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Cape Fear: Law's Inversion and Cathartic Justice

By RICHARD K. SHERWIN*

"[T]he truth tragedy tells is that we cannot protect ourselves, neither through the wisdom of self-control nor through the magic of wish. There is no defense against the self in its fate."¹

"[T]he outbreak of "real" violence is conditioned by a symbolic deadlock. *Real violence is a kind of acting out that emerges when the symbolic fiction that guarantees the life of a community is in danger.*"²

"And o, steering spirits of law, goddesses of destiny . . ."³

THREE DECADES is a long time in the history of modern film. Stories change, as does the storytelling process itself. These changes can tell us a good deal about the society we live in and who we are as a people. Popular films often yield profound insight into the dominant social conflicts of the time and the changing beliefs and expectations that inform mainstream culture. This is certainly the case with respect to film depictions of law, lawyers, and the shifting currents of social justice.

Consider, for example, the 1962 and 1991 film versions of *Cape Fear*.⁴ To judge by director J. Lee Thompson's 1962 version, the law's—and by extension, society's and our own characterological—center holds even in the face of irrational violence. Thompson's plot is straightforward, his message neat. It can be simply summarized: law has its limitations, and so does rational self-restraint; but in the end, law and reason prevail. By contrast, director Martin Scorsese's version rejects the inclination to see in law a reliable safeguard against severe societal, familial, and characterological dysfunction. The alternative, Scorsese's film suggests, lies in our

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1. RICHARD KUHN, TRAGEDY: CONTRADICTION AND REPRESSION 7 (1991).

2. Slavoj Žižek, *Ideology Between Fiction and Fantasy*, 16 CARDOZO L. REV. 1511, 1517 (1995).

3. AESCHYLUS I, THE EUMENIDES 183 (David Grene & Richmond Lattimore eds., Richmond Lattimore trans., 1967) (citizens of Athens addressing the Furies).

4. CAPE FEAR (Universal/Amblin/Cappa/Tribeca 1991) (directed by Martin Scorsese); CAPE FEAR (Universal-International/Melville-Talbot 1962) (directed by J. Lee Thompson).

accepting the trauma-induced lessons of tragic wisdom—lessons that instruct us on law's fundamental limitations and on the dangers associated with the temptation to legitimate through law pathological violence.

For Thompson, the story goes like this: immediately upon his release from prison, Max Cady (Robert Mitchum) tracks down the man who testified against him in court eight years earlier. That man, an upstanding lawyer by the name of Sam Bowden (Gregory Peck), happened to witness Cady's violent assault upon a young woman in a parking lot. Ever since his conviction, Cady has been plotting his revenge against Sam. For seven years he has fantasized Sam's death. By his eighth year of prison, however, Cady has managed to go a step further: the lawyer's death will no longer suffice. That would be too simple, too easy. No, Sam Bowden, that exemplary citizen and family man, will have to undergo something more painful than that. He is going to have to suffer, the way Cady has suffered. And that means Sam is going to have to witness the violent loss of family.

Cady's plan for revenge is as simple as it is sinister: he'll track Sam down, violate Sam's wife and fifteen year old daughter before Sam's tortured eyes, and then, presumably, finish Sam off with a fitting death.

As the film proceeds, we see Cady's plan put into action. First he introduces himself to Sam, insinuating the menace that he has in mind for Sam and his family. Cady then kills the family dog, unseen but known. Next, he stalks Sam and his family. He seeks out Sam's daughter in front of her school, and he explicitly threatens Sam and Leigh Bowden with specific acts of violence. As the Bowdens' terror mounts, Sam (and the audience which cannot but sympathize with his plight) realizes that the law is simply unable to handle this kind of threat to normal, civilized life. As the town's sheriff tells Sam, "It's a dictatorship to arrest someone for what they *might* do."

Sam gradually comes to grip with the fact that it is up to him to stave off Cady's menace. But Cady is smart. He has used his prison years to educate himself, to study up on the ins and outs of the law. He hires an attorney hot against local police efforts to "harass" his client and violate Cady's civil rights with strip searches, vagrancy allegations, and station house lineups. The police are stymied by the law, and as Cady's threats mount, Sam finally succumbs to the need for unofficial, unlawful action. He hires three thugs to send Cady a message: it's a message armed with chains and sticks. But Cady overcomes the paid assailants' attack, and when one of the assailants "talks" to the authorities about who hired his services, it is Cady now who has the legal upper hand, and he knows it. Cady's lawyer moves quickly to institute disbarment proceedings against Sam Bowden.

Hamstrung by the law he has served his whole professional life, Sam now moves to set a trap for Cady. Sam lures Cady to his houseboat on the river Cape Fear. Using his wife and daughter as bait, Sam, armed with a gun, waits for Cady to show. Cady takes the bait. He confronts Sam's wife on the boat, threatens to rape her, and then leaves in order to pursue the Bowdens' young daughter. Sam goes after him, and when he finds Cady, the two men fight. Sam gains the upper hand, gets the gun, trains it on Cady, but doesn't fire. No, death would be too simple, too easy, says Sam, consciously echoing Cady's own threatening words to Sam. It's prison for life, Sam tells Cady. Life in a cage, that'll be Cady's just deserts. And so the film ends, with Cady evidently on his way to a criminal trial that'll put him away for good.

The film's message is not hard to decipher: even the most upstanding citizen, a dutiful attorney committed to the lawful demands of due process, a man beloved by wife and daughter, a well-respected member of his community, can be driven toward unrestrained, unlawful violence. All of us, the film seems to be telling us, are capable of such fury under the right circumstances. Yet, in the end the film leaves us with a significant assurance: even when such fury is provoked, it can be checked by reason, and the law can then take its proper course. We do not have to act on our rage; we do not have to kill. Like Sam Bowden, we can depend on law to do the work of retribution without the need for self-help. In this way, law appears to be properly calibrated to meet our felt need for punishment in proportion to the menace and outright violence perpetrated by the likes of Max Cady.

In short, the original 1962 version of *Cape Fear* presents a picture of violent rage and the law's inability to stave off its threat. Law clearly has its limitations; it cannot insulate us completely from the risk of antisocial violence. But it can do justice when such violence ultimately erupts.

None of these assurances survive the ensuing twenty-nine years from Thompson's original *Cape Fear* to Martin Scorsese's brilliant and far more unsettling remake. The world has changed radically from what it was: for now, neither law, nor family, nor the virtues of individual character, nor even justice itself can be trusted to prevail in the face of irrational violence. The force of corruption has grown pervasive. And the shadow world from which Max Cady emerges has now become a place to which none of us can claim to be a stranger. According to Scorsese's vision, we are all living at least partly submerged in the shadow of violence, guilt, and denial.

Max Cady (Robert De Niro) too has changed. He has become a far more complex symbol than in his former incarnation. The early sexual, violent menace now mixes with biblical prophecy, Nietzschean philosophy, and an empathic (self-described "feminine") sensitivity to the life of the

emotions. Cady now threatens us not only with irrational violence; he is also, at least at times, a faithful guide to worldly and unworldly suffering, a self-described Virgil, Sam Bowden's (Nick Nolte) mentor—at times Cady is an oracle of truth. This role is perhaps at its most lucid and symbolically revealing when Max instructs Sam's fifteen-year-old daughter (Juliette Lewis): "Every man carries a circle of hell around his head like a halo. . . . Every man has to go through hell to reach his paradise." This is what we will have to learn by the film's anguished denouement.

The legal profession, the family, law enforcement, human character—now all of these will be viewed as deeply, perhaps irremediably flawed, permeated with the corrosive and dark force of corruption. Nor can we any longer find a straight line from the menace of irrational, unlawful fury to its rational, lawful containment. Indeed, even the linear logic of storytelling itself now undergoes significant change. It is neither straightforward, or even logical.

We see this shift in storytelling from the opening images that accompany the film's credits. As cast and production names scroll down the screen before us, Scorsese has us see the shimmering, undulating surface of water intermittently broken with discrete, contiguous images, rising up from below: a hawk reaching out its talons for its prey, an eye turning in its socket, a mouth, a face, a body caught in some irresistible current, water gone red, dripping blood. As we watch we begin to realize that surfaces cannot be trusted, that we must be on the lookout for that which lies deeper within. There are demons to be found there in the depths. The surface alone is not where the action is, nor is it what it seems. We will have to assemble truth's jagged pieces from deeper and darker recesses in partly concealed, partly repressed, injured and injuring personalities.

