

Why 'Law-and-Film' and What Does it Actually Mean? A Perspective

Orit Kamir

This article's modest goal is to introduce uninitiated readers to the emerging, interdisciplinary field of law-and-film, while presenting them with the framework of one formulation of this new area of research. The article's first part opens with a brief overview of law-and-film scholarship and proceeds to outline my own suggested conceptualization of the law-and-film terrain. This framework defines three distinct perspectives on law-and-film that, I believe, capture much of the law-and-film enterprise. These perspectives rely on three fundamental premises: that some films' modes of social operation parallel those of the law and legal system; that some films enact viewer-engaging judgment; and that some films elicit popular jurisprudence. Parts B, C and D of this article present and explore these perspectives in more detail, illustrating them with specific law-film examples. The paper concludes with a brief reference to the benefits of using law-and-film in teaching.

A. Law-and-Film: an Overview and a Suggested Framework

I

The integrated study of two pivotal socio-cultural formations, law and film, is an interdisciplinary field-in-the-making. It can be understood as a recent offshoot of more established and familiar interdisciplinary scholarly genres, particularly law-and-society and law-and-literature. In the late 1980s and into the 1990s, pioneering academic publications embarked on a project to combine the study of legal themes

Orit Kamir, from the Hebrew University in Jerusalem, Israel, is a Professor of Law specializing in interdisciplinary cultural analysis of law, law and film, and feminist legal thought. Dr Kamir received her LL.M. and S.J.D. at the University of Michigan Law School, and has published numerous books including *Every Breath You Take: Stalking Narratives and the Law* (University of Michigan Press, 2001), *Feminism, Rights and the Law* (in Hebrew) (Broadcast University Press, 2002), *Israeli Honor and Dignity: Social Norms, Gender Politics and the Law* (in Hebrew) (Carmel Publishing House, 2004), and *The Rule of Law-films* (Duke University Press, forthcoming 2006). Correspondence to: E-mail: oritkami@umich.edu

with that of film, cinematic storytelling and popular visual imagery (Machura & Robson, 2001, pp. 3–8). Since the turn of the twenty-first century, the notion that the study of law can be integrated with that of film has spread within parts of both Anglo-American and Continental legal academia. The combination ‘law and film’ has been increasingly visible in lectures, law school course titles and pop culture Websites. Not quite as established as law-and-society or law-and-literature, law-and-film is gradually acknowledged in some academic conferences (see the Symposia listed in the Reference list), and explored in monographs (Black, 1999; Sherwin, 2000; Kamir, 2001, 2006; Greenfield *et al.*, 2001; Chase, 2002; Lenz, 2003), edited collections (Denvir, 1996; Machura & Robson, 2001; Sarat *et al.*, 2005) and articles published in professional journals. In 1999, in his annual presidential address to the Law and Society Association (USA), Professor Austin Sarat presented a legal critical analysis of the film *The Sweet Hereafter*. He invited scholars to join in the formation of the innovative and virtually uncharted territory of law-and-film (Sarat, 2000a, 2000b). Five years later, at the 2004 annual meeting of the new Law, Culture and the Humanities Association (USA), film’s relationship to law was the subject matter of many panels, and referenced in many more.

Despite a growing familiarity with the basic notion that law can be envisioned in connection with film, the substance, purpose, nature and value of this endeavour remain largely obscure. The vague phrase used to denote the emerging field of study—‘law-and-film’—does little to illuminate the motivation, methodology or significance of the project. Many are baffled and/or sceptical about the value of this emerging field. For most lawyers, legal academics and students, the linkage of law and film raises numerous fundamental questions. What is ‘law-and-film’? What does law-and-film scholarship attempt to achieve, and how does it go about pursuing its goals? What types of relationships or similarities between law and film justify an integrated, interdisciplinary look at both disciplines? Can films offer significant, worthy jurisprudential insights? Why should we bother to read films as jurisprudential texts? What types of insights are potentially available through this new, unfamiliar perspective? What is their uniqueness and why are they worth pursuing? This article attempts to tackle these foundational questions and thus participate in the dialogic process of theorizing and bringing into existence the field of law-and-film.

II

At first glance, the differences between law and film appear striking. One could argue that while law is a system of organized power, commercial film is constituted by an economics of pleasure. One is an authoritative, normative, centralistic, coercive system; the other, a world of amusing, escapist, popular-cultural artefacts. However, from a more nuanced socio-cultural perspective, law and film are two of contemporary society’s dominant cultural formations, two prominent vehicles for the chorus through which society narrates and creates itself. I believe that this is the common denominator that underlies the drive to integrate the study of these two

distinct frameworks. Despite its diversity, law-and-film scholarship reflects shared fundamental assumptions regarding the centrality of both law and film in society.

As socio-cultural formations, both law and film create meaning through storytelling, performance and ritualistic patterning, envisioning and constructing human subjects and social groups, individuals and worlds. Law and film both constitute 'imagined communities', to use Benedict Anderson's term. Each invites participants—viewers, legal professionals, parties to legal proceedings and/or members of the public—to share its vision, logic, rhetoric and values. Law and film both demand adherence to rules and norms in exchange for order, stability, security and significance. Each facilitates—and requires—the concomitant and continuous creation of personal and collective identity, language, memory, history, mythology, social roles and a shared future. It thus stands to reason that an interdisciplinary approach to these two fields would offer lively and intriguing insights.

Dialogue, mutual commentary and reciprocal influences between law and film can be explored on various levels. Identified and analysed in reference to each other, legal and cinematic structures, techniques, images, symbols, ideologies, social functions and impact can be seen in a new light. Such a multi-perspective analysis invites a new theoretical framework, leading to a deeper understanding of the multiple perspectives of interdisciplinary analysis. The emerging discipline of law-and-film is a new cultural field in which the complex relations between these two cultural formations can be explored and conceptualized. Still in its nascent stages of development, law-and-film scholarship eludes a precise 'scientific' definition and cannot yet be characterized by a distinct methodology or worldview. Writers who explore this new field emphasize different aspects and interpretations of the described common ground. So, for example, in his introduction to *Legal Reelism: Movies as Legal Texts*, an early edited collection of law-and-film articles, John Denvir announces that 'we can learn a great deal about law from watching movies' (Denvir, 1996, p. xi). Viewing certain films as jurisprudential texts he notes:

[W]e can study movies as 'legal texts'. [...] Frank Capra's film, *It's a Wonderful Life*, provides an important complement, or perhaps antidote, to Chief Justice William Rehnquist's legal discussion of the reciprocal duties we owe each other as citizens. Not only do both 'texts' treat the difficult legal issue of the claims of community, Capra's treatment brings out an emotional ambivalence toward community that Rehnquist's legal prose ignores. (Denvir, 1996, p. xii)

