalytic thought and the main source of the sense of guilt.<sup>50</sup>

For Freud, this past is not something that can be completely outgrown by either the individual or society but rather is something that remains a vital and often disruptive part of existence.<sup>51</sup> *12 Angry Men* calls attention to this residue of the past and the ways it both reproduces the need for law and also lends it vitality in the present. In this sense the film opens up the possibility that law “needs” that which it seeks to repress, namely patricide.

The prosecution, as relayed to us in the recollection of jurors, alleged that the boy on trial in *12 Angry Men* killed his father after being beaten by him. As Juror #8 (Fonda) puts it reviewing the testimony of a couple of witnesses, “They heard an argument, but they couldn’t hear what it was about. Then they heard the father hit the boy twice, and finally they saw the boy walk angrily out of the house. . . .”<sup>52</sup> Disputing the fact that the beating provided a motive for the murder, he continues, “Well, I don’t think it’s a very strong motive. This boy has been hit so many times in his life that

48. 682 P.2d 991, 1009 (Wyo. 1984) (Brown, J., concurring).

49. FREUD, *supra* note 26, at 141 (footnote omitted).

50. *Id.* at 142–43.

51. See Carl E. Schorske, *Politics and Patricide in Freud’s Interpretation of Dreams*, 78 AM. HIST. REV. 328 (1973).

52. Reginald Rose, *Twelve Angry Men*, in FILM SCRIPTS TWO 156, 189 (George P. Garrett, O.B. Hardison & Jane R. Gelfman eds., Irvington Publishers 1989) (1972) (screenplay version of the film 12 ANGRY MEN (Orion-Nova Productions 1957)).

violence is practically a normal state of affairs for him. I can't see two slaps in the face provoking him into committing murder."<sup>53</sup>

These lines are delivered in calm, measured tones, which register no sense of outrage at the routine brutality that this father directed at his son. Indeed, none of the jurors seems troubled by it. It is, for them, part of their taken-for-granted world, too common perhaps to merit any dramatic comment.<sup>54</sup> The closest we come to a denunciation of paternal violence occurs late in the film when Juror #8 is asked by another juror whether some one other than the defendant might have committed the murder. "Well I don't know," he says.

The father wasn't exactly a model citizen. . . . He was in prison once. He was known to be a consistent horse better. He spent a lot of time in neighborhood bars and he'd get into fist fights sometimes after a couple of drinks. . . . He was a tough, cruel, primitive kind of man who never held a job for more than six months in his life. So here are a few possibilities. He could have been murdered by any one of many men he served time with in prison. By a bookmaker. By a man he'd beaten up. By a woman he'd picked up. By anyone of the characters he was known to hang out with. . . .<sup>55</sup>

Juror #8 deploys a set of contrasts that organizes a particular way of seeing society, the most important of which is between the "model citizen" and the "tough, cruel, primitive kind of man." The former are clothed in respectability; they have steady jobs, do not gamble, do not hang out in bars. The latter lead lives so much on the edge of violence that anyone of a long list of possibilities could be responsible for their deaths.

The association of fatherhood and violence emerges again when Juror #3 (played by Lee J. Cobb) talks about his own son, and, in so doing, reminds the film's viewers of problems that may occur when democratic institutions, like juries, ask "tough, cruel, primitive men" to do the work of "model citizens." "I'll tell you about him," Juror #3 says, taking a photo of himself and his son from his wallet,

53. *Id.* at 190.

54. None of them says anything resembling the observation of Justice Rose of the Wyoming Supreme Court, who in an opinion in the case of a sixteen-year-old boy charged with killing his father, stated,

This case concerns itself with what happens—or can happen—and did happen when a cruel, ill-tempered, insensitive man roams, gun in hand, through his years of family life as a battering bully—a bully who, since his two children were babies, beat both of them and his wife regularly and unmercifully. Particularly, this appeal has to do with a 16-year-old boy who could stand his father's abuse no longer . . . .

*Jahnke*, 682 P.2d at 1011.

