

Exploring Film's Jurisprudence in Sean Baker's Films

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B.S.W., University of Regina, 2010
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Supervisory Committee

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Abstract

In this thesis I am working at the intersection of law and film. I approach this work from the perspective of a practicing lawyer, former social worker, and through my own lived experiences to tease out and examine interactions with structural oppression. I am particularly interested in questions of pathologizing poverty, race, sexuality, and gender. I use four of Sean Baker's films *Prince of Broadway* (2008), *Starlet* (2012), *Tangerine* (2015), and *The Florida Project* (2017) to look at difficult social issues such as poverty, violence, neoliberal economic structuring, and patriarchy. Complicated pathologies emerge as viewers work through these experiences of structural oppression with each film's protagonist. To me, exploring how law is experienced by these characters assists in moving away from pathologizing both ourselves and others. To that end, this thesis is very personal at times, as I work out my own history, feelings and beliefs. In doing so, an important theme emerges: the development of interpersonal relationships to open up spaces of hope within oppressive structures. Insofar as law is oppressive, individual relationships press back.

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Chapter One

Law and Film

In this thesis I am working at the intersection of law and film. I approach this work from the perspective of a practicing lawyer. I am a practicing lawyer today against many odds. My parents were teenagers when they had my siblings and myself. We hail from the North where opportunities for social advancement were perhaps fewer. Trauma, mental health and addictions have wreaked havoc on our bonds. I ended up being raised, in part, by a conservative Christian church, an institution in its own right and not altogether kind to women. The movement between the disgraced 'No Daddy Lanes' of Yellowknife, to the morally superior and stifled sanctuary in Saskatchewan has been a wild ride. I have abandoned (or been abandoned by) both institutions; my family and the Church. My education as a social worker, then lawyer, saved me. I've done a lot of work to sort through the discombobulation that is the movement between social classes and feelings of alienation. What remains is a deep curiosity and interest in how structural oppression shapes the experience of the world we are embedded in. I am particularly interested in questions of pathologizing poverty, race, sexuality, and gender.

Experiences become our stories and stories spark connection. Moreover, stories are critically important because they contain lessons and instruction on how we might do better both individually and as a whole. Of course, stories are deeply personal and can be difficult to hold, let alone tell. To that end, films provide the critical distance necessary to see a problem that is too close when it is up front. I chose four films by the same director that each deal with compelling and difficult issues.

Director Sean Baker is, in my opinion, a great story teller/film maker because he deals with difficult social issues with extreme subtly. As will be discussed below, his films are of the

social realist genre meaning that they attempt to present stories as realistically as possible. His films are both compelling and difficult to work with. They grapple with issues of importance to me both before law and now that I work in law. His films *Prince of Broadway* (2008), *Starlet* (2012), *Tangerine* (2015), and *The Florida Project* (2017) deal with structural oppression through such topics as children, poverty, violence, and patriarchy. For example, all four films grapple with economic neoliberal exclusion from the dominant market and marginalized forms of work such as hawking and sex work to show how poverty is constructed, maintained and experienced by those living in the margins of society. What might appear as complicated pathologies are untangled as viewers work through the experiences of structural oppression which situate each film's protagonist. For me, Sean Baker's explorations of these characters and their experiences of law can assist in moving away from forms of judgment which overly pathologize self and others. In his work, I see a powerful theme that the development and nourishing of interpersonal relationships can open up spaces of hope within oppressive structures. Insofar as law is oppressive, individual relationships press back.

I am also interested in these films because they show how law operates in and through cinematic stories about average citizens in their day-to-day lives. I began law school with ideas about law as learned on television and in the movies. I left with the understanding that the majority of law doesn't play out in a courtroom. Rather, it is enacted in and through our everyday lives and experienced on a personal level. In the preface to her book *Framed: Women in Law and Film*, Orit Kamir points out that there are two very different ways of answering the question "How does law rule?" The first is optimistic, presuming that the law is clear, specific,

knowable, applying equally to all, and not corrupt.¹ The second is critical, as it claims that there is no common notion of law at all. Instead, law serves the:

hegemonic ruling classes in concealing their unlimited rule, feeding the false rhetoric that disguises the true social reality of power. In this sense, law rules through systemic concealment of its true nature and social function, achieved through the use of manipulative rhetoric of neutrality, fairness, professionalism, and equality before the law.²

Does the law apply equally to all (optimistic view)? Or does the law serve the hegemonic ruling class by way of concealing power using the rhetoric of “neutrality, fairness, professionalism, and equality before the law” (critical view)? Is there a hybrid optimistic-critical view? The answer to these questions may be sought by exploring conventional legal texts such as case law and legal scholarship. However, for me, the more compelling and differently articulated answers may be found in popular film.

Law is not cordoned off into its own realm, but rather it mixes and entangles with the social. Kamir states that law rules through culture --and through popular culture in particular. Those who never receive legal training learn what they know about law through popular culture.³ Film opens up a discussion, adds nuance and presents multiple answers. Popular film thus plays an important role in socio-political life.⁴ Some examples of the relationship between the socio-political and film are explicit; for instance, in the aftermath of the 2008 market crash, a number of films made visible the impact of corporate greed that impacted the lives of millions of Americans.⁵ *The Big Short* (2015), *Margin Call* (2011), and *Too Big to Fail* (2011) all chronicle

¹ Orit Kamir, *Framed: Women in Law and Film* (Durham and London: Duke University Press, 2006) at xi, xii.

² *Ibid.*

³ For a review of the intersections of popular culture and law see: Asimow, Michael R. and Mader, Shannon, *Law and Popular Culture - a Course Book*. (Peter Lang, 2004).

⁴ For a review of the social power of popular culture in various disciplines see: Chandra Mukerji and Michael Schudson, *Popular Culture*, *Annual Review of Sociology*, (Berkeley, University of California Press, 1986), at 47-66.

⁵ Tom Huddleston, “These 7 Films Tell the Real Story Behind the Financial Crisis” *Fortune* (27 December 2015) online: <fortune.com/2015/12/27/big-short-wall-street-movies/>

the actors and events within Wall Street that led to the financial crisis. Other films take up the more implicit and insidious themes of political and social life. For example, John Storey argues that *Network* (1976) offers a prophetic take on the influence of media on politics; and *Funny Games* (1947) ushered in the trope of the home invader striking moral panic that no doubt informed the xenophobic attitudes and policies present today.⁶

People's minds are not easy to change in that warring ideological factions can become further entrenched in their own rhetoric when pitted against each other in public and private debates. Carrie Menkel-Meadow references a study where even with scientific data, climate change deniers cannot be shaken.⁷ She asks, "When did you totally change your views on something, and how did it happen?"⁸ Curious about what answers this question might garner, I posted it to my Facebook page. One of the first responses was as follows:

[I] went vegan after watching the Earthlings documentary ... pretty big change after 23 years of eating [pork, chicken, and beef]! After having my eyes opened to the harm I was causing/being complicit in, I just couldn't go back. It made me re-evaluate why we think we are better and more deserving than others (other people, other beings) and recognize the danger viewing another group of anything as so different from yourself that they don't deserve the same basic respect and dignity in life we all take for granted.⁹

This is a pretty huge paradigm shift to have occur in such a short period of time (the average film is approximately two hours). This revelation suggests the power of film to win individual hearts and minds. Obviously, film is not inherently altruistic, and can be used for evil as much as it can be used for good. Look no further than the propaganda film used in World War II on both sides

⁶ John Storey, *"Marxisms" from Cultural Theory and Popular Culture: An Introduction* (Pearson Longman, 2009) at 13 and 167.

⁷ Carrie Menkel-Meadow, "Why We Can't 'Just All Get Along': Dysfunction in the Polity and Conflict Resolution and What We Might Do About It" (2017) *Journal of Dispute Resolution* at 2070.

⁸ *Ibid* at 2074.

⁹ Meghan Kathleen [Forhan], (March 8, 2018) Timeline [Personal Facebook Page].

to preserve patriotism and war aims.¹⁰ However, the point is that film assists in constructing and deconstructing normative values. Film is a language, a mediation of dialogue, not just a muted product.

Rebecca Johnson urges the importance of attending to popular narratives, particularly film, as it is the most broadly consumed source of storytelling in contemporary society. Writing on the construction of law's commonsense knowledge, Johnson states:

Film is a powerful repository of 'maps of social life', of 'common-sense knowledge', and can give us insight into persistent contemporary struggles about the organization of gender in family and social life. With its ability to make its stories and characters hyper-visible, film participates in the process of both constructing and challenging 'the normal'.¹¹

Johnson reasons that film is an important mechanism through which we can effectively examine the use of cultural narratives in the creation, interpretation, and application of law through visualization.

Before explaining a bit more about my methodology, a brief synopsis of what I intend to explore in the four films are as follows: In *Prince of Broadway* I will set the stage by wading into cultural studies and the movement between thing and concept. In the introduction to his book *Representations: Cultural Representations and Signifying Practices*, Stuart Hall defines culture as a set of practices concerned with the production and exchange of meaning between people.¹² He emphasises cultural *practice* as the process by which meaning is given. He writes that things "...rarely if ever have one, single, fixed and unchanging meaning. Even something as obvious as a stone can be a stone, a boundary marker or a piece of sculpture, depending on *what it*

¹⁰James Chapman, "Review Article: The Power of Propaganda" (2000) *J Contempt His*, vol. 35, no. 4, at pp. 679–688.

¹¹ Rebecca Johnson, "Law and the Leaky Woman: the Saloon, the Liquor Licence, and Narratives of Containment" (2005) *Continuum: Journal of Media & Cultural Studies* at 187.

¹² Stuart Hall, "The Work of Representation" in *Representation: Cultural Representations and Signifying Practices* (London: Sage in association with the Open University, 1997) at page 2.

means...”¹³ Further, things are given meaning by how we represent them through words, stories, images, emotions and values. Culture is represented and given meaning all around us: “Culture, in this sense, permeates all of society...Its study underlines the crucial role of the *symbolic* domain at the very heart of social life”.¹⁴

Hall notes that there is no single or ‘correct’ answer or interpretation of an image “...since there is no law which can guarantee that things will have ‘one, true meaning’, or that meanings won’t change over time...”.¹⁵ He offers that one way to ‘settle’ contested readings would be to examine and then re-examine actual practices and forms of signification and “what meanings they seem to you to be producing”.¹⁶ Hall later adds an important caveat to the invitation to broadly interpret and examine the plurality of meanings which is to pay attention to the fact that meanings are powerful and the contest over them has serious consequences. Meanings “define what is ‘normal’, who belongs- and therefore, who is excluded.”¹⁷ Though admittedly slippery, Hall offers some examples of how certain binaries are deeply inscribed with power and which have profoundly shaped our cultural lives: male/female, rich/poor, black/white, etc...The slipperiness Hall is referring to is a reference to Saussure’s contribution of the idea of slippage between signifier (the thing) and signified (the concept). The meaning of what is represented is never fixed and is always open to new interpretations. As already alluded to by Johnson and Buchanan: “the reader is as important as the writer in the production of meaning”.¹⁸

Hall’s primary focus is on the constructionist approach which posits that we must not confuse the material world and the symbolic practices and processes through which meaning and

¹³ *Ibid.* page 3.

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ *Ibid.* page 12.

¹⁷ *Ibid.* page 10.

¹⁸ *Ibid.* page 33.

language operate.¹⁹ For example, we look to the symbolic function of an image, or thing, and interpret what it represents. It is this constructionist approach that I take up in the reading of *Prince*. I propose a reading of the text in a way that reveals something about the operation of socially constructed codes and shared meanings that might otherwise be taken for granted. As per my own legal indoctrination, I will take Stuart Hall's interpretation of Foucault's discourse theory and apply it to the facts as presented in the film. I will explore the cultural constructions of black fatherhood against the white hegemonic ideal of the same to interrogate objective claims about the way things are, and how they should be.

Next, I will launch more directly into film's jurisprudence, beginning with Baker's 2012 film *Starlet* to explore the slippage between law and morality. Using Antigone's dilemma as an opening metaphor, I look at how visual representations of quasi-legal and moral reasoning reveal the plurality of truths circulating around the codification of right and wrong. *Starlet* uses its audience as a social filter of sorts in how it omits just enough context to invite the audience to fill it in. I argue that more is revealed about the viewers upon learning that the protagonist is an adult entertainer than about the topic of sex work itself. It is these unmasked attitudes and judgements which reveal us to ourselves and have real implications in how we collectively participate in constructing the social codes by which we live. In this way, *Starlet* is a wonderful example of how film makes and challenges meaning in society.

I will then read Baker's 2015 film *Tangerine* to look at the gendered constructions of contract in a way that privileges patriarchy. I will use Massimo Leone's semiotic theory to show how the film is critical of culturally imbedded binaries. My aim is to assist in articulating the movement between contrasting things and concepts to show how oppositionally positioned

¹⁹ *Ibid.* page 36.

genders are constructed to subordinate women using contract as a tool. I will look at the marriage contract and the sex work contract to show that law, contract law specifically, has a male point-of-view. I look at Carole Pateman's feminist critique of contract as expanded by Nancy Fraser to show the history and philosophies propping up inequalities enacted in and through contracts for female-appearing bodies. *Tangerine* brings a trans lens to the marriage and sex work contract in a way that asks questions about true equality in these contracts as historically patriarchal cultural constructions.

In the last chapter I will look at Baker's 2017 *The Florida Project*. In this chapter the relationship of law and film is made most explicit as I explore the socio-legal concept of Best Interests of the Child. I seek to explore the importance of narrative, and the insights and limitations of various positionings with ideas about what it means to be a good parent or thriving child. For example, I will look at the ways in which the film positions viewers with the perspective of the child to ask questions about the extent to which a child has self-determination in matters that affect them. I do this by exploring camera angles, editing, and narrative. I will also explore how the film is critical of the objectivity of CCTV footage when used as evidence of a caregiver's misgivings. I use the Foucauldian concepts of the Panoptic (few viewing the many) and the Synoptic (many viewing the few) to interrogate how surveillance is used as a method of control.

I will conclude this project with overall reflections of the themes that have emerged through this open-ended exploration of film as text.

Methodology: A Close Reading of Film as Jurisprudential Text

I am convinced that popular film can be used to explore cultural narratives in relationship with law, but the question next becomes: *how*? Orit Kamir offers a law-and-film theory

comprised of three fundamental premises to analytically approaching film: some films' modes of social operation mirrors those of the law ("film paralleling law"); some films enact viewer-engaging judgement ("film as judgement"), and some films elicit popular jurisprudence ("film as jurisprudence"). The first premise is about how law and film perform parallel functions of co-constituting concepts. Kamir writes, "[law and film offer] its reader a seductive invitation to take on a sociocultural persona and become part of the imagined (judging) community that shares the worldview constituted by law or film."²⁰ Both law and film influence how we think about ourselves and the world. The second premise is active in how it sets the audience in motion to actually participate in judgement. Films perform judgement by "creating a community of viewers to engage in social constitution of primary values, institutions, and concepts."²¹ Film does this through various methods that guide viewers to take a position on issues they may not otherwise consciously care about. Finally, film as jurisprudence explores how we know and feel about the law. Films look at both how things are, and at how things should be. Kamir states that cinematic jurisprudence explores the fundamental questions of "What is law? How, exactly, does it operate and what functions does it fulfill? What is the relationship between law-on-the-books, law-in-action, and law-as-culture?"²² Arguing for a reading of film in order that we might reread and reorganize our jurisprudence more thoughtfully and ethically, William MacNeil writes that films:

not only reach a broader audience than standard legal texts, but potentially, and even more democratically, they also help restore topics of jurisprudential import- justice, rights, ethics- to where they belong: not with the economists, not with the sociologists, not even with the philosophers, but rather with the community at large.²³

²⁰ *Supra* note 13 at 2.

²¹ *Ibid* at 3.

²² Orit Kamir, *Why 'Law-and-Film' and What Does it Actually Mean? A Perspective* (2005) *Continuum* 19:2 *J Media Cult* at 275.

²³ William MacNeil, *Lex Populi: The Jurisprudence of Popular Culture* (Stanford: Stanford University Press, 2007) at 2.

While I do not intend to apply Kamir's three concepts in a doctrinal fashion to the films, in the following chapters, I embrace the overlap between Kamir's three concepts as I critically examine how film performs a social function analogous to the law by positioning audiences in judgement while asking questions about/of the law. I accept Kamir's invitation to engage with cinematic jurisprudence to "rethink the legitimacy of the boundaries"²⁴ of legal discourse surrounding socio legal topics like family, best interests of the child, and sex work. I use her frameworks to think critically about the various systems depicted on screen. My primary motivation for doing so is not to endeavor to make a grand contribution to academia. Rather, as already mentioned, my interests are personal. Each character in the films that follow are depicted as mostly walking alone in this life, abstracted from their family of origin. In this way, I relate to these characters. I too was raised abstracted from my biological family. I remain abstracted from them. Baker's characters could be me, but they could also be my estranged mother, my siblings or my dad. By more clearly seeing the impact of things like poverty, racism and sexism on interpersonal relationships, will the shame and guilt of growing up non-normatively be less? Will I see myself, my family, or the systems around us differently by tending to these questions? Will I be kinder to myself, to my family, to the society that has shaped us and is shaping us? With these curiosities in mind, and building on the critical scholarship of law-film studies, I will explore Sean Baker's *Prince of Broadway* (2008), *Starlet* (2012), *Tangerine* (2015),²⁵ and *The Florida Project* (2017) as jurisprudential texts to look at the judging-acts they perform, the questions they raise, and to analyze the social values they constitute for their viewers, especially for myself.

²⁴ *Ibid* at 273.

²⁵ *Prince of Broadway* did not receive wide release, and *Starlet* did not acquire the same commercial recognition as *The Florida Project*, however I still consider the films to be "popular" culture because of their form.

Sean Baker's Social Realist Films and (Re)examining the Established Order

I chose Sean Baker's films because they invoke Social Realism as they attempt to depict real life in the smaller spaces in reaction to the socio-economic hardships that have become especially difficult to ignore since the 2008 global financial crisis. Baker tends to the micro mediations of the social. His films are performing political activism by appealing to the audiences with true-to-life stories regarding the oppressive social conditions of present-day neoliberal capitalist society.²⁶ Baker, an independent film maker who resists the siren call of Hollywood, makes relatively low-budget films with little to no funding from major film studios or private investors. He often employs non-trained actors as embodiments of the conditions he is depicting.²⁷ In an interview Baker states:

... I am trying to reach a large audience with these films in order for the message to have impact and for awareness to be brought to a certain subject. I am using style to capture a bigger and a younger audience [...] It's hard to be a filmmaker in the 21st century right now without [being a social activist]. Even if I were making more overt genre films or popcorn fare, I would still feel a responsibility to be commenting on our times and the local climate.²⁸

Broadly speaking, Social Realism is the term used for artistic work that aims to draw attention to the everyday conditions of the working class and to critique the social structures that maintain those conditions.²⁹ The term has been more narrowly used to describe the art movement that flourished between the two World Wars as a reaction to the hardships suffered by common people after the Great Crash. In order to make their art more accessible to a wider audience, artists turned to realist portrayals of anonymous workers as heroic symbols of strength

²⁶ Sophie Monks Kaufman, "Sean Baker: 'If you're a filmmaker in the 21st century, it's hard not to be a social activist' an interview" (9 November 2017), online (website): White Lies, Truth and Movies <<https://lwlies.com/interviews/sean-baker-the-florida-project/>>.