And we will also see that this task is made even more complicated by the backdrop of images within images against which all actions proceed. Scorsese deftly plays with this postmodern landscape,⁵ inserting film images within film images and punning off of the recycling of actors from Thompson's earlier production of *Cape Fear*. How humorous, for example, to see Gregory Peck, the strait-laced attorney-victim in 1962 transformed into the smooth-talking, hyperbolic, Bible-spouting defense attorney for none other than Max Cady himself.

5. Cf. JEAN BAUDRILLARD, *BAUDRILLARD LIVE: SELECTED INTERVIEWS* (Mike Gane ed., 1993), in which Baudrillard distinguishes the destiny of the sign with the history of the sign: [I]n the world which I evoke, the one where illusion or magic thought plays a key role, the signs evolve, they concatenate and *produce themselves*, always one upon the other—so that there is absolutely no basic reference which can sustain them. Thus they do not refer to any sort of 'reality' or 'referent' or 'signified' whatsoever.

Id. at 141.

This reversal is no idle film pun. It is part and parcel of the inversion process that builds up throughout Scorsese's film. Everything—family, law, lawyers, law enforcement—is inverted, doubled and turned inside out.⁶ Each character is another—simultaneously cohabiting both conventional society and a masked shadowland. Scorsese whispers this to us just as the film starts: when we see Danielle Bowden about to begin the film's prologue, first as a negative image, black inverted to white, white inverted to black, then, as the color reality with which we are familiar takes over, she speaks.

In Scorsese's hands, the story of *Cape Fear* becomes a parable for our time, a symbolic tale of the violent clash between desire and reality, magic and strife, childhood and childhood's end, fantasy and its consequences.

The story begins not as a straight, chronological narrative, but as a story within a story. It is fifteen-year-old Danielle's, "Danny's," story. "My Reminiscence," she recites as the film begins. And indeed it is. The story that unfolds before us is, we shall later learn, a homework assignment that Danny mentions to her father in a subsequent scene. "What are you working on?" he will casually ask. "We have to write something in the style of Thomas Wolfe's *Look Homeward, Angel*. A reminiscence," she'll reply. Hers will be of the houseboat, on the river Cape Fear. At the time she announces what her topic will be she apparently has in mind the halcyon days of summer vacation. Those days will be taken over, however, by memories of a different sort, memories of Max Cady terrorizing the Bowden family on the very same houseboat, threatening sexual violence and death, as the boat swirls out of control in a storm-swollen, raging river, gripped by a violence severe enough to break it apart, sending it down to the unseen river bottom—together with whatever halcyon memories Danny might once have recalled.

For Danny, the magic of her youth is about to end, is already ending, has ended, the magic of those early carefree summer days on Cape Fear. She is a young woman now; her sexuality is in full blossom. And with the onset of adulthood she is about to learn adult things: knowledge of social transgression, illicit sexuality, and moral and emotional suffering. This is knowledge her parents, and Max Cady, and seemingly everyone else in this bleak film, already possess. It is a form of knowledge that makes remembrance of the past, of the time before adulthood, a kind of death—the death

6. Cf. Jean Baudrillard, *The Evil Demon of Images*, in POWER INSTITUTE PUBLICATIONS NUMBER 3, at 25 (Paul Patton & Paul Foss trans., 1987) ("Although it is contaminated more and more by TV, the cinema is still an image—that means not only a screen and a visual form but a myth, something that belongs to the sphere of the double, the phantasm, the mirror, the dream, etc.").

of youth's illusion of immortality, the death of innocence and uncompromised rapture. In her remembrance, Danny already knows this, just as she knows it is best to forget, lest "you die a little every day."

And with Danny's prologue, with her reminiscence as introduction completed, we are ready to enter the modern (or is it the postmodern?) world. First, we'll witness the pervasive dysfunctionality of the family. Then we'll see law's hypocrisy and inversion, its uncanny doubling and subversive contradiction in both its official and unofficial—or private "self-help"—form. Finally, we'll see it all blow sky high in a crescendo of irrational, uncontainable fury. By film's end Max Cady's fury will blend with the barely repressed fury of his victims, Sam and Leigh Bowden (Jessica Lange), and their young daughter, Danny.

If there is a lesson in what is about to befall the Bowden family for those of us who are, at least for the moment, enwrapped in their fate, it will not come from what we already know, or think we know. There is no insight, the film suggests, to be derived from law in its conventional form, or from the conventional wisdom that mainstream culture holds out. For the Bowdens, and for us, to find succor in the face of the deadly violence and its denouement that shall soon come to pass, we will have to reach deeper: into the shimmering, raging waters of desire smack against the coarse shores of self-awareness and the pain-ridden reality of consequences.

Prologue done, consider the story's sequence. To begin, meet the updated Bowden family. Scene one: Here's Leigh and her daughter Danny together in Leigh's workroom inside their large, suburban home. Leigh is trying to come up with a logo for a travel company. She explains the challenge to Danny, drawing with one silver thumb-ringed hand as the other waves a cigarette for emphasis. "It must capture stability and movement." Leigh smiles, ironically, as if mocking the task that takes up her time. Danny plays along, for the moment, humoring her multiple gold filigree ear-ringed mom. "Uhh, let's see, a circle?" "Yes, it could be . . . but . . ." But Danny has already had enough. She turns away, her smile completes her mother's derision of the task at hand, expanding it just enough to include mom herself.

Leigh speaks her next lines to the family dog: "They switched babies on me at the hospital, didn't they?" A throwaway line, perhaps. Or perhaps not. References to the changeling, the infant exchanged soon after birth, usually by the devil or his agents, have a long literary pedigree. As we post-Freudians might prefer to put it: when I say, "The child can't be mine" (for such is the unnatural animosity that I feel for it), surely I am defending against unacceptable feelings—such as the narcissistic injury that comes of seeing in one's offspring what one would deny seeing in oneself, or the

feeling of anger and resentment toward a family member for whom tenderness and love would be the more appropriate, more acceptable, albeit unavailable effect.

So we begin our tour of the modern world: a liberated, professional woman at odds with her work, her adolescent daughter, and most likely with herself as well. (She smokes with abandon—so how heroic, how well-adjusted, could she be?) This initial impression of external and internal tension will later gain in strength. But first, what about dad? Still the upstanding citizen/attorney of Thompson's original version? Hardly.

Scene two: There's Sam Bowden, Esq. walking down the courthouse steps, briefcase in hand. Calmly, almost distractedly he reports his success to his client walking beside him, another attorney, Sam's law partner as it turns out. It's a matrimonial matter. The client's son-in-law apparently is trying to stash away assets in order to avoid a fair divorce settlement with the law partner's daughter. Sam has managed to get a 21 day extension in the proceeding. This will give the client the time he needs to launch a private investigation to find out what savings and loan accounts his son-in-law is using.

Ah, just another day in the life of a modern day attorney. No longer do we see the lawyer's virtuous concern for his client's desperate financial need—as in the tort case Sam Bowden (Gregory Peck) handled nearly thirty years before. Gone, too, is the attorney's virtuous concern for the well-being of an elderly witness. Now we have legal maneuverings, private investigations to counter deceptions, S & Ls—the familiar landscape of social corruption and private scandal. Indeed, soon we'll see Sam's law partner try to persuade Sam to undertake some unspecified, but clearly unethical, perhaps illegal, action in the divorce case that Sam is handling. "No, that's [expletive], and I'm not doing it," we'll hear Sam say.

Perhaps Sam's law partner was encouraged to think otherwise based on his knowledge of Sam's own unethical actions in the past. Like the one he committed 14 years ago, when he was a public defender handling a rape case. The defendant at the time was one Max Cady. Cady had a record of violent sexual assaults against young women. In this particular case, however, Sam learned that the victim's sexual history report contained references to sexual promiscuity. The victim had had two or three lovers during the same month as her encounter with Cady. The report could help Cady's case, but Sam buries it instead. Cady gets 14 years on a plea negotiated conviction, a conviction bargained down from rape to aggravated assault. So gone too, we see, is the lawyer's innocent, fortuitous tie to Cady's criminal case. Twenty-nine years ago, Sam just happened to witness Cady's

crime and testified against him. Now, the lawyer cannot escape complicity in the matter.

