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Framed

Richard Sherwin

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If I were having a philosophical talk with a man I was going to have hanged (or electrocuted) I should say, I don't doubt that your act was inevitable for you but to make it more avoidable by others we propose to sacrifice you to the common good. You may regard yourself as a soldier dying for your country if you like. But the law must keep its promises.

OLIVER WENDELL HOLMES

If doings such as these receive honor, why should I join the holy dance?

OEDIPUS REX

Introduction: Signs of the Times

Sudden violent upheavals in cultural life, or slower, but similarly deep cultural transitions, lead one to re-encounter the forgotten history of order's mythic origin. During such times habits of thought and perception are shaken, accepted social arrangements grow suspect, uncertainty becomes the culture's hallmark. During such times the myth of reason and the reason of myth commingle freely, if uneasily, in the mind's musings.

Signs are that ours is such a time.

Call it postmodernism. Call it the post-Enlightenment age, an era apparently lacking the secular faith—in the free and autonomous self, in reason and reason's handmaids, science and technology—that inspired the modern break with medieval sectarianism. If the moderns loved God less and humanity more than their premodern forebears, the

postmoderns fall short on both accounts. They have no more love of God than the moderns had, nor more love of reason, for all its material productions and reshaping of the natural world, than would the pre-moderns before them, had they known such control were possible. The postmoderns are in love, or perhaps it is an obsession, with desire. Today material objects proliferate and the plastic self adjusts quickly to absorb their use. But when the product's use is up, as it inevitably will be, shapeless consuming desire remains. The experience of the post-modern subject is like that: contingent upon immediate uses, constantly in danger of being used up.

It is the same with meanings as it is with things. Information proliferates. The desire to maximize the speed and quantity of fact-consumption increases daily at a dizzying pace. Global information networks spread from glow-screen to glow-screen in homes and offices. We are all linked up. And everywhere talking heads are busily revealing our world: in accumulated tonnage of toxic wastes, in the number of inches of rainfall from coast to coast, in tragedies of death and brutality, in the latest sex scandals among politicians and Hollywood stars, in news of what's in and what's out, in the size of the deficit, in the volume of shares traded on the Big Board, in the news of rising hemlines and falling expectations. Day after day. What does it mean? Never mind. It is hard enough just to keep up.

But beneath the material onslaught there flows a deepening current of cultural anxiety. Basic beliefs are unstable and the rush to distraction does not wholly succeed in covering up the accompanying confusion. Skepticism is increasing regarding our ability to control events, to choose a particular path through life, to claim a discrete identity and bear responsibility for it. Works of our culture, in art, music, literature, and film today are telling us this. As the mind gropes for meaning, new stories are being told: narrative offerings seeking to frame the elusive self, the unknowable other, the fractured reality that is our social world.

In law it is no different. Why should it be? Law is both a co-producer and a by-product of mainstream culture. The stamp of the latter continually falls upon the meanings the law produces.

What, then, we are entitled to ask, is law's version of postmodern reality? What could law be like, for example, in the absence of modern belief in the free autonomous self, of modern secular faith in the predictability of physical causation? How might we think about crime and punishment if we were to lose confidence in our ability to control external

events or govern our own acts? How would the law respond if it turned out that to some significant extent it is only but for fate or accident that the criminal wrongdoer does harm and suffers or goes free?

But what is "criminal" after all? Is guilt-by-misfortune still guilt, or simply misfortune? Must the actor be able to change the consequences of his or her act before the law will condemn? How much chance will (should) the law bear before it may take away a person's freedom, or life?

Consider the story of Oedipus: made king by a lucky response to the sphinx's riddle, laid low by fate as the most lawless of men, unwitting agent of incest and parricide. What is one to make of Oedipus: criminal or tragic hero?

The ancients suffered with Oedipus. If mighty Oedipus could fall so low from so high who was secure? Is he not the tragic victim par excellence, a helpless plaything in the hands of a force mightier than he, mightier in fact than any human? Yet, the modernists—the humanists, the rationalists, the existentialists—refused to tremble. Witnessing Oedipus's fate, they would rather seek redemption in freedom and knowledge: freely choosing to pierce human deceptions, even if it meant learning the truth of one's own hidden criminality.

And in the postmodern view, what is Oedipus: tragic hero or luckless outlaw? But what is criminality, or tragedy, or fortune? Hardly unexpected questions given the recurring postmodern refrain: What is truth and what is deception? It is a refrain that plays well on film, especially when the subject is homicide.

Errol Morris's *The Thin Blue Line* (1988)

Framing the Frame-up: The Limits of Subversion

Harris: "If [Adams] would have had a place to stay, he'd never have nowhere to go, right?"

Morris: "You mean, if he would have stayed there at the motel that night, this [murder] would never have happened?"

Harris: "Good possibility. Good possibility. Heard of the proverbial scapegoat? There's probably been thousands of innocent people convicted and there will probably be thousands more. Why? Who knows?"

The film begins by accident, and weaves its way through currents of chance and fate. Filmmaker Errol Morris sets out to make a film about

Dr. James Grigson, the “killer shrink.” Grigson is the state’s favorite expert witness in death penalty cases: he always predicts the defendant will kill again. While interviewing convicts Grigson helped put on death row, Morris stumbles upon Randall Dale Adams. Adams has been convicted for the shooting of Dallas police officer Robert Wood. Adams insists he has been framed by the district attorney. Morris is intrigued by what Adams has to say. He becomes obsessed with the case. And the film he ends up making tells the story of the felony murder case of *Randall Dale Adams v. Texas*.

It is a story that begins by accident, and weaves its way through currents of chance and fate. It was on Thursday, November 24, 1976, that Randall Adams and his brother, on their way to the West Coast from their home in Ohio, arrived in Dallas. That Saturday, Adams ran out of gas. A sixteen-year-old driver by the name of David Harris spotted Adams walking alone on the side of the road with an empty gas can. Harris had just run away from home in nearby Vidor. Along the way he had ripped off a neighbor’s car, some cash, and his dad’s 12-gauge shotgun and .22-caliber nine-shot pistol. Harris invites Adams into the car. Adams gets in.