55. Rose, *supra* note 52, at 228.



When he was nine, he ran away from a fight. I saw him. I was so ashamed I almost threw up. So I told him right out. I'm gonna make a man outa you or I'm gonna bust you in half trying. Well I made a man outa him all right. When he was sixteen we had a battle. He hit me in the face! He's big, y'know. I haven't seen him in two years. Rotten kid. You work your heart out . . .<sup>56</sup>

Here *12 Angry Men* further develops its portrait of the “tough, cruel, primitive” kind of manliness and of its dangerous underside. To make his son into a man, this kind of father teaches him to be violent, never to run away from a fight. This fatherhood inscribes itself on the body of sons who, in the process of becoming men, become violent or are the objects of the violent rage of their fathers who “bust [them] in half.”

In two ways this lesson may be dangerous for the very fathers who teach it. First, the sons to whom it is addressed may turn against their fathers. The danger of violent fathering is the fathering of violence itself.<sup>57</sup> Thus Juror #3 presents himself as the victim of filial violence of a similar kind to what he is asked to judge in his role as a juror.

In the world of “tough, cruel, primitive” men the only way to protect fathers from the violence of their ungrateful, vengeful sons is through the awe-inspiring violence of law itself. As Juror #3 puts it when the tide of the jury's deliberation begins to turn against him, “What's the matter with you

56. *Id.* at 192.

57. As Frank argues fatherly authority which is “too oppressive” produces in children an “anti-authority bias.” “The violent rebel against authority,” he suggests, “is no more ‘free’ than the slave of authority; he is in bondage to a compulsion to revolt . . .” FRANK, *supra* note 2, at 249–50.

people? Every one of you knows this kid is guilty! He's got to burn! We're letting him slip through our fingers here!"<sup>58</sup> And, when Juror #8 suggests, "Maybe you'd like to pull the switch," Juror #3 responds, "For this kid? You bet I'd like to pull the switch!" As if the association of violence, law, and manliness were not clear enough, he accuses those who are not ready to see the boy "burn" of being "old ladies."<sup>59</sup>

The second danger of violent fathering is that violence, rather than preserving the father-son bond, destroys it. Indeed, that Juror #3 has lost his son is suggested by the presence of the photograph itself for, as Barthes reminds us, photographs are sites in which their viewers confront the image of something lost, something coming back to haunt us, calling us to the work of mourning.<sup>60</sup> As the film unfolds we come to see the extent to which Juror #3 is indeed mourning for his lost son, who early on can only be denounced as a "rotten kid." And this mourning, which expresses itself as rage, is displaced onto the child who stands accused by law of patricide as well as anyone who would defend him.

These two dangers call us to consider the father-son relationship as a site of both dread and mourning. By dread I mean "the fear of the unknown, the apprehension of a future heavy with the possibility of danger."<sup>61</sup> Dread is indeed the anticipation of loss, a kind of preparatory closing off because of which loss can perhaps be avoided.<sup>62</sup> It is both an "expectation of trauma, and on the other hand a repetition of it in a mitigated form,"<sup>63</sup> and trauma is precisely that loss which is unanticipated, one which is not the object of a pre-existing anxiety. Finally, dread, in

58. Rose, *supra* note 52, at 272. The colloquial, sadistic way in which Juror #3 talks about the death penalty stands in stark contrast to Juror #8's concern about the evidence that would justify "putting a human being into the electric chair." *Id.* at 239.

59. *Id.* at 272-73.

60. See ROLAND BARTHES, *CAMERA LUCIDA: REFLECTIONS ON PHOTOGRAPHY* (Richard Howard trans., 1981).

61. Gretchen A. Craft, *The Persistence of Dread in Law and Literature*, 102 *YALE L.J.* 521, 521 (1992). "The future that is known, or surmised," Phillips 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." ADAM PHILLIPS, *TERRORS AND EXPERTS* 53 (1995). Derrida 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.

DERRIDA, *supra* note 13, at 54.

62. As Freud 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." SIGMUND FREUD, *A GENERAL INTRODUCTION TO PSYCHOANALYSIS* 402 (Joan Riviere trans., 1975).