Here then is the face of modern law that Scorsese shows us. The trial never takes place, just the conviction—a normal event. As we know, in well over 90% of all criminal cases today convictions are obtained on the basis of a plea bargain between the prosecution and the defense counsel. What we also see in the film is professional betrayal of the client in lieu of professional commitment. But who will ever know? After all, the plea agreement is a private affair, the records are buried. It will take Max Cady seven years of jailhouse legal study before he learns how to obtain those records, before he learns how his own attorney sabotaged his case, turning from zealous defender to judge and jury, determining from his own private viewpoint (after all, who likes sex offenders?) what the case is really worth. And who knows? If you negotiate the market value of enough criminal cases for a living perhaps that's the appraiser's mentality that eventually takes over.

We've seen the Bowdens in their separate professional lives; now let's see them together, as a family. In the original, Sam Bowden left the courtroom to go bowling with his loving, devoted wife and adoring daughter. Oh, but that too has changed.

Scene three: Look! We're in a movie theater. And whaddya know? The first scene of the film in the film that we're watching is a scene of a father run amok: "Here's Daddy!" the character raucously shouts as he crashes through the door of his son's bedroom, tossing toys with abandon out the bedroom window. Nice pun. "*Here's daddy!*"—a play within a play within a play: first, we hear the resonance of Ed McMahon's famous rolling introduction of television talk show host Johnny Carson; then we hear the echo of a crazed Jack Nicholson, mimicking those very words as he comes crashing through a door in an effort to murder his wife in Stanley Kubrick's chilling film, *The Shining*.⁷ The family run amok, that's good. For it's the Bowden family all together now, watching along with us and one other, Max Cady, who has joined the audience. He's one of us.

Cady has placed himself in a seat right in front of the Bowden family. He's enjoying the daddy scene immensely: his raucous, inappropriate laughter reverberates off the walls of the theater (in the theater). He's enjoying the sight of a family run amok. Meanwhile, the Bowden family sit dumbly behind him. They are unaware of their fate, but not of Max's presence. The cloud of his cigar smoke, like the ring of his raucous laughter, surrounds the Bowdens, forcing them to change their seat.

7. *THE SHINING* (Warner Brothers/Stanley Kubrick 1980).

They do not yet realize it, but the menace has begun, and so too has the Bowdens' effort to escape. What is it, we may wonder, that Max Cady sees up there on the screen? Is it a replay of his own family's destruction? (While Max was serving time, his wife left him and his daughter, now Danielle's age, thinks he's dead.) Or instead of the past, is Cady watching the future, along with the Bowdens themselves, watching the future destruction of another family, a destruction that is about to happen? Like Oedipus, Sam Bowden unknowingly confronts a riddle together with its solution. His family life will soon unravel, and the agent of destruction is sitting right there in front of him. For Oedipus, that agent was himself. For Sam Bowden, you might say it's his double.

The scene is now set for impending violence. But lest we mistake it, lest we err in thinking ourselves back in a scene that Thompson unfurled years earlier, we shall now see that the violence at work here is not that of Max Cady alone, nor is the spirit of vengeance Cady's alone. For the Bowdens are up to their necks in barely repressed, at times irrepressible, violence. And strangely, Max Cady, feared and hated as he is, is also a vehicle of vengeance for Leigh Bowden. We shall soon see that her rage toward her husband, justifiably perhaps, makes her complicit, at least subconsciously, in Cady's criminality, in his rage for vengeance against Sam. We will also see the strange appeal Cady holds for young Danielle. Or perhaps it isn't so strange after all. Consider Danny's relationship with her father, a relationship that is blocked on the one hand by his repressed eroticized and aggressive impulses toward her, reflecting perhaps Sam's aggression toward women in general, and hampered on the other by his repressed guilt, a guilt that may well be driven, at least in part, by Sam's own impermissible attraction to his daughter's raw sexuality. Perhaps it is this forbidden appeal that is projected back upon Danny in the form of aggression. Is it so strange then that Danny finds herself making an emotional connection with Cady, that she is drawn to someone for whom aggression and sexuality are the most natural things in the world?

In short, both of the women in Sam Bowden's life (as well as a third, who we shall soon meet, Sam's mistress, Lori) are drawn for their own internalized reasons to Sam's nemesis, Max Cady. There is something about Max Cady, something that he embodies, something that he offers, something forbidden, and therefore denied. But the repressed wish returns in the person of Max Cady. Furious vengeance for Leigh; the titillation of raw sexuality for Danielle; sexual revenge for Lori Davis (Illeana Douglas). (Little did she know that it would be Max's revenge against Sam, not hers, that would be acted out when she and Max lie down together.) No doubt

about it, the story of *Cape Fear* is no longer simply about the dangers presented by a lone man's crazed fury.

Every character in Scorsese's film seems haunted by a dark double. "Here we are, two lawyers," says Cady, the prison-trained lawyer, to Sam, the professional one. "Why can't I have what you have?" he will also say to Sam, adding: "We're not so different." And indeed, by film's end we will see that he's right. Both men harbor violent impulses against women, and both are capable of killing. True, the degree of violence of which Max is capable significantly outmeasures the capacity of Sam. Nevertheless, though Max may go further, the two men are clearly playing in the same register.

Consider scene four: After the movies, the Bowdens go to a local ice cream parlor. Danielle is telling her dad how he should have "punched out" that guy with the cigar in the theater. (Prescient girl, in time dad will have to.) But for now, Dad (stung by Danny's implicit blow to his male ego?) (oh, those castrating females) simply retorts, "Yeah, but I can take you!" Upon which utterance he promptly takes Danny into a headlock, his arm firmly screwed around her neck. Leigh calmly looks upon the scene, smiling wanly, then offers her husband a jab of her own: "You know how to fight dirty. You do that for a living." Blow two. Sam punctuates Leigh's sarcastic comment with a final twist of the arm. (Is it Danny, or Leigh, that he's choking?) Mouth agape, reaching vainly to unlock dad's grip about her neck, Danny coughs, gags. There's a startled expression on her face. Sam lets go, commenting: "Real cute, Leigh."

This little family transaction takes but a couple of seconds to complete. But packed within it is the baggage of shared aggression and resentment that the Bowdens have been lugging around with them for some time now. Don't let the happy surface fool you. It's all well documented.

Consider scene five: Sam is locked in an aggressive game of racquetball with an attractive, young woman. Sam knows Lori from the courthouse where they both work. Their physical contacts during the game match their flirtatious banter. It is not clear at this point whether Sam is on his way to an adulterous relationship with Lori, or whether it has already occurred. To be sure, the sexual tension between them is clear. (Feeling jilted by Sam, Lori will later admit to Max Cady in a bar, before letting Max pick her up, that Sam was "her first," by which she apparently means her first involvement with someone who's married.) But it's not Sam's first time. Sam's last adulterous affair almost wrecked his marriage. Leigh suffered a near, or actual, emotional breakdown: crying all day, staying in her room, doing no work, preparing no meals for the family. Sam stayed on—fearing Leigh's precarious state of mind, anxious about the possibility that

she might even commit suicide. Sam stayed on, through the marriage counseling sessions and the family's hopeful new beginning after they moved to another town.

Why did he stay? Was it love, or guilt perhaps? It's what Leigh wants to know when she later learns of what she'll call Sam's "pathetic infidelity" with Lori, when she mournfully asks: "Why didn't you have the balls to just walk out?" Love? No, Sam's response to Leigh is plain enough. It was guilt, and the fear that she'd do herself in. Oh, the arrogance, Leigh responds. Yes, twenty-nine years is a long time in the history of the modern family. We've come a long way, so that a spurned wife can identify with an avenger's rage against an infidel husband. And when Sam vainly attempts to bring Leigh into a common struggle against Cady by confessing to her that he is afraid, Leigh can only respond with that wan smile of hers and the almost gloating words: "So, someone has finally got to you." No, not Leigh. On her own Leigh couldn't get to Sam. But Max Cady can. Who *is* Max Cady?