Sixteen-year-old Harris and twenty-eight-year-old Adams proceed to spend the rest of the day and a good part of the night together. They shoot some pool, smoke some dope, drink some beer, attend a soft-porn drive-in, drink some more beer, smoke some more pot. Shortly after 10:00 P.M., Harris drops Adams off at the motel where Adams and his brother were staying and drives on alone toward Inwood Road. Or perhaps it is closer to midnight and Adams, having failed to get his brother’s permission for Harris to stay over at the motel, drives off together with Harris.

Shortly after midnight on Inwood Road two police officers spot a car without its headlight on. Officer Robert Wood gets out and walks toward the car. As he approaches the driver’s window the driver raises a small caliber pistol and fires five or six shots into Officer Wood’s body. The officer falls, and in a matter of minutes he bleeds to death on the tarmac.

A couple of months later, the police are led to Vidor and David Harris. Harris tells them that it was Adams who shot Officer Wood. Based on this information Adams is arrested in Dallas and indicted for the capital offense of felony murder.

At first the state’s case seems weak. It is a matter of Adams’s denial and accusation of Harris as the killer against Harris’s claim that it was

Adams. Adams has no prior record. Harris was driving a stolen car that night and had stolen the pistol that had been used to kill Officer Wood. Upon his return to Vidor, Harris went on a crime spree.

The defense team was optimistic at Adams's trial. But then came the three surprise eyewitnesses: the Millers and Michael Randall. All three claimed to have seen the shooting that night, and the guy with the gun that they just happened to spot was, they told the jury, Randall Adams.

The jury convicted Adams. Then they heard from Dr. James Grigson, "the killer shrink," and his colleague, Dr. John Holbrook. According to these two psychiatrists, if Adams were released into the community he would almost certainly kill again. The jury voted for Adams's death.

For over four years Adams sat on death row, waiting for his appeals to work their way through the legal system. He lost at the state court level and entered the federal system. The case eventually reached the United States Supreme Court. There his death sentence was reversed.¹ The state could now attempt to try the case again under a new, constitutional death penalty statute, but they didn't want to. And as it turned out, they didn't have to. Adams's sentence was commuted by order of the governor from death to life in prison. Thus, with no further legal issues to raise, Adams would now have to resign himself to spending the rest of his life in prison.

And there he would have remained, but for the sudden appearance of filmmaker Errol Morris. Morris was interested in Adams's story, interested enough to conduct his own filmed interviews of Adams, Harris, the defense lawyers, the judge, the witnesses at the trial, the cops involved in the investigation of the case, and even some of Harris's friends in Vidor. Out of these interviews Morris constructed a film about the Adams case. Upon its release the film prompted renewed public attention that eventually led to further judicial review of the case. And this time a Dallas criminal court judge ordered that the charges against Adams be dismissed. At this point, it has been over twelve years since the shooting occurred. Over twelve years Adams has spent in prison. The state can now retry the case, but they decline. A free man, Adams finally makes his way back to Ohio.

That's the story. *The Thin Blue Line* documents the Dallas DA's deceptions in the state's case against Randall Adams. We learn that it was a frame-up from the get-go. Harris lied. So did the eyewitnesses. The DA knew. It's what he wanted. You can't fry a sixteen-year-old in Texas. That's the law. But Adams was old enough to be electrocuted. And when a cop is killed in Dallas an electrocution is sure to follow.

And who is Randall Dale Adams anyway? “Just a drifter,” recounts the lawyer in Morris’s film who heard second-hand of the judge who said so. And besides, “Why spoil a local boy’s whole life?” as one police officer is heard to say in the film.

Viewers of Morris’s film also see and hear from the three eyewitnesses at Adams’s trial, the witnesses who clinched Adams’s conviction. There’s Mrs. Miller up on the screen telling us that she’s a great fan of detective thrillers and that she’s seen crimes happening all around her: “It’s always happening to me, everywhere I go, you know. Lots of times there’s killings or anything, even around my house.” Her game, she says, is trying to solve the crime before the police do. Anyone would recognize her pathology. Even her husband. Turns out she’s even called the cops on him. No substance to it though. “Yeah,” Mr. Miller sadly intones, “Oh man, she’s . . .” His voice trails off. But the film viewer sees things clearly enough to fill in the gap. “Yeah, oh man, she’s . . . crazy.”

And as for witness number two, Mr. Miller himself, the film viewer has a clear idea of why he lied as well: reward money, a lot of it, for anyone who could help solve the case. Mr. Miller learned about the reward while he was in police custody following a knife fight with his wife. As a neighbor of the Millers says in her own film interview: “For enough money, he would testify to what they wanted him to say.” We believe it.

Just as we believe the third eyewitness, Michael Randall, also lied. The film makes that clear enough. We see and hear Randall condemn the Dallas legal system as corrupt from start to finish. “The DA will put something into [your] mouth [if he wants to],” says Randall, “that’s why they call it the Hall of Justice—the scales are not balanced. The scales are in the hall, and they go up and down.” So, when in Rome. . . . Sure, Randall too must have had his eye on the reward money. It’s all corrupt. Why shouldn’t he get his share?

These are the images with which the film persuades us. Each interviewee takes his or her turn seated alone before Morris’s unmoving, unblinking camera.² Each tells his or her version of the events that preceded or that occurred at Adams’s trial. We see and we understand how the frame-up happened. We see the judge who tried to conceal his tears as he listened to the DA’s final summation before the jury, the judge who’s G-man dad had taught him respect for law and order and for the cops who risk life and limb to preserve the thin blue line between order and anarchy. We see and hear young David Harris and we know why he lied. Harris himself tells us: “A scared sixteen-year-old kid. Sure

wants to get out of it if he can." Just as we have seen and understood the all-too-human deficiencies that led the eyewitnesses to lie: madness, greed, cynicism.

On the strength of familiar stereotypes, the ordinary images that make up our common sense of the world we live in, Errol Morris plots out the mystery of Officer Wood's murder and solves it. Randall Dale Adams was framed.

But this is no ordinary documentary film. *The Thin Blue Line* does not rely solely on interviews or on the evidentiary clues that lead to a murder mystery's pat resolution. The film weaves into an otherwise conventional mystery plot a distinct counterplot. A counterplot that subverts the very mystery/documentary genre itself.

