

## ROMANCING THE FAMILY

SUSAN R. SCHMEISER\*

I would be hard pressed to name two more exhilarating narrators of psychic life than Eve Kosofsky Sedgwick and Sigmund Freud, whose authorial legacies offer countless examples of interpretation as a generative process; both took hold of my imagination more than twenty years ago and refused to let go as I migrated after college from literary studies to law. My attempts to fashion an interdisciplinary approach to the study of law thus far have been thoroughly indebted to Sedgwickian and Freudian theory. What a pleasure, then, to read the two together in the service of reconsidering how to think, write, and teach about the family in the legal academy. Both Sedgwick and Freud provide riveting glimpses into the simultaneously extravagant and austere world of domestic relations and the rather lurid psychic processes of its individual participants. The powerful emotions, wishes, fantasies, and fears that *A Child is Being Beaten* (Freud) and *A Poem is Being Written* (Sedgwick) locate in our earliest experiences of family, and indeed their recurrence throughout our lives, coexist uneasily with equally urgent exigencies of self-regulation and modes of what Sedgwick aptly dubs “chastise[ment].”<sup>1</sup>

The juxtaposition of these texts for a panel called *Reconceptualizing the Affective Family* elicits an obvious question: how might—and do—psychoanalytic models of human experience and motivation inform law’s understanding of affective life? Given Sedgwick’s training and distinction as a literary critic and poet and Freud’s own deep engagement with the literary, one might just as well ask how narrative and rhetorical dimensions of affect should (and do) inform law, but this would constitute a notably different question. If, as literature and lived experience confirm, affective life is shadowy, extreme, messy, and irrational, then psychoanalysis—a capacious theory of mind, both conscious and unconscious, and a rich anti-rationalist project—would seem uniquely positioned to help us make sense of that life. Indeed, in their 1967 treatise *Psychoanalysis, Psychiatry and Law*, authors Jay Katz, Joseph Goldstein, and Alan Dershowitz stressed the relevance of psychoanalysis, which “endeavors to construct a systematic theory of human

---

\* Professor of Law, University of Connecticut School of Law. I would like to thank the organizers of Family Law Summer Camp 2009, especially Janet Halley and Jeannie Suk, for their welcome provocation; my fellow panelists on “Reconceptualizing the Affective Family” for their insight and example; and the editors of the *Harvard Journal of Law and Gender* for their patient assistance.

<sup>1</sup> Or, rather, she describes her “favorite style” as “visibly chastised.” EVE KOSOFSKY SEDGWICK, *A Poem is Being Written*, in *TENDENCIES* 177, 177 (1993).

behavior,” to legal problems, since “each man as an individual dealing with his reality . . . is, after all, the subject of both psychoanalysis and law.”<sup>2</sup>

Yet, despite this convergence of interests, the two projects remain in many ways incommensurable; psychoanalysis dethrones not only rationality but also the stable unitary subject of legal liberalism. Moreover, psychoanalytic reality is defined by a nonlinear temporality;<sup>3</sup> by reversals and misrecognitions;<sup>4</sup> by the interpenetration of inner and outer worlds;<sup>5</sup> and by a persistent conflation of fantasy and reality.<sup>6</sup> Take what Freud identifies as the “beating phantasies” (“ph” indicating their largely unconscious nature)

<sup>2</sup> JAY KATZ, JOSEPH GOLDSTEIN & ALAN M. DERSHOWITZ, *PSYCHOANALYSIS, PSYCHIATRY AND LAW* 3 (1967). Katz and Goldstein taught and eventually practiced psychoanalysis at Yale Law School, and Dershowitz was their student.