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ J.G. Todd, 2009, '*Social Realism*' from *Grove Art Online* (Oxford University Press, 2009) (online) <http://www.moma.org/collection/theme.php?theme_id=10195>.

in the face of adversity. The goal of the artists in doing so was political as they wished to expose the deteriorating conditions of the poor and working classes and hold the existing governmental and social systems accountable.³⁰

Baker's films employ anonymous characters as protagonists. Indeed, every lead in his films has been an untrained actor who plays an "ordinary" person. Baker also allows for a large amount of improvisation to fill out his narratives.³¹ When asked what draws him to paint empathic pictures of countercultural protagonists, Baker replied:

It's really a response to what I'm not seeing in films, especially American films. The UK is a lot more socially active. A lot of my peers have been incredible with embracing social issues but I would like to see more of it in US film. I like telling universal stories about people who haven't really had stories told about them, underrepresented people. It really comes from me wanting to know more. I feel that the more diversity there is in front of – and behind – the camera can only help. It shines a light on communities of people that don't usually have a light shone on them and it shows that we are all human.³²

Richard Armstrong says social realist films "show us to ourselves."³³ Early social realist films were categorized as intellectual and were associated primarily with high society.³⁴ As post-war consumerism began to take hold, social realist films extended to mass audiences by "combining the objective temper and aesthetics of the documentary movement with the stars and resources of studio filmmaking"³⁵ By the end of the 20th Century, the New Wave of social realist films "addressed the erosion of regional and class identities amid a landscape rendered increasingly uniform by consumerism."³⁶ These films capture real life and are in critical dialogue with

³⁰ Definition of Social Realism on MOMA website: <https://www.moma.org/collection/terms/96>

³¹ Chris O'Falt, 'The Florida Project': Sean Baker Almost Lost His Crew and Movie During Production" (6 October 2017) Online: *Indie Wire* <<https://www.indiewire.com/2017/10/florida-project-sean-baker-almost-lost-crew-avoids-disaster-1201884419/>>.

³² *Supra* note 38.

³³ Richard Armstrong, "Social Realism" (2014) Online: BFI Screen Online <<http://www.screenonline.org.uk/film/id/1037898/index.html>> .

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*

systems of oppression. The trajectory of 20th Century social realism in film has gone from documentaries for the elite to adopting Hollywood appeal in order to reach a broader audience. The enduring theme is the goal of presenting reality so that we might identify with it within our specific context.³⁷

Social realist film cannot claim neutrality nor altruism. Social realist film may even be a tool for the dominant class and hegemonic social order insofar as they position viewers to accept the inevitabilities of class struggle combined with racialized and gendered experiences. Hegemony is the rule of one class over another that does not depend on economic or physical power alone, but rather on persuading the ruled to accept the system of values of the ruling class.³⁸ Leo Lowenthal argues that through standardization, commercialization, and stereotype, the culture industry has depoliticized the working class “limiting its horizon to political and economic goals that could be realized within oppressive and exploitative framework of a capitalist society.”³⁹ I believe it is true that the culture industry can discourage audiences from thinking beyond the confines of the present and its current capitalist framework. Lowenthal argues that “whenever revolutionary tendencies show a timid head, they are mitigated and cut short by a false-fulfillment of wish-dreams.” This short-sightedness is seen in Baker’s films where the majority of the characters are simply trying to get by and make a bit of money. For example, this point is illustrated in *Prince* when the protagonist lead, Lucky, loses his savings for higher education on an elaborate investment on knock off sneakers that are stolen before he can sell them to turn a profit. We as viewers are complicit in the limiting power of this short-sightedness in how we

³⁷ Supra note 45.

³⁸ John Storey, *Marxisms, Cultural Theory and Popular Culture: An Introduction* (Toronto: Pearson Prentice Hall, 2006) at 65.

³⁹ Leo Lowenthal, *Literature, Popular Culture and Society* (Palo Alto, California: Pacific Books, 1961) at 50.

accept the inevitability of persistent poverty; perhaps we never really expected Lucky to rise up from his precarious social position as undocumented immigrant hawking illegal wares.

Baker's films can also be read as counter hegemonic insofar as they intervene in discourse to highlight issues of racism and sexism in capitalist America. Baker himself claims he uses film counter hegemonically as a subversive art form through its capacity to challenge established systems:

[Films] can change the world. They really can! There's a platform for diplomatic engagement, but it's not in your face. It's not telling audiences, 'you must think, you must act' – no it's doing it through entertainment. ... You can make change by entertaining people, which is very unique.⁴⁰

I affirm film's transformative potential. My read of Baker's films are that they show us to ourselves through the presentation of certain lived experiences without necessarily drawing conclusions. They guide the viewers to formulate their own questions about the way things are, and how they perhaps should be, for better or for worse. For example, *The Florida Project* brings awareness to hidden homelessness following the 2008 market collapse and raises questions about social welfare in the United States, especially with the juxtaposition of extended-stay motels just outside Disneyland- purportedly the happiest place on earth. In this way, social realism reveals the complexities of power relations in North American society which in turn forces viewers to deal with the deeply rooted issues such as race and class oppression; issues that cannot be fixed within the current system as designed. By revealing these complexities, social realism demonstrates that the standardized approaches in currently accepted societal frameworks are infallible and point the way to ideological change from a deeper level.

On a final note, although I have presented my reasons for using Baker's films, a fundamental component of my methodology for reading his films as text is that the films

⁴⁰Sean Baker, Little White Lies: online <https://lwlies.com/interviews/sean-baker-the-florida-project/>

produce a multiplicity of meanings, and that any thought, thing or theory inspired by the films is worthy of consideration. There is much to be revealed by critically examining film for its hegemonic constructions. However, it is important not to imbue film texts with a singular meaning, and to be alive to the fact that films can be read oppositionally. Johnson and Buchanan argue that film and law are meaning makers, and that these meanings are expressed in and through the audience. The audience receives, processes, then generates ideas about truth and justice irrespective of authorial intention. Truths are subjective and slippery;

Once one begins to take seriously the notion of audience response (including the notion that what is seen depends very much on who is doing the seeing), one has to confront the depth of the postmodern challenge to the modernist notion that truth is knowable and simply waiting to be found.⁴¹

To this end, I employ a textual analysis to my readings of Baker's films insofar as I am less concerned with the filmmaker's motives, or broader conditions of production or reception of the films. Instead I endeavor to tease out and make visible the ways in which the films invite me to think about certain socio legal concepts through the use of cinematography and narrative (editing, camera angles, etc). I set out to approach my research in an exploratory manner which means that I did not center one specific thing. The films are my case studies and allow for the systems behind the characters and the narratives to be tangibly considered. I've held them in my hands and observed them from many different angles. There are of course multiple interpretations of a single film. One of my main premises is that reading film as text requires allowing those texts to speak for themselves. I am aware that while it may not be possible to speak from position of neutrality, it is still possible to speak thoughtfully and ethically. My aim

⁴¹ Johnson and Buchanan, "Getting the Insider's Story Out: What Popular Film Can Tell Us About Legal Method's Dirty Secrets" (2001) *The Windsor Yearbook of Access to Justice* Volume 20 at 105.

is to transform the often-passive consumption of film into an active process whereby what is taken for granted as common sense is critically assessed. I will present my logic as I move through interpreting these films to demonstrate this open-ended method. I will then expand these observations with the support of various theorists from various backgrounds and disciplines to see what might be uncovered.

Let's begin.

Chapter Two- Prince of Broadway (2008)

Sean Baker's 2008 film *The Prince of Broadway* takes place in the seedy side of the wholesale fashion district of New York City. The film follows Lucky, an illegal immigrant from Ghana, as he uses his humour and charm to entice tourists into the backroom of a wholesale storefront to buy knock-off designer shoes and handbags. Lucky's life is suddenly interrupted when an ex-girlfriend thrusts an 18-month-old boy in his arms and says, "be a responsible father, be a man for once and take care of your kid." Lucky is befuddled, unsure if the child is even his. Unable to call the police because he is illegally in the United States, he plods onward with a serious handicap to both his professional and personal game. Lucky's humanity is revealed through a journey that continually confronts the interplay between what is fake and what is real. The inspection into the authenticity of the bags that he sells runs parallel to the investigation into whether or not he is a real father. In this chapter I look at *Prince* to examine how viewers are positioned in relation to the discursive formation of fatherhood in sociolegal context.

Representation and Discourse Theory

In this Chapter I will focus primarily on Foucault's discourse theory which differs from things like the modernist development of semiotics and language in that its primary concern is the way in which knowledge is represented and produced in a certain moment in history. In essence, Foucault operationalizes engagement with meaning in the context of discourse. Things and actions may exist in the world, but "they only take on meaning and become objects of knowledge within discourse."⁴² Prefacing an engagement with Foucault and discourse theory, Hall says that the discursive:

...examines not only how language and representation produce meaning, but how the knowledge which a particular discourse produces connects with power, regulates

⁴² Michel Foucault via Stuart Hall, "The Work of Representation" in *Representation: Cultural Representations and Signifying Practices* (London: Sage in association with the Open University, 1997) at 45.

conduct, makes up or constructs identities and subjectivities, and defines the way certain things are represented, thought about, practised and studied.⁴³

For Foucault, truth is not absolute; it is produced to regulate the conduct of others through the combination of truth and knowledge. Hall provides the six elements that must be present to show, in the Foucauldian sense, how a concept takes on meaning within a specific discourse. A brief summary of the six elements is as follows: statements made; rules that govern in a particular moment in time; subjects who personify; how knowledge acquires authority; practices and institutions that regulate conduct; and acknowledgement that new discourses will emerge.⁴⁴ In what follows, I will look at fatherhood as a discursive construct as represented in *Prince* by applying these six elements to see how knowledge about fathering/parenting is constructed and reproduced to better understand the socially mediated values underpinning laws pertaining to these same constructs.

Statements Made

The first element involves looking at statements made about what it means to be a father which gives us a certain kind of knowledge.⁴⁵ Discussing the ways in which masculinities are discursively constructed, Nigel Edley makes the claim that: “when people talk, they do so using a lexicon or repertoire of terms which has been provided for them by history.”⁴⁶ The same can be said for fatherhood. We must pay attention to what is said by and about fathers to make sense of what it means to be a father. The following are the main verbal statements uttered to or by Lucky in reference to being a father throughout the film in chronological order:

⁴³ Supra note 24 at page 6.

⁴⁴ *Ibid.* page 46.

⁴⁵ *Ibid.*

⁴⁶ Nigel Edley, “Analysing Masculinity: Interpretative Repertoires, Ideological Dilemmas and Subject Positions” in Wetherell, M., Taylor, S. and Yates, S.J. *Discourse as Data: A Guide for Analysis* (London: Sage in association with The Open University 1991).

Be a responsible father, be a man for once and take care of your fucking kid (Linda, the baby's biological mother upon handing him to Lucky);

Look at his face, look at his hands. He looks nothing like me. Look at his hair! I know so many people with mixed kids and he don't look like me man. This shit is serious, this shit is killing me! (speaking to his girlfriend, Corrina);

I have to get you some kicks boy, you gotta look good. Just like me. (speaking to the baby as they pass a store window selling child-size Nike shoes);

I'm fucking frustrated with this thing around me and you know how my situation is, how am I going to take care of this [baby]? (speaking to Linda on the phone);

I'm not your Daddy, I'm tired of being your Daddy, go find a new Daddy alright? I'm outta here. That's it, its over (speaking to the baby after Corrina breaks up with him);

The devil in my life. You monster, monster, monster (playfully while bouncing the baby);

I'm going to get a DNA test done. I swear to God. I swear on my Daddy's grave, and if that baby is mine... never, you will never see that baby again, never... He is going to grow up to be a big man, you'll see, you'll see. (to Linda after seeing her trying to avoid them on the street);

That's why I didn't want to let him go. If I had taken him to the cops- Imagine if your Daddy dropped you there? This motherfucker would have gone through shit. That's the reason I didn't want to throw him away. My father was always there for me. I put that nigger through hell. He was always there for me. So that's why for some reason I felt I had to do the right thing with him... I figured that shit, for real. (upon being told that the DNA test conclusively proved that he was the baby's father).

Of course, these comments are all made along the narrative arc of the baby being thrust on Lucky, Lucky negotiating his new reality, and Lucky eventually coming to believe that he is the baby's father. But what knowledge do we get about fatherhood from these statements? Martin Robb, a poststructuralist who practices critical discursive psychology, conducted a study whereby he interviewed a random sample of fathers in order to reveal how identity is constituted in and through discourse about fatherhood. In his article, *Men Talking About Fatherhood:*

Discourse and Identities he uses three tools to summarize the findings of his research: interpretive repertoires, ideological dilemmas, and subject positions.⁴⁷

With respect to interpretive repertoire, which Martin defines as a “culturally-available framework that enables individuals to make sense of their experiences”, Martin concludes that the prevalent framework offered by participants was one that described fatherhood as being *present* which reveals a “dominant ideal of the actively involved and emotionally engaged father.”⁴⁸ We see this in *Prince* when Lucky vows to always be there for his son because his father was always there for him. The discursive formation of the ideal father is referential to the non-ideal father, one that is absent and uninvolved. This is the image that is conjured upon Linda’s charge to Lucky to be a man by taking care of his child.

The concept of ideological dilemmas speaks to the fact that everyday discourse tends to revolve around sets of oppositions that have to be worked through and resolved.⁴⁹ An example that emerged in Martin’s study was fatherhood as struggle contrasted with the pleasure of being a dad.⁵⁰ Lucky laments his situation and at times resents the baby, however the tension between the struggle and pleasure of being a father is most aptly paralleled as Lucky playfully bounces the baby while jokingly calling him a devil and a monster. Throughout the film Lucky speaks as though the baby is an injustice and a parasite, but his bonded affection for the child is also palpable as Lucky settles into day-to-day rhythms with the child.

Finally, Martin shows how his interviewees unanimously referred to themselves in reference to other men, namely their own fathers, as subject positions from which they make

⁴⁷ Martin Robb, “Men Talking About Fatherhood: Discourse and Identities” in: Barrett, S.; Komaromy, C.; Robb, M. and Rogers, A. eds. *Communication, Relationships and Care: A Reader* (London: Routledge, 2008).

⁴⁸ *Ibid.* page 124.

⁴⁹ *Ibid.* page 125.

⁵⁰ *Ibid.* page 126.

sense of their own experiences.⁵¹ When Lucky ultimately accepts that he is the father, he immediately references his own.

Martin concludes that these narratives that the fathers carry are not produced out of thin air, but rather come from the cultural repository from which they are located. Each participant “interwove their individual narratives of fatherhood with other kinds of personal narrative, which in turn drew on wider cultural resources.”⁵² Lucky’s comments about his experiences as a father are bound up with narratives of class mobility, race, and cultural migration. He laments his material context, questions his future and ability, and in the end vows to remain present. His son will grow up to be a “big man”. Lucky’s personal conception of fatherhood is not culturally neutral. His personal experience relative to the dominant ideal of the emotionally engaged father will not begin on equal footing as a single, black, poor, undocumented father in New York City as his attention will undoubtedly be divided on the increased effort of getting by. The comparison of Martin’s findings to Lucky’s comments reveal the complex ways in which men’s identities are produced in and through discourse by the complex interaction between personal narrative and the wider cultural narratives about fatherhood generally. This is an important way in which *Prince* avoids essentializing fatherhood.

Rules That Govern in a Particular Moment in Time

The second element looks at the rules which prescribe certain ways of talking about fatherhood and exclude other ways which govern what is sayable or thinkable about fatherhood at a particular historical moment.⁵³ *Prince* as a popular media text is a discourse that challenges ways of talking about fatherhood as a topic, as well as how fathers should act in relation to the family.

⁵¹ *Ibid.*

⁵² *Ibid.* page 128.

⁵³ *Supra* note 24 page 46.

Here I want to focus on *Prince's* preoccupation with whether or not the baby *belongs* to Lucky.

Helena Machado notes that processes to determine paternity reveal cultural models which

reinforce the naturalisation of the differences between mothers and fathers, with significant effects on the social construction of parental roles and on expectations of family organization and female sexual behaviour.⁵⁴

Like the child in *Prince*, Machado points out how children of unwed mothers who do not know the biological paternity of their child have posed serious legal problems for systems who base property ownership and inheritance on descent through male lineage.⁵⁵ Indeed, laws surrounding parentage reveal the preoccupation with property played out in and through a mother's body.

Biological and social factors have long shaped the law of parental recognition. Historically, the common law tied parenthood to marriage and thus made parentage a legal, rather than biological, determination.⁵⁶ This law tracks the normative narrative of a man "doing right by a woman" and marrying her after learning she has become pregnant so as to "legitimize" their child. Or even more dramatically, the narrative of a man who plays the mythical hero by marrying a pregnant woman even though the child is not his so as to preserve that woman and/or child's honour.

Common law's organization of parentage through marriage reflects and enforces:

a gender-hierarchical, heterosexual order—giving men authority over women and children inside marriage and insulating men's property from claims to inheritance by children born outside marriage.⁵⁷

These historical rules of parental recognition are important to think about and remember that the issue of parentage is largely determined socially, rather than biologically. Even today, there is presumption of paternity where a couple is married.⁵⁸ Hospitals are not required to confirm

⁵⁴ Helena Machado, *Biologising Paternity, Moralising Maternity: The Construction of Parenthood in the Determination of Paternity Through the Courts in Portugal*. (2008) 16 *Fem Leg Stud* at 215.

⁵⁵ *Ibid.*

⁵⁶ Douglas NeJaime, *The Nature of Parenthood* (2017) *Yale Law J* at 288.

⁵⁷ *Ibid* 288.

⁵⁸ Edward P Richards, *The Presumption of Legitimacy*. (2017) *Law, Sci & Pub Health*.

biological paternity, and most countries would require a civil procedure to remove that presumption.⁵⁹ Machado challenges of the discourse of “a child’s right to know who their biological parents” as a thinly veiled legitimization of state intervention to publicly monitor the private behaviours of women who procreate outside conventional conjugal relationships.

Quoting Emily Jackson, she writes, “Women without men do not get any privacy, the prevailing wisdom is that they may be legitimately subjected to public, political and media scrutiny”.⁶⁰

Preoccupation with biological parentage serves to protect male property through surveillance of female bodies.

Even the appearance of heterosexual partnership invokes themes of power over the female body (and child) and protection of property since the strict borders of marriage have blurred to recognize marriage-like relationships as socially valid. For example, in *Prince*, Linda’s boyfriend is depicted as a plausible father figure for the baby despite his controlling and abusive ways. The stance shared by Linda’s mother and best friend alike is that if this boyfriend really loved and cared for Linda, he would agree to take care of the baby as well. These characters are in effect advocating for a horribly abusive man to assume position as father which implies that material wellbeing is more important than physical and spiritual wellbeing. The tension here is that if Linda’s boyfriend accepted the baby as his own, the question wouldn’t be one of parentage, rather mother and child would be within the confines of the marriage-like relationship and the discourse would transition from legitimacy and ownership to standard of care. It’s not that Linda no longer wants to care for her son, it’s that her boyfriend doesn’t want to care for a child that is not biologically his. The boyfriend has the power to declare sovereignty over the family by claiming the child as his own. The decision not to keep the baby is his, not

⁵⁹ *Ibid.*

⁶⁰ *Supra* note 82 at 232.