In addition to interviews, Morris's film presents dramatized simulations of reality. Viewers of the film see actors playing out a nightmarish police interrogation of Adams. Viewers also see the scene of the shooting being simulated again and again throughout the movie. The scene varies with the person telling the story—as in Kurosawa's *Rashomon*. But unlike *Rashomon*, here the reenactments are highly stylized, self-consciously made to lack verisimilitude. For example, there's that recurring close-up of the rotating red police light wheeling within a sealed circle of fate, its audibly swooshing revolutions mimic the hypnotically redundant chords of Philip Glass's ubiquitous score. There's the slow-motion free-fall of the chocolate malt that Officer Wood's partner allegedly tossed out the squad car window as soon as she heard the first shots being fired. We see the malt splat on the ground, oozing slowly into the dirt, like blood from a fallen body.

The film toys with reality in other ways as well: for example, those obviously fake film clips, like the Hollywood gangster film scenes that play as we hear the judge reminisce about his dad's FBI career in Chicago in the days of Capone and his mob cronies. And listening to Mrs. Miller's words, evoking a fantasy world of cops and robbers, we suddenly see on the screen classic film images of Boston Blackie, as if these images, almost too comical, were unreeling within Mrs. Miller's mind.

What are these interruptions in the linear unfolding of a documentary murder mystery doing here? I believe they are in the film to remind us that the truth of the frame-up that the film reveals is itself the product of a frame-up. This is no simple documentary. It is about a particular homicide in Dallas and, more generally, it is an exploration of the way we perceive and judge the truth. The film plays with images (stereo-

types, familiar cognitive schemas, the social conventions of everyday thought and perception) that persuade us to believe in the DA's frame-up, just as it plays with counter-images that make up (that perhaps even make fun of) the way we allow film images to capture our belief in the first place. It's all being framed, the film tells us. There is no place to go for objective, unmediated truth.³

So speaks the subversive counterplot in Morris's film. If we were inclined to listen to it, the counterplot would have us question the mystery plot's neat narrative construction of historical truth. We would have to think about Morris's cinematic frame-up of the "frame-up." Such questioning is not out of place—not in a story that begins by accident and weaves its way through currents of chance and fate. (A man happens to meet a boy while walking along a Dallas roadway. A filmmaker happens to encounter a convict on death row and makes a film that frees him from prison.)

Nor are the "facts" of the case so clear. For example, what did Harris mean when he said it never would have happened if only Adams had a place to stay? Is that to say that Adams left the motel that night with Harris? Maybe so. After all, we know that Adams's brother had denied Harris entry. As Adams said, his brother "didn't like that sort of thing." (What sort of thing?) So are we to believe that Adams *was* in the car with Harris at the time of the shooting? But why? Why would a twenty-eight-year-old man spend the day and evening with a sixteen-year-old boy that he had just met? Might there be something more difficult here for either Adams or Harris to speak the truth about ("Yes, we were together, in the car, in the dark, that night . . .") than to lie about ("No, I was alone, but then I got scared, so I blamed him, I made Adams the scapegoat . . .")?

Yet the viewer is rather more inclined to reject (if he or she ever consciously discerned) what I have been calling the film's subversive counterplot. The factual inconsistencies can be explained. And anyway, the frame-up story is compelling. As for the counterplot, surely it goes too far. Postmodern truth-play may be all right for philosophers and literary critics. But this is a real life, and a real case of homicide to boot. Everyone knows that in real life justice does not depend upon chance encounters or upon the narrative compulsions of one kind of story (a linear detective mystery, say) rather than another kind (a postmodern fact-fiction docudrama, say). The prosecutor's frame-up was real. Morris showed us. Now we know the *history* of it. We understand why it happened and how. We know the characters involved, their motives,

their prejudices, their cynicism and deceit. We know whom to believe and whom not to. And that is why viewers of Morris's film have no need or patience for the subversive implications of its counterplot. That at least is one of the reasons why viewers generally refuse to confront the filmic deceptions that might have led them to doubt that the mystery has been solved after all.⁴

Let the matter rest. At least order has now been restored and the case has come to an end. *An* end, but perhaps not *the* end—at least not if we are willing to demask the frame-up used to demask the frame-up. But perhaps the human need for order, particularly in the face of homicide, is greater than the desire for knowledge (especially when it's taboo) and greater too than the capacity to live with uncertainty.⁵

But if viewers of Morris's film can accept the narrative necessity of a conventional detective mystery plot, insisting all the while that it is "documented" or "historical" truth that compels them, if they can deny the narrative necessity of the film's subversive counterplot, with its ceaselessly circling images of self-referential uncertainty and its disturbingly interwoven theme of fate and randomness, viewers of David Mamet's *Homicide* can enjoy no such leeway. For here there is no escaping the subversive impact of chance and necessity upon self and motivation. There is no escaping the tragic uncontrollability of human affairs.

David Mamet's *Homicide* (1991)

Subversion Unbound: The Dissolution of Character,
Motive, and Causation

"If you're moved, somebody has to be doing it."

David Mamet's *Homicide* is a complex tale that unfurls with the tautness and inevitability of Greek tragedy. And in true tragedian style, the havoc it wreaks is total. By the story's end its main character, Bobby Gold, is utterly undone. What is more, the forces of his undoing, including his own complicity in the fate that he suffers, seem to be entirely beyond his control. The dissolution of the willing subject and the disjunction between a person's state of mind and the external events into which his actions flow: that is our theme.⁶

As a structural matter, the film's main plot revolves around the efforts of two cops, Bobby Gold and his partner, Tim Sullivan, to trap and take

in alive the man who killed a federal agent. Two subplots closely interweave around this main one.

On his way to a meeting with the man who will serve as bait to draw in the cop killer, Gold and his partner stumble upon a couple of police officers responding to a shooting in a neighborhood candy store. An elderly Jewish woman has been killed. Her guard dog is pinning down one of the officers inside the store. Gold, responding to a rookie cop's anxious uncertainty about how to rescue his partner, enters the store and skillfully lures the dog away. Before he can break away from the scene, however, Gold runs into a senior officer who tells him he's "caught the case." It is this chance encounter with the candy store homicide that triggers the second subplot and that ultimately leads to Gold's undoing. He is about to embark upon a shattering quest for self-identity.