<sup>3</sup> Post-Freudians in particular have emphasized the nonlinear temporality of psychoanalysis, one that thwarts the developmental model much of Freud’s work ostensibly advances. For example, Jacques Lacan’s theory of the mirror stage, when the young child first perceives herself as whole and separate from the mother, depends upon the temporality of retroaction and anticipation. See JANE GALLOP, *READING LACAN* 81 (1985) (“The specific difficulty in thinking the temporality of the mirror stage is its intrication of anticipation and retroaction.”). For Hans Loewald, “[t]ime, in human (not physical) terms, . . . is not to be measured point by point. One might come closer to human time by saying that it consists in an interpenetration and reciprocal relatedness of past, present, and future.” HANS W. LOEWALD, *Psychoanalysis and the History of the Individual: The Freud Lectures at Yale University*, in *THE ESSENTIAL LOEWALD: COLLECTED PAPERS AND MONOGRAPHS* 531, 546 (Jonathan Lear ed., 2000). Melanie Klein’s focus on the psychic reality of infants and its vestiges in adult life similarly eschews linear time; in the words of analyst Juliet Mitchell, “what [Klein] is observing, describing and theorizing is the very absence of history and of historical time.” Juliet Mitchell, *Introduction to MELANIE KLEIN, THE SELECTED MELANIE KLEIN* 9, 29 (Juliet Mitchell ed., 1986).

<sup>4</sup> See, e.g., SIGMUND FREUD, “A Child is Being Beaten,” *A Contribution to the Study of the Origin of Sexual Perversions*, in *FREUD ON WOMEN: A READER* 215 (Elisabeth Young-Bruhl ed., 1990) (describing the process of psychic substitution and reversal at work in beating fantasies through which children gratify various needs and desires); MELANIE KLEIN, *Mourning and its Relation to Manic-Depressive States*, in *THE SELECTED MELANIE KLEIN*, *supra* note 3, at 146, 154 (“The subject’s triumph over his objects necessarily implies to him their wish to triumph over him, and therefore leads to distrust and feelings of persecution.”).

<sup>5</sup> See LOEWALD, *The Waning of the Oedipus Complex*, in *THE ESSENTIAL LOEWALD: COLLECTED PAPERS AND MONOGRAPHS*, *supra* note 3, at 384, 403 (“If we exclude the whole realm of identification and empathy from normality, for example, we arrive at a normality that has little resemblance to actual life. Identification and empathy, where subject-object boundaries are temporarily suspended or inoperative, play a significant part in everyday interpersonal relations . . .”).

<sup>6</sup> See *id.* at 393 (“Responsibility to oneself . . . involves facing and bearing the guilt for those acts we consider as criminal. Prototypical, in oedipal context, are parricide and incest. From the standpoint of psychic reality it matters little if these acts are, from the viewpoint of objective reality, merely fantasies or symbolic acts.”); *id.* (“Without the guilty deed of parricide there is no autonomous self.”). In his collection *The Compulsion to Confess: On the Psychoanalysis of Crime and of Punishment*, analyst Theodor Reik asked:

[W]hether the commission of a criminal act is in our own case so unimaginable, so remote from possibility as we assert. If we all unconsciously harbor such evil wishes . . . is there really such a world of difference between the wish and the deed? Is punishment really the proper reaction to a breaking through of the boundary line between the two?

of children, which reveal themselves in the course of psychoanalytic treatment. Noting the commonality of such fantasies, Freud deduces their complex affective, mnemonic, and narrative functions as they morph over three distinct phases: My father is beating the child; I am being beaten by my father; A child is being beaten.<sup>7</sup> For the fantasies to work their magic, producing both masochistic and sadistic satisfaction in the child, the roles of self and other, onlooker and participant, must succumb to substitution and reversal. In Sedgwick's reading of such fantasies, their theatrical framing helps to create "a free switchpoint for the identities of subject, object, onlooker, desirer, looker-away."<sup>8</sup>

But as Freud's account unfurls, we realize additionally that the lines separating memory and wish, fact and fantasy, also remain indistinct, within the patient and between patient and analyst. Indeed, he suggests that exposure to acts of corporal punishment may or may not bear an inverse relationship to fantasies featuring such punishment. And the second iteration in the fantasy sequence, "the most important and the most momentous of all," essential to the masochistic gratification and insulation from blame/harm this sequence enacts, may have "never had a real existence" at all; instead, it is merely "a construction of analysis, but it is not less a necessity on that account."<sup>9</sup> Psychoanalytic interpretations aspire to an accurate depiction of psychic reality, but the content of this reality as well as the process of discerning (or "constructing") it delivers a confounding challenge to legal ways of knowing.<sup>10</sup>