Well, there he is in scene six, the scene immediately following Sam's contact sport with Lori. Max openly confronts Sam in the street. "Free as a bird, eh counselor? Doing whatever you please, with whomever?" Max knows. He's there to judge Sam. It's his mission in life. We know this from our very first glimpse of Max Cady. As the art-enhanced bleak sky signals, reminiscent of the storm-clouded horizon that bears the message of imminent nuclear holocaust at the close of *The Terminator*,⁸ just as the enhanced lightning that flashes ominously behind Cady as he walks out from prison warns us: a powerful force has just been let loose in the world. It is a force of prophetic proportion, one that is inscribed in the body of Cady himself. It is as if Max Cady has physically merged with his violent fate. He wears his biblical mission in his flesh: tattooed, stained indelibly, mixed with his blood. For example, there on Cady's back, we see the scales of justice, with a bible in one scale, the word "Truth" written beneath it, and a dagger in the other, with the word "Justice" beneath it. The scales are flanked by other inscriptions in Cady's flesh. On a forearm we read: "Vengeance is Mine," with the biblical source, Romans xii, 1, written underneath it; another forearm reads: "My time is at hand," and here too we also find inscribed the biblical source. The authority is no less important than the message. Cady has also sealed into his flesh the face of a clown, with a tear falling from one eye, carrying a bible in one hand and a smoking revolver in the other. Violence, emotional suffering, biblical prophecy, vengeance.

8. THE TERMINATOR (Orion 1984).

And Leigh, at least subconsciously, wants in on the judgment. How do we know? It's in the next scene.

Scene seven: There's Sam and Leigh doing their nightly ablutions in the bathroom before bed. As they talk we learn Danny's gotten into trouble at school for smoking pot. She'll have to attend summer school as "punishment." Sam thinks it's ridiculous. "What's wrong with smoking a little pot? We smoked a little dope in our time . . . Why, in some cultures it's almost a sacrament. But of course in *our* culture it's forbidden," he'll say (upstanding lawyer, and law-abiding citizen that he is). For her part, Leigh is characteristically sarcastic. (Her aggression toward Sam isn't often on the surface; it's more passive than that, more verbal, and deeper in.) So she echoes his words, mocking his sentiment, saying: Yeah, big deal, pot is forbidden—"right up there with incest and necrophilia and bestiality, and worship of idols, cannibalism." As if to say, sure, you want to mock social conventions? Why stop there? Let's keep going. (Interestingly, her references to social taboos and perversions trigger an erotic response in Sam. As if they too are not too far from the surface of his conscious mind.) And like daughter like mother, prescience must run in the Bowden family: for even as Danny previously anticipates Sam's eventual "punching out" of Cady, so too Leigh here anticipates another fateful break with that small social convention, having to do with rules against killing. A line Sam will not be averse to crossing later on, in his final confrontation with Max Cady.

Still, on the surface, normal family life goes on. Sam and Leigh go to bed. They make love, conventionally, in quiet complacency. Then something odd occurs. Leigh rises; she sits at her bedroom mirror. It is a strange scene. For as she gets out of bed the images shift. We see Leigh as if viewed in a negative. Light and dark trade places, black and white are inverted. Fade out to a full-screen orange color field, then fade back in to Leigh, veiled in a flowing white night gown, at her bureau, seated at her mirror. Her image is doubled before her. This symbolism, though rich, flirts with obscurity. Is it a dream? A fantasy perhaps? What emotional field corresponds to orange? Who is the double upon whom Leigh gazes?

Is Leigh fantasizing Max Cady—or is it Leigh's dark, inverted double who is doing it—seducing him, making herself up with pink lipstick, as he watches her, beseeching him, for vengeance's sake? Is it really Max that she sees then, through the window pane, sitting on a wall at the edge of her property out back, sitting, smiling—or has she dreamed it, fantasized? She wakes Sam. Together, they check the back yard. Nothing. Then, as if thinking of something repulsive, something unacceptable to the waking mind, Leigh moves the back of her hand roughly against her mouth—eras-

ing the lipstick from her lips—but not quite, perhaps, the fantasy that went along with it.

The danger of yielding to impermissible desire, that dark double, our inverted negative image: the danger dogs the Bowden family.

Take scene eight: The next morning, as Sam and Leigh talk about the threat that Cady poses, the light banter continues, light, but only on the surface of their lives. Perhaps they should get a gun, they muse. Leigh says: “We’d probably end up using it on each other.” Sam answers back: “Or Danny would.” Words easily spoken on the surface of everyday life easily belie the pain and the rage that seethe deeper in. On some level the Bowdens know that none of them is far removed from impermissible impulse. None of them. Including Danielle.

Throughout the film Scorsese is careful to emphasize Danielle’s budding, provocative sexuality. When Max Cady, impersonating her drama teacher at school, tricks her into meeting him, she smokes some of the pot that he offers (after all she’s done it before), and she admits in response to his inquiry that she has read from Henry Miller, (who, Cady reminds her, once described an erection as a lead pipe). Clearly, sexuality is on their minds. And when Cady describes her parents’ hypocrisy, their not letting her grow up, their “deflection of their own guilt” onto her, he succeeds in making the emotional connection with Danny that he has been seeking. And even after Danny realizes who Cady is, she allows him to touch her, and to kiss her.

She’ll smile later that day, when her dad learns of her encounter with Cady, smile when Sam asks if Cady touched her. She’ll explain the encounter by saying that he was only trying to make a connection with her. But it is her smile—or is it her desire, or Cady’s or Sam’s own?—that Sam cannot tolerate. To what then is Sam reacting when he shakes his adolescent daughter violently, shouting, “There will *never* be a connection between you and Max Cady.” Is it Max alone that Sam fears? Have his own forbidden wishes somehow gotten involved? (“Put some clothes on,” Sam says upon entering Danny’s room, “you’re not a kid any more.”) In any event, once again Sam has gone too far in expressing his aggressive impulses toward his daughter. (Deflecting his guilt onto her?) Sam catches himself, realizing how inappropriate, how disproportionate, is his response. But it’s too late. If there had existed any possibility for Sam to connect with Danny, it is gone now. “Get out!” Danny shouts, in tears. And in silence, Sam leaves.

By this point in the film, the inversions are mounting. Character identities depicted almost three decades before have now undergone startling shifts. The once united and loving Bowden family, a model of virtue, sta-

bility and devotion, is now a model of pervasive dysfunctionality. Each Bowden finds his or her own way to rage against the other: Leigh with her passive aggressive sarcasm toward Sam, spilling over at times into overt, irrepressible physical violence; Sam with his lies and infidelities; Danny with her provocations—smoking pot at school, exploring sexuality with her dad's violent rival. Nor is this all. The film's portrayal of internalized family dysfunctions is matched in full by its depiction of externalized, social ones.

Consider the scene in which Sam's law partner confronts Sam with his earlier unethical professional behavior as Cady's criminal defense attorney. At first Sam pays lip service to the defendant's right to effective representation in a criminal case. It seems, however, that there are times when it's just too hard to put that principle into practice. "I believe in the Sixth Amendment," Sam insists, "that's why I left the public defender's office." But ultimately he admits the truth: Sam wanted to see his client in jail—that's why he buried the victim's sexual history report.

Sam Bowden's professional transgression and the unblinking hypocrisy that goes along with it are not isolated occurrences, Scorsese suggests. Nor are they the least of the lawyerly transgressions depicted in the film. In fact, without exception every lawyer in the *Cape Fear* remake is depicted as either unethical, coming across as self-interested, cynical manipulators of the system, such as Sam and his law partner, or as pretentious buffoons, as in the case of Max Cady's attorney, "that colorful old feller, but still the best criminal lawyer in the state," Lee Heller. Against this backdrop, when Max Cady says to Sam Bowden, "Here we are, two lawyers talking shop," it's not so hard for us to agree. Cady fully and openly expresses the kind of self-serving manipulation of power that we suspect lies, less openly perhaps, within the legal profession and the law itself. Cady, then, can be seen as simultaneously embodying both Sam Bowden's and the law's dark underside. He is their barely repressed double.