Denvir's jurisprudential interest in film is shared by numerous scholars. For example Christine A. Corcos reads the film *Ghostbusters* (1984) as 'a serious examination of the competing interests in the environmental regulation debate' (Corcos, 1997, p. 233) and Anthony Chase reads *A Civil Action* as asserting that 'if most Americans have to depend on to law to enforce their interests against corporate capitalism, they have not got. A trained legal philosopher and a prominent law-and-literature scholar, William MacNeil is a sophisticated and imaginative analysis of cinematic jurisprudence is cutting edge. Having tackled Jane Austen, Mary Shelley, Charles Dickens and Harry Potter in his literary-focused work, it is no wonder that, turning to film, MacNeil

chose to study *Buffy, the Vampire Slayer* (1992), *Lord of the Rings* (2001) and *Minority Report* (2002). “In his recent exploration of the popular cult-film, *The Empire* MacNeil suggests that: *Empire* may very well mark the post-postmodernisation of the theory of Global Capital in that it announces not the end of the juridical metanarrative, but, rather, its *return*. Nowhere is this return more striking than when Hardt and Negri proclaim *Empire*’s jurisprude *de jour* to be none other than that *echt*-positivist, the bane of legal theory examines everywhere, Hans Kelsen. [...] Kelsen’s well-known hierarchy of norms—the lower ones (local or domestic law) being validated by the higher (constitutions, international law), until reaching the overarching and all-inclusive *urnorm*, the (in)famous *grundnorm* (or “Basic Norm”) – effectively *dematerializes the law*. [...] Because of its notion of absoluting “juristic consciousness”, [...] the *Grundnorm* or “Basic Norm” [...] is *the very mind of Empire* (MacNeil, 2005a).”

From a slightly different and very specific angle, William Miller (1998) in his analysis of *Unforgiven* (1992), utilizes the interdisciplinary law-and-film perspective to demonstrate that, banned from the modern state’s legal system, the deep-rooted, powerful passion for just retribution has found a home in some of Hollywood’s popular law-films. Films such as *Unforgiven*, Miller argues, accommodate the human desire and need for vengeance, which is no longer honoured and served by the law. These films thus constitute a popular-cultural, much-needed system of equity, complementing the common law. This cinematic notion of equity offers a sense of justice, balance and closure, that the legalistic, calculated, passionless law fails to deliver. In a similar vein, Rebecca Johnson (2000) shows how, banned from Family Law’s normative construction of ‘family’, ‘deviant families’ are presented and explored in some films.

While restricted to Anglo-American law and film, Carol Clover’s study argues that American courtroom dramas position their audiences as active jurors: ‘the reason that juries are largely unseen in trial movies and the jury system largely uncontested within the regime of cinema is surely that we understand the jury to constitute a kind of necessary blank space in the text, one reserved for us’ (Clover, 1998a, p. 265). This, she suggests, is a consequence of the predominance of juries in the American legal system, as well as its collective psyche: ‘we are a nation of jurors, and we have created an entertainment system that has us see just about everything that matters—from corporate greed to child custody—from precisely that vantage and in those structural terms’ (Clover, 1998a, pp. 272–273). She further asserts that, combined with the centrality of juries, the adversarial nature of the American legal system, and its intricate rules of evidence, render a culture in which ‘trials are already movie-like to begin with and movies are already trial-like to begin with’ (Clover, 1998a, p. 99). She explains:

When I say that Anglo-American movies are already trial-like to begin with, I mean to make a three-part, essentially historical claim: that the plot structures and narrative procedures (even certain visual procedures, in film and television) of a broad stripe of American popular culture are derived from the structure

and procedure 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. (Clover, 1998b, pp. 99–100)

Clover shows that even in some Anglo-American trial-less films:

the narrative machine underneath the manifest plot, whatever its label, is the trial. There may be no trial in the movie, but there is a trial underneath and behind it; the movie itself mimics the phases, the logic, and the narrative texture of the trial. (Clover, 1998b, p. 110)

She sets out to examine these insights through a historical survey of Anglo-American trial movies.

Offering a diverse, panoramic, international perspective,

Machura and Robson present the essays in their edited collection, *Law and Film* (2001), as a demonstration of a number of strands of inquiry:

Three principle areas can be identified. The collection looks at the nature of the films produced portraying law and lawyers. The essays look at the significance and impact of these law films on the public perception of law and the legal process and the influence on the practice of law itself. Finally there is the assessment of how and why the various themes in writing on the topic of law and film have developed. (Machura & Robson, 2001, pp. 1–2)

“Presenting their writers’ specific interests and areas of study they say, among other things:

Michael Bohnke [...] takes the opportunity to explore the whole question of the nature and legitimacy of law. He looks at the way Ford portrays law in some of his work as being imposed on society and in other work he stresses how it emerges from social interaction and represents community values. [...] Jessica Silbey [...] notes the techniques film-makers have used to emphasize aspects of law and to involve the viewer in the story. Looking to the question of significance and impact, Stefan Machura and Stefan Ulbrich examine the dominance of Hollywood law films in contemporary German popular culture and explore reasons for this phenomenon. [...] Phil Meyer looks at the role of cinema in the way in which law is practiced in contemporary United States courts [...]. Peter Robson [...] examines how the blockbusting book success of John Grisham has been transformed into film (Machura & Robson, 2001, pp. 2–3).”

In a later work on the use of film as legal evidence, Jessica Silbey presents a very different law-and-film perspective:

[D]espite admitting the film as a demonstrative aid, courts consider film for its substantive character and as substantive evidence with independent probative value ‘adduced for the purpose of providing fact in issue.’ [...] Courts fail to encourage the evaluation of film as substantive evidence, subject to rigorous testing for the truth of its assertions. This Article will show that, when properly considered, all filmic evidence is substantive and assertive in nature. Films are testimonial that should be

evaluated as other substantive proffers in terms of their intention and their expressive qualities—for what they say and how. (Silbey, 2004, p. 499)

“From yet another perspective, Jennifer Moonkin and Nancy West examine judicial proceedings and (semi) documentary films as parallel reenactments of the real occurrence:

The key point is that both re-enactments [the legal and the cinematic] are, aspirationally, substitute depictions of what actually occurred. The reenactment and the representations presented at a trial both endeavor to stand in for the real. They do not do this through misrepresentation: They do not claim to be a literal depiction of what happened, but rather, acknowledge explicitly that they are retellings. They do not give us direct access to ground zero, but they nonetheless give us the essence of ground zero. The claim of the reenactment [...] is that it is true to the actual past in all the ways the count. [...] Reenactments and representations at trial *become*, at least in part, our account of what happened, *even though* we know that they do not give us transparent access to the events themselves. In fact, if they fail to become substitute depictions of the actual, they are failures in their own terms. The filmed reenactment that strays too far from reality loses credibility; it becomes, at best, fiction, at worst misleading or propagandist. The trial verdict that cannot stand as a judgment about what actually happened can become a social problem [...] (Jennifer L. Moonken & Nancy West, p.388–9).”