Back at the station house, Gold entreats his superiors to free him from the candy store case so that he can work on the high profile cop homicide. But he's stuck: the elderly Jewish woman's son is a doctor with big connections downtown. The doctor knows Gold is Jewish and he wants Gold on the case.

In this way, the film skillfully joins the issue of self-identity and divided loyalties. At the outset of the story, for Gold there seems to be no question: he's a cop, first and last. The Jews? "They're not my people, baby. . . . So much anti-Semitism the last four thousand years, we must be doing something [to] bring it about." Trouble is he can't escape his fate so easily. Even the cops won't let him. They too can't help but see him as a Jew. For example, it takes only a little provocation to prompt a superior officer to call Gold a "dumb kike." And in a later scene even his partner, his "family," Tim, will playfully stick Gold with the same epithet.

In any event, despite his denials, or perhaps based on them, Gold has been acting off of his Jewish identity throughout his career as a cop. His best credential has Jewish origins: Gold the "mouthpiece," the "bar room lawyer," Gold, the sweet-talking hostage negotiator. The secret of his oratorical success? As a Jew he's always felt like an outsider. And that status has allowed him to identify with the criminal. It was his *carte d'entre*. As an outsider, Gold also constantly felt the obligation to prove himself, to prove he wasn't "a Jewish pussy." "How come you always gotta be the first through the door? So brazen," his partner knowingly says to Gold, their guns drawn as they stand ready to enter a suspect's home.

With this as background perhaps it comes as no surprise when Gold gets swept into "the Jewish thing" during his investigation of the candy store case. The real surprise, however, lies in where that investigation will lead him.

The Jewish doctor calls Gold at the station house: someone's on the roof and he may have taken a shot at the doctor's wife through their kitchen window. Why would anyone do that? Gold asks. Maybe it's a conspiracy, the doctor replies. When Gold expresses his skepticism, the doctor says, "It's always a fantasy when someone wants to hurt the Jews. And when the fantasy is true, then you say 'what a coincidence, we're being paranoid and someone coincidentally wanted to hurt us.'" It's like the postmodern saw: "Paranoids are the only ones who notice things anymore." Gold checks out the roof.

On his way Gold sees a man disappearing down some stairs near a pigeon coop. Beside the coop Gold finds a crumpled slip of paper with the word "GROFAZ" written on it. He pockets the paper and then goes to take another look at the candy store where the elderly woman was shot. At the store Gold stumbles upon an old crate. Inside he finds an ordinance invoice from 1946 for Thompson machine guns and a list of Jewish names.

The ingredients of the conspiracy are now in place: Who was this elderly Jewish woman? Why was she shot? By whom? Was it the anti-Semitic group that had been distributing Jew-hating posters in the black neighborhood that surrounded the candy store? The clues suggesting that possibility are increasing.

Gold puts a trace on the tommy gun invoice and learns that the guns from the crate had been stolen. He investigates the letters "GROFAZ" and learns that it was a secret code name for Hitler during the final years of the war. Then he stumbles upon a secret Zionist organization. They know about the list of Jewish names and they want it. Gold resists; he's already tagged it, it's police property. But Gold, what are you? A Jew? The Zionists play upon his faltering sense of identity and conflicted loyalties.

Gold buckles. "Okay. I want to help you. What can I do?" "We want the list." "I can't. Anything but that." "Ach, you disgust me." But later, a member of the Zionist group allows herself to be talked into letting Gold do something for them after all. The group was planning to bomb the anti-Semitic organization that had been printing and distributing those Jew-hating leaflets. Gold implores the member: let me do this. And he does. But then the noose of events tightens around his neck.

To be a Jew, to do something for once for himself, to serve his own homeland, to be whole. Gold has been seeking himself. That search will now destroy him.

After the bombing, the Zionists and Gold meet again. "We want the list." "But I told you . . ." "Show him the pictures." And there's Gold, the cop, caught redhanded in a series of photos showing him blowing up a store. "We want the list." And as the Zionists leave him to ponder his fate, speaking together in Hebrew as they leave, double-outsider Gold knows he's been taken. His longed-for family has orphaned him already. And his "real" family is about to be killed because he dallied among strangers.

It turns out that the business with the Zionists has distracted Gold from his appointed rendezvous with partner Tim and the others who were staking out the cop killer at that moment. Gold was the lynchpin. He had sweet-talked the killer's mother into playing decoy. But without Gold she wouldn't play. And without him there, she didn't. Gold turns up late, and the trap's gone sour. His partner has been mortally wounded in the cross-fire that broke out between the cops and the killer. Gold is heartbroken and guilt-struck. Raging against his partner's killer ("I'll kill you, you fucking nigger") Gold leaps into the fray. By coincidence, the day before, a man who had been arrested for shooting his wife and two kids with a deer rifle had attacked Gold at the station house. He was after Gold's gun, to kill himself. The attempt failed, but Gold's holster strap was torn off during the struggle. Because of the missing strap, now, when Gold jumps off a ledge on his way to get the man who shot his partner, he loses his gun.

In the final encounter between Gold and the killer, Gold is shot. But he is not completely unarmed. He still has the "mouthpiece." He uses it, as revenge, on the killer: "You sorry sack of shit. Your mother turned you in." It is the one thing the killer can't accept, the last illusion he refuses to let go of. Incensed and disbelieving, the killer shoots Gold a second time. But Gold has time enough to show him proof of the trap that the killer's mother had joined. And the delay that this dallying causes is time enough for more cops to arrive on the scene and shoot the finally disillusioned killer.

Tragic threads of fate have now woven a shroud that covers everything. Gold has gotten it all wrong and it has cost him. The one insight he is left with is the one he shares with the killer: "I'm a piece of shit. It's all a piece of shit. I killed my partner and your mamma turned you in." But the last blow is yet to come.

When he has sufficiently recovered from his wounds to return to his office, Gold learns two more things: a young black kid in the neighborhood has confessed to shooting the elderly Jewish candy store owner. It seems that everyone in the neighborhood knew there was treasure in her basement, and the kid wanted it for himself. The second thing Gold learns involves the slip of paper with the word "GROFAZ" written on it. It turns out that "Grofazt" is the name of the leading manufacturer of pigeon feed.

