

LAW ON THE SCREEN

*Austin Sarat, Lawrence Douglas,
& Martha Merrill Umphrey*

THE AMHERST SERIES IN LAW, JURISPRUDENCE, AND SOCIAL THOUGHT

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Amherst Series in Law, Jurisprudence, and Social Thought

EDITED BY

Austin Sarat, Lawrence Douglas, and Martha Merrill Umphrey

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AUSTIN SARAT

LAWRENCE DOUGLAS

MARTHA MERRILL UMPHREY

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To Benjamin (AS)

To my boys Theo and Dash (MU)

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LAW ON THE SCREEN

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On Film and Law: Broadening the Focus

AUSTIN SARAT

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MARTHA MERRILL UMPHREY

The proliferation of images of law, legal processes, and officials on television and in film is a phenomenon of enormous significance. Mass-mediated images are as powerful, pervasive, and important as are other early-twenty-first-century social forces—for example, globalization, neo-colonialism, and human rights—in shaping and transforming legal life. Law lives in images that saturate our culture and have a power all their own, as the moving image provides a domain in which legal power operates independently of law’s formal institutions. As Samuel Weber observes, “the ‘world’ itself has become a ‘picture’ whose ultimate function is to establish and confirm the centrality of man as the being capable of depiction.”¹ In this age of the world as picture, the proliferation of law in film, on television, and in mass-market publications has altered and expanded the sphere of legal life. “Where else,” Richard Sherwin asks, “can one go but the screen? It is where people look these days for reality. . . . Turning our attention to the recurring images and scenarios that millions of people see daily projected on TV and silver screens across the nation . . . is no idle diversion.”²

The moving image also reminds us of the contingencies of our legal and social arrangements. It always casts what Saul Morson calls a “sideshadow” on “realities” outside itself,³ realities with which legal scholars, like the people we study, may have grown quite comfortable.⁴ According to Morson, film is not just a mirror in which we see legal and social realities reflected in some more or less distorted way.⁵ Instead it always projects alternative realities that are made different by their filmic invention or the editing and framing on which the film image depends. Seeing images projected, no matter what their subject matter, is a reminder that:

alternatives always abound, and, more often than not, what exists need not have existed. . . . Instead of casting a foreshadow from the future, [they cast] a shadow “from the side,” that is from other possibilities. . . . Sideshadows conjure [a] ghostly presence . . . [in which] the actual [what we know of the world] and the possible [what film shows of that or other worlds] are made simultaneously visible. . . . A present moment subject to sideshadowing ceases to be Ptolemaic, the unchallenged center of things. It moves instead into a Copernican universe: as there are many planets, so there are many potential presents for each one actualized.⁶

The moving image attunes us to the “might-have-beens” that have shaped our worlds and the “might-bes” against which those worlds can be judged and toward which they might be pointed. In so doing film contributes to both greater analytic clarity and political sensitivity in our treatments of law. It opens up largely unexplored areas of inquiry as we chart the movement from law on the books to law in action to law in the image.⁷

Studying Law in Film

Yet scholars have only recently begun to examine how law works in this new arena and to explore the consequences of the representation of law in the moving image.⁸ Over a decade ago, Stewart Macaulay urged that attention be paid to what he called “images of law in everyday life.”⁹ Because people learn important lessons about law from a variety of sources, none more important than “film (and) television,” he called on legal scholars to become “participant observers of . . . mass cultures.”¹⁰ Like any good practitioner of cultural studies, Macaulay drew attention to what some might dismiss as “low” or “popular” culture,¹¹ and, in this way, Macaulay helped to decanonize the traditional subjects of legal scholarship.

At the same time, the mission Macaulay charted for legal scholars of film—to provide a form of “corrective criticism”¹²—was rather traditional. According to Macaulay, scholars should police images presented on television and in movies, identifying those that, when weighed against what we know about the law in action, would seem “oversimplified, garbled, conflicting, or misleading.”¹³

Writing at about the same time, Lawrence Friedman, like Macaulay, tried to open up the moving image as a subject for legal research. Friedman noted

that the “study of popular legal culture is a relatively new field of inquiry”¹⁴ and observed that television and movies would “shrivel up and die without cops, detectives, crimes, judges, prisons, guns, and trials.”¹⁵ While insisting that “popular culture, and popular legal culture, in the first sense, are [like the sociology of law itself] of fundamental importance in constructing *social* theories of law . . . theories of law whose premises deny, altogether or in large part, any notion of legal autonomy,”¹⁶ Friedman, like Macaulay, worried that “the products of popular culture are wildly off-key with respect to those parts of the legal system that they deal with obsessively.”¹⁷

Before Macaulay and Friedman, however, Stuart Hall and his colleagues at the Centre for Contemporary Cultural Studies at the University of Birmingham had already provided a remarkable study of the social life of law’s images, showing in *Policing the Crisis* how images of crime in general and mugging in particular came to Great Britain from the United States and were disseminated in the mass media.¹⁸ Hall’s work analyzed the role of those images in the construction of a political crisis that articulated, even as it displaced, discontents that Hall traced to stresses in the reproduction of capitalism.¹⁹ More recently, Alison Young has shown how feminism, psychoanalysis, critical criminology, and film theory can be used to explore law as it “appears and reappears in the cinematic text.”²⁰ In this effort Young asks us to consider not just the representation of law in film, but “how cinema is jurisprudence,”²¹ how law exists both in, as well as outside of, the image.

Hall and Young provide but two examples of the theoretically rich and sophisticated possibilities that await scholars who study law and film. While most research on law and film has consisted of reading a single film, or series of films, to decode the portrayal of various legal actors and officials,²² other scholars have explored alternative theoretical perspectives. Some, for example, have attended to the ways films about law position their viewers and create kinds of subjects.²³ Others have sought to draw attention to the way film speaks to particular desires and anxieties about law that exist in the wider culture.²⁴ Still others have tried to delineate or historicize particular sub-genres of law on film, for example crime films²⁵ or trial films.²⁶ And some have examined the way film is used in legal processes, for example trials, as a form of evidence.²⁷

However, notwithstanding these efforts, it seems safe to say that analysis

of cultural representations of law remains relatively marginal among legal scholars,²⁸ and that cultural studies, despite its deep investment in the examination of social forms and social relations,²⁹ has not been taken on in the same way that interdisciplinary legal scholars have taken on the disciplinary and analytic perspectives of sociology, anthropology, psychology, feminism, and, increasingly, of queer theory.³⁰ Scholarship on law and film could, of course, be oriented toward assessing the impact of law on film, attending, for example, to questions of legal regulation in the domains of intellectual property or copyright.³¹ But the field still is rightly oriented toward inquiry about what film does for (and to) law, how law is represented in film, and how film means and what film means to law.³²

Broadening the Focus

As we see it, the next step in the development of law-film scholarship is to broaden the focus of such work beyond studies of how legal actors are portrayed in film, beyond the way films create subject positions, and beyond the analysis of genre. Specifically, there are three steps in this direction that can and should be taken, three steps that explain the content and organization of *Law on the Screen*. The first connects law and film as narrative forms; the second studies film for its jurisprudential content, its ways of critiquing the present legal world and imagining an alternative one; and the third expands studies of the representation of law in film to include questions of reception.

Students of law and film need to understand the way image and narrative operate in each of these domains. And yet, as we see it, the boundaries between law and film are blurred, uncertain, sometimes hard to chart. More and more lawyers and legal officials, for example, rely on techniques of persuasion drawn from visual media, contributing to a “proliferation of cinematic and televisual styles of storytelling in the courtroom.”³³ And, as Philip Meyer notes, there is a new story-telling style in law that is “remarkably influenced by the conventions of popular imagistic storytelling.”³⁴

In addition, film draws on law for its aesthetic, its narrative form, its way of positioning its viewers. “Anglo-American movies are . . . trial-like to begin with,”³⁵ writes Carol Clover. Clover argues that films are trial-like in that “the plot structures and narrative procedures . . . of a broad stripe of American

popular culture are derived from the structure and procedures of the Anglo-American trial; that this structure and these procedures are so deeply embedded in our narrative tradition that they shape even plots that never step into a courtroom; and that such trial-derived forms constitute the most distinctive share of Anglo-American entertainment.”³⁶

The connection between the narrative conventions of film and law has been highlighted recently by David Black.³⁷ Black calls our attention to what he sees as the “narrative overdetermination” of the film/law relationship.³⁸ “The [real] courtroom was *already* an arena or theater of narrative construction and consumption and so was the movie theater. The representation of court proceedings in film, therefore, brought about a doubling up, or thickening, of narrative space and functionality.”³⁹ Black’s study of law in film reveals that “films about law are stories about the process of storytelling, or narratives about narrative.”⁴⁰ When we turn to law in film, Black urges special attention be paid to their narrative connections and disconnections, as the challenge of law-film scholarship is to chart law and film as narrative regimes “in parallel.”⁴¹

The second avenue for broadening law and film scholarship is to look beyond trial films to other examples of the law-film genre. Anthony Chase, for example, argues that just as law “is more than litigation, legal movies are more than courtroom drama.”⁴² While he does not offer a precise idea of how to bound the genre, Chase ingeniously organizes his analysis around doctrinal areas, surveying films in which constitutional questions, criminal law, tort liability, and so forth provide the dramatic framing. In doing so, Chase opens up new ways of thinking about what counts as a film about law.

Second, and more important for the work we are doing in *Law on the Screen*, Chase argues that scholars should look to film as a domain to understand the “relationship between law and justice, between equality and the legal system.”⁴³ Chase wants to connect law and film scholarship to the analysis of the social forces, such as race, class, and gender, that shape the world of law beyond film and to use this analysis to criticize the idea that legal justice can or should be blind. Scholarship on law and film, Chase argues, should help us “think through the cultural and political issues that law has always raised everywhere.”⁴⁴ Like Morson’s notion of sideshadowing, Chase calls on scholars to construct what he calls a “cinematic jurisprudence—a way of

looking at law through the lens of the cinema that projects an alternative view of legality, one every bit as likely to undermine ruling ideas about fairness and formal legal equality as to reinforce them.”⁴⁵

Chase notes that film’s modes of visualization are “constantly transforming the way we see the law,” and he claims that “no technical apparatus can do more to unblindfold justice than the movie camera.”⁴⁶ His optimism about film’s sideshadowing is a powerful inspiration to the broadened vision of law and film scholarship that we hope to promote. Like Chase, we do not believe that “the visualization of justice can indefinitely be cordoned off from the sociology of law, from popular discussion of how well legal institutions work, and from the strategies and practices of professionals who operate a system being transformed right before their eyes.”⁴⁷

In conceptualizing and organizing this volume we build on Black’s and Chase’s work. We asked our contributors to analyze films for what they reveal about the narrative processes of law and film, and about the jurisprudence, critical or transformative, that film makes available to law. In addition, we sought to bring together two kinds of law-film scholarship that are generally pursued and presented separately, namely studies of representation and studies of reception.

As we have already noted, studies of the representation of law in film constitute by far the most common type of law-film scholarship. In general, these studies treat films “as ‘texts’; the point is to provide more or less definitive ‘readings’ of them.”⁴⁸ Sometimes this work is energized by an interest in the way films about law imagine and construct their subjects. “The key insight . . . is that narratives or images always imply or construct a position or positions from which they are to be read or viewed.”⁴⁹ Studies of representation “provide a way of *connecting* the account of textual forms with an exploration of intersections among readers’ subjectivities.”⁵⁰

Studies of reception, in contrast, take seriously understandings of non-specialized audiences. Here the interest is in the social life of the image. Viewers, readers, are no longer implied. In reception studies they are embodied, given voice and attention. As Richard Johnson puts it, the “problem is how to grasp the more *concrete* and more *private* moments of cultural circulation.”⁵¹ Reception studies call attention to the various and contingent

ways that images are consumed by exploring patterns of reception over time and among different groups.

Finally, reception studies caution us about the generalizability of the specialized studies of representation that dominate the field. As Johnson puts it, “All cultural products are ‘read’ by persons other than professional analysts . . . , but we cannot predict these uses from our own analysis. . . . As anyone knows, all our communications are liable to return to us in unrecognizable or at least transformed terms.”⁵² Juxtaposing studies of representation and reception, we believe, enriches both, not by creating a hierarchy in which “our” readings are used to criticize “their” less sophisticated “misreadings,” but rather by reminding us of the richness of the image in its layered meanings and its complex social life.

Overview of the Book

We begin this volume with three studies of the representation of law in film, three examples that illuminate the narrative connections and disconnections between law and film and, at the same time, open up a dialogue about cinematic jurisprudence. The first, Orit Kamir’s analysis of Roman Polanski’s *Death and the Maiden*, takes up both of these concerns. Film and law, according to Kamir, share parallel discourses that both “reflect and refract fundamental values” in their societies. There is, she argues, a degree to which explicit legal films provide “legal indoctrination [and] train audiences in judgment,” and some films contain what Kamir calls “popular jurisprudence.” Thanks to these parallel discourses, cinematic-legal representation can be useful not only for shaping legally literate citizens, but also for effectively critiquing the legal system by exposing its underlying value systems.

Death and the Maiden depicts the fictional scenario of a woman, Paulina, seeking revenge for torture and rape she endured under a brutal dictatorial regime that has since been overthrown. According to Kamir, “*Death and the Maiden* asks how law does—and should do—justice, locating a victim’s personal memory within a collective history in the fragile moment when a conflicted society struggles with its unbearable past and intimidating future.” Throughout the film, Paulina’s need for revenge as a victim comes into con-

flict with the overarching interest of the law to provide social stability and normalization.

Paulina and her husband Gerardo embody two different ways of conceptualizing the relationship between law and justice. Gerardo, the cerebral, pragmatic lawyer, privileges law and order above justice. He thinks that law must be forward looking, attending to the future implications of all its decisions. Paulina, on the other hand, sees law merely as a “social organ,” an instrument whose value is found in its ability to produce justice for the victims of the old regime. Just law cannot leave the past behind until it has fully confronted the violence and abuse she suffered.

As Kamir argues, the cinematic representation of this abstract legal theme—the struggle between the claims of retributive justice and the interests of law—creates a distinctive cinematic jurisprudence. Kamir discusses three elements of this jurisprudence. First, she argues that by framing the law versus justice question within the gendered conflict between a man and a woman, *Death and the Maiden* “suggests a deep linkage between victims’ struggle for voice and memory within a legal system serving a community that wishes to forget and deny its skeletons, and women’s struggle for legal recognition within the patriarchal, often misogynistic law.” Second, Kamir analyzes the cinematic techniques that director Roman Polanski uses to generate a split viewer identification with each of the protagonists. This split identification is employed to elicit what Kamir calls “cinematic judgment”—that is, cinematic means are used to “invite [the] viewer to adopt certain points of view, go through mental processes, and arrive at conclusions.” At various points in the film, the viewer is sympathetic to Gerardo’s point of view; at other times we share Paulina’s judgment of law’s inadequacy. “In calling its viewers’ attention to the ways in which a member of any judging community, be it legal or cinematic, may be seduced to side with the aggressor at the victim’s expense, *Death and the Maiden* illuminates the inner operation of a central element of the legal system.” Ultimately, the cinematic judgment framed by *Death and the Maiden* leads the viewer unwittingly into powerful self-judgment. The film puts its viewers on trial, forcing us to judge ourselves and our views about the complex play of justice and ordered legality.

The third and final section of Kamir's chapter explores the film's reflections on criminal prosecution and truth commissions as alternative modalities for responding to historic injustices. Weighing the merits of each in the quest for "truth" and social reconciliation, "the film allows us to consider the socio-legal choices through detailed, specific considerations of the characters' personal well-being, bringing an abstract question very close to home." In other words, the cinematic representation of the debate about the competing roles of criminal prosecution and truth commissions in the social healing process is manifested in two sympathetic characters and their stories, thus making the issues more accessible—and more complicated—to the viewer. Paulina's and Gerardo's predicaments in *Death and the Maiden* open up the larger question, "Is the law equipped to handle atrocities for which there is—and can be—no ordinary, familiar evidence?" Kamir's analysis of *Death and the Maiden* makes a strong case for film and law as parallel, influential social discourses.

From a film that focuses on the gendering of law and its adequacy in responding to a victim's horrific pain, Michael Shapiro turns to race and the way discourses of race frame law's narrative conventions and law's role in constructing and maintaining "America's racial-spatial order." Expanding on Michel Foucault's concept of a productive relationship between policing and "the delinquent milieu," Shapiro examines how Carl Franklin's film *Devil in a Blue Dress* depicts the law-delinquency relationship as a way of inviting viewers to judge the law itself. The film's jurisprudence is relentlessly, though subtly, critical, depicting the legal order as deeply implicated in the constitution of racialized delinquency.

The story, set in post-World War II Los Angeles, revolves around Easy Rawlins, a black man hired covertly by the L.A. police to help a powerful white politician avoid scandal by tracking down his girlfriend, who "frequents black establishments." Through images of racialized space and rigid borders, Franklin's film articulates the "politics of an urban frontier," with all its racial and class hierarchies. In his analysis of the film, Shapiro considers the cinematic representation of this racial-spatial order (or "racial geography"), focusing in particular on the way film generates productive commentary about law, race, and society. *Devil in a Blue Dress*, he argues, "sup-

plements the familiar detective story with a politically inflected emphasis on the connection between the administration of legalities and America's black-white relations."

Easy Rawlins initially becomes enmeshed in the law-delinquency racket because he is struggling to pay a mortgage and prevented from finding a good job. As Shapiro argues, Easy is "afflicted by the post-Reconstruction forces that have emerged to shape the identity spaces within which he strives to shape himself." Further, in Shapiro's view, Easy faces a major identity paradox: "In seeking economic independence—freedom from reliance on white structures—he must negotiate an effective, economically situated self within the same white world that impedes that achievement." In a white-dominated city, the "micropolitics of survival" dictate that Easy must "traverse hostile foreign spaces" in order to secure his own personal home space. The irony is that the detective work that poses grave risks to Easy is all in the service of a mayoral candidate whose election is largely irrelevant to Easy's life.

Shapiro suggests that these overlapping themes of place, identity, and social segmentation are extremely significant to the film's jurisprudential and political perspective. Quoting Stephen Haymes's observation that "'the territorial maintenance and integrity of black settlements [has been a] form of civic association,'" Shapiro argues that *home* is the nexus of the film's view of the complex relationship of race, law, and justice. Viewed in the context of America's history of slavery, in which people were legally defined as property, Easy's struggle for home ownership serves as a metaphor for self-ownership, and a powerful commentary on the African American, post-Reconstruction era fight for recognition of full, rights-bearing personhood and self-determination. Unlike *Death and the Maiden*, in which the question of justice is thematized in the dramatic standoff between a torturer and his victim, here Shapiro suggests "the imagistic dimension of a film can mobilize interpretive moments that clash with the action-oriented narrative."

Shapiro connects these narrative elements with the film's cinematic devices. He notes the film's use of such visual narrative as body language and cinematic versus extra-cinematic space to communicate key issues concerning racial tension, delinquency, and disenfranchisement. Visual omissions, he points out, are nearly as significant as the images that make up the film.

By portraying how Easy's body language changes in different settings, the film effectively communicates how "Easy [becomes] a victim of the criminal justice system, and of the broader set of social and political forces with which black America has had to contend."

Devil in a Blue Dress's "racial-spatial order" ultimately speaks to law's role in America's history of nation building and sideshadows that history, opening up a distinctive set of critical interpretive possibilities. "Once we recognize," Shapiro observes, "the fragmented nature of America's urban landscapes, in which the geometry of the city must be seen as a historically effected collage of diverse life worlds, which have been coercively assembled by the trajectory of Jim Crow laws and practices, we are positioned to offer a challenge to the dominant political narrative of nation building, shared by the legitimization stories of many states and canonical political theory texts." Yet, unlike *Death in the Maiden*, the film sees no redemptive possibilities in law or politics, in either retributive justice or truth commissions. "Effectively," Shapiro argues, "*Devil* tells us, through form as well as storyline, that those who are unable to anticipate relief from either the electoral process or law enforcement must rely on friendship." Indeed, Shapiro argues, the friendship network is so important as to constitute a vital "extra-state network." As such, *Devil in a Blue Dress* ultimately offers an important repudiation of mainstream legal and political theory, undermining the narrative of modernity in which the legal and political order of the state supersedes all other affiliations and micropolitical orders.

The third of our chapters continues and extends this exploration of cinematic jurisprudence and its critical and transformative possibilities. Exploring what he calls the "dream life of law," Richard Sherwin points to the way "mythic discourse" is employed in court (by skillful trial lawyers) and in cultural productions (such as film) as a means of generating legitimacy for particular legal meanings. Inasmuch as legal legitimacy is derived from society's perceptions of historical and cultural truths, generating myth is crucial to building legitimacy. As Sherwin explains, "The battle to control the constitutive norms of myth by taking over the means of cultural production is crucial to many aspects of law and politics."

Sherwin's analysis of law, myth, and cultural production is predicated on the assumption that our present state of cultural transition (into the "infor-

mation age,” if you will) closely parallels another period in history, the baroque era. Sherwin explores this parallel to provide a “thicker description of contemporary cultural conditions.” He argues that both the baroque period and the present embody a controlled mass culture of spectacle, amazement, and distraction where passivity is the norm and cultural kitsch, as a phenomenon of mass denial, vacates the authentic. Accordingly, this culture of spectacle proliferates aesthetic forms in defense against the destabilizing prospect of chaos, instability, and meaninglessness. Just as it can be argued that modernity emerged from cultural crises of the seventeenth-century baroque, Sherwin posits that our neo-baroque era marks a major transition of law and politics into what he refers to as an unknown, new constitutional regime. Using David Lynch’s *Mulholland Drive* as a vehicle for his exploration of this regime, Sherwin sets out to illustrate and explain what he means by neo-Baroque culture, highlighting the parallel importance of “dreamscape” in Baroque and neo-Baroque culture, and, finally, exploring the implications of myth, dream, and denial for the way we describe and make sense of law and justice in contemporary society.

Sherwin compares *Mulholland Drive*, a twisted Hollywood tale of envy, murder, and delusion, with the Baroque era’s dream play genre. In the film, dream is a means of psychological escape and denial for the protagonist, Diane, after she murders her lesbian lover. Perversions of justice abound, as images of power and desire spin out of control. Diane’s ambitions, spurred into delusion by Hollywood’s dream production, illustrate with devastating clarity the condition described by psychoanalyst Benjamin Kilborne: “In our contemporary world, it is striking how much technology feeds our illusions. People come to believe that an ideal of themselves can be actualized.”

In Diane’s dream she is not an envious murderer but a different woman, named Betty—beautiful, successful, and oblivious to Hollywood’s “dark underside.” Yet, Diane searches relentlessly throughout the film for her own true identity. Her world of illusion ultimately dissolves, as she is forced to confront “herself as the monstrous source of her unacceptably violent impulses”—at which point she commits suicide. Sherwin reads *Mulholland Drive* as a contemporary retelling of “the Oedipal inversion of the ancient monomyth of harmonious justice . . . [which] shows us the face of intrapsychic and cultural-political discord.” This discord is the key to understanding

what Sherwin argues is a new conceptual paradigm for law, power, and legitimacy.

After making his case for the neo-Baroque features of style and content in the film, Sherwin explores the contemporary social and legal salience of *Mulholland Drive*, asking, whether we recognize in this dream-ritual a contemporary residue of the medieval ordeal, a trial in which, rather than rationally establish factual proofs, deeper forces reveal the accused's fate. As he reads it, the film suggests that our society is now on the verge of a prolonged drift into crisis and uncertainty and a new mythic integration has yet to appear.

The representational strategies of *Mulholland Drive*, Sherwin insists, prefigure a legal spectacle, or a "jurisprudence of appearances, [where] law remains in force but lacks in significance." This, he posits, is the true nature of law governing the "market-state" of our era, an era in which the kind of choices—law versus justice, friendship versus law/politics—highlighted in the earlier chapters seem inadequate to capture our most important jurisprudential dilemmas. As he sees it, spectacle cannot be a legitimating force, because it cannot substitute for the ultimate power of myth to "inspire and sustain belief." Yet spectacle may be all we have. Lynch's film effectively raises these deep socio-legal dilemmas but does not ultimately resolve them by offering "a vision of justice's thematic reconstitution."

The next three chapters move us from representation to reception, highlighting how the narrative structures and jurisprudential possibilities available in film are consumed in various populations in various times and places. In the first of these chapters Jennifer Mnookin examines the cinematic construction of legal evidence in two documentary films, *Paradise Lost: The Murders at the Robin Hood Hills* and *Paradise Lost 2: Revelations*, and the way these films have been consumed by their viewers. These documentaries follow the trials of three teenage boys in West Memphis, Arkansas (dubbed the "West Memphis Three" or the "WM3"), who were accused of a triple homicide. All three were convicted: two received life sentences, one the death penalty. In their reception, the films have become an important part of an activist campaign focusing on the gaps in the prosecution's case and what many see as a miscarriage of justice.

Mnookin emphasizes the ways in which these films invite a particular

kind of reception even as they raise important questions about the narrative and evidentiary conventions of law and film. By “jurifying” their viewers on a number of different levels, these films provide an especially rich opportunity for reflection on questions of evidence, proof, and collective judgment. Together, the two films raise such questions as what kinds of inferences should persuade us, and what proofs should we require before we think we “know” something? Should evidence be dissected and parsed, or should it be analyzed more holistically? And whose reading of “the facts” ought to be deemed authoritative, and why?

As Mnookin points out, these films implicitly set up two significant divides: first, between direct evidence and circumstantial evidence, and second, between evidence of character and evidence that emerges from the traces of the crime itself. To convict the WM3, the prosecution anchored its case in a single piece of direct evidence, the confession of one of the boys, supplemented with circumstantial and character evidence pointing to satanic cult motives for the killings. The defense, meanwhile, sought (unsuccessfully) to cast reasonable doubt on the credibility of the confession, and to highlight the lack of other direct evidence.

In their cinematic representation of the trial and its aftermath, the filmmakers emphasize the dangers of relying on circumstantial and character evidence. Here the film sets itself up as a kind of “corrective criticism,” saving law from error, seemingly offering an alternative and perhaps superior domain for doing justice. Interestingly, however, while this posture is a central theme of both films, Mnookin calls our attention to what she identifies as the “strong dichotomy” between the treatment of evidence in the two films. Although the first film wants the viewer to privilege physical evidence (or conclusions drawn from the lack thereof) over circumstantial, the sequel uses circumstantial and character evidence almost exclusively to cast an alternative suspect in a guilty light.

The dichotomy Mnookin identifies illuminates interesting parallels between the narrative of film and courtroom narrative. In film, as in law, “proof and . . . narrative interact dialectically. A compelling story inevitably requires more than the evidence itself; but a persuasive story must also manage to engage meaningfully with the available proof or its absence.” In other words, proof itself is not sufficient—there must be effective narrative sur-

rounding it, because of the centrality of character evidence to human understanding of behavior. Even a story told well—a good circumstantial piece of narrative that “makes sense” to our human sensibilities—will ultimately not prove compelling if it lacks a solid foundation in evidence. The *Paradise Lost* documentaries showcase this fact through subject matter as well as through cinematic narrative style. It becomes apparent on close examination that the filmmakers ultimately fell into the same strategic legal narrative conundrum as did the prosecution team. Hence this film, and others that focus on legal cases, highlight the contingency of judgment in both film and law and may, in spite of its own intentions, suggest that law’s narrative and evidentiary conventions are no worse, if no better, than the narrative and evidentiary conventions of other discourses.

Mnookin further explores what effect the selective inclusion or exclusion of evidence has on collective judgment and perceptions of “truth.” She observes that the filmmakers “*seem* to be giving us the whole story, providing a neutral depiction and letting the facts speak for themselves. But they, of course, remain the master puppeteers, controlling precisely what evidence we see and evaluate.” The exclusion of certain character evidence nevertheless has persuaded more than a few of the films’ viewers “beyond a reasonable doubt” of the innocence of the WM3.

Others remain skeptical, and a public debate, rooted deeply in the films, media coverage, and original trial evidence, has arisen on an online forum, wm3.org. Here film reception is played out in another mediated domain, as ordinary citizens spurred into political action interact online and carry the trial of public opinion on through painstaking examination of “the facts” of the case of the WM3. Evidentiary themes thus continue to be salient in ongoing, real-life reactions to the *Paradise Lost* series. Mnookin notes one of the particular intricacies of the reception of law films, namely the creation of a “duplicate jury,” a part of the viewing public eager to rehear and retry the case, spurred on by film itself. Mnookin observes, “What wm3.org has created, in essence, is a duplicate jury on a much vaster scale than the original.”

While cinematic and courtroom narratives strive to fill in the gaps of missing evidence, we cannot ultimately know the real-life *truth* of what happened to the three boys murdered in West Memphis. The heated public debate and grassroots activist networks occasioned by the films attest to the

ongoing struggle of each side to claim knowledge of the “truth.” As such, these films illustrate powerfully “the way that real-life stories cohere only incompletely. Though the evidence and the story may have a dialectical relation, they do not together create a seamless synthesis.” Those who consume law films live in the gap between proof and truth, reworking what counts as proof even as they make their own truth claims.

The next chapter continues Mnookin’s interest in the reception of law’s moving image through an analysis of Steven Zaillian’s *A Civil Action*. Focusing particularly on the critical response it received from journalists and the people whose lives were depicted in the film, Diane Waldman argues that these responses, what she calls “corrective criticism,” provide an important means to gauge whose interests are being served by a particular narrative construction of law in film. Corrective criticism, she claims, enables us “both to recognize and to demonstrate more readily the stubborn persistence of limited paradigms for encoding experience, and [it gives] voice to the counternarratives of those whose stories are most often elided or ignored.” Like Kamir’s reading of the representation of law in *Death and the Maiden*, Waldman sees the reception of *A Civil Action* as highlighting law’s failure in the face of grievous injuries.

A Civil Action recounts the story of a class action lawsuit brought by several Massachusetts families against two large corporations for injuries allegedly resulting from the contamination of the town’s water supply. Both non-fictional and cinematic versions of the story raise the same large jurisprudential questions: Can the legal system, especially the traditional tort system, which is predicated on notions of private law and individual rights and responsibilities, adequately deal with injuries and illness caused by harm to the environment? Can it achieve justice by punishing those responsible, deterring others, and achieving some kind of compensation for victims?

Waldman insists that substantial conflict can be detected between the cinematic narrative and real-life perceptions of the meaning of the story. To illustrate this, she analyzes the “omissions, additions, and changes” of fact and gaps in the narrative in *A Civil Action* “that crucially shape our conceptions of the legal practice in general, personal injury law, and the issues at stake in this case in particular.” Later Waldman turns her attention to the

corrective criticism the film elicited, highlighting the public struggle over the film's marketing and the reception of its perceived meaning.

Waldman begins, however, by exploring the film's focus on a single protagonist, drawing structural parallels between *A Civil Action* and the classic western. Because the film is structured primarily in terms of a social and ideological struggle between the plaintiffs' lawyer, Jan Schlichtmann, and the defense attorneys, Waldman calls it a "disguised western." Thanks to this narrative structure, the film version of *A Civil Action*, marketed as a story about how "one dedicated soul can make a difference," tells a very different legal story than does the book that inspired it.

The film revolves around Schlichtmann's moral transformation rather than on the political struggles and community agitations of the afflicted families. By depicting the personal injury lawyer as a heroic character struggling on behalf of sympathetic victims, the film effectively challenges popular notions of personal injury law. And yet, as Waldman points out, it implicitly reinforces negative stereotypes of such lawyers when Schlichtmann ultimately discovers a calling in the (more noble) practice of environmental law. By focusing on Schlichtmann's budding social conscience, the film "undermines its efforts to explore the systemic nature of the problems addressed and threatens to hamper our ability to envision something other than individual responses to them."

Waldman also notes how, because of its compression of time, the film fails to convey what an epic battle most civil suits truly are. Thus *A Civil Action* fails in an important jurisprudential task, namely to raise the issue of "what's at stake in—and what's wrong with—legal actions of this nature." Indeed, the film would seem to mimic one of the essential gestures of legal narrative, namely the individualization of social conflict. In this sense, film narrative replicates one of the deficiencies of law instead of offering alternative narrative possibilities.

When *A Civil Action* was released, film critics, activists, and the story's real-life protagonists brought these issues, among others, into public debate. Film reviews criticized *A Civil Action* for getting caught between the conventions of a "legal thriller" and an "issue movie," never committing to one or the other. Though Schlichtmann's character fits the "disguised western" as the "one dedicated soul" out to make a difference, the environmental issues in

the film ultimately undermine the convention, confining Schlichtmann to very un-cowboylike action within a bureaucratized legal order. (The film, for example, never culminates in “some singular act of heroism or cathartic violence,” but rather with a letter to the EPA.) As the critics pointed out, the bad guys essentially won, and the implicit message is that one man’s legal quest perhaps cannot make a difference against corporate capitalism.

The Massachusetts families whose lives were portrayed in the film also offered their own readings of the film, objecting to its portrayal of Schlichtmann as the legal hero while robbing the families of their agency in the suit. Newspaper articles published in response to *A Civil Action* contained interviews with families insisting that the suit was much more of a community effort than the film portrayed. Their goal, they said, was to encourage other people to speak up and take similar action.

The response from the companies portrayed as the polluters in *A Civil Action* complicates and enriches discussion of the legal issues at the heart of the story. Waldman describes one company’s extensive web-based response. The counternarrative set forth by the company, entitled “Beyond a Civil Action,” purports to “set the record straight,” but interestingly does not deny the facts of film so much as it focuses on the changes it has since adopted. By emphasizing what a good corporate citizen it is *now*, the company implicates itself in the earlier environmental and public health transgressions portrayed in the film, thus adding new layers of complexity to the story of the trial and its outcome. Although Hollywood may have wanted to avoid the “issue film,” the corrective criticism of the real-life protagonists brought these social issues to the forefront, supporting Waldman’s contention that cinematic corrective criticism indeed serves a useful and illuminating purpose in discussions of the social life of law and film.

Eric Smoodin concludes our analysis of film reception by using a rather ingenious archival device. Focusing on fan responses to Frank Capra’s 1939 *Mr. Smith Goes to Washington*, Smoodin uses letters written to Capra as a lens to assess how the film was consumed by its viewing audience. Smoodin’s analysis suggests the importance of taking a comprehensive view of reception, considering direct commentary by a film’s audience as well as critical and other responses that situate such responses in their appropriate historical context.

Smoodin's discussion of *Mr. Smith Goes to Washington* supports the broadening of the law-film genre that Chase advocates. Focusing on how law is made, Smoodin contends that the film is a "scene-by-scene primer in American law, both state and federal: it informs viewers about the rules that govern Senate debate . . . , the role of the filibuster, how a senator can be appointed by a governor, and how a bill becomes law, among other things." The letters sent to Capra, Smoodin argues, "give us a sense of the discourses available, in 1939, for talking about connections between law, politics, and popular culture, and provide at least some evidence of a portion of the audience desperate for adult entertainment and eager to talk about adult ideas." Thus the reception of *Mr. Smith* not only informs an analysis of the cultural life of law, but also shows the ways in which "political identities and affiliations came to be formed around movies, literature, and music."

Audience responses suggested that the viewership of the film identified itself as "the everyman so often celebrated in Capra movies" and that the audience "sought to identify with characters who represented this same body politic." If the response to *Paradise Lost* was to mobilize a quest for justice and the response to *A Civil Action* was to produce various forms of "corrective criticism," *Mr. Smith's* reception primarily took the form of sympathetic identification. The film offered up an idealization of democracy; silenced by a popular culture awash in cynical portraits of our law and politics, *Mr. Smith* gave voice to a more believing audience. Viewers derived immense satisfaction from an "apparent political unity between image and spectator." They longed for "the kind of justice that the film celebrated." Whereas each of the other films discussed in this book raises dark specters and offers critical jurisprudential perspectives, *Mr. Smith* was received as a hopeful portrait of "democratic justice." It opened up a set of discursive connections, which Smoodin argues came alive in the 1930s, between religious practice and popular culture, an alliance in support of an "activist popular culture based on moral and democratic principles."

Calling attention to the plurality and heterogeneity of viewer responses, Smoodin nonetheless argues that "Capra's public looked to the director as a moral visionary and political reformer." One need only refer to Sherwin's reading of Lynch's *Mulholland Drive* or Waldman's discussion of *A Civil Action* to understand the wisdom of Smoodin's conclusion that it is "difficult

for us to imagine such a relationship between audience and an American filmmaker today.” Yet historicizing the study of film reception also should remind us, Smoodin contends, of the way law in film may offer “an aesthetics of activism” and, in so doing, stimulate “social change.”

Conclusion

Whether offering critique or “an aesthetics of activism,” the analyses of film presented in these pages chart our one small piece of a large terrain ripe for scholarly inquiry. Broadening the agenda of film scholarship to compare the narrative conventions of law and film and to explore a cinematic jurisprudence allows us to understand film as an arena of legal performance that both profanes the law and, at the same time, opens up new imaginings of legality. Examining both the representational strategies and the reception of films about law allows us to see how the performances of law in that domain play out in the social and cultural worlds in which law is made and remade. Today we can no longer adequately understand those worlds, or the law situated therein, unless we follow Stewart Macaulay’s injunction and become “participant observers of . . . mass cultures,” attending as we do to the varied and complex connections between law on the books, in action, and on the screen.

Notes

1. Samuel Weber, “Mass Mediauris; or, Art, Aura, and Media in the Work of Walter Benjamin,” in *Walter Benjamin: Theoretical Questions*, ed. David Ferris (Stanford, Calif.: Stanford University Press, 1996), 29.
2. Richard Sherwin, “Picturing Justice: Images of Law and Lawyers in the Visual Media,” *University of San Francisco Law Review* 30 (1996): 894, 896.
3. Saul Morson, *Narrative and Freedom: The Shadows of Time* (New Haven, Conn.: Yale University Press, 1994), 117.
4. We are not claiming that film has a unique ability to sideshadow. Indeed, almost any work of fiction might be said to have this property as well.
5. Vivian Sobchack, *The Address of the Eye: A Phenomenology of Film Experience* (Princeton, N.J.: Princeton University Press, 1992), 17.
6. Morson, *Narrative and Freedom*, 118.
7. It is, of course, true that the moving image, the mass-mediated image, is only

the latest domain within which law is imagined. For an analysis of law and the image in a different domain, see Costas Douzinas and Lynda Nead, *Law and the Image: The Authority of Art and the Aesthetics of Law* (Chicago: University of Chicago Press, 1999).

8. For an important early effort, see John Denvir, ed., *Legal Reelism: Movies as Legal Texts* (Urbana: University of Illinois Press, 1996). See also Paul Bergman and Michael Asimow, *Reel Justice: The Courtroom Goes to the Movies* (Kansas City: Andrews and McMeel, 1996).

9. Stewart Macaulay, "Images of Law in Everyday Life: The Lessons of School, Entertainment, and Spectator Sports," *Law and Society Review* 21 (1987): 185. These images offer, he contended, "alternative resources from which people fashion their own understandings of what is necessary, acceptable, and just." See p. 211. See also Anthony Chase, "Toward a Legal Theory of Popular Culture," *Wisconsin Law Review* 1986 (1986): 527.

10. Macaulay, "Images of Law in Everyday Life," 185.

11. For a recent example of such criticism, see Peter Brooks, "A Slightly Polemic Comment on Austin Sarat," *Yale Journal of Law and the Humanities* 10 (1998): 409. In contrast, Berlant claims "the very ephemerality of an archive makes it worth reading. Its very popularity or its effects on everyday life or its expression of emblematic knowledge makes it important. Its very ordinariness requires reflecting on what is merely undramatically explicit" (Lauren Berlant, "Collegiality, Crisis, and Cultural Studies," *ADE Bulletin* 117 [fall 1997]: 4).

12. For an interesting discussion of corrective criticism see Diane Waldman, "A Case for Corrective Criticism: *A Civil Action*," this volume.

13. Macaulay, "Images of Law in Everyday Life," 214.

14. Lawrence Friedman, "Law, Lawyers, and Popular Culture," *Yale Law Journal* 98 (1989): 1580.

15. *Ibid.*, 1587, 1588.

16. *Ibid.*, 1580.

17. *Ibid.*, 1588.

18. Stuart Hall et al., *Policing the Crisis: Mugging, the State, and Law and Order* (New York: Holmes & Meier, 1978).

19. In contrast to Freidman, Hall describes cultural studies as "the posing of sociological questions against sociology." Stuart Hall, "Cultural Studies and the Centre," in *Culture, Media, Language*, ed. Stuart Hall, D. Hobson, and A. Lowe (London: Hutchinson, 1980), 21.

20. Alison Young, "Murder in the Eyes of the Law," *Studies in Law, Politics and Society* 17 (1997): 31.

21. *Ibid.*

22. See, for example, Norman Rosenberg, "Young Mr. Lincoln: The Lawyer as Super-hero," *Legal Studies Forum* 15 (1991): 215. See also Anthony Chase, "Lawyers and Popular Culture: A Review of Mass Media Portrayals of American Attorneys," in *Lawyers: A Critical Reader*, ed. Richard Abel (New York: New York University Press, 1997); Steve Greenfield, "Hero or Villain: Cinematic Lawyers and the Delivery of Justice," in *Law and Film*, ed. Stefan Machura and Peter Robson (Oxford: Blackwell, 2001); and Michael Asimow, "When Lawyers Were Heroes," *University of San Francisco Law Review* 30 (1996): 1131.

23. Jessica Silbey, "Patterns of Courtroom Justice," in *Law and Film*, ed. Stefan Machura and Peter Robson (Oxford: Blackwell, 2001).

24. See, for example, Austin Sarat, "Imagining the Law of the Father: Loss, Dread, and Mourning in *The Sweet Hereafter*," *Law and Society Review* 34 (2000): 3, and Austin Sarat, "Living in a Copernican Universe: Law and Fatherhood in *A Perfect World*," *New York Law School Law Review* 43 (1999–2000): 843.

25. Nicole Rafter, *Shots in the Mirror: Crime Films and Society* (New York: Oxford University Press, 2000).

26. Silbey, "Patterns of Courtroom Justice"; and Carol Clover, "Judging Audiences: The Case of the Trial Movie," in *Reinventing Film Study*, ed. Christine Gledhill and Linda Williams (New York: Oxford University Press, 2000). See also Norman Rosenberg, "Hollywood of Trials: Courts and Films, 1930–1960," *Law and History Review* 12 (1994): 341; Nicole Rafter, "American Criminal Trial Films: An Overview of Their Development, 1930–2000," in *Law and Film*, ed. Stefan Machura and Peter Robson (Oxford: Blackwell, 2001); Carol Clover, "Movie Juries," *DePaul Law Review* 48 (1998): 388; and Gerald Uelman, "The Trial as Circus: *Inherit the Wind*," *University of San Francisco Law Review* 30 (1996): 1221.

27. See, for example, Lawrence Douglas, "Film as Witness: Screening Nazi Concentration Camps Before the Nuremberg Tribunal," *Yale Law Journal* 105 (1995): 449.

28. As Mezey notes, "Very few articles on popular culture and law have made it into legal scholarship, and even fewer actually use the methodology of cultural studies." Naomi Mezey, "Legal Radicals in Madonna's Closet: The Influence of Identity Politics, Popular Culture, and a New Generation on Critical Legal Studies," *Stanford Law Review* 46 (1994): 1859. In fact, since Macaulay's "Images of Law in Everyday Life" was published in *Law and Society Review*, only one other article on television and/or film has appeared there. The absence of attention to the mediated image has been more than a matter of a single editor's taste since during this period *Law and Society Review* has had six different editors.

29. See Richard Johnson, "What Is Cultural Studies Anyway?" *Social Text* (1986/87): 16. "The subject matter of cultural studies," Appadurai says, "could roughly be taken as the relationship between the word and the world. I understand

these two terms in the widest sense, so that word can encompass all forms of textualized expression and world can mean anything from the ‘means of production’ and the organization of life-worlds to the globalized relations of cultural production” (Arjun Appadurai, “Global Ethnoscapes: Notes and Queries for a Transnational Anthropology,” in *Recapturing Anthropology*, ed. Richard Fox [Sante Fe, N.M.: School of American Research Press, 1991], 196). Or, as Berlant puts it, “cultural studies seek to address and explicate the geopolitical specificity of cultural forms and practices; . . . to track in particular peoples’ ordinary lives the effects of discursive and institutional practices of domination, subordination, and hegemony.” See “Collegiality, Crisis, and Cultural Studies,” 106.

30. For a useful discussion of current controversies surrounding the question of whether cultural studies should be considered a discipline or a political perspective see David Morley, “So-Called Cultural Studies: Dead Ends and Reinvented Wheels,” *Cultural Studies* 12 (1998): 476; and Tony Bennet, “Cultural Studies: A Reluctant Discipline,” *Cultural Studies* 12 (1998): 528.

31. See, for example, Jane Gaines, *Contested Culture: The Image, The Voice, and The Law* (Chapel Hill: University of North Carolina Press, 1991). See also Rosemary Coombe, “Contingent Articulations: A Critical Cultural Studies of Law,” in *Law in the Domains of Culture*, ed. Austin Sarat and Thomas Kearns (Ann Arbor: University of Michigan Press, 1998).

32. See Steve Greenfield, Guy Osborn, and Peter Robson, *Film and the Law* (London: Cavendish, 2001), chapter 1.

33. Sherwin, “Picturing Justice,” 893.

34. Philip Meyer, “‘Desperate for Love II’: Further Reflections on the Interpenetration of Legal and Popular Storytelling in Closing Arguments to a Jury in a Complex Criminal Case,” *University of San Francisco Law Review* 30 (1996): 931, 933. See also Philip Meyer, “Why a Jury Trial Is More Like a Movie than a Novel,” in *Law and Film*, ed. Stefan Machura and Peter Robson (Oxford: Blackwell, 2001); and Nancy Rapoport, “Dressed for Excess: How Hollywood Affects the Professional Behavior of Lawyers,” *Notre Dame Journal of Law, Ethics, and Public Policy* 14 (2000): 49.

35. Carol Clover, “Law and the Order of Popular Culture,” in *Law in the Domains of Culture*, ed. Austin Sarat and Thomas Kearns (Ann Arbor: University of Michigan Press, 1998), 99.

36. *Ibid.*, 99–100.

37. David Black, *Law in Film: Resonance and Representation* (Urbana: University of Illinois Press, 1999).

38. *Ibid.*, 2.

39. *Ibid.*

40. *Ibid.*, 56.

41. Ibid., 34.
42. Anthony Chase, *Movies on Trial: The Legal System on the Silver Screen* (New York: The New Press, 2002), xii.
43. Ibid., xiii.
44. Ibid., xix.
45. Ibid., xiii.
46. Ibid., 31.
47. Ibid., 181.
48. Johnson, "What Is Cultural Studies Anyway?" 58.
49. Ibid., 66.
50. Ibid.
51. Ibid., 69.
52. Ibid., 46.

PART I

Studies of Representation

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Cinematic Judgment and Jurisprudence: A Woman's Memory, Recovery, and Justice in a Post-Traumatic Society (A Study of Polanski's *Death and the Maiden*)

ORIT KAMIR

... how much to acknowledge, whether to punish and how to recover
—Martha Minow

Introduction

Law and Film

This chapter's reading of a feature film demonstrates one type of work facilitated by the developing new field of "law and film," which this edited collection purports to introduce. "Law and film," an interdisciplinary, culturally oriented field in the making, can be viewed as a recent offshoot of the more established and familiar disciplines "law and society" and "law and literature." Law and film scholarship cannot yet be defined "scientifically" or characterized by a distinct methodology or worldview. It does, however, reflect shared fundamental assumptions concerning the central role of law and film in society. The links, analogies, and similarities between the discourses of law and film—and their sociocultural functions—invite some of the unique insights that can be gained from integrated analysis of these two spheres. As the chapters in this volume demonstrate, writers exploring this new field emphasize different aspects and interpretations of this common ground.

My own law and film work reflects my understanding of law and film as founded upon three fundamental premises. The first premise is that law and film are two pivotal discourses that both reflect and refract fundamental values, images, notions of identity, lifestyles, and crises of their societies and

cultures, and that there is a significant correlation between their parallel functions. Both law and film are dominant participants in the construction of concepts such as subject, community, identity, memory, gender roles, justice, and truth; they offer major sociocultural arenas where collective hopes, dreams, beliefs, anxieties, and frustrations are publicly portrayed, evaluated, and enacted. Law and film often perform these functions in ways that echo and reinforce each other, inviting attentive interdisciplinary examination. Certain underlying structures and modes of operation relevant to such functions are sometimes more explicit and identifiable in one discourse than in the other. The interdisciplinary comparison sheds light on the less obvious, analogous structures and modes of operation underlying the other discourse. Detailed comparison of such parallel structures may expand our understanding of both discourses, as well as the operation of social discourses and institutions at large. Most significant and intriguing of the parallel functions are the many subtle ways each field offers its readers or viewers a seductive invitation to take on a sociocultural persona and become part of an imagined (judging) community, sharing the worldview constituted by the law or the film. Much of my work, therefore, focuses on this.

The second premise is that some films, “law films” in particular, perform large-scale “legal indoctrination,” this is, they train audiences in judgment while examining—and often reinforcing—legal norms, logic, and structures. For decades, James Boyd White has been exploring and demonstrating how legal rhetoric constitutes human subjects and communities of readers, endowing them with collective visions, aspirations, and hopes, and supplying them with frameworks, images, and stories to imagine themselves and their world.¹ Judicial decision and other legal texts are inherently imbued with judgment and concerned with justice; their construction of subjects and communities are, therefore, inseparable from judgment and the search for justice. Less evidently—but no less significantly—the same can be said of many films. Films, much like judicial decisions and legislative rhetoric, can—and do—constitute communities (of viewers) that are often engaged in judgment, legal-like reasoning, the pursuit of justice, and self-creation through judgment and justice. Judgment is an activity not merely portrayed but often actively performed by films, together with their (constructed and/or actual) viewers; it is often a function of film’s constitution of a com-

munity of viewers and cinematic engagement in the social constitution of primary values, institutions, and concepts.²

The many and various means of performing such cinematic judgment and engaging viewers in cinematic judging acts can be complex, subtle, and often elusive, and thus uncritically influential on viewers. They frequently involve cinematic choices regarding genre, editing, methods of narration, plots, points of view, rhythm, and casting. Manipulation of viewer identification with on-screen characters and eliciting emotional responses to powerful imagery are particularly frequent strategies. Law films, which offer a direct combination and fictional integration of these two fields, are of particular interest in this context.

Law films, which treat the law as their subject matter, create on-screen fictional legal systems that execute judgment, pursue justice, and construct social subjects and communities both on- and off-screen. At the same time such law films may pass cinematic judgment on these “legally constructed” individuals and communities and on the judgment and justice their fictional legal systems demonstrate and execute. A film can be read as passing such cinematic judgment when, in addition to portraying an on-screen fictional legal system, it offers alternative cinematic constructions of subjects and societies, of justice and judgment. In its cinematic judgment, a law film may echo the worldview encoded in its fictional legal system, allowing legal and cinematic mechanisms to reinforce each other in the creation of community and worldview. Alternatively, a law film may constitute a community and value system that criticizes or undercuts those supported by its fictional legal system. Moreover, as a rich, multilayered text, a law film can perform both these functions concomitantly, through different means and on different levels, evoking complex and even contradictory responses toward social and legal issues presented on screen.³

A law film’s cinematic judgment of its on-screen legal system constitutes a “judging act” (or an act of judgment) while also offering jurisprudential commentary. Law films, therefore, often invite analysis as jurisprudential texts. This constitutes the third premise of my law and film theory: (some) films contain popular jurisprudence. Such popular jurisprudence embedded in film may be sophisticated, insightful, and illuminating. Associated with mass consumption and the entertainment industry, it is likely to be over-

looked and dismissed, but unrestricted by conventional academic disciplines and categories, it may be fresh, original, innovative, and imaginative, transcending familiar routes and formulas.

The three basic premises are, therefore, that some films' modes of social operation parallel the law's; that some films perform viewer-engaging judgment; and that some films contain popular jurisprudence. The study of films' performance of these functions is a study of law and film. In reference to the three basic premises, law and film studies may sometimes be distinguished on the basis of their primary focus and labeled accordingly as examining "film paralleling law," "film as judgment" and/or "film as jurisprudence." Law films, films that treat legal issues as their subject matter, often operate in two or three of these dimensions, offering a complex and powerful combination of these cinematic-legal functions. Their study may often require an integrated examination of two or three of their cinematic-legal functions.

A law and film study of a film—or a group of films (such as a genre)—may examine its implementation of one or more cinematic-legal functions in search of the film's underlying value system. Such a law and film study may discern that despite the film's proclaimed adherence to liberal values such as equality or dignity, the film's jurisprudence or judging act presumes and promotes conflicting values, such as male honor or gender- or race-based supremacy. Similarly, through the exploration of a film's jurisprudence and/or judging act, such a study may disclose a film's unacknowledged underlying perceptions of gender roles, familial structures, and human relations. It may shed light on the embedded portrayal and treatment of social and normative issues that may otherwise be effectively elusive.

Why should one invest in reading films as popular jurisprudential texts? Why explore the judging acts they perform and analyze the social values they constitute for their viewers? One answer is that films are overwhelmingly influential, playing a key role in the construction of individuals and groups in contemporary societies. They reach enormous audiences and, combining narrative and appealing characters with visual imagery and technological achievements, stir deep emotions and leave deep impressions. Leading viewers through cinematic judgments, constituting notions of justice, equality, honor, and gender, films can be extremely effective in molding public ac-

tions and reactions. Touching the viewer's emotions and imagination, a law film may introduce a viewer to jurisprudential issues and value systems while provoking a host of emotive responses and powerful impressions. More people are likely to be influenced by cinematic judging and jurisprudence than by theoretical legal texts or even judicial rhetoric. Additionally, since most viewers treat film as a source of entertainment and not as a jurisprudential challenge to be critically examined, a film's socio-legal influences may remain unnoticed and be embraced uncritically, thereby augmenting film's influence and calling for systematic critical investigation.

Furthermore, the study of cinematic jurisprudence may be valuable for its jurisprudential insight, that is, for purely real-world legal purposes. The study of cinematic judgment acts may help expose structures, techniques, and mechanisms that operate in real-world legal judging yet are more difficult to discern and identify in that realm.

Purely theoretical explication of law and film may seem abstract and baffling, particularly at this early point in the genre's development. A case study of a film is therefore useful to illustrate the arguments presented above and the actual workings of law and film. The film I discuss below, Roman Polanski's 1994 film version of Ariel Dorfman's play *Death and the Maiden*,⁴ is an example of a powerful law film. Investigating law and justice, and explicitly addressing jurisprudential themes, *Death and the Maiden* portrays an on-screen legal proceeding while conducting its own judging act; it invites its viewer to participate in the cinematic judgment while exploring the film's jurisprudential arguments. The film's specific concern is the role and meaning of law and justice in the context of a society caught in the difficult moment between a traumatic past and an uncertain future.

My reading of it explores the film's jurisprudential insights together with its judging act. Using the law and film terminology I described earlier, the first and third parts of the study offer primarily a "film as jurisprudence" type of reading, whereas the second part focuses on the examination of cinematic technique to facilitate a reading of the "film as judgment" variety. The second part also contains a discussion of the "film parallels law" type, illustrating how the film calls attention to the suspicion and resentment felt by its fictional characters and implied viewer toward the testifying victim who manifests unpleasant post-traumatic symptoms—much like judges,

lawyers, and jurors in the real legal system. All three parts jointly explore the film's underlying value system, and in particular its conceptualization of law and justice, dignity, recovery, reconciliation, gender roles, intimacy, and personal relations. The chapter also scrutinizes the film's feminist—including feminist jurisprudential—attitudes and touches on the comparison between the legal process and a truth and reconciliation process.

Ariel Dorfman's powerful play *Death and the Maiden* is the basis of Roman Polanski's film of the same title. In collaboration with Rafael Yglesias and Polanski himself, Dorfman also authored the film's screenplay, presumably tightening the deep connection between film and play. But in this essay it is the Dorfman-Polanski film that I read, as a film.⁵ As George Bluestone stated in his book on the adaptation of novels into films, "the film becomes a different *thing* in the same sense that a historical painting becomes a different thing from the historical event which it illustrates."⁶ The Dorfman-Polanski film is "a different thing" in the same sense that Dorfman's play is different from Franz Schubert's *Death and the Maiden*, Quartet no. 14 in D Minor, op. posth., which is different in turn from the song (*lied*) of the same name composed by Schubert seven years later and based on an earlier poem by Mattias Claudius.⁷

This study focuses on the film's unique characteristics. As Bluestone rightly notes, "the spatial liberation of the cinema was its unique achievement. But film editing, combining the integrity of the shot with the visual rhythm of the sequence, gives the director his characteristic signature."⁸ It is not merely the story's plotline that I focus on, but the film as such, including specific shots, editing choices, casting choices, acting styles, directing pace, atmosphere, viewer's cognizance of the director's biography and style, and the film's potentially unlimited and universal audience. Some of the significant themes discussed here are clearly relevant to Ariel Dorfman's *Death and the Maiden*, which, of course, preceded the film. Nevertheless, this reading is exclusively of the cinematic text.⁹

Post-Traumatic Societies

A society faces internal and/or external difficulties, widely experienced as threatening to its identity, safety, fundamental values, and way of life. Anxiety and confusion deteriorate into panic and paralysis; liberal forces dwindle

and fall silent as the crisis escalates. A tyrannical nondemocratic force promising personal security, order, and stability emerges and grows into a totalitarian regime. Under the totalitarian regime, radical opposition forces are persecuted and human rights violated. As opposition grows, the authorities resort to torture, kidnappings, and executions, becoming a murderous regime of terror. Freedom fighters and their families experience sacrifice and loss, while the majority procrastinate in silence. Eventually, the public is ready for a change, and after a painful struggle the dictatorship is overthrown. New institutions are established, and the new leadership attempts to unite the country and all its forces, leave the bloody past behind, and enter a new era. The country is weakened by the years of conflict and turmoil, and the new regime is fragile. The old forces are still powerful, the bonds that hold society together are frail, and peace and reconciliation seem vital. Victims of the old regime, their victimizers, and bystanders find themselves forced to cooperate in making a fresh start.

This story is relevant to the history of many societies and states, although the details vary. The totalitarian regime can be a military dictatorship, as in many South American and African countries; an ideological government, as in many Eastern European and East Asian countries; an extreme religious tyranny, as in Iran or Afghanistan; or a colonizing, racist government subjecting a “native” population, as in apartheid South Africa. At other times and in other places the brutal administration may be a powerful branch of an otherwise democratic government, as during the McCarthy era in the United States. Yet the basic plotline is similar, as is the end result: a society torn by internal conflict and brutality struggles to leave the past behind in hopes of a bright future.

To use Martha Minow’s words: “In the course of such transitions, societies have to struggle over how much to acknowledge, whether to punish, and how to recover.”¹⁰ At such critical times of reorganization, when societies and cultural paradigms find themselves caught between traumatic pasts and unclear futures, how do victims cope with their victimization and recover from painful personal trauma? How does the recovering society forge a collective memory out of its collective traumatic past? How does it integrate victims and victimizers, and their respective perspectives and self-perceptions? How does the present tell the story of the past, in service of a better future? How

are the victimizers treated by the new regime? How do bystanders come to terms with the guilt they feel about the victims and the resentment triggered by that guilt? How can and should the legal system be used to reconcile present and past, victims and victimizers, society and individuals, private memories and collective memory? What are the goals and duties of law and the legal system regarding individuals and the collective at such difficult times, and how should they be prioritized? How should a legal system respond when legitimate demands of an individual for law and justice conflict with social needs for stability and reconciliation? How can justice be done, for whom, and at what cost, and what can justice mean in such painful circumstances?

Several professional discourses, among them the psychology of trauma and recovery, sociology, political science, and jurisprudence, offer diverse theoretical tools for confronting aspects of these dilemmas. Much scholarly research on these issues has been published in the past decade, whose concerns are also represented variously in another distinct, powerful, and highly influential arena, that of popular culture. This chapter examines one artistic cinematic presentation of a (fictional) situation of the type described above: the situation of a woman severely abused by an overthrown totalitarian regime and now demanding recognition and justice from the new government. *Death and the Maiden* asks how law does—and should do—justice, locating a victim's personal memory within a collective history in the fragile moment when a conflicted society struggles with its unbearable past and intimidating future.

Film Synopsis

The protagonist of *Death and the Maiden*, Paulina Lorka, endured severe, continuous, and prolonged torture, including repeated rape, perpetrated by a totalitarian South American regime, now overthrown.¹¹ She survived the abuse without betraying the identity of her spouse, then a leader of the resistance movement, only to find, upon her release, that he had given up on her and was involved with another woman. Fifteen years later, under the new regime, her spouse, Gerardo Escobar, a celebrated human-rights attorney, is nominated to head the public commission investigating the old regime's violations of human rights. Striving to ensure national solidarity while

avoiding dangerous political pitfalls, the president authorizes the commission to investigate only crimes that resulted in fatalities. Paulina challenges and condemns her spouse's consent to head such a commission, calling his decision a betrayal. As she confronts him on a stormy night in their secluded oceanfront home, they are unexpectedly joined by a stranger whom Paulina recognizes as one of her rapists; in fact, it is the doctor who brutally raped her fourteen times while tending to her wounds and playing Schubert's *Death and the Maiden*.¹² Recognizing his voice and bodily odor, his laughter and characteristic phrases of his speech, she challenges the state's decision (and her spouse's consent) not to investigate her torture and rape. She is determined to take the law into her own hands, conduct a private proceeding, establish the truth, and achieve justice. She demands her resisting spouse's full support and active participation in this private legal proceeding.

During a long, dark night, at the outskirts of a city and on the margins of society, Paulina judges her rapist, as well as her spouse. Using brutal force, she coerces the rapist, Dr. Roberto Miranda, to confirm her accusation, admit to his inhumanity, and assume moral responsibility for his actions. Threatening her spouse with a gun, she repeatedly prevents him from releasing the accused man, forcing him to confront her victimization and sacrifice and his own weakness. On the edge of a cliff above a stormy ocean, having pushed the two men to admit their crimes against her, she chooses not to impose a death sentence on her rapist and releases him. In the film's final scene, Paulina's eyes meet Dr. Miranda's as the story's three characters, trapped together forever, meet by chance in the civilized, elegant world of a concert hall.