In an article that lays out the foundations of a comprehensive theory of law and film, Rebecca Johnson and Ruth Buchanan set out to:

relocate the discipline of law firmly in contemporary culture; in a world in which it is commonplace to question linear narratives that seem to lead without difficulty to a particular ‘truth’ of a matter, to subvert claims to truth as being subject to radically variant interpretations and to recognize the blurred boundaries between reality and representation. [...] Films like *The Thin Blue Line*, *A Question of Silence* and even *Thelma and Louise* have illustrated the tenuousness of law’s claim to privileged access to truth, the troubled relationship between narrative and truth, and even the limits of language itself. (Johnson and Buchanan, 2002, pp. 87–110)

Johnson and Buchanan suggest that much like film, law participates in the social constitution of meaning. They look to film to facilitate the identification and exploration of

three insights related to the construction of meaning: the role of narrative; the role of ‘brute perception’ and the implications of audience reception and multiple readings. [...] We seek not only to build on these critiques, but also to push them more firmly to the center of public dialogue concerning both law’s claims to legitimacy and its meaning-making function. (Johnson and Buchanan, 2002, p. 110)

In one of the latest law-and-film monograph to date, Timothy O. Lenz states that his book:

[l]ooks at images of law in Hollywood films and television programs in order to better understand one of the most important legal developments of the last half of the twentieth century: the change from criminal justice policies that were primarily shaped by liberal ideas to criminal justice policies that were primarily formed by conservative

ideas. [...] The crime stories that are told in legal fiction provide an excellent resource for understanding changing popular images of law (and to a certain extent lawyering), justice, individual rights, and the administration of justice (particular portrayals of police, prosecutors, judges, and corrections officials). (Lenz, 2003, pp. 1–2)

As demonstrated by these examples, law-and-film scholarship contains a variety of angles and focuses. Narrativity and textuality are common to several discourses and disciplines, including literature, film and law. Cinematic editing and casting are both examples of traits unique to film. While a textual or narrative analysis of law-and-film may not bear unique features that distinguish it from the textual or narrative analysis of law-and-literature, it may nevertheless be insightful. A law-and-film analysis that focuses, or at least acknowledges, film's unique cinematic features may be both insightful and "unique". To date, most law-and-film work focuses on Films' plots and characters, ignoring editing choices, camera angles and moves, casting choices, sound and other cinematic features (Carol Clover's and Jessica Silbey's publications being outstanding exceptions). This may be attributed to law-and-film scholars' lack of familiarity with film studies, and will hopefully change as a new generation of scholars combine film studies with their legal, or social science education. Less developed, to date, is law-and-film methodology.

In this paper I do not offer a comprehensive survey of, nor a commentary on, these various law-and-film perspectives and projects. Based on a decade of law-and-film study and teaching, I present my own attempt at a theoretical framework for reading law and film together in a socially meaningful manner.

III

The proposed theoretical framework defines three distinct perspectives which, I believe, constitute much of the law-and-film enterprise, laying out both their modes of operation and social significance. This framework can account for and accommodate much of the existing law-and-film study. To the extent that this vision of law-and-film overlaps with considerable portions of other writers' projects, this article may shed light on much more than the logic of my own conceptualization and research of law-and-film.

My formulation of law-and-film comprises three fundamental premises: that some films' modes of social operation parallel those of the law and legal system; that some films enact viewer-engaging judgment; and that some films elicit popular jurisprudence (see Kamir, 2005, where the specifics of this conceptualization are illustrated in a close reading of *Death and the Maiden* (1994). See also Kamir, forthcoming 2005, for an elaboration of this line of thought in a reading of a dozen law-films.) The study of films' performance of these functions is the study of law-and-film. In reference to these three basic premises, law-and-film studies may be distinguished on the basis of their primary focus or perspective and labelled

accordingly as examining 'film paralleling law', 'film as judgment' and/or 'film as jurisprudence'.

I suggest that the adoption of a law-and-film lens and examination of a film or a genre from one or more of the mentioned perspectives may reveal unexpected insights regarding the underlying value system presented. Such a law-and-film approach may expose the fact that despite its proclaimed adherence to liberal values (such as autonomy, equality or dignity) the film's jurisprudence and/or semi-legal social action and/or judging-act presume and promote conflicting values (such as male honour or racial supremacy). Through the exploration of a film's jurisprudence, semi-legal social action and/or judging-act, such a study may disclose a film's unacknowledged underlying perceptions of community, memory and identity; of law, justice and legality; of citizenship and civil disobedience; and of gender roles, familial structures and human relationships. It may excavate an embedded portrayal and treatment of social and normative issues that may otherwise remain effectively buried.

I have so far referred to films at large, yet some films' interactions with law and the legal system are more significant than others'. Courtroom dramas, trial films, movies featuring a lawyer figure or a law firm, and films that focus on social, ethical and moral issues that are commonly associated with the legal arena (such as racial equality, abortion, affirmative action, corruption and crime) clearly constitute this category. Further, films in which 'legalistic' social or moral issues are merely a secondary subject matter may be just as meaningful in the context of their mutual relations with the law and the legal system (*Unforgiven* and *Thelma and Louise* (1991) have given rise to more law-and-film scholarship than most courtroom dramas).

At this preliminary stage in the development of law-and-film as a distinct discipline, I refrain from Aristotelian typology and prefer to engage in the broad category of 'law-films': films that feature any type of legally oriented social or moral issue as subject matter. Many law-films' interaction with the world of law is multifaceted. They often rest on two or all three of the premises presented above (paralleling law, conducting judgment and producing popular jurisprudence), thus offering a complex and powerful combination of these cinematic-legal functions. Their study demands an integrated examination of their various cinematic-legal functions.