Like Oedipus, Gold has been completely undone, an unwitting accomplice in his own tragic fate. Locked into a fortuitous chain of events, he has ended up destroying everything that is of value to him. His futile quest for identity has led to blackmail and double orphanage. His adopted family betrayed him and his real family, his partner Tim, is dead because he failed to show up on time to trap the killer. Gold has also betrayed himself by breaking his word: the promise he made to the killer's mother that he'd bring her boy in alive. That's the assurance that got her to go along with the police. But they turned out to be empty words. Gold broke his promise with different words, words spoken this time out of hate rather than empathy and compassion. And with these words Gold did more than rob the killer of his last illusion, while also giving the police the time they needed to get close enough to shoot him after all. With these words Gold also jettisoned the last shred of his self-identity. For even his status as outsider now meant nothing.

And what compelled this outcome that left Gold a "piece of shit," neither a good Jew nor a good cop, transformed from culprit-sympathizer to culprit-hater and racist killer? The force of randomness: a chance encounter with a failed candy store robbery and a mysterious anti-Jewish conspiracy that turned out to be no mystery at all: Grofazt, pigeon feed. Empty coincidence.

Gold's quest for identity has been thwarted and ends tragically; his duty has been compromised on all fronts. And Gold, like his double, that mad family killer who jumped him at the station house, or that would-be robber duped by anti-Semitic propaganda, seems all along to have been living out the wisdom in his partner's dying words: "If you're moved, somebody has to be doing it." Precisely it. Like a puppet, moved by invisible forces. Brought low, like Oedipus, by an invisible power stronger than he. Like Oedipus, the knowledge Gold gains in the end gives him insight only into his own helplessness and defeat.⁷

There is no straight line to meaning here. Even a murder mystery's resolution (the kid wanted the treasure) and a cop killer's death cannot

remove the mystery of unjustifiable, uncontrollable death. Even if we can explain and condemn certain kinds of homicide, others resist easy judgment. A cornered outlaw who kills out of desperation we can blame. But do we as readily condemn the violence of a victimized people seeking political liberation and national autonomy? Those who feed on malicious myths and stereotypes and who kill out of racial hatred may be held accountable for their acts. But what about a man who kills his wife and two kids with a deer rifle? Or a cop who causes the death of a partner he loved like family?

The inexplicable homicide is tragic: as much for its inexplicability as for the pain and suffering that it causes. Perhaps it is the experience of pain and the knowledge of its inevitability (if pain is your due) that comes of our encounter with the hapless victim—the victim who does evil, the victim of fate. Perhaps here, in desperate tragedy, lies the origin of human compassion, for what it's worth.

But still we ask: On what grounds may guilt and blaming rely in the absence of human knowledge, control, or motive, in the absence even of an orchestrating sense of self? What rules for crime and punishment can come from such pervasive unruliness? To address that question, I turn now to Philip Haas's film adaptation of Paul Auster's novel, *The Music of Chance*.

Philip Haas's *The Music of Chance* (1993)

Back from Kismet: Chancing upon Order

"You tampered with the universe, my friend, and once a man does that, he's got to pay the price."

In Errol Morris's *The Thin Blue Line* we saw a straightforward detective story (who framed Randall Dale Adams?) compete unsuccessfully with a troubling counter-narrative, what I called the film's subversive anti-mystery plot. The counter-narrative suggested that truth is inescapably mediated in one narrative form or another. The question thus became: Which story is the more compelling one? To frame the issue of truth in this way leads one to confront the narrativity, one might even say the fiction (as in "*fict-io*," the constructed aspect) of truth itself. This is hard to accept in criminal cases where so much depends upon public judgments of truth. Thus it may not be surprising that many viewers of Morris's film chose not to accept the film's counterplot,

the story of how Morris framed the frame-up.⁸ They would rather travel the straight line of historical truth laid down by the film's conventional mystery tale. We also saw that unlike *The Thin Blue Line*, Mamet's *Homicide* offers no room for such denial. Here there is no final resolution to fall back on once Gold's gossamer constructions of meaning are blown away by the winds of fate. In the end there is simply no comprehending the work of such an inhuman force. When the curtain falls perhaps only pity, a sense of compassion for fate's victim, remains.

In *The Music of Chance* the power of fate and accident is assumed from the outset. The question now becomes: Assuming that to be the case, how do we find order? Close on the heels of that query is the one that asks: Is law still possible?

Phillip Haas's film begins with a blind leap into the unknown. Jim Nashe, an ex-fireman, has been aimlessly driving around the country for months. He's been kept afloat on money he inherited when his father died. He drives not to arrive anywhere but for the sense of unburdened speed that driving allows. Nashe has become truly postmodern: a placeless, will-less subject in a world in which nothing lasts for longer than a moment. He simply follows the road before him.

As his cash runs out, however, Nashe realizes that things can't continue as they have. So when he spots a stranger stumbling along the roadside he doesn't hesitate. Nashe picks him up. His passenger is Pozzi, a professional card player. Pozzi tells Nashe that he was robbed and beaten during a high stakes poker game. The shame of it, Pozzi relates, is that now because he's penniless he'll have to miss the game of his life. Turns out that he was supposed to play poker with a couple of millionaires named Flower and Stone who, according to Pozzi, know nothing about the game. He stood to win a good forty, maybe fifty grand off those two, he says.

Nashe, a man without plans or prospects, is quick to leap onto the path Pozzi lays down. Nashe will use his remaining cash, ten grand, to get Pozzi into the game with Flower and Stone. In exchange Pozzi will split his winnings with Nashe fifty-fifty. And off they go.

As it turns out, Flower and Stone are no ordinary millionaires. Respectively an accountant and optometrist by trade, they won their first millions in the lottery. They chose primes: primary numbers, "numbers that refuse to cooperate, that don't change or divide, numbers that remain themselves for all eternity." Flower adds: "It was the magic combination, the key to the gates of heaven." So it would seem, for since hitting the jackpot they can't seem to stop making money. Flower describes it this

way: "No matter what we do, everything seems to turn out right. . . . It's as though God has singled us out from other men. He's showered us with good fortune and lifted us to the heights of happiness. I know this might sound presumptuous to you, but at times I feel that we've become immortal."