Cinematic Jurisprudence

Two Concepts of Law and Justice

Gerardo Escobar is the leading jurist of a society in limbo: no longer under the tyrannical rule of dictators, Gerardo's country is not yet fully secure in its democratic identity and strength. Gerardo is a human rights expert and activist. Under the old regime, he risked his life heading a radical resistance movement. His heart was in the right place, as were his actions. Now he is confronted with the question of how the law of the land can best serve his

country at this crucial, delicate time. Gerardo's rational, pragmatic resolution is that the law must facilitate a much-needed social transformation, securing that transformation with as little risk as possible to public stability and everyday "normalcy." The law must assist the government in ensuring that the collective boat is rocked as little as possible, and this conservative foundation must be preserved at all cost. If the price to be paid for a safe future is that aggressors responsible for human rights violations under the old regime are not prosecuted and not condemned, then so it must be. Law is but the means, and the end is a smooth social transformation, necessitating unity and internal concord. If, for the sake of the future, old wrongs must be forgotten and wrongdoers of the past pardoned, the law must adapt to political considerations.

Representing the country's authoritative legal system, Gerardo refuses to harness the law to Paulina's case. His manifest ideological arguments refer to the unreasonable threat posed by the prosecution of such a case to the fragile sense of unity and harmony the new government is struggling to create. On a positivistic legal level, Gerardo's stand is that Paulina, who was tied and blindfolded during her rape and torture, cannot provide admissible, persuasive, conclusive evidence to support her accusation, and that due to her shaky mental state she is an unreliable witness.¹³ Like any potential defendant, Dr. Miranda is entitled to a fair trial, which cannot be conducted based solely on Paulina's testimony. Legal truth and legal guilt can only be determined on the basis of hard evidence beyond reasonable doubt, which Paulina cannot supply.

A more general perspective reveals that victims of systematic torture are often prevented from seeing their victimizers, and they often suffer severe post-traumatic mental injury that makes them "emotionally unstable."¹⁴ Gerardo, therefore, determines that victims such as Paulina, brutalized by a powerful regime that left few fingerprints and that damaged the victims' mental state, cannot support legal actions against alleged perpetrators. Aggressors, therefore, cannot be legally prosecuted and convicted, and the crimes committed against these damaged victims cannot be legally exposed and condemned. The law is not an appropriate instrument to cope with such aggression and victimization, and hence not an appropriate platform for

telling the stories of human rights violations to facilitate the integration of victims' individual memories into the country's collective memory.¹⁵

Paulina is not a jurist. She is a human rights activist and a surviving victim of the old regime, shadowed by her shattering experience. Her perception of law is strikingly different.¹⁶ For fifteen years Paulina has buried herself in her secluded ocean hideout, avoiding contact with life, with a community, with anything that could bring her in contact with her traumatic experience.¹⁷ Now, unexpectedly faced with her oppressor, she demands recovery and justice.

Paulina's starting point is not society's need for stable normalization, but rather her own personal needs as a victim. During the long night depicted in the film, Paulina, awakening from her fifteen-year retreat and self-inflicted incarceration, gradually comes to identify and articulate her needs as victim and survivor for the first time. For the first time since her victimization, she feels the urge to regain her life, identity, dignity, self-respect, and place in society. She even wants to reclaim her beloved Schubert, whose music she has been unable to bear all these years.¹⁸

She gradually realizes her need for explicit public acknowledgment, recognition, compassion, and care in order to pursue these goals. In order to live once again, she must be seen, heard, accepted, and embraced by her community, embodied at this crucial moment by Gerardo. She needs recognition of her existence and significance ("I don't exist," she exclaims in tears). She needs recognition of her sanity and subjecthood (again and again she rebukes both men's repetitive claims that she is "crazy" and "ill"). She needs public acknowledgment of her victimization and loss.¹⁹ She needs to tell her story, to give her testimony of the abuse and dehumanization she endured, and to be believed. She needs empathy. She needs to be "exonerated" from the guilt she feels for her helplessness while her tormentors denied her subjectivity and human worth.²⁰ She needs to break the silence, to confront her oppressors, the truth, and herself, and to break free from the shame that has silenced her and caused her withdrawal.²¹ For Paulina, the demand that her needs be met is a demand not merely for recovery and empowerment but also for justice, and the device that can achieve it is the legal process.

Denied a formal, official legal proceeding, Paulina conducts a private one,

discovering and demonstrating the specific characteristics of law and the legal process that make this vehicle most suitable for her needs. Above all else, for Paulina, law serves as a social means of remembering. Law offers a stage, procedure, discourse, and the human resources to choose among competing testimonies of memories, to articulate the selected memories as authoritative narrative, and to assign such official narrative social meaning and moral value. In this capacity, law is an intersection of private memory and public history, a site of recurring and converging personal and collective trauma.²² A victim's demand for justice, for public recognition and acceptance, is, therefore, tantamount to the demand to be given voice within the law, to have her story told and heard, and to have her private memory (legally) confirmed and affirmed as collective history.²³ Several of the legal system's specific features, as alluded to in the film, demonstrate further why this memory-creating social institution is precisely the avenue Paulina seeks.

Recovery from Trauma and the Features of the Legal Process

Law consists of clear, familiar, ritualistic moves, structuring and normalizing processes of confrontation and testimony. Almost automatically, Paulina reads her accusation against Dr. Miranda, charging him with rape and torture, and then offers him the floor for his defense. The painful, chaotic, and highly charged meeting between victim and aggressor is thus smoothly translated by these orderly legal moves into a manageable, well-organized procedure. The familiarity of the ritualistic moves offers Paulina consolation, some security, and a sense of sanity and control in the face of haunting memories of brutal savagery that threaten to flood her fragile existence.

In addition to its ritualistic nature, the legal process inherently and ineluctably repeats elements of the traumatic experience. Such repetition seems crucial for Paulina in order for her to return to the horror, contact her loss, pain, and rage, and finally transcend them and proceed with her life. The legal process requires a clear, explicit, detailed articulation, for the first time since its occurrence, of Paulina's traumatic violation. For the first time in fifteen years, Paulina must revisit the horrors she has suppressed. This suppression, she well realizes, has cost her dearly: along with the unbearable memory, she buried her self as well, condemning herself to death in life.

Nothing short of the forceful power of the authoritative legal process could both compel and enable her to break her deadly silence and return to the horrifying site of complete humiliation and annihilation of self. Death in life had become a safe, familiar hideaway, and only the law's counterforce is compelling enough to extricate Paulina and bring her back to the scene of the crime.

The law allows and obliges Paulina to articulate her accusation, to narrate her story while facing her abuser, forcing him to acknowledge her and listen to her construction of his guilt and her victimization. The legal process thereby enables Paulina to satisfy her need to narrate her memory, imposing it upon the man who used his superior power to violate and objectify her. Paulina's memory of her victimization by Dr. Miranda is her truth; it is truth forged from her unique subjective point of view, truth as only she experienced and knows it. Paulina's insistence on her truth, on her very self, defies her abuser's attempt to deprive her of the basic human capacity of assigning meaning to her own life and to his conduct toward her. It is in itself a victory. Confronting him as an equal member of society, unafraid, she celebrates her humanity and subjectivity, her survival and his defeat.²⁴ For Paulina's truth to be fully realized, the narration and confrontation must be shared with her community and sanctioned by it. She needs approving witnesses.

Describing the role of the community in the therapeutic process of trauma victims, Judith Herman, author of the definitive *Trauma and Recovery*, writes:

Sharing the traumatic experience with others is a precondition for the restitution of a sense of a meaningful world. In this process, the survivor seeks assistance not only from those closest to her, but also from the wider community. The response of the community has a powerful influence on the ultimate resolution of the trauma. Restoration of the breach between the traumatized person and community depends, first, upon public acknowledgment of the traumatic event, and, second, upon some form of community action. Once it is publicly recognized that a person has been harmed, the community must take action to assign responsibility for the harm and to repair the injury. These two responses—recognition and restitution—are necessary to rebuild the survivor's sense of order and justice.²⁵

Paulina believes the legal process is the appropriate vehicle for this purpose as well: it can and must restore her to her community, and, through recognition and restitution, offer her justice.

Initially Paulina believes that the legal proceeding can induce Dr. Miranda to admit to her truth, assume responsibility, and express remorse. “I want him to talk to me,” she tells Gerardo. “I want him to confess.”²⁶ As the night progresses, Paulina discovers that not even the law can force the truth out of her abuser. But perhaps she also realizes that her existence and recovery do not depend upon his confession. Perhaps in the process of presenting her story, confronting Miranda, articulating her truth, and reaching her audience, she learns that those very acts are the key to her liberation and recovery, and thus to her justice. His confession and remorse are satisfying, but they may not be essential for her well-being. It is not the transformation of the aggressor, but the mere process of publicly confronting him with the narration of her memory, that sets her free. This, perhaps, is the essence of the legal process she seeks.²⁷

Healing Testimony and the Legal Process

Scholarship on “testimony” offers another perspective for discussion of Paulina’s need for a legal process. In an interdisciplinary study of testimony, Shoshana Felman and Dori Laub offer illuminating insights.²⁸ Dr. Laub explains the aspatial and atemporal nature of the traumatic experience and the crucial role of testimony in the healing process:

The traumatic event, although real, took place outside the parameters of “normal” reality, such as causality, sequence, place and time. The trauma is thus an event that has no beginning, no ending, no before, no during and no after. This absence of categories that define it lends it a quality of “otherness,” a salience, a timelessness and a ubiquity that puts it outside the range of associatively linked experiences, outside the range of comprehension, of recounting and of mastery. Trauma survivors live not with memories of the past, but with an event that could not and did not proceed through to its completion, has no ending, attained no closure, and therefore, as far as its survivors are concerned, continues into the present and is current in every respect. The survivor, indeed, is not truly in touch either with the core of his traumatic reality or with the fatedness of its reenactments, and thereby remains entrapped in both.

To undo this entrapment in a fate that cannot be known, cannot be told, and can only be repeated, a therapeutic process—a process of constructing a narrative, of reconstructing a history, and essentially of *re-externalizing the event*—has to be set in motion. This re-externalization of the event can occur and take effect only when one can articulate and transmit the story, literally transfer it to another outside oneself and then take it back inside again. Telling thus entails a re-assertion of the hegemony of reality and a re-externalization of the evil that affected and contaminated the trauma victim.²⁹

The therapeutic process of narration, constitution, and reclaiming of the traumatic memory, Dr. Laub asserts, manifests itself in testimony. To testify is to narrate and create a memory, thus framing the traumatic experience within a distinct time and place and escaping its totality. Testimony, Laub stresses, is not a private, solitary process; it requires audience, community, a human reality that is external to the testifying victim.

Bearing witness to a trauma is, in fact, a process that includes the listener. For the testimonial process to take place, there needs to be a bonding, the intimate and total presence of an *other*—in the position of one who hears. Testimonies are not monologues; they cannot take place in solitude. The witnesses are talking to somebody: to somebody they have been waiting for for a long time. . . . Testimony is the narrative's address to hearing; for only when the survivor knows he is being heard, will he stop to hear—and listen to—himself.³⁰

Judith Herman elaborates further:

In the telling, the trauma story becomes a testimony. Inger Agger and Soren Jensen, in their work with refugee survivors of political persecution, note the universality of testimony as a ritual of healing. Testimony has both a private dimension, which is confessional and spiritual, and a public aspect, which is political and judicial. The use of the word testimony links both meanings, giving a new and larger dimension to the patient's individual experience. Richard Mollica describes the transformed trauma story as simply a "new story," which is "no longer about shame and humiliation" but rather "about dignity and virtue." Through their storytelling, his refugee patients "regain the world they have lost."³¹

Paulina believes that only the legal process can facilitate her testimony, that is, supply her with the presence of the listening other, which would enable her to listen to herself and reconstitute her trauma as a memory of an event

of the past rather than an endlessly present presence. Only the legal scene, the site of sanctioned testimony, can set in motion the therapeutic process of constructing a narrative and a history and establishing a trauma-free present.

In clear contrast with Gerardo's stand, Paulina asserts that the legal process is best suited to facilitate the therapeutic testimonial process she requires for her salvation. Because the state denies her access to its formal legal system she launches her own legal proceeding, using a tape recorder and a video recorder for documentation, a pistol as a means of coercion, and Gerardo's reluctant participation as listener, community, and audience. The film supplies her with viewers, her jury of compassionately listening peers.

Gendering Concepts of Law and Political Victimization

Death and the Maiden demonstrates how, when a society haunted by a traumatic past struggles to mold a new future, a victim's demand for public remembrance and recognition through legal discourse can clash with a wider social longing to forget and reconcile. Simultaneously, the film portrays this conflict from another perspective, as a conflict between a woman and her man. The woman demands that her story of sexual victimization and resistance be acknowledged within both marital and legal domains. Her partner, on the other hand, needs to forget his own weakness in the face of her heroic self-sacrifice, and desires to make a name for himself in a new, happier era. The narrative's "double vision" suggests a deep linkage between victims' struggle for voice and memory within a legal system serving a community that wishes to forget and deny its skeletons, and women's struggle for legal recognition within patriarchal, often misogynistic law. Victims' need to transform their abuse into collective history is closely associated with women's demand for justice through law, or, in other words, with a feminine concept of justice.

Death and the Maiden's explicit association of a formalistic, positivistic notion of law with a male character while it links a more compassionate, humanistic form with a female character clearly genders these two concepts along familiar lines, invoking a jurisprudence featuring a feminist ethics of compassion and care.³² Gerardo's "masculine" perception claims to be neutral, objective, pragmatic, utilitarian, professional, and free of emotional biases. In comparison, Paulina's law is one through which a wronged person can claim and regain her personhood and dignity. Further, it is law that em-

ploys and applies intuition, compassion, trust, and personal commitment. In order for law to be good and just it must demonstrate empathy and care for her, convey and facilitate faith, and encourage and empower her to speak her truth. For Paulina, a “good” future cannot deny its “bad” past. Society must use its legal system to confront its past and to come to terms with its legacy of pain and ugliness; this is how law must do justice.

Love, compassion, trust, and personal commitment are the primary qualities Paulina demands of her attorney-spouse, and which he fails to offer her. Only through deeply felt empathy and devotion, she believes, can he clearly intuit and recognize the truth of her testimony and deliver a just decision, thus becoming both a good partner and a representative of a just law. A neutral, unfeeling, “objective” stand amounts to impotent cowardice, she accuses. To her, Gerardo’s failure as jurist and husband are one and the same: he fails to feel, intuit, and care enough to be able to see right from wrong, as well as to supply her with the emotional support she requires. In the absence of empathy, compassion, and commitment, human reality cannot be fully grasped and interpreted; no side can ever be taken and no substantial judgment reached, as there will always be “reasonable doubt.”

Interestingly, Paulina’s notion of a compassionate law does not seem to require empathetic treatment of Roberto Miranda, the defendant, nor does it exclude the law’s judgmental aspect or undercut its inherent violence. Paulina’s perceptions of law and justice do not imply indiscriminate acceptance. On the contrary, it seems to offer compassion only to those who “deserve” it by demonstrating their own compassion and commitment to others, or at least by not brutally violating human dignity. Paulina herself manifested the ultimate love and devotion to her husband, the general attorney; she feels entitled to the same treatment from him as both husband and representative of the law. Roberto, on the other had, has demonstrated complete lack of compassion by committing despicable atrocities and degrading her to the utmost. In her book, justice does not entitle Roberto to compassionate judgment. Or does her decision to spare his life indicate otherwise?

The dialogue or confrontation between the competing masculine and feminine concepts of law is clearly a challenge posed to the traditional “masculine” concept of law by a feminist jurisprudence of care. But the film does not privilege the feminist jurisprudence of care over more radical femi-

nist legal analysis. On the contrary, its presentation of the community of men exposes Dr. Miranda and the attorney Escobar as mutually collaborating in the perpetuation of Paulina's sexual victimization. Bonding through their joint profit from her silenced subjugation, they erect their camaraderie and socio-legal order on the shambles of her violated dignity and personhood. This perception of the patriarchal social order as maintaining the systematic oppression of women through, among other means, legally condoned sexual violence is at the core of any "radical" feminist jurisprudence focusing on domination, oppression, and abuse.³³ *Death and the Maiden* seems to seamlessly integrate the two voices of feminist jurisprudence—a rare achievement in academic scholarship.

Rape and Political Atrocities

Political atrocities committed by tyrannical regimes often include sexual abuse. The systematic mass rapes committed by Serbs in the former Yugoslavia remind us that mass rape can reach the dimensions of genocide.³⁴ *Death and the Maiden* focuses on a single case of victimization in which the tormented victim of the dictatorial regime suffered, among other forms of torture, rape and sexual humiliation. But in the context of Paulina's confrontation of her rapist and husband, the film—like the play—presents rape not only as one form of torture, but also as deeply analogous to all forms of political atrocity.

From a dominance feminist perspective on rape, Dr. Miranda and the attorney Escobar, rapist and the victim's husband, both collaborate in the perpetuation of Paulina's sexual victimization. When, in the beginning of the evening, a terrified Paulina drives away in Miranda's car, the two men bond, drinking, chatting, and howling at the moon together.³⁵ They begin, like cautious, civilized men, by paying homage to their wives and to women in general, claiming they would be lost without them. But as alcohol and time bring them closer together, Gerardo confesses his true feelings toward his wife ("she has plenty of reasons, but she is crazy"), and Roberto agrees ("they all have reasons, and they are all crazy").³⁶ Women are castrating bitches, both men conclude. What do men want? Approval. What do they get? Castrating guilt. Doctor-rapist and attorney-husband are indistinguishable.

When Paulina returns, demanding her husband's support and participa-

tion in the legal proceeding against her rapist, Gerardo is torn between loyalty and obligation to his wife and comradeship and solidarity with Roberto. To Paulina he owes his life, and it is to her he has sworn love until death; but it is Roberto he understands and identifies and sympathizes with. Gerardo's bonding with Roberto isolates Paulina, denying her the support she craves, the love, sympathy, trust, and compassion she vitally needs in order to return from the dead and embark on a process of healing and recovery. Unable to rely on her husband's unconditional support, Paulina faces a masculine wall of mistrust.³⁷ Both men are united in treating her as unreliable and "crazy." Both men look at her with utter disbelief, communally denying her memory, her knowledge, her testimony, and her sexual victimization. Their collective mistrust undermines not merely her ability to bring her rapist to trial, but also her self-perception and self-respect. Lacking a mirror willing to reflect her as a sane, sexually abused subject, she is doomed to remain a mad, bitter, raging, neurotic woman. The men's treatment of Paulina over the long night constitutes a "second rape."³⁸

Roberto and Gerardo both benefit from Paulina's sexual victimization. In raping her repeatedly, objectifying her, and robbing her of dignity, self-respect, and a sense of autonomy, Dr. Miranda transformed Paulina from a beautiful young woman, a promising medical student, and a brave, rebellious, determined underground activist to an anxious, dependent, fearful housewife. When we meet her, she has cut her long, red hair short in order not to remind herself of who she used to be; she has given up both medicine and all other activity, and she cringes in fear at the sound of anything that enters her secluded domestic sphere. From a promising, energetic person, eager to fulfill herself as a human being, she has become Gerardo's housewife, waiting for him in their oceanside home, cooking his meals, supporting his career, and loving him. Her life is dedicated to him, and she does nothing more.³⁹

Gerardo owes this obedient, traditional wife to Roberto's brutal rape, which effectively "domesticated" her as Gerardo's meek helper. In turn, Gerardo's stereotypical, sexist conviction that Paulina, a rape victim, is "crazy," that she is not a reliable witness, that her testimony cannot be trusted, and that her memory cannot be the basis for the legal accusation and conviction of her rapist secure Roberto's dignity, respect, and freedom.⁴⁰ Gerardo's misogynist view of Paulina obstructs Roberto's prosecution, the exposure of his

conduct, his public shaming, and his incarceration. Just as Roberto's rape secures Gerardo's patriarchal position in his family, so Gerardo's chauvinistic perception of a raped woman, in his position of jurist, ensures the amnesty of Paulina's rapist. Rapist and patriarch-jurist empower and shield each other from the threat of the "castrating" woman through a shared misogynist worldview, perpetuating patriarchy and its domination of women. The law, embodied in Gerardo, shares the rapists' vision of women, silencing the raped woman and preventing exposure of the crime committed against her.

The analogy between rape and political atrocities suggested by *Death and the Maiden* implies that victims of tyrannical regimes face an impasse similar to that experienced by victims of sexual abuse. Like abused women, victims of totalitarian regimes face a wall of sophisticated, eloquent "doctors" and "lawyers" such as Miranda and Escobar, powerful agents who doubt their sanity, are suspicious of their memories and testimonies, and have vested interests in mistrusting them. Like raped women, victims of dictatorial regimes are considered unpleasant "damaged goods" and are expected to remain concealed and silent, out of the public eye. Legal systems of democratic, liberal new regimes consider these victims untrustworthy and proclaim that their memories and stories cannot support prosecutions and convictions. This is especially true of radical, rebellious civil rights activists, who are often feared almost as much by new liberal regimes as by the old tyrannical ones.

Death and the Maiden suggests that just as husbands and rapists, abusers and jurists, often share a worldview and interests, so old and new regimes, dictators and liberal legal systems have more in common than is immediately apparent. Victims of tyrannical regimes are likely to suffer a "second rape" perpetrated by new legal systems—much like rape victims. It may thus be useful to study patriarchy, its networks and self-perpetuation mechanisms, to better understand the abuse of victims at the hands of "progressive" legal systems that rise after dictatorships. The study of thousands of years of patriarchal subjection of women may shed much light on other forms of abuse. At the same time, feminine concepts of law and justice, developed in the context of the sexual abuse of women, may be useful in ameliorating the plight of victims of political atrocities.

A corresponding, complementary reading of *Death and the Maiden* is similarly powerful. *Death and the Maiden* presents rape victims as victims of

oppressive tyrannical regimes. A rape victim is likened to a freedom fighter, ideologically oppressed by a totalitarian regime. Women raped under patriarchy, this logic seems to imply, are no different from citizens abused under dictatorship. Further, women attempting to use the legal system to expose their rapists and secure their convictions find themselves in a situation similar to that of victims of a tyrannical regime, demanding justice when their country seeks nothing but reconciliation and amnesia. Just as a new liberal government wishes to leave the horrors of dictatorship behind and unite victims, aggressors, and bystanders in the making of a new future, so any legal system under patriarchy prefers a peaceful unity of rapists, victims, and bystanders to the disturbing, unsettling demand of raped women to expose and condemn their rapists. As *Death and the Maiden* demonstrates, bystanders and legal systems—both represented by Gerardo—have much in common with rapists, feel much sympathy for them, and have much to gain from their brutal aggression.

National recovery from the terror of a tyrannical regime is a unique, extreme phase in the life of a nation. But some of the evils bluntly evident in such unsettled situations are common and widespread in more routine situations, if much less apparent. Scrutiny of the extreme situation can shed light on transparent everyday mechanisms that go unnoticed. The communal wish to forgive and forget, to silence victims of a tyrannical regime and maintain unity and stability at their expense, can be seen as an allegory of the norm, exposing the everyday situation of raped women that are denied access to legal justice. This allegory forcefully asserts that a raped woman is a member of a group that is discriminated against; that raped women are a part of a terrorized, subjected population; that rape is a political crime, perpetrated under patriarchal regimes; that legal systems are inherently reluctant to acknowledge rape and its victims and aggressors, or to prosecute the rapists and expose the systems that support them. The study of reluctant legal systems following tyrannical dictatorship is, thus, also a study of legal systems' treatment of rape victims.

Cinematic Judgment

Presenting Paulina and Gerardo, *Death and the Maiden* acquaints its viewer with two jurisprudential approaches to the role of law after dictatorship. Not

restricted to conventions that apply to theoretical, academic texts, it does not explicitly weigh the merits and flaws of each of the competing stands. Rather, it utilizes cinematic means to invite its viewer to adopt certain points of view, go through mental processes, and arrive at conclusions. I label these manipulations “cinematic judgment.”

This part of the chapter presents the argument that through the cinematic technique of split identification, *Death and the Maiden* places its viewer in Paulina’s position as sole possessor of the power to look and judge, while at the same time subjecting the viewer, together with the men on the screen, to Paulina’s penetrating scrutiny and demand for feminine justice. Roberto is the sole defendant in the film’s on-screen judging process. In this fictional judgment, Paulina is the prosecutor and Gerardo the judge (although Paulina “nominates” him to “represent” Roberto). But in the film’s cinematic judgment, both men, together with the implied viewer, are judged by Paulina. This casting of both (professional, semiallegorical) male characters as “defendants” in the film’s cinematic judgment reinforces the sense of their inherent association. This association invokes dominant feminist social perceptions. Paulina, on the other hand, is closely and severely scrutinized by the film and its implied viewer from Gerardo’s perspective, yet she is not fully judged.

Structural Viewer Identification with Gerardo

Gerardo is an honest and reasonable man, a respectable, hard-working, successful lawyer, and a devoted family man. Stuart Wilson’s character is pleasant looking, friendly, chubby. He is an appealingly contemporary everyman. Despite his respectable and distinguished social status, Gerardo treats his aggressive, unpleasant wife patiently and respectfully, even when she attacks him and trashes his dinner as he arrives home wet and tired at the end of a long day.⁴¹ The viewer’s urge to identify Gerardo as a good guy and side with him is fostered from his first appearance on screen. It is maintained and complemented by the choice to have Gerardo wear a homey robe and clumsy slippers throughout most of the film. As the film unfolds, viewer identification with Gerardo becomes structural, as the viewer shares his partial point of view regarding the disputed past and is invited to examine and judge the

other characters' testimonies of it. Paulina and Roberto each know the truth of their alleged encounter fifteen years earlier.

Paulina knows, or at least believes she knows, whether or not it was Roberto who raped and tortured her. Roberto too must know whether his denial of her accusations is truthful. Gerardo is the unknowing bystander, just as he was when the events occurred. Moreover, both Paulina and Roberto are actively competing for recognition; they are parties to a conflict, each desperately trying to convince, to seek approval and belief. Each of the two claims to be an innocent victim, accusing the other of brutal, inhuman aggression. Gerardo is in the position of the judge: hearing both sides, weighing the evidence, applying his common sense and his knowledge of the world, he must determine who is telling the truth and which of the two is the aggressor. So must the viewer.

The film's viewer is a bystander with no knowledge of the events of the past other than the information provided by the testimonies of Paulina and Roberto. The viewer is also the objective, neutral, disinterested judge, invited by the film to use common sense and wisdom to weigh the evidence and decide between the contesting parties on screen. Responding to Paulina and Roberto, the viewer develops emotions toward both parties that influence his or her understanding of the situation, evaluation of the testimonies, and intuitions and inclinations. Restricted to the same limited knowledge of the disputed past and placed in the same judging position, Gerardo and viewer are similarly situated, Gerardo representing the viewer's on-screen self with respect to Paulina's and Roberto's claims concerning the past. Together with Gerardo, the viewer is torn between love and compassion for the powerful, suffering Paulina and repulsion toward her crude, aggressive behavior;⁴² between sympathy for the humiliated Roberto and suspicion that he may be concealing horrible guilt.⁴³

Like Gerardo, the viewer was brought up to believe in an impartial legal system, one that assumes innocence until the accused is proven guilty beyond a reasonable doubt. Like Gerardo, the viewer finds it hard to believe that this pleasant doctor could have been the monster Paulina claims he was. Like Gerardo, the viewer has most likely never experienced horrors such as those described by Paulina, and finds it hard to believe that a human being

who does not manifest diabolical features could *really* behave so monstrously while continuing to seem “normal.” Together with Gerardo, the viewer, a bystander, longs for society to be able to move on, to leave its troubled past behind and enter a “normal” stage, where one needn’t constantly check one’s conscience and confront guilt. The viewer understands Gerardo’s ambition for professional success and, together with him, finds it reasonable to accept the chair of the president’s commission, paving the way to a glorious professional career.

Viewer identification with Gerardo is clearly an element of Dorfman’s play, but the Dorfman-Polanski film takes this bond a step further. Comparison of play and film on this point demonstrates cinematic choice and its consequences. In Dorfman’s play, the viewer’s point of view regarding the past is restricted to Gerardo’s. An adaptation of the play to film would typically widen the viewer’s scope by using flashback to portray the contested past. Free from stage unities of time and place, a film version of *Death and the Maiden* can reasonably be expected to present the viewer with scenes of Paulina’s captivity. The film’s striking choice *not* to deviate from Dorfman’s play can be read as an active, deliberate choice to restrict the viewer’s point of view to Gerardo’s, tightening identification with the on-screen character.⁴⁴ This is particularly noticeable as “Polanski’s films usually allow us to assume the position of an omniscient spectator of the film’s characters. As such, we are granted a very unrealistic, and privileged, position. . . . Polanski’s *Death and the Maiden* constructs a very different viewer’s position: following Ariel Dorfman’s play, the film *restricts* the spectator’s knowledge.”⁴⁵

To enhance the effect, the film just as actively deviates from the play by acquainting Gerardo with a crucial, dramatic element of Paulina’s past only during the night portrayed by the film. In the play, Gerardo has known all along of Paulina’s rape during her captivity; he may not have been able and willing to fully confront it and verbalize that knowledge, but he *knows*. In the film, Gerardo learns of Paulina’s rape on screen, together with the viewer. He could—and perhaps should—have deduced it; he may have suspected it, but he never knew it with certainty, just like the viewer, who could have figured it out from Paulina’s treatment of Roberto but didn’t quite *know*. Just as in the case of the choice *not* to deviate from the play through flashback shots, here the cinematic choice to deviate from the play version secures viewer

identification with Gerardo at the dramatic moment of their mutual realization of the terrible fact of rape.⁴⁶

Throughout the scene in which Paulina explicitly reveals the truth, the film presents the viewer with Gerardo's shocked and horrified face through long reaction close-up shots. Emotional and fragile, Paulina is presented through point-of-view shots from Gerardo's perspective. These shot choices establish a powerful cinematic bond between the viewer and Gerardo. Significantly, Stuart Wilson's Gerardo wears heavy square glasses. Shot from a low angle in dim light, Gerardo's glasses cast dark shadows over his face, enhancing the dramatic expression of shock and bewilderment while illustrating the shadows entrapping the character. These editing choices (long, dramatic reaction and close-up shots—as well as medium-range shots—point-of-view shots, the low, slightly tilted shooting angle, and the dark shadows enhanced by the heavy glasses) are maintained throughout much of the film, attracting viewer attention to Gerardo and encouraging viewers to identify with him.

Viewer Identification with Paulina

Whereas Gerardo invites viewer identification through a shared limited point of view and judging position, it is Paulina who clearly dominates the screen, inviting viewers' substantial identification. Sigourney Weaver's mesmerizing character is by far the most charismatic, powerful, and impressive on screen, awarded more screen time and close-up (as well as middle-range and point-of-view) shots than the other characters. (Many of the point-of-view and over-the-shoulder shots are also from Paulina's perspective.) She is the film's uncontested hero.⁴⁷ Unlike the two men, hesitant, stuttering, impotent, Weaver's Paulina is a confident, determined woman, completely secure in her moral position and admirable in her unyielding strength to resist the men's suspicion, distrust, and manipulations and her ability to hold her ground against all odds.

Further, and very significantly, Paulina is the film's exclusive owner of an on-screen gaze: she is the character subjecting all others to her fierce, penetrating look. Despite her fear, pain, and shame, Paulina looks relentlessly at the men, all the while accusing, judging, and condemning them according to her own notions of law and justice. Her brave, relentless gaze exposes the in-

humanity of the aggressor, the weakness of the “legal official,” and the underlying solidarity that unites them. Her words and actions prosecute them—together with the patriarchal world they represent—from her own feminine perspective. Despite the men’s separate and combined efforts, the film does not allow them to subject Paulina to their gaze, power, and accusations. Those days, it states, are over, ended with the dictatorship. In the bad old days, Paulina lay blindfolded as men interrogated and raped her; now it is she who gags them, puts words in their mouths, videotapes their confessions, and holds a gun to their heads. She is a woman acting freely and forcefully as only men once could, at the same time cherishing and enforcing her unique feminine voice and convictions. Refusing to play the passive role of the blindfolded goddess of justice, she pursues her feminine justice with eyes wide open. By encouraging identification with Paulina, the film invites its viewer to share not merely her rage but, more importantly, her empowerment, her bold, brave gaze as well as her condemnation of patriarchal failure.

If Paulina’s determined action identifies her as the film’s hero, her crudeness and aggression threaten to undermine this position.⁴⁸ But Weaver’s Paulina is not merely crude and aggressive, but also fragile and hurt. We see her lead a lonely life with the radio as sole companion. We see her mourn her inability to bear children, as she sobs when Gerardo makes love to her. We witness her cringe in fear in her lonely bed, panic at the sound of Roberto’s voice and at the smell of his body, and escape in anxiety into the stormy night. Paulina’s visible vulnerability enables us to overlook her aggression, to see it in context as scars of her victimization. Significantly, the viewer’s point of view regarding Paulina’s present sorry condition is broader than Gerardo’s, who seems almost oblivious to her loneliness, pain, and fragility. This superior point of view afforded viewers by the film brings them closer to Paulina while distancing them from Gerardo.

Viewer identification with Paulina is enhanced by the film in comparison with the play, as is identification with Gerardo. Camera and viewer bonding with Paulina, in Gerardo’s absence, is constituted as early as the film’s third shot (after a shot of a quartet playing Schubert’s *Death and the Maiden*, and another of the turbulent ocean). Situated outside an open window in Paulina’s dining room, the camera dollies around the house, stops by another

open window, hesitates, and slowly enters the room. Paulina, unaware and unsuspecting of the stalking camera and viewer, seems lonely and vulnerable in the big, empty house by the stormy ocean. Entering her home, joining her in her space, we watch Paulina set the dinner table for two, and together with her we listen to the radio as it announces Gerardo Escobar's nomination as head of the commission assigned to investigate only those incarcerations that resulted in death. (The radio further mentions that Gerardo is on the president's short list of candidates for the office of minister of justice.) Not yet realizing the context, we witness the news' disturbing effect on Paulina as she smokes on the balcony in the pouring rain and sits on the floor in the dark, nervously gulping her meal. When Gerardo arrives, we realize with Paulina that he means to conceal the truth from her. His dishonesty is our first impression of him and, together with Paulina, we respond with disappointment and a lack of respect.

This scene sets the foundation for viewer identification with Paulina and suspicion of Gerardo, which linger throughout the film. In comparison, it is noteworthy that Dorfman's play begins with Paulina alone on stage, sitting and drinking wine on the terrace of her beach house. At the sound of an approaching car she escapes, terrified, into the bedroom, where she hides behind the curtain. Gerardo's voice is heard from backstage, thanking the car's driver and inviting him to come another day. Gerardo enters, and a dialogue between Gerardo and Paulina ensues.

Clearly, in the play version there is no camera paternalistically leading the viewer through the open window to slowly join Paulina in her domain, nor can Paulina's agonized face be shown in a long close-up shot. Other differences are not so obviously functions of the different media and express the film's choices in contrast with those made by the play. Unlike the film, the play does not encourage our bonding with the lonely, hurt Paulina by the shared hearing of her husband's betrayal on the radio news. This manipulation is one of the film's many innovations. Although in the play the house by the sea is a summer beach home and the family is planning an autumnal return to their city house, in the film the secluded house on the cliff seems to be Paulina's permanent home, on the outskirts of society. In the play, Gerardo is merely a junior member of the president's commission, not its chair, and there is no mention of the likelihood of him becoming minister of justice.

A film viewer, like a novel reader or a theatergoer, intuitively identifies with the text's fictional hero. The hero of a film, a predominantly visual art, is often the on-screen character who performs the privileged act also performed by the viewer: looking and subjecting others through the visual medium. Viewer identification with the hero is thus not merely substantive, but also structural: the viewer identifies with the on-screen character who, like the viewer, possesses the dominant gaze. As feminist film scholarship has convincingly argued for decades, conventional film identifies gazing and visual subjection with male dominance on screen, thus gendering all viewers and constructing them as male.⁴⁹

The Dorfman-Polanski construction of Paulina successfully undermines this convention. Despite her femininity, Paulina is the film's sole possessor of the gaze, inviting all viewers' identification. Despite her constant on-screen presence (and even one nonerotic nude scene), the film's camera eye does not objectify but rather empowers Paulina: the camera's clear attraction to her does not rob Paulina of her own visual power but enhances it. She is, bluntly speaking, treated by the camera—and consequently by the cooperating viewer—as a male hero, without undermining her femininity and feminine point of view.

This subversive stand awards Paulina the position of an "honorary man" while concomitantly undermining the viewer's automatic male gendering. The film's unhesitant insistence on viewer identification with a crude, aggressive female protagonist, a character who presents a feminine concept of justice and subjects all on-screen male characters to her penetrating gaze and uncompromising judgment, is a noteworthy and scarce act of feminist resistance and defiance in mainstream commercial cinema. It complements and enhances the film's combination of feminist approaches of care and dominance mentioned earlier, as well as the film's unique achievement in presenting a female protagonist as both victim and agent, inviting both compassion and admiration.

Viewer identification with Paulina undercuts identification with Gerardo. From Paulina's point of view and through her unblinking eyes, shared by the film's viewer, Gerardo is exposed as a weak, cowardly, self-serving man, unwilling to acknowledge his wife's heroism and self-sacrifice for his sake, reluctant to confront his own unheroic, disloyal conduct, and eager to pro-

mote his interests in the new political environment at all costs. His “objective,” “unbiased,” “legalistic” position concerning law and justice in times of transformation is exposed as highly subjective and self-serving, and his “ideological” preference for reconciliation over legal inquiries into the past revealed as stemming from a bad conscience and bad faith, personal guilt, refusal of gratitude, and simple cowardice. Through Paulina’s penetrating gaze, Gerardo’s legalistic-patriarchal position is stripped of its “neutral,” “professional” facade, and behind the scenes lurk denial, silencing, and a naked interest in self-preservation. Behind Gerardo’s hesitation to take legal action lies his refusal to confront the past, Paulina’s brutal victimization, systematic injustice, and, above all, his own role in and responsibility for her tragedy.

Sympathy and compassion for Paulina attract viewer identification with her at Gerardo’s expense on yet another, deeper emotional level. In his analysis of the therapeutic process trauma victims must undertake in order to return to life, Dr. Dori Laub stresses the crucial part played by the compassionate *other*:

Massive trauma precludes its registration; the observing and recording mechanisms of the human mind are temporarily knocked out, malfunction. The victim’s narrative—the very process of bearing witness to massive trauma—does indeed begin with someone who testifies to an absence, to an event that has not yet come to existence. . . . The listener, therefore, is a party to the creation of knowledge *de novo*. . . . By extension, the listener to trauma comes to be a participant and a co-owner of the traumatic event: through his very listening, he comes to partially experience trauma in himself. . . . The listener has to feel the victim’s victories, defeats, and silences, know them from within, so that they can assume the form of testimony.

Bearing witness to a trauma is, in fact, a process that includes the listener. For the testimonial process to take place, there needs to be a bonding, the intimate and total presence of an *other*—in the position of one who hears. Testimonies are not monologues; they cannot take place in solitude. The witnesses are talking *to somebody*: to somebody they have been waiting for for a long time.⁵⁰

The film’s viewer, drawn to Paulina’s forceful plea to commence the journey to the uncharted land of horror, is urged by the film to take on that intimate and total presence as an *other* who, through deep bonding with and commitment to the trauma victim, participates in the making of the traumatic

memory by taking an active part, and partially experiencing trauma himself or herself. Fulfilling the compassionate role that Paulina has long waited to be filled, the viewer becomes an active participant not only in her redemption, but even in the actual creation of her trauma and memory. In a deep sense, her emerging memory is also his own, as is her traumatic victimization.

The viewer's commitment to Paulina, to her trauma, memory, and truth, is thus profound. At the same time, the viewer experiences resentment toward Gerardo, who has neglected—and even refused—to fulfill this role all these years, and continues to do so. In a sense, the viewer's resentment is very real and personal: s/he blames Gerardo that his selfish, cowardly evasion of responsibility toward his wife has not merely denied Paulina salvation, but it has also now burdened the viewer with the difficult task of witnessing and experiencing trauma. The viewer's participation in Paulina's journey is an actual, painful, emotional involvement, as is the consequent resentment toward Gerardo.

Dr. Laub distinguishes between historians' reactions to the testimonies of trauma survivors and his own: a compassionate listener and fellow traveler in their journey to recovery. This distinction may illuminate the viewer's resentment toward Gerardo. Since historians know many details of a particular situation and have their own preconceptions and agenda with respect to it, what they hear is whether the attested details are in accord with their own interpretation and thus support it, or whether the details are erroneous or inaccurate in comparison with their superior specialist knowledge. Observing a detail that does not conform to their knowledge or interpretation, they conclude the witness is unreliable, and dismiss the testimony's value as a trustworthy source of knowledge and truth. Referring to his own response to testimony and the response of historians to that same testimony, Dr. Laub writes:

My attempt as interviewer and as listener was precisely to respect—not to upset, not to trespass—the subtle balance between what the woman *knew* and what she *did not*, or *could not*, know. It was only at the price of this respect, I felt, this respect of the constraints and of the boundaries of silence, that what the woman *did know* in a way that none of us did—what she came to testify about—could come forth and could receive, indeed, a hearing. The historians' stance, however, differed from my way of listening, in their firm conviction that the limits of the

woman's knowledge in effect called into question the validity of her whole testimony. . . . Of course, it is by no means ignorance that I espouse. The listener must be quite well informed if he is to be able to hear—to be able to pick up the cues. Yet knowledge should not hinder or obstruct the listening with foregone conclusions and preconceived dismissals, should not be an obstacle or a foreclosure to new, diverging, unexpected information. . . . Knowledge in the testimony is . . . not simply a factual given that is reproduced and replicated by the testifier, but a genuine advent, an event in its own right. . . . [H]er very talk to me, the very process of her bearing witness to the trauma she had lived through, that helped her now to come to know of the event. And it was through my listening to her that I in turn came to understand not merely her subjective truth, but the very historicity of the event, in an entirely new dimension.⁵¹

Death and the Maiden's cooperating viewer finds him- or herself adopting Dr. Laub's compassionate listening position, getting in touch with the deep truth of Paulina's testimony, and gaining a new emotional understanding of the horror she lived through. From this position, the viewer identifies Gerardo's "professional," "legalistic" stand as analogous to that of Laub's historians. Lacking in compassion, failing to love, bond, commit, and support, Gerardo is viewed by the viewer as selfish and arrogant. His preconceived legal notions and specialist knowledge, much as the historians', are regarded by the viewer as excuses to avoid meaningful contact with the emerging understanding of the atrocities committed by the old regime, and empty formulas meant to perpetuate Gerardo's distant superiority and to protect him from taking personal responsibility.

To complicate things further, Dr. Laub advises us that taking the position of the compassionate listener entails negotiating hazards and unpleasant responses:

Trauma—and its impact on the hearer—leaves, indeed, no hiding place intact. As one comes to know the survivor, one really comes to know oneself; and that is not a simple task. . . . The listener can no longer ignore the question of facing death; of facing time and its passage; of the meaning and purpose of living; of the limits of one's omnipotence; of losing the ones that are close to us; the great question of our ultimate aloneness; our otherness from any other; our responsibility to and for our destiny; the question of loving and its limits; of parents and children; and so on. To maintain a sense of safety in the face of the upheaval . . . the listener experiences a range of defensive feelings. . . . These listening defenses may include the following: [a] sense of total paralysis, . . . a sense of outrage and

of anger, unwittingly directed at the victim—the narrator. . . . [a] sense of total withdrawal and numbness. A flood of awe and fear; . . . Hyperemotionally, which superficially looks like compassion and caring. . . . [T]he listener . . . experiences a need, an urgency to pull back, to withdraw into a safer place, a place where he can in turn protect himself.⁵²

Overwhelmed by such unexpected emotions, does the viewer resent Paulina and identify with Gerardo? Does she feel shame, guilt, and even more resentment toward Gerardo? And how does Paulina's love for Gerardo affect the viewer? Does an audience share that love, finding oneself more forgiving, or is that audience infuriated by Paulina's love for her undeserving husband, begrudging him even more?

Double Identification and Self-Judgment to the Bitter End

One of the film's outstanding triumphs is its vehement refusal to allow its implied viewer to fully choose one of the characters over the other, for example, to reject Gerardo and side with Paulina. Constantly playing the viewer's conflicting sympathies and inclinations against each other, the film maintains intensive viewer identification with both Gerardo and Paulina throughout. At times Gerardo seems the only reasonable, decent, stable point of reference, while Paulina appears monstrous, preoccupied with sickening vengeance, hatred, and rage. At other moments Paulina seems courageous and truthful, a vulnerable woman in need of sympathy and compassion, while Gerardo appears weak, cowardly, and unable to love. The dialogue's quick pace invites a constant shift of emotions and inclinations, confusing, paralyzing, and frustrating the film's bewildered, torn, tormented viewer.

Identifying with Paulina, the viewer cringes in horror when s/he sees, reflected in Gerardo's responses, the depth of vindictive, ruthless hatred one is capable of harboring.⁵³ At the same time, identifying with Gerardo, seeing him- or herself through Paulina's eyes, the viewer is embarrassed to acknowledge and admit the powerful attraction of peace and quiet at all cost. The film's cooperating viewer is ashamed to confront how difficult it is to side with Paulina, to love and support her, and struggles with the secret longing to break away from the suffocating obligation and pursue a happier future, free of the haunting ghosts of a painful past.

As indicated earlier, the shooting and editing choices cause the viewer to experience split identification. The choice to restrict the entire film to the limited space of one house and to three characters who spend most of their time locked together in the same room increases the focus placed on the characters. Much of the film is comprised of close-up, medium, and reaction shots, as well as point-of-view and over-the-shoulder shots from the characters' perspectives. Most of the close-up, medium, and reaction shots are of Paulina and Gerardo, and most of the point-of-view and over-the-shoulder shots are from their perspectives. The viewer is thus cinematically strongly attached to them both.

The film's manipulation of viewer identification is epitomized in the ending. I mentioned earlier the choice not to deviate from the play version by not presenting the viewer with flashback shots of Paulina's rape and torture. The film's ending demonstrates an even more dramatic cinematic choice, this time deviating from the play.

In the play, in complete darkness, the viewer hears Roberto's recorded confession, the details of which were supplied by Gerardo, who heard them from Paulina. When Roberto completes writing the recorded confession and signing it, Paulina sends Gerardo to fetch his hidden car, and in his absence announces to Roberto that she is now convinced that he really is her rapist and is determined to shoot him. She says that only if he gives her a true confession and repents can she forgive him and let him live. Roberto refuses, insisting on his innocence. As they converse, both characters are slowly "covered from view by a giant mirror which descends, forcing the audience to look at themselves. For a few minutes, the Mozart quartet is heard, while the spectators watch themselves in the mirror."⁵⁴ We do not know whether Roberto is innocent, or whether Paulina shot him as she has said she would.⁵⁵ In the final scene, when he appears in a concert hall where Gerardo and Paulina attend a concert, we cannot tell whether he is a living man or a phantom: "Roberto enters, under a light which has a faint phantasmagoric moonlight quality. He could be real or he could be an illusion in Paulina's head."⁵⁶

In the film, Paulina is not satisfied with Roberto's videotaped "confession," which, she claims, seems staged and phony. As night fades and morning lights the scene, she decides to end the charade and kill Roberto. While Gerardo is phoning Barcelona to check Roberto's alibi (Roberto claimed that

he spent the relevant time in residency at a hospital in Barcelona), Paulina pushes the handcuffed and blindfolded Roberto at gunpoint to the edge of the cliff. When Gerardo, running, brings news that Roberto is indeed remembered by a woman at the hospital, Paulina discredits this evidence, saying Roberto must have arranged for her to supply him with this alibi, as did many of the old regime's criminals. Before pushing him into the ocean, Paulina removes Roberto's blindfold, looks into his eyes, and says, "Look at me. Isn't it bright enough to see me? Don't you know me?" In the light of day, in the open landscape, in a very long close-up shot capturing every nuance of his expressions and documenting his emotional upheaval, Roberto delivers a detailed confession:

I was strong; I fought it so hard. . . . I washed you. You soiled yourself. You told me "I am dirty," and I washed you clean. The others egged me on: "come on, Doctor, you're not going to refuse free meat, are you?" . . . And inside I could feel I was starting to like it. . . . You didn't know. It was bright in those rooms. And I didn't have to be *nice* to anyone. I didn't need to seduce them. I realized I didn't even have to take care of them. I had all the power. I could break anyone. I could make them say or do whatever I wanted. I was lost. I got curious. Morbid curiosity. How much can this woman take? What's going to happen to her vagina? Does it dry out when you shock her? Can she have an orgasm afterwards? I like being naked. I would undress slowly. . . . I liked you knowing what I was going to do. I was naked in the bright light and you couldn't see me. You couldn't tell me what to do. I owned you. I owned *all* of them. I fell in love with it. I could hurt you or I could fuck you. And you couldn't tell me not to. You had to thank me. I loved it. I was sorry it ended. I was very sorry it ended.

As he completes his narrative, Gerardo rushes at him in an apparent attempt to push him over the cliff. After a short, pathetic struggle he lets go, confessing, "I can't do it, Pauli. I just can't." As Gerardo sits helplessly on the fence with his head bowed, Paulina unties Roberto and walks home, Gerardo slowly following. Roberto remains standing, facing the ocean, and the camera assumes his point of view, looking down at the turbulent waters below.

In the film's final scene, the camera pans from a quartet playing *Death and the Maiden* to a concert hall packed with a well-dressed audience. The camera zooms in on Paulina—tense, grave, tormented—sitting alongside Gerardo. Sensing something, she looks up and meets the eyes of Roberto, who is sitting in the balcony with his wife and two boys and looking down at

her with a soft, longing look. Roberto's eyes meet Paulina's and then Gerardo's. A long medium shot leaves us with Paulina and Gerardo sitting very close together with paralyzed, stonelike faces.⁵⁷

The film replaces the play's open-ended last scene with a clear-cut resolution, thus actively preventing the viewer from dwelling philosophically on the unreachable nature of "truth"; such a philosophical endeavor on the part of the viewer would have also meant a convenient evasion of judgment.⁵⁸ In my analysis of *Rashomon*, I suggest that that film's open end leaves the viewer pondering the possibility of getting at the "real truth" of any past event, thus effectively distracting attention from the substantive issues of judgment and misogyny in the cinematic judgment process.⁵⁹ Dorfman-Polanski's *Death and the Maiden* refuses to let its viewer off the hook.

The film's ending leaves little doubt: Roberto *did* torture and rape Paulina; Paulina *did* recognize him correctly; her narrative *was* truthful, his denial deceitful. Together with Gerardo, with whom the viewer has strongly identified throughout the film, the viewer is overwhelmed by shame. S/he is ashamed at not having been able to tell truth from falsehood; at not having been able to love Paulina enough to do her justice; and for siding with the aggressor merely because it was easier and he was more appealing.

The viewer, together with Gerardo, the country's leading jurist, short-listed for the office of minister of justice, is terrified, realizing his or her blindness and incompetence in distinguishing true testimony from false, acknowledging how eager s/he was to dismiss Paulina's narrative. S/he feels deep guilt for doubting Paulina, for having accused her of mental illness and undermined her sense of self-respect. The viewer, together with Gerardo, is horrified at how close s/he came to exonerating a man guilty of brutal rape and torture, realizing that, like Gerardo, s/he has been actively participating in what amounts to a "second rape." Like Gerardo, who howled at the moon with Roberto, the viewer also feels betrayed and humiliated by Roberto, with whom s/he had bonded, and feels ashamed at having been so easily deceived.⁶⁰ The viewer, together with Gerardo, feels greatly humbled; the smug, self-assured judge now sits with bowed head.

To demonstrate once again the applicability of the theoretical terminology presented in this chapter's introduction, let me situate this discussion of the film's ending in the larger scheme of law and film study. In calling its

viewers' attention to the ways in which a member of any judging community, whether legal or cinematic, may be seduced to side with the aggressor at the victim's expense, *Death and the Maiden* illuminates the inner operation of a central element of the legal system. Concurrently, it points to the similarities between law and film as influential social discourses, illustrating how a film viewer, just like a member of a legal system, may be incited to participate in a victim's "second (judgmental) rape." The discussion of the film's ending is thus a "film parallels law" type of analysis.

The film's ending offers still further revelations and conclusions. The viewer's disillusioned realization in the film's final moments calls for a revised evaluation of the legalistic, "masculine" concept of law personified by Gerardo. Undoubtedly, the ending proves Gerardo wrong in his determination that Paulina is too "ill" to recognize Roberto and that her evidence is unreliable. The film's ending reveals that the "real real truth," as Roberto would put it, is manifested in Gerardo's desperate confession: "I can't do it, Pauli, I just can't do it." This confession echoes another memorable sentence, uttered by Paulina in one of the film's early scenes. When Roberto succeeds in tripping Paulina and causing her to drop her gun, he urges Gerardo to grab the weapon and overpower her, and is greatly disappointed when Gerardo fails to do so. "You didn't do anything, you just stood there," he accuses. "Of course he just stood there"—Paulina replies—"he is the law."⁶¹ Embodying the law, Gerardo is inherently incapable of "taking sides" and acting on his intuition and conviction. This accusation echoes, in the viewer's mind, yet another of Paulina's powerful lines, this one addressed to Gerardo: "I don't want you to be my lawyer, I want you to be my husband."

Indeed, Gerardo's confession, "I can't do it," is not merely that of a lawyer, but that of a husband as well. As a husband, Gerardo is expected by society to protect his wife and avenge her. Hearing of his wife's brutal repeated rape from the very man who raped and tortured her, who admits he "loved it" and was sorry it ended, Gerardo can be expected to be infuriated to the point where he loses self-control. His inability to kill—or even just strike—Roberto under these circumstances may indicate that his previous inability to see Paulina's victimization derives from and facilitates a selfish need not to see what he cannot face and cannot respond to. Unable to kill Roberto or punish him in any meaningful way, Gerardo is better off not knowing of

Paulina's rape; that is, he is best served by insisting that her evidence is inadmissible and her mental state too fragile to trust. Gerardo's condescending "professional" rationalizations regarding inadmissible and inconclusive evidence and unreliable witnesses are thus explicitly exposed by the film's ending as pathetic excuses, concealing incompetence and bad faith.

Throughout the film, the viewer is invited to respectfully consider, compare, and critique both presented notions of law and justice at face value. The film's ending pronounces its unreserved condemnation of the legalistic vision of law as "objective" and "neutral" and therefore impartial and just. The film leaves its implied viewer little room for doubt that such a conceptualization of law is a smoke screen, disguising personal, completely subjective fears, human deficiencies, and selfish interests. It is Paulina's bold, honest, and courageous pursuit of healing justice, which professes her subjective grounds, motivations, and biases, that the film celebrates and embraces. Paulina's course of action perhaps cannot secure a comprehensive, coherent system of objective judgment, but it is possible that it does constitute as good as law and justice are ever likely to get. The film seems to leave the viewer who identifies with Gerardo few means to save face.

But the film's implied viewer also deeply identifies with Paulina, thus also experiencing her redemption and relief. The viewer feels just in identifying with Paulina, and greatly relieved that the process of testimony creation, in which s/he actively shared, has been shown to be truthful and accurate. Further, the viewer is relieved that Paulina did not execute Roberto, that her lack of compassion for Roberto and her overwhelming, frightening, and embarrassing desire for vengeance, a desire that the viewer may have, at times, viscerally experienced, was redeemed and transformed into the pursuit of truth and justice.

Strongly associated with both Paulina and Gerardo, the implied viewer thus forcefully applies Paulina's judgment to himself or herself as the arrogant husband-jurist who could not tell right from wrong, and who failed to love and care for his victimized wife. The film mirrors the viewer, leaving the part of the viewer that identified with Paulina holding an unrelenting mirror to the face of the cringing part that identified with Gerardo. The cooperating viewer, who celebrates Paulina's regained dignity in the face of what the film exposed as both men's false, dangerous sense of honor and respectability, is

left with little doubt as to the film's uncompromising value system.

The film's ending clarifies that its most significant judgment is not the one presented on screen for approximately one hundred minutes, nor even that experienced by the viewer during the viewing. It similarly clarifies that the film's primary defendant is not Roberto. The real judgment instigated by the film only begins with the film's last scenes, when the Gerardo-identified viewer is presented with his tormenting reflection. Only at this point can the viewer begin to reassess his or her feelings and inclinations throughout the dramatic night, and begin to scrutinize and judge them. This process of introspection and self-judgment, the film's enduring "cinematic judgment," may last far longer than one hundred minutes.

Cinematic Reflections on Law and Truth Commissions

Death and the Maiden's ending discredits and exposes Gerardo's condescending formulation of law and justice, but this does not resolve the authentic dilemma regarding the desired nature of the legal system and its appropriate role in the transition from post-dictatorial regimes. Throughout the film, this dilemma was lost in the noise of Gerardo's bad-faith arguments deriving from personal weakness and selfish needs; silencing this noise does not resolve the dilemma but merely exposes and enhances it.

Should the law "take sides" and act on its intuition and conviction, or should it, indeed, merely supply the contesting sides with a stage and "neutral" rules? Is the law equipped to handle atrocities for which there is—and can be—no ordinary, familiar evidence? Further, Roberto's dramatic, spontaneous confession is clearly not a "realistic," convincing event in the context of these jurisprudential questions. It is most effective in ensuring the Gerardo-identified viewer's shame, pain, and introspection, but it does not reflect on the nature of the real legal proceeding, and it is, on the "mimetic" level, an obvious *deus ex machina*. In a real court of law, benefiting from the right to remain silent and from the right to professional representation, a defendant is not likely to confess so authentically to his crimes. In a real court of law, lacking Roberto's confession, would we be able to determine his guilt? And if not, is the legal process really the right social avenue to treat Paulina's victimization and trauma?

The film does not, and indeed it cannot, offer a resolution of the tragic jurisprudential dilemma it presents. Nevertheless, by subjecting its viewer to the cinematic judgmental process described in this chapter, it opens a door for rethinking the basic premises of law and legal proceedings. Most viewers, and certainly most professionally trained jurists, are likely to be deeply entrenched in the belief that law is and must be, above all, impartial. To use Dr. Laub's terms, most of us are likely to assume, with little hesitation, that the law, like historians, must listen impartially to testimony, searching for signs of scientific, objective truth, and regarding flaws and inconsistencies as undermining the reliability of the testimony as a whole. Most of us associate legal impartiality with defendants' right to a fair hearing, and confuse it with "neutral," "objective," "professional" indifference. Conflating the existing system with neutrality and objectivity, we fail to see its inherent biases. The film's cinematic judgment leads us to follow this positivistic line of thought to its logical end, forcing us to experience guilt and frustration when we realize the injustice and victimization it may entail.

Humbled and shaken, we are willing to consider that perhaps the law must maintain its historianlike reading of testimonies, while at the same time accepting the role of empathetic listener, actively participating in the testifier's heroic project of creating memory and truth. We are more likely to acknowledge that perhaps the law, as a social mechanism and the site of collective memory, is responsible not only to bystanders eager to leave the past behind, but also to victims. We are willing to rethink our common knowledge about admissible and conclusive evidence and the reliability of witnesses, and to reconsider the "impartial neutrality" of existing rules.

Why, indeed, should a victim's memory of an aggressor's odor, voice, and touch not be considered conclusive evidence?⁶² Why should visual memory be privileged, and why maintain this distinction when in cases such as Paulina's it serves to silence victims who have been blindfolded? If the law were to accept Paulina's testimony regarding Roberto's smell, voice, and skin, perhaps the chances of securing a conviction would be reasonable—even without a *deus ex machina* confession. We are willing to concede that the legal proceeding does feature characteristics that may be crucial for a therapeutic process of trauma victims, and that such victims' needs may be an important center of our attention in determining the nature and role of law.

We are even willing to admit that perhaps it is in our own interest, as bystanders, to be exposed to a legal proceeding such as that presented in the film.

The film cannot and does not offer precise recipes for how law can listen to testimony both as historian and as therapist. It does not entail detailed operational instructions for reframing evidence law to make it more empathic and compassionate to rape victims. But it does invite one's spirit to think of law and justice in the face of atrocities. It inspires reflections such as Martha Minow's about traditional legal processes' potential to ameliorate atrocity trauma:

To find the trial process wanting against the aspiration of truly dealing with the complex past is not to find it worthless as a response to atrocity. The challenge is to combine honest modesty about the promise of trials with the willingness to be inspired—and to combine inspiration with the hard, grubby work of gathering evidence and weaving legal sources into judgments.⁶³

Another socio-legal question, although never confronted by the film explicitly, hovers over it: are the needs of trauma victims and a traumatized nation better served by legalistic trials or by truth commissions such as the South African TRC? Gerardo's commission (its exact status unspecified by the film) is restricted to dealing with atrocities that resulted in death, and is therefore not the forum to investigate Paulina's victimization. Paulina herself, while strongly opposing the limitation of Gerardo's commission's authority, refers to the proceeding she demands and conducts as "law" and not as "truth finding," implying that it is strictly the legal proceeding she is interested in.

Nevertheless, the option of a truth commission as an alternative to legal proceedings does linger in the background, and, further, the private process conducted on-screen, in which the viewer is invited to actively participate, features some characteristics of a trial and some of a truth-finding process. While Paulina initiates the proceeding with a formal accusation, stresses the importance of confronting her assailant, insists on the importance of establishing the only real truth of Roberto's crimes and her victimization, and speaks of punishing Roberto, she also promises him "amnesty" (that is, his life and freedom) in exchange for his confession and remorse, and, in fact, lets him go when he eventually acknowledges responsibility and confesses. Does the film's final scene, portraying the characters in a concert hall, imply

that Paulina's nocturnal proceeding was one of truth and reconciliation? Are the characters "reconciled"? Can they ever be?

Over the last decade, scholars have offered absorbing theoretical discussions of the pros and cons of trials in comparison with truth commission hearings.⁶⁴ *Death and the Maiden's* presentation of Paulina's fictional hybrid proceeding offers a sensitive, sophisticated cinematic consideration of this subject.

Abandoning her initial desire to subject Roberto to torture and humiliation like that to which he had subjected her, Paulina finally announces to Gerardo that her wish is that Roberto talk to her, and that he confess. In the private proceeding she conducts holding a gun, she achieves both these goals. But if her need for Roberto to talk to her indicates her need for direct confrontation and personal acknowledgment, and if her demand for confession entails a need that the truth be fully revealed and publicly admitted by the perpetrator himself, then these two needs and goals may lead in conflicting directions. Direct personal confrontation, together with a formal communal accusation, moral condemnation, and positive determination of personal responsibility and guilt, are all accommodated by a legal proceeding. Paulina clearly desires all these elements. But, as Gerardo reminds her, a legal proceeding would require evidence beyond reasonable doubt—which she cannot provide—strict cross-examination, which would devastate her, and Roberto's right to remain silent. A legal setting is not likely to be sensitive to her needs and vulnerabilities, as "the very vocabularies of healing and restoration are foreign to the legal language underpinning prosecutions."⁶⁵ Her chances to prevail in a formal trial are not promising.