The proposed threefold categorization of law-and-film perspectives is neither thematic nor methodological. It is a didactic mapping of the law-and-film terrain, identifying and defining three types of relationships between law and film, which give rise to three scholarly perspectives on interdisciplinary encounters between the two cultural formations. Thematic issues, such as the image of the lawyer and the legal profession, or the law's impact on the social construction of gender roles, may be approached from either one or any combination of the three perspectives. At the same time, various relevant methodologies may be employed in the context of researching law-and-film from each or all of these three perspectives. Let me elaborate and exemplify.

An examination may be undertaken of the ways in which a law-film, a film genre, or films at large parallel the legal system in their creation of the professional image of

the lawyer. The study of films may focus on the manners in which they engage their viewers and audiences in judgmental viewing of certain types of lawyers, law firms or the legal profession's ethics. Some films may be studied for their presentation of jurisprudential insights regarding, for example, the role of lawyers, judges or juries in the administration of justice. These various examples, while all dealing with the theme of 'the cinematic image of the lawyer', demonstrate three distinct perspectives of law-and-film studies. Similarly, law-and-film study may examine the construction of gender roles in law-films, and the ways in which such construction parallels or contradicts the legal-system's construction of gender roles. Law-and-film may expose viewer-engaging judgment conducted by a film, which carries significant implications regarding women's suitable roles at home and in the workplace. Law-and-film may also discuss a film's feminist popular jurisprudential insights into issues such as women's roles as mothers and as career-seekers. Once again, while dealing with the theme of 'the construction of gender roles through law and the legal system', each of these different types of law-and-film studies emphasizes a different perspective of the law-and-film project.

From a methodological perspective, each of these courses of study may employ textual analysis (discussing, for example, the film's implied reader and reader response); focus on the film's composition of plot or characters; read the film in the context of a historical survey of developments in film, society or law; examine or highlight cinematic technique (such as shots); or emphasize cinematic choices (such as casting). Any law-and-film study, therefore, may be viewed as focusing on one or several themes (such as the image of the lawyer or legally facilitated gender roles); as employing one or more methodologies (such as studying the film's cinematic techniques or contextualizing the film historically); and as concomitantly exploring one or a number of interactions between law and film: film as paralleling law, film as engaging its viewer in judgment, and film as containing popular jurisprudential insights.

The proposed threefold categorization bears a resemblance to the elementary distinction between law-and-literature studies that focus on 'law as literature', those that read 'law in literature', and those that compare legal and literary modes of interpretation (Minda, 1995). As with any such seemingly clear-cut categorization, the one proposed in this paper may be viewed by some as necessarily partial, artificial and somewhat superficial. Despite such compelling potential critique, I believe that in the initial stages of an emerging discipline such categories are pedagogically useful in order to identify, mould and define the transpiring field, and to create a common terminology for professional discussion and exploration.

The following sections present each of the three perspectives mentioned above, relying on and referring to my experience in both teaching and researching law-and-film. The sections demonstrate the theoretical arguments using examples from my studies of stalking, and of law-films such as *Rashomon* (1950), *Anatomy of a Murder* (1959), *Adam's Rib* (1949), *Death and the Maiden* (1994) and *High Heels* (1991).

(For a full analysis of these films, as well as many others, see kamir, forthcoming 2006. See also kamir 2000, forthcoming kamir 2005, 2000b, 2000c).

B. Film Paralleling Law

The first premise of my proposed conceptualization of law-and-film is that law and film are two pivotal cultural formations that both reflect and refract the fundamental values, images, notions of identity, lifestyles and crises of their societies and cultures, and that a significant correlation exists between their parallel functions. Both law and film are dominant players in the construction of concepts such as subject, community, identity, memory, gender roles, justice and truth; they each offer major socio-cultural arenas in which collective hopes, dreams, belief, 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. My law-and-film research on stalking (Kamir, 2001) demonstrates the application of this perspective.

A historical survey of film suggested that the emergence of the contemporary notion of stalking was closely associated with the rise and predominance of cinema in twentieth-century Western culture. Many early films—horror films and thrillers in particular—remoulded ancient myths of stalking, giving new faces to archetypal stalking images, previously incarnated in literary characters such as Frankenstein's Monster, Dracula, and the female vampires. During the second half of the twentieth century such familiar iconic images were further reformulated into realistic contemporary figures of stalking serial killers (Robert De Niro's Travis in *Taxi Driver* (1976) is a case in point). These 'second-generation' visual images of stalking served as mediators between images of archetypal stalkers and real individuals classified by the social sciences as dangerously deviant.

Further, the study of film revealed that film *per se* is experienced by audiences as simulated stalking, training viewers in voyeuristic stalking. Paradoxically, film can also subject viewers to the intense experience of being stalked. Through these cinematic experiences, stalking became an important part of contemporary viewers' lives. The expectation and fear of stalking initiated while viewing a film linger on, accompanying viewers when they leave the theatre. Viewers learn to express their own emotions and needs through the language of stalking and the threat of stalkers and stalking become animated and integrated into daily life and consciousness.

I suggested that this film-induced heightened awareness of and sensitivity to stalking gave rise to the existential apprehension that led to the hasty anti-stalking legislation of the early 1990s. Furthermore, when legislators resolved to define stalking through legislation—to prohibit, stigmatize and criminalize it—it was Hollywood's construction of stalking as well as its stalking characters that served as points of reference and role models. *Fatal Attraction* (1987) and the many Dracula films influenced the legislation against stalking more than the actual social phenomenon that required attention.

By way of example, California's pioneering anti-stalking legislation had in mind fictional archetypal images rather than the actual offenders; no attempt was made to investigate and analyse the real social phenomenon of stalking. As a result of addressing cinematic, mythological images rather than social reality, the legislature did not adequately conceptualize the prohibited behaviour, and the 'panicky' drafting rendered an imperfect law. Most states followed suit and adopted California's formulation. Hollywood, in turn, quickly responded to the legal formulations, moulding the fearsome serial killer accordingly.

Focusing on the cinematic formulation of a socio-cultural issue that was later appropriated and sanctioned by the law, this law-and-film study of stalking revealed the unacknowledged dialogue between the two cultural formations that underlay the anti-stalking legislation and some of its flaws (the subject matter here being the construction of stalking; the methodology mostly focusing on film technique and viewer response).

Whereas in the history of stalking 'law imitated film', a socio-textual study of a classic law-film, *Anatomy of a Murder* (1959), reveals the complementary phenomenon of film performing a social function previously addressed by the legal system. In this acclaimed, beloved, and successful courtroom drama, James Stewart's lawyer figure defends a husband accused of killing a man with whom his wife had a sexual encounter. The winning legal tactic employed by the film's heroic lawyer is to revive the traditional 'unwritten law' which condoned a man's 'violent, honor-based action to avenge a woman's sexual purity' and to 'defend his home' from male competitors. Alluding to the 'manly honor-code' and to the 'unwritten law' that embraced it, the film's lawyer offers the jury an 'irresistible impulse' defence as a legalistic means of arriving at the right, honourable decision: acquittal.