Besides their extraordinary luck, Flower and Stone also have unusual interests. Stone is a collector. But his collection is crazy: a telephone that once belonged to Woodrow Wilson, a pearl earring worn by Sir Walter Raleigh, a half-smoked cigar filched from an ashtray in Winston Churchill's office, William Seward's Bible. Random, beside-the-point stuff. But to Stone it is something else: "Motes of dust that have slipped through the cracks." He preserves things for what they are, their purpose is irrelevant. And now Stone has branched out. He recently purchased a fifteenth-century Irish castle and had the stones, all ten thousand of them, shipped back to America. They're sitting on his property in a heap. He plans to build a wall out of them, just a straight wall.

Flower's interest is different. Rather than collect he builds. Flower is an artist. He is constructing a perfect replica, in miniature, of a city. He calls it the City of the World. There are scenes here from Flower's childhood and more recent history. Tiny figures, of Flower and Stone and others. There's the Hall of Justice, the Library, the Bank, the Prison. Everything in the city is in harmony. Even the prisoners are happy, glad they've been punished for their crimes. For now, as Stone admiringly puts it, "they're learning how to recover the goodness within them through hard work."

Surely by now we realize this is no ordinary story about people about to play a game of cards. Surely this is a mythic tale, a parable. Consider the setting: from the outset we are thrust into a world in which choice and direction have disappeared. Nashe doesn't plan, he reacts. Pozzi has made a life out of luck and instinct. And Stone and Flower have gone a step further. Propelled by luck to a mastery of the material world, they have now assumed an almost god-like status. (Perhaps they *are* immortal as Stone muses. Perhaps God *has* singled them out.) In Stone's philosophy things need no purpose. It is enough that they exist as they are. That is why he can snatch odds and ends from beneath the black veil of history and render them eternal. For Flower it has become possible to orchestrate reality itself, to shape events according to harmonious principles: law (the Hall of Justice), economy (the Bank), knowledge (the Library) and penitence (the Prison). And, stranger still, it is not only

the past that is represented in his City of the World. So, too, as we shall see, is the future: Pozzi's and Nashe's.

If Nashe has relinquished all efforts to control his life, yielding instead to fate, if fate has placed beside him Pozzi, a more experienced player in the field of chance, Flower and Stone turn out to be the masters of fate's domain. It is as if they already knew Pozzi and Nashe would come, lose all their money at cards, and be forced to pay back the debt with money earned by working for Flower and Stone. What work? Why, to build the stone wall of course. And that is precisely what transpires. With one additional detail well worth noting.

When the card games begin, Pozzi's good fortune is running high. He is in gear, and can hear luck's music playing. He is sure he can't go wrong. But then something happens that stops the music cold. Some hours into playing, Nashe decides to stretch his legs. Where does he go but back to the room with Flower's City of the World. And what does Nashe do? Why he snatches up a miniature Flower and a miniature Stone and stows them in his pocket. Mementos of a strange and glorious day, he thinks. Wrong. As Pozzi would later observe: "It's like committing a sin to do a thing like that, it's like violating a fundamental law. . . . You tampered with the universe, my friend, and once a man does that, he's got to pay the price."

And, indeed, from that moment on Pozzi's luck could not have been worse. Upon Nashe's return he finds Pozzi losing without end, until finally he is in serious debt to his hosts. In a last desperate measure Nashe puts his car into the pot. But Pozzi loses that too. That's when Nashe arranges the work contract: he and Pozzi will build the wall with Stone's ten thousand stones for an hourly wage, for as long as it takes to pay off the card debt. What choice do they have? After all, Stone has threatened to use his influence to ensure trouble with the authorities if they refuse. So their work begins.

There is but one brief stretch to cover now before the story ends. Nashe and Pozzi have consigned themselves to manual labor on Stone's and Flower's property. The wall goes up. The debt goes down. But then there's a snag. Pozzi and Nashe thought that small expenses like food and entertainment would be covered by their employers. But that turns out not to be the case. It seems they'll have to work a few weeks longer than they thought.

Pozzi buckles under the idea of more forced labor. And Nashe agrees that Pozzi, fragile to begin with, probably isn't up to the task. Nashe

suggests that Pozzi make a break for it while Nashe stays on to finish out the contract. They say their goodbyes and Pozzi escapes. Early the next morning, however, Nashe wakes to find Pozzi lying outside in the cold grass bruised and unconscious. He's been beaten silly.

Now comes the caretaker with his son-in-law to take Pozzi to the hospital, they say. Nashe is convinced that it was the caretaker, probably with the help of the son-in-law, who were responsible for Pozzi's beating. Retribution for the escape, Nashe figures.

The next days and weeks are hard for Nashe. Without his companion, whom he grew fond of during their time of shared labor, Nashe battles with guilt, sadness, loneliness, and thoughts of revenge. As time passes, the caretaker begins to take pity on Nashe's solitary duty. So when the wall is about completed the caretaker invites Nashe to a tavern for a friendly, celebratory drink with him and his son-in-law. Nashe agrees to go. They drive there together in Nashe's car, the one he lost in cards and that Flower and Stone apparently gave to the caretaker.

A few drinks at the tavern, some friendly talk, and a couple of low-stake games of pool with the son-in-law, with this catch. When the son-in-law loses to Nashe and Nashe waives away his winnings the son-in-law is not to be outdone. He insists on returning the favor. What'll it be Nashe? Why, how about a chance to drive the car back to the house? So be it.

Nashe takes the wheel. The old feelings of aimless freedom flood back. Just motion and distance, with a musical score courtesy of the car stereo. Gradually Nashe increases the speed. When he's past seventy the caretaker panics. He snaps off the music. The caretaker's sudden move breaks Nashe's concentration. He's going too fast. There's a headlight ahead, closing in like lightning. Nashe loses control and crashes into some bushes on the side of the road. The caretaker is dead. Injured and stumbling along the roadside, Nashe spots a passing car. It stops, Nashe gets in. The story ends.

A mythic gem. In the land of chance as it was in the beginning, so it is in the end. One injured chance passenger replaces another. And who knows what adventure is about to unfold, what Stone- and Flower-like design is waiting to be realized? For if things just happen, by fate or chance, the film tells us, there are also the chance gods who have laid up the patterns of fate. Destiny is already made out, in advance, in replica, so to speak.