In a truth commission, Paulina would be able to tell her story to official representatives of the community, and even to the community itself, through media coverage. She would surely find compassionate listeners who would participate in creating her testimony, memory, and truth, assisting in the process of recovery and self-reconstitution. As Martha Minow writes, "The most distinctive element of a truth commission, in comparison with prosecution, is the focus on victims, including forgotten victims in forgotten places. . . . Echoing the assumptions of psychotherapy, religious confession, and journalistic muckraking, truth commissions presume that telling and hearing truth is healing."⁶⁶ A truth commission can provide a ritualistic repe-

tition of the traumatic event, documentation and public acknowledgment, and integration of private memory into the collective memory, all cushioned with a compassion that the legal system lacks. A truth commission is also more likely to provoke confessions from perpetrators: promising amnesty in exchange for truth, it encourages perpetrators to volunteer information they would otherwise conceal. But a truth commission does not allow direct confrontation: Paulina would have to give her testimony, hoping that Roberto, too, would volunteer his complementary confession.

Would Paulina prefer the safety of the truth commission, abandoning the demand for clear-cut determination and exposure of her perpetrator? Was Roberto's confession crucial for her recovery, or was the direct confrontation more essential for her empowerment? Would giving testimony in Roberto's absence serve her therapeutic needs and sense of justice? Should she make the pragmatic choice and prefer the more compassionate, therapeutic avenue, not risking a brutal cross-examination? Would that be a defeatist choice? And which of the options should the viewer choose, having come to internalize and cherish Paulina's complex, acute needs? The film does not provide a clear solution. In this respect, it elects an open ending. It does, however, invite viewer awareness of these questions. To facilitate viewer consideration, it provides the necessary background for understanding the situation, ensures the emotional involvement required for committed, attentive deliberation, and establishes the parameters and the considerations to be discussed and weighed.

Roman Polanski's 'Death and the Maiden'

It is not a trivial choice to study and celebrate a Roman Polanski film, and a film representing a rape victim and perpetrator in particular. I would like to conclude this chapter with some reflections on the connection between the themes I have pursued and the film's special character as a Polanski film.

Writers and critics have noted *Death and the Maiden's* place in Polanski's canon. Lawrence Weschler insightfully asserts that "Death and the Maiden" might have served as an alternative title for well over half of Roman Polanski's movies (for *Knife in the Water*, for instance, and *Repulsion*, and *Chinatown*, and *The Tenant* and *Tess*, and *Frantic* and *Bitter Moon* and maybe even

for *Macbeth* or *Rosemary's Baby*).⁶⁷ More specifically, Gordana Crnkovic explains that “Many of Polanski’s films explore the victimization of a female character which ends with death—either that of the character, or of those who persecute her. . . . Polanski’s films obsessively rework the motif of a woman-victim seizing power, a tool of death, and then deploying it in different ways.”⁶⁸

Additionally, it is very evident to anyone familiar with Polanski’s work that “the mood of intensifying claustrophobia, of three scorpions tangling in an ever-tapering bottle, is so distinctly Polanskian that the whole project may well have been dubbed “Knife in the Water II,” in homage to the director’s first feature film.”⁶⁹ The entrapment of *Death and the Maiden*’s characters in a secluded, hellishly claustrophobic environment, where two men and a woman confront themselves and each other, does indeed seem like another take on the theme that has fascinated Polanski throughout his work. In both these respects, *Death and the Maiden* is and must be viewed as a Polanski film.

There is yet another significant element that seems most relevant to this discussion: the film’s reflection of its director’s (renowned) life story and personality. As many have noted, from this perspective, *Death and the Maiden* may be the paradigmatic Polanski film:

The play neatly distributes among its three characters three of the principal guises by which Polanski’s life has come to be so publicly known: Polanski the guilt-ridden husband, who had to come to terms with the savage killing of his own young wife, Sharon Tate, by Charles Manson and his gang in 1969; Polanski the man himself accused, eight years after that, of statutory rape [of a thirteen-year-old girl], who, like the doctor, steadfastly continued to maintain his innocence, . . . and before either of those events, Polanski, the young Jewish victim of a Fascist regime during the Nazi occupation of his native Poland.⁷⁰

Violence, brutality, violations of human rights and dignity, insanity, victimization, and the complex relations and boundaries between victim and aggressor are central themes in Polanski’s films, as in his life.⁷¹ Murder, suffering, rape, loss, trauma, and guilt have shaped his life and his art. Until his directing of *The Pianist* in 2003, nearly sixty years after the war, Polanski seems never to have confronted his loss, victimization, and trauma as a Holocaust survivor. His survival strategy has been to leave the past behind without

looking back, focusing solely on the future.⁷² Perhaps as a consequence, it seems that the past has never ceased to inhabit his present, in life and art alike,⁷³ and he has found himself repeating its traumatic horrors as both victim and aggressor.⁷⁴

Casting and editing choices surely contributed significantly to *Death and the Maiden*'s powerful impact.⁷⁵ But I believe that it is the director's absolute identification with all three characters that, more than anything else, explains the film's grip on its viewer. This film's director did not merely instruct each of his actors how to perform the smallest of gestures,⁷⁶ but he also lived each of the parts, breathing his own life into them. Directing the film, he *was*, in fact, all three of the characters, inspecting, condemning, hating, and loving each of them through the others' eyes. The film's compelling power results from the way in which Polanski, through his fictional characters, pulls away from the tormented past and holds onto it, suppressing pain over the loss of loved ones, aching for redemption, and denying a guilt that haunts his very existence. The director invites his viewer into his own point of view by insisting that s/he identify, concomitantly and throughout the film, with victim, guilt-ridden bystander, and even, though partially, with the aggressor. The urgent, conflicting needs for justice, recovery, remembrance, forgetfulness and denial, forgiveness and reconciliation, inherently impossible to fulfill, seem to be Polanski's own, haunting the spot in which he positions his film's viewer.

In *Death and the Maiden*, Polanski allows us to enter his own tormented life as a trauma survivor, an aggressor, and a guilt-ridden bystander, and to experience the claustrophobic horror it entails. It is from this painful perspective we are presented with social and jurisprudential questions regarding memory, truth, law, and reconciliation. This humbling experience invites us to reconsider fundamental notions of justice, dignity, humanity, and life itself.

Notes

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1. See James Boyd White, *The Legal Imagination* (Boston: Little Brown, 1973); *When Words Lose Their Meaning* (Chicago: University of Chicago Press, 1984); *From Expectation to Experience* (Ann Arbor: University of Michigan Press, 1999).

2. For full explication of this argument, see Orit Kamir, "Judgment by Film: *Rashomon's* Socio-Legal Functions," *Yale Journal of Law and the Humanities* 12 (2000): 39. The "reader" or "viewer" referred to in this work is the hypothetical construct constituted by the text, known as the "implied" or "constructed" viewer. Nevertheless, I do sometimes assume that the actual reader would occupy the constructed reader's response. See note 41 below.

3. For previous articulations and detailed demonstration of this point, see Orit Kamir, "X-Raying *Adam's Rib*: Multiple Readings of a (Feminist?) Law-Film," *Studies in Law, Politics and Society* 22 (2000): 103; "Feminist Law and Film: Searching for Imagery of Justice in Popular Culture," *Chicago-Kent Law Review* 75 (2000): 899. For other relevant publications see http://sitemaker.umich.edu/orit_kamir.

4. Ariel Dorfman, *Death and the Maiden* (New York: Nick Hern Books, 1992).

5. For a different reading, which deliberately does not distinguish between play and film and treats them as a combined narrative, see David Luban, "On Dorfman's *Death and the Maiden*," *Yale Journal of Law and the Humanities* 10 (1998): 115.

6. George Bluestone, *Novels into Film: The Metamorphosis of Fiction into Cinema* (Berkeley: University of California Press, 1971), 5. For a contemporary collection of essays on the topic, and an exhaustive bibliography, see Deborah Cartmell and Imelda Whelehan, eds., *Adaptations: From Text to Screen, Screen to Text* (New York: Routledge, 1999).

7. For Claudius's lyrics and presentation of the *Death and the Maiden* theme in German art, as well as its deep misogyny, see Luban, "On Dorfman's *Death and the Maiden*," 123–30. For discussion of the theme in Schubert's music and in contemporary art, see Janet Wolff, "Death and the Maiden: Does Semiotics Justify Murder?" *Critical Quarterly* 35 (1993): 38.

8. Bluestone, *Novels into Film*, 24.

9. I refer to specific differences and similarities between the play and the film in order to present a cinematic choice. In general, the more substantial differences between the works, I believe, are these: the play presents action that lasts thirty-six

hours or so, whereas the film presents action condensed into a single night; the film thickens the twilight-zone atmosphere by introducing an electricity blackout. In the play, Paulina claims to have hid Roberto's car, whereas in the film we see her pushing it over the cliff, and thus we know she is lying to Gerardo and tend to believe that she means to kill her prisoner. The film, unlike the play, presents a long male-bonding scene in which Gerardo and Roberto become friends; in the film, Gerardo tries to untie Roberto with a knife he steals from the kitchen, and later Roberto overpowers Paulina, only to be overpowered by her in turn. None of these dramatic events takes place in the play. The film supplies Roberto an alibi he lacks in the play: a personnel clerk who affirms, over the phone, that Dr. Miranda spent the relevant years in Barcelona. Most significantly, the ending is dramatically different. For presentation of both endings, see below.

10. Martha Minow, *Between Vengeance and Forgiveness: Facing History after Genocide and Mass Violence* (Boston: Beacon Press, 1998), 2.

11. The film implies that the South American country could be Chile, Dorfman's homeland. For a discussion of Chile's history of human rights violations, transformation from dictatorship to democracy, and truth and reconciliation commission see Mark Ensalaco, *Chile Under Pinochet: Recovering the Truth* (Philadelphia: University of Pennsylvania Press, 1999); and Luis Roniger and Mario Aznajer, *The Legacy of Human Rights Violations in the Southern Cone: Argentina, Chile, and Uruguay* (Oxford: Oxford University Press, 1999).

12. The doctor joins them on the pretext of assisting Gerardo with a flat tire, presenting himself as a Good Samaritan.

13. Paulina insists she recognizes Dr. Miranda's voice, his smell, his laughter and little snorts, his phrases ("teensy weensy," "the real real truth"), his repetitive references to Nietzsche ("I think it was Nietzsche") and Freud, and his love for Schubert, and for *Death and the Maiden* in particular. (In the play, Paulina also claims she recognizes the feel of Roberto's skin.) Gerardo rejects these as inadmissible and insufficient evidence. Gerardo also reminds Paulina how she previously responded emotionally to another man whom she mistakenly identified as the rapist doctor.

14. Judith Herman's depiction of post-traumatic stress disorder can shed light on this discussion of trauma victims, as well as on many of Paulina's behaviors, responses, and choices. "The many symptoms of post-traumatic stress disorder fall into three main categories. These are called 'hyperarousal,' 'intrusion,' and 'constriction.' Hyperarousal reflects the persistent expectation of danger; intrusion reflects the indelible imprint of the traumatic moment; constriction reflects the numbing response of surrender" (Judith Herman, M.D., *Trauma and Recovery: The Aftermath of Violence—from Domestic Abuse to Political Terror* [New York: Basic Books, 1992], 35). "Traumatized people suffer damage to the basic structures of the self. They lose their

trust in themselves, in other people and in God. Their self-esteem is assaulted by experiences of humiliation, guilt and helplessness. Their capacity for intimacy is compromised by intense and contradictory feelings of need and fear. The identity they have formed prior to the trauma is irrevocably destroyed” (ibid., 56).

15. Gerardo’s line of thought regarding the dangers of applying the criminal procedure in situations such as Paulina’s is taken to its logical end in Mark Osiel’s comprehensive sociological-legal study *Mass Atrocity, Collective Memory and the Law* (New Brunswick: Transaction, 1997). Osiel’s study reveals how:

six recurring problems . . . have arisen from efforts to employ criminal prosecution to influence a nation’s collective memory of state-sponsored mass murder. Some of these suggest the task’s impossibility; others its undesirability. First, such efforts can easily sacrifice the rights of defendants on the altar of social solidarity. Second, they can unwittingly distort historical understanding of the nation’s recent past. Third, they may foster delusions of purity and grandeur by encouraging faulty analogies between past and future controversies Fourth, they may fail by requiring more extensive admission of guilt, and more repentance, than most nations are prepared to undertake. This is because efforts at employing law to instill shared memories sometimes require substantial segments of a society to accept responsibility for colossal wrongs and to break completely with cherished aspects of its past. Fifth, legal efforts to influence collective memory may fail because such memory—almost by nature—arises only incidentally; it cannot be constructed intentionally. Sixth, even if collective memory can be created deliberately, perhaps it can be done only dishonestly, that is, by concealing this very deliberateness from the intended audience. (Ibid., 7–8)

Elsewhere he complements this critique by stating, much like Gerardo (not to mention Miranda), that “overburdened by the weight of a catastrophic recent history, we are sometimes better off to forget. Nietzsche was surely right that ‘life in any true sense is impossible without forgetfulness.’ . . . Obsession with memory can be perilous as its repression, anamnesia as problematic as amnesia. ‘Hysterics,’ Breuer and Freud noted, ‘suffer mainly from reminiscences’” (ibid., 145). Osiel does, however, argue that certain cases of mass administrative atrocity can and should be submitted to criminal prosecution. In these cases, he claims, courts must be explicitly pedagogical, theatrical, and fully aware of their role in the creation of collective memory. To fulfill these purposes, they must adopt unique procedures and a frame of mind suggested by the author. For a summary and critique of the book, see Gary Jonathan Bass, “International Law: War Crimes and the Limits of Legalism,” *Michigan Law Review* 97 (1999): 2103.

16. “Polanski visually emphasizes the opposition between the legalistic, rational discourse advocated by Escobar and Paulina’s method of getting truth through the

use of power. In many scenes, Escobar and Paulina occupy opposite sides of the screen, with the tied-up Miranda in the middle” (Gordana Crnkovic, “*Death and the Maiden*,” *Film Quarterly* 50 [1997]: 39, 43).

17. Professional literature reveals that Paulina’s response is typical of trauma victims and makes perfect survival sense in the context. “Reliving a traumatic experience, whether in the form of intrusive memories, dreams, or actions, carries with it the emotional intensity of the original event. The survivor is continually buffeted by terror and rage. These emotions are qualitatively different from ordinary fear and anger. They are outside the range of ordinary emotional experience, and they overwhelm the ordinary capacity to bear feelings. Because reliving a traumatic experience provokes such intense emotional distress, traumatized people go to great lengths to avoid it” (Herman, *Trauma and Recovery*, 42).

18. As Luban rightly notes, “Schubert, with what she calls his ‘sad, noble sense of life,’ represents the civilization outside the torturers’ basement—the entire world of art and science and philosophy, of beauty and meaning, of humanity” (“On Dorfman’s *Death and the Maiden*,” 123). Luban expresses doubt whether, given humanity’s inherent misogyny, Paulina is just in wishing to reclaim her humanity. True as Luban’s argument may be, there seems to be little else for her to reclaim if she does not choose to die.

19. “Trauma inevitably brings loss. Even those who are lucky enough to escape physically unscathed still lose the internal psychological structures of a self securely attached to others. Those who are physically harmed lose in addition their sense of bodily integrity. And those who lose important people in their lives face a new void in their relationships with friends, family, or community” (Herman, *Trauma and Recovery*, 188). Paulina suffered all these losses.

20. “Robert Jay Lifton found ‘survivor guilt’ to be a common experience in people who had lived through war, natural disaster, or nuclear holocaust. Rape produces essentially the same effect: it is the victims, not the perpetrators, who feel guilty” (*ibid.*, 53).

21. “Shame is a response to helplessness, the violation of bodily integrity, and the indignity suffered in the eyes another person” (*ibid.*).

22. For a recent collection of essays dealing with these matters see Austin Sarat and Thomas R. Kearns, eds., *History, Memory and the Law* (Ann Arbor: Michigan University Press, 1999). See also Sharon K. Hom and Eric K. Yamamoto, “Collective Memory, History and Social Justice,” *UCLA Law Review* 47 (2000): 1747.

23. Paul Connerton’s analysis offers a broader perspective on Paulina’s need to use the law to integrate her story of victimization in the collective memory:

Those who adhere most resolutely to the principles of the new regime and those who have suffered most severely at the hands of the old regime want not only re-

venge for particular wrongs and rectification of particular iniquities. The settlement they seek is one in which the continuing struggle between the new order and the old will be definitely terminated, because the legitimacy of the victors will be validated once and for all. . . . The present is to be separated from what preceded it by an act of unequivocal demarcation. The trial by fiat of a successor regime is like the construction of a wall, unmistakable and permanent, between the new beginnings and the old tyranny. To pass judgment on the practices of the old regime is the constitutive act of the new order (Paul Connerton, *How Societies Remember* [Cambridge: Cambridge University Press, 1989], 7).

24. “The survivor who elects to engage in public battle cannot afford to delude herself about the inevitability of victory. She must be secure in the knowledge that simply in her willingness to confront the perpetrator she has overcome one of the most terrible consequences of the trauma. She has let him know he cannot rule her by fear, and she has exposed his crimes to others. Her recovery is based not on the illusion that evil has been overcome, but rather on the knowledge that it has not entirely prevailed and on the hope that restorative love may still be found in the world” (Herman, *Trauma and Recovery*, 211).

25. *Ibid.*, 70.

26. Robert F. Barsky offers an interesting insight into Paulina’s need to hear Roberto’s narrative: “She wants a chance to tell her story, but also to hear the Other of her story tell ‘his side’ so that she can complete the picture. This corresponds to Bakhtin’s notion of self and other, which suggests that we need the other as narrative response in order to ‘complete’ ourselves. . . . Paulina needs Dr. Miranda, as he needs her, to ‘fill in’ respective images of both selves” (Barsky, “Outsider in Literature: Construction and Representation in *Death and the Maiden*,” *Sub-stance* 84 [1997]: 82).

27. The film does not fully determine whether Roberto’s confession is crucial to Paulina’s recovery but rather poses this question for consideration. For further discussion of this point, see below.

28. Shoshana Felman and Dori Laub, M.D., *Testimony: Crisis of Witnessing in Literature, Psychoanalysis, and History* (New York: Routledge, 1992).

29. *Ibid.*, 69.

30. *Ibid.*, 70–71.

31. Herman, *Trauma and Recovery*, 181.

32. For essential feminist scholarship on the law and justice as systems of compassion and care, see Carol Gilligan, *In a Different Voice: Psychological Theory and Women’s Development* (Cambridge, Mass.: Harvard University Press, 1982); and Robin West, *Caring for Justice* (New York: NYU Press, 1997).

33. For essential feminist scholarship focusing on systematic dominance and op-

pression, see Catharine MacKinnon, *Feminism Unmodified* (Cambridge, Mass.: Harvard University Press, 1987).

34. Catharine MacKinnon perfectly captured the essence of the connection between rape and genocide-rape in a succinct formulation: “the rapes in the Serbian war of aggression against Bosnia-Herzegovina and Croatia are to everyday rape what the Holocaust was to everyday anti-Semitism: both like it and not like it at all, both continuous with it and a whole new departure, a unique atrocity yet also a pinnacle moment in something that goes on all the time” (MacKinnon, “Turning Rape into Pornography: Postmodern Genocide,” in *Mass Rape: The War Against Women in Bosnia-Herzegovina*, ed. Alexandra Stiglmayer [Lincoln: University of Nebraska Press, 1993], 73–81, at 74). See also Claudia Card, “Rape as a Weapon of War,” *Hypatia* 11 (1996): 5.

35. This whole scene, introduced by the film, does not exist in the play.

36. Roberto’s remark, which sets the tone for the conversation, is, “I thought *my* wife is unreasonable . . . but then she’s a woman—why am I surprised?” He goes on to quote Nietzsche, stating, “we can never entirely possess the female soul,” and explains, “you go insane wanting them, doesn’t matter what it costs, you pay the price, but you still don’t get what you expect.” Gerardo says of Paulina that “she has *not* been easy,” and of all women, “fuck women.”

37. Two of the film’s many painful moments are the one in which Paulina says to Gerardo, who wants to hold her as she narrates her rape, “I love you; I don’t trust you,” and the one in which she admits to having given him a false detail about her torture, in expectation that he would betray her and provide Roberto with the details of her intimate confession. Paulina is, of course, correct in her anticipation. (This episode turns out to be one of the film’s dramatic moments. Roberto’s deviance from the information provided him by Gerardo, which turns out to have been false, indicates that his acquaintance with the details of Paulina’s torture does not rely merely on Gerardo’s tips. Paulina’s trick tips the scale in her favor.)

38. Barsky rightly notes that “what *Death and the Maiden* helps us understand is that the very fact of being a victim of rape and torture (ironically) makes Paulina an ‘outsider’ to the legal process ostensibly in place to redress such injuries” (Barsky, “Outsider in Literature,” 66, 69). He further suggests that “the play could be read as her attempt to impose her outsider justice by continuously reacting against linguistic and procedural barriers set up by traditional forces” (*ibid.*, 74).

39. Paulina’s humiliation is evident in the couple’s first dialogue when, in a patronizing tone, Gerardo scolds his wife for failing to repair the spare tire; it is, after all, her duty to maintain the house and car. Unyielding, Paulina refuses to accept the blame—or the description of her role—bluntly proclaiming Gerardo’s conduct as “dumb” and hinting at his own unspoken blame.

40. Much feminist scholarship over the last three decades addresses patriarchal dismissal and disbelief of women who suffer sexual offenses. For some fundamental works, see Susan Brownmiller, *Against Our Will: Men, Women and Rape* (New York: Simon and Schuster, 1975); MacKinnon, "Feminism Unmodified"; Susan Estrich, *Real Rape* (Cambridge, Mass.: Harvard University Press, 1987); and Helen Benedict, *Virgin or Vamp: How the Press Covers Sex Crimes* (New York: Oxford University Press, 1992).

41. Many male viewers surely identify with the familiar complaint Gerardo later makes about his wife: "I am always in the wrong, and I am sick of it."

42. Sigourney Weaver's Paulina is chillingly violent and almost savage, provoking the viewer's great unease and even repulsion. At the film's very start she is seen cutting with a knife the chicken she has just cooked, then tearing it with her hands in brutal, abrupt gestures, then sitting to eat on the floor in a secluded corner of the house. Later, irritated by Gerardo's unwillingness to admit and discuss his acceptance of his nomination as the head of the president's commission, she wildly snatches his plate as he is eating and empties it into the trash can. Gerardo bends to retrieve a chicken leg, then humbly continues to nibble. In her encounter with Roberto, Paulina's barbaric behavior is difficult to watch, especially as she tears her underwear off her body, stuffing it into his mouth. Paulina hits Roberto when he is helplessly tied to a chair, bites his neck, uses crude language, and escorts him to the toilet, holding his penis as he pees. She uses her teeth to tear the tape with which she binds Roberto, sits with her legs wide open, having taken her underwear off, and throws a burning cigarette at Gerardo. During one particularly chilling moment Gerardo pleads with Paulina, asking, "what if he's innocent?" and she replies, "if he's innocent, then he's really fucked." Interestingly, all the gestures typical of Polanski mentioned here are the film's original contributions. Paulina's crude savagery is unique to the film. The play's character is more delicate and fragile, and hardly the vicious Amazon Polanski's Weaver presents. As Gordana Crnkovic, in "*Death and the Maiden*," rightly puts it, Polanski's Paulina is "much 'uglier' and less feminine (or not feminine at all) than in Dorfman's play" (43). Crnkovic notes that, unlike the play's Paulina, who fires the gun only when she loses control of it, "Polanski's Paulina is in complete control, obviously knows how to use the gun, and does so deliberately" (44). Paulina's character and conduct have been criticized as "provocative": "it's clear that the director has confused sexual assault with sex, the only possible explanation for Paulina's provocative behavior" (Julie Monahan, "Rape and *Death and the Maiden*," *off our backs: a women's news journal* 25 [1995]: 18). I believe my discussion makes it clear that I disagree with this reading.

43. A dramatic moment occurs when Paulina relates to Gerardo that she remembers her rapist's habit of quoting Nietzsche ("at least I think it was Nietzsche,"

she imitates a man's voice and intonation). In this scene Roberto is not present. But in an earlier scene, in which Roberto and Gerardo were present alone, Roberto did, indeed, refer to Nietzsche in exactly the manner imitated by Paulina. The viewer, who was present with Gerardo at the scene with Roberto, now recognizes with him the damning phrase, realizing, together with Gerardo, that this may be a significant clue, processing it, and hesitating about what to make of it. This brief realization bonds the viewer with Gerardo through a common point of view.

44. "Instead of opening up Dorfman's play to other locales and times [a customary practice in transforming a play into a film], . . . Polanski leaves the action almost entirely in a closed space. This confinement puts us in an uncomfortable state of ignorance and limitation that is not at all typical of film. It is not merely that we do not know what the characters know, but we can also *see* only what is happening here (one house) and now (one night)" (Crnkovic, "Death and the Maiden," 40–41). Weschler makes a similar point (Lawrence Weschler, "Artist in Exile," *New Yorker*, Dec. 5, 1994, 88, 90).

45. Crnkovic, "Death and the Maiden," 40.

46. An additional deviation that strengthens the viewer's bonding with Gerardo occurs at the film's end. The play leaves Gerardo believing that Roberto's confession was fully staged. When Gerardo leaves the stage, the viewer learns from Paulina that Roberto's confession included accurate details that she had not told Gerardo, that is, that the confession was not as staged as Gerardo believed. The film chooses to confront Gerardo with this information, once allowing Gerardo to know what the viewer knows.

47. I use the masculine "hero" because Paulina's type of heroism is traditionally gendered as masculine. "Heroine" still implies passive, delicate inaction, which is clearly not Paulina's type of bravery.

48. This, of course, is a result of gender expectations. Dirty Harry's crudeness and aggression would never compromise his heroic position. In Paulina's case it threatens to render her repulsive, "unfeminine," and "crazy."

49. For the fundamental formulation of this critique see Laura Mulvey, *Visual and Other Pleasures* (Bloomington: Indiana University Press, 1989). Mulvey's scholarship has, of course, attracted much attention and provoked some dispute over the decades, but, in my view, it is still insightful and useful.

50. Felman and Laub, *Testimony*, 58–59, 70.

51. *Ibid.*, 61–62.

52. *Ibid.*, 72.

53. This feeling peaks when Paulina physically assaults Roberto, and when she relates her wish that Gerardo rape him, or that they use a broom handle as an artificial organ. The face of Gerardo, who is looking at her, expresses sheer horror.

54. Dorfman, *Death and the Maiden*, 53.

55. Cathy Maree observes that “the unresolved crisis in *Death and the Maiden* roots this play in the urgency and complexity of crisis ideology” (Cathy Maree, “Truth and Reconciliation: Confronting the Past in *Death and the Maiden* and *Playland*,” *Literator* [South Africa] 16 [1995]: 25, 26).

56. Dorfman, *Death and the Maiden*, 55.

57. Aurea Maria Sotomayor asserts that Paulina is doomed to eternal victimhood, as there is no liberation from victimization and “there are no ex victims” (Aurea Maria Sotomayor, “[To Be] Just in the Threshold of Memory: The Founding Violence of the Victim in Diamela Eltit’s *Lumperica* and Ariel Dorfman’s “*Death and the Maiden*,” *Nomada: Creación, Teoría, Crítica* [Puerto Rico] 3 [1997]: 23, 29).

58. Polanski’s choice to tightly “close” the play’s open ending was conscious and deliberate. In an interview he clearly stated, “In the play, he’s definitely guilty, I think. It gives an answer, but then somehow it doesn’t manage to give an answer. It’s ambiguous, and it seems to me to a certain extent to be a cop-out. But I think we managed to make it more satisfying” (David Thompson, “I Make Movies for Adults,” *Sight and Sound* 4 [1995]: 6, 8).

59. Kamir, “Judgment By Film.”

60. Like Gerardo, the viewer can’t help but remember Gerardo’s emotional summary of the male bonding on the balcony: “at least we became friends tonight” (another cinematic beginning of a beautiful friendship). Gerardo’s shame at his betrayal by Roberto links him with Paulina, who was just as ashamed when, fifteen years earlier, she too trusted the Good Samaritan who played Schubert for her, only to later betray and hurt her. See also Nick James, “*Death and the Maiden*,” *Sight and Sound* 4 (1995): 40.

61. “Escobar/the Law cannot follow or be a match for Paulina and Miranda as they do battle in the sphere of violence, darkness, Eros, and death, a sphere inaccessible to Escobar and his knowledge” (Crnkovic, “*Death and the Maiden*,” 44).

62. Gordana Crnkovic reminds us of the connection (through the notion of *logos*) between sight and patriarchal order: “Electricity and its even light can be seen as attributes of *logos*—a term which means mind, word, light, and can also be interpreted as an attribute of ‘masculine cerebrality.’ Paulina’s is a female space that is based on and oriented toward the body and its truths: the givens of rape and torture, the inability to conceive a child, the body’s memory of smell, touch, and sound, the exclusion of the sense of sight privileged in a *logos*-centric discourse” (Crnkovic, “*Death and the Maiden*,” 39–45, at 42–43).

63. Minow, *Between Vengeance and Forgiveness*, 51.

64. For one such comprehensive discussion and references to the literature see *ibid.*, chapters 3 and 4, “Trials” and “Truth Commission.”

65. Ibid., 63.

66. Ibid., 61.

67. Weschler, "Artist in Exile," 90.

68. Crnkovic, "*Death and the Maiden*," 39–40, 44.

69. Weschler, "Artist in Exile," 90.

70. Ibid.

71. "When Polanski discusses the violence that occurs in his films, he often asserts that, far from being a sensationalist, he is a pure realist" (ibid., 91). "The membrane between victim and victimizer is unusually porous throughout Polanski's films, as it has been throughout his life" (ibid., 95).

72. All his life, "he saw everything in front of him and nothing behind him, his eyes firmly fixed on a future he already seemed to be hurtling toward, at maximum speed. . . . Roman was hurtling forward like a rocket, but it wasn't so much toward the future as away from the past" (ibid., 93).

73. Laub writes, "Trauma survivors live not with memories of the past, but with an event that could not and did not proceed through to its completion, has no ending, attained no closure, and therefore, as far as its survivors are concerned, continues into the present and is current in every respect" (Felman and Laub, *Testimony*, 69). "*All* Polanski films . . . have been about the war and, in particular, about the simultaneous combination of claustrophobia and agoraphobia that characterized the ghetto experience" (Weschler, "Artist in Exile," 94).

74. Dr. Laub claims that survivors who do not look back to know and grieve for their victimization and loss can only relive it repeatedly through tragic life occurrences that constitute their "second holocaust." "Through its uncanny reoccurrence, the trauma of the second holocaust bears witness not just to a history that has not ended, but, specifically, to the historical occurrence of an event that, in effect, *does not end*" (Felman and Laub, *Testimony*, 67).

75. Editing choices have been discussed throughout the chapter. The film's casting has received much praise. "It is Sigourney Weaver's superb portrayal of Paulina . . . that carries the drama into movieland," says Nick James ("*Death and the Maiden*," 40). Weaver's association with the notion of "aliens" enhances the "otherness" of Paulina's situation. "Kingsley's ingenious performance, with its shrouded hints of malevolence and convincing air of indignation, is the best in the film" (Pat Dowell, "Maiden America," *In These Times*, Feb. 20, 1995, 26). "Ben Kingsley fashions a brilliant portrayal of Roberto Miranda as the cultured middle-aged physician in a light summer suit, a picture of innocence, trying to suppress increasing panic while under attack. Miranda's final confession—which a kneeling Ben Kingsley delivers with a face and voice so different from his previous Good Samaritan that it creates the stunning impression of removing a mask—could not have been gotten in

any other way” (Crnkovic, “*Death and the Maiden*,” 41, 44). Further, “Kingsley’s most recent film role had been that of the sainted accountant in Steven Spielberg’s *Schindler’s List*” (Weschler, “Artist in Exile,” 90). Also because of his earlier, memorable role as Gandhi, Kingsley’s screen image is associated with good, noble men, and even Good Samaritans and “saints.” This identification makes it difficult for the viewer to identify Roberto as a brutal aggressor and adds to viewer tension and confusion. “As the voice of Law, Stuart Wilson masterfully develops his role of a man who is always too slow, alternatively expressing astonishment, utter disbelief, confusion, and finally understanding” (Crnkovic, “*Death and the Maiden*,” 44).

76. Weschler, “Artist in Exile,” 105.

The Racial-Spatial Order and the Law: *Devil in a Blue Dress*

MICHAEL J. SHAPIRO

Introduction: Administering Illegalities

In his *Discipline and Punish*, Michel Foucault charts the emergence of a productive relationship between modern policing and “the delinquent milieu.” Many of the consequences of this emergence, in which policing authorities suborn criminal informants to make use of their insider knowledge, are elaborated in twentieth-century hard-boiled detective fiction and in its cinematic film noir realizations. However the law-delinquency relationship requires a different political sensibility when one takes into account the historical trajectory of America’s racial-spatial order. For example, in terms of both its narrative and its imagistic (often dynarrative) moments, Carl Franklin’s *Devil in a Blue Dress*, which incorporates many features of the hard-boiled detective genre, supplements the familiar detective story with a politically inflected emphasis on the connection between the administration of legalities and America’s black-white relations.

Specifically, while mapping Los Angeles’s mid-twentieth-century racial geography, the film affirms and gives substance to Foucault’s argument that the penalties administered by the law give “free reign to some [while] putting pressure on others” and that rather than checking illegalities, penalty “differentiates them, it provides them with a general ‘economy.’”¹ The film’s representation of this general economy is based on its depiction in Walter Mosley’s crime novel of the same name, which treats a variety of economies: monetary, symbolic, and penal. And while the classic nineteenth-century crime novel “*belongs* to the disciplinary field that it portrays” because it reproduces the identities generated by the penal system (juridical authorities

on the one hand and the distribution of criminal types on the other), Mosley's novel resists what D. A. Miller calls the traditional "micropolitics of novelistic convention."² Instead of a single social order, with the identities of a class hierarchy produced within a single discursive frame, Mosley's *Devil* articulates the politics of an "urban frontier" in which separate, racialized "microcultures" operate with different epistemic purchases on the social order, which they express within different discursive idioms and with alternative sentiments about authority, legality, and civic responsibility.³

If we read novelistic form from M. M. Bakhtin's perspective instead of the policing-complicit representational practice that Miller attributes to nineteenth-century crime novels, we are able to discern the centrifugal ideological commitments that the novel, as a many-voiced (heteroglossic) genre, offers. Given its "verbal-ideological decentering," which articulates its recognition of multiple cultures and linguistic styles, the novelistic form, of which Mosley's *Devil* is an exemplar, generates alternative and frequently clashing micropolitical segments.⁴ Moreover, given the persistence of the racial divide foregrounded in the novel, *Devil*'s protagonist, Easy Rawlins, does not restore a coherent and quiescent order by solving a crime. Like the white detectives in the hard-boiled detective novels of Dashiell Hammett and Raymond Chandler, the "hero" does not achieve a definitive closure. Indeed, as Bakhtin notes, the novel distinguishes itself from the epic precisely because of the hero's "inadequacy to his fate or his situation."⁵ He or she functions within "a highly unstable 'field' of representation."⁶ Thus, like Hammett's Sam Spade or Chandler's Philip Marlow, Easy Rawlins operates within a social domain that lacks the liberal contractual accord that provides the presumptive political context in classic detective fiction. Dean McCann summarizes the difference succinctly:

Traditionally the classic detective story celebrated the victory of public knowledge and civic solidarity over the dangers of private desire. . . . [By contrast] Hard-boiled crime fiction transformed that story by radicalizing its tensions. . . . civil society can no longer contain private desire, public knowledge rarely trumps specialized expertise, and the idea of a common culture seems both profoundly appealing and ultimately unbelievable.⁷

These insights fit both the novel and film version of *Devil*. However, the novel version does not have the advantages of film form, in which angles of

vision, close-ups, the assemblage of shots, and the movement of images yield complexities and insights not afforded by a novel. Certainly novels convey visual imagery. For example, Miller refers to the “panoptic narration” of classic detective novels, implying that the genre’s dominant viewpoint and storyline are managed from the center of policing power.⁸ But, as I have implied, the imagistic dimension of a film can mobilize interpretive moments that clash with the action-oriented narrative. In the film version of *Devil*, such dynarrative moments help to articulate a politics of friendship (which I treat in the last section of this essay) through the mechanisms of the close-up and referential montage. At this point, however, I turn to a dominant semi-otic that is featured at the beginning of both the novel and film versions of *Devil* in order to highlight the racial-spatial order that the story maps.

A White Stain in the Midst of Blackness

Devil in a Blue Dress begins with a powerful evocation of the spatio-temporality of post–World War II black-white relations. The year is 1948. Easy Rawlins (Denzel Washington), having just lost his job in an airplane assembly plant, is sitting in Joppy’s Bar in a black section of Los Angeles reading the employment pages of the newspaper’s classified section. While at the individual level the scene introduces Easy’s personal problem, at a collective level Mosley’s opening provides ideal visual imagery for a cinematic treatment of a racially segregated L.A. in which the war service of African American GIs has failed to affect practices of racial exclusion. As Easy looks up from his newspaper, his first-person narration says:

I WAS SURPRISED TO SEE A WHITE MAN WALK INTO JOPPY’S BAR. It’s not just that he was white but he wore an off white linen suit and shirt with a panama straw hat and bone shoes over the flashing white silk socks. His skin was smooth and pale with just a few freckles. One lick of strawberry-blond hair escaped the band of his hat.⁹

Bruce Franklin’s screenplay version of the story fails to take advantage of this visual imagery. In the film, the intruding Mr. Albright has dark hair, a sallow complexion, and variously hued clothes and shoes. But the film does make use of the radio aesthetic from which the film noir genre has drawn. Easy Rawlins’s voice-over narrates this and many subsequent scenes in the

first person. In any case, Albright's whiteness in a black venue serves various important functions. Its most obvious role is the introduction of the film's dominant semiotic, its visual articulation of the unease that attends a mixing of black and white presences in the mid-twentieth century. The viewer knows that the bar is an all-black venue because Albright's appearance in Joppy's bar is preceded by the opening street scene outside in which only black pedestrians are in evidence. However, if we recognize the historicity of the aberration intrinsic to Albright's startling appearance, we will note that beyond the significance of 1948 as a postwar period, there is a longer time period, that of the institutionalization of Jim Crow laws and the persisting racial divide they have effected.

As is the case with all critical interpretation, to "transcode" the film from a simple action story about an individual to a critical reflection on race, crime, and the law, one must lend the scenes (and the dynamic moving images with which they are interconnected) historical depth.¹⁰ Accordingly, two significant aspects of this scene require elaboration. First, Albright undoubtedly hails from Foucault's "delinquent milieu," a domain that is "separate and manipulable," a form of "controlled illegality."¹¹ Although Albright describes his vocation (in response to a query by Easy) as doing "favors for friends," the more systemic perspective on his role, elaborated by Foucault, locates him as a product of the historic policing-initiated mode of useful delinquency, which developed along with modern penal systems. In both the novel and film narratives, Albright's mode of illegality consists in "a diversion of illegality for the illicit circuits of profit and power of the dominant class."¹² He has allegedly been hired by a wealthy mayoral candidate (although he is in fact working for his opponent) whose reputation must be protected while he tries to find his female partner, thought to be a white woman who frequents black venues.

This revelation articulates with the second historically freighted aspect of the scene, not only the way it reflects on the still-extant racial-spatial order of Los Angeles, but also the way it speaks to the performance demands imposed by the racial divide. While seated in Joppy's, Easy is casually attired (he is wearing an undershirt and has a pencil stuck behind his ear) and has a relaxed body language. In contrast, in an almost immediate flashback scene, in which he has gone to speak to the foreman at the aircraft company to try and

get his job back, Easy appears in a shirt and jacket; his body language is stiff and formal as he stands there literally with hat in hand.

Visually the film enacts, through Easy's changing bodily comportment, the behavioral demands that Los Angeles's racialized geography imposes. In negotiating the spaces within and around Los Angeles, Easy has learned what Ralph Ellison testified to after he moved from Alabama to New York earlier in the same century. He had to learn what he called the "thou shalt nots" governing the movements of differently raced bodies. Faced with the demands on one's performances imposed by the spaces of welcome, the spaces of indifference, and the spaces of disparagement and exclusion, Ellison had to become alert to "the arcane rules of New York's racial arrangements."¹³ Similarly, Easy survives, although he cannot wholly avoid disdainful, coercive, and violent treatment—by his former employer, by the police, by Al-bright and his minions, and by the employees of political candidates—thanks in part to his spatial canniness and thanks in part to his violent friend, Mouse, who comes to L.A. after a summons Easy conveys through Mouse's estranged wife, Etta-May. At the same time Easy's spatial odyssey makes much of a segregated and racially coercive Los Angeles intelligible to the viewer.

Making cities intelligible has been a primary feature of crime fiction since the nineteenth century—during the first half in the crime fiction of Edgar Allan Poe and later in the century in Sir Arthur Conan Doyle's Sherlock Holmes stories. Poe's "The Man of the Crowd," in which he invents a new urban spectator, serves as a prototype for his detective stories. His character roams the city, seeking to impose a coherence on what he observes, while narrating the story.¹⁴ The avatar of this new urban spectator is Poe's detective, Auguste Dupin, who solves mysteries and, at the same time, acts as "a meta reader of urban languages."¹⁵ Doyle's Sherlock Holmes is similar to Poe's Dupin insofar as for both the city is a geography of clues. But instead of a general reading of urban space, Doyle's London is portrayed as a class order. The "epicenter" of crime in the Holmes stories "from 1891 onwards" is London's West End, where Doyle's fictional crime centers around London's fashionable set.¹⁶ London's criminal world (for example, that described as the venue of the "dangerous classes" in Charles Booth's 1889 "Descriptive Map of London Poverty") is a place that Holmes eschews, in part because it lacks

mystery. As Franco Moretti suggests, Doyle's detective fiction focuses on enigma rather than visible crime, the "fictional crime in the London of wealth" rather than "real crime, in the London of poverty."¹⁷

It is evident, then, that the literary version of crime fiction articulates a spatial map. This is the case in nineteenth-century novels, for example in Dickens's *Our Mutual Friend*, where one encounters a middle class caught between "the fraudulent arrogance of the West End and the physical violence of the docks,"¹⁸ and in twentieth-century works, for example the way Hammett's and Chandler's fiction map the class and ethnic domains of San Francisco and Los Angeles, respectively. The film noir genre also provides a spatial mapping, but a purely spatial reading fails to capture the significance of the moving image and the assembly of shots. When we take account of the film version of *Devil*, we must heed not only the way that Easy Rawlins's spatial odyssey maps L.A.'s racial geography, but also the time images through which that odyssey is inflected as a political commentary. The intelligibility of space-time, however, is always radically entangled with identity. It is necessary, therefore, before considering the cinematic articulation of space and time in *Devil*, to treat another contrast between Doyle's Holmes and Mosley's Rawlins, the different kinds of identity disturbance they confront because of the significant differences in character of the "black sleuth" (or "blues detective") and the classic white detective.¹⁹

Identity Disturbances

A complex articulation of identity, space, and politics drives the narrative in *Devil*. What must be understood first is the historical heritage of African American creativity. As Houston A. Baker, Jr., summarizes it, "All African American creativity is conditioned by (and part of) a historical discourse that privileges certain economic terms. The creative individual (the *black subject*) must perforce come to terms with 'commercial deportation' and the 'economics of slavery.'²⁰ As a result, Baker notes, African American writing invariably involves "an encounter with economic signs"²¹ as the characters in their stories seek to effect the historical transition from having been, or having descended from, people who were commodities to being economically effective actors. The fraught relationship of the African American to eco-

conomic signs becomes especially evident when contrasted with that of white characters in classic (white) fiction, for example the comfortable relationship to economic signs that Charles Dickens attributes to a white gentleman, Alfred Lamble, whose very identity as a gentleman consists in his economic *savoir faire*: “The mature young gentleman is a person of property. He invests his property. He goes in a condescending and amateurish way into the City, attends meetings of Directors, and has to do with a traffic in Shares.”²²

In contrast, Easy Rawlins isn’t dabbling with shares. His acceptance of Albright’s contract, to be paid a large retainer to help him find a white woman who allegedly hangs out in black venues, is a result of his need to pay his mortgage. The initial voice-over while he sits in Joppy’s, “I needed money to pay my mortgage,” indicates that his home is an economically unstable *piéd-à-terre*. The remark is lent concrete imagery in a subsequent scene when Easy arrives home and the camera, once inside Easy’s house, pans the various signs of domesticity—furniture, appliances, and photographs of Easy’s period as a GI. An immediate flashback to a violent act by his friend, Mouse, in Houston, where Easy lived before coming to L.A., provides a reflection on the past that Easy is trying to transcend with his domestic habitus. As Mosley’s novel puts it, “I was a man of property and I wanted to leave my wild days behind.”²³ This “time image” (one of the few in the film) departs from a simple “organic narrative” in which the camera simply follows the action and provides instead a “crystalline narration” in which nonchronological time, imposed by the sequence of shots, provides a critical view beyond the immediate consciousness of the actor, a critical time sequence that transcends what is apparent if we merely follow the movement of the protagonist.²⁴ Moreover, because the preservation of Easy’s domesticity is achieved with Mouse’s violent assistance, his wild days are in effect revisited as an essential complement to his identity as a “man of property.”

In juxtaposing Easy’s earlier association with a criminal act with his current effort to achieve economic security, the film enters a thought world that precedes Easy’s immediate dilemma. In addition to its affirmation of Baker’s insights about the centrality of the “encounter with economic signs” in African American literature, the remark has strong historical resonances, especially if we note that in 1705 the state of Virginia passed legislation that designated slaves *as* real estate (people *as* rather than *of* property).²⁵ But even

though the white-controlled factory in which Easy had worked represents an extension of the southern plantation—"A job in a factory is an awful lot like working on a plantation in the South," Easy's narration says²⁶—his story takes place in the Jim Crow rather than the slave era. He is afflicted by the post-Reconstruction forces that have emerged to shape the identity spaces within which he strives to shape himself. But Easy's struggle is in a world whose identity spaces are produced primarily by white dominance. The woman he is hired to find, Daphne Monet, is a "Negro" (so designated by the Jim Crow "one drop of blood" criterion) who is fair-complected enough to pass as white. Her lover, a wealthy aristocrat running for mayor, ends their relationship because the exposure of her "racial" origins would discredit him.

Daphne, who ends the story as a tragic figure—she cannot fit comfortably in either the black or white world—harks back to a character in what are arguably the first crime stories written by an African American, Pauline Hopkins, whose serialized crime stories, published at the beginning of twentieth century, featured black female detectives. Her "Hagar's Daughter," which is situated in 1860, is a manifestly political crime story that begins with a reflection on the rift between the ideals of the Declaration of Independence and the existence of a nation whose economy incorporates slavery in its southern section, while witnessing a vast gulf between the free Negroes of the North and the slaves of the South. The protagonist has her life disrupted by the discovery of her African American heritage. The devoutly religious Hopkins puts it this way:

Here was a woman raised as one of a superior race, refined, cultured, possessed of all the Christian virtues, who would have remained in this social sphere all her life, beloved and respected by her descendants, her blood mingling with the best blood of the country if untoward circumstances had not exposed her ancestry. But the one drop of black blood neutralized all her virtues, and she became, from the moment of exposure, an unclean thing.²⁷

Although Hopkins's Hagar story is framed as detective fiction, its most important thematic, in this as in her other stories, treats the paradoxical issues surrounding the cultural, social, and political dimensions of racial separation. Typically, when her characters' disguises are breached, the interdependencies of identities become apparent—for example, the importance of racial segregation for status within the world of white society in "Hagar's Daugh-

ter” and the complex interaction of identity and inheritance in “Of One Blood.”²⁸

The historical vicissitudes of African American identities indicate a more general phenomenon: identity is relational, not self-contained; it has both symbolic and material debts to alterity. Moreover, the intersubjective, symbolic economy, which parallels the material economy, is influenced by some of the same antagonisms that afflict socially situated monetary exchanges, primarily because individuals are loathe to acknowledge their debts to otherness, just as the social order as a whole seeks to impose a unitary identity coherence on the social topology and ignore “its heavy burden of debt to [the] space of otherness.”²⁹ A telling example, at a collective level, is the way in which the so-called advanced Western nations require, for their distinctiveness, the gaze of others who have not achieved their democratic institutional structure, while denying that requirement and instead focusing on autonomous histories of institutional invention.³⁰

At an individual level, we encounter the character Easy Rawlins, who is afflicted with a complex identity paradox. In seeking economic independence—freedom from reliance on white structures of domination—he must negotiate an effective, economically situated self within the same white world that impedes that achievement. His dilemma is exemplified in two scenes juxtaposed early in the film, the one in which he has to stifle his desire for self-assertion and beseech a hostile white foreman to give him back his job, and the one in which he has to take on work from a dangerous white man, who is undoubtedly connected to the city’s white power structure. And in the process of conducting the investigation for which he is hired, Easy must confront a critical articulation between the identity order and the spatial order. After getting his retainer from Albright, he is required to meet him in a white leisure space, the pier in Malibu, where his blackness will (and ultimately does) cause him trouble.

Similarly, both Albright and the police detectives, both in roles that represent and reinforce a white power structure, need a representative of black Los Angeles to accomplish their work. Initially hired by Albright to find Daphne Monet, who, as Albright puts it, has a “predilection for the company of Negroes,” Easy is subsequently treated as a suspect and pressured by the police to help solve two murders that are connected to the search for Daphne. As is

the case with Easy, neither Albright nor the police can move effectively in all spaces. Their Los Angeles, like Easy's, is a racial-spatial order that restricts the movement and performances of raced bodies. Doubtless, the extraordinary aggressivity of both Albright and the police can be understood, at least in part, as a reaction to their identity dependence. To promote the power of whiteness, which is already symbolically dependent on what it is not, they must depend on blackness, materially as well as symbolically, to be able effectively to conduct their investigations. This identity dependence of the powerful—treated by Hegel in one way (in terms of the paradoxes of the way the dominant and dominated are locked into a structure of mutual recognition) and Lacan in another (in terms of the complex interdependencies of the law and desire)—yields an extraordinary aggressivity, which, according to Lacan, is heightened when space is constricted.³¹

A film story that focuses primarily on the paradoxes occasioned by a law-identity problematic (whether Hegelian or Lacanian) would require a parallel montage in which the scenes cut back and forth between Easy's paradoxical dependency and images of the police and their white delinquent supplements. (This kind of story, enabled by such a cinematic technique, is effected in the Robert Solo–Dennis Hooper film *Colors* [1988].) But because *Devil* is primarily focused on Easy's hard-won economic efficacy, the cinematic technique involved is best understood as a spatial narrative that maps the order by following an individual. Nevertheless, the individual's drama is framed by a treatment of the more general difference between white election politics and the black micropolitics of survival in a white-dominated city, where elections and the other political processes and ceremonies that distinguish the American political imaginary from the national to the local level are not vehicles that confer value on African American communities.

To treat critically the film's individually inflected spatial story, it is necessary, then, to treat the political frame within which the politics of *Devil* can be made intelligible. For this purpose, we can heed the ways in which *Devil* reproduces much of the political perspective articulated in the hard-boiled detective fiction of such writers as Hammett and Chandler. Fredric Jameson captures that politics succinctly in his commentary on Chandler's stories:

Chandler's picture of America has an intellectual content . . . the darker concrete reality, of an abstract intellectual illusion about the United States. . . . On the one

hand, a glamorous national politics whose distant leading figures are invested with charisma, an unreal, distinguished quality adhering to their foreign policy activities, their economic programs given the appearance of intellectual content by the appropriation of ideologies of liberalism or conservatism. On the other hand, local politics, with its odium, its ever-present corruption, its deals and perpetual preoccupation with undramatic, materialistic questions such as sewage disposal, zoning regulations, property taxes, and so forth.³²

How can one account for the persistence of the imaginary, given such a disjuncture between the national symbolic and the on-the-ground realities? For this, Jameson offers a corollary: "As in certain types of mental obsession and disassociation, the American is able to observe local injustice, racism, corruption, educational incompetence, with a practiced eye, while he continues to entertain boundless optimism as to the greatness of the country, taken as a whole."³³ Certainly Mosley's story is concerned with illuminating the hypocrisy of America's celebration of its democratic imaginary. Accordingly, Franklin's film has Easy's remark about the irrelevance of the mayoral election for black Los Angeles in one of the first voice-overs, as Easy is going through the employment section of the newspaper: "The newspapers was goin' on and on about the city election . . . like they were really going to change someone's life. My life had changed when I lost my job three weeks before."

Subsequently, Easy's spatial odyssey at the center of the film narrative is driven by his attempt to remain an economically viable actor in a racially discriminating job market and hold onto his home. The difference between election politics and the African American micropolitics of survival is underscored near the end of the film, when there is shown a newspaper front page carrying a large headline about the restoration of Todd Carter's candidacy in the mayoral election and a smaller one that reads, "Negroes angered by new property restrictions." To translate the smaller headline into a reflection on African American micropolitics one must recognize that the social uses of the neighborhood constitute a major form of political action for African Americans, given the constraints against an effective transversal black civic action: legal manipulation, discriminatory criminalization, and exclusion from mortgage funds and grants. As Stephen Haymes has noted, "the territorial maintenance and integrity of black settlements [has been a] form of civic association."³⁴

Cinematic and Extra Cinematic Space

Despite missing some of the opportunities in Mosley's pervasively color-coded story for a cinematic semiotics, Franklin's film version does effect the spatial narrative with historical depth that is central to Mosley's novel. Easy reluctantly accepts Albright's assignment to find Daphne Monet. Although the perils of Easy's assignment are treated within the moving frames of *Devil*, a discernment of the politics of the law-crime-race interrelationships requires us to heed what Noel Burch has famously distinguished as "*two different kinds of [cinematic] space . . . that included within the frame and that outside the frame.*"³⁵ First and foremost, as Easy's early voice-over informs us, there is a mayoral election underway. It makes its way into the frame in several separate framing shots, both when close-ups of newspaper headlines about the mayor's race are shown and in one tracking shot when the motorcade of mayoral candidate Matthew Terrill is shown passing through a black section of L.A. Otherwise, the political process associated with white dominance is taking place off-screen. Largely irrelevant to the well-being of Easy and other African Americans in L.A., the election enters the camera's frame first as news to set the context of the story and then only when it becomes particularly relevant to Easy's investigation—primarily in the form of the two candidates, the incumbent (and soon-to-be-discredited pedophile) Terrill and the challenger, the city's richest citizen, Todd Carter (estranged from his "Negro" but passing-as-white romantic partner, Daphne Monet).

Most of what is inside the frame involves Easy's spatial odyssey, the central nexus of which is his house. The initiating condition for the drama of the crime story, Easy's need to secure his home, ultimately governs the mobile organization of cinematic space, for the film's spatial narrative is orchestrated through movement in and out of Easy's house. A simple tracking of space throughout Easy's odyssey yields the following list of venues (after the initial scene in Joppy's bar), with the home scenes noted in boldface: 1) to Easy's **home**; 2) to Albright's workplace; 3) to the illegal club managed by Junior Fortnay; 4) to Dupree and Coretta's place; 5) back **home**; 6) to the pier in Malibu; 7) back **home**; 8) at the police station; 9) in Mayor Terrill's car; 10) back **home**; 11) in Daphne's hotel room; 12) at the house in Hollywood hills; 13) back **home**; 22) Joppy's bar; 23) Todd Carter's home/work-

place; 24) stops at posh and seedy venues (to smoke out Frank Green); 25) back home; 26) Portland Court at Junior Fortnay's apartment; 27) Dupree's apartment; 28) back home; 29) Joppy's bar; 30) a cabin in the hills; 31) outside Todd Carter's place; 32) outside Daphne's apartment; 33) back home.

If *Devil* were merely a detective drama, the significance of the sequence of Easy's stops would supply the spatial component to his role in the solving of murder cases. Easy's sequence of stops, like those of many other crime story characters who are coerced into becoming detectives by force of circumstances they cannot control (for example, Hitchcock's Roger Thornhill in *North by Northwest*), reflects the process of his investigation. His initial assignment as an informant is simply to report to Albright where to find Daphne Monet. Subsequently, once he has been treated as a suspect in two murders and coerced by Albright to continue his search for Daphne, he becomes, perforce, a detective rather than a mere informant.

Because Easy must traverse many hostile (effectively foreign) spaces and because time is of the essence—the police give him twenty-four hours to solve the murders or else they will pin them on him—Easy's actions can be recruited into the frame suggested by Michel de Certeau. Lacking strategic control over space, Easy must rely on tactics rather than strategy in order, ultimately, to maintain some control over one small space, his home. As de Certeau notes, whereas a "strategy . . . postulates a *place* that can be delimited as its *own* and serve as a base from which the relationships of an *exteriority* composed of targets or threats . . . can be managed," a "tactic . . . is the space of the other; it must play on and with a terrain imposed on it and organized by the law of a foreign power."³⁶

The spatial sequence in the film's thirty-three scenes contains eight home scenes. If we heed the significance of each of these and bracket the detection process in which Easy is involved, we can note a series of home invasions that indicate that, in addition to his precarious financial hold over his property, Easy is unable to maintain the inviolability of his home space. The first invasion is relatively benign; a self-appointed neighborhood tree pruner threatens his property's landscaping. In several scenes, Easy must chase him away to protect his and his neighbor's trees when he returns home. Thereafter, however, the home invasions are more obtrusive and threatening. Easy's

domesticity is rendered especially precarious when two police detectives come to haul him to the station as a murder suspect (in scene seven).

Focusing strictly on the episodes of home invasion, we can discern the following: When Easy returns home from Dupree and Coretta's place (having met them at a night club where he went to inquire about Daphne), he is disturbed by a phone call from Albright (scene six). He is told to meet him at the Malibu pier, and Albright hangs up before Easy can voice his misgiving about meeting in a white space. Back home from Malibu, he is accosted by two police detectives (in scene seven) who cuff him, take him to the station, and violently interrogate him as a suspect in Coretta's murder. He is released but threatened with future surveillance. Back home again (in scene ten) after being forced into Matthew Terrill's car, where he is questioned about Daphne's whereabouts and Coretta's murder, he is again summoned by telephone, this time by Daphne, who, having heard that he is looking for her, wants him to meet her at her hotel (where he has to be sneaked in by a bellhop because it is a whites-only establishment). After accompanying Daphne to a house in Hollywood hills, where another murder has taken place, Easy heads home again (scene thirteen). When he enters he finds Albright and his henchmen making themselves at home. Albright is making himself a sandwich while his men point weapons at Easy. After brutalizing Easy while questioning him about Daphne's whereabouts (she has, in his words, "taken off" upon seeing the body of the white man, Richard McGee), they desist.

Easy tries to quit his assignment at this point, but he is told that he is owned by Albright and must continue, especially since he can be connected to two murders. It is at this point that Easy decides to conduct his own investigation, beginning with an angry confrontation with Joppy, who is obviously implicated in his dilemma. After going to the place of Daphne's former lover (Todd Carter), Easy picks up an additional retainer (from Carter) to find Daphne again and proceeds to many hangouts—both posh and sleazy—to try and provoke a meeting with Frank Green, who is intimately connected with Daphne. When he returns home (in scene twenty-five) he is assaulted by Green, who has broken into his house. Saved by Mouse, who appears just in time brandishing his gun, from being knifed by Green (Mouse shoots and

wounds Green, who then flees), Easy is left at home with a neck wound. Then, just as he is recovering, the police detectives invade his home again (still in scene twenty-five) and threaten to pin the second murder on him. After Easy promises to help them solve the murders, he is granted a day's reprieve and sets out on his quest to solve the murders and find Daphne, who is somehow connected with them. After visiting Junior Fortnay and Dupree in search of information (he learns the details of Daphne's connection at Dupree's), he returns home to find that Daphne has broken in (scene twenty-eight). After they argue, and he learns that Frank Green is Daphne's brother (and thereby that Daphne is not entirely white), Albright and his minions break in, knock out Easy, and abduct Daphne (still scene twenty-eight).

Easy and Mouse then go to Joppy's bar and abduct Joppy, who leads them to the cabin where Daphne is being interrogated. After they rescue Daphne and kill Albright and his men in shoot-outs (and Mouse kills Joppy), Easy stops at Carter's place, learns that he will not take Daphne back (because Matthew Terrill is now discredited as a pedophile and Carter, now a shoo-in for mayor, cannot risk exposure of his association with a "Negro" woman), drops Daphne at her apartment, and returns home, this time finding it undisturbed (scene thirty-three). Daphne, who was born Ruby Hanks in Lake Charles, Louisiana, is left unable to resume her new life as Daphne Monet. As Easy's voice-over puts it, "She was still convinced that her Negro blood didn't matter now that Terrill couldn't use it to keep Carter out of the mayor's race." Then he says, in an observation reminiscent of the situation faced by Pauline Hopkins's Hagar, whose rich and politically well placed white lover will not cross the color line, "Even though we had fought a war to keep the world free, the color line worked both ways, and even a rich white man like Todd Carter was afraid to cross it."

Daphne, rendered a tragic figure by a Jim Crow racial order, disappears. When Easy tries to visit her once he is absolved of involvement in the murders, he finds that she has abandoned her apartment. Easy, on the other hand, still has his house, the icon of his economic efficacy. In the last scene he is seen enjoying his domesticity and the company of friends and neighbors. But he is reminded, when the two police detectives drive by and leer at him, that his home is not a refuge from white America's coercive "justice"

system. His home, the nexus of the film's spatio-temporal narrative, which maps the crime drama into which Easy is drawn, remains a vulnerable pied-à-terre. Easy, the effective economic actor, still exists in a racial-spatial order where he can be a victim at any moment.

Embodiment

In contrast with the usual victims in classic detective stories, novels, or film noir, who are typically victims of a crime, Easy has been a victim of the criminal justice system, and of the broader set of social and political forces with which black America has had to contend. *Devil* maps this set of forces not only with its spatial narrative, but also with shots of bodily comportment, especially the way Easy walks at different moments in different racial contexts. When comfortably located in a black venue, he walks with a loose-limbed, almost jiving, motion. The first example of this behavior is his walk from the table at Joppy's over to the bar to meet Albright for the first time. That walk is repeated twice in sequences of referential montage. It occurs once when he walks into the illegal night club in the black section of L.A. and once when, at the end of the film, he has been freed from Albright's and the police's coercion. His walk along his neighborhood street, near his house, recalls the earlier moments when his body reflected an absence of external threat.