Linda's. The boyfriend represents biological essentialism, and the film's depiction of his violence and self-centeredness criticizes this essentialism by raising questions about what it truly means to be a father.

The advent of the DNA test shifted the rules around determining parentage, as is demonstrated in *Prince* with the constant pressure placed on Lucky to confirm biological parentage before committing to a financial and emotional relationship with the child. *Prince* effectively asks whether or not Lucky should provide materially for the child given that he may not be related to the child on a cellular level. Conversely with Linda, the audience is positioned to decide whether or not she should even be recognized as a legitimate parent despite her biology thereby implicating her character rather than her legal or moral obligations. *Prince's* preoccupation with the DNA test both reproduces and challenges patriarchal gender relations by focusing on Linda's sexual history and her behavior as a means to evaluate her overall truthfulness and credibility regarding her claim that Lucky is the father while reproducing the theme of protection of male property. It is not Linda who references her sexual history, but the men around Lucky who ask whether she can be trusted to know who the father is because of the chance that she may have had other partners. *Prince* asks for objective, scientific, rational proof of Lucky's ties to his son, and rejects Linda's knowledge of her history and body as subjective. The pursuit of determining parentage through an objective, scientific, and rational method is not neutral. The question is not that of parentage, but rather the question is: *is it mine?* Patriarchal notions of ownership and dominion prevail.

Subjects Who Personify

The third element looks for subjects who personify the discourse of parent/father with attributes one would expect these subjects to have given the way knowledge is constituted at that

time.⁶¹ In *Prince* Lucky is the subject who personifies fatherhood by representing the trope of black absent father as discursively constructed in opposition to the more hegemonic ideal of white male breadwinner. By measuring black male practices against a white hegemonic ideal, black male voices are muted in a way that discredits experiences of managing race and gender in certain spaces. For example, black men face higher unemployment rates than white men and are often the first fired in the face of an economic downturn.⁶² Black men face greater wealth disparities than white men, regardless of class.⁶³ Allen suggests that black men have compensated for these subordinations by “seeking employment in underground market economies or performing hypermasculinities” and that the cultural pathologization of such compensations has a causal link to the rise of absent black fathers.⁶⁴ This absenteeism results in black boys lacking “appropriate” male socialization in the home in turn causing a perpetual cycle of less-than-ideal behavioural performances.⁶⁵ In a system so uneven in opportunity and oppression, can the explanation for a black father’s absenteeism really be because they choose to be? The playing field is not even. Choices are informed and guided by social conditions. When those social conditions are oppressive, it follows that choices are constrained.

On June 15, 2008, President Barack Obama (then the paternal leader of the nation) gave a speech admonishing absent black fathers for the social woes experienced by black communities.

Prince is also set in 2008, the year following the subprime mortgage crisis in America, and the

⁶¹ *Supra* note 24 at page 46.

⁶² Kenneth A Couch, and Robert Fairlie, *Last Hired, First Fired? Black-White Unemployment and the Business Cycle* (2010) 47.1 Demography at 227–247.

⁶³ Jennifer Wheary, Thomas Shapiro, Tamara Draut, and Tatjana Meschede *Economic (in)security: The experience of the African-American and Latino middle classes*. (New York: Institute on Assets & Social Policy, 2008).

⁶⁴ Quaylan Allen, “Tell your own story”: Manhood, Masculinity and Racial Socialization Among Black Fathers and Their Sons. (2016) 39(10) *Ethnic Racial Stud* at page 3.

⁶⁵ *Ibid.*

year that the banks collapsed. In the midst of this socially and economically perilous time, President Obama addresses a large church congregation as follows:

But if we are honest with ourselves, we'll admit that too many fathers also are missing – missing from too many lives and too many homes. They have abandoned their responsibilities, acting like boys instead of men. And the foundations of our families are weaker because of it.

You and I know how true this is in the African-American community. We know that more than half of all black children live in single-parent households, a number that has doubled – doubled – since we were children. We know the statistics – that children who grow up without a father are five times more likely to live in poverty and commit crime; nine times more likely to drop out of schools and twenty times more likely to end up in prison. They are more likely to have behavioral problems, or run away from home, or become teenage parents themselves. And the foundations of our community are weaker because of it.⁶⁶

President Obama is suggesting that if black fathers simply remained present in their children's lives, poverty would be reduced, literacy would increase, prisons would empty and communities would strengthen. He is suggesting that if black fathers would grow up and take responsibility, social statistics which negatively characterize the African-American community would change. President Obama is pathologizing black fathers by suggesting an inherent irresponsibility as the cause for shared social woes.

But what is this perilous image of black fatherless families standing in opposition to? According to President Obama, black children of fatherless families are more likely to: “live in poverty and commit crime” which is in opposition to living with financial wealth and respecting the sanctity of private property; “drop out of schools” which is in opposition to increasing their future employability; “end up in prison” which is in opposition to participating in the market economy; “have behavioral problems, or run away from home, or become teenage parents

⁶⁶ Barack Obama, *Fathers Day Speech: Delivered to Apostolic Church of God Congregation* (15 June 2008), online: politico.com

themselves” which is in opposition to predictability and stability. The weakened foundations of community that President Obama is referring to appears to be a direct reference to the ability to participate in, and contribute to, the capitalist economy. President Obama also appears to be suggesting that black fathers failure to participate in this realm is by choice.

Allen points out that the problem with perspectives like President Obama’s is that they measure black male practices against a white hegemonic ideal: “whether responding to structural impediments or due to their own pathology, black men are perpetually seen as falling short of dominant conceptions of masculinity.”⁶⁷ Allen suggests that the failure here is the lack of recognition for “how black men learn and conceptualize manhood and masculinity in ways that contest or accommodate dominant gender expectations.”⁶⁸ *Prince* discursively constructs fatherhood outside the white hegemonic ideal by performing black masculinity in opposition to dominant gender and race expectations of black men as absent fathers in how Lucky remains present in the child’s life. While it’s true that Lucky missed the first couple years of his son’s life, this is only because he had no knowledge that his son existed. In a social realist fashion, *Prince* doesn’t make a virtuous hero out of Lucky because of his decision to remain present in his son’s life. On the contrary, the audience is positioned on a razor’s edge to question whether or not Lucky will keep or abandon the child throughout most of the film. Lucky really struggles with this decision. In an almost comedic display, Lucky flails, complains, and questions whether and how he could possibly care for a child given his precarious existence in New York City. Doubt is further inscribed when Lucky is asked numerous times if he has confirmed biological paternity. He is asked if he has called the police to collect the abandoned child. In one scene Lucky does indeed attempt to part with the child by dramatically walking out on him during an

⁶⁷ *Supra* note 92 at page 4.

⁶⁸ *Ibid.*

emotional moment in the restaurant, but he comes back. Ultimately though, Lucky reveals his commitment to re-enact his own father's unconditional love through his presence. By doing so, Lucky contests dominant gender and race expectations that he will abandon his son, and in the process reveals that the decision had far less to do with his "irresponsibility" and more to do with the structural barriers surrounding him making it difficult to survive.

Any belief that sees black men as being absent in their children's lives simply because they are irresponsible lacks an intersectional perspective. The breadwinner trope looks at the general of the hegemonic ideal and fails to see the specific circumstances of the debtor deadbeat dad. In *Prince*, both Lucky and Linda's abusive boyfriend are evaluated as breadwinners through their ability to provide shelter and the necessities of life for the child. As mentioned, the film contends that the boyfriend is better positioned as a breadwinner insofar as he has an apartment, a car, and appears to be a US citizen. This is juxtaposed with Lucky who lives in a boarding house where he shares a kitchen and bathroom with other residents and occupies a small room with a mattress on the floor. His subject position as breadwinner is further diminished by his uncertain employment and immigration status. By shifting the focus from general stereotypes about black fathers, and paying attention to an individual's story, an interconnection of discrimination and moral politics as espoused by President Obama on Father's Day in 2008 comes into view. President Obama is talking about some monolithic notion of black fathers, whereas Lucky actually is a black father. He is struggling to provide financially for Prince, but not because he is irresponsible or lazy, but because the odds are stacked against him.



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How Knowledge Acquires Authority

The fourth element is how knowledge about being a parent acquires authority, a sense of embodying the truth about it, constituting the ‘truth of the matter’ in a historical moment. *Prince* both privileges and subverts medical knowledge as truth through its (de)emphasis on DNA tests. Lucky ultimately gets the DNA test, but only after much hesitation. The film asks if Lucky is perhaps afraid that he might not be the father. The DNA test is both everything, and worthless because though it provides conclusive proof of genetic ties, it says nothing of bonded love. Citing Foucault’s theory of biopower, Pylypa explains how scientific knowledge has mobilized power over and through bodies, especially in the medical realm:

...the medical profession historically gained considerable power to define reality through the control of privileged and respected scientific knowledge. Medical knowledge came to define the boundaries of normality and deviance. Medicine has also objectified our bodies, bringing them under the surveillance of the medical system as objects to be manipulated and controlled. Thus, at the level of ideology, medicine creates the discourse that defines which bodies, activities, and behaviors are normal; at the level of practice, medical procedures are a principal source of the institutional regulation and disciplining of bodies.⁷⁰

⁶⁹ Still from *Prince of Broadway* depicting Lucky laying on a mattress engaging with Prince who is in his play pen. I chose this still as it depicts the familiarity between baby and caregiver through their gaze and body language.

⁷⁰ Jen Pylypa, *Power and Bodily Practice: Applying the Work of Foucault to an Anthropology of the Body* (1998) 13 *Arizona Anthropologist* at 30.

Prince argues DNA tests are objects of surveillance and control. Proof of parentage based solely on biology is a medical discourse, and a legal discourse as well. DNA tests enable law to converge with the ideal of objectivity that dominant discourses confer to science.⁷¹ The DNA test surveilles and controls who gets to act as a parent based on objective confirmation of shared genetic material. This scientific objectivity has been adopted by courts in most countries whereby applications can be made to determine parentage through a DNA test. By using DNA tests to confirm parentage, authoritative knowledge is monopolized by the medical profession; technical analysis of genetic material is deemed relevant while bonded affection and love are considered irrelevant. The normative conception of parent is a person who shares the same DNA as their child and to depart from this “objective” truth is seen as deviant.

Lucky is pestered several times in the film to confirm parentage through a DNA test. His friend thinks it so important that he donates \$300.00 to Lucky to fund the expensive test. In the end, Lucky cannot bring himself to look at the DNA test. He asks his boss Levon to look at the document. We see a close up on the letter which has a series of indiscernible numbers on it. After a dramatic pause, Levon finally announces that Lucky is the father. Lucky’s face lights up, “Now I feel it,” he says. “For real. That’s the reason I didn’t want to let him go... My father, he was always there for me. I put that nigger through hell. He was always there for me.” Seeing Lucky’s elated and emotional reaction, Levon pockets the letter. This is an ambiguous act because we do not see Lucky confirm the results for himself. We do not get an interpretation of the results which leaves open the possibility that Lucky is not the child’s biological father. This omission is affective in how it relieves viewers of the potentially painful alternative of the child not being Lucky’s biological child. But for those viewers who still want to know conclusively may want to

⁷¹ Hub Zwart, and Annemiek Nelis, *What is ELSA Genomics? Science & Society Series on Convergence Research* (2009) *EMBO reports* vol. 10,6:540-4.

pay attention to what is operating below their reaction. By questioning why a man would volunteer to care for a child that was not biologically his, they may be judging a non-normative decision and labelling non-normative as deviant. Whatever a person's reaction, what is clear is that medical knowledge is powerful: The scientific discourse of medicine... "produce[s] new forms of knowledge. This knowledge is not neutral or objective; it represents particular perspectives, conventions, and motivations."⁷² This knowledge influences our behavior and "has a controlling effect on our bodies, such that knowledge is inseparable from power."⁷³ By paying attention to the privileging of medical scientific knowledge, the circulation of power reveals itself in how it produces shared assumptions about reality and objective truths begin to crumble.

Practices and Institutions That Regulate Conduct

The fifth element looks at the practices within institutions for dealing with subjects whose conduct is being regulated and organized according to ideas about being a parent. In *Prince* police are present, and child welfare is noticeably absent. Lucky finds that he cannot go to police nor child services upon having a child abandoned at his feet.⁷⁴ In *Prince*, the major regulation of conduct is revealed most pointedly by the representation of childminding in the workplace.

Prince presents us both with scenarios where an individual should be able to rely on police and those in which police actually do intervene. For example, when the child is forced onto Lucky, he is asked several times why he doesn't just call police. He responds, "How can I call the police? I've got no papers. Are you crazy?" The risk of deportation is too high. Lucky cannot rely on the authorities to respond to an abandoned child. The absurdity of this situation is illustrated by the context in which the police actually do intervene, which is in the raid of

⁷² *Supra* note 98 at 30.

⁷³ *Ibid.*

⁷⁴ This is not to say that Lucky should go to the police or child protective services, nor that they are the most appropriate agencies to respond to an abandoned child. Rather I raise the selective presence and absence of the institutions to show how patriarchal power works differently in the lives of marginalized men.

Levon's store because of the sale of trademarked counterfeit merchandise. The police intercept Levon on his way out of the store and rudely tell him to "get the fuck back into the store" with an arrogance that suggests that they have conducted these raids before and see the alleged offenders as less than human. Guns are drawn as they intrude without referencing or producing a warrant. The officers direct those already inside the store to empty the contents of their bags onto the floor which bears no apparent link with the sale of counterfeit merchandise. One officer asks Levon if he has any needles on him suggesting that he may be a drug user. The officers are on a rampage to zealously protect trademarked property with little to no regard to the violation of individual human rights in the process. Deference is given to purses, yet there is no help for the baby.



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The police raid is colonial to the core. Gucci, Prada, Dior, the trademarked names previously called out on the streets by the hawkers are brought to mind as viewers try to reconcile the brute actions of the police against the alleged crime perpetrated. Each brand, with the exception of Nike, is European. The fetishization of these branded items has eliminated

⁷⁵ Still from *Prince of Broadway* depicting a "birds-eye view" of a white police officer standing over people of colour waving a gun with purses displayed on the wall adjacent. I chose this still as visual representation of the colonial interaction whereby European objects are being protected over people.

borders and transformed mere purses and shoes into revered pieces of precious property to be given deference and respect. The baby is ignored.

First, a female is permitted to leave. The officer tells her “you are free to go, don’t do this again, it’s illegal.” Next, Lucky is told, “get your kid and get the fuck out of here.” Finally, Levon is handcuffed and escorted to the police car. Levon asks the arresting officer, “are you going to read me my rights or what?” to which the officer replies, “I’m not interrogating you, I’m fucking arresting you”. The informality and break with proper police procedure in this scene represent the values of police enforcement against hawkers who are largely immigrants and people of colour. In this scene, the police are asking those coded “domestic” (in terms of both nationality and economic role) to slink back into the private realm as they zero in on the threat to the market.

But what to do with an “illegal” immigrant hawker of colour *with a baby*. The officers make almost no mention of the child aside from a sarcastic comment, “oh they are starting them young, huh?” It is apparent that the police don’t know as they tell Lucky to “get [his] baby and get the fuck outta [there]”. Children are absent within the institution of paid labour. The search terms “children absent in paid labour” reveals top hits dealing exclusively with government compensation for taking leave from work to tend to childcare obligations.⁷⁶ Taking a baby to work is a non-normative and deviant act. Lucky lacks familial support, and his employment primarily takes place on the streets. Viewers deeply feel the burden watching Lucky attempt to push the child in a stroller down a snow packed sidewalk full of pedestrians in the freezing cold while carrying all the things that go along with a baby. Part of the success of being a hawker of illegal wares is the ability to flee from the police, and avoid disgruntled patrons upon their

⁷⁶ Search conducted November 5, 2018 on google.com

learning that they have paid money for knock-off merchandise. Childcare is not supposed to be visible and public:

What is valued today (by choice as much as by unchosen necessity) is the ability to be on the move, to travel light and at short notice. Power is measured by the speed with which responsibilities can be escaped. Who accelerates, wins; who stays put, loses. ... Attachments to objects with a long-life expectation goes against the precept to stay slim, light and fit. But that precept, in its turn, militates against taking up moral responsibilities, which may lead to commitments, obligations and other 'burdens' which would be rather, with the rest of the ballast, thrown overboard from the hot-air balloon.⁷⁷

Lucky stands out as depicted in the scene in which an angry patron returns and says “want to know how I know I bought these here? Because it’s the only shop on Broadway with a baby working.” The shape of Lucky’s burden is bulky, backbreaking, and cumbersome. And although an informal care network emerges around this social anomaly, survival is tough. The police may be protecting what the State deems legitimate businesses; however, the very institution of paid labour also regulates Lucky’s conduct as it presses out any possibility of being an active and present father while also providing materially for his son. The capitalist social order must be preserved. *Prince* elicits sympathy for Lucky, and disdain for a system that impedes the relationship between father and son.

Acknowledgement That New Discourses Will Emerge

Finally, the sixth element acknowledges that a different discourse or episteme will organize at a later historical moment, supplanting the existing one, opening up a new discursive formation and producing in its turn new conceptions of being a father/parent, and new discourses with the power to regulate social practices around fatherhood/parenting in a new way.⁷⁸ Foucault argues

⁷⁷ Zygmunt Bauman & Keith Tester, *Conversations with Zygmunt Bauman* (Cambridge: Polity Press, 2001) at 95.

⁷⁸ *Supra* note 24 at 46.

that power can mask itself as resistance.⁷⁹ Pylypa, writing on the manipulation of desire as a mechanism by which power masks itself to make what is constraining appear desirable writes:

When power meets with resistance, it is not overcome; it simply finds new ways of manifesting itself: ‘...power can retreat here, re-organize its forces, invest itself elsewhere...and so the battle continues’ (Foucault 1980b:56). There is a constant interaction of power and resistance in which power asserts itself, meets with resistance, and responds by re-asserting itself in a new guise.⁸⁰

Power is a shapeshifter which is why it is so important to pay attention to the ways in which power operates in the tiny capillary spaces permeating everyday life. Foucault has been criticized for this pessimistic view that does not consider the potential for positive social change.⁸¹ Rather than training on positive social change, he remains vigilant against the circulation and operation of power. Power is not overcome, rather it is transformed. To me, there is a vigilance in this theory, one that partners really well with visual representations of the social as perfect case studies for analysis in a particular moment in time.

