

ARTS REVIEW

***Worth*, film written and co-produced by Max Borenstein, directed by Sara Colangelo and starring Michael Keaton, Stanley Tucci and Amy Ryan, 1 hour 58 minutes, released in 2021 and currently streaming on Netflix.**

Worth is a film based on the memoir of lawyer Kenneth R. Feinberg: *What Is Life Worth?: The Inside Story of the 9/11 Fund and Its Effort to Compensate the Victims of September 11th*.¹ This American film addresses questions of the value of human life from the starting out of ‘our national tragedy’: the terrorist attacks on the World Trade Center and Pentagon (and the fourth plane attempt). Amongst the many political and social upheavals the attacks caused, the film picks up one legal thread: it tells the story of Feinberg’s work to develop the rules for how US Government funded compensation would go to those who suffered personal injury or death from the 9/11 attacks. The fact that it was a state compensation process is important; otherwise the only legal recourse would be against the airlines and others who failed to stop the attacks, and that litigation would be complex, very lengthy, expensive and uncertain for all concerned. Instead, after lobbying by the airlines the US Government decided to enact a different solution. It passed the Air Transportation Safety and Stabilization Act 2001.² Among other things, this established the September 11 Victim Compensation Fund 2001 (hereafter ‘the Fund’). The question was who would get what from the Fund. Some basic rules were set up, including that victims could not all simply be paid a single fixed amount. To fill in the rest of the rules, the legislation used US civil procedure to appoint a person to set up rules for the disbursement of the money from the Fund. That ‘special master’ was Feinberg, who took on the work pro bono, that is, for free for the sake of the public good.

Contrary to the film’s portrayal, Feinberg (played by Michael Keaton) did not need to be persuaded to do the work; he lobbied to do so. He and his firm took it on, with a colleague, Camille Biros (played by Amy Ryan); while the film treats her as a lawyer, it appears she was more a senior administrator. The Fund’s rules had to be attractive enough to avoid litigation: Congress specified that for the Fund to operate, 80% of the eligible victims, including the families of the deceased would have to sign on. By signing on, they had to agree not to sue the airlines for any failures in the tragedy. The film explores how the Fund rules were

¹ K.R. Feinberg, *What is Life Worth?: The Inside Story of the 9/11 Fund and Its Effort to Compensate the Victims of September 11th* (PublicAffairs, 2005).

² US Public Law No. 107-42.

developed, and how Feinberg went about answering important questions about the value of life.

Starting to answer important questions

What is life worth? Are all lives worth the same? What can law actually do when a life has been lost? How can human beings best answer those questions? These questions are first introduced through a classroom scene, almost at the start of the film. Feinberg is teaching novice students in law at University of Pennsylvania. Practicing lawyers do teach at US Law Schools, often classes with a more practical element, such as civil procedure. Perhaps unsurprisingly then, these potentially very abstract questions turn quickly to how lawyers would negotiate a settlement after an unlawfully caused death. Money, bargaining and ruthlessness, naturally in the classroom setting, become a game. That game comes with large knowledge imbalances, and power imbalances, particularly where large defendants, especially insurers, are repeat players. The students are there to learn this quickly, and acquire skills. Feinberg is there to teach that. For him, it is largely a matter of process, evidence and solving problems. Less obvious in this scene is the premise of the negotiation: that whatever the trained lawyers do, ultimately non-lawyers have to decide to accept it. Here, the grieving family member must accept the settlement offered, trading it for the uncertainty of litigating. People get what they settle for.

Law as entertainment

That same scene also captures a further question relevant to the film's success on the mainstream streaming service Netflix: how do you make law entertaining to watch? Based on the appearance of law in media, particularly in popular television programmes, one might imagine it is easy to make law watchable. The real-life of the law is often painstakingly slow, punctuated by moments of intensity. Gathering evidence and engaging with clients and opponents can take a long time (see, e.g., the film *Erin Brokovich*, 2000), also a settlement sign-on case). Selecting carefully from that monotony uses law as a setting for moving stories and for introducing characters we can care about. We are even willing to suspend our disbelief at the remarkable number of homicides committed in small spaces, from a sleepy New England village (Cabot Cove, in the television series *Murder, She Wrote*, 1984-1996) to a single Manhattan building (the television series *Only Murders in the Building*, 2021-).

Perhaps, as one legal commentator wrote, law is a powerful medium because of stories from real life, exposing both human vulnerability, and ethical and moral conundrums.³

Some of the appeal of law as popular entertainment may also be the process of a resolution: ultimately, the law has to give an answer. A flawed answer most likely, and perhaps one that allows different sides to claim some kind of victory, but an answer nonetheless. With it, those who were only being carried along by the story, can let go while those who are deeply interested, can turn to fighting over whether that answer is right. Law takes philosophy, economics, psychology, sociology, politics and other perspectives on the human condition and gives a route to an outcome.