In all other instances, throughout the episodes in which Easy is endangered because his body largely belongs to Albright and/or the police, his walk reflects the precariousness of his situation. One exemplary scene is his walk along the Malibu pier, with his collar turned up, his hands in his pockets, and his stride stiff and tentative. Another is his carefully constructed deliberateness when, in suit and tie, he walks into Todd Carter's place, aping the constrained bodily comportment characteristic of white bourgeois classes in formal settings. Although the film's close-up body shots and face shots in these and other instances are focused on individuals, telling us something about an individual's mentality, they also convey a structural reality, the pattern of release versus restraint that is imposed by a racially structured legal-administrative-social order. In short, the tracking shots of Easy's walking styles reveal a complex, historically racialized order. The viewer is not simply

meant to “recognize” the character but to achieve a “knowledge” about what his movements imply about the emergence of a world that has produced those movements.³⁷

It is important to recognize, therefore, that the knowledge conveyed in Franklin’s *Devil* is not located entirely within the narrative sequence of the crime story. If we heed what film theorists call the “cinematographic body,”³⁸ realized in *Devil* with the shots of Easy’s bodily comportment, we see a relationship between narrative and body different from its familiar portrayal in classic cinema. As Vincent Amiel puts it, the tendency in classical cinema was “*d’utiliser le corps comme simple vecteur du récit, abandonnait son épaisseur au profit exclusif de sa fonctionnalité*” (to utilize the body as a simple vector of the narrative, abandoning its density for the exclusive benefit of its functionality).³⁹ In contrast, certain directors (Amiel singles out Keaton, Bresson, and Cassavetes) use the body differently. Its comportment is not an “*instrument . . . au service d’articulations narratives*” (instrument in the service of narrative articulations)⁴⁰ but rather the primary vehicle for producing what is to be known. In some contemporary films (and here *Devil* is an exemplar), “the cinematographic body is no longer an object of film or knowledge; rather it is a model of knowledge via editing. . . . [It is] simultaneously that which is filmed and that which (re)organizes the film in the mind/body of the spectator . . . [becoming the] source rather than the object of cinema.”⁴¹

But “knowledge” here requires a distinctive frame, which is undoubtedly more familiar to African American viewers; it requires knowledge of “the blues,” which, beyond its familiar existence as a musical aesthetic, is significant as an African American practice of collective knowing, an ethno-epistemology. “Blues epistemology,” as Clyde Woods has described it, emerged first as a regional political reaction against the post-slavery deprivations of the “plantation bloc.” It is a “constant reestablishment of collective sensibility in the face of constant attacks by the plantation bloc and its allies” and “the historic commitment to social and personal investigation, description, and criticism present in the blues.”⁴² In practice, blues epistemology involves collective methods of survival in the face of diverse forms of white oppression. In *Devil*, that oppression is mobilized in the forms of a dis-

criminatory job environment and of policing, along with its delinquent supplement.

Once Easy shifts from informant to detective, he becomes, effectively, a “blues detective.” Unlike his early counterparts in classic and hard-boiled detective genres, Easy, like other blues detectives (for example Chester Himes’s Coffin Ed Johnson and Grave Digger Jones in his Harlem novels), has an added complexity. Rather than having the abstract and sketchy life of classic detectives such as Poe’s Dupin and Conan Doyle’s Holmes, or hard-boiled detectives such as Hammett’s Spade and Chandler’s Marlowe, Mosley’s Rawlins disports a “blackness [that] is an integral ingredient in the success of his investigation,” and, more importantly, Rawlins has an awareness of his “place within the fabric of [his] black society,” of his embeddedness within a “cultural community.”⁴³ This awareness is consistently delivered to the viewer not only implicitly through the bodily savoir faire that Easy displays during his investigatory odyssey, but also through the voice-overs, which deliver a pedagogy about the special difficulties associated with African American physical and economic survival. In the African American detective story, detection therefore has a double resonance. Because the black detective is “intimately connected to [his or her] surroundings,” the story involves the detective’s growing awareness of what blackness means to both the self and to the other black characters.⁴⁴

Conclusion: Devil and the Politics of Friendship

While Easy’s body is *Devil*’s most significant cinematic vehicle, several other bodies play important roles in the film’s delivery of its political sensibility. Easy’s emerging location in a network of bodies provides a context for discerning the politics of the distribution of the film’s bodies. Crucial to an appreciation of the politics of *Devil* is a comparison of two of Easy’s queries, one to Albright at the beginning of the film and one to Easy’s friend, Odell, at the end. During his initial meeting with Albright in Joppy’s bar, Easy asks about the kind of work Albright does. The response, after a hesitation, is, “I do favors for friends.” At the end of the film the issue of friendship comes up again when Easy asks Odell if it is all right to retain the friendship of some-

one you know to do “bad things.” Odell’s response, “All you’ve got is your friends, Easy,” is one of the story’s most significant lines.

Throughout his odyssey, Easy is thrust into situations in which he must test the value of friendship and distinguish between true and false friends (including himself). This aspect of Easy’s process of detection is more relevant to the film’s disclosure of black micropolitics than his solving of the murders. Initially wary of Albright’s kind of friendship, Easy’s qualms are justified when Albright and his henchmen invade his home and threaten and brutalize him. After tracing this episode to Joppy Easy confronts him, and during their shouting match Joppy protests, “Look at me, Easy. I’m your friend,” which locates Joppy alongside Albright as another false friend. But Easy himself proves false with respect to his friendship with Dupree, giving in to the temptation to have sex with Dupree’s “woman,” Coretta, at their house while Dupree is asleep in the next room. Later in the film, when Easy and Mouse visit Dupree in search of information, in a letter tucked into Coretta’s Bible, which is still in the house, Easy says to Dupree, “I’m sorry.” Although he is ostensibly offering his condolences, it is clear that the remark has a double resonance; it applies as well to his betrayal of their friendship, even though Dupree is unaware of Easy’s transgression.

Two aspects of film form articulate *Devil*’s politics of friendship. In the first, the viewer is made aware of good versus false friends through what Deleuze calls affection-images, consisting primarily of close-ups of faces.⁴⁵ For example, both Albright’s hesitation and Joppy’s pleading remarks about friends are uttered during close-ups in which their faces betray their duplicity. Less immediately evident in terms of its meaning is a close-up of Odell, who is sitting at the same table with Easy, Dupree, and Coretta in the black club where Easy first makes his inquiries about Daphne. At the point at which Easy begins his queries and Coretta, after deflecting them, begins a flirtation with Easy, the viewer is shown a close-up of Odell’s face, which registers alarm and worry. In retrospect, it becomes evident Odell was concerned about the trouble ahead for his friend. The other significant affection-images are of Mouse’s face, especially when he anticipates expressing his friendship with Easy through the use of his gun. The grinning face (with flashing gold teeth) speaks both of his relish of violence and of the affirmation of friendship that it effects. However, Mouse is also a pivotal character

because his role in the crime story bridges both aspects of the film's form-related treatment of friendship.

The close-ups give the viewers a chance to anticipate what Easy must ultimately do before he gives up the idea of being an employee and decides to own his own labor as a private detective (a decision revealed to Odell at the end of the film). Easy must achieve an amical phronesis; he must learn how to select friends as part of a micropolitics of survival, which he shares with others in the African American community. It is immediately clear to the viewer that Albright's friendship discourse is betrayed by the strategic look on his face and his bodily comportment. In a meditation on Aristotle's approach to the politics of friendship, Jacques Derrida provides a sketch that excludes people like Albright from the pool of possible friends:

Why are the mean, the malevolent, the ill-intentioned (*phauloi*) not, by definition, good friends? Because they prefer things (*pragmata*) to friends. They stock friends among things, they class friends at best among possessions, among good things. In the same stroke, they thus inscribe friends in a field of relativity and calculable hypotheses, in a hierarchical multiplicity of possessions and things.⁴⁶

Albright conforms especially well to Derrida's description of the malevolent nonfriend because, beyond being ill intentioned and ruthlessly pragmatic, Albright explicitly regards Easy as a temporary possession, which he tells him when Easy tries to end his contract. In contrast, Mouse fulfills one of Derrida's criteria for the friend; he is someone whose friendship has endured a test of time. As Derrida puts it, "Primary friendship does not work without time . . . it never presents itself outside of time: there is no friend without time . . . and no confidence which does not measure up to some *chronology*, to the trial of a sensible duration of time."⁴⁷

Although time is integral to the friendship phronesis that becomes a parallel investigation for Easy, the film's second aspect of its form-friendship construction is articulated through filmic space. Easy exists in a friendship network that extends to Houston (a place that, as I have noted, appears once in a flashback). Mouse's timely arrival from Houston to rescue his friend from having his throat cut, and ultimately from having two murders pinned on him, derives its political significance from the juxtaposition of two networks—the network of law enforcement personnel and its supplement constituting the criminal justice system, a racialized police-delinquency map-

ping of L.A., and the friendship network, which ultimately provides relief for Easy, who is victimized by the criminal justice network.

To understand these networks it is necessary to recognize that from the mid-twentieth century onward, L.A. has increasingly become an “urban landscape made up” (as one comprehensive interpretive mapping would have it), “of layers of premium network spaces, constructed for socio-economically affluent and corporate users, which are increasingly separated and partitioned from surrounding spaces of intensifying marginality—spaces where even basic connections with elsewhere, and basic rights to access spaces and networks, are increasingly problematic.”⁴⁸ As is made clear in *Devil*, it is the administration of the criminal justice system that connects the various partitioned spaces in a racially splintered L.A.—in ways that disadvantage the African American community. Effectively, *Devil* tells us, through form as well as storyline, that those who are unable to anticipate relief from either the electoral process or law enforcement must rely on friendship. Certainly Mouse does “bad things,” as Easy recognizes. But as Odell reminds him, for African Americans especially, “all you’ve got are your friends.”

We can locate Odell’s insight in a political context that transcends the politics of the race-crime-law relationship within Los Angeles. Once we recognize the fragmented nature of America’s urban landscapes, in which the geometry of the city must be seen as a historically effected collage of diverse life worlds, which have been coercively assembled by the trajectory of Jim Crow laws and practices, we are positioned to offer a challenge to the dominant political narrative of nation building, shared by the legitimation stories of many states and canonical political theory texts. *Devil*’s larger contribution to political theory consists in its repudiation of the Hegelian narrative of modernity, in which (in the case of the European-inaugurated nation-state model) a state-managed political order effectively supercedes other modes of affiliation.

As Derrida notes at the beginning of his treatment of the politics of friendship, “[No] dialectic of the state ever breaks with what it supercedes . . . and from which it arises.”⁴⁹ Accordingly, if we turn our attention to such racialized micropolitical orders as Los Angeles’s African American community, we encounter an extrastate network based on historical grievance, on the history of a crime that has been constitutive of “the American political tradi-

tion.” Mosley’s crime story, which provides the basis for Carl Franklin’s film *Devil in a Blue Dress*, is embedded in a more venerable (and continuing) crime story, the story of the historical trajectory of America’s racial-spatial order.

Notes

1. Michel Foucault, *Discipline and Punish: The Birth of the Prison*, trans. Alan Sheridan (New York: Pantheon, 1977), 272.

2. The quotations are from D. A. Miller’s Foucauldian analysis of nineteenth-century crime novels, “The Novel and the Police,” in *The Poetics of Murder: Detective Fiction and Literary Theory*, ed. Glenn W. Most and William W. Stowe (New York: Harcourt Brace Jovanovitch, 1983), 316.

3. The quoted expressions belong to Robert Crooks, who sees the African American crime story in terms of a spatial divide that compares with that generated between European and Native Americans in Westerns. See his “From the Far Side of the Urban Frontier: The Detective Fiction of Chester Himes and Walter Mosley,” *College Literature* 22, no. 3 (Oct. 1995): 68–91.

4. See M. M. Bakhtin “Discourse and the Novel,” in *The Dialogic Imagination*, trans. Caryl Emerson and Michael Holquist (Austin: University of Texas Press, 1981), 259–422. The quoted expression, “verbal-ideological decentering,” is on p. 370.

5. M. M. Bakhtin, “Epic and Novel,” *ibid.*, 37.

6. The quoted expression belongs to Theodore O. Mason, Jr., who also applies Bakhtinian insights to Mosley’s fiction. See his “Walter Mosley’s Easy Rawlins: The Detective and Afro-American Fiction,” *The Kenyon Review* 14, no. 4 (Fall 1992): 176.

7. Sean McCann, *Gumshoe America* (Durham, N.C.: Duke University Press, 2000), 4.

8. Miller, “The Novel and the Police,” 318.

9. Walter Mosley, *Devil in a Blue Dress* (New York: Simon and Schuster, 1990).

10. The term “transcoding” belongs to Fredric Jameson, who also addressed himself, in the same place, to adding history to a film’s surface problems, in a discussion of allegory in Hitchcock. See his “Allegorizing Hitchcock,” in *Signatures of the Visible* (New York: Routledge, 1992), 100.

11. Foucault, *Discipline and Punish*, 279.

12. *Ibid.*, 280.

13. Ralph Ellison, “An Extravagance of Laughter,” in *Going to the Territory* (New York: Random House, 1986), 148.

14. My commentary here is drawn from Dana Brand’s discussion in *The Spectator and the City on Nineteenth-Century American Literature* (New York: Cambridge University Press, 1991), 79–82.

15. *Ibid.*, 99.
16. The quotations are from Franco Moretti's mapping of the city in nineteenth-century novels in his *Atlas of the European Novel* (London: Verso, 1998), 134–35.
17. *Ibid.*, 136.
18. *Ibid.*, 86.
19. The "black sleuth" expression is a reference to one of the earliest treatment of an African American detective, John Edward Bruce's *The Black Sleuth* (Boston: Northeastern University Press, 2002), originally published in serial form in *McGirt's Magazine* in 1907 and 1909. On the "blues detective," see Stephen F. Soitos, *The Blues Detective: A Study of African American Detective Fiction* (Amherst: University of Massachusetts Press, 1996).
20. Houston A. Baker, Jr., "Figurations for a New American Literary History," in Sacvan Berkovitch and Myra Jehlen, *Ideology and Classic American Literature* (New York: Cambridge University Press, 1986), 160.
21. *Ibid.*
22. Charles Dickens, *Our Mutual Friend* (London: Harmondsworth, 1977), 159.
23. Mosley, *Devil in a Blue Dress*, 48.
24. For Deleuze's juxtaposition of the two kinds of narration, see Gilles Deleuze, *Cinema 2*, trans. Hugh Tomlinson and Robert Galeta (London: Athlone, 1989), 126.
25. See *An act declaring the Negro, Mulatto, and Indian slaves within this dominion, to be real estate* at <http://www.law.du.edu/russell/lh/alh/docs/virginiaslaverystatutes.html>. Section II reads, "Be it enacted, by the governor, council and burgesses of this present general assembly, and it is hereby enacted by the authority of the same; That from and after the passing of this act, all negro, mulatto, and Indian slaves, in all courts of judicature, and other places, within this dominion, shall be held, taken, and adjudged, to be real estate (and not chattels;) and shall descend unto the heirs and widows of persons departing this life, according to the manner and custom of land of inheritance, held in fee simple."
26. Mosley, *Devil in a Blue Dress*, 62.
27. Pauline Hopkins, "Hagar's Daughter," in *The Magazine Novels of Pauline Hopkins* (New York: Oxford University Press, 1988), 62.
28. Pauline Hopkins, "Of One Blood," *ibid.*, 441–621.
29. The quotation is from Wlad Godzich's "Afterword," in Samuel Weber, *Institution and Interpretation* (Minneapolis: University of Minnesota Press, 1987), 161.
30. This scenario is encouraged by some insights in Slavoj Žižek's "Enjoy Your Nation as Yourself," in *Tarrying with the Negative* (Durham, N.C.: Duke University Press, 1993), 72.
31. See Jacques Lacan, "Aggressivity in Psychoanalysis," in *Écrits*, trans. Alan Sheridan (New York: W. W. Norton, 1977), 8–29.

32. Fredric R. Jameson, "On Raymond Chandler," in *The Poetics of Murder: Detective Fiction and Literary Theory*, ed. Glenn W. Most and William W. Stowe (New York: Harcourt Brace Jovanovitch, 1983), 129–30.

33. *Ibid.*, 130.

34. Stephen Haymes, *Race, Culture, and the City* (Albany, N.Y.: SUNY Press, 1995), 70.

35. Noel Burch, "Nana, or the Two Kinds of Space," in *Theory of Film Practice*, trans. Helen Lane (New York: Praeger, 1973), 17.

36. Michel de Certeau, *Practices of Everyday Life* (Berkeley: University of California Press, 1984), 35–36.

37. The quotations around recognition and knowledge refer to Gilles Deleuze's discussion of the way a tracking shot can transcend a simple movement image and deliver knowledge instead of mere recognition by assembling shots in a way that lends daily life a critical temporality. See his *Cinema 2*, 18–19.

38. Among the most effective recent treatments is Vincent Amiel's *Le Corps au cinéma: Keaton, Bresson, Cassavetes* (Paris: Presses Universitaire de France, 1998).

39. *Ibid.*, 2.

40. *Ibid.*

41. The quotation is from a commentary on Amiel's approach to the cinematographic body: Jerome Game, "Cinematic Bodies," *Studies in French Cinema* 1, no. 1 (2001): 50–51.

42. Clyde Woods, *Development Arrested: Race, Power, and the Blues in the Mississippi Delta* (New York: Verso, 1998), 30.

43. Soitos, *The Blues Detective*, 29.

44. *Ibid.*, 31.

45. See Gilles Deleuze, *Cinema 1*, trans. Hugh Tomlinson and Barbara Habberjam (London: Athlone, 1986), 65–70.

46. Jacques Derrida, *Politics of Friendship*, trans. George Collins (New York: Verso, 1997), 19.

47. *Ibid.*, 14.

48. Stephen Graham and Simon Marvin, *Splintering Urbanism: Networked Infrastructures, Technological Mobilities and the Urban Condition* (New York: Routledge, 2001), 23.

49. Derrida, *Politics of Friendship*, viii.

Anti-Oedipus, Lynch: Initiatory Rites and the Ordeal of Justice

RICHARD K. SHERWIN

The path to heaven leads through the abyss.

Friedrich Schelling, *Philosophy of Religion*

Initiation lies at the core of any genuine human life.

Mircea Eliade, *Rites and Symbols of Initiation*

Reversal is the direction of study which transforms existence into script. Its new teacher is Bucephalus, “the new advocate,” who takes the road back without the powerful Alexander—which means, rid of the onrushing conqueror . . . [H]e reads and turns the pages of our old books. . . The law which is studied but no longer practiced is the gate to justice.

Walter Benjamin, “Franz Kafka”

Introduction: “Law Dreams”

Law dreams, and forgets. It forgets its dreams and forgets that it dreams. Law dreams of law: its hidden fantasies, desires, impulses, fears. Like all dreamers, law dreams in images: taboo symbols, intimating forbidden knowledge amid forbidden urges. We repress law’s disorder for the sake of its order. We repress its violence for the sake of its legitimacy. But as Freud taught, the price of repression is inescapable. In symptoms of disorder, the repressed returns. The dreams of law haunt the law. Its ghost, like Hamlet’s father, returns to set things right. In daylight, law rules paternally, as infallible judge. But at night—and let us include the simulated night of darkened theaters—its demons (and perhaps also its angels) roam. On silver screens, the symbolic life of the law breathes free.

In what follows, we will explore the dream life of law. This is the scene of law’s otherness, its repressed others. When we visit the dream space of law we confront law’s debt to its own unconscious. Naked, incoherent forces and untapped meaning-making power lie buried in the symbolic life of the law.

We go there in search of a reckoning with law's debt. This coming to account is a making good and a putting right. And while the books of law may never be fully squared, the effort to balance its accounts remains salutary. Passing through the hell of confrontation, daring to face that which terrifies us and makes us want to forget, raises hope for illumination. Undertaking this rite of passage initiates a renewed awareness of forgotten sources of culture and meaning that may help to revitalize the dead letter of the law. That deadness, I shall argue, consists in the historic collapse of the symbolic life of the law. When we dare to call back to mind the initiatory rites of the ordeal of justice another memory stirs. Yes, law dreams.

It is fitting that we undertake this act of remembrance now, for we are living in the age of the image. It is in the image that we may explore law's rule together with its reveries and torments. Symbols, as in a dream, display the mythic origin of law. Consider in this regard the story of Oedipus, the king. His powers of detection were unsurpassed. Oedipus alone unraveled the Sphinx's riddle, thus gaining lawful rule over Thebes. But Oedipus carried a secret. Murder was also a precursor to his rule. When Oedipus unwittingly killed his own father he released the very seat of power that he would occupy. For Freud, this act of parricide is paramount. Law begins with the death of the primal father. For us, however, the emphasis will shift. It is not simply violence against the father that will concern us, but also, and more significantly, the radical misplacement of (and perverse forbearance from) violence.

In the ancient myth of kingly succession, it is the symbolic figure of the feminine that must be confronted and worked through. In the rite of royal investiture, the king's rightful successor must engage in combat with the dragon. The hero who vanquishes the female monster frees the bride. Along the way, he undergoes a symbolic sacrifice. The monster swallows him up, only to spit him back out. The hero-initiate thus undergoes symbolic rebirth. It is this ancient rite of succession that Oedipus confounds. His misplaced violence against the paternal force and his blind (perverse) fusion with the monstrous feminine brings plague to the kingdom—sure sign of Oedipus's illegitimate rule. Arch detective that he is, Oedipus will in time unravel the mystery of his crime. And his confrontation with the horror of his deeds, the trauma of b[e]aring forbidden knowledge, will trigger his tragic fall from

highest to lowest. Oedipus's fate is to become a lonely exile in the land of the blind. Only after a lifetime of suffering will he achieve purification and gain the insight that wins him redemption at Colonus.

In what follows, I shall argue that in the film work of David Lynch we witness a reenactment of Oedipus's desecration of the founding rites of law's legitimacy. Lynch's *Mulholland Drive* (2001) invites us to encounter the dream life of law. Like the Oedipus myth, Lynch's film is structured as a mystery. It is a metaphysical mystery of identity and repression, of forbidden impulses and the thousand and one tales that we tell to divert us from hidden truths. Yet, these tales are also clues. We dream the symptomatic signs of our repression and interpret what the images mean. Before taking their meaning to heart, however, we must first experience a tear in quotidian reality. The rite begins in violence.

Not surprisingly, at least on this account, it is with violence that the story of *Mulholland Drive* unfurls. A car accident at night; dead bodies strewn around a smoldering black limousine. A detective holds up a plastic bag containing a pearl earring and says, "The boys found this on the floor in back of the Caddy." His partner responds, "Yeah, they showed me. . . . Any of those dead kids wearin' pearl earrings?" The detective: "No. Could be someone's missin' maybe." Partner: "That's what I'm thinkin'." The mystery has begun.

We are about to enter the labyrinth of identity and its fragments in the Lynchian theater of dreams. It is also the stage upon which law and its unconscious will play out. If on the way down into the Lynchian abyss we confront forms of cultural and intrapsychic discord that cry out for recognition and redress, the hope is that our insightful attunement to the terrifying realities that we encounter will ultimately help to restore a healthier psychic and cultural balance. Further exploration of such a restorative possibility, however, remains premature. The immediate task before us is to cast ourselves, like a Dantesque pilgrim, into David Lynch's interior purgatory of violence, terror, and death. Before encountering the promise of light, under such guise as the times may allow, we must first venture downward, to a place where horrific forces await us. That place is David Lynch's *Mulholland Drive*.

Law as Initiation Rite: Going Down with David Lynch

My dreams are your actions.

Leontia in Shakespeare's *A Winter's Tale*

Doubtless, each organ-machine interprets the entire world from the perspective of its own flux, from the point of view of the energy that flows from it.

Gilles Deleuze and Felix Guattari, *Anti-Oedipus*

Lynch's 'Mulholland Drive'

Mulholland Drive consists of a series of subversions, as film director Lynch, with infinite craft, leads (one is tempted to say “seduces” or “tricks”) the viewer from one plane of reality to another. The first two-thirds of the film turn out to be a dream fantasy, though we have no way of knowing this is so until later in the film. Only then do we realize that what we have taken as real life is not so. Lynch plainly wants us to experience this realization as a shock. It is the shock of suddenly “waking up” to an illusion that we’ve mistaken for reality. The play of reality and illusion is a central motif of the film, as the penultimate scene at Café Silencio will later reveal. Our disorientation is complete when, instead of allowing us to remain within the stable realm of what we subsequently take as real life, the film upends our expectations yet again. Like an infinite regression, Lynch’s film in the end reintroduces, and yields to, powerful irrational elements. The unreality of incomprehensible (“monstrous”)¹ forces now finally invades, and throws into question, the reliability of any assumptions we may have held regarding the stability of real life. We realize that the same unreality that launched this drama of jealousy, hatred, and violent retribution—the same unbearable forces that staged its figuration and violent denouement—remain present at the end, as at the beginning. There is no stable place for us to hold still in. As we shall see, this destabilizing [de]realization links Lynch’s work to key elements in the distinctive culture of the baroque.

The initial dream fantasy sequence, which dominates the film, plays out as a murder mystery—as well as a mystery of identity. In time, we will learn that this mystery is the projected fantasy of Diane Selwyn. Upon repeated viewings, one may discern clues, both in style and content, that disturb the linear (“real life–like”) flow of the opening story frame. On the whole, how-

ever, the initial story frame offers none of the conventional markers of a dream narrative. The general inclination is to take the mystery straight. We realize our mistake when a second story frame unfolds—the story of Diane’s real life. When Diane awakens we see, for the first time, elements of her inner and outer world (the psychic conflicts and real-life characters) that make up Diane’s dream fantasy. Yet, just as we manage to decode that fantasy from the details of Diane Selwyn’s tawdry, conflict-ridden life, the dream images that we have been viewing do not simply dissolve into a restored normality—à la Dorothy’s homecoming to Kansas upon her awakening in *The Wizard of Oz*.

In Lynch’s hands, there is no reprieve from the grip of chaotic unconscious forces. Unlike Dorothy, Diane Selwyn awakens to a horror that utterly overwhelms her. That final horror is the abyss of infinite desire. It has been present from the beginning. It is that out of which the film comes, and back into which it dissolves. This is the Lynchian (postmodern) sublime, the final subversion—and there is no reality to stabilize its significance. For Lynch, there is no escape, no awakening, only the endless play of schizoid fantasy.² Folds (of desire) pass into other folds, “folding into folding to infinity,”³ like endless arabesques, forming and reforming against the void. Here we reencounter the infinitude of the postmodern sublime as baroque excess, as the schizoid self that fractures into infinite monadic possibilities.⁴ This *mise en abyme* is a definitive feature of both the postmodern and the neo-baroque sublime.⁵ In its folding of real life back into the (“monstrous”) reality of desire, *Mulholland Drive* becomes an anti-*Wizard of Oz*. For in place of restabilized reality, Lynch’s baroque fantasy culminates in the schizoid sublime of Deleuze and Guattari.⁶ Lynch is anti-Oedipus, the anti-philosopher.⁷

In what follows, I shall try to make good on these claims and their implications for law in our time. First, I will lay out the basic frame story of *Mulholland Drive*, describing the “real-life” events out of which Diane Selwyn’s dream fantasy takes shape. Second, I will interpret the narrative configuration of that fantasy in an effort to crack the dream code. I will then withdraw to a third reality, the reality of the abyss, in an effort to interpret Lynch’s film vision and its philosophical implications. As part of this effort, I will link Lynch’s seriation⁸ of destabilizing subversions to the aesthetic of the post-

modern sublime. I associate the latter with the contemporary emergence of neo-baroque culture. Lastly, I will enwrap these interpretive accounts in the narrative framework of a failed initiatory rite. Relying upon Jean-Joseph Goux's analysis of the subverted rite of royal succession encoded in the story of Oedipus, we will encounter the genealogy of baroque law, a tragic sign of our inability to sustain law's legitimation.

The Basic Frame Story

First-time viewers of *Mulholland Drive* must wait for most of the film to pass before they wake up to the real plot structure of Diane Selwyn's dream fantasy. Only then do we see the details from Diane's real life that have supplied both the motive force and the code for interpreting the dream/mystery that we have been watching. Let us begin from the vantage point of this awakening. Here (in retrospect) is what we come to understand:

Diane Selwyn is a Hollywood starlet wannabe. She has traveled south from Deep Rivers, Ontario, to sunny Los Angeles, where she takes up residence in a seedy bungalow complex called Sierra Bonita. Diane auditions for the starring role in *The Silvia North Story*, but the part goes to a sultry, seductive woman named Camilla Rhodes. Some time thereafter, Diane and Camilla begin an intense love affair. As Camilla's star rises, however, Diane's falls. Diane's dreams of stardom ultimately crumble as she finds herself living a grimy hand-to-mouth existence on the dark outskirts of Hollywood's lucrative dream-weaving industry. When acting crumbs, tossed her way by Camilla, grow too scarce to live on, Diane plummets to the diminished state of a drug-addled prostitute.

The final blow comes when Camilla tells Diane that their affair must end. To add insult to injury, Diane soon learns that Camilla has acquired a new love object—in fact, two. This knowledge comes to Diane only after Camilla persuades her to attend a glamorous Hollywood party at the suitably upscale home of director Adam Keshner, located on Mulholland Drive. The occasion, it turns out, is the announcement of Adam and Camilla's engagement. This news is delivered with sadistic glee, since both Adam and Camilla are well aware of Diane's continued infatuation with Camilla. The final humiliation, laying bare the annihilation of Diane's hopes and desires, comes in the shape

of a blonde starlet who exchanges, before Diane's suffering gaze, erotic whispers and a passionate kiss with Camilla. Diane has been supplanted on every front.

Overcome by jealousy and rage, Diane hires a hit man named Joe to murder Camilla. Diane meets Joe in a diner called Winkie's, where they are served by a waitress named Betty. Joe informs Diane that when she sees the blue key in her apartment she will know that the deed has been done. Diane hands over the cash and the deal is clinched. Diane has set in motion the machinery of death on the heels of thwarted desire.

When Diane later spots the blue key on her coffee table she realizes the irrevocability of her action. She also learns from a neighbor that two detectives are looking for her. Fear and guilt play havoc with Diane's mind. She hallucinates Camilla returning to the living and recalls (or fantasizes) their making love on Diane's couch. This imagery feeds a masturbatory impulse that desperately mingles violence and pleasure. A knock at the door triggers a final psychotic break. Diane hallucinates two tiny parental figures crawling under the front door. As they grow to adult size, their hands flail madly in the air as they rush toward her, screaming. Diane backs away into the bedroom. She, too, screams madly and flails in panic as she scurries backwards. Falling onto her bed, Diane blindly reaches out to an end table drawer, pulls out a revolver, places it in her mouth, and pulls the trigger. Her body lies sprawled on the bed.

The Initial Dream Work: An Interpretation

Life is a great dream; to dream in this big dream, and to speak of dreams, is to not know where the illusion is going to end.

Tun-ch'eng, *Enchantment and Disenchantment*

[Mulholland Drive]—a love story in the city of dreams.

From the *Mulholland Drive* press kit

Mulholland Drive begins with images of a surreal jitterbug sequence.⁹ We then see Diane Selwyn flanked by two parental figures—the same figures who, in their frenzied, Furies-like reappearance at the end of the film, trigger Diane's suicide. Tightly shot in the opening sequence, together the three evoke the image of a strange Mt. Rushmore, with the face of Diane's (deceased) aunt fluttering onto the screen and then off to the lower right.

This aural-visual pun of the “jitter” (the jitterbug, the jittery image) is suggestive of the overdetermined meanings that populate Diane’s dream world. A similarly floating camera will later become the telltale sign of the dreamer approaching (but never quite achieving) awareness of herself dreaming. And, indeed, the next image that we see is that of a bed, with maroon sheets, even as we hear the deep, regular breathing of the sleeper. The first-time viewer remains in the dark, but the site of Diane’s dream production (and death) has been announced.

The scene then shifts to a long black limousine wending its way at night down a sinuous road. We see Camilla seated in back. The car stops unexpectedly, somewhere on Mulholland Drive. The two men up front turn toward Camilla with revolvers pointed toward her. “We don’t stop here,” Camilla plaintively utters. “Get out,” they say. With the aid of retrospect, we recognize this scene. It is from the time Camilla sent a limo to pick Diane up and take her to director Adam Keshner’s home on Mulholland Drive, the fateful site of Camilla’s and Adam’s wedding announcement. As Diane’s dream begins, we are about to revisit the scene where her Hollywood dreams were finally shattered, sending Diane cascading down a desperate path of jealous rage. The first link between desire and death has been made.

In Diane’s dream fantasy, Camilla sits in Diane’s place in the limo; her death is imminent. But a sudden freak accident intervenes. Joyriding teenagers are speeding blindly down Mulholland Drive. We see two of them, ominously standing and lurching with the curves of the road, their hands flailing as they scream with the joyful speed of it.¹⁰ With sudden violence, their car crashes into the limo. The men with guns are killed instantly. Camilla stumbles out of the smoking wreckage. She is intact, we will learn, but for a cut on her head, and total amnesia. Camilla stumbles down into the streets of Hollywood, finally finding her way to the idealized cottage community where Diane will meet her again.

But this is not Camilla, nor will it be Diane who meets her. Diane has become “Betty,” a naïve, perky ingénue just arrived in Hollywood to realize her dreams of stardom. She is all that Diane wished to be in real life. As for her counterpart, Camilla too has now become all that Diane would have wished her to be: a blank screen, ready for Diane’s fantasies (of love and desire) to play out, as they soon will.¹¹ Camilla sees a film poster on a bathroom wall in

Diane's apartment. It features Rita Hayworth playing the star role in *Gilda* (1946). Camilla will thereafter assume the famous seductress's name as her own. In Diane's fantasy, Camilla has become "Rita," a Hollywood creation and Diane's ideal (imaginary) object of desire.¹² Together, she and Betty will reconsummate an idealized love affair as they stage (like a play within a play) the mystery story of Rita's lost identity. But, the originating reality of Camilla's death hangs over the fantasy like a dark cloud. And intimations of discovery (as the dreamer, like Oedipus, unravels the riddle of her identity and her crime) are already apparent.

Consider the two detectives, standing beside the wreckage left by the joy-riding teenagers' crash into Camilla's limo. In their oddly wooden conversation they recapitulate the dream weaver's own dynamic logic. "Looks like someone's missing," says one. "Just what I was thinking," says the other. It is the dream logic of the whodunit in the existential, postmodern mystery (or crime noir)¹³ genre of Samuel Beckett and Paul Auster.¹⁴ In her dream fantasy, Diane is missing (she has become Betty), and Camilla is missing as well (she has become Rita). The challenge of solving the dream riddle of Rita's missing identity and the real-life mystery of Camilla's death (she was murdered by a hit man hired by Diane) propels the dream forward. The solution, however, already lingers in the distance, in a future that has already passed, in the terrible reality of identity revealed.

Self-knowledge, in this Oedipean world, is an excavated horror.¹⁵ Like Oedipus, Diane/Betty is a detective bent on solving the mystery of identity. Ostensibly, it is Rita's identity that she is seeking, but in reality it is her own self that lay hidden in both, for Diane *is* the split psyche known as "Betty/Rita." They are but two (idealized) forms of Diane's unstable, borderline personality. In this respect, one might say that the film's drama is fueled by the return of the repressed.¹⁶ As in the fabled *One Thousand and One Nights*, the mystery's tension lies in the dream's ingenious strategies for postponing the dreamer's demise. Like the reader of Scheherazade's serial narrative arabesques, each of which gives the teller yet another day of life for the next installment to unfold, the viewer of *Mulholland Drive* is kept in a precarious state of suspense: for how long will Diane's defensive dream maneuvers stave off the terror (of forbidden knowledge) from which she is fleeing? For how long will the fantasy realm of splitting and idealization delay con-

frontation, and ultimate fusion, with the monster (the Thing behind the diner, the one “who is doing it”) that she has become?

In Diane’s dream, erotic fantasy desperately competes with guilt, fear of discovery, and the reality principle of death itself. The key tools of Diane’s psychological dream defense are familiar ones in the Freudian toolkit: idealization, splitting, condensation, and role reversal. Diane becomes someone else to avoid the guilt of Diane’s murderous deed. She becomes the idealized Betty to preserve her identification with (and jealous longing for) Camilla’s Hollywood success. Betty is the idealized part of Diane that has been spoiled and lost, sacrificed on the altar of Hollywood’s cruel, often destructive reality. The persona of “Betty” preserves the unspoiled Hollywood of the youthful Diane’s naïve dreams and thwarted ambitions. In her fantasy, Diane realizes the talent and success that she never could achieve in real life. Wish fulfillment, denial, and idealization: in her dream, it is Diane who displaces her rival, Camilla, rather than the other way around; it is Diane who restores her lost love relationship with Camilla; and it is Diane who denies, by interrupting with a timely car accident, Camilla’s murder. It is Diane as well who idealizes the real by splitting off the treacherous Hollywood into a surreal, pastel-lit, benevolent wonder-world—a domain that is infiltrated by corrupt and omnipresent conspiratorial forces.

Like a latter-day Prospero, Diane magically enfolds Camilla in the oblivion of amnesia, so that the illusion may go on, at least for a while, until the mystery’s solution can no longer be put off. Diane’s ultimate confrontation with herself, as the monstrous source of her unacceptably violent impulses, will mark the mystery’s end. When Diane merges with the monstrous corpse on the bed with maroon covers, when she fuses with the monster behind the diner, when, in short, she assumes the identity that her dream fantasy so desperately fights to disguise, the idealized dream world vanishes. The defense is over. She is no longer Betty, and Camilla is dead, the victim of Diane’s jealous rage. Diane’s ensuing judgment is severe: the sentence is death, by suicide.

Along the way to this horrific denouement, Lynch offers clues that disturb the outward serenity and apparent stability of Diane’s dream fantasy. Consider, for example, the scene of the two friends who meet at Winkie’s, a replica of the real-life diner where Diane’s murder plot was put into action.

Here we encounter the source of Diane's consciously unacceptable violence, her interior horror. In this scene, the camera floats and sways as if caught in the eddies of an unseen current. This happens, it seems, whenever we come close to the dream's horrific point of origin. Not surprisingly, then, it is at Winkie's that Diane's horror assumes tangible form. Like a Rosetta stone of the unnameable, it is momentarily figured. Just before it appears, we hear one friend tell the other (although it might as well be a patient recounting to his therapist) a dream that has been recurring. The dream takes place at this very Winkie's, he says, and it scares him to death. There is a monster behind the diner. "He's the one who is doing it," the friend reports.

Despite his terror, he allows himself to be persuaded by his friend's (the "analyst's") calm, disarmingly matter-of-fact encouragement: "So, you came to see if he's out there." And so, in the spirit of therapeutic reality testing, they go behind the diner to look. In a masterfully timed sequence of suspense and horror, the monster—which rationality would dispel—duly appears. Upon glimpsing it, the friend loses his breath and falls to the ground, apparently lifeless. Contact with forbidden knowledge equals death. That is what this dream-within-a-dream sequence tells us. Reason, it seems, contains a trap door—into the abyss. (So much for testing reality.) And, indeed, the dreamer's prophetic (Diane's hidden) knowledge is accurate, as Diane's subsequent suicide makes plain.

These clues, among others, leave no doubt that the dreamer is on the trail of solving the mystery of her own identity.¹⁷ Powerful psychological forces have been unleashed to preserve the dream-denial that is under way. But no less powerful forces of detection are also at work, threatening to disrupt the dreamer's desperate defensive wish for complacency. At the top of the pyramid of detection/surveillance/power is Mr. Rocque, a mysterious Howard Hughes-type figure who watches, and apparently controls, everything he sees from an electronically equipped living room sealed behind glass.¹⁸ It is Mr. Rocque who will set loose, always by intimation (as if to ensure deniability), a wide range of forces aimed at finding "the missing girl." For example, through a series of phone calls that Mr. Rocque initiates, the search reaches the streets. Joe the hit man (Diane's pimp?) asks a prostitute (Diane's real-life co-worker?), "Any new girls on the street?" At least two different elements of "detection" may be discerned here. On the one hand, Joe may be

acting as a stand-in for the detectives who are actively seeking to solve the murder mystery involving Camilla Rhodes. Subconsciously, Diane knows that she is a suspect in the crime investigation under way. On the other hand, it is also possible that Diane's repressed rage against Camilla has taken the form of yet another role reversal. Perhaps Diane's unconscious has placed Camilla on the streets, substituting her professional rival (and fickle partner in love) for Diane's own unconscionable fall to soliciting tricks on the dismal outskirts of Hollywood.

On a more condensed, symbolic level, the search for the "missing girl" takes the form of a widely cast, strangely potent conspiracy bent on coercing director Adam Keshner to cast "Camilla Rhodes" as the lead in his new ("star-vehicle") movie venture. "This is the girl" (the exact words Diane uttered in real life to Joe the hit man, consummating her contract for Camilla's murder) now becomes the mantra for Camilla's *carte d'entrée*, the tainted "open sesame" that lands her the part that Diane herself coveted.¹⁹ "This is the girl." We hear the words spoken by the Castigliane brothers at a business meeting with Adam and his agent. The two brothers are Italian power brokers, one a producer (whose wilting demand for the perfect espresso can never be met ["It's shit!"]), the other a lawyer (whose rumbling, animal-like roar sweeps across the conference room when Adam hesitates to comply with the brothers' casting demand). Or consider the mysterious cowboy, who instructs Adam on what to say when casting the star of his film ("When you see Camilla Rhodes, tell them 'this is the girl.'"). He speaks in sphinxlike riddles,²⁰ but his sinister intent, and the means of carrying out his implicit threats, are never in doubt.

In short, the tools of detection run the gamut: from brute force to riddles to a far-flung conspiratorial network of social forces (lawyers, producers, mobsters, banks)—all equipped with the means to cut off and control, by any means necessary, the object of their power. We will return later to reexamine this symbolic reference to criminal, financial, legal, and corporate forms of power in contemporary society.

In the penultimate scene of the film Betty and Rita rush into the blue-lit night (with its symbolic reference to the underworld) to the windswept Café Silencio. This scene embodies both the interpretive key to, as well as the final disruption of, the outward order of the dreamer's dream flow. Like the

dream-within-a-dream sequence featuring the two friends in the dream diner called Winkie's, here too the camera bobs and sways, in the grip of a hidden current, as we peer down the blue-lit alley that leads to the café. This visual trope²¹ links the monster behind the diner (the one "who is doing it") with a complementary figuration: the maestro, the magician, the poet, the film director. Inside Café Silencio, we encounter him, the master of ceremonies, a Prospero-like figure and a likely stand-in for film director Lynch himself. (Is it not Lynch—this film, this fantasy, this play of reality and illusion—that is, after all, "doing it"?) "*No hay banda,*" the emcee cries. "There is no band." Seated in the sparsely populated late-night theater (of dreams?), Rita and Betty watch and listen as the emcee/magician reveals the truth of illusion: "This is all a tape recording, and yet we hear a band . . . if we want to hear." In the baroque play of reality and illusion, *la vida es sueño* (life is a dream). The poet-director controls it all, under the immobile gaze of his muse, the blue-haired lady, who sits like a statue in the box seat above the stage. Like the monster's artistic double (on the stage, rather than behind it), the maestro too is the one "who is doing it." He too channels the flow of Eros. His power is evident when he raises his arms above his head and a mighty roll of thunder rattles the theater—like the atavistic roar that opens Joyce's *Finnegan's Wake*, the unwordable thunder sound of Zeus, father of the gods.

Significantly, it is when the Lynchian maestro reveals to the audience the illusions of sight and sound, making plain that it is he who is directing them at will, that Diane's dream finally reaches its violent denouement. Knowledge (of the dream code) upon announcing its illusory nature terminates the play (of illusion). When Betty [Diane] and Rita [Camilla] behold this tutelary guide, and wordlessly make his Teiresian knowledge their own, the dream veil is lifted, and Diane awakens. The terror of what she has learned will now precipitate her demise. Her epiphanic knowledge will become real. Knowledge equals death. It is just as the surrogate dreamer in the diner predicted. The one who confronts the source of the mystery—the terrible reality of unbearable knowledge-desire-power, momentarily figured as the monster behind the diner—must die. As the blue-haired lady in the theater will say, uttering the final, Shakespearean words of the film, "the rest is silence."²²

One may, of course, protest: Who is to say that Diane's death at the end of *Mulholland Drive* is real? Might it not be but a symbolic death? Might it not

herald yet another dream within a dream, part of an infinite regress of en-folding arabesques, or nomadic monads, each a discrete self/world/reality? Who can say whether there is another scene to come after the silence of dissolution in the monstrous abyss: the scene of yet another awakening, the beginning perhaps of the initiate's ascent, after the torturous descent through hell? It is the scene that follows the mythic ordeal of being devoured by the monster, a symbolic death that prepares the initiate for rebirth—into humane (civilized) culture, as *bios politikon*.²³

Yet, the event of knowledge (in the aftermath of the initiate's symbolic "death") remains elusive. To all appearances, at the end of *Mulholland Drive* we remain caught in uncertainty. This state of unrelieved ambiguity, suspense, and agitation is the natural offshoot of the *mise en abyme* that Lynch brilliantly stages in this film. Indeed, it is precisely this aesthetic effect, as we will soon see, that links Lynch's film vision to the baroque sublime. The horror of the Nothing—of nothing happening—ramifies form as the infinite distraction of decorative ornamentation, what Walter Benjamin calls "the will to art." In pop-baroque art, evident, for example, in Andy Warhol's endless seriations, denial through the diversion of physical sensation takes the place of real horror. The *frisson* of the "cheap thrill" (the "spectacle") substitutes for the soul-shaking terror of deadly desire.²⁴ But Lynch is not toying here with the pop-horror of mere sensation. This is the Unnameable rapping at the front door, bringing death. Whether, and in what way, the new baroque may yet tap the mythic power needed to go beyond the seventeenth-century baroque tradition of paralysis in the sensate realm of empty, infinitely ramified form, remains to be seen.

Before pursuing this possibility further, however, it will be useful to survey more closely the philosophical, political, and legal implications of *Mulholland Drive*.

The Dream Work Writ Large: Law, Culture, and Power

Lynch's dream play may be read as prototypical. Let us call it a contemporary allegory of unchecked desire and unregulated power in a narcissistic world of mind and culture where knowledge is understood solely in terms of mastery or control.²⁵ Let us call it a neo-baroque allegory: a symbolic world

of unadulterated narcissism. Behold the Hollywood kitsch culture of solipsistic pleasure, embodied in Diane Selwyn's ambitions of stardom. This is *Mulholland Drive*, a fantasy world fueled by a borderline personality's unbound desire—violent when thwarted—as that desire inevitably will be. As psychoanalyst Benjamin Kilborne aptly observes, “In our contemporary world it is striking how much technology feeds our illusions. People come to believe that an ideal of themselves can be actualized.”²⁶ Hollywood's machinery of dream production, further empowered by its alliance with new digital technology, spawns a Disneyesque ideal that denies pain, suffering, helplessness, and ultimately death itself while amplifying the momentary pleasures of narcissistic gratification. This too is a hallmark of the contemporary baroque.²⁷

I propose, then, to construe Lynch's film writ large as a baroque allegory, an account of man's fate in late modernity. I believe this analysis shares an affinity with Jean-Joseph Goux's claim that we are now witnessing the final sequence of the profoundly disordered Oedipal monomyth that Sophocles recounted with exquisite precision so many centuries ago.²⁸ Tracking Goux's analysis, in what follows I will contend that the multiple pathologies of knowledge, desire, and power that we witness in *Mulholland Drive* evoke a profoundly disturbed rite of royal investiture, a subverted ritual of law's legitimation. As Goux puts it, “the cryptic soul is not all human; it has dark, disturbing depths, unfathomable instinctual resources that elude humanity and plunge into the dangerous darkness of animality.”²⁹ Reason is an authority that can tame the soul's animal components. However, there is also the danger of confusing the “inner (divine) man with man as a whole.” That danger risks overlooking “the monstrous structure of the soul” (i.e., the unacceptable chaos and irrationality of the unconscious) and forgetting that the “properly human part of the soul is only one element in a larger composite.”³⁰

Lynch's cinematic allegory invites us to restore (even if Lynch himself does not provide) a connection that has all but disappeared from the collective consciousness of mainstream culture. The first requirement is that we be willing to undergo a cinematic rite of passage. We must be willing to face the abyss, the unadulterated horror of schizoid desire. We must undergo a symbolic death, in the grip of the postmodern sublime. The challenge is straightforward: will we remain caught, like our baroque predecessors, in a

perpetual state of agitated suspension between opposing (and equally unreachable) infinitudes of light and dark, trapped in the nauseating proliferation of endless matter?³¹ Worse still, will our contemporary “failure of nerve”³² continue the diversionary tactics of mass culture—a pop-baroque culture of spectacle—where sensory gratification and motion for its own sake, a hallmark of baroque aesthetics, perpetuate our collective denial of a deeper lack, a deeper longing (for the sublime)? Or will we perhaps grasp the significance, the epiphanic potential, of the baroque yearning for the sublime—whether it is the sublime dissolution of self in *infinite* (albeit inhuman) *freedom*, or the Lynchian (“postmodern”) sublime dissolution of self in the terrible abyss of *infinite desire*, or the ethical sublime obligation of self in response to the *infinite demands of the other* (in *agapé*, love’s paradoxical marriage of the infinite and the singular)?

The contemporary challenge, then, has been set: for how long will we be content to engage in the endless (“constructivist”) play of reality and illusion, mired (as Goux argues) in the perverse state of Oedipus, a perpetual exile, foreclosed from learning the ancient monomyth’s higher wisdom? For how long will the pseudo-horror of mass culture, with its “pop-baroque” aesthetic of shock and sensation, or its postmodern pose of ironic detachment, continue to mock the real terror of initiation that marks the epiphanic quest for the sublime? And, to the extent that this state of affairs remains our fate, what hope is there for contemporary baroque law, a law whose validity remains, but whose significance eludes us? For that is the fate of law when the ordeal of justice lies suspended, eclipsed by the frantic motion of the baroque impulse toward form piled upon form, matter ramified in a state of hyperproductivity—baroque production on a colossal scale. Grant Gilmore grasped the implications of law’s going under in a comparably baroque fashion when he invoked that hellish state where there is nothing but law.³³ Mass production in law as in art leaves a trail of desolation and endlessly ramified unfulfillment in its wake.³⁴

As an initial step toward explicating and justifying the foregoing interpretive construct, in what follows I will briefly recapitulate Goux’s analysis of the fateful history of the Oedipal subversion of the ancient rite of succession, the failed monomyth, and then proceed to explore what it can tell us about the configuration of law, meaning, and power in our time.

The Subversion of the Monomyth: Oedipus Rex

In *Oedipus, Philosopher*, Jean-Joseph Goux reads the myth of Oedipus as an anomaly. “Matricide, not patricide, is at the heart of the heroic myth in its typical and universal form.” Goux goes on: “The hero who is to become king is the hero who kills the female dragon, the female serpent, the female monstrosity, in bloody combat. By murdering a dangerous, dark, feminine force, the hero liberates the bride.”³⁵

According to Goux, the Oedipus myth disrupts this universal structure. It is, in his view, “a myth of failed royal investiture, or of avoided masculine initiation.” It is this failure that links it to parricide and incest. Oedipus’s systematic disruption of the tripartite structure of the universal monomyth, its “canonical schema of the triple ordeal,” gives rise to three concomitant pathologies or “sins.” I want to interpret these pathologies in relation to the symbolic order of the law that measures them in terms of knowledge, power, and desire. Properly understood, this mythic code may lead us to a theory of the rites that accompany the ordeal of justice upon which the law is founded. Here lies the code by which to interpret the allegorical import of Lynch’s dreamscape in *Mulholland Drive*.

The ritual of investiture that the ancient monomyth embodies enacts the normalization of power in transition from one generation to the next. In short, it describes a rite of political and legal legitimation. That rite follows the following sequence:

- (i) “A king fears that a younger man, or one not yet born, will take his place, as an oracle has predicted.” The king does all he can to avoid this fate;
- (ii) “The future hero escapes from the king’s murderous intentions.” However, he subsequently finds himself endangered by another king who plots his demise. The second king is unable to realize this goal himself, so he sets the hero “a perilous task”;
- (iii) “The trial takes the form of a fight with a monster.” The hero succeeds in defeating the monster, with the help of a god, or a wise man, or a future bride;
- (iv) “Finally, the hero’s triumph over the monster allows him to marry the daughter of a king.”³⁶

In the Oedipus story, the “perilous task” is avoided. In fact, there is no second king and no trial to overcome. Nor is there a monster to slay. Instead, by sheer chance, Oedipus encounters a stranger in the road who turns out to be a king, his unknown father, whom Oedipus unwittingly slays.

The youthful violence traditionally reserved for the great trial of slaying the horrible, monstrous Thing has been misspent and perverted. The paternal, rather than the maternal, power has been vanquished. This failure to encounter the monster within spreads terror and plague throughout the land, and in due course it will shatter Oedipus’s soul.

Parricide is not Oedipus’s only mistake. He also mistakes his own efforts as the sole basis for his kingly authority to rule over Thebes. Oedipus persistently, and roughly, spurns the guidance of others, such as the blind seer Teiresias. It is by sheer force of his own intelligence, Oedipus believes, that he has solved the Sphinx’s riddle. The arrogance of intellect, with its inflated belief in the ability of reason to dominate and control irrational forces, speeds Oedipus’s ultimate downfall. Only belatedly will he realize his fateful ignorance, and his true state as parricide and spouse to his own mother.

This symbolic disruption of mythic elements—perverse violence, perverse knowledge, and perverse desire—becomes, in Goux’s analysis, the chief paradigm for subsequent western culture. For is it not, he argues, the rationalist philosopher who mistakes the power of reason alone to rule self and society?

The universal myth³⁷ that the Oedipus story systematically perverts enacts a symbolic drama of legitimation. This political/legal drama is also a psychodrama in which the hero confronts the terrible Thing (the horrible monster), accepts aid and guidance from tutelary spirits, undergoes symbolic death (being devoured by the monster he must confront), and is reborn as the triumphant hero, spouse to the second king’s daughter. As Plato too conceived, the nature of the city-state coincides with the nature of the soul. Disruption in one domain is matched in kind with disruption in the other.³⁸

In the Oedipus story a systematic disruption of the monomyth leads to pseudo or ersatz legitimation. Its proxy is baroque law, in a pop-baroque culture steeped in sensation and denial. Oedipus’s rule rests on a series of deceits and perversions. His perversion of the monomyth not only generates

plague in the community and a political regime of illegitimate tyranny, but also a psychological trauma that results in Oedipus's emotional collapse, self-mutilation, and, finally, the infinite hardships of a lifetime of loneliness, poverty, and exile. The dire consequences of failing properly to undergo the rite of royal investiture could hardly be more compelling.

In the dream fantasy of Diane Selwyn we discern a replication of Oedipus's (self-)deceits. Could it be that David Lynch has intuitively staged in *Mulholland Drive* the philosopher-detective's arrogant claims for reason against the backdrop of a subverted initiation rite, in the sense that Goux describes? Do we not recognize the symptomatic pathologies of knowledge-desire-power as they permeate and bring to climax Diane's self-annihilating dream fantasy? I contend that in *Mulholland Drive* we witness signs of an important cultural convergence. The Oedipal subversion of the ancient ("monomythic") rite of succession and the postmodern-baroque nexus play out together in the horrific sublime of Lynch's cinematic *mise en abyme*. In what follows, we shall see what more may be said to render this claim persuasive.

From Oedipal Perversion to the Postmodern Sublime

Elements of the Baroque Mind and Culture

Stripped to its barest impulse, postmodernism invites us to reencounter the inherited foundations for knowledge, meaning, and truth. One may say that this questioning represents a moment of crisis in traditional sources of authority. The baroque era, during the seventeenth century in Europe, was also a time of crisis and insecurity. Long years of warfare over competing religious viewpoints had created a climate rich in violence, cruelty, uncertainty, and despair. Events appeared to be moving toward a total excavation of worldly things.³⁹ The yearning for stability and conservation was matched by a deep fear of imminent catastrophe. As Maravall puts it, "a culture developed to bring under control not only religious disquiet . . . but all the insecurity produced as a consequence of the long period of changes that the western European societies had been undergoing for centuries."⁴⁰ This quest for control led to authoritarianism, a form of monarchical absolutism.⁴¹ As Benjamin notes, the baroque concept of sovereignty gave rise to a doctrine of

princely power that can be understood in terms of the state of emergency. “The ruler is designated from the outset as the holder of dictatorial power if war, revolt, or other catastrophes should lead to a state of emergency.”⁴²

Baroque culture’s main concern was to establish a mass culture of conformity and control. It was essentially a visual culture, as is our own. In the service of manipulation, it relied on the well-known efficacy of visual elements to seize and hold the public’s attention. Mass culture thrives on the sensible image for its power to capture, amaze, and stupefy.⁴³ Baroque culture resorted to broadly disseminated visual spectacles (emphasizing painting and theater over poetry and prose) as its main instruments of shaping and controlling public opinion (“to color the soul with passions”⁴⁴ and to “penetrate psyches and wills”⁴⁵).

Art, under the strict rule of rhetoric,⁴⁶ had become kitsch, a mass culture put in place for the sake of engineering consent through pleasure.⁴⁷ “Opinion moves the world,” wrote Juan Alfonso de Lancina, and Hobbes attested that “the world was governed by opinion.”⁴⁸ The seventeenth century, like much of the twentieth, had become dominated by mass culture—a culture of dazzling spectacle and splendor amid transitory fragments, the ruins of a profoundly disenchanted, devalorized world.⁴⁹

Yet, the pleasures of visual distraction notwithstanding, the sense of imminent collapse continued unabated. Baroque man felt he was “being driven along to a cataract.”⁵⁰ Deprived of grace in this world, all things were gathered together “in order to clear an ultimate heaven, enabling it, as a vacuum, one day, to destroy the world with catastrophic violence.”⁵¹ A state of emergency in the soul reigned in parallel with the princely state of emergency without.

Creation without grace assumed a ghostly appearance. As in a dream, discrete fragments piled up. One lived amid ruins. And as hopelessness mounted regarding the corrupted state of worldly affairs, aesthetic forms proliferated. It was as if the desperate reaching out toward a distant heaven, as if to outrun an encroaching darkness, could only express itself in further decorative embellishments, like infinite folds within a compressed, but seemingly infinite, translunary space.⁵² In order to stave off the uncanny monstrosity of empty form, to tamp down the fear of Nothing, what Lyotard has aptly described as the fear of the nonoccurrence of the event,⁵³

baroque man piles form upon form, as if only this colossal ramification of matter could avert catastrophe.⁵⁴ And so, like arabesques endlessly improvising their monadic design, baroque ornamentation proliferated, dizzying, decentering, even nauseating in their spatial onslaught.⁵⁵

Each construction was a world unto itself, each soul a Leibnizian monad. Hence the importance attributed to perspective. As Maravall says of the great baroque painter Velazquez, “[H]e strove to capture what an individual—himself, Velazquez, the painter—had experienced of an object, thing, or person that had appeared within his field of vision.”⁵⁶ As with the intensely subjective impressionist vision of van Gogh or the surrealist vision of Paul Klee, to the baroque eye everything is a question of individual viewpoint, sensibility, perspective. Such singularity of vision serves as a much-needed anchor in an endless sea of change. For the baroque mind in particular, impressed as it is with the fleetingness of all things, the best to be hoped for is to capture a moment, a fragment, a way of seeing this now before it is gone, swept away under the force of internal collapse. “Nothing of what is today will be tomorrow,” writes Martinez de Cuellar. “Nothing you are aware of remains.”⁵⁷

Under such conditions of extreme contingency, the baroque dream play came into its own. *La vida es sueno*.⁵⁸ “The dream stands over waking life like the vault of heaven.”⁵⁹ As Richard Alewyn writes, “The baroque illusion is always conscious and intentional: it refuses to seduce the soul or even to deceive reason; it wishes to seduce the senses.” Buci-Glucksmann adds, “If life is a dream, the world is truly a theater.”⁶⁰

Infinitely distant from a source of authenticating meaning, the never-ending artifice of play (in theater and painting and elsewhere in public life) became the baroque era’s secular god. In the grip of such icy disillusion, under the intense pressure of fear and uncertainty, human nature revealed itself: a chaotic web of animal instinct and emotion, just as Machiavelli had written. Politics was the domain in which human forces had to be captured, turned to princely purposes, or simply overcome by the counterforce of the state. Machiavelli’s knowledge prevailed within the court culture of the baroque: human nature had to be studied in the infinitely complex folds of its interiority so that state power might triumph.

The deeply disturbed relationship of knowledge, power, and desire that we witness during the baroque era proper resonates uncannily within the

cinematic neo-baroque dreamscape of David Lynch's *Mulholland Drive*. Here it is plain that power, knowledge, and desire have grown potent but elusive, masked yet mired in perversion. Consider the film's evocations of power as: 1) *remote, yet ubiquitous* (as evidenced by the mysterious power of Mr. Rocque);⁶¹ 2) *cryptic* (as evidenced by the paradoxical cowboy); 3) *vicious* (as evidenced by the brutish company lawyer who intimidates, and the thug who pursues the director, Adam Keshner); and 4) *spectral* (a source of wonder and illusion, as evidenced by the emcee-magician of Café Silencio). Or consider again the film's images of knowledge as: 1) *blind* (as evidenced by the Oedipal detective Diane/Betty); 2) *prophetic* (as evidenced by Louise and the riddling cowboy); 3) *panoptic* (as evidenced by Mr. Rocque's ubiquitous surveillance cameras); and 4) *mantic* (as evidenced in the revelatory dream logic of the film itself) and *initiatory* (as evidenced by the emcee/magician as director/Lynch surrogate). Finally, consider the film's images of desire as 1) *monstrous* (as evidenced by the creature behind the diner); 2) *subject to idealistic splitting* (as evidenced by Diane/Betty); and 3) *perverse merging* (as evidenced in Diane's borderline pathology, as she fuses with and then violently repels, Camilla); while remaining 4) *endlessly generative* (as evidenced in cinematic dream production itself).

Deprived of deeper mythic resources to counter the terror of death, the baroque antihero, Diane/Betty, becomes trapped in a web of phantasmal deceptions. Like Oedipus, by the time she confronts her monstrous self, it is too late: all hope of redemption or transcendence has been lost. The implications of this allegory of cultural and intrapsychic dysfunction are no less profound in regard to the new baroque (neo-Machiavellian) law and politics of our time.

Neo-baroque Law

Baroque law, like its counterpart in baroque art, embodies a distinctly decadent form: the will to create has been divorced from the source of significance.⁶² This coincides with Scholem's formula for the status of law in Kafka's work.⁶³ As Agamben puts it, "What, after all, is the structure of the sovereign ban if not that of a law that is in force but does not signify?"⁶⁴ In this sense, the spectral reality of neo-baroque culture corresponds to that of neo-baroque law.