63. SIGMUND FREUD, *INHIBITION, SYMPTOMS AND ANXIETY* 92 (Alix Strachey trans., 1959).

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[].”<sup>64</sup>

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?<sup>65</sup> What is the connection of loss to mourning that law calls on us to remember and revisit? Is the work of mourning, as Rose contends, “the spiritual-political kingdom—the difficulty sustained, the transcendence of *actual* justice”<sup>66</sup> Or, is Goodrich 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”<sup>67</sup>

Central to any consideration of these question is, of course, Freud’s classic essay *Mourning and Melancholia*.<sup>68</sup> It treats mourning, of the kind experienced by Juror #3 as a predictable occurrence, a “reaction to the loss of a loved person,”<sup>69</sup> a “pain [that] seems natural to us.”<sup>70</sup> It is, in Freud’s view, a type of “work” in which the libido is “withdrawn from its attachments” to a lost object.<sup>71</sup> “[T]he mourning process,” as Bronfen explains,

64. *Id.* at 56. It is, as Freud says, “an admission of helplessness” in the fear of danger. *Id.* at 92.

65. One might also ask whether law can aid that work and facilitate its completion? Or, was Hayim Bialik 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.

Hayim Nahman Bialik, *On the Slaughter*, in *THE PENGUIN BOOK OF HEBREW VERSE* 512, 513 (T. Carmi ed., 1981).

66. GILLIAN ROSE, *MOURNING BECOMES THE LAW: PHILOSOPHY AND REPRESENTATION* 122 (1996).

67. GOODRICH, *supra* note 44, at 39.

68. 4 SIGMUND FREUD, *Mourning and Melancholia*, in *COLLECTED PAPERS* 152 (Ernest Jones ed., Joan Riviere trans., 1948).

69. *Id.* at 153.

70. *Id.* at 154. In mourning, we see feeling[s] 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.

*Id.* at 153. So easy is it to explain mourning that, as Freud 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.” *Id.*

71. *Id.* at 154. Derrida asserts that

involves an identification between 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.<sup>72</sup>

Yet Freud 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.”<sup>73</sup>

In *12 Angry Men* the jury’s deliberation over the death of a father becomes for Juror #3 the occasion to work through his loss and complete his mourning, a work that is facilitated by the calm, controlled, almost therapeutic, role played by Juror #8, onto whom Juror #3 also projects and transfers his rage, fear, and anger. Indeed it is Juror #8’s insight into the work that Juror #3 is doing through his jury service that provokes the following exchange:

#8: I feel sorry for you.

#3: Don’t start with me now!

#8: What it must feel like to want to pull the switch!

#3: Listen, you shut up!

#8: Ever since we walked into this room you’ve been behaving like a self-appointed public avenger!

#3: I’m telling you now! Shut up!

[w]hen 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 to oneself, according to oneself, and giving oneself this liberty of finitude, the most worthy and the freest possible.

Jacques Derrida, *By Force of Mourning*, 22 CRITICAL INQUIRY 171, 172 (1996).

72. Elisabeth Bronfen, *Risky Resemblances: On Repetition, Mourning, and Representation*, in DEATH AND REPRESENTATION 103, 106 (Sarah Webster Goodwin & Elisabeth Bronfen eds., 1993) (citation omitted). Or, as Cole puts it, “Mourning . . . is a performance of ambivalence on behalf of an absent presence.” SUSAN LETZLER COLE, THE ABSENT ONE: MOURNING RITUAL, TRAGEDY, AND THE PERFORMANCE OF AMBIVALENCE 1 (1985).

73. FREUD, *supra* note 68, at 154. 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.” *Id.* at 153. While Freud does not pursue that suggestion, it invites us to ask whether we can mourn the loss of law as a child mourns her father? Or, if not law itself, of a particular condition, type, or relation to, law? 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, *supra* note 66, at 1.

#8: You want to see this boy die because you personally want it, not because of the facts.

#3: Shut up!

#8: You're a sadist . . . .

At this point, Juror #3 lunges at Juror #8 and, while being restrained by several other jurors, shouts, "Let me go! I'll kill him! I'll kill him!"<sup>74</sup>



The end of his mourning is marked visually, in one of the culminating scenes of the film, when, standing alone, isolated from the other jurors, Juror #3 catches a glimpse of the photo of himself and his son which he'd left at his place at the jury's table.