And in this parable of fate we also learn there is harmony in destiny's order. The story of Pozzi and Nashe confirms it. It is as Stone said

about Flower's city: the prisoners are happy in their labor, learning to recover the goodness within them, just as Nashe did. There was nothing to be found in his aimless and solitary driving. Nashe was no *easy rider*. He realized that his shielded existence on the road was an empty fantasy that could not be sustained. It was only when he began his labor with Pozzi that Nashe found what he lacked before: human companionship, a sense of sharing with and caring for another human being, the basis for community. Moreover, forced labor though it was, Nashe's work with Pozzi provided him with a sense of worth and purpose. As the wall grew, he and Pozzi took pride in their efforts and those efforts were plain to see, they were tangible, made in stone.

Fate is strange: in aimless freedom Nashe was a lonely prisoner of placeless speed and empty distance; in forced labor he found solidarity, freedom, and peace of mind. But then the order of things was disturbed again. Doing penance to pay off their card debt was in harmony with basic principles. But when Nashe, convinced that Pozzi could no longer take it, coaxed Pozzi to escape, that harmony was shattered. As in the card game before, and the car ride with the caretaker later, once the music shuts off a payment has to be made. When Nashe by his rash act stopped the music of harmonious penance he could not avoid paying the price, as would Pozzi for his own disharmonious repudiation of penance altogether.

And so it goes. From car to car on the road of chance and necessity. Yet even if human will, the ability to govern or design one's fate, is forfeited, responsibility for one's actions does not disappear. There is it seems an order deeper than human designs can go. As the ancient Greek philosopher Anaximander said: "And into that from which things arise they pass away once more, according to necessity; for they pay penalty and retribution to each other for their injustice according to the assessment of Time."⁸ If we breach the natural order, our fate is sealed. It is best, then, to seek harmony; failing that, it is best to seek happiness in penance. So speaks the wisdom of the fate gods.

Let us review now the film trail we've been traveling: (1) from denial of chance and fate in deference to human designs (identifying with Adams's fate as the prosecutor's "scapegoat" in the *The Thin Blue Line* while resisting the film's anti-mystery story counterplot); (2) to acceptance of fate and chance along with tragic self-loss and incomprehensible suffering (identifying with Bobby Gold's fate in Mamet's *Homicide*); (3) to acceptance of chance, fate, and natural principles of harmony for the breach of which penance is inevitable (identifying with Nashe's fate

in Haas's *The Music of Chance*). But what are the implications for the legal culture of the realities that these three films depict?

Conclusion: Law through a Postmodern Frame

"Bitzer," said Mr. Gradgrind, broken down, and miserably submissive to him, "have you a heart?" "The circulation, sir," returned Bitzer, smiling at the oddity of the question, "couldn't be carried on without one. No man, sir, acquainted with facts established by Harvey relating to the circulation of blood, can doubt that I have a heart."

CHARLES DICKENS, *Hard Times*

With increasing skepticism toward the modern ideal of technological progress and the ability rationally to control one's life, with the growing realization that much of what goes on in the world, including our own acts and desires, will never yield to human control, it may not be surprising to see a newly emerging belief in alternative, nonrational mythic forces. Forces like chance and fate. It is that development that I believe these three films by Morris, Mamet, and Haas portray.

Consider again what Errol Morris shows us through the homicide case of Randall Dale Adams. Comprehensive rational truths do not stand alone, naked and pure in the objectified space of historical documentation. If we choose to believe a truth it is because we also choose to accept the form of its mediation. Perhaps the history story or the mystery tale with its neatly rational resolution of clues *is* more compelling under one set of circumstances rather than another. The credibility of its truth, however, is inescapably the product of the narrative by which we get it. And in the process of 'getting it' much goes on at a subconscious level, hidden from view. Subconscious processes not only affect our perceptions of truth, they do so independently of the reasons we may posit for what we believe to be the case. In this sense, Morris is inviting us not to deny truth but to stop denying the mediations by which our beliefs are activated.

One of the narratives most frequently denied by legal authorities in the modern age is the one that tells of the loss of human control. In the age of reason, the loss of control was not the official story. David Mamet revives the tale. In doing so he subverts the rule of modern reason.

We cannot hope to comprehend all that befell Bobby Gold. All we can do, perhaps, is what audiences in the ancient Greek amphitheaters did when they beheld Oedipus's fate: they felt overwhelmed by horror, pity, and a sense of collective vulnerability to inhuman forces against which no one is secure.

And once we allow ourselves to see through the false armor of reason, what then? Cross our fingers and wait for the ax to fall? Phillip Haas's adaptation of Paul Auster's novel suggests otherwise. If chance and fate are forces that must be reckoned with in this life, there are also rules. Even chance has its harmonies. Stop its music and there will be a penalty to pay. Neither rational calculation nor irrational denial can avoid the retribution that must come.

In the modern era, jurists, like most people, took pride in reason and the order it could impose on natural and human events. And why not? After all, this was an age when technological advances were a marvel to behold. What would man invent next to improve the human lot? A similarly optimistic attitude shaped and informed the modernists' rational aspirations for society. For example, one influential group of modern idealists believed that individuals in state-controlled economies would find all that they needed for contentment in life by devoting themselves to the ideals propagated by the state. Other modernists believed that individuals who lived in free market societies would find similar reward if they would only emulate the ideal of the rational calculator. The free citizen who knew how to maximize in his or her rational choices the best interests of society would surely share in the wealth that those choices would help to produce.

But the modern era has gone into decline, and faith in modern reason and its rational ideals has diminished. The marvels of modern technology? Yes, of course. But what of machines of mass destruction? What of technological wreckage and waste that ravage the planet? As for the rational engineering of society by the state: the fall of Communism has attested to the fallacy of that ideal. And while free economies have fared better, their weaknesses are increasingly apparent. For example, today we see that the modern ideal of the rational agent as the best generator of social wealth is gradually being overtaken by other, far less rational images of the self.