In short, the psychoanalytic subject frequently seems ungovernable by mechanisms familiar to law. She is especially ungovernable when ruled by such forces as unconscious guilt, which remain in large part impervious to legal ordering. Analyst Theodor Reik took up Freud's interest in the relationship of unconscious guilt to criminality, noting that "[t]hrough the effect of unconscious guilt, many people are prevented from fighting for their rights . . .," since "[t]he unconscious of an accused may wish for the very thing he consciously strives against with all his might."<sup>11</sup> Psychoanalysis teaches us that guilt inheres in the necessity of relating to others: the essential condition of family life. Revisiting Freud's work on the Oedipus complex and significantly expanding its scope and temporality, Hans Loewald

---

THEODOR REIK, *The Unknown Murderer*, in *THE COMPULSION TO CONFESS: ON THE PSYCHOANALYSIS OF CRIME AND PUNISHMENT* 1, 153–54 (1959).

<sup>7</sup> FREUD, *supra* note 4, at 222–224.

<sup>8</sup> SEDGWICK, *supra* note 1, at 183.

<sup>9</sup> FREUD, *supra* note 4, at 223.

<sup>10</sup> This challenge has resonated in legal debates over repression and recovered memories, and throughout criminal law. Elsewhere, I have attempted to account for epistemic tensions between legal and psychoanalytic conceptions of truth and between legal and psychoanalytic conceptions of guilt. See Susan R. Schmeiser, "No Truth Machine": Law, Psychoanalysis, Uncertainty, 2 *LAW, CULTURE & THE HUMANITIES* 179 (2006); Susan R. Schmeiser, *Punishing Guilt*, 64 *AMERICAN IMAGO* 317 (2007); see also PETER BROOKS, *TROUBLING CONFESSIONS: SPEAKING GUILT IN LAW AND LITERATURE* (2000).

<sup>11</sup> REIK, *supra* note 6, at 158.

contends that individuation and autonomy from parents require—indeed, constitute—acts of parricide, whether symbolic or wholly phantasmatic. Hence,

[i]f without the guilty deed of parricide there is no individual self worthy of that name, no advanced internal organization of psychic life, then guilt and atonement are crucial motivational elements of the self. Guilt then is not a troublesome affect that we might hope to eliminate in some fashion, but one of the driving forces in the organization of the self. The self, in its autonomy, is an atonement structure, a structure of reconciliation, and as such a supreme achievement.<sup>12</sup>

Psychoanalytic theory and the therapies it has inspired leave no doubt as to the fragility of this achievement. This fragility and its social repercussions find expression in law, but law can do little beyond addressing its consequences. Psychoanalysis teaches us that much of life, and often its most salient aspects, unfolds in the register not only of fantasy but of the phantasmatic (i.e., unconscious fantasy).

Psychoanalysis does identify certain rules that govern the psyche. These include the “law” of transference, compelling subjects to relate to new objects as they have to earlier objects;<sup>13</sup> the “law” of intrapsychic conflict, demanding internal strife as a condition of social existence;<sup>14</sup> and the “law” of ambivalence or conflicted affect, mandating the affiliation of love and hate, eros and aggression.<sup>15</sup> Such imperatives reflect, in the formulation of one analyst, “the complexity of object relations, which present excruciating conflicts from virtually the beginning of life . . . .”<sup>16</sup> With Freud’s topographical model of the conscious, preconscious, and unconscious yielding to the structural model of id, ego, and superego, psychoanalysis identified mental faculties that resemble institutions of government, organized according to a separation of powers. Whereas juridical law emphasizes rights, duties, obligations, interests, and the like, psychoanalysis foregrounds dynamics of desire, rivalry, identification, projection, introjection, sadism,

---

<sup>12</sup> LOEWALD, *supra* note 5, at 394.