Prince asks viewers specifically if Lucky is the father. It also asks the more general question of whether Lucky is father material. Compare this social realist film of the early 2000s with a film from 100 years ago, and the audience would surely be positioned to answer the question differently. Take for example Charlie Chaplin’s 1921 film *The Kid*. In that film, which bears many parallels to *Prince*, Chaplin discovers a child abandoned by his mother on the streets. Chaplin takes the child in, raising him in a comedic display which follows the pair as they engage in petty crimes such as throwing rocks at windows so that Chaplin’s character can get work fixing them. After a brief separation caused by state intervention, Chaplin’s character is

⁷⁹ *Supra* note 24 at 30.

⁸⁰ *Supra* note 98 at 30.

⁸¹ *Ibid* at 34.

reunited with the child who is given a fairy tale ending. The child has been reunited with his biological mother and also gets to keep Chaplin as his adoptive dad.

In *The Kid*, viewers are similarly positioned to see the precarity of the pairing due to the protagonist's difficult financial situation. Times are tough. However, very different discourses regarding fatherhood are displayed. In *The Kid*, viewers are positioned to sympathize with the mother's reasons for abandoning the child whereas in *Prince*, viewers are positioned to be critical of Linda. The idea of a single father feels more tangible and possible in *Prince*. In their review of research on fatherhood, writers Charlie Lewis and Michael E. Lamb write:

Historical changes [...] mark paternal involvement [...] in many respects, fathers have been neglected in the past because scholars assumed that a mother's nurturing role was pre-eminent and that mothers' impact on children was overwhelming.⁸²

Where *The Kid* upholds the primacy of the nurturing mother, *Prince* complicates the pre-eminence of a mother's love. Viewers have very little information about why Linda is abandoning her child, aside from what appears to be a controlling relationship. She appears well supported by her own mother and best friend so theoretically positioned to raise her child with help. *The Kid* on the other hand is sympathetic to the mother who was almost immediately regretful of her decision to abandon her child in an expensive automobile in the hopes that he would be raised by a wealthy family. Viewers are positioned to accept the inevitability of the reunification of the child with his mother who is now wealthy and famous.

What is represented in both of these films, however, is the impact of poverty on choices regarding child rearing. Chaplin's character and Lucky have limited options in terms of material provisions for their children, and it is this struggle which guides viewer negotiation with the meta

⁸² Charlie Lewis & Michael E Lamb, *Understanding Fatherhood, A Review of Recent Research* (York: York Publishing Services Ltd, 2007) at 6.

questions of the films. What makes a good father? Are these men father material? Lewis and Lamb explain the pervasive impact of economic inequality on paternal involvement:

...some factors are so powerful that they are capable of influencing every father in a culture or even across cultures. For example, Olavarría (2003) referred to two processes leading men to take more active roles in their families: the increase in female participation in the labour force; and a general instability in modern economies that has made traditional 'men's jobs' more unstable. Olavarría's study involved highly impoverished families in Santiago, Chile, yet it could as easily have involved fathers in Tyne and Wear (Wheelock, 1990). Evidently, there are historical shifts towards global patterns of employment and social life that cut across differences derived from culture and local history.⁸³

Lewis and Lamb acknowledge that there are economic trends that dictate what is said and believed about paternal involvement that transcend geography. So, while things have surely changed since the early 1920s in terms of how we think and talk about paternal involvement, there are still powerful forces circulating to influence this discourse. To my mind, and as alluded to in the previous sections, the enduring theme of economic impact on familial relations should be considered in place of rhetoric about "deadbeats".

Conclusion

In her article *Spectres of Foucault in Law and Society Scholarship*, Mariana Valverde advocates for a return to Foucault's methods and move away from the co-optation of his work unto self-serving theory.⁸⁴ She argues that his work has the most utility when used to analyze current formations of intellectual habits rather than a flat application to bolster dusty philosophy. In this chapter, I've attempted to do just that. I've attempted to use Foucault's ideas in an exploratory manner to reveal something about the way fathers are discursively constructed through film and how power is operating.

⁸³ *Ibid* at 8.

⁸⁴ Mariana Valverde, *Spectres of Foucault in Law and Society Scholarship* (2010) 6 *Annu Rev Law Soc Sci* at 54.

As alluded to in my introduction, the practice of creating and sustaining symbols and meanings is not benign. As Hall points out, these meanings have the power to organize our conduct, "...they help to set the rules, norms and conventions by which social life is ordered and governed"⁸⁵ which is why it is so important to tend to the politics of representation. In other words, what we come to believe about parenting and/or fatherhood will ultimately determine how the construct of family is approached legally, culturally, socially, etc...

In her article, "*Manning Up*" to be a Good Father: *Hybrid Fatherhood, Masculinity and US Responsible Fatherhood Policy*, scholar Jennifer Randles looks at the discourse surrounding government made laws regarding fatherhood. She explains how the policies began to develop in response to the social concern of "fatherlessness" as a significant social determinant in the prognosis of a child's future which tracks Robb's findings regarding statements made about fatherhood through the interpretative repertoire of *presence*. Randle troubles the foundation of these policies which she says are "reinscribing patriarchy by prioritizing men's breadwinning and women's reliance on it" by pointing to evidence that rebuts gender as the cause of societal decline. Rather, the greater indicator appears to be access to resources, which includes double-parent capacity in homes.⁸⁶ In her research, Randle discovered that many state-funded marital and parent programs seek to control normative conceptions of men as promiscuous and competitive because these traits are supposedly causing men to reject paternal responsibilities.⁸⁷ She argues that the discourse these practices create stigmatize poor fathers of colour as these men do not fit the image of "professionally successful, married, residential fathers who are

⁸⁵ *Ibid* page 4.

⁸⁶ Jennifer Randles, "*Manning Up*" to be a Good Father: *Hybrid Fatherhood, Masculinity and US Responsible Fatherhood Policy* (2018) 32(4) *Gender & Society* at 516-539.

⁸⁷ *Ibid.* at 521.

financially and emotionally involved with children”.⁸⁸ Her logic parallels my criticism of President Obama’s Father’s Day speech as wrongly pathologizing black absent fathers as though they are uninvolved by choice rather than circumstance. Linda’s charge to Lucky to be a responsible father by taking care of his son connotes themes of father absenteeism which is fraught with social constructions of masculine caregiving. Randle concludes that propagating the narrative of domesticated, wholesome, and financially secure as ideal father

...obscures how socioeconomic obstacles—including deteriorating educational opportunities and labor market conditions, disparate treatment by the criminal justice system, and high rates of family instability—have constrained paternal involvement among low-income families of color in recent decades.⁸⁹

The visual representation of Lucky’s precarious circumstances troubles Linda’s connotation that he is an irresponsible and absent father by revealing the many barriers that are working against Lucky’s ability to be present in his child’s life. The potential for the bias that Lucky is a promiscuous and irresponsible man due to the fact that he didn’t even know he had a child begins to fall away as we travel through Lucky’s complicated existence. This is most powerfully punctuated at the end of the film when Lucky is lead to believe that he is the biological father and in that moment he reveals a deeply rooted moral code bestowed on him by the example set for him by his own father.

Finally, Foucault has been criticized for creating a picture of passive and equal acceptance of norms by everyone without regard for freewill and individual agency.⁹⁰ Pylypa summarizes this critique as follows:

Individuals respond differently to the knowledge produced by science, and ‘social norms’ are not equivalent for all sub-groups within a society, nor equally adhered to by all. Foucault’s approach does not help us to account for such variation and resistance.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Supra* note 24 at page 33.

This is where I affirm film's potential as conduit of social change by winning hearts and minds. Film allows for multiple readings and interpretations. For example, on the issue of biological parentage, some viewers may need conclusive biological proof, for others it matters not. Film creates this inner dialogue. Depending on how the film plays out on the viewers emotions, they may even be manipulated to pivot to a different conclusion than one previously held. Paying attention to moral arguments about how a father should be acting reveals a breadcrumb trail back to systemic exclusions preventing black fathers from performing "as they ought to". This is so obviously played out in *Prince* as viewers witness Lucky's plight. The expectation that he adhere to the white hegemonic ideal of the father is absurd given how the odds are stacked against him. His very existence is precarious. Housing, income, and citizenship are all uncertainties- things that many of us sitting in judgement give little thought. *Prince* positions viewers with Lucky in a way that promotes a troubling of stereotypes and reveals the cruel systems working against the sanctity of the father/son bond.

Chapter Three- Starlet (2012)

Law, Morality, and the Spaces Between

What is the difference between law and morality? Is a good person someone who obeys the law? Whose laws are they obeying? Typically, we understand law to be that which is according to formal law makers, and morality to be that which is morally right or just. Formal law does not always track what is morally right and just, and what is morally right or just does not always track formal law. Sometimes this is expressed as an opposition between what the gods command and what the political authorities command. This is dramatically illustrated in Sophocles' tragedy *Antigone*, in which the heroine defies the decree of the king and buries her brother. The king being the source of formal law, and the act of burial being what the audience is positioned to assume is morally right.

In arguing that films can be read as legal texts, Orit Kamir says that "...some films[...] train and mould viewers and audiences in judgment, while examining—and often reinforcing—legal norms, logic and structures".⁹¹ Law parallels film. Like the positioning of the audience in *Antigone*, film viewers are similarly positioned to judge depictions of law and morality in a multi-sensory context. Indeed, films do perform judgement themselves through various methods "genre, editing, narration, plots, points of view, rhythm, casting...manipulation of viewer identification with on-screen characters and elicitation of emotional responses to powerful imagery."⁹²

The film *Starlet* (Baker, 2012) invites viewers to examine judgements of law and the concept of morality. *Starlet* is premised on a tricky legal/moral question: what would you do if

⁹¹ Orit Kamir, *Why Law and Film and What Does It Actually Mean? A Perspective*. (Continuum: Journal of Media & Cultural Studies Vol. 19, No. 2, June 2005) at 268.

⁹² Orit Kamir, *Framed: Women in Law and Film* (Durham and London: Duke University Press, 2006) at 3.

you found \$10,000.00 in a thermos you paid \$1.00 for at a garage sale? Should you return the money or is it yours to keep? Set in the San Fernando Valley, a suburb of Los Angeles, the story is about the unlikely friendship between 22-year-old Jane and 85-year-old Sadie. Jane is a carefree leggy millennial living out of a suitcase with her dog Starlet, and her roommates Melissa and Mickey; and Sadie is a crusty old recluse who lives alone inside her cluttered bungalow eclipsed by foliage. Unsure of what she should do with the money from the thermos, Jane befriends Sadie in an attempt to appease her conscience and redeem herself. The money is the tricky question on which the plot of this film is based, however the context of the film is legally and morally tricky as well. Jane and Melissa are adult film actresses. While Jane does not appear to be resolving any moral or legal qualms with herself regarding her chosen profession, the film does explore porn in a way that lends to questions of law and morality as well.

In this chapter, I will argue that a postmodern reading of *Starlet* highlights the relationship between law, morality, and film. I will begin by discussing two ways *Starlet* positions the audience to judge while examining legal norms. First through the film's treatment of two legal/moral tensions; specifically, the fire lane violation and what to do with the money from the thermos. Secondly, I will look at how the film positions the audience to judge porn. After a brief review of Canadian porn law, I will argue that a postmodern reading of *Starlet* rejects modernism's myth of fixed truths in how it presents porn in a way that leaves each individual viewer to make up their own minds as to the relevance of porn, regardless of what formal/state-made law says.

Legal/Moral Arguments

Starlet presents both legal and moral questions in a way that conflates the two. The film offers two examples of blended law and morality: the first is relatively simple metaphor and the second a more complex issue. We begin with the seemingly straightforward and formal violation

of law by parking in a fire lane. This primes the more complicated question that follows, namely: what to do with money that may not belong to you.

We encounter formal law where Jane attempts to wait for Sadie in the fire lane at the grocery store violating the local fire code law. A store clerk implores Jane to move before he loses his job. The clerk is unlikely to lose his job, but his comment lends to the argument that political mediations of space through law are deeply internalized by citizens. In the case of the fire lane, circumstances do not matter. The sign is clear. Violating this regulatory law could result in a ticket to which there is no defence. The remote chance of a fire breaking out before frail Sadie finishes her shopping, against the very likely possibility that Sadie will feel abandoned and confused by Jane's absence positions the audience to side with the breaking the law. Panic sets in as Jane gets stuck behind a garbage truck as she rounds the neighbourhood and does inevitably leave Sadie deserted. We want Jane to defy the king and do what feels morally right: refuse to move despite the law.

A second legal and moral issue that positions the audience to judge, and which is central to the plot, is what to do with the money from the thermos. What would you do if you bought a thermos at a yard sale for \$1.00 and subsequently found \$10,000.00 inside? Is it still a fair bargain? Is keeping the cash a crime? A tort? A sin? None or all of the above?

Here is what we know about the money: Sadie's late husband was a professional gambler, and he was "very good." Indeed, Sadie tells Jane that she has "more money than [she] can spend in [her] lifetime." Jane attempts to return the money to Sadie the day after the garage sale but when she arrives at Sadie's door, Sadie abruptly yells, "I said no refunds!" and slams the door in Jane's face. To Sadie's mind, the transaction is finished. But Jane remains conflicted, so she throws herself into service for Sadie, much to Sadie's suspicion and reluctance. Jane drives

Sadie to and from the grocery store, she takes her out for breakfast and ice cream, and accompanies her to bingo. Aside from getting her nails done and buying a flashy new harness for her dog Starlet, Jane spends the rest of the money on Sadie. Ultimately the majority of the money is spent on two first class tickets to Paris to fulfill Sadie's lifelong dream of travelling to her favorite city.



The audience is on the inside of the dilemma. We have all the information. We are positioned to absolve Jane with each act of kindness towards Sadie. What each of us is left to determine is how much personal and emotional labour \$10,000.00 is worth. On one hand, Jane's omission to tell Sadie about the money, especially after they become genuine friends, is inexcusable. On the other hand, the bizarre circumstances surrounding the money could support an argument that Jane owes Sadie nothing.

Starlet's depiction of Sadie pulls the audience to and fro on the issue of the money from the thermos. Sadie is a crusty old woman. She shows little warmth towards Jane. Jane on the other hand is kind. The argument being that it is more okay to take money from a bad person than it is from a good person. However, insofar as Sadie is a contrary character, she also garners

⁹³ Still from *Starlet* depicting Sadie, Starlet and Jane sitting on a bench with power lines reminiscent of the Eiffel Tower stand in the background.

sympathy. Sadie is a widow. She lives alone in a crowded house. She has all but given up on life. Though she attends bingo every Sunday, she rarely wins. She gave up her driver's license because she is "too old". The tension that these characteristics produce is that of "how could you take this old lady's money?"

In attempting to resolve this dilemma for herself, Jane asks her stoned roommate Melissa while playing video games. Melissa's answer helps the audience establish a moral and legal grey area: depending on your financial and social position relative to others, keeping the money may be the appropriate thing to do.

Jane: Question, say you found like a bunch of money and you're pretty sure you know whose it is, you're pretty sure that he or she has no idea that they ever had it, what would you do?

Melissa: How much money?

Jane: I dunno, like, say ten grand.

Melissa: Unless they really needed it... if it was like a family you know and they were like homeless and broke and they were living off dog food, otherwise fuck it, it's yours, keep it.

Melissa's moral position is informed by her experience of law. She is haunted by contract throughout the film. Her brand new red Camaro gets repossessed when she cannot make the payments, an experience she responds to as though it were an inevitability. Rather than being rebuked for her poor money management, she is reprimanded by her boyfriend for parking the vehicle in a visible place. Melissa and Mikey playing fast and loose with the terms of their car lease invites a criticism that they are amoral. Later, Melissa is fraught when she does not receive the paycheque she was expecting. She storms into her managers office and demands payment. Her manager reminds her that she did not work that pay period, indeed she was sent home in a cab because she showed up to work "too out of it to perform". Melissa demands her kill fee. A kill fee is a clause in a contract that promises a percentage of payment in the event that work gets cancelled. Her manager says, "a kill fee

is for when *I* cancel work”. Melissa demands it anyways citing her manager’s impropriety towards her as reason enough to be paid. Melissa’s logic regarding her car and her pay cheque have nothing to do with formal contract law, however her moral positions hold weight. The audience is situated to empathize with Melissa. Why shouldn’t she have a nice car and financial security? She employs her body in a multi-billion-dollar industry and has no security. We are drawn in to her plight. For Melissa, the answer to whether Jane should keep the money is not black and white. Melissa needs context to decide. Context which is largely informed by her values, and her values informed by her context.

Postmodern Porn

Modernism usually refers to Neo-Classical, Enlightenment assumptions concerning the role of reason in guiding our understanding of the human condition.⁹⁴ Postmodernism challenges those assumptions. A modernist would argue that reason transcends and exists independently of our existential, historical, cultural contexts; it is universal and “true”.⁹⁵ Whereas a postmodernist would argue that there is no universal, objective means of judging any given concept as “true”; all judgments of truth exist within a cultural context.⁹⁶

Much like the exercise of resolving what Jane should do with the money from the thermos, the audience is asked to decide what to make of Jane’s vocation. On my read of the film, the issue is left open in a postmodern vein. Is Jane’s participation in the porn industry a symbol of her liberated and empowered use of agency? Or is it a symbol of her oppression through capitalist commodification? *Starlet* argues the potential for both and neither.

⁹⁴ Leonard Orr, “Modernism and the Issue of Periodization” *Comparative Literature and Culture* 7.1 (2005): <<http://docs.lib.purdue.edu/clcweb/vol7/iss1/3>> at 2.

⁹⁵ Lester Faigley, “Fragments of Rationality: Postmodernity and the Subject of Composition” (*Pitt Comp Literacy Culture: University of Pittsburg Press, 1992*) at 5-7.

⁹⁶ *Ibid.*

In *Starlet*, porn is not entirely about men getting rich through exploitation, but it is certainly not altruistic either. For example, Arash is a wealthy businessman and Jane's boss. He provides guidance to Jane and makes sure she has safe housing. We are brought into his home life with his children running around the dinner table and later see him at the porn convention telling Jane that he is going to "get [her] tits fixed". The audience sees him as professional and legitimate, but also as morally corrupt and backwards. Mikey is the polar opposite of Arash. He stays at home most of the day smoking pot and playing video games. He acts as Jane and Melissa's agent and talks a big game about making money off and for both of them. However, Mikey is also their friend and protector. The audience sees him as kin to Melissa and Jane, a tragic character in his own right. However, we also see him as an exploitative degenerate as well. The dualism of Arash and Mikey's characters assists the audience's feelings of ambiguity towards porn. We may be able to vilify them as patriarchal representations of female oppression, but not all the way.