While the lawyers might configure, hone (or to some eyes, hide) the issues, much of the reality of law is non-lawyers making choices. And in that first scene, ultimately the students playing the role of family member must make a choice: to accept the amount offered in settlement, or fight. That is the underlying premise to the film. On one level, it engages with the deeper human questions about the value of life, the comparisons between lives, and what law and lawyers can do about it. On another, it shows how the practical reality of claims handled through a legal process where interests conflict and resources are in some ways finite. The ultimate legal test on that practical level was not a persuasive answer to the value of life, neither in theory nor in dollars and cents. Rather, the test was whether enough victims agreed to the Fund's terms, to allow the Fund to do any good at all.

Storytelling

The narrative drive to the film is the process of humanising the law and Feinberg. Feinberg begins by creating rules to be applied to boxes of information for potential claimants to comply with the legislation and any review by a judge. At its worst, such a process could be dehumanising, mechanical, and reductive: life was worth a number decided by a computer. (Fast forward to today's debates about Artificial Intelligence, and even more opportunities for stripping away emotion are available.) Feinberg is depicted as keeping his distance from victims' own stories. He asked his staff to handle those meetings, though he did acknowledge their value, and their importance to the Fund (as well as, implicitly, to getting people to sign on to it). Feinberg is portrayed as impartial, efficient, and getting the best deal there was rather than chasing a perfect but unobtainable goal. This is counterposed with what the

³ Thane Rosenbaum, 'Why the Movies Love Lawyers' (*ABA Journal*, 1 August 2015) <https://www.abajournal.com/magazine/article/why_the_movies_love_lawyers> accessed 27 December 2024.

potential applicants wanted, symbolised as being about the state recognising their dignity. The film shows Feinberg's detached style angering the potential applicants. The film's personification of this process is Charles Wolf (played by Stanley Tucci), the widower of a lawyer who was killed in the attack. Wolf is at a meeting attended by a large number of potential applicants where Feinberg's approach inflames the room; he acts as a voice of reason, calling for Feinberg to be given a chance to explain his proposed rules. When Feinberg thanks him at the end of the meeting, Wolf politely but firmly explains that he is in fact vehemently against the initial rules. He is at that moment offering flyers for a meeting to galvanise others under the www.fixthefund.org website (which remains up to this day).

Feinberg's personal development arc is the backbone for the rest of the plot. It is told with a heavy brush, but the acting is superb. Feinberg meets, and even more modestly, just sits in on his colleagues' meetings with the potential applicants. He is moved by their stories and ultimately he creates a personal shrine to their memory in his office. Wolf's acceptance of this change of heart and the view that it led to better rules for the Fund, led to him advising his network of applicants to accept the Fund. His website then began with 'The Fund is Fixed'. That website still displays the letter Wolf sent to Feinberg, in November 2003, on applying to the Fund:

to have one of your sharpest critics follow through on a promise and not only join the program he was criticizing, but promote it to his peers, says a lot about you and the way you have adjusted both the program and your attitude.

Ultimately, to trust the model, the applicants had to trust the modeller. Trust was being used as a proxy for the very things most of them did not have: understanding, knowledge, and power. The way the film tells it, the process of trusting was even one more step removed from Feinberg: the bulk of them trusted Wolf, and Feinberg persuaded Wolf to trust Feinberg.

Qualification and quantification

Other issues were much more technical. One of the threads in the movie was who qualified under the Fund. Again, there were some rules in the legislation, and some scope for the special master to exercise discretion. Two examples capture some of the myriad cases: a man who was killed had a wife and a mistress, each family with children; another deceased had a gay lover in a state where gay marriage was not yet recognised. The discretion was pushed again, though only as far as to compensate the first and not the second. Similarly, once

Congress had enacted that the payments could not all be the same, the calculation took on another dimension. A single payment might be relative to many things: the cost of a car, of a house, or an education. But differential payments could also be relative to each other. The high-paid lawyers who lost their lives have their firms advocating for full compensation for their earning power into the future. The families of the cleaners and other service workers initially assume the outline sum for one person is to be split between the group of families present.

In the book that the movie was based on (*What is Life Worth?*), Feinberg records that Senator Kennedy gave him advice on how to navigate the fairness of payments across the spectrum of wealthy victims to poor victims, to use the discretion granted by Congress: ‘just make sure that 15 percent of the families done receive 85 percent of the taxpayers’ money.’⁴ This became the fourth of an eight-point plan for deciding the figures under the Fund. It was achieved by narrowing the gap between the largest and the smallest compensations paid to claimants.