<sup>13</sup> See, e.g., Leo Stone, *Transference*, in *PSYCHOANALYSIS: THE MAJOR CONCEPTS* 110, 110 (Burness E. Moore & Bernard D. Fine eds., 1995) (defining transference as “the tendency to repeat, in a current setting, attitudes, feelings, impulses, and desires experienced or generated in early life in relation to important figures in the individual’s development.”).

<sup>14</sup> See, e.g., David Beres, *Conflict*, in *PSYCHOANALYSIS: THE MAJOR CONCEPTS*, *supra* note 13, at 477 (noting that conflict “is intrinsic to life and ubiquitous in human psychic activity.”).

<sup>15</sup> See, e.g., Allan Compton, *Objects and Object Relationships*, in *PSYCHOANALYSIS: THE MAJOR CONCEPTS*, *supra* note 13, at 433, 438 (“[A]ll intense relationships are based upon both libidinal and aggressive cathexes of the representation of the object and are therefore in some degree ambivalent.”).

<sup>16</sup> Christine Ury, *The Shadow of Object Love: Reconstructing Freud’s Theory of Preoedipal Guilt*, 66 *PSYCHOANALYTIC Q.* 34, 59 (1997).

masochism, rage, greed, envy, fear, guilt, shame, misrecognition, and gratitude, among others.

*A Child is Being Beaten* schematizes some of these dynamics in the punishment fantasies of children, suggesting (as film critics have long reminded us) that the spectator is deeply implicated in the spectacle she observes.<sup>17</sup> Freud's work on paranoia similarly pierces the membrane between self and other, persecutor and persecuted,<sup>18</sup> while Melanie Klein's identification of a paranoid-schizoid position in earliest infancy and beyond, with its primary anxiety and resulting defenses of splitting, projection, introjection, denial, and idealization, extends these insights considerably.<sup>19</sup> At worst, those of us who cannot emerge from this position remain in a menacing world of constant peril, dismembered bodies, thoroughly bad objects, and vulnerably good ones. At best, we may enter a comparatively felicitous cycle of love, hate, guilt, and reparation.<sup>20</sup> Along with Klein, Loewald and others have identified a "psychotic core" operative in "normal psychic life," where our capacity for empathy as much as for less desirable ways of relating depends on a temporary suspension of boundaries between self and other.<sup>21</sup>

Eve Sedgwick seems to have been among a small group of pioneers who drew comfortably on both Freud and Foucault, a practice that soon came to characterize much of queer theory, in order to capture the texture of desire as well as its cultural contingency and discursive production. She easily accommodated robust accounts of psychic life—its demons and small triumphs—and of the subtle and diffuse workings of power through countless sites of discipline and normalization, including those that tout self-revelation as a liberatory practice. Toward the end of her life, though, Sedgwick moved away from both Freud and Foucault in embracing the fine Kleinian line that separates psychosis from the relative achievement of mere depressive guilt and neurosis. In *Melanie Klein and the Difference that Affect*

<sup>17</sup> FREUD, *supra* note 4, at 223 (explaining that in the second, repressed, iteration of the beating fantasy, "the child who is beaten has been changed into another one and is now invariably the child producing the phantasy").

<sup>18</sup> See generally 12 SIGMUND FREUD, *Psychoanalytic Notes on an Autobiographical Account of a Case of Paranoia (Dementia Paranoides)*, in THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD 3, 63–64 (James Strachey trans., 1995) (1955) (describing the circuitous route through which the sentiment, "I love him," becomes transformed into, "He persecutes me.").

<sup>19</sup> See MELANIE KLEIN, *Notes on Some Schizoid Mechanisms*, in THE SELECTED MELANIE KLEIN, *supra* note 3, at 176–200 (describing the mechanisms and defenses that accompany an infant's persecutory anxieties during the first months of life).