The inversion of the law and the legal profession that we see in Scorsese's film is skillfully reinforced by Scorsese's inspired casting. The director here deliberately plays upon Hollywood's established iconography, using Hollywood images to reverberate against one another, calling to mind other images in a sequence of associations that takes on a life of its own. Take Gregory Peck, who portrayed the exemplary citizen/lawyer from the *Cape Fear* of twenty-nine years ago, an actor also renowned for his 1962 portrayal of the heroic attorney Atticus Finch in *To Kill A Mockingbird*.⁹ Scorsese has taken this icon and turned him into a Bible-quoting, mock

9. *TO KILL A MOCKINGBIRD* (Universal-International 1962).

eloquent, aging sycophant. "Just as God arose to judgment to save the meek of the earth I hope and pray that *you'll* do the same, Sir," argues Lee Heller/Gregory Peck before the court. And when he wins for his client, Max Cady, the order of protection that he has been seeking against Sam Bowden, Heller's self-mocking, inadvertently humorous style continues: "King Solomon could not have adjudicated more wisely, your Honor." And this, we are told, is the best the state has to offer.

The inversion of the law enforcement characters in the film, both official and unofficial, is no less pronounced. And the sense of images playing among images, with film-based character identities referring back to other film characters—so typical of what has been called postmodern hyperreality,¹⁰ with its incessant flow of images among images lacking any anchor in something more "real" to ground them—is heightened when, for example, we see Robert Mitchum; the menacing Max Cady from the original, now in the role of chief law enforcement officer. This inverted association, like Gregory Peck's shift from heroic icon (Atticus Finch) and innocent victim (the once upstanding Sam Bowden) to buffoonish advocate for the aggressor (Max Cady), adds an extra dimension to the actor's role, a kind of overdetermined resonance. It is the reason why we hear a heightened note of menace in Mitchum's unofficial recommendation that Sam treat the situation as one that requires a real stakeout. Men like Cady must be treated like wild tigers. By this reference one can reasonably infer that the police themselves think Sam should blow Cady away on his own.

Unofficial law enforcement speaks with a similarly cynical and menacing voice in the film. And here too we see Scorsese deliberately playing off of classic film history, namely the pop cultural iconography that has come to surround the character of the private eye. For example, we hear Leigh saying at dinner, in her best sarcastic voice, "You can relax now Danny, 'cause your Daddy has a private investigator on the payroll. What's your feeling about him? Mickey Spillane? Peter Gunn? Dirty Harry? Perry Mason?" "No, no, no." Sam immediately corrects her erroneous inclusion of "Perry Mason" in this list of famous, pop cultural hero/outsider types—assuming Leigh's inclusion of the TV defense lawyer's name in this company *was* a mistake. (Are we meant to wonder whether today's "Perry Mason" has in fact become indistinguishable in our contemporary culture from the vigilante/outlaw archetype?) It is as if in Leigh's mind, and our own, all

10. See JOHN FISKE, *MEDIA MATTERS* 62 (1994) ("Hyperreality is a postmodern sense of the real that accounts for our loss of certainty in being able to distinguish clearly and hierarchically between reality and its representation, and in being able to distinguish clearly and hierarchically between the modes of its representation."). See generally JEAN BAUDRILLARD, *FATAL STRATEGIES* (Jim Fleming ed., Philip Beitchman & W.G.J. Niesluchowski trans., 1990).

these characters have become indistinguishable—from one another, and from real life itself.

In Thompson's original, Persig, the intense private eye, played straight by a young, not yet head-shaven Telly Savalis, cooperated with his more official counterparts, the police. Now, however, Scorsese gives us an agent of the Oliver North, off-the-shelf covert operation school. No longer is Persig the least concerned about playing by the book. He has grown fat and corrupt. And he dangles altogether free of the law. Persig savors his bourbon and Pepto Bismol cocktail the same way he savors his fear on a stakeout. This kind of fear has a fine history in Persig's mind: his daddy felt it when *he* was on stakeouts, and so, Persig muses, must have the men who won this country from the Indians. Yes, Persig adds, continuing the thought, the South has a fine tradition of savoring fear, like they did in battle against "the damn Union." Persig, the displaced rebel, has given fear a fine coating; his kind of violence comports well with the patriotism of the Free man. Cady, doubled again, will kill him quickly with a piano wire. Seems there's no future in Persig's kind.

The Bowden family, the lawyers, the official law enforcement agents and their unofficial counterparts—each now has been inverted, reversed in polarity, turned inside out from what they once were. And they are a thoroughly blemished lot, assuredly not the characters they were twenty-nine years ago. The change is no less striking in the character of Max Cady himself.

Cady's irrational fury remains, but there is more now. There is also truth and prophecy, and there is a kind of wisdom gleaned from harsh suffering. "Ever been a woman?" Cady at one point asks Bowden. He is not just referring to what it's like to be raped in prison. In addition, he is referring to what it's like to make contact with the "feminine side" of the self. It is this knowledge that enables Cady to tune in to the emotional states of others and establish a connection. It's how he knows how young Danielle really feels about her parents and about herself, and it's also how he knows about Leigh's pain and sadness and rage in her marriage to Sam. It's the same knowledge Leigh will act on toward the end of the film, at the time of Cady's final violent confrontation on board the houseboat, on the river Cape Fear, when she says to Cady, seeking to make her own connection with him, to save her daughter from Cady's imminent violence: "Since this started, I've thought about you all the time, what it must've been like for you, locked up all those years in jail . . . You see, I know about loss, about losing time, even losing years." Leigh confesses, sharing her secrets with Cady, about what it's been like for her to live with Sam. "I can understand and share this with you," she adds.

Leigh's message to Cady is clear: 'I'm like you,' she is saying. 'You can trust me.' It's the victim struggling to make a human connection with the aggressor, to normalize the relation, to gain access and thereby win some leverage, some ability to affect the course of events. This tactic, which the law in the past has interpreted harshly, often misconstruing the victim's desperation as permissive complicity,¹¹ falls on deaf ears here. "That was real eloquent, Leigh. Brave too," Cady replies. Then he adds, referring to the rape that he has in mind for her, "I'm gonna enjoy this all the more." Max can appreciate Leigh's effort, he recognizes the strategy, the way she attempts to make the connection. He has the same knowledge, and he's used it himself, effectively.

No, Cady's fury cannot now be written off simply as the byproduct of an isolated, crazed mind. Cady's fateful mission of justice reflects a curious, and potent blend of diverse cultural forces. It was nurtured under the influence of Friedrich Nietzsche, whose *Will To Power* stands prominently on Cady's prison book shelf, right beside the Bible and the law books. It's a mission nurtured as well before the gaze of Robert E. Lee and Stalin whose photos adorn Cady's prison wall. It is as if Cady has come to embody the dark underside of Western culture, a force that has a historical and intellectual as well as an artistic dimension. With regard to the latter, consider, for example, Cady's erudite discussion with Danielle of Thomas Wolfe's nostalgic reminiscence in *Look Homeward, Angel*. We hear Cady describe Wolfe's novel as a "*roman a clef* . . . all about discovery and inner voice." And Cady will go on to counter Wolfe's failed nostalgia with the writings of Henry Miller, the writer who got away, who managed to leave his past behind him, *wanderlusting* in Paris, producing his own brand of sexual mysticism.

In Scorsese's hands, then, Max Cady is closer to us than he was in Thompson's 1962 original. We recognize him as our own dark double, the one we repress, not entirely successfully. We know he is there. Our history won't let us forget. We recognize that Cady's is the same righteousness that inspires men and women to commit acts of resistance, to join rebellious social movements, like John Brown and the abolitionists or, more recently, like the gun-toting anti-abortionists, or the Freeman and other Patriot groups whose common law courts mingle freely, if quixotically, the law, the Constitution, and the scriptures.¹² But then again, even so great an icon

11. See generally Kim Lane Scheppele, *Just the Facts Ma'am: Sexualized Violence, Evidentiary Habits, and the Revision of Truth*, 37 N.Y.L. SCH. L. REV. 123 (1992).