A historical perspective reveals that this exact legal tactic was used in highly publicized courtroom dramas in the mid-nineteenth century by lawyers representing murderous husbands. Historians claim that these show-trials, which constituted a moral panic, manifested and functioned as a backlash against women's liberation. In the name of honour, purity and family values, jealous husbands—often abusive and violent towards family members—demanded and gained control over their wives' sexual conduct and freedom of movement at large. Exploiting discourses of 'manliness' and 'patriarchal entitlement to control women's bodies', lawyers used the legal system and its courtroom drama to 'send women home' and to send a clear, conservative message across the nation.

A critical law-and-film interpretation renders the following analysis of the law-film in the broad social context. In the years 1859–1870, in the face of women's symbolic advancement, lawyers, juries and the media combined to revive the unwritten law and to reinforce patriarchy and the trope of a man's honour through sensational show-trials. Exactly 100 years later, just as the last vestiges of the unwritten law were fading away, *Anatomy*, (based on a best-selling novel), once again revived the undying legal phoenix in the face of threatening liberal attitudes towards 'family values' and gender roles. Once again, in the law-film as in the actual legal cases, domestic violence is

overlooked as a husband's honour takes precedent, and is associated with natural law, 'real manliness' and American values. Significantly, in 1959 it is a law-film that replaces the nineteenth-century show-trials, and fills their sensational and conservative social function. Novel and film together may have reached as many Americans as did the nineteenth-century trials, replacing, with their literary and cinematic law, the legal system and judgment and standing in for the real courts, lawyers and juries. (This reading of *Anatomy* is analogous to Miller's reading of *unforgiven*, mentioned above, as well as Johnson's treatment of 'deviant families' in law and film).

My law-and-film reading of *Unforgiven* may further demonstrate the 'film parallels law' perspective (Kamir, unpublished).

A body of scholarly work views Eastwood's celebrated Western as a tribute to honour and manliness. Contrariwise, my reading finds a cinematic text that promotes and advocates the abandonment of honour codes and their replacement with social values deriving from human dignity. Imploring the legal system to overcome its honour-based impulses, this Western leads the way by dismantling the honour-based heritage of the Western genre and demonstrating how even a Western can foreground dignity rather than honour.

Eastwood's William Munny, once 'the worst, meaning the best' of the Old West's outlaws, 'returns from the dead' repentant and transformed, liberating Big Whisky from the stifling, oppressive heritage of Little Bill and English Bob. This (anti-)hero takes up the unpopular but just cause of Big Whisky's 'whores', avenging his best friend's death. But performing this romantic role, Eastwood's Munny exposes the legendary honour code, as well as the rhetoric of retribution and deterrence.

Throughout the film, Munny exhibits the least 'honourable' behaviour possible. Repeatedly falling off his horse, missing his targets, admitting his fear of death, and letting Little Bill 'kick the hell out of' him, the Munny who rides into Big Whiskey is no (traditional) 'hero'. Furthermore, Munny proclaims soberly and unsentimentally that even in the old days, the Old World's honour code never existed outside the eager imagination of cheap Western writers. In the old days, when he shot men, women, children, animals, and 'anything that walked or crawled', he was regularly drunk and barely conscious of his actions. Honour had nothing to do with it. Nor did retaliation and desert. Glory had nothing to do with it either.

The film's unromantic reality of survival in the Old West has everything to do with pure chance, the capacity to commit brutal murders without scruples, and the ability to execute horrors that would discourage potential rivals. The violent nature of an 'honour-based' culture boils down to survival through apish intimidation. Honour, retribution and deterrence are merely sophisticated terms used to disguise and beautify the harsh truth that survival in a brutal world depends on ruthless cold-blooded savagery and sheer luck.

Playing the role of the celebrated gunfighter, Munny nevertheless acts in the sole service of exposing the romanticized 'honour code' bravado, the disguised state terror, and the pretentious rhetoric of deterrence and retribution. He employs the Old World's

violent conduct in the course of waging war on it. To take on the old system, Munny, the worst and best of its products, must fight fire with fire and perform the ultimate old-West role. But in playing out his role, he turns the system's definitive human weapon against it, replacing the honour-based system with an alternative, dignity-based regime.

Munny's arrival in town facilitates its transformation, the film's central theme. Engaging in Old World terror he empowers the women, Big Whiskey's most vulnerable segment of the population, enabling them to participate in the collective making of an emerging legalistic, egalitarian, dignity-based social system. Having achieved his goal, Will Munny, the last remainder of the Old World, returns to the dead, this time for good, and Clint Eastwood re-emerges from his ashes as a civilized, urban family man, a San Francisco merchant.

Like the classic Western hero, Munny rides out of town alone, on a stormy night, as the townspeople look on in awe. But the film reassures us that Munny does not ride into the wilderness to reappear once again in a town in need of a True Man. He rides out of Wyoming to become a pillar of civilized society in San Francisco. And the grateful townspeople Munny leaves behind are its women, the 'whores', now liberated from Skinny and the Old World, freer to participate in the making of a new one than they were before. *Unforgiven* expresses unequivocal adherence to its proclaimed belief in the human possibility of transformation, transcending limits of genre and audience.

Certain underlying structures and modes of operation relevant to law and film's socio-cultural functions are sometimes more explicit and identifiable in one formation than in the other. An interdisciplinary comparison can shed light on the less obvious, or less familiar, analogous structures and modes of operation of the parallel cultural formation. Let me demonstrate this point.

In Roman Polanski's mesmerizing *Death and the Maiden* (1994), a rape victim, Sigourney Weaver's Paulina, conducts a private judging process of her would-be rapist, a medical doctor. She compels her resisting lawyer-husband to serve as attorney for the defence, judge and jury—as well as the accuser's supportive husband. Confused and bewildered, the film's viewer is torn, vacillating between overwhelming sympathy with and empathy for Pauline, and deeply rooted disbelief in her wild accusations. Confronted with Paulina's savage, repulsive conduct, the viewer is tempted to distance themselves from her and to join the company of the two men, both pleasant, civilized and professional. The viewer may prefer to doubt Paulina's memory, her testimony and even her sanity.¹

At the film's end, Paulina is proved right. She was, indeed, viciously raped by the doctor, who now admits to his inhuman conduct, as well as to the great pleasure he derived from it. I suggest that the viewer is overcome by the sickening realization that, together with the lawyer-husband, he has participated in a rape-victim's

'second rape'; that the film invited his to partake in the process, just as the legal system invites its participants: judges, juries and members of the general public (Kamir, forthcoming 2005a).