<sup>20</sup> See generally Clare Huntington, *Repairing Family Law*, 57 DUKE L.J. 1245 (2008) (challenging the Manichean love/hate model of family law and arguing for an alternative, informed by Klein, that identifies and values guilt and reparation); Eve Kosofsky Sedgwick, *Melanie Klein and the Difference that Affect Makes*, 106 SOUTH ATLANTIC QUARTERLY 625, 636 (2007) ("The depressive position, by contrast [to the paranoid/schizoid one], is an anxiety-mitigating achievement that the infant or adult only sometimes, and often only briefly, succeeds in inhabiting.").

<sup>21</sup> LOEWALD, *supra* note 5, at 403.

Makes, she identifies Klein's account of the depressive position as "a uniquely spacious rubric," noting that entry requires "the simple, foundational, authentically very difficult understanding that good and bad tend to be inseparable at every level."<sup>22</sup>

Notwithstanding Sedgwick's characteristic eloquence in formulating the relative advantages of depressive anxiety, it is not altogether clear in Klein's work or in psychoanalytic theory more generally how much such an achievement improves upon alternatives. And what salutary developments—assuming that depression itself, aside from the quality of suffering, is not the desired telos—might accompany it? In her recent piece on Klein and family law, Clare Huntington enumerates the comparative benefits of guilt and reparation and calls for a legal regime that recognizes and promotes these more salutary concomitants of love and hate.<sup>23</sup> These sentiments, along with gratitude and other affective states that inspire concern for objects whose very imperfect but enviable existence might, under other circumstances, have driven one mad with paranoid rage, reflect a far more peaceable world than do the violent, greedy, shame-filled dynamics of its paranoid-schizoid alternative. Primitive guilt accompanies these latter dynamics, emerging in the narcissism of self-torment and exploding into punitive urges toward others; depressive guilt, animating concern for the object whose existence one has imperiled, is surely preferable. Nonetheless, the two affects bear a strong family resemblance.

Sedgwick's work embraces the darkest insights of psychoanalysis as compelling accounts of the psyche in all of its fragility, violent conflict, and surprising resilience, but it does not clearly support application of psychoanalytic theory to the project of law. Despite the optimism that characterizes some of the existing work on law and psychoanalysis, a less sanguine view of the benefits psychoanalytic insights might confer on law also warrants consideration. For starters, psychoanalysis might expose the rule of law as illusory. In the words of Italian psychoanalyst Roberto Speziale-Bagliacca,

[O]ne would have to conclude that the great construction of the law is a noble endeavor undermined by various types of interference, including the urges that come from the unconscious. If we think of how we really are as opposed to how we should be, we realize that it is not so easy to exclude the dark return of primitive conflicts.<sup>24</sup>

Reik recognized the function of confession in the criminal law to enact and disguise precisely such conflicts. A confession not only gratifies the confesant's wish for punishment and vindicates the community's desire to punish

---

<sup>22</sup> Sedgwick, *supra* note 20, at 637.

<sup>23</sup> See Huntington, *supra* note 20, at 1245.

<sup>24</sup> ROBERTO SPEZIALE-BAGLIACCA, GUILT: REVENGE, REMORSE AND RESPONSIBILITY AFTER FREUD 50 (Susan Budd trans., 2004).

her, but in localizing guilt in one subject it allows those who sit in judgment to displace and then satisfy their *own* need for punishment.<sup>25</sup> In *A Child is Being Beaten* and elsewhere, Freud taught us that punishment, whether of ourselves or of others, may simultaneously defend against or redress a forbidden impulse *and* provide gratification of that impulse in substitute form.<sup>26</sup>

Those scholars who have attempted to apply psychoanalytic concepts to legal doctrine generally argue for reformation or reformulation of legal rules and policies to reflect complex psychoanalytic understandings of human motivation and behavior. Psychoanalysis appears, for these scholars, to offer law a therapeutic intervention whose object is to correct reigning misconceptions of human psychology. Less frequently, writers draw on psychoanalytic theories to diagnose law's symptomatic defenses.<sup>27</sup> Whereas we might seek to enhance law as a tool of democracy by enriching its appreciation for psychic complexity, though, even critical readers of Foucault should worry about harnessing psychoanalysis to the most disciplinary of projects: more effective governance of everyday life.