12. See Michael Janofsky, *Home-Grown Courts Spring up As Judicial Arm of the Far Right*, N.Y. TIMES, Apr. 17, 1996, at A1 ("The supporters of the common law courts reject state and Federal statutes and all constitutional amendments except the Bill of Rights, and they base their

of the legal academy as Robert Cover of Yale Law School did that while he lived.¹³

Contemporary life, it seems, at least to judge by Scorsese's vision of it, has grown more complex in the years since *Cape Fear* first made its appearance on the silver screen. True, then as now, law has its limits. It cannot reach the menace of Max Cady until *after* he strikes. There are times when violence must be used to meet violence. It also remains true that then, as now, the law exacts a price from the victim of the aggressor's violence. For it is the victim who is often victimized again by a legal system whose abrasive search for truth, in the adversarial process of cross-examination, at times silences rather than lays hold of truth—as, for example, when the parents of a child-victim refuse to allow the child to undergo the trauma of trial, or when the pressures of the adversary process prevent the child witness from saying what he or she really knows.¹⁴

Of course Max Cady has always been there. Yet now he seems closer, his rage blends more readily with the social conventions and institutions we are used to, and we recognize him in our own private lives. Consider, for example, the climactic mock trial scene aboard the houseboat, with Danielle as jury and Leigh as judge. Is it not with the American Bar Association's own canon of professional ethics that Cady will judge and convict Sam

authority on highly selective interpretations of English common law, Bible passages, United States case law and the Constitution.”)

13. See, e.g., Robert M. Cover, *The Bonds of Constitutional Interpretation: Of the Word, the Deed, and the Role*, 20 GA. L. REV. 815, 832-33 (1986). Cover argues:

The citizen or dissenter's constitutional interpretation cannot be *less* the deed than that of the state's officials. If the officials of the state realize their vision in blood, the dissenter must also either suffer or impose a parallel form of violence. Warren Burger and his group may or may not be ready to kill with their own hands. But they are ready to kill. . . . If a movement such as the right-to-life movement is to make law, it too must be ready, as it is, to suffer or impose violence for the constitutional vision it develops. In other words, the extension of constitutional politics from argument to action—from briefs to pickets or sit-ins or even bombings—is in part compelled by the logic of constitutional interpretation.

In law to be an interpreter is to be a force, an actor who creates effects even through or in the face of violence. To stop short of suffering or imposing violence is to give law up to those who are willing to so act. The state is organized to overcome scruple and fear. Its officials *will* so act. All others are mere petitioners if they will not fight back.

Id.

14. Compare *Coy v. Iowa*, 487 U.S. 1012, 1018 (1988) (affirming the defendant's right to a face-to-face confrontation with the accused at trial, notwithstanding the profound effect this may have on a child victim of rape precisely because this is the way we “confound and undo the false accuser, or reveal the child coached by a malevolent adult”) with *Maryland v. Craig*, 497 U.S. 836 (1990) (permitting a child witness in a sexual abuse case to testify out of the presence of the accused, by one-way closed circuit television, in order to diminish the emotional distress of the child victim).

Bowden, his former defense attorney? And do we not recognize as our own the at least covert violence in the trial process, in its rules of procedure—altered in Cady’s mocking, exaggerated form, yes, but still recognizable—as when Cady strikes Sam in the head and then meekly, albeit mockingly, condemns the act as “argumentative”?

By film’s end we come to realize that Sam’s imperious act of vigilantism, his decision to assume the role of judge, condemning his client when he should have been the client’s most zealous advocate, has unleashed an even more violent force of vigilantism. He has triggered the vengeful fury of Max Cady. And in this too we see an inversion of Thompson’s original *Cape Fear*. Indeed, Scorsese’s film plays out as an inversion of Aeschylus’s great tale of law and vengeance in the *Eumenides*. In that classic tale, the hideous fury of retribution was tamed, it was brought *into* the law. In that process of containment furious vengeance was civilized; thus was the trial and its procedures born and handed down to us, borne through the ages to our own day.

Yet, when the civilizing effect of law is inverted, when we willfully defy law and its procedures, its principles of fairness and due process, even when the particular circumstances may seem to warrant our defiance, that same fury is let loose again in the world, it is torn free from law’s civilizing constraints. From this viewpoint, then, we might say that Scorsese’s is, at heart, a *conservative* message. Beware the dark forces within. Beware the return of the repressed. Beware the loss of the reality principle when confronted with the chthonic potent agencies of desire, fantasy, and magical thinking.

In this respect, Scorsese’s *Cape Fear* might be read as an updated version of Freud’s *Civilization and its Discontents*.¹⁵ If we do not challenge the unquenchable claim of instinct (“where it [the id] was there I [the ego] will be!”), we shall leave civilization in shambles. It is a fear Freud suffered all too compellingly in the last years of his life as he witnessed in exile the rise of Nazism.

But there is more to Scorsese’s vision than simply expressing the need to repress basic instincts while also acknowledging their inescapable presence in our lives. He also forces upon us the vital question: what agency, what power, will secure us from the deep imbalances, the familial and social dysfunctions, with which we have grown so familiar? If law and lawyers are as corrupt as they seem, if private ethics and the corrosion of

15. SIGMUND FREUD, *Civilization and its Discontents*, in THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 59 (James Strachey ed., 1961).

character are as pervasive as they seem to be, how do we chart a course out of the present social and familial morass?

Once upon a time, one might have said that there is a natural law, a form of justice that could intervene in human history to set straight the crooked course of human affairs. Once perhaps, but no longer. Nietzsche and the Romantics of the late nineteenth century have already mourned the death of God and the flight of the gods. Indeed, much of twentieth century art, literature, and philosophy has been taken up with the desecralization of nature and the secularization of society.

Nor does Scorsese hold out any reason to think that law or justice *can* save us. It is, after all, only blind fate that prevents Sam Bowden from becoming a killer in the end, the same fate that drags Max Cady to his death under the surface of Cape Fear. In the penultimate scene in the film, Sam is prepared to kill Cady; indeed, he wishes it with all his being. There he stands, with a rock heaved above his head, ready to smash it down on Cady's face, crushing bone and brain. And so things would have turned out but for the fact that the wind changes, the river's currents shift, and the fragment of the houseboat to which Cady has been handcuffed is suddenly dragged away, out of Sam's reach. Just the wind, the water's current. As in Albert Camus' great novel, *The Stranger*, why did Meursault shoot and kill?¹⁶ It was the sun, yet so easily could things have been different.

But if this is the way of "justice," how can we be sure that it will work the next time we need it? How do we know the winds will shift then? It is a quixotic kind of justice, this.

Sam does not kill Cady in the end, but we could easily imagine things working out otherwise. Sam might well have preempted and transgressed the law, for if he did kill the secured Cady when no threat was then apparent, is this not an unjustified form of homicide? Surely there is no triumph of law here. How different is this ending from the one presented in the original *Cape Fear* when Sam Bowden (Gregory Peck) heroically concludes: "No, I won't kill you, you'll go to prison for the rest of your life." Which is to say, not I, but the law will be the agency of your punishment, the law will serve my need and the felt need of society for just deserts.

In the early 1960s, perhaps we could be assured. Law would do its job in the end. But today we are not. Today, we must depend upon a wind, a current—something more in keeping with a theory of chaos than of divine or natural law.

In the end we are left with fateful justice, justice as chance. But what kind of justice is that? In another film, a documentary of some notoriety,

16. ALBERT CAMUS, *THE STRANGER* 75 (Stuart Gilbert trans., 1982)

Errol Morris's *The Thin Blue Line*,¹⁷ we see in graphic particularity what kind of force justice becomes when it becomes synonymous with chance. And there we see that, no, the consequences are hardly a source of reassurance. For with Morris' documentary we learn that but for the grace of a film director, who happened to be making a film that took him onto Dallas' death row where he happened to stumble upon the story of accused cop killer Randall Dale Adams who then became the subject of a film documentary depicting Adams' "frame-up" thereby winning sufficient public notoriety to prompt a new hearing for Adams which then resulted in the dismissal of all charges against him—but for this unlikely chain of events, the falsely accused, but anonymous Randall Adams would still be in prison, and would most likely have remained there for the rest of his life.