74. Rose, *supra* note 52, at 273–74. Juror #8 uses this exchange to make the point that people sometimes say things that they do not mean. Just as Juror #3 probably would never have killed his substitute father so too the defendant may have said that he'd like to kill his father, without ever having intended to kill him.



Breaking down, he repeats a line from the earlier moment in the film when he first took out the photo, “Rotten kids. You work your life out. . . .” as he rips up the photo. With this symbolic destruction of the token of his loss, the symbol of his mourning, he now can vote to acquit the son accused of murdering his father.

Freud turned to mourning in the hope that it would shed some light on something extrinsic to itself, “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.<sup>75</sup> *12 Angry Men* helps us see how mourning sheds light on something else extrinsic to itself, namely the ways we imagine the being of fathers and of law.

### III. FINDING A GOOD FATHER

*12 Angry Men* offers an alternative vision of fathers in law and of law as the father, this time a vision of a “good” father, of father as “model

75. 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” which needs treatment. FREUD, *supra* note 68, at 155. “Mourning,” Goodrich 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.” GOODRICH, *supra* note 44, at 21 (footnote omitted).

citizen,” in the person of Juror #8.<sup>76</sup> Unlike Juror #3, the embodiment of fatherhood/law as violence, Juror #8’s parenting is directed toward his fellow jurors, many of whom enact childlike roles in their impatience, selfishness, stubbornness, silliness, displays of temper, and, most of all, their belief that they can know with certainty the facts of the case before them. The other jurors treat each other like children as well, baiting one another, calling each other names, and accusing each other of childlike behavior.

To take one example, Juror #10, disgusted with the foreman’s efforts to stick to a procedure jurors had agreed to at the start of their deliberation, mocks him by saying, “Ah stop being a kid, willya!” The foreman responds indignantly and immaturely,

A kid! Listen, what d’you mean by that? . . . What just because I’m trying to keep this thing organized? . . . You want to do it? Here. You sit here. You take the responsibility. I’ll just shut up, that’s all . . . Come on, Mr. Foreman [said sarcastically to Juror #10]. Let’s see how great you’d run the show.<sup>77</sup>

Fonda’s distance from such childlike bickering is rendered visually right from the start of the jury’s deliberations. As the others mill about talking aimlessly, he stands ramrod straight, alone, looking out the window.



76. At one point in the film Juror #8 says that he has three children. And, in contrast to what Juror #3 expects of his son, we also know that Juror #8 does not think it is necessary for his children to call him “sir,” but that is all we ever learn about them.

77. Rose, *supra* note 52, at 195.

But, occasionally he is pulled into his erstwhile colleagues' childishness, acting to stop it when he can. For example, in the midst of their deliberations about a key piece of evidence, Fonda momentarily loses his temper when he notices two of the other jurors playing tic-tac-toe. He scolds them, "This isn't a game," and snatches it from them as an exasperated parent might from his misbehaving children.<sup>78</sup>

That Fonda is presented in a paternal role also is powerfully suggested in one other scene. Late in the film, as the jury again sifts through the evidence presented by the prosecution, one of the jurors begins to puzzle about "the stab wound and how it was made, the downward angle of it, you know?" He worries about the fact that the dead father was more than six inches taller than his son and says "it's a very awkward thing to stab *down* into the chest of someone who's more than a half a foot taller than you are."<sup>79</sup>

In an effort to resolve this doubt, Juror #3 takes the knife which the boy allegedly used to kill his father and offers to demonstrate how the stab wound might have been made. He asks for a volunteer, for someone to play the role of the father. After a noticeable pause,<sup>80</sup> Juror #8 stands up and walks in silence over to where Juror #3 is standing with the knife. As they grow close, Cobb's character instructs the other jurors to "watch this. I don't want to have to do it again."<sup>81</sup>

He bends down approximating the height difference between the boy and his father. "I'm six or seven inches shorter than you," he says, looking up at Juror #8.<sup>82</sup> In the next moment he suddenly makes a sharp downward stabbing motion with the knife stopping only about an inch from Juror #8's chest.