Baroque culture bears witness to recurrent political and legal pathologies and their intrapsychic and cultural counterparts. A drama of denial plays out in a dangerous dream world of aesthetic and violent deceits fueled by delusions of philosophical grandiosity and technological mastery over nature. Without the capacity to confront (and ultimately transcend) the terror of violence and death, life in this world becomes the life of the undead: the life of the one who, “chilled in the full current of life, sees . . . death waiting for him. So he steps outside of life. If living means dying, he prefers not to live. He chooses death in life. He escapes from the inevitability of death into the paralysis of artificial death.”⁶⁵ This artificial death is sustained by endlessly ramified aesthetic forms—phantasmal arabesques, the ever-diverting spectacle of fantasy and dream weaving spawned by life-denying terror. This is the baroque sublime, a hellish labyrinth of infinite form without significance. As I have written elsewhere, “Sick reason compels obsessive repetition of a repressed excess that resists expression. . . . Life is thus lost in the living. In the face of death, and the terror that it holds for us, we encounter the metaphysical temptation. Sick reason seeks a way out of life, an escape from the terror of mortality.”⁶⁶

Rationalist philosophy conspires with this state of denial. As Franz Rosenzweig noted, “philosophy might well have swallowed [death] up into the night of the Nought, but it could not tear loose its poisonous sting. And man’s terror as he trembles before this sting ever condemns the compassionate lie of philosophy as cruel lying.”⁶⁷ In the grip of metaphysical beatitude, sick reason is haunted by an insatiable phantom—a dybbuk, the soul’s dark double, product of repressed forces. Dead, yet living, the phantom cries out to us, like Lucy in Bram Stoker’s *Dracula*, “Come to me. . . . My arms are hungry for you.”⁶⁸ But upon hearing her voice, our blood turns cold. There is “something of the tingling of glass when struck” in her diabolically sweet tones. It is the sweetness of Eros captured by death. To yield to the call of the undead is to embrace death itself.

This retreat from life, this capture of the soul in the night of the Nought, lies at the heart of what Nietzsche described as the spirit of decadence, and what Freud diagnosed as the pathology of death anxiety. It is not the will to power, but rather the fanatic’s will to destruction.⁶⁹ As Nietzsche put it, “Man

would rather will nothingness than not will.”⁷⁰ And as Henry Birault has observed, “This will, avid for meaning, we see, is at bottom a will to annihilation, a will that begins by saying ‘no’ to existence, to our meaningless, immoral, unreasonable existence.”⁷¹ Call it revolt, or call it the undeadness that comes of unresolved death anxiety. It is, at its core, the pathological spirit of resentment (what Nietzsche called *ressentiment*),⁷² a turning away from life,⁷³ “only a death instinct.”⁷⁴

I believe that this retreat from life comports with what I have described as the baroque (and neo-baroque) withdrawal to the domain of dream, fantasy, and spectacle—a realm that is haunted by repressed knowledge (of the Thing, the monster, the terror of unconscious forces). As in the Oedipus story, so long as the monster has not been confronted, its unassimilated force is bound to endlessly ramify spectral forms of denial. This is what drives the mystery plot of *Mulholland Drive*. Like the dream domain of baroque spectacle, Diane’s dream is maintained by the proliferation of endlessly deceitful forms (masking unacceptable rage and desire) on the one hand, and the proliferation of tyrannical power, in its multifarious guises, on the other (e.g., Mr. Rocque’s seemingly limitless legal and financial leverage, the brute force of the thugs who work for him, the legal force of the production company’s lawyer, and the mysterious power of the riddling cowboy).

The fear of laying bare the irrational and pervasive forces that lie at the heart of the culture of spectacle—disenchanted knowledge, unchecked desire, and perverse power chaotically ramified—prompts a state of emergency within that parallels the state of emergency without.⁷⁵ This pathological state gives rise to tyrannical rule bent on denial and sustained by deceit. The political and legal state of emergency is the fruit of a perpetual legitimation crisis. In this sense, the failed initiation rite that Goux describes as the Oedipal perversion of the universal monomyth takes on distinctly political and legal implications. One may suggest that the dream logic that *Mulholland Drive* so vividly depicts, expresses, from a deeply interior perspective, a state of political and legal affairs first conceived by Machiavelli, Hobbes, and Locke and that achieved two distinct culmination points in the history of ideas: first, in de Sade’s sensate imaginary, and later, in Nietzsche’s highly estheticized will to power. Both historic culmination points reflect a profound eroticization

of death, and both have been crudely concretized in twentieth-century totalitarian societies.

This historic shared pathology may be understood as the enactment of an inversion of justice that parallels the Oedipal inversion of the ancient monomyth. According to this ancient model, which Plato also conceived, justice requires a harmonic, appropriately balanced configuration among power, knowledge, and desire—in mind as well as in culture. In place of that balance, in the late modern era we have witnessed a growing convergence between Machiavelli's understanding of brute power, on the one hand, and the machine-like bureaucracy of the Hobbesian nation-state fueled by the Cartesian model of rational knowledge (authorizing total mastery over chaotic nature), on the other. This convergence has contributed to the current impasse of politico-legal confusion which has helped to throw the modern nation-state into crisis. As Goux writes, "the tyrant gives free rein to his most frenetic impulses, as he does to the numberless horde of passions governed by Eros. . . . [H]e attempts to live out in reality what others only dream of doing in their sleep."⁷⁶ In *Mulholland Drive* we encounter various signs of this perversion of justice—as power, knowledge, and desire spin out of control in the absence of suitable regulatory norms to constrain them.

Recent prognostications of a transformed (postliberal, postdemocratic) state may accurately extrapolate from, and diagnose, current legal, strategic, and historical trends. For example, Philip Bobbitt refers to the "market-state"⁷⁷ that might now be emerging out of the collapse of the 'outmoded' modern nation-state. However, I believe that analytical efforts like Bobbitt's fall short to the extent that they fail to come to grips with the deeper cultural and intrapsychic implications of the development they seek to describe. In other words, they fail to articulate the degree to which newly emergent political entities, such as the market-state network or, for that matter, its deterritorialized ('virtual state') knockoff, the multinational terror network, may embody a transitional stage in which neo-baroque representations of fragmentation, decay, and ruin, in alliance with Nietzschean *ressentiment* and unresolved death anxiety prefigure more thoroughly reformulated political regimes.

The cultural and intrapsychic cost of the state's relegitimation as a neo-baroque "market-state" may simply have to be borne. However, if we con-

tinue to believe that human choice exercises some efficacy in the constitution of national and global states of affairs, it seems appropriate that this additional cost be taken into account. In the final section that follows, I want to take a closer look at what that price might be.

Ritual, Initiation, and the Ordeal of Justice: Neo-baroque Culture as a New Paradigm for Law

Neo-baroque law in the society of spectacle bears many characteristics of baroque culture in general, for here too we witness ramified aesthetic forms fueled by denial and devoid of normative content or compass. This diagnostic of the cultural conditions under which law is now developing tracks Gershom Scholem's powerful reading of Kafka's great modern parable, *The Trial*. Scholem's observations, which he recorded in a letter to Walter Benjamin, are recounted by Agamben:

Scholem defines the relation to law described in Kafka's *Trial* as "the Nothing of Revelation." Intending this expression to name "a stage in which revelation does not signify, yet still affirms itself by the fact that it is in force. Where the wealth of significance is gone and what appears, reduced, so to speak, to the zero point of its own content, still does not disappear (and Revelation is something that appears), there the Nothing appears."⁷⁸

The neo-baroque construct of law that I have been describing comports well with Scholem's account. Neo-baroque law in the society of spectacle takes on the phantasmal quality of the spectacle itself. Trapped within a "jurisprudence of appearances,"⁷⁹ law remains in force but lacks significance. As the offspring of metaphysical beatitude, the byproduct of the totalizing nihilism of Nietzsche's purely aesthetic will to power, law becomes manifest as the pure "Nothing of Revelation." This is what is meant when we refer to neo-baroque law as a monadic arabesque, a form devoid of normative content or compass—like other, similarly empty forms of cultural kitsch that flicker across the screen.

In this respect, Benjamin's appreciation of the work of Carl Schmitt is understandable. For notwithstanding our uneasiness in the face of Schmitt's embrace of fascism in the 1920s and '30s, it is difficult to dismiss the prescience of his thought. As Bobbitt writes,

By stripping the State of any particular legitimating myth, however, Schmitt thinks that liberalism perpetuates the greatest myth of all, the depersonalized, rational, mechanistic operation of the law. “Eventually, as part of the logic of the process, all that will matter is that the machinery functions, on the one condition that the subjects continue to enjoy protection so they can go about their own lives.”

Bobbitt goes on to note:

By thus making civil society the field of competition for numberless private myths, the State sows the seeds of its own destruction because it has become marginal to the production of meaning, while private interest groups, each organized around its own myth, try to capture the machine of government. Meanwhile, the lives of the citizens dissolve into consumerism, hedonism, and an attraction to cults.

According to Schmitt, “the value of life stems not from reasoning, it emerges in a state of war where men inspired by myths do battle.”⁸⁰

Neo-baroque law, manifesting the normative vacuum that haunts the market-state, risks Lenin’s “law as terror” (what Italian fascists such as Marinetti viewed as a fusion of war and beauty).⁸¹ It is the natural offspring of ersatz culture, the culture of spectacle and delight, which foments emotional intensities that stand in for absented values. The element of terror (at home and abroad) usefully fuels the simulation of legitimacy by interposing coerced commitment (for survival’s sake, for the sake of ersatz freedom for the ordinary individual, if not for the markets that measure flux and contingency at home and abroad)⁸² in lieu of freely chosen constitutive norms. Terror, then, becomes the culminating logic of the culture of spectacle embodied in the market model of mass media.⁸³

The legitimation of the market-state on the basis of an ersatz (“kitsch”) culture of spectacle, in which baroque law predominates, also comports with Agamben’s notion of “bare life” as lying at the center of contemporary political life. Here the model of law as that which is in force but lacks significance comes into its own.⁸⁴ *Homo sacer* (what Goux describes as the “monstrous part” of man’s soul, his dark “animality,” the embodiment of what Agamben calls *zoe*) is the one left beyond the reach of grace. He is baroque man—the man who is constituted by spectacle and delight. He is also Oedipus: the polluted man, the one whom we cannot touch without being

tainted, for he is the infected source of the community's plague, the one who must be cast out.

The rite of passage, traditionally associated with ordeals (namely the physical/spiritual/symbolic sacrifice, confronting the terrible monster, the horror of unbearable knowledge), may be called for in order to help dispel the pathology of *homo sacer*, and to instigate the creative process through which the most authentic source of law's legitimacy, the possibility of justice, may be realized. This ordeal of justice, which risks the terror of mythic injustice in its name, as Schmitt's proto-Nazi thinking disconcertingly reveals, is set in motion through an *ascesis*, a deliberate deprivation,⁸⁵ a confrontation with (symbolic) death, the annihilation of self in the midst of the sublime, for the sake of epiphanic wisdom. In this completed rite (or *ascesis*) lies the hope of humanizing law by situating the distorted and arrogant ("totalizing") claim of the rationalist philosopher/detective (legislator/judge/prosecutor) within the larger mysteries of chance, Eros, and mythic enchantment, which remain impenetrable to reason.⁸⁶ Put in Agamben's terms, the challenge is to civilize *homo sacer*, to remove the beastly taint of *zoe* ("bare life") and bring him back into the human community of politics (*bios politicon*).⁸⁷ This marks the completed passage from (symbolic) death to epiphanic affirmation, from the "night of the world to *agape*,"⁸⁸ the ethical sublime.

Absent the fulfillment of the Oedipal rite of royal investiture, which is also symbolic of man's passage from innocence to maturity (from man to human, *zoe* to *bios*), the human condition seems destined to remain paralyzed within a state of perpetual diversion and exile. Continued domestic and global crises are likely to prompt an ever-deepening legitimization crisis as the public's willingness to submit to the state's demands for sacrifice weakens. Sacrifice requires normative commitment, but this is not something the neo-baroque culture of spectacle can deliver. Amid endless parades of empty form, ersatz legitimacy may be dramatically evoked through the emotional intensities of terror and delight. Yet, the Nothingness of Revelation that lies at its heart cannot be evaded forever. The uncanny sense of imminent catastrophe—so pervasive in baroque culture generally and in the dream world of Diane Selwyn in particular—persists, testifying to the power of the repressed to return. We may seek to deny the horror we feel before the masked core of

forbidden knowledge and desire, but in the dream life of the soul, as in the dream life of baroque law and politics, that horror abides.

The edification of Oedipus, who after a lifetime of exile and suffering attains redemption at Colonus in the moment before he dies, anticipates the reversal that is called for. The arrogance of reason is humbled at last by tragic experience. Oedipus finally asks to be taught. Ritual is renewed, and divine grace redeems him.⁸⁹ As Goux aptly notes, the sacredness of the impure meets up with the sacredness of the purified. “By virtue of his avoidance and delay, by virtue of delayed passage, it is Oedipus’s entire life that has been initiatory. . . . Existence itself has become the trial, and death the supreme passage.”⁹⁰

If only the mystery of the symbolic had been confronted earlier, and worked through in the ritual ordeal, symbolic death might have been substituted for a real one. Then, tragic wisdom might have been gained, along with the possibilities of redemptive justice, for justice is the grail that the hero brings back to the living from his ordeal in the phantasmal realm of the underworld.⁹¹

But baroque culture offers no such wisdom. Deprived of grace, unable to confront directly the terror of death, baroque man remains imprisoned within the infinite arabesques of his own fantasies and illusions, wrapped in the multiple folds of denial. For him, life is a dream. This is what it means to live in perpetual exile, standing before the locked door of the law, a door that never opens, for the key—akin perhaps to the esoteric knowledge that completion of the universal monomyth holds out—has been lost.

The Oedipus story’s systematic perversion of the universal monomyth, as recounted by Goux, describes a state of cultural pathology, political tyranny, and intrapsychic suffering. This is what comes of the systematic disruption of knowledge, power, and desire. It describes Oedipus’s fate, just as it describes the fate of Diane Selwyn in *Mulholland Drive*. Like Oedipus, Diane’s initial illusion of control and her brash staging of the mystery of her own identity can only quicken her flight toward tragic knowledge and death. For both Diane and Oedipus, knowledge comes too late. When the source of their denial is finally confronted, when their own monstrous nature becomes too palpable to deny, the nature and extent of their blind illusions are finally apparent. They have been wandering in a dream play, in a theater like the Café Silencio, where sounds and images are playthings in the hands of the magician-

emcee—like the sounds and images that David Lynch has projected onto the screen before us.

“May ours be not the fate of Oedipus”—is this the fateful prayer of David Lynch? Must we activate a new ordeal, a new rite of passage, in quest of a new understanding of ethical enchantment?⁹² Is this the “reversal” of which Benjamin spoke? By casting off the baroque pall of the Oedipal perversion of the ancient monomyth, we may be rid of the “onrushing conqueror,” master of false mastery, who remains trapped in the infinite folds of arrogant reason. What else do the “old books” hold out for us if not this esoteric knowledge leading us back, under the tutelary guidance of “the new advocate,” to “the gate to justice”?⁹³

But has cinema the power to accomplish a goal that is at once so vital and so distant?⁹⁴ Do we yet have access to the cultural resources, such as the universal monomyth, that Lynch’s film symbolically evokes? Lynch’s cultural diagnostic describes a pop-baroque culture of narcissism and spectacle that represses the terror of the abyss with the mock terror of sensation. By staging a horrifying *mise en abyme* set against this trivialized backdrop, Lynch provokes us to awaken to the real terror of the abyss. Perhaps this is the necessary precondition to curing us of our neobaroque ambivalence and agitated suspension between the unbearable infinitudes of light and dark. Perhaps in our encounter with the postmodern sublime there lies a path toward completing the thwarted rite of succession manifest in the Oedipal claim to rational mastery and the arrogance of instrumental reason. By deconstructing the impulse toward (false) mastery, amid the deceits of pathological reason and desire, perhaps a way is being prepared for renewal, for an ethical sublime. Yet, the historic danger of false mastery remains close by—the danger of the new myth that denies the spiritual terror of the *mise en abyme*, and offers in its place a different terror, and a different agency of power: the people, the Führer, the enemy of the state.

To paraphrase Georges Dumézil,⁹⁵ if the culture of modernity has lost its capacity for myth, perhaps it is already dead. But then again, perhaps the death of modernity is but a threshold to a new cultural life, a new myth—for good or ill. Like Dante’s purgatory, Lynch’s *Mulholland Drive* serves as a station along the way.

Conclusion

The great gift of culture is to give meaning to, and in so doing normalize, the constraint of desire. Accordingly, one of the key queries that lie at culture's core is what is the proper relation between law and desire, discipline and pleasure? What sort of constraint—in the name of what meaning or value, toward what end—best serves our understanding of ethics and justice? With this central query before us, it becomes plain why cultural criticism plays such an essential role within free societies. The cultural critic affords the community an opportunity freely to assess how power stands in relation to meaning. If the rule of law is distinguishable from naked, self-interested force (and law's legitimacy requires that this be so), then we need to ask: how is that difference to be understood? Is the extant relationship between law and power optimal, or might it be afflicted by some as yet undiagnosed pathology?⁹⁶ Based on the foregoing analysis of *Mulholland Drive*, I have attempted to suggest that a resurgent Hobbesian sensibility of terror pervades the postmodern sublime—and its offspring, neo-baroque law.⁹⁷

Law's norms and imperatives—and the legal institutions and processes (both official and unofficial) through which those norms and imperatives are enacted—help to shape and inform not only the outward conditions of social life, but also the ways in which the state permissibly affects, at times taking up residence within, our private lives. The nature of the debate, and the extent to which it is a debate, over the means and ends of cultural (and self-) production, set against the backdrop of state power and legalized violence, constitutes a public contest of and for mind and culture. Specific legislative enactments, social policies, and judicial decisions may be analyzed from this cultural and intrapsychic perspective. As Plato noted, one may ascertain the nature of a society and the individuals who compose it from an analysis of its legal and cultural institutions.⁹⁸ That is the strategy that has been essayed here. We have explored the cultural and intrapsychic negotiation of power, knowledge, and desire in order to ascertain and assess how law stands in regard to power.

By asking what are the cultural values and imperatives currently in circulation within society, we seek to learn more about the principle of constraint that edifies freedom and disciplines desire. The examination of individual

and collective pathologies in regard to this key function of culture drives and informs the diagnostic process. It also fuels the ensuing search for corrective measures. This critical inquiry also allows us to ask how law may yet respond to utopian aspirations for health and balance in our individual lives and in the communities in which we live. Central to this inquiry is an abiding concern with the existing configuration of knowledge, power, and desire—the three constitutive elements that configure our individual and collective sense of justice. In order to understand what sort of justice, if justice it is, lives by the law of our time, we shall need to direct our attention, from more than one vantage, to this crucial cultural and intrapsychic configuration.⁹⁹

But how does one begin such a multidimensional venture in critical thinking? Where does one look for guidance when faced with the complex demands of developing a cultural diagnostic?¹⁰⁰ Every culture in every age has its Virgil, though his name may only be confidently uttered in retrospect. For the cultural critic, however, such uncertainty cannot be helped. His task is to name names.

In this chapter, I have presented the first installment of a larger work. The first movement has taken us down (and in). The second will lead up (and out). Since this is a venture in cultural criticism, along the way I have sought the services of suitable artistic guides. For the initial leg of this journey our guide has been David Lynch, a good choice for going down. Dark, irrational forces crowd Lynch's abundantly creative imagination; and, indeed, this part of our voyage has had much to do with darkness and discord among the core elements of mind and culture. Informed by Lynch's poetic vision we have encountered and sought to assess the current cultural configuration of power, knowledge, and desire, with an eye in particular to the political and legal forms that it adopts.

In Lynch's hands, the film viewer, not unlike the main protagonist in *Mulholland Drive*, comes to recognize, as if for the first time, who and what she is. This rite of awakening from a dream that had been mistaken for real life has deep roots in both Western and Eastern culture.¹⁰¹ It is a theme that has been much on our minds of late, the fruit, no doubt, of a young digital culture still grappling with its power to make (up) realities sufficiently believable to live in.¹⁰² Asking what reality we are in, or prefer to inhabit, raises a host of difficult issues that directly implicate the strengths and limitations

of human power, knowledge, and desire. This is particularly so in advanced technological societies where the mind's power of imagination quickly translates into habitable worlds.¹⁰³

Whether and to what degree pathologically configured intrapsychic elements find their counterparts in lived experience, perhaps taking root in the culture at large—and in Lynch's world terrifying forms of pathology are more often than not the reality we confront—brings to the forefront of critical reflection the need for appropriate regulative principles. Without them, it will not be possible to restore a more healthful psychic and cultural balance. As in the reading of fairy tales, and in dream work generally, a crucial function of initiatory rites is to consciously confront, even to the point of being swallowed up by (in order to overcome),¹⁰⁴ deep-rooted terrors. We have explored this theme in order to assess the initiatory implications of Lynch's cinematic dream work and its affinity with what was regarded in premodern times as the ordeal of justice.

I have argued that the Lynchian dream state offers a window onto a political "state of exception" (in Giorgio Agamben's sense)¹⁰⁵ in which the terms of law's legitimation (as well as the conditions of legal-political succession) are starkly revealed. The dream of law's rule lays bare the power of the exception that lies at its heart. A state of crisis disrupts the veil of normalcy both in our personal life and in the life of politics.¹⁰⁶ By deliberately simulating on the screen (and perhaps inducing in real life, even if momentarily)¹⁰⁷ such a crisis, Lynch's cinematic "*mise en abyme*," like all profound rites of passage, reveals hidden realities.¹⁰⁸ In this case, I have contended, the reality that we glimpse pertains to the actual condition of state power in contemporary society. It is a condition that corresponds in significant respects with past efforts to legitimate law through the state of exception.¹⁰⁹

David Lynch's film work addresses our need to confront repressed forces of violence and disorder, both within and without. In Lynch's universe of chance and contingency, the classical detective-philosopher becomes a figure of derision and mockery. His logic is viewed as absurd in the face of irrational forces he cannot even begin to fathom. Comprehending the mystery of a murder that has been committed, or of a self that is being enacted, requires more than a detective's logic. It demands an encounter with (and perhaps ultimately a surrender to) those very forces that threaten to overwhelm

him. In Lynch's filmic universe, the typical act of "Sherlock Holmesian" mastery gives way to a transformative defeat—the reconstitution of self from the violent trauma of (symbolic) annihilation. Oedipus the detective-philosopher thus becomes anti-Oedipus, the initiate-initiator.¹¹⁰

David Lynch's *Mulholland Drive* symbolically restages the Oedipal de-arrangement of knowledge, power, and desire, and in so doing evokes our exile from the originary order of the ancient monomyth. By going under, and within, into the mysterious depth of unconscious desire, the dreamer gains hidden/esoteric knowledge about the way things are, and in the process learns who she really is and how knowledge, power, and desire actually operate in the psyche, and in the world. Here lies the symbolic code of law's unconscious. In the epiphanic completion of the rite of succession we reencounter law's primal dream of the ordeal of justice, the wellspring of meaning from which lawful rule originates. Perhaps we may also recognize in this dream ritual a contemporary residue of the medieval ordeal, a trial in which, in place of rational proofs, deeper forces reveal the accused's fate.¹¹¹

In universal dream space we enact the initiation ceremony. What was once concretely ritualized and collectively enacted in the open amphitheater and beyond has moved, first to literature and later, perhaps, with even greater affinity for its highly symbolic psychic dynamics, to the dream space of film. Sitting in the dark, we are absorbed into the mysterious terrors of the unconscious, once again trapped in the belly of the monster, reliving the dreamtime of originary mythic reality,¹¹² awaiting some new form of knowledge coincident with rebirth, upon our reemergence under the sun.

Film director Lynch—like the magician-emcee in *Café Silencio*, a Prospero-like figure and Virgil-like tutelary guide to the underworld, the psychoanalyst's kindred spirit—plays out the contemporary role of the initiate-initiator. Diane Selwyn's story, like Oedipus's, shows us the face of intrapsychic and cultural-political discord in our time. In this way, Lynch, like Sophocles in his day, is an invaluable cultural diagnostician. He too shows what needs to be corrected, and motivates us to move toward rooting out not the poet-messenger or the symbol-rich message that he bears, but the pathology that the message reveals.

Ritual restores the moral conscience to itself (both in interior isolation and in collective practice).¹¹³ Reactivation of the ancient monomyth of royal

investiture as a paradigm for law's legitimation brings with it not only a renewed awareness of the enduring elements of justice, but also a renewed appreciation of the consequences of the arrogance of reason and the need for humility in the face of that which reason cannot conquer.

If in *Mulholland Drive*, David Lynch invites us to reenact an initiatory rite that anticipates law's re-legitimation, his vision breaks off before revealing the legal and ethical landscape to which that initiation might lead. In the premodern fashion of Dante, and the late modern fashion of Eliot, following our descent with Lynch into the hellish baroque labyrinth of Diane Selwyn's dream world, the task ahead is to seek the path that leads upward (and out): into everyday life, in a world of reconstituted justice—the realm of the ethical sublime.

Notes

1. See Omar Calabrese, *Neo-Baroque: A Sign of the Times* (Princeton, N.J.: Princeton University Press, 1992), 92, describing the etymology of “monster” in terms of ‘*monstrum*’ (outside the norm) and ‘*monitum*’ (the idea of mystery), or that which is concealed in nature (i.e., the marvelous and the enigmatic).

2. See Slavoj Žižek, *The Fright of Real Tears* (London: British Film Institute, 2001), 175, recounting Lacan's quip about “awakening into reality as an escape from the Real” (of desire).

3. John Rajchman, *Constructions* (Cambridge, Mass.: MIT Press, 1998), 13.

4. See Gilles Deleuze, *The Fold* (Minneapolis: University of Minnesota Press, 1993).

5. See Jean-François Lyotard, “The Sublime and the Avant-Garde,” in *The Inhuman* (Stanford, Calif.: Stanford University Press, 1988). On the *mise en abyme* motif, see Lucien Dallenbach, *The Mirror in the Text* (Chicago: University of Chicago Press, 1989), 8 (“[A] *mise en abyme* is any aspect enclosed within a work that shows a similarity with the work that contains it”). See also Jorge Luis Borges, “The Garden of Forking Paths,” in *Labyrinths: Selected Stories and Other Writings* (New York: Random House, 1984) (“I remembered too that night which is at the middle of the Thousand and One Nights when Scheherazade [through a magical oversight of the copyist] begins to relate word for word the story of the Thousand and One Nights, establishing the risk of coming once again to the night when she must repeat it, and thus on to infinity”).

6. Gilles Deleuze and Felix Guattari, *Anti-Oedipus* (Minneapolis: University of Minnesota Press, 1977), 5 (“Schizophrenia is the universe of productive and repro-

ductive desiring-machines, universal primary production as ‘the essential reality of man’”).

7. Jean-Joseph Goux, *Oedipus, Philosopher* (Stanford, Calif.: Stanford University Press, 1993).

8. See Salah el Moncef, *Atopian Limits* (Bern: Peter Lang, 2002), 118–19.

9. The viewer cannot know it, but the reference is to Diane Selwyn’s earlier history. She won a jitterbug dance contest back in her hometown of Ontario. Her subsequent interest in acting gave rise to dreams of success in Hollywood. The flashback to the contest suggests high school days of purity, unspoiled ideals. Presumably, this is the biographical core of Diane’s split-off, idealized persona, “Betty.”

10. Their bodily motion is reminiscent of the monstrous parental figures. Might this be construed as a physical metaphor linking disparate yet similar agencies of violence? The condensation of pleasure and violence (in the image of joyriding youth) rests uneasily with that of guilt-triggering authority figures (in the image of elderly parents).

11. There is evidence throughout the film that Diane’s love for Camilla is of a highly narcissistic nature. Camilla may in fact be viewed as a fantasized extension of Diane. Throughout the film we see a variety of signs pointing to Diane’s fusion with Camilla. For example, as Betty and Rita come close to discovering their true identities, Rita cuts her hair to match Betty’s hairstyle (as if to hide within Betty’s benign persona). We see the two women literally fuse, after making love, in a brilliant frame that depicts Rita’s profile eerily completing Betty’s. The characterological pathology reflected in Diane’s fragile sense of self and her felt need to fuse with, and then violently repel, the split-off (“idealized”) other (dark, seductive Camilla) is suggestive of what psychologists refer to as “borderline personality” type. Diane’s frightening loss of boundaries makes it feel like she is falling endlessly into Camilla. As a tactic of defense, Camilla must be demonized as the vampiric other, the one who must be destroyed in order for Diane to save her own self.

12. The image of Camilla looking in the mirror, with a smaller mirror set within the larger one reflecting the movie poster of Rita Hayworth as Gilda on the opposite wall, brilliantly figures the quintessence of the *mise en abyme*: the baroque, infinitely reiterated image within an image.

13. See, for example, Tony Hilfer, *The Crime Novel: A Deviant Genre* (Austin: University of Texas Press, 1990), 3, 7, noting that a crime novel maneuvers its reader into various forms of complicity, managing to subvert the reassurances of the detective novel by “put[ting] the signification process into doubt or even exploit[ing] the gap between socially accepted signification and ultimate reality.”

14. See, e.g., Paul Auster, *City of Glass* (The New York Trilogy, vol. 1) (London: Penguin, 1987), in which Quinn, the story’s private detective, discovers that he can

never arrive at the heart of the mystery—which is ultimately the mystery of himself in a world in which signifiers are no longer attached to the signified and the distinction between self and other no longer holds. See also Samuel Beckett, *The Unnameable* (New York: Grove Press, 1958).

15. Lyotard associates this horror with the experience of Pascalian terror: standing before the infinite nothingness that surrounds us and in which we are enveloped. The monstrousness of this infinite absence might be denominated the ‘postmodern sublime.’ See Lyotard, “The Sublime and the Avant-Garde,” 97–99.

16. Diane’s fantasy of Camilla not only keeps her victim alive (thereby staving off the guilt that accompanies murder); it also allows her to merge with the object of her envy, and her thwarted desire. With her old identity out of the way, Diane is now free to become an ersatz Camilla, and like Camilla, a star. This wish fulfillment is matched by another, for in the persona of “Betty” Diane can now seduce Camilla and thus regain the passionate love affair that she has lost in real life. Merging with Camilla, however, also has the most devastating consequences for Diane. For it is through Camilla that Diane ultimately tracks down her true identity, figured in the end as a stinking, swollen, hideous decomposing corpse. This is the monster that Diane, in her own mind, has become—a creature not unlike the hideous monster behind the diner, the one “who is doing it.” This is the monstrous force at the center of things, the one driving the dream, a figure so terrible that to behold it is fatal.

17. An amusing joke, in the form of a clue to Rita’s identity, and her own, occurs when the intrepid Betty conceives of a plan to call the police to learn about any car accidents reported on Mulholland Drive. “C’mon,” Betty cries, “it’ll be just like in the movies. We’ll pretend to be someone else.” But at this point the deadpan revelation is premature, and it goes unnoted.

18. He, too, it would seem, is the one “who is doing it”—a surrogate monster, the omnipresent policing agency of the unconscious.

19. Could it be that Diane, still enamored of Camilla, unconsciously seeks to insulate her from Diane’s jealous wrath by attributing her success not to Camilla’s talent, but rather to a nefarious conspiracy?

20. “A man’s attitude goes some ways the way his life will be. Is that something you might agree with?” the cowboy asks the stunned and slightly bemused director. But Adam Keshner’s bemusement will quickly fade. “I want you to think about that and stop being a smart aleck. Can you try that for me?” is the sobering response to Adam’s initial “attitude problem.”

21. In addition to the signature of the jittery, water-bobbing camera, Lynch also uses the trope of blue light to figure the mysterious, abyssal force (of endless, unutterable desire) that makes things happen.

22. Compare Jean-Luc Godard’s *Contempt* (1964); at the end of the film the di-

director cries “Silencio,” after which the scene shifts, in silence, to a car accident, depicting both driver and passenger as dead.

23. See Mircea Eliade, *Rites and Symbols of Initiation* (Woodstock, Conn.: Spring Publications, 1956), 136 (“Death prepares the new, purely spiritual birth, access to a mode of being not subject to the destroying action of Time”) and 62 (describing the recurring pattern of “initiatory ordeal” as enabling the initiate to descend into Hell alive in order to “confront its monsters and demons”). See also 135: “Initiation lies at the core of any genuine human life.” There are two reasons, according to Eliade: 1) “any genuine human life implies profound crises, ordeals, suffering, loss, and reconquest of self, ‘death and resurrection’”; and 2) there comes a moment for every person when one’s life seems a failure, “an obscure feeling that he has missed his vocation; that he has betrayed the best that was in him. In such moments of total crisis, only one hope seems to offer any issue—the hope of beginning life over again. . . . [T]he man undergoing such a crisis dreams of a new, regenerated life, fully realized and significant. . . . This ‘nostalgia for an initiatory renewal’ sporadically arises from the inmost depths of modern nonreligious man. It would appear to represent the modern formulation of man’s eternal longing to find a positive meaning in death, to accept death as a transition to a higher mode of being.”

24. See Lyotard, “The Sublime and the Avant-Garde,” 101, 107.

25. Following Wai-Yee Li, I use the term “allegory” to refer to “the rhetorical procedure that emphasizes the relationship between different and disjunctive levels of coherence.” See Wai-Yee Li, *Enchantment and Disenchantment: Love and Illusion in Chinese Literature* (Princeton, N.J.: Princeton University Press, 1993), 161.

26. Benjamin Kilborne, *Disappearing Persons* (New York: SUNY Press, 2002), 113, 123 (“The more internal feelings are repressed the more individuals view their feelings with mistrust; and the greater their dependence on appearance, the greater the tendency to mistake appearance for reality”).

27. See Heinrich Wölfflin, *Renaissance and Baroque* (Ithaca, N.Y.: Cornell University Press, 1964), 33–34, 86, on baroque precariousness, and the fleeting ecstatic sublimation in the absolute.

28. See Eliade, *Rites and Symbols of Initiation*, 125–26, describing how, over time, primitive/premodern ritual ordeals shifted to literary motifs, which presented their message directly to the imagination; this, in turn, has more recently shifted to images on the screen—with directors like Lynch as initiate/mentors, dream weavers, and tutelary guides.

29. Goux, *Oedipus, Philosopher*, 155.

30. *Ibid.*

31. See Wölfflin, *Renaissance and Baroque*, 34, noting that the baroque seeks to stimulate the imagination through infinite figurations, and the suggestiveness of the

indefinite. Cf. Walter Benjamin, *The Origin of German Tragic Drama* (London: Verso, 1998) on the baroque artistic imagination, and creation in a void.

32. See Gilbert Murray, *Five Stages of Greek Religion* (New York: Doubleday, 1955), 119–65.

33. See Grant Gilmore, *The Ages of American Law* (New Haven, Conn.: Yale University Press, 1977), 111 (“In Hell there will be nothing but law, and due process will be meticulously observed”).

34. Wolfflin, *Renaissance and Baroque*, 38.

35. Goux, *Oedipus, Philosopher*, 2–3.

36. *Ibid.*, 6.

37. According to this mythic account, heroic exploits—accepting the challenge, trial, or ordeal that culminates in symbolic death and resurrection and the subsequent acquisition of the grail (esoteric knowledge/justice)—mark the cultural dynamic by which humans leave behind the naïveté of childhood and are introduced to a world of adult wisdom. See Eliade, *Rites and Symbols of Initiation*, 9. See also Wai-Yee Li, *Enchantment and Disenchantment*, 44, describing the classic Chinese literary effort to assimilate the “supernatural woman” into mundane reality, thereby integrating enchantment (in the face of infinite desire) into schemes of order (disenchantment).

38. See Goux, *Oedipus, Philosopher*, 145, discussing Plato’s methodical analysis of the tripartite division of the soul and the correspondences to how city-states are organized. Goux writes: “Each element is associated with a virtue: lust has the corresponding virtue of temperance; to anger corresponds the virtue of courage; and to intelligence, prudence. . . . The difference between just and unjust political constitutions can be deduced with precision from the interplay of these three components and the relation of harmony or disharmony that prevails among them, and the same can be said of types of souls.” *Ibid.*

39. Benjamin, *The Origin of German Tragic Drama*, 3.

40. See Jose Antonio Maravall, *Culture of the Baroque: Analysis of a Historical Structure* (Minneapolis: University of Minnesota Press, 1986), 14.

41. *Ibid.*, 71.

42. Benjamin, *The Origin of German Tragic Drama*, 3.

43. See Maravall, *Culture of the Baroque*, 14.

44. *Ibid.*, 262.

45. *Ibid.*, 263.

46. *Ibid.*, 74.

47. *Ibid.*, 81–82.

48. *Ibid.*, 98.

49. *Ibid.*, 83. Maravall discusses a variety of mass media devices available at the

time for purposes of emotional manipulation, including “books, commercialized theatrical representations, painting in abundance, songs in vogue, posters, programs, lampoons, etc.”

50. See Benjamin, *The Origin of German Tragic Drama*, 3.

51. *Ibid.*

52. See Deleuze, *The Fold*.

53. Lyotard, “The Sublime and the Avant-Garde,” 99.

54. See Wolfflin, *Renaissance and Baroque*, 38, describing the aim of baroque art as overwhelming the mind by using matter to create oppressiveness, irrationality, amorphousness, “treating matter with violence.”

55. Compare *ibid.*, 45, describing St. Peter’s cathedral, a masterpiece of baroque architecture, in terms of the “viscous mass lowly oozing down the slope,” with Sartre’s description of the “de trop” in his first novel, *La Nausée*.

56. See Maravall, *Culture of the Baroque*, 174.

57. *Ibid.*, 186.

58. *Ibid.*, 170, citing Calderon’s baroque masterpiece.

59. *Ibid.*, 81.

60. Christine Buci-Glucksmann, *Baroque Reason* (London: Sage, 1994), 60 [citing Alewyn].

61. It is Mr. Rocque who moves the strings of worldly power, cutting off the director’s personal money supply and shutting down his movie in order to force him to hire the female “star” that Mr. Rocque mysteriously prefers. It is the monosyllabic Mr. Rocque, immobile in his high chair in his immaculate glass-enclosed room, with its screens that panoptically reveal all that there is to see, who cryptically sets in motion all manner of worldly forces to get his way, from the brute violence of the huge thug who comes to the director’s home, to the implicit violence of the strange cowboy who speaks to the director in aphoristic riddles, to the enraged film company lawyer who screams like an animal and his comrade in arms, the powerful, immaculate producer whose impossible demands are manifested during a meeting with the director and his agent in the grotesque gesture of spitting up an elegantly served espresso that tastes like “shit.”

62. See Benjamin, *The Origin of German Tragic Drama*, 54–55 (“Inwardly empty or profoundly disturbed, outwardly preoccupied with technical problems of form which seemed at first to have very little to do with the existential problems of the age—this is what most of the baroque writers were like. . . . [T]he baroque is not so much an age of genuine artistic achievement as an age possessed of an unremitting will. This is true of all periods of so-called decadence. . . . The form as such is within the reach of this will, a well-made individual work is not.” See also *ibid.*, 66 (“[For baroque man] the hereafter is emptied out of everything which contains the slightest

breath of this world, and from it the baroque extracts a profusion of things which customarily escaped the grasp of artistic formulation and, at its high point, brings them violently into the light of day, in order to clear an ultimate heaven, enabling it, as a vacuum, one day to destroy the world with catastrophic violence”).

63. See Richard K. Sherwin, “Law’s Beatitude,” *Cardozo Law Review* 24 (2003): 685.

64. Giorgio Agamben, *Homo Sacer* (Stanford, Calif.: Stanford University Press, 1998), 51.

65. Franz Rosenzweig, *Understanding the Sick and the Healthy* (Cambridge, Mass.: Harvard University Press, 1999), 102. See also Eric Santner, *On the Psychotheology of Everyday Life* (Chicago: University of Chicago Press, 2001), 13 (“The pursuit of the end of the world is . . . fundamentally fantasmatic”).

66. Sherwin, “Law’s Beatitude,” 687.

67. Franz Rosenzweig, *The Star of Redemption* (Boston: Beacon Press, 1971 [1921]), 4–5.

68. Bram Stoker, *Dracula* (London: Penguin (1994 [1897])).

69. Cf. Jean-Luc Nancy, *Freedom* (Palo Alto: Stanford University Press, 1993), 127–28. Compare the baroque impulse to yield to the infinite—an inhuman freedom that offers no relief from ambivalence, and agitated suspense. See Wolfflin, *Renaissance and Baroque*, 88.

70. Friedrich Nietzsche, *The Genealogy of Morals*, III, section 28, 163 (1969 [1887]).

71. Henri Birault, “Beatitude in Nietzsche,” in *The New Nietzsche: Contemporary Styles of Interpretation*, ed. David B. Allison (Cambridge, Mass.: MIT Press, 1999), 226.

72. See Friedrich Nietzsche, *The Will to Power*, ed. Walter Kaufmann (Princeton, N.J.: Princeton University Press, 1968 [1895]), 108–9, describing as the “masterstroke” of *ressentiment* its need “to deny and condemn the drive whose expression one is, continually to display, by word and deed, the antithesis of this drive.”

73. Sherwin, “Law’s Beatitude,” 683; Deleuze, *The Fold*, 74 (“The damned are those whose last thought is a scorn of God because, when their soul vomits all and can no longer enclose clearly anything other than this hate or this rage, it is the maximum of all possible hate or the smallest amplitude of reason”). See also Peter Goodrich, *Oedipus Lex: Psychoanalysis, History, Law* (Berkeley: University of California Press, 1995), 245, linking the absence of desire in law to “death in the midst of life: ‘tu morieris invivendo / Atique vivis moriendo’” [“You are dying in the midst of life / and you live while deserving to die”].

74. Birault, “Beatitude in Nietzsche,” 222.

75. See Benjamin, *The Origin of German Tragic Drama*, 65–69, 74, 97–98.

76. Goux, *Oedipus, Philosopher*, 148.

77. See Philip Bobbitt, *The Shield of Achilles: War, Peace, and the Course of History* (New York: Knopf, 2002), 9.

78. Agamben, *Homo Sacer*, 50–51.

79. See Richard K. Sherwin, *When Law Goes Pop: The Vanishing Line between Law and Popular Culture* (Chicago: University of Chicago Press, 2000), 141–69, on the jurisprudence of appearances and law as spectacle.

80. Philip Bobbitt, *The Shield of Achilles*, 596, 606 [noting Lenin’s “law as terror”].

81. Sherwin, *When Law Goes Pop*, 224.

82. See Sherwin, “Law’s Beatitude,” 689, n. 28, referring to President George W. Bush’s rhetorical insistence upon the need to root out evil in the face of post–9/11 terrorism.

83. According to Bobbitt, in the market-state, “the media are well situated to succeed” in their direct competition with the government of the day (Bobbitt, *The Shield of Achilles*, 784).

84. Agamben, *Homo Sacer*, 9, 51.

85. See Lyotard, “The Sublime and the Avant-Garde” (on deprivation), and Benjamin, *The Origin of the German Tragic Drama*, 56 (on “ascetic apprenticeship”).

86. Cf. Mircea Eliade, *Rites and Symbols of Initiation*, 66, on the land of the dead as the sacred realm, the realm of enchantment.

87. Agamben, *Homo Sacer*, 1. This is, as I will argue in a subsequent work, the main ethical thrust of Krzysztof Kieslowski’s late film work.

88. See Žižek, *The Fright of Real Tears*, 161.

89. Goux, *Oedipus, Philosopher*, 185.

90. *Ibid.*, 186.

91. As Eliade writes, “He who makes the passage dies to one life in order to gain access to another” (Eliade, *Rites and Symbols of Initiation*, 9).

92. See Benjamin, *The Origin of German Tragic Drama*, 232, 234 (“Ultimately, in the death-signs of the baroque the direction of allegorical reflection is reversed; on the second part of its wide arc it returns to redeem. . . . The Aristotelian idea of [wonder], the artistic expression of the miracle (the Biblical [sign]) is what dominates [art and architecture too] in the period after the counter-reformation”). It is in this sense that Lynch—the magician, like Virgil, like the psychoanalyst—may be viewed as the initiate-initiator, and we, the audience, in following Diane’s fate, like the audience that followed that of Oedipus, encounter the awesome power that fuels the monomyth. The clues that lead the initiate through the terrors of (symbolic) death in the dream realm take on a labyrinthine design. As Eliade notes, “the labyrinth plays the role of a post-mortem initiatory ordeal; it falls in the category of the obstacles that the dead person—or, in other contexts, the Hero—must confront in his journey through the beyond.” Significantly, it is the aesthetic of the labyrinth that dominates baroque narrative, theater, architecture, and painting.

93. See *ibid.*, 1. See also Zizek, *The Fright of Real Tears*, 163, referring to “love beyond law,” a cognate notion to what I have referred to in this chapter as “the ethical sublime.”

94. Cf. Lyotard, “The Sublime and the Avant-Garde,” 103 (“an interior ascesis” allows the painter to discover “elementary sensation” hidden in ordinary perception. The viewer gains access to the artist’s vision only by undergoing a “complimentary ascesis”).

95. Georges Dumézil, *The Destiny of the Warrior* (Chicago: University of Chicago Press, 1969), 3.

96. See Giuseppe Mazzotta, *Cosmopoiesis: The Renaissance Experiment* (Toronto: University of Toronto Press, 2001), 30 (“The metaphysical foundation of Machiavelli’s world is the disorder of a fallen state of nature; the principles of this condition of existence are force and simulation . . . whereby power is acquired and maintained”), and Giuseppe Mazzotta, *The New Map of the World* (Princeton, N.J.: Princeton University Press, 1999), 191–92 (“Hobbes’s Epicureanism [or doctrine of ‘chance’] envisions the breakdown of the charitable social order. Within the Hobbesian framework of justice without charity human beings are apprehended as isolated entities, as disintegrated multiplicities related by perpetual, random antagonisms and reciprocal fear”). See also Trisha Olson, “Of Enchantment,” *Syracuse Law Review* 50 (2000): 109 (“By the early thirteenth century, the Church’s focus had shifted from a wrongdoer’s ability to perfect himself with his god through purgation, to the fallen state, which made such perfecting necessary in the first place. Put differently, ‘natural’ man was now an animal who ‘would do good only out of terror’ rather than a being who was himself a ‘revelation from God’”). This Western cultural thematic reached its philosophical apotheosis in Nietzsche’s will to power. See Sherwin, “Law’s Beatitude,” 683.

97. See, for example, Lars von Trier’s allegorical film *Dogville* (Zentropa, 2003).

98. See Plato, *The Republic*, in *The Collected Dialogues of Plato*, ed. Edith Hamilton and Huntington Cairns (Princeton, N.J.: Princeton University Press, 1961), 683 (“A man is in the same way in which a city [is] just.”). “Each of the principles [of a person’s soul] within him does its own work in the matter of ruling and being ruled” (*ibid.*, 443a, p. 685). “Believing and naming the just and honorable action” are “that which preserves and helps to produce this condition of soul.” “Law is not concerned with the special happiness of any class in the state, but . . . [with] harmonizing and adapting the citizens to one another by persuasion and compulsion . . . and that it itself creates such men in the state” (*ibid.*, VII 519e, p. 752). See also VIII 544a, p. 773, describing four kinds of state constitutions and the “corresponding type of man” as well as constitutional “defects” and their corresponding type of man—for example, in an oligarchy rulers are determined by property ownership and the corresponding

character traits are avarice, placing wealth above all else, and doing all he can to satisfy his own appetites and desires, subduing all other things as vain and unprofitable (VIII 553, pp. 781–82).

99. Cf. Friedrich Schelling, *Philosophy of Religion*, cited in Ernst Bloch, *The Utopian Function of Art and Literature* (Cambridge, Mass.: MIT Press, 1996), 259. “Whoever thinks he can recognize the good without that of evil is making the greatest of mistakes, for just as in Dante’s poem, the path to heaven leads through the abyss in philosophy as well.” See also *ibid.*, 260, quoting Schelling, *Philosophical Investigations into the Essence of Human Freedom*: “After the eternal act of self-revelation, everything in the world as we now see it is law, order and form; yet lawlessness always lurks at its foundations, as if it could once again break through, and nowhere does it appear as if order and form were at the origin but rather, that as original chaos was brought to order. . . . Without this antecedent darkness, there is no creational reality; gloom is its necessary heritage.”

100. Mieke Bal describes this kind of analysis as “cultural philosophy,” a phrase I also find congenial. See Mieke Bal, *Quoting Caravaggio: Contemporary Art, Preposterous History* (Chicago: University of Chicago Press, 2001).

101. See, for example, Cervantes’ *Don Quixote* and Chan Tsao’s eighteenth-century classic *The Dream of the Red Chamber* (New York: Random House, 1958). In regard to the latter, which is of particular interest in the context of Lynch’s work, see Wai-Yee Li, *Enchantment and Disenchantment*.

102. This is the compelling theme of such recent films as *The Matrix* (1999), *Existenz* (1999), and *Dark City* (1998). For a recent example of a livable virtual world, visit www.seconddlife.com.

103. See, for example, *The Playful World* (New York: Ballantine, 2000); Marie-Laure Ryan, *Narrative as Virtual Reality: Immersion and Interactivity in Literature and Electronic Media* (Baltimore, Md.: Johns Hopkins University Press, 2001); and Lisbeth Klastrup, *Towards a Poetics of Virtual Worlds: Multi-User Textuality and the Emergence of Story*, <http://hypertext.rmit.edu.au/dac/papers/Klastrup.pdf>.

104. See, for example, Victor Turner, *The Ritual Process* (Ithaca, N.Y.: Cornell University Press, 1969); Victor Turner, *Revelation and Divination in Ndembu Ritual* (Ithaca, N.Y.: Cornell University Press, 1975); and Eliade, *Rites and Symbols of Initiation*.

105. Agamben, *Homo Sacer*, 37 (“The state of nature and the state of exception are nothing but two sides of a single topological process in which what was presupposed as external [the state of nature] now reappears, as in a Möbius strip . . . in the inside [as a state of exception], and the sovereign power is this very impossibility of distinguishing between outside and inside, nature and exception, *physis* and *nomos*”).

106. Agamben refers to contemporary political life as the life of bio-politics

(*ibid.*, 3). To the extent that we are now witnessing a convergence between the bio-political state and the transnational corporate-entertainment-culture of spectacle (collapsing political life into bare life on a global scale), the sovereign exception transcends the modern nation-state just as it transcends local [state] law. In their place we find simply the circulation of power through bio-politicized market mechanisms, what Philip Bobbitt has referred to as the “market-state.” See Bobbitt, *The Shield of Achilles*.

107. See Lyotard, “The Sublime and the Avant-Garde,” 102, describing “colouristic sensations” that are “only accessible to the painter, and can, therefore, only be re-established by him, at the expense of an interior *ascesis* that rids perception and mental fields of prejudices inscribed even in vision itself. If the viewer does not submit to a complimentary *ascesis*, the painting will remain senseless and impenetrable to him.” The initiation of the rite of passage also goes under the ancient Greek rubric of *ekphrasis*—bringing the initiate across an epistemological and existential threshold, from one reality to another, through an experience, an event, an epiphany, that affords transformative insight. This was a central goal of Renaissance (Neoplatonist, alchemically minded) artists like Botticelli, as is exquisitely evident in his masterly painting *Primavera*. See Charles Dempsey, *The Portrayal of Love* (Princeton, N.J.: Princeton University Press, 1992), 149, n. 20.

108. See Dallenbach, *The Mirror in the Text*.

109. Agamben, *Homo Sacer*, 60 (“What after all is a State that survives history, a State sovereignty that maintains itself beyond the accomplishment of its *telos*, if not a law that is in force without signifying?”).

110. See Deleuze and Guattari, *Anti-Oedipus*.

111. See Olson, “Of Enchantment,” 112–13, noting that in the Middle Ages the ordeal was the way the divine manifested itself.

112. Eliade, *Rites and Symbols of Initiation*, 35.

113. See Emmanuel Levinas, *Nine Talmudic Readings* (Bloomington: Indiana University Press, 1994).

PART II

Studies of Reception

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Reproducing a Trial: Evidence and Its Assessment in *Paradise Lost*

JENNIFER L. MNOOKIN

In May 1993, three eight-year-old boys were murdered in West Memphis, Arkansas. The murders were particularly brutal: all three victims were severely beaten, and one of the boys had been stabbed repeatedly and crudely castrated. One month later, three local teenagers were charged with the crimes. Though no physical evidence definitively linked any of the defendants to the crimes, one of them implicated himself and his two acquaintances in a rambling and error-ridden confession to the police. Another of those arrested was an archetypal alienated teenager. A misfit within the local culture, at once strange and estranged, Damien Echols dressed in black, listened to heavy metal music, and wore a trench coat even when it was warm outside. Fascinated by the occult, he fancied himself a Wiccan; in Bible-thumping West Memphis, brewing rumors linked him to devil worship and the dark arts. The prosecution's theory of the case was that this young man was the ringleader of a satanic cult, and the three boys had been murdered in the course of a grisly cult ritual. In two separate trials, all three defendants were convicted. Two were sentenced to life in prison, while Damien Echols, the alleged ringleader of the cult, was sentenced to death. Some viewed the verdicts as justice. Others thought them the product of a frightening satanic panic, Salem redux.¹

The murders, the trial, and their (ongoing) aftermath have been the subject of two critically acclaimed documentary films produced for HBO, *Paradise Lost: The Murders at the Robin Hood Hills* and *Paradise Lost 2: Revelations*. These extraordinary films offer a remarkable case study of the potential uses of film as a form of legal and political advocacy. The first film, shown on HBO in 1996 and subsequently released in theaters, generated a social

movement in miniature: today, web sites, chat rooms, musical benefits, and art openings are devoted to trying to free the defendants now known by supporters as “the West Memphis Three.” Many viewers came away from the films convinced that they were bearing witness to an embarrassing miscarriage of justice—and, perhaps more surprisingly, some of them embraced the West Memphis Three as a cause of their own, learning more, sending money to a “support” fund or contributing to a legal defense fund, participating in online discussion lists and chat rooms. A number of devoted supporters even traveled to Arkansas to investigate the crime-scene locales or to show support at post-conviction legal proceedings. Indeed, the second film takes as its subject in significant part this phenomenon born of the first: the creation of a viewing public transformed by the film from passive spectator to engaged citizen, inspired to fight against a perceived wrongful conviction. The film stirred some spectators from quiescence to advocacy, illustrating that law’s moving image can, on occasion, be a truly *moving* image, mobilizing viewers to engage and contest the law.

Why are these films an especially interesting site for examining law and film? First, the films are themselves a kind of legal intervention. They are a call to action, an explicit appeal—indeed, they function as an alternative appeals process, operating in parallel to the formal (and cumbersome) legal appeals process but equally designed to effect a change in legal outcome. While this extralegal form of instrumental advocacy is directed toward the viewing public rather than appellate courts, and thus to an audience both broader and less empowered to effect direct legal change, the films’ diction of persuasion, fundamentally evidentiary, is not wholly dissimilar from the languages of legal appeal. The “storyline” of the films fits into familiar legal categories, suggesting that newly discovered evidence and the inadequacies of the original trial combine to establish a basis for believing that there may be a factual claim of innocence.

Second, the films offer a fascinating case study in the effects of observation, or, more specifically, in the ways that the making of a documentary can affect the matters being observed. That observers affect what they watch is practically axiomatic; the very presence of the camera may change what is seen. So it was with *Paradise Lost*. But the issues raised in this case go well

beyond the ordinary and familiar (though nonetheless important) questions about how the presence of cameras may change the dynamics of, say, the courtroom. In fact, the trial itself and the films that depict it turn out to be mutually constituted to an extraordinary degree, and tracing out these interconnections can provide a significant object lesson in the way that the media mediates and creates what it represents. The films thus not only illustrate the familiar but still important point that observation can be transforming, but they also raise significant questions about both the ethics and the truth status of different kinds of observation and representation, both filmic and legal.

A few examples: Although it is not mentioned in the first film, HBO paid honoraria to all the major participants; some of this money may have helped pay for defense experts that otherwise would not have been part of the story.² Not only do such payments raise clear questions about documentary as performance—does payment of the principal participants, or the lack of disclosure of such payment, undercut the film's claim to documentary authority?—but they also may have literally changed the story told at trial. Other overt effects of the film on the trial abound: most dramatically, at one point in the film, the HBO staff received as a present a knife that potentially inculpated someone other than the defendants, thus making the cameraman part of the case. And Damien Echols has argued (unsuccessfully) on appeal that the presence of HBO generated a conflict of interest for his attorneys, encouraging them, for example, not to seek a needed trial delay in order to reach a verdict before the scheduled release date for the film.³

The films thus invite questions about the extent to which intervention, manipulation, and staging can be permitted within a documentary. What is the relation between persuasiveness and truthfulness, or between representation, objectivity, and advocacy?⁴ And how do the pressures to create an entertaining or persuasive narrative affect the forms of documentary representation?⁵ These questions take on a particular salience in relation to a documentary about a legal trial, for they replicate, almost precisely, parallel questions about both the ethics and the tactics of legal representation, the sometimes thin line between zealous representation of a client and unethical lawyering.⁶

Third and relatedly, the films enact multiple and competing visions of

popular epistemology. They provide a site for asking how we know what we know, and how we decide what counts as evidence and proof. Viewers in both films are overtly structured as jurors, evaluating and sifting the evidence for themselves. The films both ask and invite questions about judgment, knowledge, and proof. How ought the evidence in the legal case be assessed? What kinds of evidence are worthy of credence? In my reading of *Paradise Lost*, I argue that the film implicitly sets up two significant divides: first, between direct evidence and circumstantial evidence, and second, between evidence of character and evidence that emerges from the traces of the crime itself. Turning on its head the clichéd vision of circumstantial evidence as misleading and suspect, the films instead critique certain forms of direct evidence—even that so-called queen of proofs, the confession—as deeply problematic. And while the films advocate a focus on *trace evidence* over *character evidence*, that is to say, the evidence produced by the crime itself rather than evidence about the inherent nature of those accused,⁷ especially when read together, they end up simultaneously enacting our deep cultural ambivalence about the relative roles of each kind of proof. More generally, the films raise profound questions about how to “read” evidence and its absence: What kinds of inferences should persuade us, and what proofs should we require before we think we “know” something? Should evidence be dissected and parsed, or should it be analyzed more holistically? Whose reading of “the facts” ought to be deemed authoritative, and why? Who, in the end, has the social and epistemic authority to render a legitimate judgment?

This chapter will offer a close reading of the construction of legal evidence in *Paradise Lost*, focusing to a lesser extent on the second film as well. While I thus focus primarily on this third set of questions about how evidence is made persuasive, this evidentiary reading is inevitably linked to the question of how and to what extent film can be a form of legal advocacy, and equally related to concerns about the ethics of filmic representation. First, the reason that many viewers responded to *Paradise Lost* not simply with outrage but with a desire to act on their outrage was, primarily, a sense gained from the film’s depiction that the West Memphis Three were convicted without adequate evidence. It was, then, many people’s implicit sense of what kinds and quantity of evidence ought *properly* to support a conviction that led to their

view that an injustice had occurred. Moreover, the dominant ongoing public discourse about the case is explicitly evidentiary; that is, it involves debates about evidence and its appropriate interpretation.

In addition, the films themselves construct a kind of parallel evidentiary record: the first film in particular is overtly structured as a kind of meta-trial, a trial on the legitimacy of the actual trial. The film implicitly suggests that it offers an objective take on the case, laying out the facts for the viewer as juror to decide. And jurors, like film viewers, make inferences and interpret the evidence laid before them without knowing what has been excluded from their view by either the rules of evidence or the strategic or artistic decisions of either lawyers or filmmakers. Although any reflexive documentary filmmaker (like any good historian or social commentator) recognizes this seeming impartiality as a rhetorical form, its power speaks in profound ways to our shared conception of the nature of persuasion and advocacy, in film as much as in the courtroom.

To say simply that films, even documentaries, are inevitably *produced*, that they are arguments rather than “mere” description, the result of elaborate processes of selection and editing rather than neutral retellings of the real, is neither surprising nor interesting in and of itself.⁸ But unpacking the specific ways in which the films are “produced” also sheds refracted light on the trial itself as a production.⁹ That trials, too, are “productions”—elaborate staged dramas whose relation to the real is very far from indexical—also almost goes without saying; a naïve realist interpretation of the trial as a cultural form is perhaps even less plausible than a naïve realist take on the genre of documentary.¹⁰ And yet, both documentary and the trial have a generic similarity: they both overtly aspire to produce truth.¹¹ In both the documentary and the trial, then, the processes by which they are constructed are somehow hidden in plain sight—it goes without saying and yet we, as the viewer of the documentary or the witness to a verdict, are simultaneously invited to forget what we know, to take what we see as a depiction of *the event* rather than as a *depiction* of the event.¹² Both the filmic judgment of a documentary and the legal judgments of a verdict are—when successful—taken as commentary on “what really happened” rather than as commentary on the evidence presented.¹³ This elision—the papering over of the gap between

that which we see and that which occurred—has a parallel legitimating effect within both genres: it allows both the documentary and the verdict to make a powerful claim to speak the truth (note the etymology of verdict, *ver-dict*, or *truth-speak*), even while simultaneously disclaiming mechanical objectivity as either a goal or an ideal.

Recognizing this parallel reveals both an irony and an affinity in the relation between documentary and law. First the irony: *Paradise Lost* suggests that the verdicts were unsupported by the evidence; yet to accept this conclusion requires us to accept *Paradise Lost* as a substitute, or supplementary, trial, which in turn requires us to accept the validity of its depiction of the proof presented, even though the film invites doubt about whether such depictions ever give us the “whole” story. To succeed, such a documentary must walk a tightrope between skepticism and belief, engendering doubt about the evidence presented without also losing its own epistemological authority.¹⁴ The flip side of this irony reveals the structural affinity between documentary film and the trial: whatever their ostensible topic, both the trial and the documentary are always in part about what it means to know. Both embody and engender ruminations on the structure of knowledge and the processes of its construction, especially the relation between seeing and knowing and the complex connections between narrative and belief.