Is there then no glimmer of hope to be gleaned from the tragic events that unfold in Scorsese's *Cape Fear*? If there is, I propose that it lies in the nature of tragedy and the effect tragedy has on the sensibilities of those caught up in its traumatic, destabilizing grip.

Conclusion: Tragic Wisdom and Cathartic Justice

Law has an "interest in a monopoly of violence." This monopoly doesn't strive to protect any given just and legal ends but law itself. . . .

The admiring fascination exerted on the people by "the figure of the 'great' criminal," can be explained as follows: it is not someone who has committed this or that crime for which one feels a secret admiration; it is someone who, in defying the law, lays bare the violence of the legal system, the juridical order itself.¹⁸

Nearly thirty years before Martin Scorsese took hold of the *Cape Fear* story the tempest of one man's crazed fury for revenge could be isolated from the rest of society. Max Cady in that version was an anomaly, an extreme that could be handled within the official legal system. He was not like us, that story told us, and we were not like him. In the nineties, however, things are different. Radically different. Scorsese now turns *Cape Fear* into an allegory of contemporary society's confusions—institutional confusions, and confusions within the self. The film mirrors our pervasive uncertainty about almost every aspect of public and private life. The only hope held out, perhaps, is that the film's warning will be heeded in time,

17. *THE THIN BLUE LINE* (BFI/Third Floor/American Playhouse 1988).

18. Jacques Derrida, *Force of Law: The "Mystical Foundation of Authority"*, 11 *CARDOZO L. REV.* 919, 985, 987 (Mary Quaintance trans., 1990) (citations omitted); see also WALTER BENJAMIN, *Theses on the Philosophy of History*, in *ILLUMINATIONS* 253, 256 (Hannah Arendt ed., Harry Zohn trans., 1969) ("There is no document of civilization which is not at the same time a document of barbarism.").

and that out of the tragic knowledge that extreme suffering discloses perhaps new boundaries will be set. Perhaps then right values and emotions will be clarified and separated out, so that the institution of law and the content of professional and personal character will once again become virtuous enough to accommodate, to make space for, the spirit and the language of justice. But to achieve that end, there must come a suffering that cannot be isolated to merely a few—those unfortunate enough to encounter anomalies like Max Cady. Rather, it is a suffering that must become as pervasive, as universal, as the shadow world from which Max Cady has emerged.

In order to live, Danny recites in the epilogue to the film reminiscence that has just unfolded before our eyes, we must battle not to let Cady into our dreams. Nor can we cling to naive dreams of the past, dreams of idyllic childhood days, of innocence, and unadulterated joy. But how is he to be kept out when he is so close? And how are we not to despair when we forget to forget, and memories of bygone days surge back to consciousness?

According to Danny, the proper fear is not that the magic will end.¹⁹ As adults, we all know that it will. No, the proper fear is that the magic might be unnaturally prolonged, held onto, in the service of desire. "If you hang onto the past," Danny recites, "you die a little every day." Here speaks the wisdom of the reality principle, checking fantasy and unabated instinct. This is the voice of tragic knowledge, the proper fruit of catharsis which, as Danny and her parents know—and as do we, the audience, who have let Cady and the Bowden family into our own lives, at least for a while—will not come without trauma. As philosopher Richard Kuhns has written: "Catharsis [is] the descriptive term for clarifying, separating out, and getting centered upon the *right* emotion."²⁰

But there is something more, something deeper at work here. It suggests something that the anodyne of "emotional correctness" will not cure. For there is still the double to deal with, the inversion, the uncanny other. What remains to be worked through are our repressed or disguised fantasies. Our covert fictions, fictions that we hold dear, are increasingly coming into view *as fictions*, and we increasingly feel the need to protect them. For after all, these are fictions that hold together our sense of conventional reality, of social norms, of laws and the institutions that enforce them. They are also the necessary fictions that hold together our sense of self and

19. Danny's prologue in the film goes as follows: "My Reminiscence. I always thought that for such a lovely river the name was mystifying. Cape Fear. The only thing to fear on those enchanted summer nights was that the magic would end, and real life would come crashing in."

20. See KUHNS, *supra* note 1, at 2; see also MARTHA C. NUSSBAUM, *LOVE'S KNOWLEDGE* (1990); MARTHA C. NUSSBAUM, *POETIC JUSTICE* (1995).

character and virtue, of individual freedom and social responsibility. For example, we need to hold fast to our belief in individual agency and control over consequences. These beliefs, a bequest of the Enlightenment, represent a kind of cultural bedrock on which rational legal judgments lie. Similarly, we need to hold fast to our belief in the legitimacy of law's force, a legitimacy that transforms "violence" into *authority*. To lose this sense of authority is to let loose the force of revolution, a historical moment in which new acts of force proclaim new laws under the aegis of new authorities.²¹

And so we cannot let loose the fear, the anxiety, that all is not as tightly wound as we might wish, that forces lurk within us, dark and powerful forces not readily subject to control. We are loathe to acknowledge that similarly powerful forces operate from without, as when the unpredictable bedevilmings of chance and fate let loose upon the innocent and the unwary unimaginable injury and suffering—even the most virtuous among us. (But who is Job without the Lord who tests his faith?)

So we set up structures, within and without, laws and law courts, defense mechanisms of the ego and prohibitions of the superego, to maintain our sense of control, a sense that is reassuringly bolstered in public and private rituals of social and self judgment.

Consider, just briefly, the law's monopoly on, and the state's legitimation, of force. Deeper fears protect our willing delegation to the legitimate other, the state and its agents, of the right to use force. We need that legitimate other, just as we need the other's dark double, the one upon whom the force of law must operate. For, on a deep and hidden level within ourselves, we know that violence cannot be put off or denied. In this respect, the ancient Greeks were more honest with themselves than we tend to be about this state of affairs. They could admit that a horrible and terrifying fury *is* the steering force of the law,²² that such fury lies at the heart of law.

For us, this knowledge must be repressed. Law's violence must be sanitized, neutralized, denied. And when it cannot be, when public recognition of law's violence can no longer be concealed—triggered perhaps by an accidental home video of police violence or by a legal outcome perceived by many as unjust enough to warrant urban rioting—at such times we witness law's legitimacy slipping.

When the violence of law cuts through our denial of its monopolistic claim upon the use of force in society we awaken to our complicity in our

21. See BENJAMIN, *supra* note 18, at 261 ("The awareness that they are about to make the continuum of history explode is characteristic of the revolutionary classes at the moment of their action."). See *supra* note 13 and accompanying text.

22. See AESCHYLUS I, *supra* note 3, at 150-53.

own apparent disempowerment. The urge at such times is to act: to take back the grant of power that elevates law and the state above us, and perhaps to use that power ourselves, in the way that we see fit.

This is a frightening event, both to those who conceive it and to the state that suffers its consequences. For where does it end once the law's legitimacy comes to be questioned, when the individual's self-empowerment threatens to displace discredited laws? There is much to support the urge to keep the state's violence hidden from view, repressed; disguised as something else, something less threatening. Call it justice or the Constitution or the Bill of Rights or the common law—authorities that can do more than one kind of work.

The riddle of Max Cady's being is that he is, and must not be. The danger of Scorsese's vision is that Cady exists, and will not be denied or chased from the scene. He may return back to the depths from whence he came, but—like the primitive threat of Godzilla or the creature from the black lagoon—this submergence in the end is no guarantee that the Other will not resurface sometime thereafter.

If we need the Other (both the legitimate other and his uncanny, dark double) for the law's sake, to channel impermissible desire, to find a permissible place for unconstrained violence, find him we will. Surely we would have to create the criminal if he did not already exist. And if there are too few such others to adequately absorb the force of our fury bursting free of repression, then we shall have to find them as well. And, to a significant extent, that is precisely what we are already doing.²³ By law we determine the nature and extent of criminality. And when internal, psychological, and external, social pressures build, when the fiction of sanitized official violence comes into view, or even threatens to do so, or when the fiction of our empowerment in the face of law's monopoly on force wears thin, as when we see law threatening to don the mask or fall into the

23. Stephen Schulhofer argues that the punishment of felons has already begun to escalate, thus promoting harsh sentences to lesser felons:

As our fears drive us toward ever harsher sentencing policies, capital punishment and life sentences proliferate; mandatory minimums become more common, and those that exist are pegged at ever higher levels; prison programs such as weightlifting and college studies are replaced by hard labor on chain gangs; "three-strikes-and-you're-out" legislation brings lesser felons, including nonviolent felons, within the ambit of mandatory life sentences; and "two strikes" proposals loom as the inevitable next step. Increasingly, the ground rules for our "war" on crime are set not by the Geneva Convention but by a scorched earth, take-no-prisoners philosophy (literally, for advocates of capital punishment).