78. *Id.* at 233.

79. *Id.* at 301.

80. As the screenplay notes, "No one moves for a moment." *Id.*

81. *Id.*

82. *Id.* at 302.



This gesture startles and alarms several of the others who rush over to them, only to be calmly reassured by Juror #8, “Nobody’s hurt.”<sup>83</sup>

In this scene, as Cunningham notes, Juror #3,

unwittingly becomes son to Fonda’s father . . . . While seemingly he has gained status and relieved his emotional blocks by his thought-murder of the father, Lumet’s visual irony catches Cobb, reducing his stature considerably below that of Fonda, metaphorically as well as physically . . . thus emphasizing Fonda’s own superior role in the torturous process of teaching Cobb self-awareness and, with it, social responsibility.<sup>84</sup>

Indeed throughout the film Fonda patiently, calmly teaches the others, as a father would teach his children, about deliberation, reason, good judgment, about the virtues that law would claim for itself, leading them toward self awareness and social responsibility. “Fonda,” Cunningham observes, “become[s] father[] to the other jurors, disclosing to some of them to some degree, at least, the sources of their irrational responses to the issues in the trial.”<sup>85</sup>

83. *Id.* at 303.

84. Cunningham, *supra* note 5, at 117. As Cunningham says, Cobb is “the juror most in need of fathering and most irresponsible in terms of his ability to exercise rational judgment in an issue that calls up dimly realized personal associations for him that are highly charged with subliminal energy.” *Id.* at 116.

85. *Id.* at 115.

He is supported in his efforts by Juror #9, who is a kind of father to Fonda himself. This juror is a seventy-year-old retired man who the screenplay describes as a “mild, gentle old man, long since defeated by life.”<sup>86</sup> Yet he rescues Fonda by switching his vote on the jury’s second ballot, an act he explains to his then incredulous fellow jurors as follows. “I respect his motives. The boy on trial is probably guilty. But I want to hear more.”<sup>87</sup> What he respects is precisely Juror #8’s desire to deliberate and act deliberately. Thus his use of the term “probably” indicates that he shares Fonda’s own way of seeing the world much more than any of the other jurors.

In contrast to the snap judgments of the others, Fonda’s Juror #8 is the embodiment of openness, thoughtfulness, and of an ability to live with uncertainty. As Juror #7 puts it, responding with frustration when he learns that Fonda cast the sole not guilty vote on the initial jury ballot, “Well what’s there to talk about? Eleven men in here agree. Nobody had to think about it twice, except you.” Juror #8’s response is instructive and characteristic, “There were eleven votes for guilty. It’s not easy for me to raise my hand and send a boy off to die without talking about it first. . . . [W]e’re talking about somebody’s life here. I mean we can’t decide in five minutes. Supposing we’re wrong?”<sup>88</sup>

That Juror #8 embodies the virtues of a different kind of father and a different kind of law is suggested by the contrast the film draws between him and those who occupy law’s official roles, in particular the judge, who we see only briefly, and the defendant’s lawyer. In contrast to Fonda’s deep engagement and care in scrutinizing the evidence, the judge appears quite bored as he reads the instructions to the jury in a flat monotone voice. As he reads, his right hand is propping up his cheek and “we sense that, although he is languidly adhering to the forms of the law, he is ignoring its spirit and thus setting a poor example for at least some members of the jury.”<sup>89</sup> And, as for the defense lawyer, “I kept putting myself in the place of the boy,” Fonda says, “I would have asked for another lawyer I think. I mean if I was on trial for my life I’d want my lawyer to tear the prosecution witnesses to shreds, or at least to try.”<sup>90</sup>

In contrast to the laziness or disengagement of the judge and defense lawyer, throughout the jury’s deliberation Fonda is active, engaged, alive,

86. Rose, *supra* note 52, at 160.

87. *Id.* at 219.

88. *Id.* at 178.