Confronted with his lack of compassion, the viewer (the viewer is consciously referred to male) are filled with shame and the remorse at failing to discern truth from falsehood; at failing to empathize with Paulina enough to do her justice; for siding with the aggressor merely because it was easier and because he was more appealing. The viewers must realize his evaluative blind spots and face his own eagerness to dismiss Paulina's narrative. He feels deep guilt for doubting Paulina, accusing her of mental illness, and undermining her sense of self-respect. The viewers is horrified at how close he came to exonerating a man who is guilty of brutal rape and torture.

The viewers' emotional upheaval, deliberately inflicted by the film, compels them to acknowledge the 'second rape', to experience the sensation of having participated in it, and to examine this phenomenon from a personal, engaged point of view. Most viewers have never participated in a criminal process. They may have heard that rape victims accuse the legal system of subjecting them to a 'second rape', but they are not likely to have meaningfully processed the accusation. The personal, emotional, film-induced experience is likely to transform such viewers' attitudes. Having identified the 'second rape' induced by film, they are likely to similarly identify it in the legal system. Calling the viewer's attention to the role the film induced them to play, *Death and the Maiden* implicitly invites its viewer to employ his personal experiences in order to identify elements of the legal system that may have otherwise escaped him. In this sense *Death and the Maiden* is unique in its treatment of rape victims and their reliability. Many films invite viewers to participate in a second rape, but never induce them to examine themselves reflexively.

Most significant and intriguing of these parallel functions are the many subtle ways each field employs to offer its reader a seductive invitation to take on a socio-cultural persona and to become part of an imagined (judging) community, sharing the worldview constituted by law or film. It is this seductive invitation that the next section examines.

C. Cinematic Judgment

The second premise is that some films, law-films in particular, perform wide-scale 'legal indoctrination'; that is, they train and mould viewers and audiences in judgment, while examining—and often reinforcing—legal norms, logic and structures (Clover's work often addresses this premise).

For decades, James Boyd White has been exploring and demonstrating the ways in which legal rhetoric constitutes human subjects and communities of readers, endowing them with collective visions, aspirations and hopes, supplying them with

frameworks, images, and stories with which to imagine themselves and their world (White, 1973, 1984, 1999). Judicial decisions 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, pseudo-legal reasoning, the pursuit of justice, and a corresponding self-fashioning. Judgment is often an activity not merely portrayed but actively performed by films, together with their (constructed and/or actual) viewers; it is often a function of film's constitution of a community-of-viewers and its engagement in social constitution of primary values, institutions and concepts.

The many and varied methods of performing cinematic judgment and engaging viewers in cinematic judging acts can be complex, subtle, and often elusive, and, as a result, influential. The various methods frequently involve cinematic choices regarding genre, editing, methods of narration, plots, points of view, rhythm and casting. Particularly frequent strategies include manipulation of viewer identification with on-screen characters and elicitation of emotional responses to powerful imagery.

Law-films, which offer direct combination and fictional integration of these two fields, are of particular interest in this context. A law-film can be read as passing 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 a community and a 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, multi-layered text, a law-film can perform both of these functions concomitantly, through different means and on different levels, evoking complex and even contradictory responses towards social and legal issues presented on screen. The following examples illustrate these theoretical assertions.

Akira Kurosawa's Japanese film, *Rashomon* (1950) is among the most enduring and influential classic courtroom dramas, offering one of the most sophisticated examples of cinematic judgment. The film's title has become a 'legal-cultural' expression, encapsulating a disturbingly relativistic, sceptical view of truth, reality, humanity, and the nature of the legal process. Focusing on the film's unacknowledged viewer-engaging cinematic judgment process, I suggest that underneath this nihilistic facade the film engages its viewers in active judgment, inviting them to arrive at a very concrete and certain 'judicial' conclusion (Kamir, 2000a).

Rashomon presents three men at the Rashomon gate, reviewing the legal investigation of a fatal encounter that took place in a forest between a samurai, his wife and a bandit. The encounter included sexual intercourse between the bandit and the woman, and the consequential death of the samurai. Bandit, woman, and dead samurai

(through a medium), as well as two of the men at the Rashomon gate, all testify in the legal proceeding, and their testimonies are the topic of discussion on the gate.

In *Rashomon*, judgment is passed in three distinct, yet closely related, contexts, the first being the film's on-screen, fictional courtroom proceeding. Much of the witnesses' testimonies is presented through on-screen flashbacks, offering the viewer a sense of first-hand experience. The viewer is thereby directly implicated in the courtroom judging. Most importantly, by placing the camera in the judge's position, the viewer is explicitly offered the judge's seat and role. By not offering an on-screen judge, the film constructs the implied viewer as the exclusive judge in the film's legal proceeding.

The second judgment takes place at the Rashomon gate. The three characters at the gate comprise a fictional lay tribunal, applying legal evidence, first-hand acquaintance with the case, common sense, and life experience. The 'commoner', the only character who was not present in the legal proceeding and who has no prior acquaintance with the case at hand, listens to the others' narration of the testimonies, and contributes his common-sense input to the collective attempt to reconcile the conflicting bits of information and interpretation. Like the commoner, implied viewers were not present at the court, are uninvolved and therefore allegedly 'neutral' and 'objective' in their approach. Within this context, the implied viewer is associated with the commoner.

The film's third judging process, its cinematic judgment, takes place beyond the film's fictional, on-screen world. Within this judging process, the (implied and real) viewer is presented with four central testimonies: the three presented in the on-screen courtroom scenes, plus an additional one, presented at the gate. The viewer is invited to rely on legal conventions and underlying familiar 'common wisdom', both introduced and mirrored by the film in various effective ways, to define a defendant, make a judgment, and to find the defendant guilty.

The (implied) viewer's association with the film's fictional judge (combined with the legal conventions introduced by the film, that the (implied) viewer is requested to apply within the cinematic judgment), constructs the film's cinematic judgment as quasi-legal. The viewer's association with the commoner adds a social, common-sense aspect to the film's cinematic judgment.

This complex, 'multi-judgmental' cinematic structure walks the viewer through a very active process of passing judgment, in which the viewers are invited to apply legal conventions and common wisdom supplied by the film, and feel that their judgment is not merely that of a judging-viewer but also that of both judge and jury. In this fashion, *Rashomon* enhances its viewers' 'judgmental nature', indoctrinating them into judging and legalism, while leading them to arrive at the 'legal' conclusion marked and predetermined by the film.