Starlet employs a relatively uncommon use of porn in that it does not feature centrally to the plot. The story focuses on the moments outside of work when Jane is going about her business and just living her daily life. Indeed, we do not even come to learn that Jane works in the industry until 40 minutes into the film. In an interview about the film, director Sean Baker explicitly admits to using porn to elicit judgement from his audience:

I have to admit that I wanted her to be a porn star for experimental purposes. I honestly wanted to play with the audience. Everyone brings their own individual viewpoints and opinions about porn to the table when watching *Starlet*. I want the audience to be forced to question the way they judge. Does their opinion of Jane change once they find out what she does for a living? And why? Everyone will have a different answer to this, and I find that intriguing. If there is any one thing that the film is condemning, it is the judgment of an individual without walking in his or her shoes.⁹⁷

⁹⁷Golden Girls: Sean Baker's *Starlet*, Adam Nayman undated, available online <http://cinema-scope.com/cinema-scope-magazine/golden-girls-sean-bakers-starlet/>

What is compelling about Baker's so-called experiment with the audience, is that *Starlet* does not give us much personal or biographical information about Jane. All we know about her history is that she is from Jacksonville, Florida; she is at least on speaking terms with her mother (who abuses oxycotin); and she rescued her male dog named Starlet. These are rather benign facts that don't help us "walk in [Jane's] shoes" based on the usual tropes of sex workers in film such as their socio-economic background, history of abuse, mental illness, and troubled childhoods. Rather as her name suggests, Jane is pretty plain. She is depicted as the all-American girl. Jane is dressed in casual and comfortable clothing with the exception of two scenes in which she is put through hair and makeup for a video shoot, and a porn convention. She typically doesn't wear any make up and is seen on a number of occasions rolling out of bed and into her day.

Jane hides the fact that she works in the adult film industry from Sadie which signals that she might be ashamed of her job. However, Jane also takes care of Sadie with a deference and respect afforded to older generations which signals that she believes Sadie might lack understanding due to her "old school" values. Jane doesn't make one comment throughout the film of other vocational hopes or dreams. We have no indication that her job is merely a means to an end. The scales for or against Jane's decision to be in porn are balanced.

An example of *Starlet* intentionally lacking context leaving the audience to decide what to make of Jane's chosen career is a quick one-off scene in which Jane is getting blood taken. In a relatively close up shot, we see Jane's arm with her sleeve rolled up and a drip attached. There is no precursor, dialogue or follow up to this action. We don't see any signage, other clientele, or even the staff. Viewers are instead left to decide whether Jane might be getting tested as a prerequisite for her job, donating blood to make money, or simply donating blood altruistically.

The audience is left to decide, but in a tricky way. The scene is spliced into the narrative flow. It is over almost as quickly as it begins. It is so out of place that the audience is positioned to make a knee-jerk reaction that subconsciously follows into the continuation of the story. In this way, the reaction reveals more about viewers than it does about Jane.

According to Lord Devlin, a society cannot exist without agreement on what is good and what is evil. And if, having come to such an agreement, “the agreement goes, the society will disintegrate.”⁹⁸ Hart on the other hand, warned against basing law on popular moral consensus in the absence of harm. Law is not an end in itself, but rather a means to realizing societal values. It follows that a serious challenge to creating laws is when differing values compete. Porn, indeed sexuality generally, is an excellent example of competing values leading to a crisis to the idea of universally applicable laws. Porn reveals the tension between freedom of expression and personal liberty on the one hand, and the protection of moral standards in the community on the other. The tension is in balancing individual freedoms with collective moral order. This is the Devlin-Hart debate.

Canadian criminal law regarding pornography is a perfect example of the thinly veiled attempt to mediate societal values and the tension between personal liberties and the “collective” moral order. Under Canadian criminal law, the term “pornography” occurs only in section 163.1 of the *Criminal Code*, which provides a definition of “child pornography.” Pornographic material featuring consenting adults is regulated through the “obscenity” provision of the same section. Unlike child pornography, pornographic material involving consenting adults is legal in Canada if it is not deemed to be obscene. The elaboration of what is obscene in section 163(8) is as follows:

⁹⁸ Lord Devlin, “The Enforcement of Morals” (45 PROc. Of BR. Academy, 1959) at 138.

For the purposes of this Act, any publication a dominant characteristic of which is the undue exploitation of sex, or of sex and any one or more of the following subjects, namely, crime, horror, cruelty and violence, shall be deemed to be obscene.

Thus, a judge must decide “undue” exploitation in reference to the community standard of tolerance. Crime, horror, cruelty and violence alone are not sufficient to warrant judicial intervention, there must be a sexual component. The law is therefore protecting against that which the community will not tolerate in reference to sex.

Judges are explicitly invited to pass judgement on what Canadians will not tolerate sexually. This law is not made or interpreted based on empirical data, but rather this law is made and interpreted based off of *representations* of our values at a given moment in time. The 1990s saw judicial engagement at the highest level in *R v Butler*, 1 SCR 452; *R v Jorgenson*, 4 SCR 55; and *Little Sisters v Canada*, 2 SCR 1120. But what happened to this debate? A cursory search of Canlii reveals not one post-millennium reported decision dealing with obscenity in the context of non-child porn with the exception of *Little Sisters* whose decision came out in 2000. The debate seemed to die with the internet where there is generally no ability to control the distribution and consumption of porn.

If law is a reflection of society’s values, film is a depiction of those values played out. Films assist in determining community standards with or without the help of judicial decisions. In her article, “*Leaving Normal*” *Constructing Family at the Movies and in Law*, Johnson asserts that boundaries of normal and deviant are policed not only through formal mechanisms such as law, but also importantly through informal mechanisms such as popular culture.⁹⁹ She says,

Because culture operates at the level of symbolic representation, it not only constructs and maintains social order, it also bears the seeds of social transformation

⁹⁹ Rebecca Johnson “Leaving Normal” *Constructing the Family at the Movies and in Law* in *New Perspectives on Deviance: The Construction of Deviance in Everyday Life* (Scarborough ON: Prentice Hall Allyn and Bacon Canada, 2000) at 164.

[...]. Thus, any examination of popular culture should be attentive to the ways in which particular texts maintain or subvert the current order.¹⁰⁰

Starlet both maintains and subverts the controversies around porn by not focusing Jane and Sadie's story directly on the arguments for or against its existence or regulation. Jane is just a regular person with little to no personal story to give her context. This neutral treatment turns the gaze back on viewers in a way that forces an examination of their own individual reactions and how these beliefs may or may not align with the realities of the ever-present porn industry and the people who work within it. The very fact that porn, a once hotly contested site of law and morality, can be treated neutrally in popular culture shows that truth is relative, and that truth is up to each individual to determine for themselves based on their location in the larger cultural context.

Conclusion

Law and morality serve to channel our values and behavior. Law accomplishes this primarily through the threat of sanctions if we disobey legal rules. Morality too involves incentives: bad acts may result in guilt and disapprobation, and good acts may result in virtuous feelings and praise. Conversely, our values and behavior also inform constructions and interpretations of law and morality. Film helps us visualize and make sense of the world. *Starlet* is an example of how meanings of law and morality are not stable. *Starlet* invites the audience to work legal and moral tensions out through affective reactions to depictions of complicated social interactions. *Starlet's* representation of porn reflects a contemporary example of engagement with moral and legal grey areas.

¹⁰⁰ Ibid.

Chapter Four- Tangerine (2015)

This chapter is about the gendered constructions of contract law as represented in Baker's 2015 film *Tangerine*. In this chapter I look at contract as a patriarchal context in which culturally-created dichotomies are mediated in a way that privileges heteronormativity and oppresses female autonomy. For example, I look at how the marriage contract is depicted in *Tangerine* to disrupt traditional ideas of love and marriage through the transing of these relationships. I then consider how the sex work contract is depicted in *Tangerine* to reveal socially mediated codes surrounding the more taboo coupling of non-married persons in a more explicitly market-based context. But before exploring these things, I will center my own experience with the socio legal construction of contract to make transparent my interest in this topic. My indoctrination into contract law comes from film, but it comes from other major institutions as well: namely family and the Church. I believe that my oppressive experience as a young woman in a religious context is an extreme example of the patriarchal context in which the bargaining over female-appearing bodies occurs. This rigid experience stands in valuable contrast to the more culturally subversive experiences shown in *Tangerine*. For example, my church experience was man "buying" woman. *Tangerine* depicts man "buying" many women, including women assigned male at birth.

My husband and I met in a conservative Christian context which meant that there were very specific rules around long-term relationships. For example, you certainly couldn't live together before you were married. This might be a mischaracterization of the rule, because it was not so much that you couldn't live together, as you couldn't have sex before you were married. Living together before marriage was evidence that you were engaging in premarital sex. This specific culture was so strict that they didn't like unwed couples being alone together for fear

that hormones would take over and compromise the young couple's salvation entirely. The church was obsessed with sex, new couples became church property, and the surveillance was intense.

To the news that we would be cohabitating (admittedly an economic decision rather than an indication of our commitment to each other), my husband's parents responded, "there is more to a relationship than sex, you know?" Were they asking us, or themselves? We fled to the West Coast, away from the prying eyes of the church elders. We wouldn't move in together in the same city as the church because a couple years earlier, when I was dating a different person, the church elders gathered one evening to discuss the crisis that was the mere possibility that my boyfriend and I were physically intimate. I was later approached and warned about being "damaged goods" and offered a book called, *And the Bride Wore White, Seven Secrets to Sexual Purity*¹⁰¹ which said something about controlling my hunger by not eating Cheetos because Jesus was going to come back and make me a feast... I did not read past the introduction but what stuck with me most was a comment likening me to a cow as an extension of the damage goods metaphor. Essentially, if I was willing to give my milk away for free, no one would seriously consider buying (marrying) me because I would be less special. I was apparently a commodity that would eventually go to market, and I had to make sure I kept myself valuable for prospective buyers.

I found the rituals around this courtship through to marriage to be bizarrely contractual in nature. For example, once the male decided the cow was special enough, he would ask the cow's father if he could have permission to ask the cow to marry him (offer). Once he had the father's blessing (acceptance), he would offer the cow (goods) an expensive ring which, upon her

¹⁰¹ Dannah Gresh, *And the Bride Wore White, Seven Secrets to Sexual Purity* (Chicago: Moody Publishers, 2004)

acceptance, would indicate that the parties were betrothed (consideration). Then, on a predetermined day, father, cow and male (the parties) would gather before friends and family (witnesses) where the father would formally give the cow away (delivery) to the male after that male and cow exchanged promises to be faithful to one another forever. The cow could then offer her milk without fear of retribution (rights and obligations).



There was also so much symbolism in this contractual context. Consider the semiotic value of the wedding veil, for example. A Google search reveals a myriad of bridal magazine articles and blogs with all sorts of lore about its symbolic meaning. One article explains that a red or yellow veil, or *flammeum*, was used during Roman times to ward off evil spirits on a bride's wedding day.¹⁰³ The wedding veil is also said to conceal the bride's face so that she cannot be killed for her beauty or rejected for her imperfections.¹⁰⁴ The veil is lifted only after vows are exchanged and before the kiss so that the groom does not have the chance to reject the terms of the contract before formalities are completed.¹⁰⁵ The white veil indicates purity.¹⁰⁶

¹⁰² Google images of veiled cows. The fact that these showed up on a google image search illustrates the socially mediated idea of women as chattel bargained for and procured through marriage.

¹⁰³ Miranda Popkey, In Defense of the Bridal Veil March 16, 2016 <www.racked.com/2016/3/16/11240658/weddings-bridal-veil-feminism>

¹⁰⁴ Ibid.

¹⁰⁵ Ibid. and Jess Edwards April 4, 2016 Cosmopolitan Magazine The Real Reason Brides Wear Veils on Their Wedding Day is Pretty Scary <www.cosmopolitan.com/uk/fashion/style/news/a42431/brides-wedding-veil>

¹⁰⁶ Ibid both.

Puerto Rican tradition says that if veil falls off as the bride walks down the aisle, that is God revealing that she is not a virgin.¹⁰⁷ There is even a suggestion that the veil weighs the bride down so that she cannot run.¹⁰⁸ The semiotic themes here connote visibility, invisibility, and restraint.

In his article *Cultures of Invisibility: the Semiotics of the Veil in Early Christianity*, Massimo Leone provides a historical exploration of the veil as a central semiotic device, “used in order to articulate a complex pattern of visibility and invisibility around the presence of the body in the visual structure of a society.”¹⁰⁹ Leone draws a parallel between an early Christian moral treatise regulating the veiling of women, and the moral discourse of contemporary religious fundamentalisms to show how religions construct themselves through semiotic mediations played out on the female body. Leone reviews the moral treatise of Tertullian, an early Christian writer, and summarizes his arguments as follows:

the veil is nothing but a sign of the hymen, that bodily veil which stands between the female body and the desire of men, so that obliging a virgin to remove that sign is equivalent to obliging her to lose her physical virginity. One could say that for Tertullian the veil is a public sign of virginity exactly as the hymen is a private sign of it.¹¹⁰

Both the veil and the hymen are contemplated here as barriers mediating access by men to female bodies.

Leone uses a meta-semiotic approach which rejects the pursuit of fixed meanings and is rather “conceived as instituted by semiosis between a pair of contrasting expressive elements and a pair of contrasting semantic values”¹¹¹. He gives the example of how different cultures use

¹⁰⁷ Ibid both.

¹⁰⁸ Ibid.

¹⁰⁹ Leone Massimo 273

¹¹⁰ Ibid 280.

¹¹¹ Ibid 275

nodding to express the affirmative, and the horizontal shaking of the head to express the negative, and visa versa.¹¹² A meta-semiotic approach would conclude that it is not the action and its associated meaning that are important, but rather the space between the contrasting movements and values. A nod meaning yes, moves us along a betweenness to the shake that means no.¹¹³ The presence of the veil means virginal, and what is important is how this construction moves us along the betweenness to conclude that the absence of the veil necessarily means non-virginal. According to Leone,

the veil is adopted as a meta-semiotic device that, by projecting a pattern of visibility and invisibility on the bodies of women, implicitly projects a pattern of identities differentiating between in and out, us and them, *halal* and *haram*.¹¹⁴

What is evident from observing the space between invisible (in/us) and visible (out/them) is that Tertullian's concern is not with the preservation of virginity, but the control over sexuality by the erasure, through veiling, of femininity. I believe this was my church's intention through surveillance as well. Their concern over the value of my milk was an intention to control my sexuality such that the good men of the church could be defended from me as a self-directed (bad) woman. If I was not virgin, pure, obedient, or at least *seen* to be those things, the conclusion was that I was promiscuous, dirty, and rebellious, and therefore unsafe. I was a threat to the established moral order. I was a sinful influence on my sisters, and a stumbling block impeding the path of my brothers to moral greatness. Therefore, the gaze was fixed on me, and if I had any non-normative proclivities (which in the case of the Church meant being alone with my boyfriend between the hours of 9PM and 9AM), I would have to conceal, or veil, these actions for fear of retribution, and

¹¹² Ibid.

¹¹³ Ibid 247

¹¹⁴ Ibid 278

diminishing self-worth such that I would no longer be valuable consideration in the market of love.

According to my former Church, God had apparently given men dominion over female sexuality. Sexual availability was traditionally understood as a woman's marital obligation. Beginning with an extreme example of "wifely duties", the Christian Bible in 1 Corinthians 7:3-5 says:

The husband should give to his wife her conjugal rights, and likewise the wife to her husband. For the wife does not have authority over her own body, but the husband does. Likewise, the husband does not have authority over his own body, but the wife does. Do not deprive one another, except perhaps by agreement for a limited time...¹¹⁵

Though the scripture may appear symbiotically balanced, from my experience, the cultural interpretation of this passage has been unilateral. Additionally, until relatively recently, the marriage contract had been interpreted to permit a husband to beat and rape his wife. According to the 17th century English jurist, Sir Matthew Hale:

a husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind to her husband which she cannot retract.¹¹⁶

Although the strict interpretation of this law has fallen out of favor, researchers document that women continue to suffer harm at the hands of men at disproportionate rates, especially in domestic contexts.¹¹⁷ Although no longer legally enforced, that troubling paradigm continues to be reinforced in claims that women should restrain their premarital sexual activity if they want to attract a husband. Courts declare that women are now be equal before the law, but these kinds of

¹¹⁵ (1 Corinthians 7:3-5) The Bible, (London, England: Fireside Bible Publishers, 1999).

¹¹⁶ Sir Matthew Hale, in *The History of the Pleas of the Crown* (posthumously, 1736) at 629.

¹¹⁷ Anne Aizer, "Poverty, Violence and Health: The Impact of Domestic Violence During Pregnancy on Newborn Health" *Journal of human resources* vol. 46,3 (2011): 518-538.

deep-seated, disturbing beliefs surrounding marriage roles persist. And they don't exactly scream "gender equality".

To unpack Sir Hale's pronouncement is to reveal the *thinly veiled* attempt at controlling female sexuality through rhetoric of mutuality and contract. He is suggesting that men and women are equal bargaining parties, providing "mutual consent" to enter into a binding contract. History has shown that the scales are not balanced. A wife cannot retract her consent because the damages for the breach are severe. Once a man gains access by unveiling his bride, what good is she if she does not surrender her body for sex and procreation? These two duties are so deeply implied by the marriage contract. By failing to perform and having her worth called into question, she risks abandonment and the stigma of being damaged goods and therefore no longer marketable. Within the marriage she is biologically and socially encumbered by expectation of child bearing and rearing obligations thereby impeding self-sufficiency. Whereas the consequences for a husband's breach of contract are less apparent. Men arguably assume more power in a relationship because of the material dependency created by relegating women to unpaid labour practices in exchange for material provisions.¹¹⁸ When men stray from their marital vow to remain faithful, rhetoric of boys will be boys is produced to argue that it is in a man's nature to stray. Women are to blame if men do. It was Eve, after all, who tempted and corrupted Adam by enticing him to eat the forbidden fruit.

My point is that patriarchy is a legal context in which gendered understandings of hetero-social code violations such as premarital sex, or marital infidelity are produced. In her piece *Feminists and Contract Doctrine*, Debora Threedy explains

...Law is a human artifact; it is constructed by individual judges, legislators, and lawyers acting within the social context of their time, race, gender, and class. American law has, until very recently, been constructed almost exclusively by the

¹¹⁸ Pat Armstrong and Hugh Armstrong, *Theorizing Women's Work* (Toronto: Garamond Press, 1990) at 161.

male gender. Therefore, it should not be surprising that ‘law’ incorporates and reflects male gender traits. Some of these traits are identified as the preference for rationality over other ways of knowing (e.g., intuition); for objectivity over subjectivity; for abstraction over contextualization; and for hierarchical decision-making over consensus or compromise. Contract law, like law more generally, is said to be male-gendered because of the perceived presence of these traits. In other words, contract law is not neutral; it is one of the many social structures that supports a male preference. Further, it is not objective; it has a perspective, *but its point of view is masked* [emphasis mine].¹¹⁹

In what follows, I want to unmask contract law’s point of view to reveal its gendered constructions by looking at the two paradigmatic contemporary contracts present in *Tangerine*: the marriage contract, and the sex work contract.¹²⁰ First, I will set the stage. The setting is the corner of Santa Monica Boulevard and Highland Street in Los Angeles on Christmas Eve. The corner of Santa Monica Boulevard and Highland Avenue is notoriously known “as a haven for all sorts of unsavory characters, from prostitutes and drug dealers to run-of-the-mill shady types who seem to think hanging out in front of a doughnut shop is the best way to look tough in Los Angeles.”¹²¹ The surrounding area is replete with strip malls and seedy motels. Sin Dee Rella and Alexandra, both transgender sex workers, are on a hunt for Sin Dee’s pimp boyfriend, Chester. Sin Dee has learned from Alexandra that Chester cheated on her with a “real fish”, or a non-trans woman, while Sin Dee was in jail. The pair eventually meet up with Dinah, aka the “Real Fish”, and drag her all over their stomping grounds before ending up at their local haunt, Donut Time, where they finally confront Chester. Their story is paralleled with taxi driver Razmik who divides his time between driving his cab and engaging trans sex workers while maintaining the illusion of a “respectable” family life. It seems as though Razmik is in love with

¹¹⁹ Deborah Threedy, *Feminists and Contract Doctrine* (1999) Indiana Law Review at 1249.