89. Cunningham, *supra* note 5, at 115.

90. Rose, *supra* note 52, at 197.

constantly questioning. He regularly voices his uncertainty, his doubts, his eagerness to subject everything to careful examination. “I don’t know” is his constant refrain. Early in the jury’s deliberation he expresses his own doubt, “You know everybody sounded so positive that I started to get a peculiar feeling about this trial. I mean nothing is that positive.”<sup>91</sup> Later he says about the witnesses who testified against the defendant, “they’re only people. People make mistakes. Could they be wrong?”<sup>92</sup> And summarizing his epistemology as the jury’s deliberations reach their climax, he says, “I don’t really know what the truth is. No one ever will, I suppose. . . . [W]e’re just gambling on probabilities. We may be wrong. . . . No one can really know.”<sup>93</sup>

Offering his readers a different way of conceiving the relationship of fathers and law, Jerome Frank long ago noted that the good father is one who has “throw[n] off dependence upon external authority” and who manifests “self reliance, the acceptance of responsibility.”<sup>94</sup> Frank uses this conception to point the way toward a new legality which would be avowedly pragmatic, grounded more in instrumental reason than in violence.<sup>95</sup> The good father (and this new legality) courageously confronts and accepts the uncertainties of the world in which he lives, carefully investigating the “facts” of the world and orders his world probabilistically. Reason and judgment are his guide—not false certainties, carefree prejudgments, impulses, or hidden motives. As Frank says, talking about what he calls “the modern mind,” it is “free of childish emotional drags . . . .”<sup>96</sup>

It is Fonda’s ability to live in a world where “no one can really know” that marks his maturity and makes available another image of fathers in law. In this alternative image, the father is one who has, in Frank’s words, the “courage to let their ‘children’ grow up,” so they can see through myths and “fatherly lies.”<sup>97</sup> *12 Angry Men* offers its viewers a vehicle for contemplating what happens, and can happen, when men live with those myths and lies as well as for identifying, and identifying with, the fatherly attributes of its heroic Juror #8.

91. *Id.*

92. *Id.* at 198.

93. *Id.* at 316.

94. FRANK, *supra* note 2, at 245.

95. Frank was a staunch critic of the jury. Juries were, in his view, too often subject to emotion and whim. See JEROME FRANK, *COURTS ON TRIAL: MYTH AND REALITY IN AMERICAN JUSTICE* 130 (1949).

96. FRANK, *supra* note 2, at 252 (emphasis omitted).

97. *Id.* at 244.

## CONCLUSION

Depending on how one reads its ending, *12 Angry Men* is either a triumphalist tale of the victory of reason over violence, of good fathers over their “primitive” counterparts, or a troubling reminder of the ongoing struggle of those two different kinds of fathering for the soul of law. Yes, in this one case, reason works its will, but what will happen in the next case and the case after that?

In this film images of law and fatherhood are symbolically joined, the one often becoming a substitute for the other. Those images remind us of a dread inspiring power wielded by fathers over their sons.<sup>98</sup> The film also calls its viewers to remember, as Frank 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 . . . .”<sup>99</sup> 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, wantonly against all, or any, of us, and that our fathers may well abandon us to that power.<sup>100</sup>

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, that for every Juror #3 there is a father-like Juror #8, more than equal in his artfulness and subtlety of mind to the challenge of saving us from the Lee J. Cobbs of this world.

The enduring value of *12 Angry Men* is that it holds out the possibility that we need no longer live, if we ever had to, in the world of Abraham’s

98. What Denver says in Toni Morrison’s *Beloved*, speaking about how she lives with the knowledge of her mother’s murder of Denver’s sister, 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 of 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.” TONI MORRISON, *BELOVED* 205 (1987).

99. FRANK, *supra* note 2, at 249.

100. Hartman observes that the episode described in Genesis 22 “does not imply an authoritative rule of conduct that can be learnt . . . .” Hartman, *supra* note 11, at 30. 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.” *Id.* at 34.

solitary encounter with a unified, omnipotent, commanding Law, or a world in which Joshua DeShaney or the boy accused of killing his father find themselves caught between an abusive father and an indifferent legality. Much separates us from the realization of that possibility, but, fifty years after its release, *12 Angry Men* both warns us of our continuing vulnerability and alerts us to the availability of different ways of fathering and of a different legality.