The documentary and the trial thus equally invite what Bill Nichols has called, in the context of the documentary film, “epistophilia.”¹⁵ They both generate and partly satisfy a craving for knowledge, knowledge as “a source of pleasure that is far from innocent.”¹⁶ They create a belief that through observing we—we the jurors, we the viewers, we the public—can join the ranks of those who know, but simultaneously they risk engendering a fraught anxiety about whether we can know at all. If both the trial and the documentary invite ruminations about knowledge and its limits, documentaries *about* trials become a particularly potent site for reflexive examination of the narrative construction of evidence, belief, and knowledge. Perhaps, then, we should not be surprised that documentaries and fictional cinematic accounts of actual trials are mushrooming into their own subgenre, a genre worthy of more sustained consideration than it has yet received.¹⁷ Although some law and film scholarship has given attention to fictional law films based on actual trials and events,¹⁸ very little attention has yet been paid to legal documentaries in particular.¹⁹



Paradise Lost: The Child Murders at Robin Hood Hills, directed and produced by Joe Berlinger and Bruce Sinofsky, details the trials and convictions of three teenage boys for the murders of three eight-year-old Cub Scouts. Like Errol Morris's better-known *The Thin Blue Line*, *Paradise Lost* probes the legitimacy of its subjects' criminal convictions, reopening the issue of guilt or innocence well after the jury has reached its verdict. Though far less cinematically stylized than *The Thin Blue Line*, and lacking Morris's aesthetic self-consciousness, *Paradise Lost* is equally gripping and perhaps even more unsettling. One of the most extraordinary aspects of the film is the directors' extensive access: in addition to filming a great deal of trial footage (no longer startling in itself in this era of Court TV), the filmmakers were able to interview the defendants, their families, their lawyers, the prosecutors, and the victims' families, all while the trial was actually underway. They appear to have sat in on defense team strategy sessions,²⁰ and they interviewed the victims' parents when their emotions were still violently raw. Morris, who made his film well after David Harris's trial had concluded with a conviction, turned his lack of time-of-trial access into a self-conscious virtue: he offered stagy reenactments of what might have been, changing perspective at will. By contrast, Berlinger and Sinofsky produced something closer to a true-crime cinema vérité, filming a trial documentary without advance knowledge of the trial's outcome. To be sure, the film is overtly "produced"—the filmmakers play with temporal sequencing to construct narrative arcs out of their material—but the footage nonetheless has a tremendous immediacy and directness that makes a viewer believe that she is witnessing a real-life drama unfold before her eyes, à la MTV's *The Real World*, but with much higher stakes.

The film opens with an unsteady police-made crime scene video dated May 6, 1993. The viewer sees an image, stomach-churning though only partly legible, of the dead, naked bodies of three small boys pulled from a creek in West Memphis, Arkansas. Over the next two hours and thirty minutes, the film takes the viewer through the two trials of those accused of committing these murders, first that of Jessie Misskelley, and then the joint trial of Damien Echols and Jason Baldwin, interspersing scenes from the courtroom with personal interviews, local news broadcasts, and the offstage reflections of those involved.

The only central participants missing from the movie are the jurors, never seen on screen and heard from only at the moment the verdict is announced. Especially in the trial film, there are obvious parallels between the movie spectator and the jury: both view a spectacle produced by others for their benefit; both watch the plot unfold before them without having any control over the information that is included or omitted; and both are asked to render judgment, evaluating credibility, plausibility, and fact.²¹ Though journalistic accounts of trials often include post-conviction juror interviews, the jury's complete absence from *Paradise Lost* comports with the conventions of the fictional trial movie as a genre, in which the jury is typically invisible and the film audience is implicitly substituted as decision maker.²² *Paradise Lost*'s viewers are given but one short glimpse of a juror from the neck down, identifiable only because of a badge labeled "juror." The lack of face renders the juror generic, a kind of everyman or everywoman, while also overtly structuring the viewer as juror.²³ This setup is amplified by the film's lack of narration, which positions the filmmakers as the "mere" presenters of evidence, implicitly asking the viewer "Guilty or innocent? You decide."

More precisely, the film's audience is "jurified" in several related ways: first, it stands-in for the actual jurors, evaluating the question of the defendants' factual guilt; second, the audience takes on a quasi-appellate role, assessing whether or not the prosecution sufficiently proved its case and whether the trial was generally fair; and third, it acts as a social critic, judging more generally the legitimacy of the legal process itself, or, to put the point even more broadly, judging the small-town Arkansas community and the legitimacy of its collective judgment. Viewers are thus invited to judge 1) the guilt of the defendants; 2) the adequacy of the prosecution's evidence; 3) the fairness of the trial; and, finally, 4) the moral judgments of the community. Though the film structures itself as neutral rather than partisan, both its narrative structure and its visual and editorial choices invite the viewer to skepticism in each of the four judgments, which turns the film into a cultural appeal for a change in legal judgment.²⁴

Evidence becomes an explicit topic of the film only moments after it begins. We see the chief inspector, Gary Gitchell, announce the arrests of three suspects for the murder at a press conference. He is asked "How solid is the case on a scale of one to ten?" and, without missing a beat, answers "eleven."

Spontaneous applause bursts out among the listeners at his response. But the rest of the film belies his claim, for whether or not the audience-jurors leave the film convinced of the defendants' factual innocence, the film presents the evidence supporting conviction as scant.

In Jessie Misskelley's trial, which occurred first and which we see first on film, the only significant evidence adduced by the prosecution is a confession.²⁵ Confessions are an extremely powerful form of proof: the perpetrator's own lips confirm his deed. That one who confesses is in fact guilty seems almost self-evident; the act of confession seems itself to prove the guilt of its speaker. Yet, as Peter Brooks writes in a recent book exploring the nature and meaning of the confession, "The speech-act that begins with the words 'I confess' seems to be marked by contradictory intentions and subject to contradictory uses."²⁶ In the legal setting, confessions are the ultimate goal of interrogation, but they are simultaneously inherently problematic. On the one hand, a confession appeases our anxieties about our own responsibility for the judgment of guilt; when the guilty party admits culpability, the declaration of guilt becomes *his* rather than *ours*; we passively concur with his own judgment of himself rather than making an independent judgment about his guilt. A confession makes it psychologically easy for us to hold him responsible, *both* for the act to which he confesses and for the act of confession itself. Indeed, confessions often obviate the need for a public trial at all; an interrogation, a confession, and a plea bargain often follow one another in the criminal process like falling dominoes.

Yet the confession that emerges from the interrogation room—like that that emerges from the therapists' couch or the confessor's booth or the television talk show host's stage—cannot simply be taken at face value. As Brooks argues, in all of these nonlegal settings the confession is linked to absolution, consolation, and rehabilitation—all of which may be both desired and sought by the innocent along with the guilty—and the link between confessions and healing and forgiveness cannot and does not simply disappear in a legal setting.²⁷ Moreover, the very fact of being a subject under interrogation may produce feelings of guilt, whether or not the subject committed the particular acts at issue. We may thus worry that the subjects of interrogation will confess out of a somewhat inchoate desire for absolution, factual guilt or innocence aside.

Even more profoundly, the act of confessing, Brooks argues, partly constitutes our understanding of personhood, our idea of the self as separate, individual, inner: “the practice of confession creates the metaphors of innerness that it claims to explore: without the requirement of confession—one may overstate the issue—there might be nothing inward to examine.”²⁸ Linking the confession to the creation of the self reminds us of one of the limitations on the use of confessions as legal evidence: to be constitutionally permissible a confession must be voluntary, the product of an autonomous self rather than an overborne will. It must be freely given rather than coerced; hence the creation of legal protections designed to protect suspected offenders from self-incrimination through pressure tactics.²⁹ And yet, because the instrumental value of confessions as evidence is so enormous, we allow interrogators great leeway in the psychological techniques they use to pressure ostensibly willing suspects to confess. Bright-line procedural niceties like the reading of Miranda rights substitute for a more nuanced and troubling examination of what actually transpires in the interrogation room.

At the extreme, we may fear that the confession that emerges from a legal interrogation may not only be something other than voluntary; it may even be false. The suspect might admit to acts that are factually untrue, confess to crimes that he did not commit. This, according to his defense counsel, is exactly what happened to Jessie Misskelley, a seventeen-year-old with an IQ of 72, when he provided police with an internally inconsistent, factually implausible account of the murders that implicated himself but laid primary responsibility on Damien Echols and Jason Baldwin.

Putting aside the possibility of physical torture or even the psychological “third degree,” why might a suspect confess falsely? A false confession is so deeply against one’s interest that it seems irrational, destructive, almost insane. That it seems to defy common sense is precisely what makes it so dangerous, because juries—that is to say, people, that is to say, *we*—typically believe that confessions, even standing virtually alone, warrant conviction. Though no reliable statistics exist, both anecdote and investigation show that false confessions truly do occur; the recent revelation that those teenagers convicted of raping the Central Park jogger falsely confessed is the latest high-profile example of a well-documented if poorly understood phenomenon.³⁰

Why might an innocent person confess? Brooks offers several possibilities: the omnipresence of guilt, the existence of a death drive, the desire to be released from accusation even if only by embracing it. Psychological experts on confession suggest that false confessions are most likely to occur when interrogators persuade suspects that “their situation, though unjust, is hopeless and will only be improved by confessing; or by persuading them that they probably committed a crime about which they have no memory and that confessing is the proper and optimal course of action.”³¹ Especially when investigators concoct tales about other incriminating evidence that does not actually exist, a legally permitted interrogation technique, the innocent subject of the interrogation may begin to feel doomed. He may think he is being framed or has somehow entered a Kafkaesque alternate universe, and false confessions can be born of the resulting disorientation and despair.³² He may confess out of a misplaced desire to please his interrogators, or out of a shortsighted but desperate desire to extricate himself from the immediate discomfort of interrogation. Psychologists suggest that those most likely to succumb to the temptation of the false confession are those who are highly suggestible—youth, those with a mental handicap, and those with low self-esteem—and lengthy interrogation without family or counsel all increase the chances that a suspect will confess even if he did not commit the act in question.³³

In the film, we first learn of Jessie Misskelley’s statement to the police from an Arkansas television newscast: “Seventeen-year-old Jessie Misskelley allegedly confesses to watching two other suspects choke, rape, and sexually mutilate three West Memphis second-graders.” Gradually, over the course of eight trial segments interspersed with interviews, shots of the town, and other materials, we learn more about the statement. The first segment from the trial moves back and forth between the prosecution’s opening statement and the defense’s, providing us with the key arguments of each side through back-and-forth visual turn-taking that diverges from the seriatim presentations that would have actually occurred in court. The prosecutor emphasizes that “the proof’s going to show that this defendant confessed, that he was not coerced. We do not contend that every word that came out of his mouth was the truth.” We immediately cut to a shot of a defense exhibit labeled “False confession” and see Dan Stidham, Jessie’s attorney, telling us that the state-

ment to the police “is a false story. The interrogation techniques . . . rendered him completely incapable, they broke his will, they scared him beyond all measure.”

A true confession or a coerced fabrication? At this point, the viewer is left with two explicit theories of the statement and its interpretation, and no principled method for choosing between them. Right after the opening statements, the film shifts to an interview with Jessie’s father and his father’s girlfriend, Lee Rush, in which her first words articulate precisely the viewer’s dilemma while the camera stays closely focused on her face: “We don’t know what the truth is.” She goes on: “But when it really gets down to brass tacks, his daddy and I are going to look him in the eye and say, son, did you do this, was you even there?” This scene and this advice thus provide us with one possible method for deciding whether Jessie committed the actions to which he confessed: evaluate his demeanor. Look closely at the boy and decide whether to believe him. (By contrast, Jessie’s father in this scene appears ambivalent about both how to know the truth and whether he wants to know it; he vacillates between insisting that if his son is responsible, he must “do his time and suffer the consequences,” and insisting that he won’t ever believe that his son has committed these deeds, revealing, intermittently, a faith impregnable by evidence.)

Over the next thirty minutes, the film provides us numerous chances to follow Lee Rush’s advice and to assess Jessie’s demeanor. While the film never explicitly takes a stand on the question of the truthfulness of the confession, the choices made about how and when to present Jessie to the viewer are best interpreted as a form of visual advocacy. The next time we see Jessie, he is slowly reading a birthday card aloud in prison, and he seems to find the generic Hallmark verse (“Sons can be slouchy, sons can be sweet, sons can be grouchy . . .”) touching. He tells us of his life in prison: “I cry a lot when I’m in here because I miss my family and everything. I just cry a lot and after that I go to bed and try to sleep.” Jessie comes across in this scene as a little childish, a little sad, a little clueless—we do not feel that we are looking at a person likely to have committed such brutal murders. In a subsequent courtroom scene, we are told by a police detective that prior to his taped confession, Jessie told the police that he’d attended “some satanic cultlike meetings,” and described “sessions of sex—orgies as he called them, that

dogs and animals had been killed and . . . portions of them eaten by the members.” A few scenes later, the directors implicitly challenge this representation of Jessie as an orgy-attending, dog-eating satanic cult member by letting us eavesdrop as Jessie talks about sex. When we next hear from Jessie, we are listening in on a phone call with his girlfriend Susie, a strangely intimate conversation to have captured on tape, in which he reveals himself to be a red-blooded American teenager with sex on his mind. But as he tells his blushing, faux-shocked girlfriend about a raunchy dream he had that “freaked him out” in which he and his girlfriend had sex in the bathroom, outdoors, and even in front of everyone, he comes off as a teenager more likely to fantasize about orgies than to have actually participated in them. The conversation, complete with her injunction to him to stop talking to his friend and pay attention to her, seems so, well, adolescently ordinary. Later, we see Jessie in the courtroom, head down and hangdog, looking as if he feels ashamed or has something to hide. Indeed, the prosecutor comments critically on Jessie’s demeanor: “This defendant won’t look up, he won’t look at you, but the defendant’s actions, you just think about it.” But the filmmakers almost immediately provide us with a counterexplanation: two scenes later, while Jessie and his family wait for the verdict, Jessie expresses irritation at the criticism of him for looking down, telling his family, “I was told to keep my head down.”

The filmmakers thus provide us with multiple opportunities to decide whether Jessie committed the crime by evaluating his demeanor, his self-presentation. Although these depictions of Jessie are seemingly neutral, the way in which they each explicitly rebut the prosecution’s depiction of him nudges the viewer toward a belief that Jessie doesn’t *seem* like a murderer. Interspersing these scenes of Jessie with the courtroom footage exemplifies once again the parallel between viewer and juror, for the assessment of demeanor as a method for determining credibility is often deemed a central, perhaps the central (though also quite possibly mythic), capacity of the jury.³⁴ However, the viewer-jurors are provided far more opportunities to make this assessment than were the actual jurors, especially as Jessie did not testify on his own behalf.

Unlike the jury, we are able to see Jessie speak to relevant issues, but it is worth noting one conversation that the filmmakers did not have with Jessie,

or in any event did not choose to include. Never in the film's footage do we see them ask Jessie directly about his confession: whether it is true, or why he made it if it is not, nor do they directly inquire whether or not he committed the acts. For all our opportunities to assess his demeanor, we never get to do precisely what Lee Rush suggests, to look him in the eye as he answers whether or not he has committed murder. This failure to offer us the demeanor evidence that we would most like replicates for us as viewer-jurors Jessie's failure to testify in the actual case, leaving us with silence where we crave speech. We are forced simply to wonder what Jessie would say to the unasked question, and how he would look as he answered it, just as the actual jurors were forced to make their judgment on the basis of the evidence presented, even when the defendant remained a silent cipher, subjected to the jury's gaze but mute.³⁵

While assessing his demeanor is presented as one legitimate way to determine Jessie's guilt, an assessment of the contents of the confession itself is shown to us to be an alternative method. This is the focus of nearly all of the trial footage included in the film. We learn that Jessie initially denied all involvement, but that he changed his story after being shown one of the photos of the dead boys. It is the fifth time that the film returns to the courtroom that we finally hear a portion of the confession itself. The camera focuses on the witness box and closes in on the tape recorder. We next see an emotionless shot of Jessie followed by a shot of nearly everyone most relevant to the case. As the camera pans the parents of the victims, Jessie's father, the attorneys, and the judge, we hear an excerpt from Jessie's recorded words: "When I was there, I saw Damien hit this one boy real bad, and then he started screwing him and stuff." In essence, Jessie claimed Damien Echols and Jason Baldwin beat up, raped, and killed the three boys while insisting that he did not directly participate. We listen to him acknowledge chasing down one boy who had ran away and returning the youngster to Damien and Jason.

The most significant problem for the prosecution is that Jessie's statement contains certain elements that are indisputably incorrect. For example, he initially said that the murders took place at noon; as the prosecution acknowledges, this is impossible, as the young boys were still in school at this hour. Richard Ofshe, a renowned expert on false confessions, testified for the defense, and in the excerpt shown in the film, he tries to show the jury that

the way that Jessie was questioned about, for example, the time of the murders was unduly suggestive and manipulative.³⁶ He describes on camera how the officers revisited the question of the time of the murders eight separate times, revealing “a pattern of unrelenting pressure on Mr. Misskelley.” When Jessie says the acts occurred around noon, the officer replies, “Okay, was it after school had let out?” suggesting it must be later.” Through their questions, Ofshe testifies, the interrogators keep suggesting that the “right” answer was later on, and Jessie responds each time by accepting the interrogator’s suggestion. Finally, an officer asks, “Okay, the night you were in the woods, had you all been in the water?” but, according to Ofshe, Jessie had never before said that he was in the woods at night. “This is the first time in the record that it is directly suggested to Jessie that the correct answer is, ‘This happened at night.’ Immediately upon that being suggested Jessie responds by accepting, and now he starts to use the word ‘at night’ where he had never used it before. That’s an influence tactic,” Ofshe testifies. As another defense expert on false confessions testifies, “I just don’t understand how he made a mistake on the time factor.” Jessie made other errors as well: we are told in passing by a defense expert that he seems to have claimed that the boys were tied up with rope, when in fact they were tied by their shoelaces. The defense argues that the manipulative tactics used by the police, the obvious factual errors in the statement, the fact that the confession told the police nothing they did not already know about how the crime was committed, and the reality that Jessie has a low IQ and is a highly suggestible young man who talked to the police without a parent present all combine to suggest a strong likelihood that the confession was in fact false.³⁷

By contrast, a prosecution witness explains the discrepancies by postulating on cross-examination that “Jessie simply got confused.” The detectives claim that they thought when Jessie made his statement he “was telling a good bit of the truth,” and that it did not occur to them that Jessie had a mental handicap. The prosecutor emphasizes that Jessie told them details of the crime that were not known by the public (such as the fact that one of the boys was sexually mutilated), but the defense points out that there were several hours of interrogation before the tape recorder was turned on, and it is impossible to know what was discussed or suggested to Jessie in this time. Inferring guilty knowledge from his description of injuries is therefore highly

problematic because the police could either have told him directly or given him hints about the nature of the boys' wounds. In its closing argument, the prosecution urges the jury to resist the defense's "smoke and mirrors" that make it seem like someone who confessed to a crime and knew specific details about the crime might somehow not have been the perpetrator. The jury obviously heeded the prosecutor's advice, as we learn in the film when the presiding judge reads out the verdicts. Jessie is found guilty of two counts of second-degree murder and one count of first-degree murder. He is sentenced to life plus forty years.

In these scenes, the film offers us another way to reach our verdict about Jessie: by analyzing the credibility of his confession. Either as a substitute for or as a supplement to our assessment of Jessie's demeanor, we can attempt to decide whether these words of confession and its context signify that Jessie truly did and saw the acts described. Just as the representation of Jessie's demeanor invites the view that he is not a murderer, the way the trial scenes are presented in *Paradise Lost* also invites us to be skeptical of the truthfulness of Jessie's confession. The two defense experts on false confessions receive more contiguous screen time than any other witness, and we do not see any expert testify for the prosecution. Therefore expertise, the power of specialized knowledge, is harnessed by the film entirely on Jessie's behalf. In addition, we see the prosecution witnesses mostly on cross-examination rather than direct examination so that we witness them primarily in a defensive posture. Some of the out-of-court scenes provide us with information to supplement what we see in court: we learn that not only is there no physical evidence linking Jessie to the crime, but the crime scene was astonishingly devoid of physical evidence. In a discussion of some of Jessie's attorneys and experts, it is pointed out that leaving a crime scene so clean requires "great cunning and intelligence," two attributes we are not led to believe that Jessie has in abundance. Finally, we are treated only to a very brief excerpt of the confession itself, and what is most striking about the few sentences we hear is their utter vagueness. Language like "beating him real bad" and "screwing him and stuff" lacks any of the concrete precision or vivid detail that persuades a listener that the speaker is describing a remembered experience. And though we are told by the prosecutor that Jessie provided specific information about the nature of some of the wounds, we never hear any of those potentially

persuasive details from the confession itself. By the end of the trial, we are therefore primed to think that the jury may well have gotten it wrong.

But the film does not permit its viewers either certainty or complacency. Shortly after the trial has concluded, we see a scene in which the prosecutor meets with the victims' families to talk to them about the possibility that Jessie will receive a reduced sentence in exchange for testifying against Damien and Jason. In this scene, the inspector tells the families that the day that he was convicted, as the police drove him from the courthouse, Jessie talked the whole way about what he had done. "Contrary to somebody that was innocent that would say things like . . . I didn't do it and what a terrible injustice . . . Jessie talked all the way down there about how he committed the crime, specific details." For any viewer who has become convinced of Jessie's innocence, this is a startling moment. He confessed again, *after* his conviction? What did he say? Why would an innocent person engage in such behavior? Like a juror stymied by the rules of evidence and the adversaries' control of the courtroom process, we are left with lingering questions, side-long glimpses of matters of which we are not told. This time we are given no experts to help us contextualize and understand Jessie's actions. We are simply left to wonder.

However, the film rehabilitates Jessie by showing us that he decides not to testify at Damien and Jason's trial. His lawyer reports on camera, "He didn't want to get up there and lie. . . . This is his decision, and it's final." Just as a renewed confession seems to be a significant indicator of actual guilt, the decision to turn down a greatly reduced sentence in exchange for testimony points to innocence. Both actions could of course have multiple interpretations. Perhaps Jessie confessed again out of fear, or out of a belief that his situation would improve if he tried to please authorities, or out of a tremendous sense of guilt, not for the murders, but for having gotten into so much legal trouble. As Brooks describes, "the false referentiality of confession may be secondary to the need to confess; a need produced by the coercion of interrogation or by the subtler coercion of the need to stage a scene of exposure as the only propitiation of accusation, including self-accusation for being in a scene of exposure."³⁸ Perhaps Jessie's renewed confession signaled only a sense of overwhelming guilt for having been convicted. And, while most guilty convicted criminals (and, for that matter, perhaps most of those

convicted who are factually not guilty as well) would no doubt accept the offer of a reduced sentence in exchange for repeating a confession already made, Jessie's decision not to testify could have explanations other than innocence: perhaps his fear of letting down his parents and his attorney, all of whom believed him innocent, was stronger than his fear of prison.³⁹

Still, these two items of evidence—a second confession and a decision not to testify in the trial—are in definite tension, and together they complicate any simple interpretation of the evidence. By including both of them, but providing very little information or explanation of either, the film makes two profound points about the nature of evidence. First, it suggests that conviction—conviction, that is, in the sense of belief, not in the sense of a conviction for a crime—is never wholly compelled by the evidence. Evidence does not simply speak for itself; we evaluate it within an interpretive framework and we use the individual pieces of evidence as building blocks with which to build a plausible story.⁴⁰ But this story does not simply arise out of the evidence as a matter of deductive logic; rather, a story built on the evidence requires a supplement, something more than the evidence itself actually proves. Evidence is never univocal nor complete, and thus, to make sense of what happens in the courtroom—or onscreen—we must inevitably create for ourselves images of what might have taken place backstage as well.⁴¹ Legal commentators often suggest that trials are simply about facts and their aggregation; narratologists suggest that “the story comes first,” shaping the way the facts are understood.⁴² Surely the relation between story and evidence is neither/nor; instead, the proof and the narrative interact dialectically. A compelling story inevitably requires more than the evidence itself; but a persuasive story must also manage to engage meaningfully with the available proof or its absence.⁴³

Second, the film illustrates powerfully the way that real-life stories cohere only incompletely. Though the evidence and the story may have a dialectical relation, they do not together create a seamless synthesis; unlike a Sherlock Holmes story, or a classic Hollywood whodunit, all of the pieces simply do not fit together like an interlocking jigsaw puzzle.⁴⁴ Loose ends linger, teasing the viewer, suggesting the need to guard against interpretive overconfidence or hubris. If we believe Jessie Misskelley's confession is false, we must somehow explain away its repetition to police after the trial. If we believe it to be

true, we must find a way to make sense of his refusal to testify against those whom he describes as committing far worse deeds than he. The great difficulty of “containing” the evidence and fitting it into one impregnable tale reminds us that whatever we come to believe about the truthfulness of Jessie Misskelley’s conviction, we could possibly be wrong.⁴⁵ As even Jessie’s lawyer asks, “How do we know what really happened?” We thus see that persuasion requires a story, but a compelling story requires both less and more than the evidence itself. It requires us to ignore what doesn’t fit, and simultaneously to invent or imagine the missing pieces.⁴⁶ We thus are left simultaneously with belief and doubt: epistophilia begets epistophobia.

Finally, the film’s portrayal of Jessie Misskelley’s trial inverts the clichéd filmic claim about the superiority of direct evidence. A great many films, from classic films like *Fury*, *Twelve Angry Men*, and *Beyond a Reasonable Doubt* to recent dramas such as *Memento*, *The Life of David Gale*, and even comedies like *My Cousin Vinny* and *Legally Blonde*, among others, suggest the dangers of circumstantial evidence. The implicit message of these films is that circumstantial evidence can mislead us into making dangerous interpretive errors.⁴⁷ What we need in place of circumstantial evidence of guilt, these films suggest, is direct evidence: statements of an eyewitness or, better yet (as eyewitnesses can also be mistaken), a confession. The depiction of Misskelley’s trial suggests quite the opposite: we yearn for better circumstantial evidence to contradict or corroborate the defendant’s own words. More specifically, the film suggests that the lack of corroborating circumstantial evidence can give us reason to disbelieve the confession; as his attorney puts it in a strategy meeting, “I hope that the fact there’s no physical evidence linking him to the crime scene is going to have a lot of impact with the jury.” The suggestion is that if Jessie’s direct evidence were true, the police should have been able to find significantly more circumstantial corroboration. More generally, the film invites us to believe blood—or, more precisely, the surprising lack thereof—over Jessie’s words, privileging the circumstantial over the direct.

The second half of *Paradise Lost* is concerned with the second trial, the capital murder trial of Damien Echols and Jason Baldwin. Without Jessie’s testimony implicating his acquaintances, the prosecution’s case is sparse.⁴⁸ As one of the prosecutors tells the victims’ families, “All is not lost if he doesn’t

testify, but the odds are reduced significantly.” Another prosecutor says that in his opinion the odds of conviction are perhaps fifty-fifty unless Jessie testifies. However, the prosecutor’s dry description in the same scene of the other items of evidence leaves out the prosecution’s best weapon: evidence about the boys’ character and appearance, especially Damien’s—that he typically dresses in black, reads strange books about the occult, and simply doesn’t fit in. In the end, character evidence proves adequate, and both defendants are convicted. Damien is sentenced to death, and Jason receives a life sentence without the possibility of parole, all on the basis of an evidentiary record that is shockingly thin.

The issue of whether appearance and character provide legitimate and persuasive evidence of guilt surfaces in the first few minutes of the film: Pam Hobbs, the mother of Steve Branch, one of the murdered children, tells TV news reporters that she is convinced that the suspects who have been charged were indeed worshipping Satan: “Just look at the freaks. Just look at them. They look like punks,” she says angrily. A few minutes later, Damien’s father tells us that underneath that black trench coat is a decent, sweet young man: “I’ve seen him take a little kitten and love it like you’d love a little baby.” And Damien himself, the very first time we see him on screen, acknowledges that he and his friends were “the obvious choice because we stood out from everybody else.”

The Anglo-American rules of evidence have a long-standing ambivalence about character evidence, evidence that suggests that either because of a defendant’s innate nature or because of a particular propensity, they are likely to have committed a particular crime. Character evidence typically takes the following form: she’s embezzled before, so she probably embezzled this time as well; he’s a violent guy, so he probably started this fight too. We of course use character evidence all the time in everyday reasoning: if someone is invariably late to appointments, we expect them to run late to their next appointment as well. But in the context of a criminal trial, character evidence is seen to be potentially dangerous, unfair, and unreliable. It risks being used as an unfair substitute for concrete evidence linking a person to an act, too easily casting blame on “the usual suspects” rather than forcing the state to establish who in particular committed a criminal act. If we admit character evidence, we risk convicting people for who they are and what they have

done before rather than for what they did or did not do on this occasion. Nor is it obvious that stable character traits even exist. Is there truly such a thing as character? Do people act in conformity with their past actions, or are behavior and identity too fluid and malleable to make character a useful evidentiary proxy? Out of a mixture of concerns like these and a certain dose of historical contingency, character evidence is formally excluded by the Federal Rules of Evidence, at least for the purpose of proving that the defendant acted in conformity with her character trait.⁴⁹

But this formal ban on character evidence is so riddled with exceptions that the exceptions often overwhelm the rule. Character evidence is generally permitted, for example, when it bears on the credibility of a witness rather than the issue of whether a defendant committed an act. Although I am oversimplifying a complex set of rules, this exception often has the effect of permitting character evidence when a defendant chooses to testify on her own behalf. For example, if someone charged with fraud chose to testify in court, the prosecution could introduce her prior convictions for fraud to suggest that she, as a convicted fraud, was not worthy of belief. Ostensibly, the evidence would be allowed only to help the jury decide whether to believe her testimony, not to help them decide directly whether or not she committed fraud in this instance (and a jury instruction attempting to explain this gossamer distinction is available to a defendant upon request), but this is undoubtedly a legal fiction. Both common sense and psychological research suggest that human beings cannot compartmentalize knowledge in that fashion. Once the jury knows about the defendant's past conviction, it probably cannot help but think that it has some bearing on the likelihood that she committed fraud this time as well. (Practically speaking, this set of rules means that defendants with prior criminal records frequently choose not to testify on their own behalf precisely to limit the jury's knowledge of their past misdeeds.)

Another set of exceptions permits evidence of particular past acts to be introduced, not to prove "action in conformity therewith," but for what are supposedly other purposes, such as "proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident."⁵⁰ It is this rule that most clearly illustrates the deep-rooted ambivalence about character evidence within our system of legal rules. For while the character

evidence rules exhibit concern about the way in which evidence of character might substitute for more probative evidence that actually links a person to a deed, the rules of evidence also recognize that lots of evidence that might be relevant for some other reason may also invite an inference about a defendant's propensity. And if the prosecution can make an argument that the evidence is useful for some purpose beyond mere propensity, a court will usually permit the evidence to be heard, notwithstanding the genuine risk that the jury will make a supposedly impermissible inference about the defendant's character on the basis of the evidence permitted.

One of the central themes of *Paradise Lost* is the danger of relying on character evidence. The basic story the film tells of Damien and Jason's convictions is that a population primed by a potent blend of religious fervor and sensational television news to fear satanic cults found it far too easy to uncover Satan's agents in their midst. Ordinary signs of alienation were taken as evidence of an evil character. Difference was mistaken for deviance. Fear, prejudice, and anger substituted for a careful analysis of the evidence.

The prosecution's theory of the case, as presented in the film, is that the murders were committed as part of a satanic ritual. This theory of motive gave them a justification to introduce evidence that suggested that Jason and Damien might be involved in a cult; it transformed what would otherwise be impermissible character evidence into legitimate evidence of motive. But as the film presents the case, what is striking, even shocking, is how astonishingly thin the prosecution's theory seems to be. We see remarkably little credible evidence suggesting either that the killings were part of a cult ritual or that Jason and Damien were involved in a satanic cult.

The state's strongest evidence for both propositions comes from Dale Griffis, an expert on satanism, cults, and the occult who the defense attempts to discredit by suggesting that he has a mail-order Ph.D. Griffis indeed testifies that the killings reveal "trappings of occultism" because they occurred during a full moon, on a date close to certain holidays with occult or pagan significance, and because a young victim's blood is seen by some occultists to have special purity and power. Griffis seems quick to interpret any ambiguous evidence as suggestive of satanic activity. One wonders, for example, how many days of the calendar are *not* in relatively close proximity to some pagan holiday or another? Just as conspiracy theorists can find patterns in

matters of sheer coincidence, Griffis's ad hoc methods may locate occult significance where none exists.

The evidence of Damien and Jason's personal involvement in a cult is even thinner. Griffis testifies that he has "personally observed" people with black fingernails and dyed black hair who wear black T-shirts and sometimes sport tattoos; all of these sartorial choices suggest to him evidence of involvement in a satanic cult. Listening to certain kinds of music—for instance, Metallica, one of Damien and Jason's favorite bands—is also, according to Griffis, a possible indicator of cult involvement. Of course, as the filmmakers no doubt recognize, many viewers will find this depiction so ridiculous as to be laughable; by Griffis's account, an enormously high proportion of disaffected teenagers, Goths and metalheads alike, must actually be satanists.

The problem for the defense, simply put, is that Damien is more than a little strange. He appears in court with a pale face and an asymmetric haircut, looking precisely like something out of a casting call for a teenage satanist. Worse, he was by his own admission a devotee of witchcraft—though in his testimony he carefully distinguishes between Wicca, white magic, and satanism and claims to embrace only the former. He acknowledged in interrogation that everyone has "demonic forces" inside them, and he admitted reading numerous books related to witchcraft and the occult. Of course his name—Damien—did not help, given its association with the demonic thanks to the movie *The Omen*. To make matters worse, Damien's birth name was Michael; he chose the name Damien for himself some years earlier (though he insisted in his testimony that he selected it out of admiration for a Catholic priest by the name who took care of lepers, not out of any connection to satanism).

Nothing Damien admits provides any direct evidence of involvement in a cult, much less direct evidence of involvement in murder. But it does provide evidence that Damien has strange fascinations, and perhaps therefore unusual proclivities. For a jury already primed by the evening news and by evangelical sermons to accept the prosecution's theory that the killings were satanic in nature, Damien may come across as just strange enough to have been the ringleader of a satanic cult, just strange enough to have committed the murders. The prosecution's closing argument suggests that, taken to-

gether, wearing black, listening to Metallica, and reading strange books about witchcraft all add up to something evil: “you look inside him and there is not a soul in there.” When Jason’s attorney asks him, before the jury has returned with the verdicts, “If you were on that jury, would you have a hard time letting [Damien] go, based on what you heard,” even Jason reluctantly answers, “yeah.”

However, just as the film positions us to be skeptical of Jessie’s confession, it also invites us to doubt that Damien is in fact a ringleader of a devil-worshipping teenage cult. We hear about him from his girlfriend, who describes how he followed her around like a puppy. Though she’d been warned that he was strange, even a devil worshiper, in fact, he turned out to be “real sweet.” In many of the interview scenes, Damien appears as a thoughtful, intelligent, sometimes even wry observer of his surroundings and situation. We learn from his testimony that the suspicious books (with titles like *Never on a Broomstick*) were actually bought from a library book sale for ten cents apiece.

While showing us Damien’s gentler side, the film appears not to soft-pedal its depiction of him—a time-tested credibility-enhancing technique that encourages viewers to believe in the trustworthiness of the filmic depiction. Viewers therefore witness some deeply unappealing aspects of the teenager; in one scene, for example, the camera lingers on him as he preens, combing his hair before a small mirror, staring at his image with a vanity and self-absorption that seem especially out of place while he is on trial for his life. Apparently after he is sentenced to death (though as the directors clearly play with the temporal sequences of the footage, we cannot know for sure), he reports, “I knew from when I was real small that people was going to know who I was, I just never knew how. I kind of enjoy it, because now even after I die people are going to remember me forever . . . it’d be sort of like I’m the West Memphis Bogeyman.”⁵¹ By showing these unflattering images of Damien to us, the film suggests that it is telling the “whole” story; the message is that Damien may be self-absorbed, solipsistic, and even strange, but that hardly provides conclusive evidence that he committed a triple homicide.

However, the film does not reveal some of the most damning “character” evidence against Damien. In the sentencing phase of the trial, Damien’s psy-

chologist admitted that his medical records contained the following notations of his own statements:

I want to go where the monsters go. Pretty much hate the human race. Relates that he feels people are in two classes, sheep and wolves. Wolves eat sheep. Echols explains that he obtains his powers by drinking blood of others. He typically drinks the blood of a sexual partner or a ruling partner. This is achieved by biting or cutting. It makes me feel like a god. Echols describes drinking blood as giving him more power and strength. . . . He has also agreed to continue to discuss his issues with power and control as related to his practice of rituals. I just put it all inside. Describes this as more than just anger like rage. Sometimes he does “blow up.” Relates that when this happens, the only solution is to hurt someone. Echols reports being told in the hospital that he would be another Charles Manson or Ted Bundy. When questioned on his feelings he states, “I know I’m going to influence the world. People will remember me.”⁵²

Although this statement was not admissible in evidence until the sentencing phase, the *film’s* evidence is in no way circumscribed by what was admissible at trial. To be sure, this statement proves nothing directly at all, except perhaps that Damien is more troubled than his filmic depiction suggests. It too is pure propensity evidence—suggesting that if Damien has a tendency to get angry, drink blood, and hurt people, perhaps he behaved in accordance with his propensity and actually committed these brutal murders. While the statements may well be nothing more than the vitriolic rants of a harmless but disaffected teenager, they are a far more probative form of propensity evidence than Damien’s affinity for Metallica. Their exclusion from the film provides one example among many of the editorial decisions of the filmmakers: by providing unappealing footage of Damien, they *seem* to be giving us the whole story, providing a neutral depiction and letting the facts speak for themselves. But they, of course, remain the master puppeteers, controlling precisely what evidence we see and evaluate.⁵³

The filmmakers do repeatedly, albeit implicitly, remind us of their control (thus once again apparently showing us just how trustworthy they are). On numerous occasions the film shows us the news in the process of its construction, reminding us that no representation is as straightforward as it seems. We see a TV reporter begin her account, slip up twice, and begin again; we hear a radio reporter give his “short but sweet” account into a telephone. One victim’s stepfather berates the press for getting things wrong and

making up confidential sources when none exist. In a striking scene near the film's beginning we hear Dan Stidham, Jessie's lawyer, tell an assembled group of Jessie's friends and family to "be very, very careful about who you talk to with regard to the media." He reminds them "the one rule is don't talk to anybody [in the press]; it's just going to hurt us." The irony, of course, is that the HBO crew films all the while. All of these scenes operate as a contrapuntal message within the film; even as the film's straightforward visual aesthetic, lack of stacy camerawork, and extraordinary access to all sides invite us to believe the film as a trusted guide to reality, the constant presence of other cameras and other reporters and the incessant presence of overly dramatic one-sided news reports on the case remind us that representation is inevitably selective, situated, and partial, and they invite a reflexive consideration of the film's own editorial choices.⁵⁴ Interestingly, however, the film leaves out one critical piece of information about its own process of construction: HBO paid significant honoraria (about \$7,500 each) to each defendant and to the family of each victim. Although *Paradise Lost 2* acknowledges this fact—in part because it becomes one of the bases for an (eventually unsuccessful) legal motion made by Damien, in which he argued that the payments by HBO created a conflict of interest for his lawyers—the original movie gives its audience no hint of this exchange of money for access.

In one place in *Paradise Lost*, however, the filmmakers themselves become overt if unwitting participants in the story they are telling. In one of the handful of textual frames in the film, the viewer reads: "Mark Byers [the stepfather of one of the victims] gave a member of the film crew a used hunting knife as a Christmas present three weeks before the Misskelley trial was set to begin." Because what looked like blood was found on the knife, it was turned over to prosecutors for further examination and testing. Sure enough, traces of human blood were found, and the tests revealed that the blood type was consistent with both Byers and his stepson. (The film fails to explain clearly that because of the minute quantity of DNA recovered, only a relatively insensitive kind of testing was possible using then-available testing techniques.)⁵⁵ Though Byers had previously claimed that the knife had never been used, when the defense calls him as a witness, he says that he had used

it to trim his toenails and cut venison and he now (conveniently) remembers cutting his thumb with it at some point.

Byers is depicted as at least Damien's equal in terms of sheer creepiness. We see him ranting histrionically at the site where the bodies were found, threatening someday to urinate on Damien, Jessie, and Jason's graves. We watch him smash pumpkins in target practice, rather gleefully pretending that the pumpkins were the defendants. The material on Byers and the knife raises far more questions than it answers. Why did Byers give a member of the film crew a knife at all? Did the police consider him as a possible suspect? Should we? Did the film directors struggle over whether or not to turn the knife over to the police? Here we see the filmmakers explicitly playing a supporting role in the story they are telling; the awkwardness is captured most acutely in a scene in which a detective on the stand is asked how he received the knife. Obviously uncomfortable, he gestures to the camera, saying, "I received it from, uh, uh, Joe and the people at HBO productions." That observation can itself change the nature of what is viewed is practically a cliché, but when the HBO crew came into possession of a potential murder weapon that pointed to an alternative suspect, they showed in an especially literal way how the presence of the filmmakers could have a profound effect on the way that the trial unfolded.

In addition to Byers, the defense offered up an additional possible suspect: the night of the murders, a bloody, disheveled, and disoriented black man entered a nearby Bojangles and spent an unusually long time in the women's restroom. Though the manager called the police, the officer who responded neither investigated carefully nor issued a report. She did not even enter the restaurant itself, but instead spoke briefly to the manager at the drive-through window. Later blood scrapings were taken off the wall, but they were lost by the police and therefore never tested by the forensics lab.

Interestingly, the two other potential suspects both fit into generic storylines about violence in modern America. Just as the satanic cult killer theory obviously resonated deeply, not only in Arkansas, but nationwide, each of the alternative suspects also had potential cultural resonance. The physically or sexually abusive stepfather is a familiar if troubling theme, a recurring image of the dark underbelly of family life. In addition to bestowing the

curious gift of the supposedly unused but bloody knife, Byers admitted to having whipped his stepson Christopher Byers with a belt earlier that afternoon, raising the specter of an angry stepfather who might have lost control and killed. The image of the violent black stranger disrupting an orderly white universe has equally deep cultural roots; in a case where the defendants, victims, and everyone we see testify on the stand are all white, the description of the mysterious visitor to Bojangles marks, somewhat jarringly, the only time in the trial that race is even mentioned.

In the film (as in the trial) little additional evidence is available to support either alternative theory of the crime. But they linger, inviting speculation. Are they McGuffins, creating narrative suspense but without actual significance? Might one or the other of them actually have committed the murders for which the teenagers are charged? The jury clearly remained unpersuaded; the viewer/juror is more likely to have doubts.

The two alternative suspects—and the jury’s refusal to view their existence as generating reasonable doubt—suggest an interesting point about the structure of a trial. Film theorist Carol Clover has described how the system of argumentation within a jury trial is especially unsettling because

the two sides are not arguing *equally* fairly. We may or may not be able to articulate the principle of different burdens (the prosecution’s to prove its case beyond a reasonable doubt, the defense’s merely to raise enough doubt), but we see its discursive consequences in a structure that pits a prosecution X not against a defense Y, but against a defense not-X, X being a relatively fixed and coherent story with some commitment to a single account of “what really happened” and not-X being a site of proliferating scenarios, including mutually exclusive ones, of what *might* have happened. What this boils down to in practice, for the jury, is different truth statuses for X and not-X.⁵⁶

While Clover captures the received wisdom about the distribution of burdens of proof and epistemic responsibilities in criminal trials, *Paradise Lost* reveals the risk that actual juries may be deeply intolerant of such narrative proliferation. Despite the existence of a mysterious alternative bloody suspect whose blood evidence was lost through police ineptitude, despite catching the stepfather of one of the victim’s making inconsistent statements about a possible murder weapon, and despite the fact that both of these alternative suspects fit squarely into conventional genre tales of would-be

murderers, the jury did not think their existence warranted a finding of reasonable doubt. At a meeting of the prosecutors one wonders why the defense put Byers on the stand, suggesting that this was a dangerous strategy, “an awfully big gamble” on the part of the defense. Another prosecutor added, “To me, if I were on the jury, it would look like something desperate, they’re going to cast blame on anybody and everybody that they can.” The prosecutors’ instincts seem to have been correct. For all that real-world narratives may never completely cohere, embracing narrative proliferation may be a high-risk strategy. Jurors may not, in fact, grant different truth statuses to X and not-X. Multiple and inconsistent arguments in the alternative may not provide jurors with enough of a narrative onto which to hold.

Of course, the defense is not generating random narratives, spinning them out of nothing at all. In fact, the two counternarratives have something significant in common, something that is starkly missing from the case against Damien and Jason: blood. The existence of blood evidence is what makes both alternative stories especially tantalizing. In each case there was genuine trace evidence that, if only it could have been properly preserved and tested, and if only it had been a little more voluminous, might have yielded substantial information about the plausibility of each alternative tale. Each counternarrative is a story of possible knowledge partly thwarted, stories that therefore take the form “If only . . .” *If only* the blood scrapings on the wall of Bojangles had not been lost, and *if only* they could have been tested, who knows what the blood might have revealed? It might have led them to identify the Bojangles visitor, and what would his story have been? Perhaps the blood could even have been traced to one of the three boys. *If only* there had been more blood on the knife, more sensitive tests could have shown whose blood was on it. *If only* Chris Byers and his stepfather did not have the same HLA-DQ alpha profile. Of course, the biggest “if only” of the film is epistemic: if only we could really know who committed these crimes, if only we could have an infallible method for determining guilt or innocence. And perhaps the blood evidence is like a mirage in the desert: it appears to be just what is needed, and yet it remains elusive, always a bit beyond our reach.⁵⁷

Nonetheless, the critique of character evidence as a sound method for determining truth coupled with the focus on the blood evidence suggests a strong dichotomy. The film invites us to privilege physical evidence over

character evidence, and, more generally, to value the knowledge we can gain from the traces that must inevitably have been left by the crime itself over the softer, fuzzier knowledge of human propensities and predispositions.⁵⁸ Trace evidence, that evidence that arises *because* of the commission of a crime, surely ought to count more than character evidence, suggests the film. We should trust the knowledge we can glean from the crime scene itself—the bodies and the site—and not the dubious links between, say, a person’s musical preferences and their criminal actions. As Damien’s attorney puts it in his closing argument before the jury, “Satanic panic—yeah, that’s a scary thing, but it’s a scarier thing to convict someone with no evidence. If you can’t figure it out, if it doesn’t make sense, let’s call it a cult killing and find somebody weird, somebody who wears black.”

The film urges us to focus instead on the evidence that ought to have been produced by the commission of the crime—and the lack of connections between the defendants and any such evidence. If the defendants raped the boys, why was there no semen evidence? If Christopher Byers bled to death close to where his body was found, why did police not find significant traces of his blood nearby? Why did they not find any of the boys’ blood on the defendants’ clothing? Would the teenagers even have had the skill to perform the castration in the dark, given that the medical examiner testified that he was not sure that he could have done so? If the boys were beaten and then killed outdoors, why didn’t they have any mosquito bites on their bodies, given that the mosquitoes were out in abundance that evening? More generally, how could the teenagers have left the crime scene so clean? If they were killed elsewhere, and the gully used only as a dumping ground for the bodies, wouldn’t that substantially undermine the satanic-ritual-under-a-full-moon theory? As Jason’s attorney asks in his closing argument, “Crime scene. It doesn’t fit for a kid to bleed to death and not leave a drop behind. . . . Not a drop of blood? Not a drop of blood?”

So we have character evidence on the one hand, and trace evidence—or, more accurately, its astonishing lack—on the other. The film suggests to us that valuing the former given the absence of the latter is a mistake, a cognitive error, the erroneous privileging of emotion over reason. We are invited to view what has occurred as having been, in Damien’s words, “a second Salem,” cold, hard facts trumped by fear and hysteria. Interestingly, the possi-

ble satanic overtones of the case were trumpeted by the news (and perhaps the police) from the very beginning, as we learn in the first moments of the film through a news broadcast, creating a climate in which even innocuous teenage behaviors could be seen as dangerous evidence of satanic character. Rumors spread like wildfire—including, for example, the false rumor that Christopher Byers's testicles were found in a jar in Damien's bedroom. As Damien understood, "If they can make us look bad in front of the public, then people are going to kind of have their minds made up before anything even comes out."

However, the film's strong indictment of character evidence is complicated by the film's own sequel. Reading *Paradise Lost* together with *Paradise Lost 2* illustrates that character evidence may well be dangerous, but it is also almost impossible to ignore. Moreover, when we read the films together, it becomes less clear that we *should* ignore it.

Paradise Lost presents itself as offering a balanced and objective take on the case, simply laying out the facts for the viewer as juror to interpret. As I have suggested, the reality is (inevitably) more complex; the structure of the film and the editorial choices privilege the defense stories over the prosecution in significant ways. My primary purpose is not to focus on which side is right (though, for what it is worth, let me reiterate that I am deeply troubled by the paltry basis for the defendants' convictions), but rather to explore the dynamics of proof within the trial documentary and the particular mechanisms through which the film enhances its own credibility through a rhetoric of neutrality that is inevitably belied upon close examination and yet remains affectively persuasive. In all events, *Paradise Lost 2: Revelations* casts aside this mantle of neutrality. In the second film the filmmakers side explicitly with the West Memphis Three. Not only does the film suggest that Jessie, Jason, and Damien have been wrongfully convicted, but it even points the finger directly at an alternative suspect, John Mark Byers.

Throughout the second film Byers is depicted in a way that invites suspicion. Melissa Byers, his wife, died in their house under suspicious circumstances, several years after Christopher Byers's murder, and Byers makes inconsistent remarks about both her death and her drug use at the time. We learn that Byers has been charged with quite an array of crimes since their son's murder: writing bad checks, DUI, and robbery. At one point his neigh-

bors got a restraining order after Byers allegedly spanked their son. Byers behaves creepily on camera as well: in one scene he stages a mock funeral for the three men convicted of his son's murder, laughing, wild-eyed and hysterical as he pours charcoal lighter and drops a match. More generally, his emotional pitch is both feverish and off; he seems skewed, askew, not quite normal. A key revelation during the film is that a forensic profiler has found what he believes to be a bite mark on Chris Byers's body. Jessie, Damien, and Jason's teeth don't match the mark found. Chillingly, we learn that Byers had all of his teeth removed sometime after the murders—and he provides multiple inconsistent and not wholly plausible accounts of why his teeth were pulled.⁵⁹

By the end of the film, many viewers are quite convinced of John Mark Byers's guilt. Some might even say that they are persuaded beyond a reasonable doubt. And yet most of the evidence against him is, in fact, character evidence. All of his other troubles with the law are suggestive purely through a propensity inference—the idea that someone who is a frequent law breaker might have committed this other criminal action as well. The restraining order incident is also relevant only through its illustration of a particular propensity. And if a viewer suspects that he killed his wife, that provides further evidence of guilt through “action in conformity” as well. Byers's story changes all the time, suggesting first that perhaps he has something to hide, but also inviting the inference that because he lies about other matters, perhaps he is lying when he denies committing the murders. And all of the scenes that show him to be just plain weird invite us to suspect him because he is just plain weird, so deeply weird that he comes across as potentially capable of the vicious triple murder. The film even explicitly points out the structural symmetry between the evidence it has adduced against Byers and the evidence introduced against Damien and Jason in court. But recognizing the parallel does not allay suspicion. We begin to see the profound psychological power that character evidence can have.

Of course, all character evidence is not the same. An inference that someone who might have killed his wife might also have killed his stepson is perhaps substantially more justified, both morally and empirically, than an inference that someone who wears black committed a satanic killing. With character evidence, as with all things, there may be matters of degree, and

some items of character evidence may be more probative than others. Moreover, perhaps character can be a reasonable basis for suspicion but insufficient for conviction.

In the end, however, the films embody a deep cultural ambivalence about the legitimacy of using character evidence as proof. Character is too central to our understanding of human behavior, motivation, plot, and storyline to leave aside in the face of murder: we often cannot satisfyingly answer the “why” of a crime without an explanation that partakes of the language of character. People do horrible things in part because they are *that kind of person*. Character is part of how we make actions fathomable, how we find order and pattern in the wake of violence. Assessments based on character may be erroneous—they are, at best, predictions—but we cannot leave them aside.

Simultaneously, the film faces us with the nearly infinitely recursive nature of knowledge. Lest any viewer be fully satisfied that Byers is the culprit, the film provides two reasons for doubt. First, we learn that he is being paid for his performances; he has received an honorarium for his participation. Suddenly, we are forced to wonder if his performances are just that: performances. Perhaps he wants to make sure that the filmmakers get their money’s worth. Perhaps he’s acting. Learning that he is being paid has a destabilizing effect: we no longer know whether we’re seeing the “real thing” on screen. (Are we ever?)⁶⁰ It invites the proliferation of speculation: At the extreme, what if Byers has come to believe that the WM3 are not guilty himself? What if his odd behavior is his own peculiar contribution to helping convince the public that an injustice has occurred? While such speculations are probably unwarranted, the point is that learning that he has been paid complicates any attempt to read what we see on screen as purely “authentic.” Even beyond the fact that he is paid, the film overtly tells us to be suspicious of the authenticity of his performance. At one point Damien calls Byers “the fakest man I’ve ever met.” At another we see a colloquy between one of the West Memphis Three supporters and Byers, in which Byers is asked why he behaves differently when the cameras are pointed in his direction. He is accused of being nice to the advocates of the West Memphis Three whenever the cameras are off and changing completely when he is on film. Which Byers is the “real” one? He refuses to answer, responding “I guess it’ll stay a

mystery then.” We viewers cannot possibly know the “real” Byers; perhaps Byers’s apparent performance of guiltiness is just as likely to be false as Jessie’s confession.

A second complication of any straightforward character evidence-driven story of Byers’s guilt is that Byers passes a polygraph test. The polygraph test operates in *Paradise Lost 2* as a parallel to the trials in the first film: it is the public test of his guilt just as the trials formally operate that way for the three teenagers. In a direct parallel to the episodic portrayal of the courtroom scenes, the second film periodically takes the viewer inside the room in which Byers undergoes the polygraph examination, and his answers are implicitly tested and contextualized through other scenes. There is very little that actually *happens* in the second film; the uncertainty as to whether or not Byers will pass the polygraph test is the dominant source of dramatic tension, and the viewer awaits the result like a verdict. In the final scene we learn that, in the opinion of the examiner, Byers is telling the truth as he sees it. (Oddly, Byers responds, “I knew I was innocent” in a tone that suggests that he did not quite know any such thing.) Although the polygraph is figured as scientific within the film (or at least there is no effort to discredit the technique itself), the film also informs us that Byers was taking numerous medications at the time, suggesting that these may have influenced the ability to conduct an accurate test. But once again, we are denied confidence in any simple story. If Byers is guilty, how did he pass the polygraph? But can we possibly view his wife’s suspicious death, his admission that he was tortured in a similar way as a youth, and his removal of his own teeth as a staggering set of coincidences? Real life once again overwhelms attempts to make the story neat.

Where does this leave us? Put bluntly, without any stable source of knowledge. The careful viewer is forced to temper her suspicions about Byers, to recognize that she simply does not know enough to evaluate the likelihood that he is the actual culprit. And perhaps simultaneously the film’s depiction of the power of character evidence invites us to view the invisible jury who convicted Damien and Jason a little more sympathetically: though they may well have made a dreadful mistake, perhaps we can better understand how they were lulled into belief by a story of demonic character. The film overtly structures us as judges, inviting us to condemn both the out-

come and the process of the trials of the WM3. But it simultaneously shows us that we should be careful about what we claim to know, recognizing the inevitably situated character of both representation and evaluation. Together the films offer a disturbing civics lesson about the dangers of our legal system, and an equally important lesson in interpretive modesty. They invite a pair of reactions in some tension with one another: outrage on the one hand, and uncertainty on the other.⁶¹

Many viewers of the first film did indeed leave the theater outraged; others left uncertain.⁶² Some were even spurred to action by the film: three friends in Los Angeles, horrified by the film, decided to do some more research on their own and soon started a support group for the three teenagers to whom they gave the moniker “the West Memphis Three.” *Paradise Lost 2: Revelations* is structured, in significant part, around this phenomenon, the emergence of a grassroots, largely internet-based support network, nearly all of whose members got interested in the case as a result of seeing the movie. In the film we see that several dozen supporters from all around the country have even made the trip to Arkansas in order to be present for a hearing at which Damien is seeking a new trial. Today, almost precisely ten years after the murders, support for the WM3 continues. Two benefit CDs have been released, one in 2000 and one in 2002; many musicians support the WM3, from Metallica to Tom Waits to Henry Rollins. There are chat rooms, web sites, email lists, T-shirts, and email signatures all devoted to the WM3. It’s become a rather hip cause: Trey Parker, creator of *South Park*, has been seen in a “Free the WM3” T-shirt and even shouted “Free the WM3” into the microphone at the MTV movie awards one year; a character on *Dawson’s Creek* wore a WM3 tank top.

There are several extraordinary aspects to the emergence of this support group. First, it is an example of the convergence of film, devoted advocacy, and the internet: without any one of the three, it never could have taken this form. The curious can easily visit the dominant web site of the support group, www.wm3.org, which provides background information on the case and the defendants, as well as information about how to provide support. An official support group email list devoted to the WM3 is available at <http://www.topica.com/lists/WM3discussion/>; there are currently 865 subscribers and an average of twenty-six messages a day. If you’d rather talk about the

case on the web rather than via email, see the discussions found at <http://p210.ezboard.com/bwestmemphisthreediscussion>. Do you want to see photos of where the crimes took place, view elaborate maps, or read trial transcripts? Take a look at <http://callahan.8k.com>. Would you like to read Jessie Misskelley's confessions for yourself? Find them at <http://www.attyeddy.ocatch.com/>. If you're curious about time-of-trial newspaper articles in Arkansas, see <http://pub52.ezboard.com/fwestmemphisthreediscussionfrm21>. There's even a forum in Dutch for supporters from Holland. The power of the internet to aggregate those with similar (but relatively obscure) interests is obvious. The internet also creates fascinating possibilities for access: at one point in *Paradise Lost 2* we see the founders of the WM3 conducting an online chat session with Damien from death row: he is on the telephone, and a WM3 support group organizer sits at his computer, reading questions to him and transcribing his answers.

The second noteworthy aspect is that the support network's existence has clearly made a difference to the case. The WM3 remain in prison yet, and Damien is still on death row in Arkansas, but there is now a legal defense fund, and high-profile defense lawyers are now involved in Damien's habeas appeals process, whereas before *Paradise Lost* was released Damien had apparently not even spoken to his attorney for a year. But for *Paradise Lost*, the WM3 support group would never have been formed; but for the support group, *Paradise Lost 2* would never have been made. The ongoing publicity the cases receive is clearly a function of both the films and the advocacy they have inspired.⁶³ In the meantime, the three men's lives in prison are certainly made marginally better by the existence of the support group: the site tells viewers how to make contributions to their commissary funds (you can even do it over the web using Paypal), and Damien and Jason even have their own Amazon.com wish lists. The relation between public sentiment and the formal legal appeals process is well beyond the scope of this chapter; but, at a minimum, it is clear that Damien now has representation of a caliber that would have been unlikely to have been available to him without both the film and the subsequent agitprop. This supplementary appeals process has thus effected the formal legal appeals process, albeit indirectly. As advocacy, indeed as legal intervention, the films have thus already partly paid off.

Third and finally, the online support network reveals a fascinating hybrid

of discursive practices. Fan culture (death row inmate becomes cause célèbre) meets legal formalism, and the blend can be downright strange. Supporters are contrasted with “nons” (nonsupporters who believe the WM3 to be guilty); threads can oscillate rapidly between the substantive and the absurd. There are numerous conversion stories; most take the form of “I used to think they must have done it, but now that I’ve [had my conversion experience, that is to say seen the movie, or read some of the evidence for myself, or listened to some of the arguments on this board, or visited the crime scene for myself], I know deep in my heart that they are innocent.” Occasionally the stories go in the other direction, a former supporter doing more research and then joining forces with the “nons.” Many other participants are WM3 agnostics, not certain about the defendants’ innocence or guilt but convinced that the trial was too flawed for the verdict to have legitimacy.

But the most striking aspect about the language of discussion is how profoundly *evidentiary* it is. Post after post posits potential theories of the case and potential holes in each theory, and participants examine the available evidence in extraordinary detail. Every Tuesday night supporters gather in a chat room to discuss a recorded audio segment from Jessie Misskelley’s case. There are detailed threads on every evidentiary topic imaginable: Damien’s alibi; whether John Mark Byers could have come across his son and their friends playing “doctor”; astonishingly careful delineations of the numerous discrepancies between Jessie’s confessions and the other evidence in the case; and speculation about motives, probabilities, and what explanations are plausible, to name just a handful of the hundreds of topics. The discussions often blend emotional responses with quasi-legalistic references to particular items of evidence. Overall, reading through a selection of the voluminous materials on the main site discussing the case, what is most striking is the extent to which they bear a remarkable resemblance to our idealized vision of the civic jury. People frequently describe struggling to make up their own minds. They wrestle with the evidence. They confront the contradictions and the imperfections in any story. They bring their personal experiences—be they lonely adolescences, criticism for their musical tastes or their personal styles or their clothing, unfortunate encounters with the police, or a belief in the benevolence of the state—to bear on what they learn. What *wm3.org* has created, in essence, is a duplicate jury on a much vaster

scale than the original. It is a self-selected group, to be sure, made up of those who choose to spend their free time discussing the case rather than those chosen to perform a civic duty. But their intense debates and sometimes obsessive attention to the case operate as a kind of shadow court, scrutinizing and critiquing the formal legal system. While the actual appeals process continues to move forward at a glacial pace, especially compared to the instantaneous nature of internet communication, it is quite clear that WM3 supporters will be watching every step of the way.

What, in the end, can we learn from this exploration of *Paradise Lost*? We have seen how the films show us three different social and epistemic locations from which to judge what happened on that day in 1993 in West Memphis, Arkansas, three different “juries” with competing claims to render judgment about both the trial and the guilt or innocence of Damien Echols, Jason Baldwin, and Jessie Misskelley. There is, first, the actual trial juries, whose invisible members voted unanimously to convict the three teenagers of murder; second, the film viewer, conceived within the film as a virtual juror and gently directed by both the evidence (or, more accurately, its lack) and the filmmakers’ subtle advocacy to condemn the outcomes in the actual trials; and, finally, those virtual jurors who help to create communities of shared interest in the case through their participation in discussion and dialogue over the internet. The first jury and the third are both deliberative bodies and collective ones. It is traditionally the first jury, those men and women who sit in court, that has the social authority to speak the truth, and in so speaking make it so. But it is the purpose of the second and the third juries to destabilize this truth, to try to force a recognition that this is one set of convictions in which we ought not to believe.