¹²⁰ Pateman uses the term “prostitution contract” but I have chosen to replace the pejorative “prostitution” with “sex work”.

¹²¹ Farley Elliot, Stripmall Rat: On the Corner of Santa Monica Boulevard and Highland, 8 April 2013, online: <www.laweekly.com/restaurants/strip-mall-rat-on-the-corner-of-santa-monica-and-highland>

Sin Dee, and upon learning that she is out of jail, sets out looking for his crush. When Razmik leaves his wife and small daughter on Christmas Eve to allegedly continue working, his nose-y mother-in-law suspects his infidelity and follows him to Donut Time where all parties collide in a wildly kinetic interpersonal climax.

On my first read of *Tangerine*, I saw quite a bit of lawlessness as depicted by the soliciting and buying of sex, a brutally violent assault, and illicit drug use. However, each of these contraventions is produced in, and issued from a context recognized as *lawful*. This legal context is established in *Tangerine's* opening scene of an ambiguous shot depicting a yellow surface with a small black hole centered near the bottom of the screen. Viewers do not know what they are looking at. Is it a door with a peep hole? The credits continue to roll as hands emerge onto the yellow surface producing a donut. It's a table! This scene primes viewers for the following scene in which two female-appearing people are sitting in a booth. But wait, are they women? The mental negotiation begins. Moments later, the two main characters settle it with their talk of estrogen-produced breasts: they were born male. The interpolation into this deliberation captures the jurisprudence of this film. Habituated in processes of classification, viewers do not know whether they are looking at men or women. The film encourages viewers along the betweenness of man and woman in a way that helps parse out gender from sex. On some level, this is experienced as a jarring interruption in the gender dichotomy that is so deeply embedded in society. It's this betweenness, this troubling, this process of greying, that sets viewers up to think critically about the questions asked throughout the film.



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The encouragement away from dichotomous thinking recurs in Razmik's cab. First through the older woman getting picked up from the vet, is there a dog or a cat in the carrier? In fact, neither is in the carrier, her animal has died. Next through the woman taking smiley selfies and then sitting looking melancholically listening to her headphones: is she happy or sad? Perhaps she is bored... Finally, through the Cherokee man named Mia who reasons through whether his name is male or female. He explains that Cherokee custom requires a mother to name her child after the first thing she sees upon giving birth. She sees a red bird, or in Cherokee, *mia mia*. He isn't named after male nor female, but a bird. *Tangerine* places these questions in viewers' minds, the cumulative effect of which is to challenge the production of a snapshot jurisprudential definition of law as black and white. The third options listed above prime viewers for a departure from what is expected, and it's this interruption, or breach of various cultural norms that is scrutinized in *Tangerine*.



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¹²² Still from *Tangerine* depicting the ambiguous opening shot and subsequent clarifying shot of Alexandra's hands.

¹²³ Still from *Tangerine* depicting the woman in Razmik's cab taking selfies and the subsequent shot of the same woman displaying a different emotion.

Marriage Contract

The marriage contract is an ancient and enduring nomological agreement. Following in the vein of Cover, Carole Pateman nods to nomos in the opening of her critique of social contract theory as she acknowledges that stories are a significant mode through which we make sense of ourselves and our social world.¹²⁴ According to Pateman, the most “famous and influential” of these stories is that of Hobbes, Locke and Rousseau’s original contract.¹²⁵ Her criticism is that seventeenth and eighteenth century writers’ conceptions of the social contract masks a more fundamental contract about men’s relationship to women, the *sexual contract*, which guarantees sexual access to women.¹²⁶ Modern patriarchy is characterized by a contractual relationship between men, and part of that contract involves power over women.

Contract theory represents itself as being opposed to patriarchy through the myth that all parties are free and equal to enter into contracts pursuant to their own free will.¹²⁷ However, as Pateman points out, the “original pact” that precedes the social contract is the agreement by men to dominate women, the sexual contract, which in no way leaves women in an equal bargaining position.¹²⁸ The “original pact” is made by brothers, literally or metaphorically, who, after overthrowing the rule of the father, agree to share their domination of the women who were previously under the exclusive control of one man, the father.¹²⁹ Pateman argues that the sexual contract is displaced onto the marriage contract and made invisible by relegating it to the private realm.¹³⁰

¹²⁴ Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988) at 2.

¹²⁵ *Ibid* at 1.

¹²⁶ *Ibid* at 2.

¹²⁷ P S Atiyah, *An Introduction to the Law of Contract*, 4th Ed., (London: Oxford University Press, 1989) at 40

¹²⁸ *Supra* note 152 at 2.

¹²⁹ *Ibid* at 3.

¹³⁰ *Ibid* at 18; see also Peter Fitzpatrick, *Modernization and the Grounds of Law* (Cambridge: Cambridge University Press, 2001) 272.

Tangerine presents us with two marital unions; Razmik and Yeva, and Sin Dee and Chester. The two couples are engaging with the ramifications of one common breach, infidelity. The film asks, “is it even cheating if it’s with a sex worker?” Trying to resolve if Chester’s indiscretion while Sin Dee was away is considered cheating, Chester asks Razmik, “...you married right, you gotta wife, I know you do....so when you be fucking my bitches, you don’t consider it cheating, do you?” Razmik responds with a shrug, “I’m paying for it, it’s not like we are getting married.”

Yeva is later asked by her mother how she can stand her husband cheating on her. Yeva tells us nothing of her personal feelings, instead she offers a utilitarian explanation suggesting that she cannot afford to have an opinion on her husband’s indiscretions. She literally cannot afford it: Yeva is the primary caregiver to their small daughter and is therefore financially dependent on Razmik.

The film positions the mother-in-law as legal interpreter of sorts. She gives praise when the parties are acting according to their socially mediated obligations as spouses and is beside herself when she perceives a deviation. However, she is limited in her analysis. The film argues this through language. Only Razmik and Yeva speak English; his mother-in-law does not have access to the terms of their agreement, because she cannot understand what is being said. In the exuberant final scene where all the parties finally collide, Razmik’s mother-in-law pleads with her daughter in Armenian to open her eyes and decry her husband’s treachery to which she replies, “He takes care of us!!!” Her mother corrects her daughter, “what are you talking about, he only takes care of himself!” The audience is positioned alongside the mother-in-law as judge and jury to decide whether Razmik’s wife should stay in her marriage thereby fulfilling her contract or leave, breaching her obligation to stay put at home thereby risking the socioeconomic

damages that will inevitably ensue. And this very dilemma unearths the basis of Pateman's claim that no contract that requires the exchange of one's body can ever be equal.¹³¹ The idea that Yeva must exchange her obedience and body (for child rearing, domestic labour, and staying put) for Razmik's economic support makes women's subjugation visible.

Nancy Fraser expands Pateman's work by encouraging broader thinking. Fraser says that painting man as master and woman as slave, "the didactic master/subject model" is a limited metaphor.¹³² To the marriage contract Fraser adds the sorts of structural and processual constraints "that Susan Okin has characterized as 'a cycle of socially caused and distinctly asymmetric vulnerability by marriage.'"¹³³ Fraser summarizes Okin's cycle which accounts for systemic factors aiding women's disadvantage in the paid labor markets. For example, childrearing responsibilities, inferior training and education opportunities, and lack of career advancement which all in turn lead to increased vulnerability within the marriage itself.¹³⁴ Attention to these realities shows the structures propping up the master/subject relation.

For example, Yeva is not contained within the domestic realm because she is Razmik's sex slave, she is there because she has generational obligations to her young dependent daughter, and to her mother and elderly relatives. Her daughter is too young for her to return to work. Her identity outside being a mother and homemaker is completely obscured and we are given no clues as to what her former life entailed aside from a murky reference to the fact that she was employed before having a child. Razmik's wife's consent and capacity are impaired in her

¹³¹ This claim might be contrasted with *Starlet* insofar as it is left open as to whether her sex work is empowering or not. Nevertheless, I do not see any contradiction because even in *Starlet*, the film is critical of how and when Jane's body is used and referenced, despite her agency to participate in the industry as a whole. The tension is preserved by the enduring negotiation over whether sex work is good or bad.

¹³² Nancy Fraser, "Beyond the Master/Subject Model: Reflections on Carole Pateman's Sexual Contract" *Social Text* No.37 (1993) Duke University Press at 174.

¹³³ *Ibid* at 175.

¹³⁴ *Ibid*.

intermarital negotiations by larger cultural structures upholding female subordination in marriage. The majority of the film's focus on Razmik's home life depicts a domesticated setting. The women sit around and praise Razmik as king of the household and tell his wife how lucky she is to have such a wonderful provider. These factors combine to position the audience to understand why Yeva might defend her marriage and refuse to simply walk away on account of her husband's indiscretions. This is perhaps an example of the meta-semiotic slippage between contrasting signifiers and meanings. Yeva may stay or leave. By staying she may reflect condonation of her husband's infidelity. Leaving would express rebuke. But the representation of her process on screen shows different kinds of comings and goings. Yeva may be staying put, but her exasperated and defeatist attitude show that she has left mentally. Her catatonic stares throughout the film show her leaving mind and soul. And this complicates things.



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Like Fraser, Judith Butler invites attention beyond the individual dynamics of the marriage to see the bigger picture in a cultural context by focusing on the coincidental advantages and disadvantages of the relationship as recognized by the state. According to Butler, state recognition confers existence on particular relationships.¹³⁶ Those who are not legitimized by the state are not recognized, and therefore do not exist.¹³⁷ This sense of nonexistence is damaging to

¹³⁵ Still from *Tangerine* depicting Razmik at Christmas dinner with his wife and extended family. I chose this still as it is shot from behind Razmik and orients him as head of the table.

¹³⁶ Judith Butler, "Is Kinship Always Already Heterosexual?" *A Journal of Feminist Cultural Studies* (2002) at 16.

¹³⁷ *Ibid.*

the dignity and livelihood of non-heterosexual individuals and makes it difficult to sustain non-traditional bonds of kinship. According to Butler,

variations on kinship that depart from normative, dyadic heterosexually based family forms secured through the marriage vow are figured not only as dangerous for the child, but perilous to the putative natural and cultural laws said to sustain human intelligibility.¹³⁸

The question asked over and over again by this film is “why would a heteronormative man want to be with a trans woman?” Razmik has violated the heteronormative code. In one of the movie’s most revealing scenes, Razmik picks up a sex worker that he assumes is his type only to discover that she has a vagina. He angrily demands that she get out of his cab. Razmik prefers transgendered women with a penis. While it’s clear that Razmik’s tastes are specific, he also appears to be especially fond of Sin Dee. He lights up upon finding out that she is out of jail and sets about looking for her only to look crestfallen at the news that Sin Dee is engaged. “I didn’t know you retired” he mumbles looking forlorn. Dinah considers it “pathetic” and laughable that Sin Dee and Chester would be bonded outside the formal contract of marriage as boyfriend and girlfriend. Upon finding out that Sin Dee and Chester are in fact engaged, something made more believable upon seeing Sin Dee’s name tattooed over Chester’s heart as though formally under seal, Dinah (the “real fish” sex-worker with whom Chester has been cheating on Sin Dee with) elevates in the hierarchal relationship over her pimp, laughs in his face and says, “you just went from half fag to full fag!!”

Razmik’s family sees his cheating as bad, but they are utterly confused by the fact that he has engaged non-cis sex workers. Razmik’s mother-in-law has to take a seat upon learning this news. Both Razmik and Chester are othered and ostracized in different ways as the audience is positioned to see that their affective bonds to Sin Dee are apparently more offensive than their

¹³⁸ *Ibid.*

mere exploitation of her body. The overt reaction of various characters to the potential coupling versus the passive acceptance of sex work argues that the exploitation of Sin Dee's body through sex work is more acceptable than the idea that a hetero-appearing man might actually be in love with a trans woman. The signifier (Sin Dee's being) begins to fall away from the signified (recreational and disposable sex object). Women as commodities makes sense, but transing that market interrupts the process of male domination and forces the audience to imagine meaningful and loving relationships between a trans women and cis men who occupy traditionally male spaces of breadwinner and boss. It is as though men can have sexual interactions with the idea of a woman and can access any female as the placeholder for a woman-thing. But to opt for a woman who defies the closed gender-box means that he must want her for more than just her body. *Tangerine* situates viewers to see how this is experienced as a normative betrayal through the visceral reactions of confusion and disgust by the characters on screen.

Sex Work Contract

The sex work contract is foregrounded in this film. There is the offer and acceptance. The offer is the act of walking on a particular sidewalk, on a particular street, in a certain manner, dressed a certain way. Acceptance is slowing down, a look, a whistle, a cat call. Counteroffers are exchanged through negotiation of the terms. The adjudicator and enforcer, the pimp, is noticeably absent in this particular story, and perhaps by design. Lurking in the background, profiting off of women, "running things". In *Tangerine*, Chester is anything but hands on. The reciprocity of the agreement is unclear. The majority of the film is spent trying to track him down. While the possibility of contractual marriage between Chester and Sin Dee is subversive in theory, Chester's insincerity and impotence as both a boyfriend and pimp reproduce the theme of female subordination and gender inequality.

Leon Laidlaw, in their masters thesis, contends that the demand for trans-feminine bodies as objects of sexual desire should not necessarily be perceived as open-mindedness to other genders, but rather more of a reflection of the Patmanian sexual conquest described above:

Resembling the way in which the over-sexualization and exoticism of racialized women can be viewed as an effect of the interplay between racism and sexism (hooks, 2002; Nagel, 2003), the sexual exploration of trans bodies can be explained by looking at the intersection of cisgenderism and sexism. The perception of trans bodies as ‘taboo and exotic’ (Fletcher, 2013, p. 70) and the hyper-sexualization of trans-feminine individuals (Serano, 2007) reduces trans women to objects.¹³⁹

The secret desire for ‘male-bodies’ can be viewed as a manifestation of heterosexism, which Laidlaw describes as “the system of oppression that privileges (cis) heterosexual identities and disadvantages all other sexual orientations.”¹⁴⁰ By hiring a worker who presents as female yet retains cis-male sex organs, the client can outwardly and publicly retain the privilege that comes from being heterosexual and yet can also explore his non-normative sexuality in private so that he is not outed. Implicit in this is the belief that other sexualities are deviant.

Pateman looks at the master/subject dyad “as the basis for constructing meanings of masculinity, femininity, sexuality, and sexual difference” as between men and women.¹⁴¹ Fraser broadens this analysis to capture the larger cultural systemic picture because, as in the present case for example, Razmik is far from master as John. She posits that the master/subject formulation cannot stand today because men are ashamed to hire sex workers and do so in hiding and are therefore not masters at all.¹⁴² Indeed Razmik’s sexual transactions take place in a car wash where he cannot be seen or heard. Fraser sees the fragility of links associating male with master and female with sexual subject in the context of sex work and says:

¹³⁹ Leon Laidlaw, *‘Playing Two People’: Exploring Trans Women’s Experiences in Sex Work* (Masters of Arts, University of Ottawa, 2017) at 70.

¹⁴⁰ *Ibid* at 70 referencing Catalano & Griffin, 2016.

¹⁴¹ *Supra* 152 at 3.

¹⁴² *Supra* note 160 at 179.

I suggest that what is sold is a *male fantasy* of ‘male sex-right,’ one that implies its precariousness in actuality. Far from acquiring the right of command. A staged representation of command, however, involves a performative contradiction. The fantasy of mastery that is sold through prostitution is undermined as it is enacted.¹⁴³

In present cultural configurations, men in effect buy sex to enact a *representation* of master over subject, rather than actual mastery. In *Tangerine* we have a double fiction: a representation of a representation of master over subject. But wait, even in this double fiction, does Razmik in his heteronormative-passing capacity occupy the position of master, and Alexandra that of subject? He performs oral sex on Alexandra who tolerates the action as part of her job but doesn’t appear to be deriving pleasure from it. Razmik is not hiring a sex worker to be “served”, but in fact he does the serving. So, who is servicing whom? What exactly are the terms? Fraser’s point is that while femininity and masculinity do have associations with the master/subject dyad, the approach is too simple, “far from monolithically patriarchal, the categories of masculinity and femininity are precisely sites of cultural contestation”¹⁴⁴ and are prone to resistance and change. I am not arguing that Alexandra and Razmik have equal bargaining positions. I am simply pointing out that *Tangerine’s* depiction of Razmik as the male contracting party moves him along the betweenness of master and slave and takes viewers along with him.

Tangerine depicts the complexity of cultural contestation as betweenness. In one scene, Alexandra and a john negotiate the terms of their contract up front. “What do you want?” asks Alexandra. The john replies “BBBJ [bare back blow job],” to which Alexandra replies, “I’ll give you a blow job with a condom.” But the john doesn’t have the requisite \$80.00 so the john offers \$40.00, he will “do the work” and Alexandra just has to “hold [his] balls”. Alexandra agrees, the contract is formed. However, the john couldn’t “perform” by ejaculating and decided that the

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid* at 180.

contract had been frustrated so that he no longer had to pay. The john takes his money off the dashboard, and Alexandra in turn takes his car keys. The john begins to get violent at which point Alexandra proclaims, “you forget that I have a dick too” and goes toe-to-toe with the john. Alexandra represents the fluidity of gender in this scene as she recodes herself male in order to raise her status in negotiating the breach of contract. This is no longer merely about male access to a female body, this is now two men fighting over what is rightfully theirs. Alexandra will play along with the master fiction, which is what the john is buying, but only to a point. By stepping outside of the contracted role to assume a masculine position, Alexandra acknowledges the weaker bargaining position of women generally.

Their fighting garners the attention of the police, whom I suggest represent the state. Butler contends that insofar as we seek state recognition of non-normative unions, we are giving the state power to regulate what is normal.¹⁴⁵ Sitting in their cruiser, the police officers see Alexandra and the john quarreling down the street getting physically violent with one another. The female police officer says to the male officer, “fucking Alexander, now’s your chance if you want to meet him” before exiting the car and referring to her once again as Alexandra, and as a “woman” when speaking to the john. This shift between disdain and misgendering in private, to polite but clearly false recognition in public animates the hegemonic negotiation of gender normativity. In her book *Gender Trouble*, Butler argues that gender is a cultural construction. A central term in Butler’s work is *performativity*, which comes from speech act theory.¹⁴⁶ Language is performative because it can “[enact] or [produce] that which it names”.¹⁴⁷ The concept of performative language was first described by the philosopher John L. Austin who

¹⁴⁵ Supra note 160.

¹⁴⁶ *Ibid.* at xxi.