How we respond to loss

The film’s focus on the Fund leaves less space to consider wider human questions about how we respond to loss. In the film, the reason to avoid litigation was how expensive, uncertain and long such litigation would be, and how it would likely bring down the defendants (especially the airlines) and frustrate the claimants in any case. But the issues are much deeper. What can law do? It can shape behaviour before negative events and respond to events once they have happened. (To a limited extent it can also shape expectations and socio-ethical standards.) An action against the terrorists and those who backed them was essentially impossible. If victims had successfully sued the airlines, what would have happened? The claim might have been that the airlines were negligent and that that had caused the unlawful death of loved ones. The outcome would have been a money award meant, so far as money can, to put the claimant in the position as if the wrong in question had not happened. The typical claimant would have had some medical costs, and some would have been very large. But quite commonly the largest sum would be for lost earnings, which for high-powered professionals might have been in the millions of dollars.

⁴ Feinberg (n 1) 47.

Some legal systems limit a claim by the estate for lost earnings would be, seeking instead to ensure any dependents are compensated for the support they lost (as in England and Wales). This idea of 'compensation' expresses a specific relationship: the wrongdoer pays the victim for a harm (there is some theoretical debate about whether it is 'compensation' when the state sets up a fund like this). But the law would be seeking to undo a harm, not to reset the reality of society. Where women and ethnic minorities have lower incomes and job prospects, tort law would not pay them more than they actually lost in order to fix this inequality. Similarly, other things claimants might want, and other claims they have, would take attention in other directions. One character in the film who lost his brother in the rescue operation argued the emergency services had been negligent in their procedures and supplied faulty equipment, but Feinberg is not investigating the truth of that, which is part of he wanted.

More widely, the story highlights the wider legal framework for handling loss. The marketplace of litigation was set to fail and the stakes were high enough, so the state intervened. That means the airlines were not held accountable for any of their failures, at least through the normal legal avenues. An avowedly capitalist country turned to state handouts. The state was the insurer of last resort against a terrorist attack of some scale. But the US still acts in such single instances, though not systematically (as an end credit scene highlights, even for such more common occurrences in the US as a mass shooting). The US still retains a narrow social security provision compared to similar Western democracies. The choices individuals make are still central, rather than choices to reset the playing field for everyone. The legislator, and the US Government, did pass the burden, and significant risk, to a private party, Feinberg. Their choice was that they did not want the work or risk of creating rules *and* applying them. This is one of the classic problems of law: what balance of certainty and flexibility produces justice? The firmer the rule, the greater the certainty; the greater the certainty, the more the features of the particular case might be lost and justice not done. By passing to Feinberg the rule-making, rule-applying, and consent-acquiring roles, Congress could appear to act, supply the money, but give the practical work to Feinberg. In a way, Feinberg then had to persuade the potential claimants to focus on practical steps towards at least financial recovery, rather than anger, or indeed, litigation.

Future

Questions about the worth of human life have been debated since human beings have made rational choices. They have been made particularly stark in war, slavery and wherever the

deliberate choice to kill for advantage is made. Our responses take many forms. It's no surprise that the vast majority of legal systems prohibit the person who kills to obtain money under a will from receiving that money: under that rule, life is worth more than any inheritance. What makes the 9/11 Fund, and *Worth* so moving is a story about national unity out of loss, and the choice to trust in a technocrat. Had the experience gone otherwise the fallout from the Fund's failure would have been toxic. In fact, the Fund was set up to close after a little under two years, at the end of 2003. By then it had awarded US\$7 billion to 97% of the families, according to Feinberg. However, the Fund was reopened with new time limits, until 2020 when any time limit was removed. The driving force was particularly the harm to first responders, suffering from exposure to dangerous substances and dust while they sought to rescue survivors. On the 23rd anniversary of the attacks, in September 2024, the Special Master then in office noted that US\$14.2 billion had been paid in compensation over 62,000 claims but the work carried on.⁵ Similarly, for Feinberg personally, this was not the first, and definitely not the last compensation process he led. He had led on compensation for Agent Orange, and after 9/11 led on funds for the Virginia Tech massacre, the 2008 financial crisis, and the Deep Horizon gulf oil spill amongst other things. He continued to write about these experiences, as well as to practice.⁶

Conclusion

There are many answers to how much a life is worth. *Worth* tells a fraught story of one way to find a dollar and cents answer for each 9/11 victim. It is a human-focused story of what non-lawyers need in order to trust the system. A lawyer thinking he should use a dispassionate and neutral model to do the most good is not trusted; instead, laypeople needed to feel valued and to believe in the values of those making the decisions. The harder and more painful the question, the more important the trust. The film thus expresses a story of personal development, of shared pain, and of the choices that came out of it. Indeed, despite uncertainty, power imbalances and disaster, people have to make choices in the shadow of the law all the time. In this particular case, that choice also mirrors some of the steps American society was taking to recover after 9/11.

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⁵ 'Message from the Special Master of the September 11th Victim Compensation Fund' (September 11th Victim Compensation Fund, 11 September 2024) <<https://www.vcf.gov/blog/message-special-master-september-11th-victim-compensation-fund>> (accessed 27 December 2024).

⁶ See, for example, K. R. Feinberg, *Who Gets What: Fair Compensation after Tragedy and Financial Upheaval* (PublicAffairs 2012).

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