Stephen J. Schulhofer, *The Trouble with Trials; the Trouble with Us*, 105 YALE L. J. 825, 852 (1995) (reviewing GEORGE P. FLETCHER, WITH JUSTICE FOR SOME: VICTIMS' RIGHTS IN CRIMINAL TRIALS (1995)).

hands of the wholly Other (that alien amongst us), the more criminals the better—the better to channel the violence we fear and must repress.

In light of this analysis, the current movement toward increased criminalization on the one hand, and increased skepticism (on both the left and the right) toward law's legitimacy on the other hand, call out for serious critical reflection.

Where then does this leave us? Perhaps with the wisdom of tragic knowledge, the kind of knowledge that, as Kuhns puts it, "draws moral distinctions that help us in growing up."²⁴ We must come to grips, as did the ancient Greeks before us, with the urge to deny the fury within us and with the fictions with which we pretend to maintain control over our affairs. The tragic sufferer is us, and the cause of the tragedy that is unleashed upon the sufferer is also, at least in part, us. We can no more split off the innocent victim from our sympathy than we can alienate ourselves altogether from the forces of the victim's victimization.

Nothing said here is meant to deny the reality of antisocial aggression and the pressing need for law to punish and deter criminal acts. At the same time, however, it will not suffice in doing so to render the criminal the wholly Other, in turning him into the one wholly unlike ourselves, as if his incarceration, our act of "putting him away," will make the fury we fear also go away. That fiction,²⁵ reflecting the urge to neutralize and sanitize the violence without as well as within, so that it may be channeled without fear or uneasiness, only invites the return of the repressed, the one who like Max Cady comes into our midst as the wholly Other, but who eventually may be recognized as the dark double that we carry deep within ourselves. It is precisely then that the object of our fear, distorted by the demands of deepest fantasy, returns to haunt us.²⁶

It is the way we picture the wholly Other that gives us insight into the nature of the repressed trauma, the fantasy, that makes the Other what he is. In the hated Jew lies the split-off, uncanny double of the Nazi's repressed

24. See KUHNS, *supra* note 1, at 68.

25. See, e.g., Ray Surette, *Predator Criminals as Media Icons*, in *MEDIA, PROCESS, AND THE SOCIAL CONSTRUCTION OF CRIME* 131 (Gregg Barak ed., 1994). Surette argues:

Predator criminals are modern icons of the mass media. As with other icons, they represent a largely unquestioned set of beliefs about the world, a constructed reality that, as the aphorism "perception is reality" suggests, has the ability to shape the actual world to fit the media image. In the world of crime and justice, the icon of predator crime pushes life to imitate art.

Id. at 132.

26. See Zizek, *supra* note 2, at 1525 ("What the specter conceals is not reality, but its 'primordially repressed,' the irrepresentable X on whose 'representation' reality itself is founded.").

unconscious fantasy.²⁷ Similarly may we find in the distorted image of the hated Federal government the repressed kernel of the Freeman's unconscious fantasy—a fantasy driven by the unacceptable realization that the receipt of Federal subsidies, and the self-assurance that they make possible, has turned the conscious ideal of self-sustenance into the unconscious (repressed) ignominy of self-contempt. Just as we may also discover our own dark and uncanny double in the hated and feared terrorist, the maniacal foreigner, or the crazed crackhead, in short, the one who is not, and who could never be like us.

If social healing is to be found, as tragic-fated Oedipus learned and as, one hopes, the Bowden family realize in the aftermath of their terrifying ordeal, perhaps it is to be found in the healing power of trauma and catharsis. Healing in this sense consists in the use of suffering and the catharsis that suffering brings to repair pathological splitting. In a significant sense, we *are* the Bowdens, and we *are* Max Cady. The Bowden family is a symbolic family and a microcosm of society as a whole. It is only an extreme, the trauma-inducing violence of a Max Cady, that can save the Bowden family from splitting apart. Only by confronting directly the spectre of demonic violence that lies within the depths of the soul, and that casts a shadow of dysfunctionality over us all, may the Bowdens (like the rest of us) find the impetus to change.

Our fate in adulthood is to accept the unacceptable and to consciously forge a livable balance between our self aspirations and ideals (about who we would be) and our darkest terrors and anguish (about who we are in our innermost depths). The fictions with which we deny our fears ultimately serve only to ramify and enlarge them. As Richard Kuhns puts it: “[T]he means to the mastery of splitting that yields the pleasure we find in the harshest scenes of suffering. It is the mastery of this process and the knowledge it makes manifest that allow us to become cultural beings.”²⁸

If we could see ourselves in the demonized other, perhaps the compelling need to intensify state violence, to criminalize more acts, to isolate more others as “wholly Other,” would be eased, recognized for what, to a significant extent, it covertly embodies, and that is: a form of denial, the repression of what we fear most within ourselves, of the one we might become were our life circumstances other than as they are. It is this that marks the greatest insight into law and justice that Scorsese's updated *Cape Fear* has to offer. Let us look upon Max Cady and the Bowdens and recognize part of who we are. Out of such trauma, for it is no less than traumatic

27. *Id.* at 1519-20.

28. KUHNS, *supra* note 1, at 76.

to make this connection, may come catharsis: the tragic knowledge of adult consciousness. That task, making that connection, hard as it is, is perhaps harder still for us postmoderns. As Kuhns again incisively puts the matter: "Living as we do today, more and more in images and stories, we have obscured the line that separates fantasy from reality, internal psychological entertainments from external natural events."²⁹

Law is not exempt from this destabilization process; indeed, law's adept internalization of the images and storytelling practices of popular culture continues at a steadily increasing pace. Which is to say that Scorsese's *Cape Fear* could hardly provide a more apt cautionary tale for contemporary lawyers and for all those whom the law touches. In this view, the greatest danger is that we will not be alarmed enough, that we will not experience and internalize the terror that gives rise to cathartic justice and that may help us to heal the pathological splitting that all of us are prone to, a pathology by which our own demons are unwittingly externalized and targeted as the Other. That Other, a creature of fantasy, cannot—precisely because it *is* imaginary—be destroyed. Though we who continue in the vain attempt to do so are not so invincible. We can become the unwitting victims of our own dark and uncanny double.

In 1962, the original *Cape Fear* depicted law and lawyers as appropriate and efficacious agents of social retribution. In this view private self-help is both wrong and unnecessary. This is what attorney Sam Bowden realizes by film's end when he successfully curbs his fury and retains his virtue. Three decades later Scorsese's remake of *Cape Fear* inverts this image of law and lawyers. Now attorney Sam Bowden, like the law he serves, can no longer be trusted as a faithful agent of civil justice. In this version chance (a mere shift in the wind or in a river's current) is all that stands between Sam's raging desire to kill Max Cady and the frustration of that desire. And in the end it is chance with which we are left to measure the justice of Max Cady's ultimate demise by drowning.

Something has happened in the twenty-nine years between the original *Cape Fear* and its remake. The feeling of control is gone. In Scorsese's film neither the rational constraint of human law or of reason serves as an effective safeguard against fury or fate. And the realization dawns that amid the glorious and powerful works of our hands and days irrepressible and untameable forces remain. Like the force of Max Cady, our dark double within.

This realization is humbling, to say the least. Yet the possibility of wisdom lies close by. It is the kind of wisdom that comes after trauma, in

29. *Id.* at 146.

this instance the trauma of deeply experiencing human finitude and uncertainty and the extreme perils posed by irrepressible forces both within and without. In the cathartic aftermath of such trauma the face of justice may change. And we may then see that in seeking to do justice we must not forget or deny the figure of the dark double—lest we confuse which side of the double we are acting on.