¹⁴⁷ *Ibid.*

posited that there was “a difference between constative language, which describes the world and can be evaluated as true or false, and performative language, which does something in the world”.¹⁴⁸ Butler gives Derrida’s example of words having the power to pronounce a marriage. The speech act of announcing a marriage would not have authority if it were not coded in society. Butler extends this idea to gender whereby speech acts sex and gender people from birth. For example, when a baby is born, and the attending professional announces, “it’s a girl!”. Even though there may be testes hidden in this child, or when they grow they may opt to wear their hair short and bind their breasts, we will still know this individual to be female because she was announced and documented as such.

This is why the police officer’s slippage between the two normative gender signifiers is significant. On my reading of the film, the officer’s language represents some small victory whereby the LAPD have been corrected through rights-affirming processes such as human rights complaints to ensure proper gendering of persons with whom they are engaging with and serving in the community. What this scene shows is that although these small victories may be achieved, they are surface level and do little to address the normative assumptions so deeply embedded within mainstream society, especially as depicted through the state. These are cultural processes, and the reason why attention needs to be paid to both the jurisprudence of popular culture and formal law alike.

Conclusion

In an age of #metoo I’ve been thinking a lot about what film asks me to believe and accept. I’ve been thinking about the subservience of women in Hollywood narratives and all that this signifies about women and film. Film teaches us so much: how to flirt; how to kiss; how to be

¹⁴⁸ John L. Austin, *How to do things with words*. (Cambridge, MA: Harvard Univ. Press, 1962).

mothers; how to walk into a room; how to be looked at. They also teach us that the streets are unsafe and how our right to bodily integrity and self-determination are often not respected.

Film's narratives and ideologies stay with us.

Tangerine transcends stereotype through two amazing female leads who have the final say in a tender moment where, betrayed and alone upon discovering that Alexandra was intimate with Chester while she was in jail, Sin Dee walks off only to get a cup full of urine thrown on her by a passing truck full of ignorant men. Alexandra comes to her aid, and Sin Dee presses her betrayal to the side to make way for Alexandra's tenderness and care. Alexandra cleans her friend, sits with her in the laundromat and unveils herself by removing her wig and placing it on Sin Dee's head. This action restores Sin Dee's dignity and sense of worthiness. While the strict gendered codes assist to construct Sin Dee's dignity, the presence of patriarchy cannot deny the fullness of her humanity. These women are not merely dominated decorations, but embodiments of survival and strength. They are real people, regardless of what the terms of the agreement are.

Virginia Held, in her book, *Feminist Transformations of Moral Theory*, says that social contract theory relies on a conception of the person that can be best described as "economic man."¹⁴⁹ "Economic man" is concerned with the furtherance of his own, individually considered interests, and he uses contracts to achieve this end.¹⁵⁰ In short, he is not a general representation of all people. Therefore, and I think Pateman and Fraser would agree, "contract is far from being opposed to patriarchy; contract is the means through which modern patriarchy is constituted."¹⁵¹ Two paradigmatic contemporary contracts are present in *Tangerine*: the marriage contract, and

¹⁴⁹ Virginia Held. "Feminist Transformations of Moral Theory." *Philosophy and Phenomenological Research*, vol. 50, 1990, at 337.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid* at 3.

the sex work contract.¹⁵² Both contracts are concerned with men's (or in the case of a pimp, one man's) control over women. As mentioned, until relatively recently, the marriage contract has been interpreted to permit a husband to beat and rape his wife. The sex work contract has permitted a man to govern a group of women thereby permitting men access to female bodies. Both contract examples prove that contract is not the path to autonomous freedom. Rather, as Pateman well establishes, contract is one means, perhaps the most fundamental means, by which patriarchy is upheld.¹⁵³ Fraser cautions us to expand this theory beyond the interpersonal to see the larger structural arguments at play. And finally, Butler shows us how non-normative genders and sexuality are culturally mediated. The plotline may change from blunt depictions of master/subject, however the jurisprudence of the contract prevails. In this chapter I've attempted to show how by critiquing the legal logic of contract underpinning cultural negotiations of things like gender and sexuality, we may be compelled to think and rethink the nature of both ourselves and our relations with one another as we unveil cultural values and become more comfortable sliding in between culturally ingrained dichotomies.

¹⁵² Pateman uses the term "prostitution contract" but I have chosen to replace the pejorative "prostitution" with the more contemporary "sex work".

¹⁵³ *Ibid* at 19.

Chapter Five- The Florida Project (2017)

“You know why this is my favorite Tree?

Why?

‘Cause it’s tipped over but it’s still growing.”

-Moonee to her friend Jancey (*The Florida Project*)

It is said that there is no handbook for parenting. Indeed, people have very different ideas about what is in a child’s best interest. Who among us doesn’t have some conflict or disagreement with how our parents interpreted our needs as little ones? Take my dad’s enactment of parental judgement for example. I was 11 and my sister was 12. For a very short period of time we attempted a structured shared parenting schedule of visiting my dad every second weekend as well as Wednesdays. When we weren’t with him, he lived his life. It wasn’t uncommon to have our pillow cases smell of alcohol and cigarettes from the friends he had over there the days before. My sister and I fought over the top bunk of our shared room because it stunk less than the lower bunk. On this particular evening, I won. At some point in the night, one of my dad’s friends stumbled in very drunk. He crawled into the bottom bunk with my sister. Terrified, I froze. My sister made her way out and went down the hall to get my dad. He came barrelling down the hallway, turned the lights on, and he beat that man to a pulp before throwing him out into the Yellowknife winter. I was sitting upright on the top bunk watching the whole thing. He came back to our room, tucked my sister in, shut off the lights and returned to his room. I honestly believe that he felt as though he protected us in that moment by showing us that he was physically stronger than any threat. He didn’t see that situation as preventable the way I did. He didn’t see his complicity by sharing our room with his rowdy friends while we weren’t there. He didn’t understand why I was so bothered by it. “I took care of it”, he would say. I am sure my dad would tell this story differently, if he even remembers it. Maybe he would say that I am telling stories. I doubt our perspectives will ever align. I share this experience as an example of

differing perspectives on what is in a child's best interest, how that is determined, and who is best positioned to do the determining. These are very difficult questions. I imagine myself as an 11-year-old on the top bunk watching this scene play out- like a CCTV camera positioned in the upper corner of the room. I imagine my 12-year-old sister and the close up shot of a large male body coming down on her, limiting her perspective. I imagine my dad, the authority figure, who was not present for these early moments, being judge, jury, and executioner in his role of assessing and responding to the infraction.

Shortly after this experience, we stopped going over to my dad's house. My sister returned to my dad as soon as she was old enough to decide where she would live. My recounting of this experience is a narrative. One version of the story. One perspective. Two children. Who is to say which perspective is right? And how might those perspectives ever be verified to a reasonable degree of certainty? The answer is that there is no single or true way of knowing. We rely on culturally created notions of what is in a child's best interest and make decisions on that basis. I explore these cultural constructions in this chapter.

How Film Informs Conceptions of a Child's Best Interest Through *nomos*

In his article *Nomos and Narrative*, Robert Cover argues that law should not be thought of as a system of rules and interpretations or a set of institutions. Rather, law is better thought of as a normative world, or *nomos*, in which the legal interacts with the cultural in the production of legal meaning.¹⁵⁴ There is an interdependence between law and narrative. In his introductory paragraph Cover writes, "no set of legal institutions or prescriptions exists apart from the narratives that locate it and give it meaning."¹⁵⁵ We need look no further than the vacuous legal

¹⁵⁴ Robert Cover, "The Supreme Court, 1982 Term—Forward: Nomos and Narrative" (1983) Faculty Scholarship Series. Paper 2705 online <digitalcommons.law.yale.edu/fss_papers/2705> at 1.

¹⁵⁵ Ibid at 4.

principle of the best interests of the child (BIC)¹⁵⁶ to appreciate Cover's point.¹⁵⁷ BIC is vacuous in that it is an empty signifier. It has no agreed upon meaning and is therefore entirely culturally mediated.

What we do know about BIC is that it is a child rights principle. Whether in the context of custody, child apprehension or international law, BIC says that in decisions affecting children, their best interest should be the primary consideration.¹⁵⁸ Presently it derives from Article 3 of the UN Convention on the Rights of the Child, which says that "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the BIC shall be a primary consideration." Importantly, BIC is not actually defined in the Convention. Assessing the BIC means to evaluate and balance "all the elements necessary to make a decision in a specific situation for a specific individual child or group of children." Of course, conceptions about what is best for a child predate the exact words in Article 3. For example, in the leading Supreme Court of Canada case, *Young v. Young* ([1993] 4 SCR 3) the constitutionality of BIC was criticized as conferring too much discretion on judges, and as being so vague as to not be prescribed by law. The judges in that case defended the principle as "value neutral" suggesting independence from any value system. This judicial finding is suspect because the application of BIC cannot be carried out using empirical measures of best interests. Rather the application of BIC relies on ordinary understandings of best interests that derive from, and flow through the stories we tell. It is these ordinary understandings that I wish to take up in this chapter.

¹⁵⁶ Article 3 of the UN Convention on the Rights of the Child; *Young v. Young* ([1993] 4 SCR 3).

¹⁵⁷ For a very similar argument using Robert Cover's *nomos* in the context of mothers engaged with the criminal legal system see Rebecca Johnson's *Mothers, Babies, Jails* (U. MD. L.J. Race, Religion, Gender, Class 2008)

¹⁵⁸ *Supra* note 184.

Not surprisingly, while the language of BIC may appear neutral and universal on its face, history has shown that its human interpretation and application has actually been quite destructive and uneven. For example, beginning in the nineteenth century, the Canadian state endorsed colonially violent narratives to give normative conceptions of BIC meaning when it forcibly removed indigenous children from their families and sent them to residential schools to be indoctrinated into Euro-Canadian and Christian ways of living and assimilated into mainstream Canadian society.¹⁵⁹ The state sought to fit indigenous communities into its ideal of care.¹⁶⁰ As a result, the Truth and Reconciliation Commission in their very first call to action addresses child welfare to redress the awful legacy of that particular colonial project.¹⁶¹

While the history behind the origins and evolution of BIC and its ongoing use are beyond the scope of this chapter, suffice it to say that the principle itself is an intentionally vague concept that allows broad discretion by decision-makers. This broad decision-making is unavoidably informed by narrative. Rebecca Johnson in her piece, *Law and the Leaky Woman: the Saloon, the Liquor Licence, and Narratives of Containment*, urges the importance of attending to popular narratives, particularly film as the most broadly consumed source of storytelling in contemporary society. Writing on the construction of law's commonsense knowledge, Johnson states as follows:

Film is a powerful repository of 'maps of social life', of 'common-sense knowledge', and can give us insight into persistent contemporary struggles about the organization of gender in family and social life. With its ability to make its stories and characters hyper-visible, film participates in the process of both constructing and challenging 'the normal'.¹⁶²

¹⁵⁹ For more information see Indigenous and Northern Affairs Canada's webpage *Indian Residential Schools*, available online: <http://www.aadnc-aandc.gc.ca/eng/1100100015576/1100100015577>

¹⁶⁰ I would be remiss to frame this state project in historical terms as the imposition of a certain standard of care is still being imposed on indigenous families at disproportionate rates today.

¹⁶¹ *Truth and Reconciliation Commission of Canada: Calls to Action*, 2015

¹⁶² Rebecca Johnson, "Law and the Leaky Woman: the Saloon, the Liquor License, and Narratives of Containment" (2005) *Continuum: Journal of Media & Cultural Studies* at 187.

Johnson is arguing that film is an important mechanism through which we can effectively examine the use of cultural narratives in the creation, interpretation, and application of law.

Culture, like law, draws from social reality and helps shape our lives. In her article *Why Law and Film and What Does It Actually Mean? A Perspective*, Orit Kamir advances this point stating, “law and film are two of contemporary society’s dominant cultural formations, two prominent vehicles for the chorus through which society narrates and creates itself.”¹⁶³ Court rooms are closed, and court files are sealed in child protection matters to protect the privacy of the child. Because of this, few of us will ever have access to the moral and legal reasoning that goes into deciding whether to remove a child from their family. Aside from a few reported decisions, we cannot know or examine what narratives are being used. What we do know is that because BIC is so vague, these decisions are inevitably shaped by the baggage of our shared assumptions which is partially constituted through knowledge of the law, and through film. In this way, we know exactly what narratives are being used in those courtrooms.

In their article *Getting the Insider’s Story Out: What Popular Film Can Tell Us About Legal Method’s Dirty Secrets*, Johnson and Buchanan argue that film and law are meaning makers, and that these meanings are expressed in and through the audience. The audience receives, processes, then generates ideas about truth and justice irrespective of authorial intention. Truths are subjective and slippery:

Once one begins to take seriously the notion of audience response (including the notion that what is seen depends very much on who is doing the seeing), one has to confront the depth of the postmodern challenge to the modernist notion that truth is knowable and simply waiting to be found.¹⁶⁴

¹⁶³ Orit Kamir, “Why Law and Film and What Does It Actually Mean? A Perspective” (2005) *Continuum: Journal of Media & Cultural Studies* at 268.

¹⁶⁴ R. Johnson and R. Buchanan, “Getting the Insider’s Story Out: What Popular Film Can Tell Us About Legal Method’s Dirty Secrets” (2001) *The Windsor Yearbook of Access to Justice* at 105.

Through film we bring our subjective selves to see, judge, replicate or rebuke depictions of the social and material conditions of a child, and the caregiver in charge of those same conditions based on our own complex human experiences. Though it is true that film can encourage certain audience identifications, it does not matter what the writer or director intended to convey. What matters is the lens we bring when viewing the film.

In arguing that films can be read as legal texts, Kamir says that “...some films[...] perform wide-scale ‘legal indoctrination’; that is, they train and mold viewers and audiences in judgment, while examining—and often reinforcing—legal norms, logic and structures”.¹⁶⁵ Popular film positions viewers to receive and accept values and beliefs without critical analysis. In this way, learning to read film by engaging with its arguments has the potential to interrupt passive indoctrination and question what we typically take for granted. *The Florida Project* (Baker, 2017) helps to illustrate the complexity of taking a legal concept and interpreting it in the context of complex social relationships. It is not so much that the film itself invokes law, rather I am proposing to use the film as a way of exploring the challenges involved in applying a legal concept. In this chapter I provide a textual analysis¹⁶⁶ of the film *The Florida Project* to look at how the audience is positioned to judge conceptions of BIC. I will show how the film positions the audience to judge by how viewers are positioned with the perspective of children, specifically the protagonist child, Moonee; and through the film’s use of surveillance.

The Florida Project is set in a purple, candy coloured budget motel called Magic Castle located on Seven Dwarfs Lane just a few miles away from Disney World in Florida. The

¹⁶⁵ Supra note 191 at 268.

¹⁶⁶ Textual analysis is a method of data analysis that closely examines either the content and meaning of texts or their structure and discourse. See Lisa Given, *Textual Analysis* in *The SAGE encyclopedia of qualitative research methods* (Thousand Oaks, CA: SAGE Publications Ltd, 2008).

extended-stay motel is primarily occupied with transients and mortgage defaulters. The motel is not part of the Magic Kingdom, however its physically close but psychically distant presence signifies the irony of a child experiencing the class disenfranchisement so close to the Happiest Place on Earth. The film is premised on the relationship between foul-mouthed, bull-headed Halley and her precocious six-year-old daughter Moonee. The pair oscillate between highs and lows caused primarily by their financial situation. After she fails to land a job at a restaurant or as a dancer at a strip club, Halley turns to soliciting wholesale perfume in Disney resort parking lots. When this venture fails, she turns to soliciting sex. It is the solicitation of sex that beckons Child Protective Services to her door. A realist film, the film does not center so much on the financial situation of the characters, but rather on the characters themselves.¹⁶⁷ The film¹⁶⁸ seems to assume that the best way to represent the systemic nature of poverty is to recreate an experience and narrative that does not echo the reductive Hollywood tropes of fractured relationships and selves caused by the stress of having no money. Instead, *The Florida Project* complicates an experience of poverty by representing it in an unfamiliar way; through the eyes of a child whose primary goal in life is not to pay rent, but to simply be.

Positioning: Perspective of the Child

The Florida Project positions the audience to judge BIC from the perspective of six-year-old Moonee. In this way, we are not with the adult legal subject (the parent) whose decisions and behavior are subject to state scrutiny, rather we are with the child whose wellbeing is theoretically of primary concern. The film achieves positioning the audience with Moonee

¹⁶⁷ I chose this film because unlike many other films reflecting the realities of the financially poor, *The Florida Project* is not condescendingly exploitative. For example, the films *Slumdog Millionaire* and *Precious* have both been criticized as “Poverty Porn” (see Priya Rajsekar’s article *Slumdog Sacrifices Indian Pride*, Irish Times, February 8, 2009 and Dana Steven’s article *Precious* in Slate Magazine, November 5, 2009).

¹⁶⁸ The film is the subject of this sentence. One of my main premises is that reading film as text requires allowing those texts to speak for themselves.

primarily through plot, camera angles and editing. The majority of the film is spent following Moonee around with her two friends as they go about her daily lives. Moonee spends her summer break running all over the walkways and alleyways of the motel and even farther afield in the marshy Florida grounds surrounding the sprawl of budget motels and Disney-centric souvenir shops. Though Halley and Moonee are living in precarious housing, using the perspective of Moonee focuses on the joy of being a kid: the imagination; the playfulness; the resilience. Childlike wonderment and adventure are foregrounded even though there are some serious adult issues lingering in the background. As Richard Brody, film reviewer for the *New Yorker* puts it:

There's no scraped knee or cut finger that might get infected, no toothache or cavity, no asthma, no diarrhea, no childhood problem at all that might put Halley and her parental attention or neglect to the test—and no sense that the smart, perceptive Moonee is aware at all of what's missing.¹⁶⁹

However, being positioned with Moonee also reveals her childlike naivety to the audience. It is true that she is carefree, but she is also ill-mannered. We see this after she is caught having a spitting contest onto another resident's car. She is unapologetic, and when Halley is brought in to discipline Moonee, she minimizes the situation and makes fun of the offended party. In this way, the audience is positioned to see that Moonee is a product of her environment, and even to fear that she might turn out like her mother.

The outer world that Moonee traipses across is candy-coloured and bright. This is juxtaposed against the rarer glimpses into the dark overstuffed motel rooms. In one scene Moonee and her sidekick Scooty give their new friend a tour of their motel block by identifying the afflictions behind the bright purple motel doors: “The man who lives in here fought in some

¹⁶⁹ Brody, Richard. “The Florida Project is the Cinematic Antidote to Helicopter Parenting” *The New Yorker* (5 October 2017) online: <newyorker.com/culture/richard-brody/the-florida-project-is-the-cinematic-antidote-to-helicopter-parenting>

wars, and he drinks beer. This guy has a disease that makes his feet large...the man who lives in here gets arrested a lot. This woman in here thinks she is married to Jesus.”. We never actually see these people, rather they are presented to us as exciting characters in the imaginations of children. Their afflictions form a sub-text which is secondary to the bewilderment of Moonee and her friends.