Much of this chapter has explored the specific representations of the trial made within the film, the inevitable elisions, the ways in which the documentary was produced, the ways in which it offers a particular interpretation in the name of fidelity to the real. I have suggested that we can see an affinity between the trial and the documentary: it is not simply that each is a representation, inevitably partial, inevitably selective (this is true, but not surprising). What is more interesting is the way that both rhetorical forms have something deeper in common, the way that they hide their constructed nature in plain sight. They each offer performances that are just that: perform-

ances—and yet, when they succeed, these performances manage to stand in for the actual, they manage to be accepted as both persuasive and true. When trials succeed, the community accepts the verdict as a judgment about what happened rather than simply a judgment about the evidence, or about the quality of the lawyers, or about the power of the state. So too with documentary: when it works, it seems to have a truth-status different from a fiction film. *Paradise Lost* endeavors to unsettle precisely the legal judgment made about the murders at the Robin Hood Hills, persuasively suggesting that the defendants were quite possibly innocent or, at a minimum, that their guilt was insufficiently established by the state. Even as we recognize that *Paradise Lost* is itself a representation, both partial and mediated, we are also invited to interpret it as a substitute, and more legitimate, judgment about the case than the ones reached in the courthouse of Arkansas.

But in order to undermine our belief in the rightness of the jury's judgment, the films end up attempting to place the blame on an alternative suspect, enacting the received wisdom of experienced legal counsel that it takes a story to beat a story. As I have argued, this also leads the second film in particular to partake in precisely the same rhetorical forms that it condemns in the actual trial: conviction by character assassination. Thus anyone who leaves the films convinced of John Mark Byers's guilt must also, upon reflection, leave with some sympathy for the original trial juries: the temptations of character evidence are awfully hard to ignore. This parallel between the evidence the film adduces and the evidence it condemns creates a form of interpretive reflexivity: if a viewer is inclined to be critical of the trial, she must also be critical of both the movie and of herself.

The parallels between the two chief "suspects"—Damien Echols and John Mark Byers—and the character evidence against them are striking: both have strange religious fascinations; both repeatedly have emotional responses that seem unnatural, somehow off; and both strike the viewer as just plain creepy. By the end of the second film, there are, to be sure, distinctions to be made: one could argue that inferring Damien's guilt from his appearance, religious beliefs, musical preferences, and reading tastes is different from—and worse than—condemning Byers on the basis of his actual and suspected criminal conduct, as well as circumstantially suspicious behavior like eliminating his teeth. One could distinguish, in other words, between propensity judgments

drawn from one's preferences and those based more concretely on one's prior conduct. But here, I think, legal doctrine, which generally makes no such distinction, has something to offer. Whether we judge Damien on the basis of his taste for writings about witchcraft or judge Byers on the basis of his prior crimes, we are, in both instances, making propensity inferences that share a logical form: this datum tells us something about the kind of person we are dealing with, which in turn tells us something about the likelihood that the person committed the particular act with which we are concerned.

Let me be clear about what I am arguing: I am not suggesting that we ought not to make judgments about character. We could not excise such judgments from either film or law even if we wanted to: the expression of character is integral to both trial narratives and filmic narratives. In fact, *even demeanor evidence is itself a kind of character evidence*—and it is also a form of evidence specially privileged within both the film and the trial, as it is a judgment that derives precisely from the careful looking that is expected of viewer and juror alike. At trials we (partly) prohibit character evidence, but we simultaneously recognize demeanor judgments as part of the jury's particular capacity; the evaluation of demeanor is often described as a core function of the fact finder, and as one of the reasons why a distant appellate court ought to defer to the jury's judgment. Although demeanor is typically understood to help a jury determine *credibility*, in the case of a defendant, it does something more: the jury also uses demeanor clues to decide the question of guilt or innocence. Moreover, this is so even if the defendant does not testify, so long as he is present in court to be observed by the jury. The very act of looking at someone invites a kind of judging: we infer something about character based precisely on how a person appears before us—how he dresses, how he moves, how he speaks, or even how he listens—equally so in cinematic representation as in court. The visual nature of the filmic form thus also inevitably emphasizes the evaluation of demeanor; and here, again, we see a structural parallel between the film—especially the trial documentary, which so overtly calls for judgment—and trials themselves. More generally, the films, read together, vividly enact our cultural ambivalence about character evidence: we can see how it is at once inevitable, persuasive, and dangerously seductive. It may lead us to believe, but can we ever know?

Notes

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1. In addition to the documentary films that are the subject of this chapter, the murders in West Memphis have been the subject of two true-crime accounts by journalists. See Guy Reel and Marc Perrusquia, *The Blood of Innocents* (New York: Kensington Publishing Co., 1995), and Mara Leveritt, *The Devil's Knot: The True Story of the West Memphis Three* (New York: Simon and Schuster, 2002).

2. The fact of these payments is revealed in the second film. They are also discussed in the recent Arkansas Supreme Court ruling in which the court ruled that neither the film contract nor the payments created a conflict of interest for Echols's attorney. See *Echols v. State*, 2003 Ark. Lexis 567 (2003). According to Echols's trial lawyer (and the court), the funds provided a way for Echols to hire some experts without having to request funding from the state and hence exposing the details of their strategy to the prosecution. *Echols v. State*, *18.

3. *Echols v. State*, *18–19.

4. In the literature on documentary film, the most sustained effort to examine these questions can be found in Bill Nichols, *Representing Reality* (Bloomington: Indiana University Press, 1991).

5. There are important parallels between this set of inquiries and the concerns of Diane Waldman in her interesting essay on *A Civil Action* in this volume, in which she makes the case for the value of “corrective criticism,” that is to say, an examination of the relation between a film and its source material, an examination of the filmmaker's choices about what to include and how to portray and shape material. Like Waldman, I maintain that the close examination of the particular representational choices made within films, especially those that claim the authority of documentary or docudrama, is a worthwhile exercise, though it is an exercise, as she puts it, “not motivated by a belief in the ability of a text to adequately represent reality nor by an abstract notion of fidelity to source material, but by a commitment to analyzing specific instances of ‘law's moving image’ and determining whose interests they serve.” Indeed, David Black's argument against “corrective criticism” to which Waldman is responding seems oddly beside the point with respect to those films—such as trial documentaries, and even fictional films based on actual trials—that are, themselves, overtly “corrective” of the historical record; to put it differently, it would seem that his critique would apply equally to the films as to the “corrective” critics

(David A. Black, *Law in Film: Resonance and Representation* [Urbana: University of Illinois Press, 1999], 141–60).

6. Consider, for example, the extent to which what is offered at trial may itself be a performance. Where is the line between (legitimate) witness preparation, or even witness “coaching,” and the (illegitimate) manufacture of evidence? To what extent can an attorney offer arguments in which she does not herself believe?

7. H. Richard Uviller, “Evidence of Character to Prove Conduct: Illusion, Illogic, and Injustice in the Courtroom,” *University of Pennsylvania Law Review* 130 (1984): 845.

8. Indeed, film theorists wrestle with whether documentaries are properly conceived as a form of “disguised fiction, a form of narrative . . . that makes special claims for its authority by minimizing its fictive aspects,” or better thought of as having, at least in part, a distinctive ontological or epistemological status. Nichols, *Representing Reality*, xi. Compare, for example, Michael Renov, who argues “the documentary film addresses issues of seeing and knowing in a manner quite apart from its more frequently discussed fictional counterpart” (Michael Renov, “Toward a Poetics of Documentary,” in Michael Renov, ed., *Theorizing Documentary* [New York: Routledge, 1993], 12, 24), with Brian Winston, who calls on documentary to forgo its evidential claim and embrace “art over science” and accept a relation to truth more “analogical” than evidential (Brian Winton, “The Documentary Film as Scientific Inscription,” *ibid.*, 37, 56).

9. Parallels and affinities between law and film have received attention in the law and film literature. David Black, for example argues that fictional courtroom films are inevitably, automatically reflexive, because film and trials are both fundamentally narrative enterprises and, therefore, law films are “narratives about narrative” (Black, *Law in Film*, 55). Carol Clover has suggested that American films in general share a particular narrative structure with the trial (Carol Clover, “Law and the Order of Popular Culture,” in *Law in the Domains of Culture*, ed. Austin Sarat and Thomas Kearns [Ann Arbor: University of Michigan Press, 1998], 97). Jessica Silbey has suggested that “the trial film’s viewer-subject mirrors the concept of the liberal legal subject” (Jessica Silbey, “Patterns of Courtroom Justice,” *Journal of Law and Society* 28 [Mar. 2001]: 97, 98). Philip Meyer suggests that effective narratives in jury trials are “often mimetic of popular cinematic stories” (Philip Meyer, “Why a Jury Trial Is More Like a Movie than a Novel,” *Journal of Law and Society* 28 [Mar. 2001]: 133, 135). However, the particular affinities between the documentary as a cultural form and the trial have received scant notice.

10. For a rich analysis of the embedded narrative structures and performative nature of the trial, see Robert P. Burns, *A Theory of the Trial* (Princeton, N.J.: Prince-

ton University Press, 2001); see also Anthony Amsterdam and Jerome Bruner, *Minding the Law* (Cambridge, Mass.: Harvard University Press, 2000).

11. Bill Nichols writes of documentary's traditionally marginalized status among the "discourses of sobriety," suggesting that documentary film's efforts to be received as transparent representations capable of having instrumental effects have traditionally been tainted by its kinship with film, that is to say its imagistic and narrative qualities (Nichols, *Representing Reality*, 3–7). Of course, it is precisely the spectacular and vivid qualities of the documentary that also can make it more emotionally affecting and persuasive.

12. For a seminal legal analysis focusing on the distinction between the trial as a judgment on the evidence and the trial as a judgment of the event, see Charles Nesson, "The Evidence or the Event? On Judicial Proof and the Acceptability of Verdicts," *Harvard Law Review* 98 (1985): 1357.

13. Nesson, "The Evidence or the Event."

14. For a structurally similar argument about *The Thin Blue Line*, see Richard K. Sherwin, "Law Frames: Historical Truth and Narrative Necessity in a Criminal Case," *Stanford Law Review* 47 (1994): 39.

15. Nichols, *Representing Reality*, 31.

16. *Ibid.*

17. Other examples of legal documentaries include *My Brother's Keeper* (also directed by Joe Berlinger and Bruce Sinofsky); *Capturing the Friedmans*, *The Thin Blue Line*, and *Murder on a Sunday Morning*; some of the better-known fictional films based on actual trials include *JFK*, *Catch Me If You Can*, *Midnight in the Garden of Good and Evil*, *A Civil Action*, *Erin Brockovich*, *The Hurricane*, *Breaker Morant*, *Compulsion*, *Inherit the Wind*, and *Reversal of Fortune*, to list just a few.

18. See, for example, Jennifer L. Mnookin and Nancy West, "Theaters of Proof: Visual Evidence and the Law in *Call Northside 777*," *Yale Journal of Law and the Humanities* 13 (2001): 329; Steve Greenfield, Guy Osborn, and Peter Robson, *Film and the Law* (London: Cavendish, 2001), 55–84; Jessica Silbey, "The Subjects of Trial Films," Ph.D. diss., University of Michigan, 1999, 224–47.

19. Sherwin, "Law Frames," is a noticeable exception.

20. My use of the word "appear" is not accidental: it seems, according to recent court documents on the case, that the defense strategy session we see on screen was, in fact, a reenactment. See *Echols v. State*, 2003 Ark. Lexis 567 at *19 (Damien Echols's trial lawyer, Val Price, acknowledged that he had "staged" a strategy session for the cameras, explaining "that he had agreed to re-create for the cameras a meeting between himself, co-counsel, and the defense investigator regarding the decision whether to call a certain witness. Price stated that he was not paid for his participa-

tion in this part of the film and that was the only part of the film that was recreated.") The "staged" nature of this conversation is nowhere indicated within the film.

21. On some of the parallels between juror and viewer, see Clover, "Law and the Order of Popular Culture," 97.

22. Carol Clover, for example, remarks on the jury's invisibility in trial movies, suggesting that "The positioning of the film audience as jury is one of the most fundamental and consistent rules of the courtroom drama" (*ibid.*, 102, n. 10).

23. The filmmakers self-consciously intended this; Sinofsky has explained, "We tried to treat the viewer like a jury," he explains, "and just present the evidence" (Joel Chineson, "Revisiting the Scene of the Crime," *Legal Times* [Mar. 6, 2000]: 35).

24. Nichols argues that documentaries are inevitably arguments, emphasizing that, while the "evidence they recruit bears the authenticating trace of the historical world itself," the arguments embedded in any documentary necessarily go beyond any one-to-one correspondence with what is represented (Nichols, *Representing Reality*, 117–18).

25. It is not that the filmmakers were leaving out other critical pieces of evidence in their representation; the Supreme Court of Arkansas noted in affirming Misskelley's conviction, "The statements were the strongest evidence offered against the appellant at trial. In fact, they were virtually the only evidence, all other testimony and exhibits serving primarily as corroboration" (*Misskelley v. State*, 915 S.W.2d 702 [Ark. 1996]).

26. Peter Brooks, *Troubling Confessions: Speaking Guilt in Law and Literature* (Chicago: University of Chicago Press, 2000).

27. *Ibid.*

28. *Ibid.*, 111.

29. The most famous such procedural protection is, of course, the Miranda warnings (*Miranda v. Arizona*, 384 U.S. [1966]).

30. On the Central Park jogger case, the media, and the false confessions of those convicted of the crime, see Lynell Hancock, "Wolf Pack: The Press and the Central Park Jogger," *Columbia Journalism Review* 38 (Jan./Feb. 2003); and Jim Dwyer and Kevin Flynn, "New Light on Jogger's Rape Calls Evidence into Question," *New York Times*, Dec. 1, 2002, 1. More generally, on the phenomenon of false confessions, see Richard A. Leo and Richard J. Ofshe, "The Consequences of False Confessions: Deprivations of Liberty and Miscarriages of Justice in the Age of Psychological Interrogation," *Journal of Criminal Law and Criminology* 88 (1998): 429; Paul G. Cassell, "Protecting the Innocent from False and Lost Confessions," *Journal of Criminal Law and Criminology* 88 (1998): 497; Richard J. Ofshe and Richard A. Leo, "The Decision to Confess Falsely: Rational Choice and Irrational Action," *Denver University Law Review* 74 (1997): 979; Welsh S. White, *Miranda's Waning Protections: Police Interro-*

gation Practices after Dickerson (Ann Arbor: University of Michigan Press, 2003), 139–90; Lawrence S. Wrightsman and Saul M. Kassir, *Confessions in the Courtroom* (Newbury Park: Sage 1993).

31. Ofshe and Leo, “The Decision to Confess Falsely,” 986.

32. Ibid.

33. White, *Miranda’s Waning Protections*, 180. White suggests that evidence indicates that “even relatively benign interrogation methods can easily produce false confessions from mentally handicapped suspects.”

34. For a review of the empirical evidence casting doubt on the capacity of the jury to assess demeanor, see Olin Guy Wellborn III, “Demeanor,” *Cornell Law Review* 76 (1991): 1075.

35. Lack of evidence does not necessarily stymie imagination; it may possibly fuel it instead. Missing pieces of trial narratives can invite speculative “filling-in” by the jury; see, for example, the rampant (and largely erroneous) speculation that reporter William Finnegan describes based on his own experience as a juror (William Finnegan, “Doubt,” *New Yorker*, Jan. 31, 1994, 48, 51).

36. Ofshe’s testimony may be read in full at <http://www.wm3.org/live/trialshearings/documents.php?docid=103>. From the transcript, it appears that the jury was permitted to hear only a portion of his testimony.

37. A recent report on wrongful convictions finds that youth and mental handicap are both indicators of a heightened possibility for false confession (Samuel Gross et al., “Exonerations in the United States,” available at <http://www.law.umich.edu/NewsAndInfo/exonerations-in-us.pdf>).

38. Brooks, *Troubling Confessions*, 21.

39. Jessie’s stepmother tells the viewers in one scene that she told him, “If you get up there and lie, I’m going to be in that courtroom and you’re going to have to sit there and tell that lie when you know I’m sitting there listening to you, when you know I know the truth, that you are lying.”

40. The story model is the dominant psychological model for understanding jury decision making. See, e.g., Nancy Pennington and Reid Hastie, “A Cognitive Theory of Juror Decision Making: The Story Model,” *Cardozo Law Review* 13 (1990): 519; Nancy Pennington and Reid Hastie, “The Story Model for Juror Decision Making,” in *Inside the Juror: The Psychology of Juror Decision Making*, ed. Reid Hastie (Cambridge: Cambridge University Press, 1993), 192; W. Lance Bennett and Martha S. Feldman, *Reconstructing Reality in the Courtroom: Justice and Judgment in American Culture* (Camden: Rutgers University Press, 1981).

41. A wonderfully vivid illustration of this narrativizing tendency can be found in the account by William Finnegan of his experience as a trial juror in an assault and robbery case in New York City. Finnegan writes of how “the impossibility of

considering only ‘the evidence’ was so obvious it was hardly mentioned. As jurors, we had been kept firmly in the dark throughout the trial, allowed to hear only what the judge deemed fit for our ears . . . the disputed facts before us would make sense only if we could imagine the worlds around them. And so we told each other stories” (William Finnegan, “Doubt,” 51).

42. Sara L. Knox, *Murder: A Tale of Modern American Life* (Durham: Duke University Press, 1998), 200.

43. Burns, *A Theory of the Trial*.

44. C.f. “Doubt,” in which, after inhabiting the dual roles of juror and journalist, William Finnegan is still left with lingering doubt about what happened. Even after numerous interviews with the principals in the case, he concludes, “I now have no idea whether [the defendant] committed the crime for which I and my fellow-jurors sent him to prison” (Finnegan, “Doubt,” 67).

45. In his intelligent account of the experience of being on a jury in a murder trial, historian of science D. Graham Burnett acknowledges that until close to the conclusion of deliberations, he actively hoped for a hung jury, resisting the idea of a single, seamless interpretation, preferring instead to make the trial into a text with multiple possible interpretations (D. Graham Burnett, *A Trial by Jury* [New York: Random House, 2001]).

46. An interesting question, though beyond the scope of this chapter, is how classic conceptions of narrative in film and literature figure in jury interpretations of the evidence. If we are accustomed to stories that cohere and in which the loose ends are nicely tied together, how do we interpret the narratives we hear at trial? Does a messy, inconsistent story therefore seem more or less likely to be true—are inconsistencies and rough edges a mark of realism, or do they suggest a lack of veracity? How do popular cultural forms shape our expectations of what the truth will look like?

47. For a similar suggestion that films are particularly critical of circumstantial evidence, see Paul Bergman, “A Bunch of Circumstantial Evidence,” *University of San Francisco Law Review* 30 (1996): 985.

48. The taped confession itself may not be used against the defendants because it is hearsay that does not fit into any legally recognized exception to the hearsay rule. By contrast, a defendant’s own prior statements are exempt from the hearsay rule when introduced against him, thus permitting the confession into evidence at Jessie’s trial. While Jessie could have been subpoenaed by the prosecution, they no doubt feared that he would recant the confession on the stand and thus potentially aid the defendants.

49. Federal Rule of Evidence 404 says, “Evidence of a person’s character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.” For a general discussion of the character evidence

rules, see Richard O. Lempert, Samuel R. Gross, and James S. Liebman, *A Modern Approach to Evidence*, 3d ed. (St. Paul, MN: West Publishing Co., 2000).

50. Federal Rule of Evidence 404(b).

51. According to Burk Sauls, one of the founders of *wm3.org*, the statement was actually made before the trial even began.

52. *Echols v. State*, 936 S.W. 2nd 509, 521 (Ark. 1996).

53. Let me be clear: by unpacking and critiquing the filmmakers' editorial choices I neither mean to suggest a belief in the possibility of a "neutral" depiction, nor in any way buttress the legitimacy of either the trial or the verdicts. Rather, my efforts stem from an interest in dissecting the way evidence is put forth and made persuasive, both in the trial and in the films' representations.

54. For a sharp critique of reflexivity within documentary film, see Trinh T. Minh-ha, "The Totalizing Quest of Meaning," in *Theorizing Documentary*, ed. Michael Renov (New York: Routledge, 1993), 103–5.

55. Echols's appellate defense attorneys, including the well-known Barry Scheck, have now filed motions to request additional DNA testing of a number of items of physical evidence, including Byers's knife.

56. Clover, "Law and the Order of Popular Culture," 105–6.

57. There is certainly no simple relationship between information and certainty. As William Finnegan continued to research the case, his confidence diminished. See Finnegan, "Doubt."

58. This distinction parallels the distinction between trace evidence and predictive evidence set up in Uviller, "Evidence of Character to Prove Conduct," 845.

59. Forensic odontology is not necessarily a reliable evidentiary technique. It has not been adequately validated, and it cannot simply be accepted at face value as a persuasive form of proof. Though it has been accepted in numerous jurisdictions, not enough is yet known, for example, about how much bite marks differ from one another, or how accurately odontologists can match marks to teeth. See, e.g., Michael J. Saks, "Merlin and Solomon: Lessons from the Law's Formative Encounters with Forensic Identification Science," *Hastings Law Journal* 49 (1998): 1069. Nonetheless, forensic odontology is at least as reliable as satanic cult experts who rely on musical tastes and clothing color to determine cult membership.

60. This is, of course, the primary anxiety of the documentary as a cultural form. On the one hand, it posits a particular kind of truth claim, a more factitious relation to its referent than fiction film, what Michael Renov, for example, refers to as a "relationship to history which exceeds the analogical status of its fictional counterpart" (Michael Renov, "Rethinking Documentary: Toward a Taxonomy of Mediation," *Wide Angle* 18 [1986]: 71). But at the same time, it relies on aesthetic and narrative conventions to buttress its claims to authenticity.

61. This doubled response replicates the tension between advocacy and documentary that we have seen throughout the film.

62. According to the directors, although most viewers of *Paradise Lost* left thinking the teenagers were innocent or at least not proven guilty, roughly 20 percent of viewers came away thinking that the verdicts were correct.

63. A feature film on the case is now in the works as well, as well as a third documentary.

A Case for Corrective Criticism: *A Civil Action*

DIANE WALDMAN

Introduction

In “The Forensics of Film Reception,” a chapter in David Black’s *Law in Film: Resonance and Representation*,¹ the author draws parallels between the role of plausibility in courts of law and in critical responses to film. Legal procedure, Black argues,

depends on the exercise of judgment on narratives, largely taking the form of the evaluation of stories on the criterion of plausibility. It is familiar enough that courtroom witnesses produce conflicting testimony; that judges and juries must reconcile or choose among conflicting versions; that plausibility governs much of that reconciling activity; and the lawyers strive, among other things, to demonstrate implausibility in testimony. (142)

What is not so familiar, Black argues, is that film culture is similarly obsessed with plausibility, and he gives a number of examples drawn from journalistic reviews of films as diverse as *Terms of Endearment*, *Yentl*, *Raiders of the Lost Ark*, *JFK*, *Silkwood*, and *Teenage Mutant Ninja Turtles* to illustrate this phenomenon. “What these remarks have in common,” argues Black,

is that they find factually *against the cinema* on a variety of probabilistic, empirical, and/or historical grounds. In this they illustrate a much wider film-cultural obsession with plausibility, an obsession materialized in the incessant questioning we read and hear as to whether or not something in a film “would have happened”; assertions that a character “would not have done that”; protests against lapses in continuity and psychological motivation; and more narrowly targeted complaints about a film’s historical or biographical accuracy. (143–44)

Black labels such types of criticism “corrective” “in the sense that they take issue with elements of theme and plot posited by the films they concern,” and he refers to the practice of “making such corrective pronouncements, of publicly attacking a film for having erred in its representation of reality,” as “forensic criticism” (144). He is critical of such a practice, because, he argues, it implies that texts might somehow be adequate to the realities they represent, and because ultimately the role of forensic criticism is that of diversion: “The minor skirmishes and faultfinding represented by forensic criticism serve as decoys away from what might otherwise develop into a more penetrating demystification of film or unmasking of its constructive strategies” (147).

Film reception is obsessed with plausibility; such is the result of the hegemony of the paradigm of the classical Hollywood cinema, with its carefully constructed plots and its attention to motivation of narrative event and character behavior. And it is easy to see the ways in which criticisms based on plausibility are always ideological, predicated not only on a realist aesthetic, but also on the writer’s own subjectivity and experience masquerading as logic and knowledge of the ways of the world. But I would take issue with the inclusion of the examples from the reviews of the docudramas *JFK* and *Silkwood* and “the more narrowly targeted complaints about a film’s historical or biographical accuracy” in this category. In the first place, such criticisms often have nothing to do with plausibility: critics and viewers steeped in a realist aesthetic will often accept the most implausible occurrences in a film “based on a true story” that they would never forgive in a purely fictional film (Stephen Spielberg’s current *Catch Me If You Can* immediately comes to mind). But, more importantly, I want to question the notion that appeals to agreed-upon historical facts or other versions of the same historical events are only “minor skirmishes” that divert us from the main show, which is drawing attention to any narrative’s constructed nature. And as will become clearer later in this chapter, it was W.R. Grace’s debunking web site, “Beyond a Civil Action,”² that helped convince me.

In this chapter, then, I want to make a case for a certain type of corrective criticism, using Steven Zaillian’s 1998 film *A Civil Action* as my major example. Like *JFK* and *Silkwood*, *A Civil Action*, based on Jonathan Harr’s award-winning book,³ is a hybrid form, a docudrama, a fictionalized representation

of a nonfictional representation of actual historical events. And like the stories presented in these other films, the version of events in *A Civil Action*—what transpired when a group of families in Woburn, Massachusetts, brought action against two large corporations, W.R. Grace and Beatrice, for injuries due to the contamination of the town’s water supply—was hotly contested. The film was appropriated by those with different political agendas, and it became an occasion to put forward different views of the law. It offers a clear example of the attempt of a Hollywood studio to control the meaning of a film through its marketing, and the attempts of others to contest that meaning.

In what follows, I first put forward my own reading of the film, risking a certain version of corrective criticism. This version is not motivated by a belief in the ability of a text to adequately represent reality, nor by an abstract notion of fidelity to source material,⁴ but by a commitment to analyzing specific instances of “law’s moving image” and determining whose interests they serve. Any translation of a 500-page work of nonfiction into a two-hour fictional film will necessarily incorporate a number of omissions, additions, and changes. *A Civil Action* has many. It represents a particular reading of Harr’s book, and a creative conversion of the sign system of one medium into that of another.⁵ My reading, however, will focus on those omissions, additions, and changes that crucially shape our conceptions of legal practice in general, personal injury law, and the issues at stake in this case in particular. It will also point to some of the structural and stylistic devices through which this shaping is accomplished. The second part of my chapter focuses on the film’s marketing and reception, a reception, I would argue, that makes some degree of corrective criticism important for those who wish to contest the dominant discourses many popular cultural forms help to construct and circulate or the readings of those who wish to impose these discourses on the popular cultural forms that attempt to challenge them.

‘A Civil Action’: A Reading

In their nonfictional and fictional representations of the plight of the Woburn residents and their attorneys, both the book and the film versions of *A Civil Action* deal with serious issues and raise important questions about

the law: Can the legal system, especially the traditional torts system, which is predicated on notions of private law and individual rights and responsibilities, adequately deal with injuries and illness caused by damage to the environment? Can it achieve justice by punishing those responsible, deterring others, and achieving some kind of compensation for victims? In taking on these questions the book and film stage in a popular venue debates occurring in courts and in scholarly legal journals.⁶ Both seem to answer no to these questions. Yet by relying on a narrative and thematic paradigm that privileges the actions of an individual protagonist, the film in particular undermines its efforts to explore the systemic nature of the problems addressed and threatens to hamper our ability to envision something other than individual responses to them. Examining the ways in which the film adapts its source material allows this pattern to emerge more clearly.

I saw the film when it premiered, having recently finished Harr's book. While I was waiting for my friends at the theater, I found the following blurb on a poster describing it:

John Travolta stars in this true story about an attorney who represents a small group of families who have lost their children to leukemia possibly because of the dumping of toxic waste nearby. Robert Duvall costars as the corporate legal representative in this epic of a courtroom showdown that fleshes out how a legal system can go awry and just how one dedicated soul can make a difference.⁷

Although later I will question the extent to which this blurb, part of the film's marketing machinery, is itself a reading that shapes my own, at the time I was struck by the ways in which the description, especially "how one dedicated soul can make a difference," differed from my reading of Harr's book, which to my mind illustrates the complexities and challenges of attempting to address the issue of corporate responsibility for environmental disasters through the legal system despite the best efforts and intentions of various individuals involved. Yet I think this blurb neatly summarizes the film's approach to Harr's work and to the series of events described therein, an approach that trades the multilayered and multidimensional approach of Harr for one that uses the narrative and thematic paradigm that Robert Ray, after Leslie Fiedler, has described as the "disguised western."⁸

Attempting to reconcile the quest for radical autonomy with the need for

some type of collective action, the disguised western, like the actual western it models, translates social and ideological conflicts into struggle (usually physical) between two individuals. Even the most baroque westerns, seemingly involving multiple protagonists and complex plots, end with a gunfight between the two major antagonists (as in the final battle between Harmonica [Charles Bronson] and Frank [Henry Fonda] in Sergio Leone's *Once Upon a Time in the West*). The film *A Civil Action* follows a similar process by structuring its narrative as a conflict between the plaintiffs' lawyer, Jan Schlichtmann (John Travolta), and one of the defense attorneys, Jerome Facher (Robert Duvall).

While Harr's book itself arguably constructs its story by creating a protagonist in Schlichtmann,⁹ the film carries this process further by centering its narrative on Schlichtmann and little else. Although Harr's book begins with a short prologue that draws the reader in by describing an incident that highlights Schlichtmann's financial troubles and emotional distress during the jury's deliberations, it then devotes considerable pages to a lengthy exposition that describes places, people, and events considerably prior to Schlichtmann's involvement in the case—the town of Woburn and its industry, the problems with its drinking water, the families who experienced the devastating illnesses and deaths of their children. Some of these people begin to suspect some link between those illnesses and the water, and they contact a lawyer to explore the connection. A minister, the Reverend Bruce Young, counsels them and helps them organize. The film, in contrast, begins with Schlichtmann's cynical voice-over narration as he wheels one of his personal injury clients down the hallway of an official-looking building, soon revealed as a courthouse. By thus beginning in *media res*, so to speak, and eliminating the development of the families' stories, the film robs the families of their agency and pumps up the role of Schlichtmann.¹⁰ It transfers agency from a collective entity, comprised of working-class women and men, to a middle-class male professional. It also spares the filmmakers having to represent or the audience having to directly confront any representation of the sick children whose lives were at issue, much as the real-life jury was "spared" by Judge Skinner's polyfurcation of the trial¹¹ from hearing the families' stories.

This is, I would argue, one of the only ways that *A Civil Action* positions

the audience similarly to the diegetic (and in this case real-life) jury, a feature Carol Clover argues is constitutive of the trial movie or courtroom drama.¹² Unlike the spectator for the films Clover describes, the audience here is not positioned to consider the questions the diegetic jury had to decide, namely whether or not the companies were responsible for contaminating the water or whether the contaminated water in fact caused the plaintiffs' injuries. These are answered in the affirmative in the first part of the film, although a sequence where the partners discuss the advisability of taking on the case hints at the difficulties in demonstrating medical causation.¹³ Rather, the questions *A Civil Action* asks its audience to ponder are whether Schlichtmann will prevail in a legal system represented as corrupt,¹⁴ and how he will be transformed by the experience.

Schlichtmann's role as protagonist is furthered by an emphasis on his subjectivity through cinematic devices such as voice-over narration, point-of-view shots, and flashbacks that purport to represent his consciousness, devices that, but for a few important exceptions discussed below, are not associated with any other character. This again is in marked contrast with Harr's book, which, although it centers on Schlichtmann, also distributes narrational perspective among a variety of characters, including Schlichtmann's partners and associates, Conway, Crawley, Gordon, and Phillips; Harvard law professor Charles Nesson; the opposing attorneys, Facher, Cheeseman, and Keating; various family members; Reverend Young; and the jurors. It also, as described below, substitutes two invented dramatic epiphanies on the part of the central character for the less exciting grunt work of others in order to explain crucial turning points in the development of the plaintiffs' case.

As in many a real or disguised western in which the hero is initially indifferent to the plight of the townspeople he later comes to defend, Schlichtmann is initially presented as indifferent to his clients' cause.¹⁵ He doesn't even recognize the voice of his client, Anne Anderson, when she is reduced to phoning him during a call-in segment of a radio talk show program in order to get his attention. He decides to go out to Woburn to get rid of the case over the pleading of his soft-hearted partner Kevin Conway. (This entailed some changes from Harr's version, in which Schlichtmann recognizes Anne's voice although he has been putting her off; in which Schlichtmann is interested but cautious about the case and wants to wait for an Environmental

Protection Agency report before he proceeds with a complaint; and in which Conway is the one initially opposed to the firm's involvement.)¹⁶

The film motivates Schlichtmann's involvement with an incident that never really happened but purports to represent the discovery of the sources of the water contamination. It is an interesting example of the way in which classical Hollywood cinema uses previously established character traits (in this case Schlichtmann's propensity for fast, expensive cars) to motivate narrative action.¹⁷ Stopped for a speeding ticket on his way back from Woburn, Schlichtmann decides to go exploring down by the river and notices a Dumpster with the sign "W.R. Grace" and a passing truck spelling out "J. J. Riley—a subsidiary of Beatrice Foods." In the next sequence he tells his partners this was "fate," and he gleefully recites the companies and products associated with these giant corporations. This does a disservice to the actual Schlichtmann, by depicting him as an apolitical ambulance chaser who dispenses his business cards to the injured on the street and is only convinced to work on the case when he discovers the "deep pockets" or corporate sources of the contamination. I will have more to say about the depiction of personal injury lawyers as "ambulance chasers" later, but here I only want to point out the ways in which it accords with a dominant view embraced by a large sector of the business community. Thus in a review of the film in *Forbes* magazine, the author cynically claims, "When personal injury lawyers set about identifying the cause of their clients' illnesses, they use sophisticated methodology. First they identify someone with deep pockets. Then they find something that Deep Pockets did that a jury might accept as the cause of the illnesses."¹⁸

The film, then, exaggerates the representation of Schlichtmann as crass, cynical, and materially motivated in the beginning of the film, in order to better represent him as transformed and politically enlightened as the result of the action. Consider, for example, the second sequence of the film, in which Schlichtmann is on a radio talk show defending personal injury law against its evil reputation. "They call us ambulance chasers, bottom-feeders, vultures," Schlichtmann says into the microphone in the studio. "If that's so, why do I lie awake at night worrying about my clients. . . . Their pain is my pain."¹⁹ But as he talks, the film dissolves from Schlichtmann in the studio to an image of Schlichtmann dancing with an attractive blonde woman, opening up a gap between sound and image, what he says and what he does. Cine-

matically specific means, in other words, have been used to convey the unreliability of the narrator and to confirm rather than refute the reputation of personal injury lawyers the character purports to defend.

In reality Schlichtmann was a political person, a founding member of the public-interest law firm Trial Lawyers for Public Justice (whose involvement in the early stages of the litigation is also eliminated from the film) who had once represented the antinuclear Clamshell Alliance.²⁰ As Harr represents him, he is a complex mixture of progressive politics, personal flamboyance, and ambition. I point this out not in the name of some abstract notion of fidelity to reality or to literary source material, but because the modification shapes our perceptions of what kind of lawyer or what kind of firm is likely to get involved in this kind of litigation.

The sequence in which Schlichtmann discovers the sources of the water contamination is the first of the two dramatic epiphanies mentioned earlier that substitute some insight (based literally on a visual *sight*) on the part of the central character for a more complex relationship between the lawyer's insights and the work of others. Harr, for example, presents the discovery of the sources of the water contamination not as Schlichtmann's dramatic discovery, but as appearing in a Princeton professor's interpretation of the preliminary EPA report. Similarly, the film credits Schlichtmann alone with the discovery of evidence that proves that Riley (the owner of the polluting tannery) and perhaps his attorneys *did* know about the contamination of his property and was in fact attempting to clean it up in anticipation of a visit from the EPA inspectors. This the film does by presenting an incident in which Schlichtmann sees an accidental spill of some water in a restaurant and focuses on the image of the mopping up rather than the spill itself. This leads him to the notion that he should have looked for someone who helped Riley clean up his contamination instead of someone who would admit to the dumping itself as occurred with W.R. Grace. Again, this rather ingenious visual rendition is a lot more exciting than Harr's version of events: Schlichtmann asks one of his associates (Gordon) to go to the regional EPA office and check the files on Beatrice for any additional information; he finds a hydrogeologic report commissioned by Riley that was never revealed in discovery. These sequences, while dramatically and visually compelling, thus mystify legal work, substituting chance and dramatic "Eureka!" experiences for

persistent research conducted by a team of legal workers who often rely on the scientific reports and analyses of others. They also tie legal insights to some sort of visual regime.²¹

Other changes or omissions further contribute to this construction of Schlichtmann as the “lone gun” in the plaintiffs’ story: examples include the elimination of Reverend Young, the minister who helped the families organize, and Charles Nesson, the Harvard law professor who served on the plaintiffs’ legal team,²² as characters, and the reduction of Schlichtmann’s partners Conway and Crawley to minor supporting characters who nag about money. Many other characters were eliminated in the transition from a 500-page book—the women romantically involved with Schlichtmann are a surprising example—but those noted above are particularly significant in constructing the myth of the “one dedicated individual” responsible for pursuing the case.

The creation of composite characters is another staple of reducing a complex book or novel to film, and there are several instances of this in *A Civil Action* as well. Two seem to me worth noting: 1) the conflation of Cheeseman and Keating, the Grace attorneys, and 2) the confusion of one of the Woburn plaintiffs, Donna Robbins, with another, Anne Anderson. Although both instances make the narrative more efficient and economical, they have other effects as well. The first blurs the line between trial conduct and other aspects of legal work (Keating took over from Cheeseman in the trial portion of the litigation). The second seems to me particularly insensitive to the actual families involved in the case, again robbing them of their agency within the collective, particularly in the way that a very emotional, personal, and idiosyncratic incident involving one of the deceased children related in Harr’s book by Donna Robbins (“I used to tell Robbie, when we went to a department store, that if we ever got separated he should meet me in the back left-hand corner. Toward the end, he used to say to me: ‘We’ll meet in the back left-hand corner of Heaven’”) is attributed in the film to Anne Anderson, suggesting, in effect, that these women (and their relationship to their children) are somehow interchangeable.

Another factor that bears upon the film’s depiction of legal process involves its representation of time. As with most two-hour movies that depict events of a much longer duration, the filmmakers must find a way to compress story time into screen time by eliminating various incidents and indi-

cating the passage of time through punctuation devices such as cuts, dissolves, and fades; montage sequences; and titles that indicate how much story time has been elided. Many people familiar with the events depicted or with Harr's book have remarked upon how quickly the film seems to go by—how events that in reality were months or years apart seem to occur in rapid succession.²⁴ In part this is due to certain stylistic choices made by the filmmakers: no titles indicate the passage of time; there are few fades and dissolves, the traditional denoters of the passage of time, particularly in the latter part of the film; and sound bridges (where the sound of the next shot comes up over the last image of the previous sequence) are curiously used to connect successive sequences. This, if anything, accelerates time in the film rather than slowing it down.

Yet surely some stronger sense of the amount of time it took to pursue this “civil action,” from the original contact with a lawyer through the years of pretrial legal maneuvering, discovery, trial, settlement, and appeals, was necessary to convey what's at stake in—and what's wrong with—legal actions of this nature. A particularly good example is the trial itself, where, as Nesson has argued, Judge Skinner's polyfurcation of the trial (in reality occurring before the trial began rather than halfway through as the film suggests) meant that the jury had already endured months of tedious expert witness testimony when they began to deliberate Judge Skinner's complex special interrogatories that concluded the first phase of the trial, and this crucially affected the outcome of the case. Again, as Nesson argued, if the jury found for the defendants, they got to go home, but if they found for the plaintiffs, they got to come back and hear more.

On the other hand, however, there are places in the film where editing is used very effectively to convey the weight of time on the proceedings or to convey a more abstract idea central to an understanding of the difficulty of the plaintiffs' position vis-à-vis the traditional torts system. For example, to economically convey both the amount of time it took to conduct the depositions and the kind and number of questions the Woburn family members had to endure from the defendants' attorneys, the filmmakers begin to edit the sequence as if Facher were conducting a single deposition, but subsequent jump cuts of Facher and matches on action of different plaintiffs reveal retrospectively that this is not one but many. The filmmakers had the

good sense, however, to play out the deposition of Richard Aufiero (played by David Thornton)—in which he describes pulling over on the expressway and futilely attempting to revive his dying son through CPR—in much greater length and detail. The sequence plays out as a struggle for control of narration between Facher and Aufiero (Aufiero at one point objects to Facher’s interpretive recapitulation of the former’s testimony, to which Facher replies, “I’m just trying to re-create the events”), and it demonstrates the affective power of the family members imposing their own discourse on story events, a power they were denied during the trial itself. This becomes one of the most emotionally compelling sequences of the film, conveying both the reasons for the lawsuit in the first place and the dignity of those who chose to pursue it. In this sequence, as well as those involving Al Love (played by James Gandolfini), the Grace employee who decides to provide crucial information that will help the plaintiffs’ case, the film manages to break out of its “lone wolf” mentality and give expression to the subjectivity of others involved in the action. These sequences are also a concrete reminder that any narrative—legal or cinematic—is told from a particular perspective and could, therefore, be told differently to different effect.

Several other sequences effectively use cinematically specific means to convey the difficulty of the plaintiffs’ position. For example, cross-cutting between expert witness testimony and the Gordon character’s efforts to finance the case and hold creditors at bay represents the cost of expert witnesses and scientific tests to plaintiffs’ attorneys, and a similar cross-cutting between Facher’s lectures at Harvard Law School and Schlichtmann’s botched cross-examination of J. J. Riley indicates the kind of legal expertise and experience the plaintiffs’ attorneys were up against. Both illustrate the difficulties of bringing cases of this nature, particularly against the enormous financial and legal resources of major corporations.²⁵

Sequences such as these have the strongest potential to present a critique of the traditional torts system and the obstacles it places before those attempting to achieve justice for environmental harms. *A Civil Action* returns, however, to its selective focus on Schlichtmann in the final section of the film, after the first-phase verdict (the jury decides in favor of the plaintiffs with respect to Grace but not to Beatrice) and what is presented as a disappointing settlement with Grace. Contrary to Harr’s version of events, here Schlicht-

mann's partners desert him and he single-handedly pursues evidence that Riley/Beatrice was also responsible for the contamination of Wells G and H. In reality Nesson wrote and argued the appeal for the Beatrice verdict, and, as indicated above, Gordon did research that led to the revelation that important documents had never been turned over during discovery. Schlichtmann did pursue the case (unsuccessfully) up to the U.S. Supreme Court, remaining with the firm until he left of his own accord.

The film concludes, however, with a montage sequence that intercuts the packing up, shipping, and delivery of documents to Washington, D.C., with Schlichtmann typing a letter to the Environmental Protection Agency, his voice-over narration discussing the terrible odds of winning the appeals process and urging the agency to pursue the case: "I have the evidence but no longer the resources to appeal the decision in the Beatrice case. . . . The Woburn case has become what it was when it first came to me—an orphan." This imagery and voice-over conflate the civil action with the EPA's action against W.R. Grace and Beatrice Foods, a separate action in which the agency filed suit against the companies to recover costs for its cleanup project of the region they contributed to contaminating. But the film's main concern at this point is the effect of the lawsuit on the protagonist, an effect articulated through the continuing voice-over (accompanied by music I can only describe as "schmaltzy"): "If you do decide to take it on, I hope you'll be able to succeed where I failed. If you calculate success and failure as I always have, in dollars and cents divided neatly into human suffering, the arithmetic says I failed completely. What it doesn't say is if I could somehow go back, knowing what I know now, knowing where I'd end up if I got involved with these people . . . I'd do it again." Ultimately, then, this sequence attempts to provide an uplifting ending for what is actually an unusual feature of a classical Hollywood film—the protagonist's failure—by emphasizing a "cynic's redemption."²⁶

From here we fade in to an aerial shot of Boston that moves over to Fenway Park, the accompanying sounds of which cleverly provide a segue to Facher's office, where he is listening to the game on the radio. This is the first of several brief sequences that take us away from Schlichtmann and back to the health and environmental issues that were raised by the case. Freeze

frames of the defense attorneys and Anne Anderson inform us through superimposed titles about the closing of the plants, the EPA's indictments, and the mandated cleanup, "the largest, most expensive project of its kind in New England history," encouraging the film audience to go home thinking justice has ultimately been accomplished, and to feel considerably better than the readers of the final paragraphs of the Afterword to the Vintage Edition of Harr's book:

The clean-up of the Wells G and H site, now in its sixth year, proceeds under the supervision of the Environmental Protection Agency. . . . The ultimate aim, of course, is to clean up the Aberjona River and its surroundings to a degree that makes the area safe for human recreational activities. Given the nature of the contaminants, however, all parties agree that it will prove impossible to rid the site of TCE and perc completely, especially in the deepest reaches of the aquifer. Only nature can accomplish that, and it will take nature many thousands of years to do so.²⁷

The final sequence of the film, however, returns us to the effect of all of this on Schlichtmann, looking distracted and uncomfortable in what is shortly revealed to be bankruptcy court. "Where did it all go?" asks the skeptical judge, "The money, the property, the personal belongings, the things one acquires in one's life, Mr. Schlichtmann. The things by which one measures one's life." But remembering back to the previous sequence with Schlichtmann we know that these are no longer the things by which he measures *his* life, and this is how we are encouraged to interpret his silence in response. A final title, which tells us that Schlichtmann now practices environmental law and is currently representing sixty families in Toms River, New Jersey, in another contaminated water case, returns to the theme of the cynic's redemption.

Schlichtmann's last voice-over narration, which refers to his former practice of "calculat[ing] success and failure . . . in dollars and cents divided neatly into human suffering," and the film's final title remind us of the trajectory the film's protagonist has followed, from personal injury law to what the film sees as the higher calling of environmental law. I have already commented upon the film's early depiction of the personal injury lawyer as a shyster, a depiction that echoes the view embraced by the business commu-

nity. It is now time to discuss more fully the dominance of this representation, its alternatives, and the extent to which *A Civil Action* does or does not challenge it.

In an important essay on the relationship between a culture's concept of injury and its concept of identity,²⁸ David Engel explores the ways in which different societies and systems of justice deal with questions of harm to members of their communities. In his study of the rural community of Sander County, Illinois, in the late 1970s Engel found that

farmers and other longtime residents spoke clearly and eloquently about injury, identity, and remedy. In a society where the values of interdependence were previously paramount and individuals had to rely on and trust their neighbors, injuries called for sympathy and assistance but not for remediation. My interviewees rarely expressed the view that the injured person acted for the good of the community in seeking compensation from the injurer. On the contrary, longtime residents argued that the reverse was true. They associated claims for remedy, both legal and extralegal, with individuals they perceived as "outsiders" or newcomers to the community, those who did not participate in the fabric of interdependencies that they imagined had once characterized Sander County. . . . The appropriate response to injury, they believed, was to absorb the harm without requesting any compensation from the injurer. Unacculturated outsiders who demanded a remedy and sometimes went to court to enforce their demand were seen as destroying rather than preserving the community. (13–14)

If we postpone for a minute the question of what Engel means here by "injury," it would be harder to find a more accurate description of the ethos that permeates another cinematic representation of personal injury lawsuits, Atom Egoyan's *The Sweet Hereafter*, a film to which at least one reviewer has compared (and contrasted) *A Civil Action* and a film on which several of the conference's participants have written eloquently.²⁹ Based on a novel by Russell Banks, Egoyan's film also deals with litigation involving the parents of dead or severely injured children, in this case dead or injured as a result of a tragic bus accident in a small Canadian town. A personal injury lawyer comes to the town from an unspecified large city outside the community (in the novel he comes from New York to a small town in the Adirondacks) and attempts to solicit clients for a legal action—against the bus company for faulty manufacture, and against the township for an insufficient guardrail. Various causes of action are suggested by the lawyer, who tells potential cli-

ents “there are no accidents.” Motivated by monetary considerations and/or his own personal demons (a drug-addicted daughter he feels powerless to save), the lawyer’s actions are clearly viewed as corrosive to the fabric of the community, an impediment to healing, and Banks and Egoyan encourage the spectator to sympathize with the actions of Nicole, the teenaged survivor whose lies during a deposition effectively put an end to the litigation and allow the community to get on with its grieving.³⁰

As both Austin Sarat and Michael Shapiro have argued, the film is a profound meditation on the law’s inadequacy in dealing with an event such as the loss of a child, a critique of the ways in which it turns “misfortunes” into “injustices,”³¹ its “invitation to turn grief into greed.”³² But what about the situation where that loss is not so ambiguously due to “misfortune,” but to the carelessness or disregard of those who should know better? Dumping toxic chemicals into the groundwater may fall into this category. Acknowledging that the law could never compensate for an event such as the loss of a child, and even with an awareness of the difficulties traditional torts law presents in dealing with environmental harms,³³ I still want to hold onto the notions both that injustices are out there and that tort law may be one way to attempt to deal with them, especially in the face of economic concentration, government deregulation,³⁴ and corporate power gone wild. I also want to recognize that the demonization of plaintiffs and plaintiffs’ attorneys can serve some powerful interests. As the editors of *A Documentary Companion to A Civil Action* put it:

The word *litigation* has itself taken on increasingly pejorative connotations to many Americans. To some, this negative view of the legal system is a natural reflection of the excessive costs of formal adjudication and the frequency with which people rush to courts to resolve disputes of all kinds. Others think it results from a carefully orchestrated campaign by powerful, self-interested groups to limit access to the court and discredit litigation as a means of bringing large private institutions to account. Commentary on *A Civil Action* has reflected both these views. (724)

Later in his essay Engel returns to this question of responses to American tort law and public attitudes (often highly gendered) toward those who use it to pursue remedies for their injuries, and he argues that many voices in the United States still express the view that “It is unmanly and socially destruc-

tive to demand compensation for physical harms, and it is fraudulent, or at best unseemly, to seek a remedy for injury to incorporeal, emotional, or psychological aspects of the personality” (15). Yet, Engel argues, alternative discourses exist:

For example, some perceive a claim for damages as an effort to curb the injurer’s socially destructive behavior as well as an attempt to make the injured person “whole.” In a just society, according to this view, injurers should be called to account for their actions, and rights should be vindicated, so that the deterrent effects of legally enforced remedies will produce a safer society for all. Remedy seekers, according to this alternative perspective, are not socially destructive. They reduce the level of risk in society generally and curb the injurious behavior of careless actors. (16)

Once again it would be difficult to find a more succinct description of the ethos of a cinematic representation, this time the ethos of *A Civil Action*. Although the personal injury lawyer is initially presented as a shyster and ambulance chaser, arguably portrayed with even less sympathy than the one in *The Sweet Hereafter*, the plaintiffs in the Woburn case are presented as principled rather than greedy, motivated not by money but by the need for an acknowledgment of responsibility from the corporations whose carelessness contaminated the water and caused the injuries they suffered. They are also represented as concerned with more than compensation for their injuries; they are interested in securing the cleanup of the Aberjona aquifer and preventing further destruction of the environment.³⁵

To the extent that *A Civil Action* presents this alternative view of the plaintiffs in personal injury lawsuits while simultaneously presenting some of the obstacles they will encounter in attempting to address environmental issues through the traditional torts system, it serves an important purpose. To the extent that it mystifies the legal process or posits an individualist response to corporate power it will be less successful from the perspective of those who wish to challenge that power. The extent to which it does either, however, cannot be derived from textual analysis alone, but only by the addition of a study of the film’s reception. It is to this reception I now wish to turn.

“Bruised at the B.O.”? Some Notes on Marketing and Reception

There is a certain irony to the fact that the art film *The Sweet Hereafter* presents an arguably more conservative view of torts litigation than the Hollywood film produced by a major conglomerate. But there is some suggestion that the corporation ultimately responsible for *A Civil Action*, Disney, wanted to run away from the film’s more radical implications. One of the earliest reviewers of the film, Emanuel Levy in *Variety*, noted the challenges the company would have “in marketing an intricately structured film that is downbeat, lacks clear-cut heroes and villains, and is imbued with moral ambiguity in its dissection of the legal profession, corporate ethos, and the disparity of the American class structure, a painful issue avoided by most mainstream movies.”³⁶ My title for this section, “Bruised at the B.O.,” is a phrase taken from an article published in *Variety* somewhat later about the struggle between Disney and various environmentalist groups over the marketing of the film, and the studio’s fear that the film would suffer at the box office because of its embrace by activists wishing to use the occasion of the film’s premiere to draw attention to health and environmental issues.³⁷ According to the author of this piece, Bill Higgins, Disney wanted the film to be seen “as a John Grisham–like courtroom drama where John Travolta stars as a crusading attorney,” while “environmentalists see it as a tale of toxic chemicals and childhood leukemia”: “Offered the choice between selling John Travolta and selling children with leukemia, Disney made the obvious choice: the film’s ad campaign has more to do with Travolta’s sincere, double-breasted suit than it does with sick kids.” Hence the blurb I read on the poster when I saw the film at a theater, and the fact that the jackets for both the video and DVD versions of the film stress the stars and their performances and the genre of the “legal thriller,” with nary a mention of the health and environmental issues on which this “legal thriller” is based.

But perhaps this aspect of the film’s marketing campaign backfired, because some who were expecting a legal “thriller” were disappointed, and some of those who were disappointed were journalistic film reviewers whose dashed expectations in turn may have turned away the “everyday Joes” the studio was so afraid of alienating with an “issue movie.”³⁸ One review noted

that “the film’s attention to the known facts is ‘both its strength and its undoing’ because the trajectory of events does not always make for gripping drama,”³⁹ another that there is “nothing exciting in it,”⁴⁰ and a third “that the story is true . . . doesn’t, I’m afraid, make ‘A Civil Action’ any more satisfying dramatically. . . . Unfortunately, the big confrontation between Duvall and Travolta that the entire movie appears to be working toward never arrives. . . . I think one can safely state that a movie that reaches a climax with the hero writing a letter to the Environmental Protection Agency has landed in a certain amount of trouble.”⁴¹

This last comment in particular points to the persistence of the paradigm Ray identified in fifty years of Hollywood cinema, and the frustration it evokes in certain spectators when its conventions are violated. Although earlier I emphasized the adherence of *A Civil Action* to that paradigm, its deviations from the model are also significant. For example, in most of the real and disguised westerns Ray discusses, the hero is outside the law, an institution associated with either the “official hero” who is ineffectual or the villain who wields it in the name of greed and injustice. Extralegal (usually violent) means must be employed in order to achieve a just solution. Although *A Civil Action* does conform somewhat to this pattern (Schlichtmann is depicted as an outsider to the world of corporate boardrooms and Ivy League-educated corporate attorneys), its hero is still a lawyer, attempting to achieve justice through the legal system. Instead of culminating in some singular act of heroism or cathartic violence, the film ends with an ambiguous accomplishment at best, perhaps leading to the perception that the “big confrontation [between the hero and the villain] never arrives.”

Running through the reviewer comments cited above as well is the notion that the nonfiction basis of the movie was somehow at odds with its ability to be satisfying dramatically, but others found it a refreshing source of innovation. Anthony Chase, for example, in an essay that is the most extensive discussion of the film I have seen in a legal journal to date,⁴² situates the film within a subgenre of the crime or legal drama he calls “tort law film” or “civil action cinema.” Arguing that “the master discourse of tort cinema” was established in four films, *The Verdict*, *Class Action*, *Philadelphia*, and *The Rainmaker*, made between 1982 and 1997, Chase describes its generic conventions: its focus on torts, or noncriminal wrongs; its young hero or aging,

disillusioned warrior; the “how I almost didn’t get the client scene,” in which the heroes almost pass up the case of a lifetime, the big case that “moves gradually from the periphery of consciousness to the very center of their being”; the villainy of corporate power, and the way in which “justice in a particular case, economic survival, professional prestige, personal salvation, and the credibility of the legal system itself, all hinge on [the] heroic struggle to see that the rule of law prevails” (948–52). *A Civil Action*, Chase argues, “picks on the same culprit as other mainstream tort films: corporate America,” and to a certain extent “obeys the rules of the master discourse or genre code,” but with one crucial difference: “In *A Civil Action*, unlike the other films, the bad guys win.” For Chase,

If most Americans have to depend on *tort law* to enforce their interests against corporate capitalism, they have not got a chance. That, I think, is the meaning of *A Civil Action*, and that is not something which can readily be fit into the reigning tort film paradigm. . . . So, in this sense, *A Civil Action* does indeed cause a new wrinkle in the otherwise smooth fabric of the tort film genre. (955)

And it is a wrinkle he attributes in part to the nonfictional source material that was the film’s basis. Chase writes, “In this case, a non-fiction source helped replenish, indeed change the stock, piling up in the great storehouse of (tort cinema’s) narratable forms. That is exactly how all literary and cinematic genres change over time, reflecting new, and sometimes bitter realities” (955). And so, in spite of Disney’s attempts to control the film’s marketing and thereby restrict its meaning to the notion that “one dedicated soul can make a difference,” environmental activists saw its meaning in its ability to publicize the continuing effects of contaminated water and toxic pollution, and a law professor saw its meaning in its deviation from generic conventions and its presentation of the inability of tort law to defend the interests of ordinary citizens against the abuses of corporate capitalism. As another executive quoted by Higgins in his *Variety* article put it, “When you have a movie with a budget like this, you need to control the message very, very tightly. If you let it get out by itself, you run into a hideous problem of not knowing what the ramifications of the appeal to a particular group might be.”⁴³

But Disney, environmentalists, and law professors were not the only ones to put forward their bids for interpretation of *A Civil Action*. Because of the

hybrid nature of the docudrama form, I would argue, the reception of the film was shaped by two other kinds of responses. The first invited corrective criticism from the real-life participants in the events the film depicted (or omitted). These circulated both locally and nationally, in articles such as “Loved Ones and Lawyers Revisit Painful Ground: The Real People of ‘A Civil Action’ Try Moving On” in *Newsweek* and “For Woburn Families, Emotions Run the Gamut” and “Defense Lawyers Defend Judge Skinner” in the *Boston Globe*. I have already discussed some of these responses (see notes 10, 20, 22, and 23) in passing: the Woburn plaintiffs wished that more of their stories were depicted in the film and/or criticized the focus on Schlichtmann as savior; and the defense attorneys objected to the representation of Judge Skinner as unduly biased in their favor. These articles also offered the participants a chance not only to “set the record straight,” as it were, but to put forward their own readings of the film. In interviews in the *Boston Globe*, several of the former Woburn plaintiffs wished the movie well in spite of their reservations about it, hoping that “the film encourages people to act as they did. Speaking up when they find something wrong and not backing down to corporations that pollute.”⁴⁴ Defense attorneys, on the other hand, offered their view that, contrary to its representation in the film, the legal system worked as it should in the Woburn case and that the corporations were not responsible for the injuries these people suffered.⁴⁵

The second type of response the film elicited, related to the first, thematized the fact that the film raised again issues and conflicts some of the participants wanted to forget. Articles such as “Bad Blood: A Lawsuit’s Bitter Legacy; Disney’s ‘Civil Action’ Revisits an Irretrievably Poisoned Past” in the *Washington Post*⁴⁶ and “W.R. Grace Takes on ‘A Civil Action’: Company Goes on Offensive after Film Dredges up Pollution Case” in the *Boston Globe*⁴⁷ review what was at issue in the trial, the difficulties in demonstrating that the contaminated groundwater reached the wells and that it caused the plaintiffs’ injuries, and they offer the companies, Schlichtmann, and environmentalists a chance to discuss the ways in which developments since the trial might support or challenge the movie’s representation of the Woburn case.

The *Globe* article especially, as is apparent from its title, focuses on W.R. Grace’s⁴⁸ attempts to influence its representation in the film both before and during its production, and, when those attempts were unsuccessful, the ac-

tions it took to influence the film's reception. According to this article, the company began to lobby executives at Disney's Touchstone Pictures as soon as they learned that Robert Redford had purchased the rights to Harr's book. "We wanted to make sure they understood that a lot has happened since 1986, and that the book isn't necessarily the whole story," Grace's director of communication is quoted as saying. They also asked to read the script and view the film in advance, requests the studio denied.

When the film came out, therefore, it was viewed as a "crisis," a "publicity nightmare," the "flip side of the positive exposure" a company hopes to get through product placement. They had no choice but to "mount an offensive,"⁴⁹ "a broad lobbying effort to convince the media of that which it could not convince a jury of in 1986: that Grace was not responsible for contaminating two key wells in Woburn, Mass."⁵⁰ These articles, although news stories that also contain other voices, are part of that offensive. But I would like to focus on that part of Grace's public relations efforts in which they need not depend on the good will of a reporter, or contend with other perspectives: the web site they created in response to the film's release.⁵¹

"Beyond a Civil Action: Woburn Issues & Answers," although launched in response to the film, appears to be more comprehensive: it includes seven sections, "The Facts," "The Environment" (which includes an "informal discussion" with director of environment, health, and safety and assistant general counsel for W.R. Grace, Mark Stoler), "The Book," "The Movie," "Links," "Search," and "Press Room." The web site adopts two main strategies throughout to combat the damage to the company's image done by the film: emphasizing Grace's environmental efforts since the period depicted in the film (literally "beyond" *A Civil Action*), and emphasizing the partial and selective nature of the representations of the company and the trial in Harr's book and the Disney film. What interests me here is that neither strategy addresses nor critiques the representation of events in the film directly.

For example, the section on the movie begins with a brief description of the film, but then immediately moves to the first strategy: "In the 12 years since the Woburn environmental trial, a lot has changed and much has been learned. Grace has been called '*one of Woburn's model corporate citizens*' by one Boston reporter."⁵² It continues, "A lot more is known about groundwater and river flow and possible sources of contamination. And the more

we know, the more apparent it is that the litigation shone light on only a small portion of Woburn's environmental history." So what *is* the portion of Woburn's history that the litigation left out, inquiring minds want to know. But we don't find out. Instead, this statement provides a segue to the second strategy, pointing to the selectivity of the film's representation:

But this is not what millions of viewers of the Disney movie are likely to see dramatized. As any astute moviegoer realizes, by the time a story leaves Hollywood, it may be a long way from the reality that inspired it.

Beatrice attorney Jerome P. Facher, who is portrayed in the movie by Robert Duvall, expects the worst. In a conversation with reporter Dan Kennedy of the *Boston Phoenix*, Jonathan Harr recalls Facher calling the movie version of the Woburn trial "*the fourth degree of separation*," understanding that with each level of removal, the resemblance between what is seen on the screen and what may have actually happened grows dimmer and dimmer. First come the actual events, then the trial's version of events, then the author's version and now the filmmaker's viewpoint.

The italicized phrase, "the fourth degree of separation," provides a hyperlink to the article alluded to in the above paragraph, that is, an article by Dan Kennedy in which Harr recalls Facher's comment about the movie. But those that actually read this article⁵³ discover that about the only thing it has in common with Grace's perspective is an agreement about the partiality and situated nature of *any* representation. Kennedy's article, written on the occasion of the film's production on location in and around Boston, is actually about the author's dismay that the film was turning the real-life Schlichtmann, whom Kennedy, who covered the trial for the *Woburn Daily Times Chronicle*, perceived as a tenacious but arrogant and inexperienced bumbler, into a celebrity: "Arrogance cost Jan Schlichtmann the victory he sought in the Woburn toxic-waste trial 11 years ago. But never mind. Now Hollywood's *Civil Action* is turning him into a winner."