A law-film may invite cinematic judgment of a different character or social issue than those judged by the film's on-screen fictional legal system. In *Anatomy of a Murder*, the avenging husband is tried by the film's on-screen fictional legal system for killing his

wife's sexual partner. But it is the wife whom the film subjects to cinematic judgment, inviting the viewer to question and pass judgment on her sexual conduct, which may have led to the illicit encounter, the death of a man, and the murder charges brought against her husband. In so doing the film parallels the social operation of many real legal proceedings that, instead of judging the alleged rapist, focus judgmental attention on the rape victim.

Similarly, in the Hollywood classic *Adam's Rib* (1949), the on-screen fictional courtroom drama presents the accusation of a wife for the attempted murder of her husband and his lover. Yet it is the feminist counsellor for the defence, Katherine Hepburn's abrasive Amanda, that this much-admired romantic comedy invites its viewers to scrutinize and judge for ridiculing the legal system, the institution of marriage, family values and her own decent lawyer-husband Adam (Spencer Tracy). Nevertheless, this sophisticated film confuses its viewer further by undermining its own cinematic judgment of Amanda in offering firm cinematic support to and affirmation of her legal arguments and strategy. This structure implores viewers to reflexively examine their own judgment and its moral implications.

An extraordinary cinematic judgment is carried out in Polanski's *Death and the Maiden*. The film's on-screen, fictional, private legal process judges Paulina's would-be rapist. The film's cinematic judgment appears to be the scrutinizing of Paulina's own reliability, sanity, ruthlessness and cruelty. Yet, as the viewers learn in the film's closing scenes, Paulina was indeed trustworthy and correct in her accusation: the film's true judgment is revealed to be that of the viewers themselves. Realizing the role they have played, together with Paulina's lawyer-husband, in blaming, undermining and condemning the victim, viewers are invited to scrutinize themselves, their compassion, and their susceptibility to institutional indoctrination.

Even more extraordinary is the non-judgmental position advocated by Pedro Almadovar's Spanish film *High Heels* (1991), in which a woman is investigated and tried for the killing of her philandering husband. Despite the solid evidence supporting the criminal accusation, the film resists and avoids passing cinematic judgment over the defendant, as well as over her mother, whose unmotherly conduct appears to be the root of her daughter's deadly acting-out. So effective is the film's resistance to judgment that viewers find it difficult to consider either mother or daughter as potentially blameworthy.

D. Cinematic Jurisprudence

The third premise of the suggested conceptualization of law-and-film is that (some) films elicit popular jurisprudence. Such popular jurisprudence, embedded in film, may be sophisticated, insightful and illuminating. Associated with mass consumption and the entertainment industry, it may be overlooked and dismissed by legal scholars; yet unrestricted by conventional academic disciplines and categories, it may also be fresh, original, innovative and imaginative, transcending familiar routes and formulas.

The proposition that (some) films contain jurisprudential insights, standpoints and even elaborate arguments is hardly novel, and would seem self-explanatory. The more puzzling question may be why we should invest in reading films as popular jurisprudential texts. Why explore the judging-acts they perform, and analyse 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 narratives and appealing characters with visual imagery and technological achievement, can stir deep emotions and leave deep impressions. Leading viewers through cinematic judgments constituting notions of justice, equality, honour and gender, films can be extremely effective in moulding public actions and reactions. Touching the viewer's emotions and imagination, a law-film can introduce a viewer to jurisprudential issues and value-systems. More people are likely to be influenced by cinematic judging and jurisprudence than by theoretical legal texts or even judicial rhetoric.

Additionally, since many viewers tend to 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 imperceptible and be uncritically embraced, thereby augmenting film's influence and the need for critical, systematic investigation. Last but not least, the study of cinematic jurisprudence may be valuable for its popular jurisprudential insight: that is, for purely real-world legal and jurisprudential purposes. A few quick examples will suffice to illustrate this point.

In Giuseppe Tornatore's French film *A Pure Formality* (1995),² a police inspector (played by Roman Polanski) investigates a detainee (played by Gerard Depardieu) whom he suspects of killing a man in the forest, on a rainy night. Over the course of the long, painful night, the law-enforcing inspector forces the suspect to confront and admit to his true identity, his tormenting internal conflict, and his conduct in the forest at the time of the killing. The legal proceeding compels the resistant suspect to regain his memory of the fatal occurrence. Acknowledging that, in self-defence, people forget unbearable experiences, the law-enforcing authority nevertheless uses every power it has, including brutal violence, to overcome the survival-mechanism of memory suppression.

In the process of the legal investigation and accusation, the detainee abandons his defences and admits to his lies. In response to the inspector's interrogation, he admits that in the pursuit of success and fame he has lost himself and has become a fake, empty shell of a person, who could no longer access the memory of the meaningful moments of his life. In his desperate attempt to recover the lost person, the suspect recalls, he shaved his beard. When this too failed, he found his pistol and shot the empty facade of a man, ridding himself of his imprisoning presence. Recovering the memory of the killing, the suspect realizes that he is dead.

In *A Pure Formality*, the law, although violent and excruciatingly painful, offers and enforces a purifying process of self-recognition and redemption. Overcoming powerful mechanisms of self-deceit and willful blindness, the legal proceeding mercifully relieves the tormented soul of its lies and denial, liberating it to accept and make peace with itself.

Yet what the film does not resolve, and what it poses as a deeply disturbing, unanswered question, is whether the law generously and compassionately redeems the guilty offender, or his prey, the devastated victim. Is the legal system fashioned to absolve the criminal, the deviant individual, the offender against society, or is it geared to cater to the spiritual needs of the innocent victim? Whose interests does the law serve? Whose should it serve? Can they be reconciled?

Combining the killer and his victim in a single character, the film creates a situation that cannot materialize in the real legal system, opening new horizons for jurisprudential inquiry and speculation. Who benefits from the legal quest for truth? Who gains from acknowledging the truth and coming to terms with it? In its pursuit of truth and reconciliation, does the law adhere to the logic of the defendant's psychological needs or to the logic of victims' rights? In so doing, is it retributivistic or utilitarian? And which is in society's best interest? These familiar jurisprudential concerns take on new emotional and cognitive meaning in the context of the film's narrative.