Perhaps one of most powerful moments of being positioned with the child is when Halley launches into Scooty’s mom’s room and begins beating her after being confronted about her sex work. Rather than focusing the camera on the person being beaten, we are positioned behind young Scooty’s head as he watches Halley repeatedly punch downward between the two hotel beds where his mom has landed. What is shocking here is not in the violence, but in the fact that a child is witnessing the event. We have no idea if Moonee has actually witnessed her mother’s sex work, but we know for a fact that Scooty has witnessed violence. The audience is lead to the conclusion that it cannot be in a child’s best interest to witness this type of violence.



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The majority of the film is shot from a low camera angle which positions us at the relative height and perspective of a child. While standing with Moonee as she observes her

¹⁷⁰ Still from *The Florida Project* depicting Scooty looking on as Halley violently beats on his mother who has fallen between the hotel beds.

surroundings, the camera tends to subtly bounce and sway. Like a child, the camera does not sit still. The scenes are very short and non-linear. Viewers move with Moonee from walking across an empty parking lot sharing ice cream with her friends, to playing on top of picnic tables, to yelling at passersby from the balcony of the hotel. These quick edits train viewers into a short attention span, much like that of a child. The gaze loses interest quickly, and readily moves to the next bright shiny thing. The camera angle and editing argue the resiliency of children who do not spend a great deal of time pondering their larger context. This jovial movement and placement aligns the viewers with Moonee's point of view where what and when she eats, for example, is of little importance. The audience is positioned to ignore her shaky living situation because it appears Moonee does not seem to see what is so shaky about it.



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BIC, where possible, is supposed to consider the views of the child.¹⁷³ Though child protection matters are typically within provincial or local jurisdiction, they must still comply with and implement the *UN Convention on the Rights of Children* which expressly states that a child has the right to be heard.¹⁷⁴ *The Florida Project* positions the audience with Moonee. When she finds out she is being apprehended, Moonee runs to her friend Jancey's motel room at the neighbouring Futureland Motel where she stands broken before her friend with tears streaming

¹⁷¹ Still from *The Florida Project* of Moonee and her best friend Jancey waiting out the rain. I chose these stills as examples of the relatively low camera angles positioned at the height of the children and also positioned in the direction that they are looking.

¹⁷² Ibid.

¹⁷³ Senate, *Children: The Silenced Citizens: Effective Implementation of Canada's International Obligations with Respect to the Rights of Children*, 39th Parl, 1st Sess, Issue 89 (25 April 2007) at 101.

¹⁷⁴ Ibid at 102.

down her face and says, “I can’t say it”. She cannot bring herself to utter the unspeakable reality that she will be separated from her mother. This is the first and only time the film shows Moonee as anything but carefree. After Moonee slips away from the social workers to see Jancey, Halley yells, “you let her get away? And I’m the one who is unfit? FUCK YOU!” From where viewers are positioned with Moonee, Halley is not causing her harm, the system is. But after what we’ve seen in terms of Moonee’s mirroring of Halley’s bad habits, and Scooty’s exposure to violence, we are also left to question whether children are the best authority on what is best for themselves. Viewers may see that while Halley isn’t entirely to blame, Moonee might be “better off” in a different environment. This tension helps drive home the point that context really does matter.

Positioning: Surveillance

The Florida Project uses surveillance to position the audience in judgement. The primary sources of surveillance are Bobby the hotel manager, the film’s narrative, the CCTV cameras positioned around the property, and the design of the motel itself. In his article *Video Surveillance in Hollywood Movies*, Dietmar Kammerer contends that Hollywood films are developing “rhetorics of surveillance” in their use of CCTV images.¹⁷⁵ Kammerer describes the complementary relationship between mass media and surveillance through Bentham’s Panopticon, where the few observe the many, and Thomas Mathiesen’s Synopticon, where the many observe the few.¹⁷⁶ Though the structures are different, the Panopticon a fictitious building designed for surveillance within a prison complex, and the Synopticon an audience looking through a screen, both uphold themes of surveillance and control.¹⁷⁷ Kammerer explains that

¹⁷⁵ Dietmar Kammerer. “Video Surveillance in Hollywood Movies in Surveillance and Society, CCTV Special” (2004) *Surveillance and Society* at 465.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

cinema is likewise an apparatus of control in how it analyzes “movement or situation (*what is going on?*) for the purpose of controlling it (*what do we want, what should be going on?*).”¹⁷⁸

The Florida Project invokes the synoptic with the film itself. A large number of people are observing a few characters. Though it is a realist film that has been credited for its honesty,¹⁷⁹ the film still constructs its own analysis by how it filters out time. A summer is edited down to a couple of hours to present the film’s version of *what is going on*. We are not with Moonee and Halley in one continuous shot. The audience is not positioned to see Halley’s circumstances pre-Moonee. The filtering out of time leading up to the apprehension of Moonee invites the following questions: how long does one need to observe before deciding whether a child should be apprehended? What needs to be seen? Do momentary lapses in care negate a bigger picture of bonded affection? The film doesn’t tell us whether Halley has told Moonee that she is only permitted to go only to certain areas for certain amounts of time. The continuity of Halley and Moonee’s love and life together is abstracted as viewers are presented with a collection of events that might support an apprehension: Moonee’s apparent lack of supervision as she roams around with her friends; her near encounter with a probable pedophile; and the possibility that she has been exposed to her mother’s sex work. This collection of events is provided to the viewers in a way that poses the question: *what should be going on?* In this way, the film is not presenting a neutral and linear account, but rather controlling viewers by guiding them toward a decision about *what we want* for Moonee.

¹⁷⁸ Ibid.

¹⁷⁹ A. O Scott “Review: In ‘The Florida Project,’ Enchantment in a Shabby Motel” (5 October 2017) online: <[nytimes.com/2017/10/05/movies/the-florida-project-review-sean-baker-willem-dafoe.html](https://www.nytimes.com/2017/10/05/movies/the-florida-project-review-sean-baker-willem-dafoe.html)>



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In *The Florida Project*, the panoptic gaze is suggested by the architecture of the motel. An L-shaped building sitting three stories high and facing a large parking lot, the motel is frequently shot at a distant wide angle from which we are positioned to see every door (see figure 1). The panoptic nature of the building is pointed out by Scooty's mom when she confronts Halley about her sex work, "you don't think everyone knows what's up Halley, *everyone?!?*" as she points left to right along the length of the building. Bobby walks the length of the building, often looking beyond the frame and speaking to unseen characters which further establishes him as the watchman of the motel who can see *what is going on*. However, Bobby does most of his monitoring from his office where he watches CCTV screens. It is on these screens that Bobby confirms his suspicions that Halley is soliciting men to her motel room while caring for Moonee. It is not Bobby's direct observation of Halley inviting a man into her room, nor her social media profile soliciting sex that leads to Moonee's apprehension, it is the CCTV footage. Presented as an objective gaze, the footage is used as evidence of Moonee's need for protection from her mother. No longer the subject of gossip around the complex, the footage reveals that men have indeed come and gone from the motel room. When presented with the footage, Halley uncharacteristically accepts that Moonee is being apprehended and begins to pack a bag. The CCTV footage of unbroken, continuous narrative depicting more than one man

¹⁸⁰ Stills from *The Florida Project* depicting Bobby watching CCTV footage of the motel property, and a still of Moonee and her friends spying on a topless resident at the pool over what looks like a castle wall.

coming and going from her motel room becomes quantifiable proof for the State that Moonee is not safe with her mother. The footage effectively controls Halley in one of the only scenes in which she isn't seen giving the finger to authority.

However, the positioning of viewers with Moonee while her mother was working, troubles the authority of the CCTV footage; Moonee is in the bathtub with her toys while loud music plays. She is explicitly told by her mother not to come out. We are placed in the bathroom twice with Moonee without the context of sex work in the background before we realize what this nightly ritual actually means. On the third occasion, we hear the door open and a man's voice speak. Halley scolds the man saying, "I told you the bathroom was off limits." The camera remains on Moonee the entire time, so we do not know what she has seen. Is the man naked? Fully clothed? The film leaves the viewers to resolve whether Halley's protective measure of keeping Moonee in the bathroom while playing loud music as she works is adequate, or if the bare fact that she performs sex work in the room, as established by CCTV footage, is enough to deny her guardianship of her child. This decision will very much fall on where viewers land on the issue of sex work. The audience is left to decide whether even if Moonee has not seen or heard the sexual encounters, is it in her best interest to be raised by a sex worker? Does her mother's profession override her status as the most appropriate caregiver for her daughter?



(Figure 1)¹⁸¹

Conclusion

Law and film can be seen as two completely unrelated worlds. The former is an intimidating system of rules of the highest order, the latter is accessible entertainment. In this paper I explore the relationship between law and film, specifically the normative interpretations and understandings of BIC and the film *The Florida Project*, to reveal how film succeeds in complicating our preconceived notions of what is in the best interests of children.

Despite evidence supporting the questioning of Moonee’s wellbeing, *The Florida Project* resists passing cinematic judgment over her, as well as over Halley herself, whose parenting appears to be the root of her daughter’s acting-out. Rather the audience is left to decide if it is in Moonee’s best interest to remain with her mother. The film’s resistance to judge might make it difficult to accept the impending apprehension because the audience has come to question whether Halley is a bad mother, or whether Moonee is an at-risk child. The audience is positioned to judge through Moonee’s eyes whose carefree sun-soaked adventures present an

¹⁸¹ Still from *The Florida Project* depicting the Panoptic layout of the motel whereby the camera sees all, but the view of the residents is limited.

infectious happiness. Moonee does not criticize her mom or complain about her surroundings. The one interruption in Moonee's happiness comes when the child protection workers arrive at her door. In this moment, the audience is situated to criticize state intervention into this family's life. Appearing in matching khaki pants and red polo t-shirts, the workers are shown from the neck down implicating that they are faceless bots, or perhaps unable to think for themselves. The audience is also positioned to judge through the seemingly objective evidence of the CCTV cameras which offer incontrovertible proof that Halley is soliciting sex. However, the film's narrative interrupts to complicate the objectivity of this evidence by presenting Halley's lack of options, and the safety measures she takes to protect Moonee from exposure to her sex work, despite the small space.

BIC means different things to different people. Inconsistency in interpretation means unequal treatment of families who are involuntarily separated. The materiality and cultural politics of life will no doubt invoke historically specific forms of spatial practice entangled with normative visions of what constitutes a child's "best interest." This is why it is so important to pay attention to wider narratives that make normative claims about particular modes of living, and to how we are positioned to receive and propagate these stories.

Chapter Six- Unifying Themes and Post-Reflection

When the concept of law is given [...] broad coverage, it becomes apparent that many of the central issues of today are, in this extended sense, ‘legal’ in nature. The pressure of our present predicament pushes us – as we have not been pushed for a long time - toward an effort at comprehension. We must come to perceive and understand the moral and psychological forces that underlie law generally and give it efficacy in human affairs.¹⁸²

I continued working as a lawyer as I studied and wrote this thesis and in every client intake, every case brief, and every hearing I saw scripts, storylines, performances, triumphs, adversities, villains, and heroes. There is a filmic formula of sorts for my clients in that there are culturally formed ideas about their race, sex, gender, and material contexts. We think we know each other. We judge so that we may classify and sort. According to whose measure? Whose code? I thought that reading film through a jurisprudential lens would distance me from conventional thinking. Perhaps it has. But I found myself asking some of the same questions that ancient Greek philosophers were asking 3000 years ago. Why are we here? Why do things happen as they do? How can we know for sure? These questions seem both unavoidable and impossible to answer.

Baker’s films ask a similar, but more specific question: How are societally created structures failing citizens? The films answer: an unequal playing field for Lucky in *Prince*; abstraction into a cyber oblivion for Jane in *Starlet*; invisibility for Sin Dee in *Tangerine*; and undeserved inequality for Moonee in *The Florida Project*. There is little help for Lucky. He is utilized for access to thrifty status symbols such as shoes and bags, and then discarded as outside the law and its protection at the first hint of inconvenience to society. *Starlet* reveals that as the world changes and technology advances, interpersonal alienation manifests. We are losing meaningful connection and lacking authentic intimacy in our lives as we busy ourselves with

¹⁸² Lon L. Fuller, Human Interaction and the Law, *The American Journal of Jurisprudence*, Volume 14, Issue 1, 1969, Page 1.

making money to get by. Jane and Sadie are relatively alone in the world before finding each other. Money is what brings them together, however the money plays a very small role in their relationship. Capitalism uses female bodies for the male gaze and profit while leaving those same female bodies in precarious financial positions. *Tangerine* also criticizes the exploitation of bodies, especially gendered and racialized bodies. Bodies may be selected then employed, yet invisibilized when they need help or protection from violence. There is something wrong with America when you can only rely on people who look and behave exactly like you. Finally, *The Florida Project* answers that society is failing when certain children can access happiness while others cannot. The film highlights capitalism's impact on little ones who have no agency in the systems that govern them. For some are taught they deserve happiness, while others are taught that life just isn't fair.

Law, or the lack thereof, is fascinating. Formal laws, as they are traditionally understood, were not always already there. They have been constructed and codified through a dominant point of view. This point of view is typically white and male and therefore many formal legal systems benefit patriarchy. While it is true that film can be complicit in reflecting and perpetuating stereotypes that keep us divided, they are also capable of subversion.

On my read, Baker's films have a subversive relation to patriarchal law. *Prince* shows the absurdity of law's emphasis on copyright infringement over safety of citizens and calls out the police state for protecting the interests of the wealthy. Moreover, the film shows that ownership of kin through bloodline does not a father make. *Starlet* casts shade on policy considerations behind regulatory laws like parking infractions to show that the state consecrates space for fire trucks in the off chance that property may be destroyed by fire. The value reflected is that property owner's interests are paramount. The film also shows that though women may be used

and exploited through adult entertainment, they also have agency to claim their power and navigate that world on (some) of their own terms. *Tangerine* shows the passive acceptance of the sale of female-appearing bodies to the exclusive benefit of men and intervenes by transing the narrative in a way that reveals deep culturally ingrained sexism. Non-normative love can still be deep and true. There is movement between binaries and beyond. Finally, *The Florida Project* shows the state drawing a line with respect to the sale of the female body at the mere chance that a child may have been exposed to it. This is an acknowledgement of the societal sin that is the exploitation of the female body through the admission that innocence must be protected from such exchanges. Ultimately these films all show how the playing field warps and changes based on an individual's class, race, gender, or sexuality in direct reference to the white hegemonic and patriarchal ideals that are indeed culturally formed and therefore capable of being deformed.

As I conclude this thesis, I am distracted by a story straight out of the movies. I'm caught by the disturbing news coverage of Toronto serial killer Bruce McArthur. So far, it has been discovered that McArthur killed eight men over the course of seven years.¹⁸³ The first seven of McArthur's victims were recent immigrants or refugees. Though some were reported and investigated, McArthur was interviewed and released, and the matter did not gain traction until his eighth victim, Andrew Kinsman. Kinsman was a "white, high profile, well-liked figure in the gay village" of Toronto.¹⁸⁴ In a CBC article, Piranavan Thangavel, a friend of Krishna Kumar Kanagaratnam, one of the victims, speaks on behalf of his late friend and explains how we are all complicit in Kanagaratnam's murder.¹⁸⁵ In 2010, Thangavel and Kanagaratnam met aboard the MV Sun Sea, a cargo ship filled with people fleeing Sri Lanka's bloody civil war. The two

¹⁸³ CBC Radio. As McArthur pleads guilty, victim's friend says 'everyone' bears responsibility for his murder, (2019) online: <https://www.cbc.ca/radio/day6/episode-427-mcarthur>.

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

applied for refugee status upon landing in Canada. They both knew they would be combatting the stigma associated with coming from an area occupied by Tamil Tigers. Thangavel successfully appealed his initial denial. Kanagaratnam's appeal was denied. Terrified of the prospect of returning to Sri Lanka, he went into hiding. It was while he was in hiding that McArthur murdered him.

We already know racism, classism, sexism, and homophobia play a role in the way missing and murdered people are investigated. Canadian Indigenous women have been murdered and have gone missing at a rate disproportionate to other women.¹⁸⁶ These stories are often told from a deficit perspective, one that attributes the cause of vulnerability to the individual rather than their environment.¹⁸⁷ From this deficit perspective, researchers say that Indigenous women are “at risk” because they are socially, economically and politically marginalized.¹⁸⁸ Likewise, the story goes that Kanagaratnam was vulnerable because he was an “illegal immigrant”, a person of colour, financially poor, and gay.

Social realist films like *Bakers* provide a much-needed counter-perspective to the deficit perspective. The visual representation of these material contexts and circumstances allow for criticism for the systems upholding these social conditions rather than the individuals impacted by them. The stories imbue a humanity into the characters which elevates them from two-dimensional social statistics and implicitly lesser-than to individuals in whom we can see ourselves. This has a unifying effect whereby their plights feel like our plights as well.

Indigenous women are going missing and being murdered with little to no investigation after the

¹⁸⁶ National Inquiry into Missing and Murdered Indigenous Women and Girls, (2019), Online: <http://www.mmiwg-ffada.ca>

¹⁸⁷ Volk, D., & Long, S. (2005). Challenging myths of the deficit perspective: Honoring children's literacy resources. *Young Children*, 60(6), 12-19.

¹⁸⁸ Anita Harper, “Is Canada Peaceful and Safe for Aboriginal Women?” (2006) *Canadian Woman Studies*. 25: 33–38.

fact because of culturally created messages that pathologize. Kanagaratnam was murdered along with six others who did not garner enough attention from authorities to stop the killings. Films like Baker's humanize these folks by turning the gaze back on systems that privilege whiteness and call out the power imbalances. They bring audiences closer to people who move through this world a little differently in a way that complicates simplistic and ignorant messages. These films do this through the relatability of bonded human affection and closeness. Audiences see the characters in a complicated way, perhaps remembering that they were somebody's baby once. This is the power of film -- to show us our many, many sides.

With that, I will conclude this thesis with a poem. This is a shortened version of a song written by my husband. He tells me that he wrote this piece with bits and pieces of my story as I've told it to him. When I was reflecting on the central thread of this thesis with him, I told him that I saw myself as well as many of the characters in my life in these characters. I told him how these stories reveal something more about the structures upholding oppression than they do about the individuals themselves. I told him how each anonymous protagonist invoked humanity in a healing way despite the harshness of racism, sexism, classism and homophobia. These stories helped me with forgiveness, understanding and a renewed sense of purpose in terms of tending to the systems that maintain conditions of dis-ease, division, and oppression. To that end, these stories helped my relationships with my clients, my family, and myself.

Imaginary Man

I can never tell if you're a hero or a villain
 I only have faint memories
 Of standing next to you inside of a hotel room
 A car full of stuff laying at your feet
 People were looking in the window laughing
 We must be uncivilized

But it's a role we play, we're actors on a stage
 I can never blame you for that

I tried to escape, I cried and I prayed
I said I'd never go back
But sometimes I still talk to my imaginary man

My life feels like an all-night drive
On a January night
There is one truth for one lie,
I'm not afraid of God or the Cops or the Cold
Cause they all know about us

And the roles we play, we're actors on a stage
I can never blame you for that
I tried to escape, I cried and I prayed
I said I'd never go back
But sometimes I still talk to my imaginary man...¹⁸⁹

¹⁸⁹ Matthew Goud, *Imaginary Man* (Unreleased, 2019).