If anything, one could come away from this article with a firmer conviction of Grace's legal liability than if one hadn't read it. For example, we learn that "W.R. Grace, which operated a factory that manufactured food-processing equipment, and which used solvents to clean machinery and to thin paint," was one of three companies "identified by the US Environmental Protection Agency as being responsible for polluting the wells," that Facher

undermined the credibility of Schlichtmann's witnesses "so effectively that he not only destroyed Schlichtmann's case against Beatrice, but seriously damaged the case against Grace as well—even though Grace employees and ex-employees admitted they had used trichloroethylene and dumped it out in back of the plant," and that "the jury exonerated Beatrice, but found that Grace had negligently polluted the wells." In short, by arguing that Schlichtmann blew the case, Kennedy more than implies that he had a case against Grace to blow.

So what exactly is going on here, and why would W.R. Grace provide a link to *this* article in its attempts to improve its image? The company may be assuming that most people won't actually pursue the link, a risky strategy since clicking on a hyperlink is certainly easier and quicker than tracking down a reference the old-fashioned way to determine whether a reference actually supports or refutes the company's claim.⁵⁴ Or they may be hoping that the common point about the difference between representation and reality will carry the day.

But this brings me back to corrective criticism, and my desire to question the notion that appeals to agreed-upon historical facts or other versions of those historical facts only serve as minor diversions from the main show: drawing attention to the partiality or constructed nature of any and all representations. The latter is not enough—and this example shows it—in a world where not only film scholars but also corporate publicists easily do it to serve different ends. Pointing out precisely *how* and *why* those representations are partial and in whose interests they serve can make a difference in the reception of popular culture and hence ideas about the law, and in the case of the docudrama, appeals to reality or alternate versions of that reality may sometimes help us to do just that. These appeals enable us both to recognize and to demonstrate more readily the stubborn persistence of limited paradigms for encoding experience, and they give voice to the counternarratives of those whose stories are most often elided or ignored. Such a version of "corrective criticism" might offer film spectators something other than skepticism about the nature of representation in general: it might offer some evidence upon which to exercise judgment about the adequacy of particular representations and how they function in our world.

Notes

The earliest version of this chapter was written for a web site presenting arguments for the plaintiffs' case in *Anderson et al. v. Beatrice Foods et al.* for an Evidence class taught by Professor Charles Nesson in January of 1999. At the time, I was auditing as a Liberal Arts Fellow at Harvard Law School. I come to this work, then, primarily as a film scholar who has some experience formally studying law. I wish to thank the organizers and participants in the Law's Moving Image conference for their comments on the draft presented there. Special thanks go to Cynthia Bond and to Jennifer Mnookin, both of whom provided especially useful detailed observations.

1. David A. Black, *Law in Film: Resonance and Representation* (Urbana: University of Illinois Press, 1999). Specific page references will appear parenthetically in the text.

2. W.R. Grace and Co., "Beyond a Civil Action: Woburn Issues & Answers," <http://www.civil-action.com>, 1999.

3. Jonathan Harr, *A Civil Action* (New York: Random House, 1995; first Vintage Books edition Sept. 1996). Page numbers refer to the Vintage Books edition.

4. However, I do think there are ethical and legal issues involved in representing real people, especially real people who are still alive, but that is the subject for another paper.

5. Dudley Andrew, "Adaptation," in *Concepts in Film Theory*, reprinted in *Film Theory and Criticism: Introductory Readings*, 5th ed., ed. Leo Braudy and Marshall Cohen (New York: Oxford University Press, 1999), 452–60.

6. See, for example, David Rosenberg, "The Causal Connection in Mass Exposure Cases: A 'Public Law' Vision of the Tort System," *Harvard Law Review* 97, no. 4 (1984): 851–929; Robert Rabin, "Environmental Liability and the Tort System," *Houston Law Review* 24 (1987): 27–52; and Kenneth S. Abraham, "Individual Action and Collective Responsibility: The Dilemma of Mass Tort Reform," *Virginia Law Review* 73 (1987): 845–907. Comments on this chapter by several participants at the Law's Moving Image conference, especially Lawrence Douglas and Orit Kamir, pointed to the narrative of individualism in the law as well as film and sent me in search of this literature.

7. Some of this language is very similar to that on the back of the first Vintage Books paperback edition.

8. Robert Ray, *A Certain Tendency of the Hollywood Cinema* (Princeton, N.J.: Princeton University Press, 1985); and Leslie Fiedler, *Love and Death in the American Novel* (New York: Stein and Day, 1966).

9. Harr makes no bones about his access to the plaintiffs' legal team and the ways

in which this shaped his narrative. See, for example, Harr, "A Note on Sources," in *A Civil Action*, 495–97; Harr's presentation at the January 30, 1999, Lessons from Woburn Project conference at Harvard Law School, video archive, <http://www.acivilaction.org>; and his introduction in Lewis A. Grossman and Robert G. Vaughn, eds., *A Documentary Companion to A Civil Action*, revised edition (New York: Foundation Press, 2002), xi–xiii.

10. This is a point made by some of the participants themselves. See, for example, Anne Anderson's comments, "I think the picture portrays us as a rather sorry lot . . . like a poor group stuck in a blue-collar mentality. And it makes Jan into a sort of Mighty Mouse who comes in to save the day. It wasn't really like that. I'd done a lot of work before Jan ever arrived on the scene. The movie makes us out to be a lot less than we are. I think we were better people than that" (quoted in Ken Shulman, "Loved Ones and Lawyers Revisit Painful Ground," *Newsweek*, Jan. 11, 1999).

11. The judge divided the trial into distinct phases. First, the jury was to decide whether the defendants had dumped the toxic chemicals into the groundwater and the groundwater reached the wells that provided the families' water supply. If they answered in the affirmative, they would proceed to the next phase, where they would decide whether those actions caused the plaintiffs' injuries. Again, only if they decided in the affirmative would they proceed to the next phase, a determination of damages. See Harr, *A Civil Action*, 285–88; and Grossman and Vaughn, *A Documentary Companion*, 528–40.

12. Carol A. Clover, "Judging Audiences: The Case of the Trial Movie," in *Reinventing Film Studies*, ed. Christine Gledhill and Linda Williams (London: Arnold, 2000), 244–64.

13. The partners discuss the fact that the drinking water contained a chemical the Environmental Protection Agency called a "probable" carcinogen, a term described as "a euphemism for unproven," thus making the case "a loser financially." For legal analyses of the difficulties of demonstrating causation in cases of this nature and the financial disincentives to plaintiffs' lawyers, see the articles in note 6.

14. This does appear to be an example of what Clover describes as "the double-trial structure . . . fundamental to trial narratives," where films "typically mount a second, unofficial trial on the legal system's ability to serve the . . . victims of . . . crimes" (Clover, "Judging Audiences," 252). The corrupt or ineffectual nature of the law is also, of course, a characteristic of the broader pattern identified by Ray in the real and disguised westerns of the classic Hollywood cinema.

15. Ray sees this "reluctant hero" motif as one of the ways in which Hollywood narrative attempts to reconcile individualism with the need for collective action: the private man attempts to keep from being drawn into action except on his own terms

and only on a temporary basis (Ray, *A Certain Tendency*, 65). In an article in which he situates *A Civil Action* in a genre he refers to as the torts film genre or civil action cinema, Anthony Chase refers to this as the “how I almost didn’t get the client scene,” a staple of the genre, which includes films such as *The Verdict* (1982), *Class Action* (1990), *Philadelphia* (1993), and *The Rainmaker* (1997). See Anthony Chase, “Civil Action Cinema,” *Law Review of Michigan State University–Detroit College of Law* (1999): 945.

16. See Harr, *A Civil Action*, 74–75.

17. See, for example, David Bordwell, Janet Staiger, and Kristin Thompson, *The Classical Hollywood Cinema: Film Style and Mode of Production to 1960* (New York: Columbia University Press, 1985).

18. Michael Fumento, “Disney Pollutes,” *Forbes*, Dec. 28, 1998, 52. Grossman and Vaughn also refer to a *Wall Street Journal* editorial that criticized the use of Harr’s book as a law school teaching device, “bemoaning the fact that ‘we must prepare for a generation of grads that makes the ambulance chaser its hero’” (“Uncivil Action,” *Wall Street Journal*, Jan. 11, 1999, A22, cited in Grossman and Vaughn, *A Documentary Companion*, 724).

19. I wonder to what extent this is an intertextual reference to Bill Clinton’s “I feel your pain,” playing off the connection with the prevaricating, womanizing politician Travolta played in *Primary Colors*. Schlichtmann himself alludes to this connection in a lecture he gave at Seton Hall University Law School: “Anyway, when John Travolta was finished playing this two-timing, two-faced politician, a fictional character, of course, they said, ‘have we got a part for you; this Schlichtmann guy’” (“Perspective: Law and the Environment: Reflections on Woburn,” *Seton Hall Legislative Journal* 24: 265). J. Hoberman also points to “a vaguely Clintonian feel to the war between Travolta’s cocksure, crypto-Democrat ambulance chaser and Robert Duvall’s eccentric, if Republican-respectable, Harvard law prof” (“The Wars Within,” *Village Voice*, Dec. 29, 1998, 117).

20. Schlichtmann represented this group in a case involving the denial of a parade permit before Judge Skinner, the judge in the Woburn proceedings, who ruled in the plaintiffs’ favor (see Harr, *A Civil Action*, 106–7). Harr offers this incident as an indication that Skinner remembered Schlichtmann and was favorably disposed toward him. This, too, would complicate the film’s representation of events, particularly its representation of the judge (played by John Lithgow). The representation of Skinner as unduly biased in favor of the defendants’ attorneys was one of the most highly contested aspects of the film (see, for example, Judy Rakowsky, “Defense Lawyers Defend Judge Skinner,” *Boston Globe*, Jan. 7, 1999, B4), and not just by the defense attorneys or those favoring the defendants. See also Dan Kennedy, “Woburn Toxic

Waste Trial: Judge Has Reputation for Fairness,” *Woburn Daily Times Chronicle*, Mar. 7, 1986, reprinted in Grossman and Vaughn, *A Documentary Companion*, 147–50; Dan Kennedy, “Don’t Quote Me: Take Two,” *Boston Phoenix*, Jan. 1–8, 1998; and Kennedy’s remarks at the Lessons from Woburn conference cited above.

21. This may be a special feature of the legal film in which the hero is a lawyer, as opposed to that in which the hero is an outsider to the law. See, for example, Norman Rosenberg’s analysis of *Call Northside 777*, in which some type of visual evidence trumps “the ways of seeing and knowing traditionally employed by the legal system” (“Law Noir,” in *Legal Reelism: Movies as Legal Texts*, ed. John Denvir [Urbana: University of Illinois Press, 1996], 287).

22. As mentioned above, when the film premiered in Boston I was auditing Nesson’s Evidence class. Nesson suggested another reason for his elimination, in addition to the need to pare down a complex story: since Facher (the film’s main antagonist) and Eustis (Grace’s executive vice president and corporate counsel) were the “bad guys” associated with Harvard, it would complicate matters considerably to introduce a character who was one of the good guys and was also associated with that institution. Part of what the film explores thematically is what one reviewer has referred to as “the sharp hierarchy that prevails within the legal profession: the prestige of the school one attended (Harvard vs. Cornell), the selectivity of private clubs, [and] the contempt for personal injury lawyers as ‘ambulance chasers’” (Emanuel Levy, “A Civil Action,” *Variety*, Dec. 21, 1998–Jan. 3, 1999, 73). If this is the case then it would complicate matters to suggest that one might use the power and prestige of a tenured professorship at Harvard in the service of the plaintiffs.

23. See Harr, *A Civil Action*, 34. I believe this is what is alluded to in a *Boston Globe* story on the Woburn families’ responses to the film: “Robbins said she had hoped the families would be seen more in the movie, which focuses on the lawyers in the case. She also wished the film were more accurate in its portrayal of her. The writers gave a highly emotional line to the Anderson character that, in reality, was said by Robbins” (Doreen Iudica Vigue, “For Woburn Families, Emotions Run the Gamut,” *Boston Globe*, Jan. 7, 1999, B4). This example gets into the ethical dimension of docudrama filmmaking I alluded to in note 4.

24. See, for example, David Ansen (“‘A Civil Action’ is one movie that could have been longer”), “A Civil Action,” *Newsweek*, Dec. 21, 1998, 67; Kent Jones (“events are severely telescoped”), “A Civil Action,” *Film Comment* (Jan./Feb. 1999): 76; and Peter Travers (“Events are condensed and sometimes egregiously simplified. . . . We want to know more, but there’s no time”), “A Civil Action,” *Rolling Stone*, Jan. 21, 1999, 84.

25. Again, see the essays in note 6, especially Rosenberg, for a discussion of some of these issues in scholarly legal literature.

26. The phrase “cynic’s redemption” comes from Hoberman, who sees a similar theme in *Schindler’s List*, also written by Zaillian.

27. Harr, *A Civil Action*, 494.

28. David M. Engel, “Injury and Identity: The Damaged Self in Three Cultures,” in *Between Law and Culture: Relocating Legal Studies* (Minneapolis: University of Minnesota Press, 2001), 3–21. Further page references to this work will appear parenthetically in the text.

29. Levy, “A Civil Action,” 73. Levy’s focus is not, however, on the films’ contrasting representations of personal injury litigation, but on *A Civil Action*’s failure to depict what he found so poignant about Egoyan’s film, “a portrait of the community at large.” See Austin Sarat, “Imagining the Law of the Father: Loss, Dread, and Mourning in *The Sweet Hereafter*,” *Law and Society Review* 34 (2000); and Michael Shapiro, *For Moral Ambiguity: National Culture and the Politics of the Family* (Minneapolis: University of Minnesota Press, 2001), especially 79–88.

30. In a review of the film in a legal studies journal, Robert Waring cites a *Fresh Air* interview with Banks on National Public Radio in which the author describes writing the book “after interviewing residents of a small town in South Texas who lost their children in a school bus crash. Banks realized that two events tore the town apart: the crash and the litigation which followed. He set out to write a novel illustrating the American obsession with explaining inexplicable tragedies, drawing on his personal experience with the loss of a brother in a train accident three decades before” (Waring, “Film Commentary,” *Legal Studies Forum* 24 [2000]: 301, 312–13).

31. Here Sarat is invoking Judith Shklar’s distinction between a misfortune, “a dreadful event . . . caused by the external forces of nature,” and an injustice, an event “brought about by an ‘ill-intentioned agent’” (Shklar, *The Faces of Injustice* [New Haven, Conn.: Yale University Press, 1990]).

32. The phrase comes from Sarat.

33. Some of these difficulties include: the financial burdens on plaintiffs’ attorneys of conducting scientific tests and hiring expert witnesses to attempt to prove some action of the defendants caused the plaintiffs’ injuries; the lag time between those alleged actions and the manifestation of the symptoms of illnesses; scientific uncertainty as to the exact causes of diseases such as cancer and leukemia, which does not translate well into legal standards of causation; and the reluctance of courts to accept statistical over particularistic evidence. Again, see the essays in note 6 for a discussion of these difficulties and the ways in which a system predicated on actions between two individuals is inadequate to deal with them.

34. In the early 1980s, the period in which the Woburn action commenced, for example, the EPA’s budget and staff were cut drastically.

35. This is the reading of Robert Waring, who argues: “The film is compelling in

part because it tells the story of a group of people trying to do the right thing, correct the harm done by a polluter, gain an apology for the victims and inflict a monetary punishment that will deter future wrongdoing. In spite of the plaintiff's [sic] tactical miscalculations, the film may actually improve the public image of the plaintiffs' bar" (310).

36. Levy, "A Civil Action," 73. He might also have mentioned "no romance."

37. Bill Higgins, "Disney in an Uncivil Action with Activists," *Variety*, Jan. 11, 1999, 6.

38. "It has to be a star-sell or you don't have a shot," an executive from another studio is quoted as saying. "No one's going to see an issue movie about dying babies." And similarly, "the elite groups that deal with issues are not the ones who buy movie tickets. . . . If you make something look highbrow and something that the environmentalists are embracing, you can turn off the everyday Joe from wanting to see the picture" (quoted in *ibid.*, 6).

39. This is a quote from a summary of a review by James Cameron Wilson, *Film Review* 581 (May 1999): 27, from the International Index to the Performing Arts Full Citation service.

40. Gregory Valens, "Current Events: From A to Z Notes on Films: 'Prejudice' ['A Civil Action']," *Positif—Revue mensuelle de cinema* 459 (May 1999): 52–53. The quotation and translation also come from the International Index to Performing Arts Full Citation service.

41. David Denby, "Tough Cases," *New Yorker*, Jan. 11, 1999, 95.

42. See also Waring, "Film Commentary," 309–10, for a discussion in a legal journal that focuses on the film itself. Waring, incidentally, finds the conclusion of the film, where Schlichtmann sends his case files off to the EPA, one of its most "noteworthy moments," in contrast to considering it a boring denouement, as described by David Denby. Most other references to the film I have found in legal writing use the film as a springboard for a discussion of the issues it raises, a tendency David Black has noted in most of the legal writing on film (see Black, "Legal Scholarship Looks at Film," 109–40, in *Law in Film*). One writer, for example, uses *A Civil Action* and *Erin Brockovich* to propose a different approach to groundwater contamination, strict products liability theory (Jim Gash, "Beyond *Erin Brockovich* and *A Civil Action*: Should Strict Products Liability Be the Next Frontier for Water Contamination Lawsuits?" *Washington University Law Quarterly* 80 [Spring 2002]: 51); several others use the film to discuss legal ethics (Marianne M. Jennings, "Moral Disengagement and Lawyers: Codes, Ethics, Conscience, and Some Great Movies," *Duquesne Law Review* 37 [Summer 1999]: 573; Elaine D. Pappas, "Legal Ethics: Lawyers' Duties to Clients and Clients' Rights and the Media—Teaching Legal Ethics Using a Media Studies Lesson Plan," *Nova Law Review* 24: 701). Jan Schlichtmann

himself uses the film to tout the advantages of alternative dispute resolution over litigation (Jan R. Schlichtmann, Esq., "Perspective: Law and the Environment: Reflections on Woburn," *Seton Hall Legislative Journal* 24: 265), and another writer alludes to it in order to praise Schlichtmann as a risk taker and his efforts as a creative moment in environmental law (William H. Rodgers, Jr., "The Most Creative Moments in the History of Environmental Law: The Who's," *Washburn Law Journal* 39: 1). See also the Lessons from Woburn Project web site, whose goal is "at once to open a public dialogue on the moral and political issues raised by the book and movie versions of *A Civil Action*, and to use both the book and movie as tools to teach multiple levels of law to many people—from those who want to know what a civil action is to law students who need to know how to file one"; and *A Documentary Companion to A Civil Action*, which uses the interest generated by the book and the movie to teach civil procedure.

43. Higgins, "Disney in an Uncivil Action," 6.

44. Vigue, "For Woburn Families, Emotions Run the Gamut," B4.

45. See Rakowsky, "Defense Lawyers Defend Judge Skinner," B4, and Shulman, "Loved Ones and Lawyers Revisit Painful Ground," 64.

46. Sharon Waxman, "Bad Blood: A Lawsuit's Bitter Legacy; Disney's 'Civil Action' Revisits an Irretrievably Poisoned Past," *Washington Post*, Dec. 28, 1998, C01.

47. Steven Wilmsen, "W.R. Grace Takes on 'A Civil Action': Company Goes on Offensive after Film Dredges up Pollution Case," *Boston Globe*, Jan. 12, 1999, C1.

48. These articles focus on W.R. Grace because Beatrice no longer existed at the time the film came out, according to Waxman, "bought and dismantled by corporate raiders in the '80s."

49. Wilmsen, "W.R. Grace Takes on 'A Civil Action,'" C16.

50. Waxman, "Bad Blood," C01.

51. Wilmsen says that the company launched the web site in November 1998; the version I accessed and am using in my discussion, "Beyond a Civil Action: Woburn Issues and Answers," <http://www.civil-action.com>, was copyrighted by W.R. Grace in 1999.

52. The italicized portion is supposed to provide a link to a specific article, but I could not access it.

53. Dan Kennedy, "Don't Quote Me: Take Two," *Boston Phoenix*, Jan. 1–8, 1998.

54. Thanks to Jennifer Mnookin for suggesting this line of reasoning to me.

“Everyone Went Wild over It”: Film Audiences, Political Cinema, and *Mr. Smith Goes to Washington*

ERIC SMOODIN

On 25 November 1939, Helen McMullin felt compelled to send Frank Capra a postcard after seeing his new film, *Mr. Smith Goes to Washington*, at Radio City Music Hall in New York. She wrote the director that she had attended a Sunday matinee, and “we had to stand for two whole hours before we could see the show.” The wait was worth it, because “everyone went wild over it.”¹ Indeed, Mrs. McMullin only confirmed what so many fans had been telling Capra since *Mr. Smith* went into general release in the fall of 1939. According to Capra’s fan mail, the film generated intense excitement, something not necessarily unusual for a major Hollywood film during the 1930s. Capra’s own *It Happened One Night*, from 1934, produced an even greater number of ardent fans, and other films, including another from 1939, *Gone with the Wind*, occasionally produced deeply felt viewer responses. But we tend to think of movie fans from the 1930s as responding in direct proportion to a film’s escapism—the more fluff the better. The response to *Mr. Smith*, though, demonstrates that a significant number of fans looked for films that dealt seriously with serious issues. The fans who wrote to Capra were excited by the representation of the law itself, and by the film’s depiction of a meaningful and constitutional people’s democracy.

Mr. Smith Goes to Washington tells the story of a political novice, played by James Stewart, a do-gooder from an unnamed but vaguely Midwestern state who is appointed by the political machine to serve out the last few months of the term of a senator who has died suddenly. He unknowingly goes to Washington as a stooge, but through the force of his goodness, common sense, and grit (and the immense help of his secretary, played by Jean Arthur), he exposes the corruption that controls Congress. Along the

way, Smith learns lessons about senatorial practice, crafting bills, the constitution, and the art of the filibuster. In other words, the film amounts to an extended civics lesson. Capra, a renowned collector of rare books, and Sidney Buchman, his extremely accomplished screenwriter, almost certainly based the story on Trollope's *Phineas Finn*, but the naïf, instead of going to Parliament to learn the hard realities of politics, is sent to Congress.

The film is a scene-by-scene primer in American law, both state and federal: it informs viewers about the rules that govern Senate debate (particularly who yields to whom, and when), the role of the filibuster, how a senator can be appointed by a governor, and how a bill becomes law, among other things. One could quite reasonably analyze the manner in which the film's textual systems present law and government to audiences, or the ways that the *mise-en-scène* represents the law (the exact replica of the Senate chamber, for instance, or the sequences that take place at the Lincoln Memorial). Indeed, this was precisely the project of the *Cahiers du Cinéma* editorial collective in 1970 when they sought to examine the manner in which law and government came to be imbedded in the visual and narrative mechanics of John Ford's great film from 1939, *Young Mr. Lincoln*.² My own project, however, shifts this emphasis. Rather than analyze the representation of the law and government in a film with such an overdetermined interest in such things, I plan to examine the ways that audiences responded to those representations. In other words, my project shifts the question from "what does *Mr. Smith Goes to Washington* tell us about law?" to "how did audiences in 1939 make sense of the movie's arguments about law?"

My materials will be the fan mail that Capra received during the first run of *Mr. Smith*, and that the director deposited with his papers at Wesleyan University. Starting around 1933, Capra received volumes of fan mail, mostly approving but also critical, and he probably stands out as something of an extraordinary case among filmmakers. By the early to mid-1930s, after a number of box office successes and concerted publicity efforts by his employer, Columbia Pictures, he had almost certainly become one of the two most famous directors in the country (probably only Cecil B. DeMille was better known). He was also among a very select group of filmmakers (besides DeMille, Walt Disney comes to mind, and perhaps some of the heads of the studios) who could compete with major movie stars in terms of celeb-

rity and media attention. And because his films were so often understood as national allegories, from *Mr. Deeds Goes to Town* (1936) and *You Can't Take It with You* (1938) to *Mr. Smith* and *Meet John Doe* (1941), fans frequently sought him out, talking to him as to a friend about nosy neighbors, about talented offspring (“my daughter sings like a bird”), and about philosophy and politics.

I am making no claim here that the few hundred fan letters for *Mr. Smith* constitute an unmediated view of the gigantic domestic audience. And, certainly, the letter writers themselves seem aware of the genre of fan mail, and they write according to its accepted tropes: “I have never written a fan letter before,” for instance, or “You probably will never read this, but . . .” Nevertheless, the letters give us a sense of the discourses available in 1939 for talking about the connections between law, politics, and popular culture, and they provide at least some evidence that a portion of the audience was desperate for adult entertainment and eager to talk about adult ideas.

I should add that, at various times, *Mr. Smith* has had vexing relationships with legal systems and institutions. The film premiered in Washington, D.C., in front of an invited audience of members of Congress, a plan that could not have been worse. Senators were horrified at this representation of themselves and their practices, and several of them registered their displeasure by threatening new laws to regulate the film industry, threats that, at least in some small way, contributed to the 1948 Paramount Decision, which served to at least partially dismantle the studio system.³ In 1940, when the film went into international release, the State Department considered banning it from Central and South America. The thinking went that the film presented American systems unfavorably and so could only serve as a bad influence in an area teetering between Allied and Axis sympathies. The State Department finally relented, with officials there realizing that they had better things to do than monitor movies, but this was, in fact, an extremely unusual business for the department to consider in the first place, since its primary role in relation to Hollywood movies was to make sure that they confronted no legal restrictions in foreign markets.⁴

The government got into the act once again in the early 1950s. We know that the FBI persecuted the Hollywood left, but during the Red Scare the bureau also went after the right. Someone as solidly conservative as Capra, who

never voted for Franklin Roosevelt, raised the government's suspicions, largely because of *Mr. Smith*. Capra had been asked to do some overseas goodwill work for the government and so, of course, he had to be investigated. The FBI wanted information about a number of Capra's screenwriters, and especially Buchman, who had written *Mr. Smith* and had, in fact, been a communist. The FBI believed that if Capra had been aware of this, he must have been a fellow traveler. Capra denied knowing anything about Buchman's ideological inclinations at the time the film was made, and said that he and the writer had had an argument about politics in 1940, and the two had stopped talking. Capra added that "it was a great shock to me to hear Buchman refuse to answer the \$64 question before the Congressional Committee." Here, of course, he was referring to the House Un-American Activities Committee's "Are you now or have you ever been a member of the Communist party?" The FBI was not fully satisfied and went on to ask about Capra's charitable donations, implying that he had given to some leftist causes. Capra was outraged and insisted that his donations indicated "a Catholic pattern and a Caltech pattern [Capra's alma mater] but no red pattern."⁵

The evidence, then, indicates that *Mr. Smith* has typically been understood by different groups of viewers as dealing significantly, and in various ways, with the law, with democracy, and with government. As a study of audiences, examining these responses contributes to some of the recent developments in film studies. Over the last twenty years the discipline has taken a renewed interest in movie audiences, in theorizing and historicizing the empirical evidence that viewers have left behind, analyzing the data that tell us who these audiences were and what they watched, and determining where they saw movies. A number of scholars have contributed to this reception studies project; examples include Janet Staiger, who has produced significant work on various aspects of the historical audience; Gregory Waller, who has studied audience and exhibition practices in a single town in Kentucky; and also Jackie Stacey, whose *Star Gazing* examines women's memories of the actresses they watched in Great Britain in the 1940s, '50s, and '60s.⁶ More broadly, scholars have grown increasingly interested in the production of what we might call film culture, in the ways in which fans

learned about movies and experienced them, through fan magazines, or in the context of dish nights, bank nights, and other theater contests and giveaways, or as part of a day of shopping downtown.⁷ In other words, scholars have paid more attention to the public sphere of movies, and somewhat less attention to the movies themselves.

In addition, scholars in a number of disciplines have started taking a closer look at what Michael Denning, in his study of mid-twentieth-century American culture, has called "aesthetic ideologies," the ways in which political identities and affiliations came to be formed around movies, literature, and music.⁸ The dozen years or so from the stock market crash to the United States' entry into World War II seem a particularly overdetermined period for such identities and affiliations, with international economic crises and military expansions, and the domestic development of a wide popular front that might make allies of conservatives like Capra and Marxists like Buchman. It is my intention here to examine the public sphere that developed around *Mr. Smith Goes to Washington*, and the aesthetic ideologies of law, democracy, and justice that the film generated in its fans.

Methodology and the History of Film Studies

There have been changes in material conditions that allow for this sort of project, and for the renewed interest in film reception. Some of the primary materials requisite for audience studies have been available for a long time at sites including UCLA (papers from Twentieth-Century Fox and Paramount and personal collections such as that of animator Walter Lantz), the Library of Congress (invaluable motion picture copyright records), and the New York Public Library (the records of the National Board of Review). We have also seen the opening of a number of archival sources since the early 1980s: the Hays Office censorship files at the Academy of Motion Picture Arts and Sciences Library and extensive Warner Bros. files at the University of Southern California, and the establishment of the Motion Picture Reading Room at the Library of Congress. Thus we now have records of industry censors, exhibitors, studio officials, and fans, all of which help us understand some of the complexities of reception. To the extent, then, that institutional attitudes

toward collections of primary materials can influence intellectual work, these improvements have led to important shifts in film studies scholarship, particularly as they relate to issues of audience.

In part because of the extraordinary documentary evidence that now surrounds the American cinema, a number of film historians have adapted the recent work of such intellectual and cultural historians as Hayden White, Dominick LaCapra, and Natalie Zemon Davis, who have been instrumental in developing what can be called a theory of the textuality of the historical field.

This makes it possible to treat all discursive practices—and for film studies this means fan magazines, theater manager reports, and studio memos, for instance, in addition to films—as worthy of being “read” as texts, creating meaning through interrelationships rather than in isolation. In fact this method of reading has become part of a broad cultural studies project that includes film as well as other disciplines, with such practitioners as Eric Lott in American studies, John Bodnar and Mary Ryan in urban history, and Jane Gaines in such hybrid fields as critical legal theory and film studies.⁹

Applied to the audience this project allows for theorizing and historicizing how films, filmmakers, and the film industry were perceived by movie fans. My own research, a broad project on Capra and his audiences, has been grounded in the everyday artifacts of material history that might provide evidence about spectators—produced by fans, journalists, theater managers, industry censors, and government officials, among others. Guiding methodological principles for current audience studies were enumerated by Edward Buscombe more than twenty-five years ago, although, almost certainly because of a lack of available primary materials, film scholars tended to avoid dealing with Buscombe’s concerns until fairly recently. Discussing some of the textual analyses performed on Hollywood films from the 1930s that claimed to establish the meaning of a film regardless of the interpretive gymnastics required, Buscombe quite reasonably wrote that “surely it would have to be demonstrated that such a reading was available to an audience at the time.”¹⁰ That is, these analyses tended to demonstrate the virtuosity of the scholar rather than the reactions of the film audience.

In adopting Buscombe’s call for a different approach to interpretation, I do not mean to imply that we can ever conclusively reconstruct any film

audience, just as we cannot chart all of the variations of an audience’s interpretation of a film. But we can study a rhetoric of reception; the various discursive forms that articulate possible responses to a movie, such as fan letters; and also those forms that help to shape reception, such as advertising and movie star interviews. By so studying film viewing, I am not trying to indicate that meaning itself is endlessly deferred as we go from a film to a variety of audiences and then to a variety of sources describing both film and audience. Rather, following Ien Ang in her work on the television audience for *Dallas*, I plan to show that reports of response can be read “symptomatically” and that “we must search for what is behind the explicitly written, for the presuppositions and accepted attitudes concealed within them,” so that they come to “be read as texts, as discourses.” In Jackie Stacey’s words, such a reading brings us to a methodology marking the “shift from the textually produced spectator . . . to the spectator as text.”¹¹

A case study of audience desire, preference, and sometimes distaste, as with the fan mail for *Mr. Smith Goes to Washington*, gives us broad insight into the cinema as an institution and film studies as a discipline. Such a case helps us ask questions about meaning and interpretation that center on different viewers rather than on the films themselves. It can also give us a sense of the contours of film culture that extend beyond the theaters that people attended and the movies that they saw. In addition, we can also get a much fuller understanding of the relationships between the cinema and other institutions, in this case the law and its various forms and practices in the United States in the immediate prewar period. And in a study of Capra’s audiences, we begin to understand the complicated interactions between the celebrity and the viewer, the expectations that audiences have for filmmakers, and, at least in the case of a famous director, the special status they grant him and also the familiarity they feel toward him.

I mentioned earlier that the recent interest in audience was actually a renewal of an earlier emphasis in film studies. Indeed, in 1939, the same year that *Mr. Smith* premiered, Margaret Farrand Thorp wrote in one of the significant works of film scholarship from the period that “There are other people who make the movies besides the artists and technicians in Hollywood,” and then added that these were the “eighty-five million Americans [who] go to see a picture every week.” She continued that “In whichever direction jus-

tice lies it is undoubtedly true that no art has ever been so shaped and influenced by its audience as the art of cinema.” So Thorp, a sociologist, began *America at the Movies*, a major scholarly study published by Yale University Press. We can learn a great deal about Thorp’s methodology from the title of the book, and also of its chapters: “Eighty-Five Million a Week” and “What Movie Tonight?” for example.¹² For Thorp, the proper subject for the study of cinema was the audience and the relationships between films, the film industry, and consumers. With this project Thorp was only adding to an important aspect of early-twentieth-century film studies, because as soon as intellectuals began taking the cinema seriously, they focused on issues of audience as often as on meaning, aesthetics, and style. As early as 1909 Jane Addams, in *The Spirit of Youth and the City Streets*, paid far more attention to theaters than to the films themselves, an interest very much in keeping with the era’s reformist concern over the sites of children’s leisure; not only movie theaters but also parks and playgrounds come to mind here.¹³ About twenty years later film had fully entered the academy not only as a humanities discipline related to literature and art, but also as a branch of study related to sociology, with a specific interest in audience activity. The most famous example here, of course, is Robert and Helen Lynd’s study of Muncie, Indiana—the Middletown of their book’s title—in which filmgoing habits and other modern consumer activities received significant attention.¹⁴

Shortly after the Lynds published *Middletown*, issues of reception came to dominate film studies with the publication of research sponsored by the Payne Fund, research that concentrated on the effects of the cinema on children and adolescents. The very titles of some of the studies demonstrated this emphasis: *Motion Pictures and Youth*, *Children’s Attendance at Motion Pictures*, *The Emotional Responses of Children to the Motion Picture Situation*, and *Getting Ideas from the Movies*, for instance.¹⁵ Then, in 1939, Thorp published her sociological study. In something of the apotheosis of these various projects, Leo Handel published *Hollywood Looks at Its Audience* in 1950, a work that still stands out as perhaps the most thorough examination of reception in the United States.¹⁶ Handel produced an incredibly detailed quantitative analysis of the composition of the audience for American films, dependent upon the “Hopkins Electric Televoting Machine,” the “Cirlin Rectograph,” and other machinery with similarly frightening names. Just two

years later, David and Evelyn T. Riesman’s “Movies and Audiences” appeared in *American Quarterly*, the journal of the American Studies Association.¹⁷ The Riesmans called for a much more thorough understanding of the manner in which various audiences interact with the movies they see, but the moment for this kind of research had already begun to pass.

Around this time the intellectual discourses about film started shifting decisively toward more literary concerns, and film studies came to occupy a place in the academy alongside disciplines in the humanities rather than those in the social sciences. The reasons for this development remain unclear, but it may have had something to do with the diversification of English departments during the period, when film became something of a staple. For better and for worse, that is how things stayed until the mid-1970s and early 1980s. Now, at the beginning of the twenty-first century, it makes perfect disciplinary sense to study Capra’s viewers just as closely as Capra’s films, and to read their own texts—the fan letters—as complicated discourses of pleasure, politics, and the place of law and democracy in their lives.

“Our Friends the Ham & Eggers”: The Politics of Identification

It seems many of the fans of Capra’s film were aware of being part of a broad audience for *Mr. Smith*, writing to Capra individually, but speaking, as well, for “the people.” One man wrote to tell Capra that “My wife and I are not movie addicts, seeing only a few pictures.”¹⁸ In fact, in some form or another, fans constantly made the same assertion, that they were not movie enthusiasts in the conventional sense, implying that his films stood out as special events, as something other than movies. The same viewer wrote that he and his wife had been “urged by our friends the Ham & Eggers” to see *Mr. Smith*, and so decided to go. Here, then, we get a sense of the public sphere created by *Mr. Smith*, or, rather, the kind of public sphere to which so many of Capra’s viewers wanted to belong. The fans of *Mr. Smith* were just regular ham and eggers, the various Mr. Smiths and John Does so often celebrated in Capra movies. And, indeed, they sought to identify with characters who represented this same body politic. This particular ham and egger told Capra that “through the eager, honest eyes of Mr. Smith we saw Washington the beautiful, the magnificent.”

This is a kind of identification process that film scholars have failed to study systematically. The psychoanalytic and semiotic film theory of the 1970s usually sought to determine unconscious identificatory practices, but viewers also quite often expressed the kind of conscious model of identification that we find here. In this case, the man and his wife understood that they were seeing events through Mr. Smith's eyes, and that what they were seeing indeed clarified things for them. They, like Mr. Smith, were able to view government and democracy, as signified by the country's capital, as something wonderful.

By far the greatest number of correspondents echoed these sentiments, that, whether or not through Smith's eyes, the film provided representations of law and government specifically, and American ideals more generally. One writer, speaking for herself and her husband, told Capra how rare it was for either of them to compose such a letter. "Professor Mead and I almost never write about a motion picture," she told the director, but then she added that "we have been very much impressed by *Mr. Smith Goes to Washington*."¹⁹ She explained that enthusiasm by saying that "we are especially interested in dramatizing democracy." Indeed, then, for her and for so many other fans, Capra's film constituted not so much a typical Hollywood story, but instead a dramatization of democracy itself, and a narrative of American practices and systems. Like the letter writer above, who extolled the ham and egg, she separated herself from typical American popular culture, saying that "there is too much anti stuff, and concern about various isms," but she told Capra that "you have done something to stir the right kind of emotions in the American audience."

For this viewer, then, movies and other cultural forms were both too negative and too dogmatic, concentrating on the various popular "isms" of the day such as fascism, communism, and capitalism. *Mr. Smith*, on the other hand, stood out as offering the kind of positive lesson viewers needed. Then, celebrating the brand of democratic nationalism that *Mr. Smith* might produce, the writer specified that this was precisely the type of film that Americans needed.

Yet another writer, Mary Clement from Erie, Pennsylvania, sent an extraordinary sixteen-page handwritten document touching on a number of subjects to Capra. She could not stop thinking about *Mr. Smith*, and she told

Capra, “here it is just one week after seeing *Mr. Smith Goes to Washington* and I still can’t believe it.”²⁰ She quickly clarified the source of her disbelief: “I mean, to think that they actually portrayed such truth.” Thus, for her, *Mr. Smith* astonishingly depicted American political life just as it was. She then articulated a slight variation on seeing things through Smith’s eyes. Rather than identifying with a character, she experienced the entire film as visualizing her thoughts and feelings. About the film’s revealing look at political corruption in Washington, she wrote, “I was thinking that right along but [had] no way of voicing it.”

Thus we have evidence for a kind of spectatorial desire through which a viewer feels silenced and unable to speak until seeing a film, and then understands that a film actually expresses her ideas, in this case about politics and government. We have ample evidence of films providing imitative fantasies for viewers, most often for female viewers who study the fashions and styles of films, for instance, and then, once outside the theater, try to dress and look like glamorous movie stars.²¹ In this instance, however, the female viewer wants the film to mirror her own thoughts, and, in fact, make her thoughts more fully comprehensible and apparent even to her. This viewer seeks to identify not so much with a character in a film but with the political narrative of a motion picture, to find unity between her thoughts and those on screen, and to have the screen articulate those thoughts more coherently than she felt able to do herself. Film theory has spoken of this unity, of the screen as mirror, and of the psychoanalytic oneness a viewer might feel by imagining seeing him- or herself on screen. But along with this kind of psychoanalytic sense of fullness and well-being, we might also have to think of the satisfaction generated by the apparent political unity between image and spectator.

Mary Clement continued that she would be as moved as Mr. Smith by the sheer monumentality of American government. In the film, Smith goes to Mount Vernon and to the various memorials on the mall, and they serve to remind him of the democratic mission of the United States. Clement wrote to Capra that “being a person who just adores to travel, I think I’d be flabbergasted myself if I saw those beautiful monuments and inscriptions,” and added that “they would touch my very heartstrings just like they did Mr. Smith, and if I stood before the Gettysburg address [at the Lincoln Memo-

rial] I'd have to read every word, and they'd touch me just like Lincoln meant them to." She contemplated the possibility of seeing "the dome of the Capitol light up at night," and then mused that "there's more beauty in America than we know about."

Clement felt very much the same "dramatization of democracy" as Professor and Mrs. Mead. For her, the signifiers of law and government—the Capitol dome and the Lincoln Memorial, for example—were reminders of the project of *Mr. Smith* as powerful as any of the narrative devices of Capra's film about one man against entrenched power. Indeed, Clement was responding to a form of signification that seemed inescapable during the period. Perhaps because of the convergence of ideological concern and technological possibility during the 1930s, issues relating to citizenship, history, law, government, and democracy had been consolidating themselves around issues of representation—like the monuments in *Mr. Smith Goes to Washington*—and these same issues informed many kinds of public display, leisure activity, and popular entertainment.

The 150th anniversary celebration of the ratification of the Constitution, for example, held between 1937 and 1939, undoubtedly helped people equate momentous historical shifts and legal experiments with parades and ceremonial paintings and even with postage stamps, as the commemorative stamps issued by a number of countries made for frequent news items. Indicating a fully modern mobilization of mass media, advertising, technology, government purpose, and corporate enthusiasm, these celebrations maintained high visibility and effectively reached millions of people in department stores, schools, museums, and other public gathering places (in contrast, the centennial celebration of 1887 to 1889 had been an unqualified bust). The 1939 New York World's Fair—featuring gigantic statues of great Americans like George Washington and regularly screening the film industry's contribution to the fair, Cecil B. DeMille's pastiche of great moments from the country's past, *Land of Liberty*—performed much the same function, using representational practice to create an official history shared by all citizens.²²

The federal government added to this notion of legitimation through representation by finalizing its plans for the mall in Washington, D.C., with the construction of the Jefferson Memorial. So important had this project be-

come to arbiters of culture that in 1939 a work stoppage at the memorial turned into a major news story, with journalists worrying over the prospect of an unfinished representation of the third president. Finally, merging modern technology and a kind of representational mania, Mount Rushmore neared completion during this period with the unveiling in the summer of 1939 of the fourth and last presidential head, that of Theodore Roosevelt. These various projects typified a 1930s cultural and political context in which few people seemed to doubt that democracy, government, and law could in fact be depicted and that representational practice might not simply signify the historical but actually present it, virtually unmediated, to the public.

For many viewers of *Mr. Smith*, the entire film signified nothing less than the American ideal of justice. Dorothy Allen, from New Hampshire, sent a short handwritten note to Capra exclaiming about the film that “it is so firmly American!”²³ Others identified the film’s call for fairness and political virtue precisely with that public sphere of viewers that so wanted movies about democratic justice. A married couple from Detroit wrote that the film “was more than an evening’s entertainment for us,” saying that “it was a great emotional experience for which we owe you a humble debt of gratitude.”²⁴ They continued that Mr. Smith “was to us a living symbol of that great mass of American citizens (of whom we think we are typical), who are intensely proud of their nation and government, despite their awareness of the existence of corruption and graft in many high places.” These viewers, then, acknowledged their identification with both the hero of the film and that “mass” of average citizens who, apparently, longed for the kind of justice that the film celebrated. For these viewers, the film made them aware of their membership in a body politic, in a group outside the theater mobilized around issues dealing with the potential of American democracy. That mobilization had its limits, however. The couple writing to Capra, after mentioning that “graft” in high places, ended their letter by saying that they, like so many others, “live in humble hope that some day someone will do something about it.”

That “someone” here seems to have been both Smith and Capra, the hero of the movie and the man who made it. Fans asked the director for more films like this, to “hit us again,” in the words of one viewer.²⁵ Others told him that “you haven’t only directed and made a masterpiece, you have opened

the road of inspiration to millions of people, people who want desperately to cling to American ideals.”²⁶ Fans, then, gave Capra himself extraordinary power, and felt obliged to address him as someone who could speak to, and possibly assuage, their greatest fears about the future of American democratic institutions.

“Thinker in Hollywood”: Legal and Spiritual Education

In February 1940 the *New Yorker* called its profile of Capra “Thinker in Hollywood,” and then informed readers that his colleagues believed him to be “the most thoughtful man in the [film] industry,” and that “the war has caused Capra to think more than ever about the part which the lowly might well play in bringing the powerful to their senses and in putting things right.”²⁷ Fans who may never have read the *New Yorker* seemed to believe, as well, in Capra’s seriousness and thoughtfulness, and they looked to him for political guidance and uplift.

Capra himself sought to impress this notion upon his fans. To his credit, he responded personally to most of his fan mail. When he wrote back to Mary Clement, who had written the sixteen-page manuscript, he told her that “we truly have a responsibility in making pictures,” and went on to say that “unfortunately, motion pictures are not an individual affair,” but were instead “big business.” He stressed that “I really think such expressions as [your letter] serve to impress us with the importance of motion pictures in shaping and guiding the thoughts and actions of our people.”²⁸ Thus Capra seemed to accept his role as pedagogue, as someone who might be able to give a civics lesson to millions of viewers.

We can see here a kind of cinematic practice that was unusual for the period and almost unthinkable today. But this give and take between Capra and his viewers indicates once again that there was at least a sizable minority of the audience that hoped for political instruction from Hollywood films, and that some viewers, although frequently disappointed, looked to popular culture to help secure and maintain American democratic institutions. At least some of these same fans, perhaps unlike those who waited for “someone” to help them, intended to take the lessons learned from films like Capra’s and actively implement them in other aspects of their lives. A Presbyte-

rian minister wrote to Capra from Washington, D.C., to congratulate the director for creating "a true appreciation of our national heritage." He wrote that he intended his Thanksgiving sermon to "focus attention upon the blessings for which we in America ought to be profoundly grateful," and hoped that "my message [will] do the very thing in church that your latest picture did on the screen." To help guarantee this, he asked "if it would be possible for me to obtain some excerpts from the script which I might quote in my sermon," and particularly "the lines that Senator Smith speaks to his secretary as they begin work on his bill, and also the lines he speaks on the floor during his one-man filibuster."

These scenes provide viewers with an extraordinary range of dramatic registers. During the famous filibuster scene Smith speaks about a number of issues, reads from a variety of documents, and speaks eloquently about the necessity of fighting for lost causes. The earlier scene, in which Smith and his secretary start working on his bill for a national boys camp, perfectly embodies the film's emphasis on civics and something deeper, a people's democracy springing from the best of American history and government. The scene begins with Smith's hard-boiled secretary, Saunders, telling him the nuts and bolts of getting a bill passed. The first thing a senator has to do, she says, is "sit down . . . and write it up: the why, when, where, and everything else." She continues:

You take it over there [the Senate] and introduce it. You get to your feet in the Senate, take a long breath and start spouting. But not too loud because a couple of the senators might want to sleep. . . . It goes over to the House of Representatives for debate and vote. But it has to wait its turn on the calendar. . . . More amendments . . . and the bill goes back to the Senate. The Senate doesn't like what the House did to the bill and they make more changes. The House doesn't like those changes: stymied. . . . Finally, if your bill is still alive after all this vivisection, it comes to a vote. Yessir, the big day finally arrives, and Congress adjourns.

Smith is undeterred, and in telling Saunders about the bill he moves from his secretary's pragmatism to the romance of American democracy. Looking at the view from his window, Smith says:

That's what's got to be in it; the Capitol dome. I want to make that come to life for every boy in this land. . . . You see, boys forget what this country means. . . .

Then they get to be men and they forget even more. Liberty is too precious a thing to be buried in books. . . . Men should hold it up in front of them every single day of their lives and say, "I'm free, to think and to speak. My ancestors couldn't, I can. And my children will." Boys ought to grow up remembering that.

Capra was only too happy to oblige the viewer's request, sending a transcript of the bill-writing scene and of Smith's reading from the Declaration of Independence during his filibuster. These requests of Capra for scripts were not unusual, and in particular he received many in relation to *Mr. Deeds Goes to Town*, *Mr. Smith*, and *Meet John Doe*, with fans usually intending to read from the scripts during formal gatherings, for instance at church, or during informal ones, such as at a group meeting in a home. And these uses of the scripts represent an exceptional and little studied form of film culture, the ways in which a film reached audiences well beyond the theater. The public sphere of movies, at least in the 1930s and '40s, and perhaps for very few films other than Capra's, included audiences who made use of movies in a variety of settings through different kinds of dramatic readings from scripts. Moreover, in Capra's case at least, these readings always centered on scenes, like those in *Mr. Smith*, that concentrated on social justice and the proper workings of American democracy.²⁹

In fact, a number of fans, even if they did not ask for selections from the script of *Mr. Smith*, made connections between the film they saw in the theater and other spaces and institutions, most often, like the Presbyterian minister, between the movie theater and the church. For these fans, at least in the case of Capra's films, both spaces became the sites of democratic practice and pedagogy, and the locations par excellence for the celebration of the rule of eternal law.

From Pasadena, California, a woman wrote to say that, "although I am but one of the great number of UNKNOWN, I must obey the urge to write you that I think it the greatest picture and will do the greatest good in uplifting mankind, especially its politicians." She continued, "God bless you Frank Capra," and then, in fact, stressed Capra's special status as a kind of conduit between God and the masses.³⁰ "May He use you always as His channel for good," she wrote, "opening the eyes of the blind . . . [and] making of you always as now, a savior of men." Clearly, for her, popular culture had a spiritual responsibility and might, on rare occasions and through rare

talents, actually carry out its proper mission of uplift. Similarly, an official from a New York organization called the Religious Union for World Peace, Inc., told Capra that “your genius has produced in *Mr. Smith Goes to Washington* a film which with God’s help will do what the parables did for His Gospel.” He continued that the film “will . . . destroy corrupt politics which I consider worse than War,” and then he asked Capra “to consider the possibility of completing your job by attempting to destroy the Munition Racketeers.”³¹

In this fan discourse, religious practice and popular culture might become one and the same thing, and it was a sign of Capra’s special position that he was the one who might bring the two institutions, so seemingly opposite, together. Yet another fan wrote that “the world is better because of men like you,” and that “I think spirituality will play foremost on the screen in the near future,” while a fan from Niagara Falls told Capra simply that she watched the film “in reverence.”³² We tend to think of organized religion as being at odds with the film industry during the 1930s. Indeed, it was largely the work of the Protestant and Catholic churches that led to the development of industry self-regulation around such issues as sex, violence, and crime—the well-known “Hays Code.” Of course, even after the implementation of stricter film censorship, the Catholic church in particular continued to agitate for better, “cleaner” films.³³ Frank Capra’s fan mail from the period, however, indicates a significant interest in asserting the link between religion and cinema in order to form an activist popular culture based on moral and democratic principles, and in teaching those principles to the broadest possible audience.

Capra himself seemed to understand and support this connection. In his *New Yorker* profile, he said that “I’ve always had a dream for a picture,” and added that “I once had Mussolini in mind, or the Prince of Wales.” In the dream, this slightly ambiguous head of state “goes down to a bordello, and there a little trollop like Mary Magdalene tells him, while in her arms, to throw away your guns, throw every goddam cannon in the ocean, open up your borders.” Capra concluded that “Mussolini’s too far gone now,” and said as well that “I’m afraid Hitler wouldn’t do.”³⁴ Capra never made his “dream” film. But the dream itself shows the desire to combine the national and the governmental with the religious and the moral, with legal and spiri-

tual systems merging to create a sort of utopian universalism. This was, at least in part, the kind of religious-juridical practice proposed in 1931 by Pope Pius XI in his encyclical "On Reconstructing the Social Order," a mixture of egalitarianism and activist Christianity. For both Capra and his audiences, the movies would serve, along with the church itself, as the ideal space for showing the possibilities of this new social order and the benefits of this activism.

"Some Sense of Their Civic Responsibilities": The Director as Reformer

Some fans viewed the significance of the film in more worldly terms, indicating not so much the importance of eternal law, but rather the rights and duties of citizens and the proper relationship between the government and the governed. "I hope that you will produce [other films] which give the audience some sense of their civic responsibilities," one woman wrote to Capra, calling on the director to continue the pedagogical project of democratic education for the masses. Another fan, with a much more specific goal in mind, felt that Capra might turn his talents to what, for her, was a pressing question of civil liberties. Writing from the League for Mental Hygiene Reform in New York, Hortense Danaher told Capra that "for a long time I have been thinking of asking Darryl Zanuck if he would do something realistic based on records in possession of this league."³⁵ Zanuck, of course, had been the producer of many socially conscious films at Warner Bros. and then at Twentieth-Century Fox, and by 1939 he had already turned his attention to filming *The Grapes of Wrath*, which would appear the next year. For this fan, there were only a few men in the film industry, perhaps only Zanuck and Capra, who might be called upon to make responsible films about the rights of minority groups, and as a result she went on to ask Capra to make a film exposing the practice of "holding sane people in insane asylums." She implored Capra to consider a film that might "prevent a political machine from confiscating civil rights under the guise of mental hygiene," a film that would "wake the people up before it is too late."

Thus Capra's public looked to the director as a moral visionary and political reformer, and saw in him and his films one of the best hopes for wide-

spread education in American justice and for fulfilling the promise of American democratic institutions. It is difficult for us to imagine such a relationship between audiences and an American filmmaker today. Certainly the public sphere for movies has changed, and the cinema itself seems less amenable to intellectuals like Capra’s screenwriter, Sidney Buchman, or to directors, like Capra himself, who hoped to make “idea” films.

I can hardly claim, however, that the response to *Mr. Smith Goes to Washington* examined here was universal. The letter writers were a select group, and they might not really have represented all of the “ham and egg-ers” who went to movies. And I do not mean to idealize a now lost era of concerned, informed filmgoers who understood the potential of popular culture. Many of the letter writers speak of a hypernationalism that would have been anathema to the more progressive aspects of the popular front of the period, and several interpreted *Mr. Smith* as a purely celebratory film of American exceptionalism. One woman, for instance, prefaced her comments by telling Capra that she came from “old New York ‘stock,’” and that her heritage was “colonial,” which gave her a special understanding of the issues raised in the film.³⁶ Still, the responses to the film pose the possibility of a small but sizable film audience, at least in the years immediately before the United States entered World War II, that viewed popular culture on a continuum with political, legal, educational, and religious cultures. They often shared a disdain for movies in general, but also exhibited a utopian belief in the promise of Hollywood cinema. One fan saw in Jefferson Smith the crusading California congressman Jerry Voorhis, then early in his political career, but later, in 1946, to lose his seat in the House of Representatives to Richard Nixon in the first of the future president’s unseemly campaigns.³⁷ Yet another told Capra that his film “has a Mark Twain smack in its humor and conception.”³⁸ And this, indeed, was the importance of Capra’s cinema, and the potential of Hollywood cinema generally, that it might show the practical possibilities of one man against the American system and critique American governmental practices and institutions, and while doing so raise the cinema to the level of the greatest American literature. Rather than divorcing art from politics, these fans viewed Capra as the best hope for an aesthetics of activism and social change.

Notes

1. Helen McMullin to Capra, 25 Nov. 1939. This letter, and all of the letters referenced here, are housed in the Frank Capra Collection at the Wesleyan Cinema Archive at Wesleyan University.

2. The Editors of *Cahiers du Cinéma*, "John Ford's *Young Mr. Lincoln*," in *Movies and Methods*, vol. 1, ed. Bill Nichols (Berkeley: University of California Press, 1976), 493–529. The text originally appeared in *Cahiers du Cinéma* 223 (1970).

3. For a discussion of the Washington premiere, see "Mr. Smith Riles Washington," *Time*, 30 Oct. 1939, 38.

4. State Department documents about *Mr. Smith Goes to Washington* are stored in the National Archives in Washington, D.C., in a file labeled "Adult Education, 1940–44."

5. The exchange between Capra and the FBI can be found in Capra's FBI file, which I obtained through a Freedom of Information Act request. The file number is 123-12626, and the conversation about Buchman and about Capra's donations can be found in a memo dated 29 January 1952.

6. Janet Staiger, *Interpreting Films: Studies in the Historical Reception of American Cinema* (Princeton, N.J.: Princeton University Press, 1992); Gregory Waller, *Main Street Amusements: Movies and Commercial Entertainment in a Southern City, 1896–1930* (Washington, D.C.: Smithsonian Institution Press, 1995); Jackie Stacey, *Star Gazing: Hollywood Cinema and Female Spectatorship* (London: Routledge, 1994).

7. See, for example, Kathryn Fuller, *At the Picture Show: Small-Town Audiences and the Creation of Movie Fan Culture* (Washington, D.C.: Smithsonian Institution Press, 1996); Shelley Stamp, *Movie-Struck Girls: Women and Motion Picture Culture after the Nickelodeon* (Princeton, N.J.: Princeton University Press, 2000).

8. Michael Denning, *The Cultural Front* (London: Verso, 1997). See in particular chapter 3, "Ballads for All Americans: Aesthetic Ideologies."

9. Eric Lott, *Love and Theft: Blackface Minstrelsy and the American Working Class* (New York: Oxford University Press, 1993); John Bodnar, *Remaking America: Public Memory, Commemoration, and Patriotism in the Twentieth Century* (Princeton, N.J.: Princeton University Press, 1992); Mary P. Ryan, *Women in Public: Between Banners and Ballots, 1825–1880* (Baltimore, Md.: Johns Hopkins University Press, 1990); Jane Gaines, *Contested Culture: The Image, the Voice, and the Law* (Durham, N.C.: Duke University Press, 1991).

10. Edward Buscombe, "Notes on Columbia Pictures Corporation 1926–1941," in *The Studio System*, ed. Janet Staiger (New Brunswick, N.J.: Rutgers University Press, 1995), 24. The essay originally appeared in *Screen* 16, no. 3 (Autumn 1975).

11. Ien Ang, *Watching Dallas: Soap Opera and the Melodramatic Imagination* (London: Methuen, 1985), 11; Stacey, *Star Gazing*, 71.

12. Margaret Farrand Thorp, *America at the Movies* (New Haven, Conn.: Yale University Press, 1939), 1.

13. Jane Addams, *The Spirit of Youth and City Streets* (New York: Macmillan, 1909). See, for instance, chapter 4, “The House of Dreams,” pp. 75–103. In this chapter, Addams writes of “the absorbed gaze of a child” (75), and also examines the manner in which the impact of the motion picture extends well beyond the space of the theater: “Hundreds of young people attend these five-cent theaters every evening in the week, including Sunday, and what is seen and heard there becomes the sole topic of conversation, forming the ground pattern of their social life” (86).

14. Robert S. Lynd and Helen Merrell Lynd, *Middletown* (New York: Harcourt, Brace and World, 1929).

15. Werrett Wallace Charters, *Motion Pictures and Youth* (New York: Macmillan, 1933); Edgar Dale, *Children’s Attendance at Motion Pictures* (New York: Macmillan, 1935); Wendell S. Dysinger and Christian A. Ruckmick, *The Emotional Responses of Children to the Motion Picture Situation* (New York: Macmillan, 1935); Perry W. Holaday and George D. Stoddard, *Getting Ideas from the Movies* (New York: Macmillan, 1933).

16. Leo A. Handel, *Hollywood Looks at Its Audience* (Urbana: University of Illinois Press, 1950).

17. David Riesman and Evelyn T. Riesman, “Movies and Audiences,” *American Quarterly* 4, no. 3 (Fall 1952): 195–202. For a similar article from a non-American studies perspective, see Mark Abrams, “The British Cinema Audience,” *Hollywood Quarterly* 3, no. 2 (Winter 1947–48): 155–58.

18. John Corydon to Capra, 5 Nov. 1939.

19. Mrs. Edward Sherwood Mead to Capra, 22 Nov. 1939.

20. Mary Clement to Capra, 3 Nov. 1939.

21. See, for instance, Stacey, *Star Gazing*, and also Stamp, *Movie-Struck Girls*, for discussions of women’s imitative relationships to movies.

22. For a discussion and analysis of the 150th anniversary celebrations, see Michael Kammen, *A Machine That Would Go of Itself: The Constitution in American Culture* (New York: Vintage Books, 1987), 282–312. For photographs of World’s Fair statuary, see *Newsweek*, 25 Mar. 1940, 18–19. For a discussion of *Land of Liberty*, see Allen W. Palmer, “Cecil B. DeMille Writes American History for the 1939 World’s Fair,” *Film History* 5, no. 1 (Mar. 1993): 36–48.

23. Dorothy Allen to Capra, 1 Nov. 1939.

24. Mr. And Mrs. Louis Tendler to Capra, 17 Nov. 1939.

25. Reverend O.E. Morton to Capra, 24 Oct. 1939.
26. Marie B. Fry to Capra, 23 Oct. 1939.
27. Geoffrey T. Hellman, "Thinker in Hollywood," *New Yorker*, 24 Feb. 1940, 23–
28. The opinion of Capra's colleagues appears on page 24.
28. Frank Capra to Mary Clement, 25 Nov. 1939.
29. For a discussion of script readings from *Meet John Doe*, see Eric Smoodin, "This Business of America': Fan Mail, Film Reception, and *Meet John Doe*," *Screen* 37, no. 2 (Summer 1996): 111–28.
30. Ann D. (last name illegible) to Capra, 8 Nov. 1939.
31. William Sheafe Chase to Capra, 16 Nov. 1939.
32. Imogene Carr to Capra, 21 Nov. 1939; Mrs. LeRoy Farley to Capra, 28 Oct. 1939.
33. See, for instance, Gregory Black, *Hollywood Censored: Morality Codes, Catholics, and the Movies* (Cambridge: Cambridge University Press, 1994); Richard Maltby, "The Production Code and the Hays Office," in *Grand Design: Hollywood as a Modern Business Enterprise, 1930–1939*, ed. Tino Balio (Berkeley: University of California Press, 1995), 37–72.
34. Hellman, "Thinker in Hollywood," 24.
35. Hortense Danaher to Capra, 2 Nov. 1939.
36. Mary deWitt Angier to Capra, 16 Nov. 1939.
37. John Corydon to Capra.
38. Mary deWitt Angier to Capra.

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