A legal regime informed by psychoanalytic theory, with its view of a psyche wracked by violent conflicts, may in fact look rather authoritarian; after all, ungovernable subjects make poor candidates for democratic rule, and our pervasive ambivalence hardly lends itself to neat adversarial justice. Family law in the United States represents one area of jurisprudence in which psychoanalytic ideas have taken hold and exercised notable influence. Indeed, the evolution of family law in recent decades owes much to psychoanalytic insights into child development: the significance of early bonds with caretakers; the centrality of parental authority to a child's burgeoning sense of self; the divergent temporalities of a child's world and an adult's (particularly the torpid pace of legal processes); the ample opportunities for derailment in a person's journey from infant to functional adult; the potential

---

<sup>25</sup> See REIK, *The Compulsion to Confess*, in *THE COMPULSION TO CONFESS: ON THE PSYCHOANALYSIS OF CRIME AND OF PUNISHMENT*, *supra* note 6, at 291 (contending that, in shifting our penal aims between retribution and deterrence, as we have done intermittently over the past two centuries, we implicitly acknowledge that "no great gulf separates [us] from the crime, that we all carry in us latently all the germs of the criminal.").

<sup>26</sup> See FREUD, *supra* note 4, at 226–27 (A fantasy of being beaten functions as "a convergence of the sense of guilt and sexual love. *It is not only the punishment for the forbidden genital relations, but also the regressive substitute for that relation . . .*") (emphasis in original).

<sup>27</sup> These scholars engage particularly with Jacques Lacan and the French analyst and jurist Pierre Legendre. See, e.g., David S. Caudill, *Pierre Schlag's "The Problem of the Subject": Law's Need for an Analyst*, 15 *CARDOZO L. REV.* 707, 732 (1993) ("But I would recommend that Schlag and others concerned with the subject consult with Lacan—if not to solve the problem of the subject, then at least to help explain the persistence of the presumed subject, and the disciplinary paranoia, in law."); Peter Goodrich, *Law and the Postmodern Mind: Translating Legendre or, The Poetical Sermon of a Contemporary Jurist*, 16 *CARDOZO L. REV.* 963, 963 (1995) (decrying the "dual absence . . . of psychoanalysis from law and of the writing of Legendre from the curriculum of contemporary jurisprudence.").

eclipse of biological progenitors by functional parents.<sup>28</sup> Certainly these constitute an improvement over a view of families predicated on a father's right to the labor and obedience of his children (and wife) and his complete dominion over their bodies (and hers). But psychoanalytic skepticism toward robust notions of individual autonomy, rationality, and altruism calls into question the wisdom of much private ordering. And indeed psychoanalytic family law policies have controversially favored permanence above all in state-ordered child placement, disfavored joint custody arrangements, including mandated visitation with a non-residential parent, and emphasized the primacy of one caregiver (or at the most two) and omnipotent psychological parent.<sup>29</sup>

Or, in the alternative, more "humane" legal institutions and doctrines and more psychologically sophisticated forms of state regulation may prove still less appealing than even a relatively authoritarian legal regime. Armed with psychoanalytic insights, these operations of power might perfect the instruments of discipline and purport to extend their reach to the unconscious itself. In addition to these rather frightening developments, we might witness *psychoanalysis itself* further domesticated by virtue of its collusion with law.

But there I go being paranoid.