If the invisible forces of the free market are still perceived as active in the world today, it seems increasingly likely that they are not operating alone. What names will we give in our time to other inhuman forces,

among them perhaps the gods of chance and necessity? I do not know. What stories will we be telling of their dealings in human affairs? I cannot say. What I am saying is that the prospect ahead is for more such nonrational mythic tales about law and justice.

Let me close this essay with a more specific musing on law as viewed through a postmodern frame. As we increasingly come to see, along with Morris, that there are multiple narratives by which truth and justice may be constructed, it is likely that the ascendancy of modern reason in the legal culture will end. As the rhetoric of rational control begins to compete with other forms of legal discourse, different sources of knowledge, previously repressed (or delegitimized) as taboo, will enter the mainstream. Consider, for example, the rhetoric of the emotions.

No longer an outcast in the realm of truth, the emotions could bring the law back from the brink of hyper-rationality, the frenetic, obsessed quest for final causes and neat, formalistic resolutions in the face of human conflict. If the emotions render us vulnerable to the particularities of a given case, eschewing detached legal formality for a more empathic consideration of the fates of the parties concerned, this is not to be considered a vice. Rather, it is a virtue. The emotional response to the fate of the other, even when the impulse is strong to deny that we could ever suffer the other's destiny, brings life to the law.

Now it is true that such a highly contextualized approach might make the law less predictable. But the question arises: What price are we willing to pay for formal order? In any event, with increased awareness of life's tragic subversions of artificially posited rational norms the rule of law is unlikely to remain unaltered. It is plausible that over time law will be viewed as operating on a field of causation and human agency as well as accident and necessity. In this way we may see, if not an end to, at least a reduction in the law's repression of uncertainty in its quest for closure. By opening up to the separate rhetorics and respective truths of rational order (agency/causation) and the emotions as judgments of value⁹ (accident/fate) the law may acquire a more compassionate and thus a more human face.

There is no closure here. I have no way of knowing whether the norms depicted in the three films that I have discussed will ever achieve cultural dominance. However, one thing is certain. If the life of the law were to imitate the art of Morris, Mamet, and Haas, the stories the law tells would be different. And the cultural balance between the yearning for order and the impulse toward mercy would surely change.

Notes

1. *Randall Dale Adams v. Texas*, 448 U.S. 38 (1980).
2. The novelty of the camera lies in its ability to present to the interviewee live video images of the interviewer. In this way, the interviewee is able to maintain constant eye contact with his or her interlocutor while staring directly into the camera. Morris calls his invention the "interrottron."
3. See John J. O'Connor, "The Film That Challenged Dr. Death," *New York Times*, May 24, 1989, 22 (quoting Morris: "What I want to do in those reenactments is to take people deeper into the ambiguities of the case, not to show what really happened"); Peter Bates, "An Interview with Errol Morris," in *Cineaste* 17:1 (1989): 17 (quoting Morris: "Truth isn't guaranteed by style or expression. It isn't guaranteed by anything"). See also Bill Nichols, "Getting to Know You . . .": Knowledge, Power, and the Body," in *Theorizing Documentary*, ed. Michael Renov (New York: Routledge, 1993), 179-80 ("Morris creates a minor dissonance that upsets our usual assumptions about the historical authenticity of what we see. It is but a small step to realize that the conventions of documentary themselves guarantee the authenticity of that to which they refer. . . . Morris questions the reliability of evidence while still asserting that there is a reality to which memory and representation allude").
4. See Michael Renov, "Towards a Poetics of Documentary," in *Theorizing Documentary*, ed. Michael Renov, 203n.55 ("The popular attachment to truth in cinema suggests that the erosion of referentials associated with the postmodern is being resisted in some quarters with great intensity"). See generally Saul Friedlander, *Probing the Limits of Representation* (Cambridge, Mass.: Harvard University Press, 1992), and Richard K. Sherwin, "Law Frames: Historical Truth and Narrative Necessity in a Criminal Case," 47 *Stanford Law Review* 39-83 (1994). In the latter work I question Morris's tendency in *The Thin Blue Line* to suppress the film's subversive counterplot for the sake of a stronger, linear resolution to the question, Who killed police officer Wood?
5. But see Tony Hilfer, *The Crime Novel: A Deviant Genre* (Austin: University of Texas Press, 1990), 2-3. "The function of the detective hero is to guarantee the reader's absolution from guilt. This is basic to the genre's form of wish fulfillment. In contrast, the reader of the crime novel [and, one might add, the viewer of the equally subversive crime film] is maneuvered into forms of complicity."
6. See generally Martha C. Nussbaum, *The Fragility of Goodness: Luck and Ethics in Greek Tragedy and Philosophy* (Cambridge: Cambridge University Press, 1986).
7. See the *New York Observer*, October 7, 1991, quoting Mamet: "[*Homicide*] has no moral. It's not a cautionary tale. . . . It's a myth: a symbolic exploration of the unconscious—it purifies and cleanses through enabling the

auditor to respond on other than a conscious level. . . . It's the myth of the minotaur. He goes deeper and deeper into the labyrinth to out what plagues the city, only to find out it is him."

8. See, e.g., Martha Sherrill, "Errol Morris: The Auteur as Advocate," *Washington Post*, January 3, 1989, B1 (describing Morris's film as a "feature-length documentary"); Alvin Klein, "Film Dissects Murder and Justice," *New York Times*, October 23, 1988, 14 (describing the film as a "nonfiction feature film"); and Pat McGilligan and Mark Rowland, "100 Film Critics Can't Be Wrong, Can They?" *Times Mirror*, January 8, 1989, 20 (describing the film as a "crime documentary").

9. See John Burnet, *Early Greek Philosophers*, 4th ed. (New York: Meridian Books, 1969), 52; G. S. Kirk and J. E. Raven, *The Pre-Socratic Philosophers* (Cambridge: Cambridge University Press, 1957), 106. The ancient Greek philosopher Heraclitus expressed a similar thought: "The sun will not overstep his measures; if he were to do so, the Erinyes, handmaids of Justice, would seek him out." Philip Wheelwright, *Heraclitus* (New York: Atheneum Press, 1968), 102.

10. See Martha Nussbaum, "Emotions as Judgments of Value," *Yale Journal of Criticism* 5:2 (1992): 201-12; and Nussbaum, *Fragility of Goodness*.