In the spirit of reparation, I will concede that psychoanalysis may help us transcend the imaginative limits of law's normative family: mommy, daddy, two-point-whatever kids. While family is everything in psychoanaly-

---

<sup>28</sup> Many expressions of such concerns appear across case law and scholarship, but for my purposes the work of Joseph Goldstein, who—along with Anna Freud (Sigmund's daughter), Albert Solnit, and Sonja Goldstein—wrote multiple books seeking to reform the law's treatment of children around issues of placement, offer a prime example of this influence. See JOSEPH GOLDSTEIN, ANNA FREUD & ALBERT J. SOLNIT, *BEYOND THE BEST INTERESTS OF THE CHILD* (1973); JOSEPH GOLDSTEIN, ANNA FREUD & ALBERT J. SOLNIT, *BEFORE THE BEST INTERESTS OF THE CHILD* (1979); JOSEPH GOLDSTEIN, ANNA FREUD, ALBERT J. SOLNIT & SONJA GOLDSTEIN, *IN THE BEST INTERESTS OF THE CHILD* (1986). In the first volume, the authors explained the value of psychoanalytic understandings of child development to evolving legal guidelines affecting children, which should aspire to "manipulat[e] . . . a child's external environment as a means of improving and nourishing his internal environment." GOLDSTEIN ET AL., *BEYOND THE BEST INTERESTS OF THE CHILD*, *supra*, at 7; see Peggy C. Davis, "There is a Book Out . . .": *An Analysis of Judicial Absorption of Legislative Facts*, 100 HARV. L. REV. 1539, 1542 (1987) (documenting and analyzing widespread judicial absorption of Goldstein, Freud, and Solnit's psychological parent theory).

<sup>29</sup> For critiques of the psychoanalytic turn in family law and policy, see, for example, Ayelet Blecher-Prigat, *Rethinking Visitation: From a Parental to a Relational Right*, 16 DUKE J. GENDER L. & POL'Y 1, 14–18 (2009) (contesting Goldstein, Freud, and Solnit's disfavoring of visitation); Susan L. Brooks, *A Family Systems Paradigm for Legal Decision Making Affecting Child Custody*, 6 CORNELL J.L. & PUB. POL'Y 1, 11–12 (1996) (criticizing the individualist bent of policies resting on psychoanalytic models of child development); Marsha Garrison, *Why Terminate Parental Rights?*, 35 STAN. L. REV. 423, 449–67 (1983) (using psychoanalytic theory to challenge the permanency model in the context of post-divorce custody and arguing for the child's deep developmental need to idealize both parents).

sis (a point lamented by Deleuze and Guattari in *Anti-Oedipus*),<sup>30</sup> a template for all object relations and therefore the psyche itself, its significance is largely structural. Might we use its insights to resist the seemingly inexorable pull to recognize and protect only relations of sexual exchange, reproduction, and (in certain contexts) caretaking in favor of a more expansive conception of relationality? In *A Poem is Being Written*, Sedgwick offers a second (off-stage) scene to complicate the spanking tableau: her beloved French teacher Monsieur O's public restroom tryst, which results in his arrest and discharge from school.<sup>31</sup> The young Eve's discovery of this event through her mother's cryptic, if measured, reporting and Eve's subsequent romance with (male) homosexuality—spoken, hinted at, denied—is surely as developmentally significant as any Oedipal drama. A girl's encounter with the largely obscured scene of gay public sex, an encounter which, in typical Freudian fashion, confers new meaning on memories of parental discipline and the anal erotics of spanking, also emboldens her voracious imagination and epistemophilia in transformative ways.

And if I am to be honest, I should note that I locate my own "scholarly agenda" exactly at the intersection of law and psychoanalysis. So what do I seek in such an exotic locale? In his pithy 1908 essay *Family Romances*, Freud identified a common genre of fantasies that mark a particular stage of childhood self-formation: when the child has moved beyond the acute version of the Oedipus complex, renouncing hopes of marrying one parent and vanquishing the other, and has begun to cast his imaginative net beyond the bounds of his household and its members.<sup>32</sup> Through interactions with the world outside of the home, particularly with other—less disappointing—families, the child forges a theory of self no longer entirely coterminous with mommy, daddy, siblings, and their shifting dynamics of rivalry and seduction, but conceptually and existentially separate. Grievances against his parents resulting from their frustration of his Oedipal wishes and their inevitable failures leave these other families looking rather preferable to the child's own. He thus spins tales of mistaken identity and hidden origins to account for his predicament. These tales reinvent the thwarted child as born to other parents, nobler in station and in character than his existing ones, and therefore in—but not of—the wrong family.<sup>33</sup> Conjuring up an exalted but

---

<sup>30</sup> See GILLES DELEUZE & FELIX GUATTARI, *ANTI-OEDIPUS: CAPITALISM AND SCHIZOPHRENIA* 51–130 (Robert Hurley, Mark Seem & Helen R. Lane trans., 1983).

<sup>31</sup> SEDGWICK, *supra* note 1, at 206–07.

<sup>32</sup> See 9 SIGMUND FREUD, *Family Romances*, in *THE STANDARD EDITION OF THE COMPLETE PSYCHOLOGICAL WORKS OF SIGMUND FREUD*, *supra* note 18, at 237.

<sup>33</sup> In Freud's words:

For a small child his parents are at first the only authority and the source of all belief. The child's most intense and most momentous wish during these early years is to be like his parents . . . . But as intellectual growth increases, the child cannot help discovering by degrees the category to which his parents belong. He gets to know other parents and compares them with his own, and so comes to doubt the incomparable and unique quality which he has attributed to them.

tragically estranged “real” family—whether royal or wealthy or merely kinder, more understanding, more like him—the “child’s imagination becomes engaged in the task of getting free from the parents of whom he now has such a low opinion and replacing them by others . . . .”<sup>34</sup>

But lest we revile the child as an ingrate and repudiate him (“turn away in horror from this depravity of the child’s heart”),<sup>35</sup> or deny this account of betrayal altogether (“feel[ ] tempted, indeed, to dispute the possibility of such things”),<sup>36</sup> Freud assures us that:

[t]he faithlessness and ingratitude are only apparent. If we examine in detail the commonest of these imaginative romances, the replacement of both parents or of the father alone by grander people, we find that these new and aristocratic persons are equipped with attributes that are derived entirely from real recollections of the actual and humble ones . . . . He is turning away from the father whom he knows to-day to the father in whom he believed in the earlier days of his childhood; and his phantasy is no more than an expression of regret that those happy days have gone.<sup>37</sup>

In other words, the child’s putative search for different parents entails both a mis/recognition of himself as other to his existing family and a mis/recognition of others (whether embodied or imagined) as extensions of himself; like most quests, this one is less a departure than a return to an earlier identification with idealized parents. In the end, they’re all families, and his is as good or bad as any other.<sup>38</sup>

At the risk of burdening this family romance trope excessively, I want to suggest that the quest to find a more exalted discipline for the study of law might have something in common with the child’s search for her real family and hence an explanation for her dissatisfaction at home. In my own case, a certain nostalgia for the era of imaginative possibility in which I first encountered Freud and Sedgwick surely underlies my restless search for a

---

Small events in the child’s life which make him feel dissatisfied afford him provocation for beginning to criticize his parents, and for using, in order to support his critical attitude, the knowledge which he has acquired that other parents are in some respects preferable to them.

*Id.*

<sup>34</sup> *Id.* at 238–39. Freud emphasizes here that these others “occupy . . . as a rule, a higher social station,” but this criteria seems a proxy for general aggrandizement: a dynamic through which the glorification of his “true” parents—and hence his “true” self—secures the debasement of his existing parents, and vice versa. *Id.* at 239.

<sup>35</sup> *Id.* at 240.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 240–41.

<sup>38</sup> Compare LEO TOLSTOY, *ANNA KARENINA* 1 (Joel Carmichael trans., 1960) (“Happy families are all alike; every unhappy family is unhappy in its own way.”), with VLADIMIR NABOKOV, *ADA, OR ARDOR: A FAMILY CHRONICLE* 3 (1990) (“‘All happy families are more or less dissimilar; all unhappy ones are more or less alike’ . . . .”) (parodying Tolstoy).

more exalted, or at least understanding, interdisciplinary home. After all, disciplinary romances are nearly as seductive as family ones. But our imagined interdisciplinary families may prove little better than—and in fact uncannily like—those from which we seek to distinguish ourselves.