In his controversial *The Conviction* (1994), Marco Bellocchio examines the plausibility of the criminalization of rape.³ In this unusual Italian courtroom drama of sorts, a man is prosecuted for rape because he 'forcefully seduced, against her will', a woman with whom he happened to spend the night in a locked, vacant museum. In his defence, the accused argues that women's bodies conceal an inherent secret, a uniquely feminine sexual pleasure, which women vehemently refuse to discover or disclose. It is, he continues, men's natural role and obligation to force the secret of women's orgasm into the open. Such forceful manly sexual conduct, he argues, is indeed compelling, yet it must not be labelled 'rape' or tried by courts of law, as it is beyond good and evil, outside the realm of human logic and social order.

Deaf to the defendant's pleas, the prosecutor demands conviction, and the judge adheres. Yet the prosecutor's sexual partner, like the complainant herself, sides with the defendant, acknowledging the fundamental 'natural truth' of his brutal masculinity. The bewildered prosecutor, accused by his partner of being inhumanly inhibited, is rebuked and condemned for denying the natural law of femininity and masculinity. Shaken to the core of his repressed being, he is reformed through a pastoral rape fantasy.

The framework and underlying assumptions of contemporary law, jurisprudence, and law as a cultural formation preclude the consideration of jurisprudential arguments refuting the validity of the criminalization of forced sexual intercourse conducted against a woman's manifested will. Existing legal and jurisprudential formations bar reference to 'natural law' of masculine brutality, which drives men to overcome women's sexual rejection and to conquer them for their own inherent good. Only a cultural medium such as film can construct a courtroom drama in which the legal system is engaged in such jurisprudential deliberations, inviting the public to rethink the legitimacy of the boundaries of the legal discourse. The film's viewer-engaging cinematic judgment of the fictional prosecutor effectively enhances its jurisprudential arguments.

In Marleen Gorris' Dutch film *A Question of Silence* (1982), three women are prosecuted for the would-be random, brutal killing of a male boutique owner. Together with the female psychiatrist assigned to decipher the case, the viewer is invited to realize that the accused women are perfectly sane, and that their would-be inexplicable action is, in fact, a perfectly reasonable response to their gendered social condition. Learning to see her own gender oppression, which is in every way similar to that of the accused women, the psychiatrist finds that within a male-dominated social order, feminine 'war atrocities', albeit horrifying, are sane, understandable and beyond the scope of the existing legal system, which is an integral part of the oppressive social order and fashioned to serve it well. As any acts of war, such 'war atrocities' cannot be considered and evaluated as criminal offences of unruly citizens, or forgiven as insane feats; they must be treated as acts of resistance of an occupied civilian population. The film's psychiatrist leaves the on-screen fictional courtroom, in which this perspective cannot be voiced or heard, to join a silent community of women outside the courtroom.

The accused women's killing of the boutique owner is public, violent, ideologically motivated conduct; it manifests political protest and aims to challenge the patriarchal social order and to change society's fundamental gender values. In the framework of jurisprudential argumentation, relevant questions for the interpretation and evaluation of such action would be: should the women's conduct be classified as 'civil' or 'revolutionary' disobedience? Does it challenge 'a law or a public policy', or 'government or the constitutional arrangements'? Can it be morally justified, given that 1982 The Netherlands is a 'liberal' state, offering women non-violent ways to influence the social structure? (see Raz, 1983).

But these are not the jurisprudential questions posed by the film. *Silence* challenges and rejects these accepted jurisprudential conceptual distinctions, discarding the notion of 'rightfully justifiable' (Kamir, unpublished a). *Silence* contends that, as far as women are concerned, patriarchy as a system, as well as every legal and social aspect of it, is oppressive, hostile and illegitimate. 'Justifiably' from within this system's own perspective or not, women who resist their oppression and defy patriarchy take part in an ideological uprising which should be beyond the reach of the ruling system's own legal system.

Not all cinematic jurisprudence is quite so unconventional. Many films pose more familiar jurisprudential arguments regarding such issues as women's right to abort, or the acceptability of the death penalty. Much cinematic jurisprudence, just like its theoretical counterpart, explores the fundamental questions: what is law? How, exactly, does it operate and what functions does it fulfil? What is the relationship between law-on-the-books, law-in-action, and law-as-culture?

Taken seriously, the law-and-film outlook presented in this article suggests that when viewing a law-film we are likely to encounter popular jurisprudence. Study about the analogous social functions of law and film and undergo cinematic judgement. We may

submit to the enchanting powers of cinema and allow these processes to progress unconsciously. Alternatively, we may chose to follow and acknowledge them, admiring the workings of the potent audio–visual indoctrination and taking pleasure in the complexity of our cultural reality.

E. Postscript: Teaching Law-and-Film

The conceptualization of law-and-film presented in this article grew out of the process of teaching. But the teaching of law-and-film is far more than the sum of its publishable products; it is valuable in its own right (for a review of articles describing the use of film in law school see Johnson & Buchanan, 2002, Section B).

In one way or another, I have been teaching law-and-film for almost a decade, in five different universities. In some cases, courses and seminars were explicitly devoted to the study of law-and-film, focusing on a topical theme such as ‘Women as Victims and Villains’, ‘Constructing Identity, Memory and Community’, and ‘The Making of the Lawyer’. In other cases, I used films in the course of teaching criminal law (*Unforgiven*) or sexual harassment law (*Disclosure* (1994)). Without exception, these experiences taught me how effective and powerful films can be in law schools (as well as in gender studies programmes).

Films have a unique way of touching people’s hearts and allowing them to employ their emotions in the processes of seeing, listening, understanding, discussing and analysing. Analysis of film from a new perspective is an exciting, intriguing and challenging experience for students, who take it home with them and share it with families and friends, thereby continuing its work. The intersection of law and film adds a personal aspect to professional legal training, making it more human, specific and meaningful. Further, the study of jurisprudential issues through film makes them less abstract and intimidating and more concrete and intuitive. Teaching law-and-film, therefore, becomes an important avenue for bringing the humanities into legal studies.

Notes

- [1] The viewer or reader that I refer to closely resembles a text’s ‘implied (or constructed) reader’, as formulated and defined within narratology. Narratology’s implied reader is a:

theoretical construct, implied or encoded in the text, representing the integration of data and the interpretive process ‘invited’ by the text. [...] Such a reader is ‘implied’ or ‘encoded’ in the text ‘in the very rhetoric through which he is required to “make sense of the content” or reconstruct it “as a world”’. (Rimmon-Kenan, 1983, p. 117)

The implied reader is thus a part of the text, distinguished from the ‘real’ flesh-and-blood human being actually performing the act of reading a book or viewing a film. The implied reader is the fictional ‘ideal reader’ sought and invited by the text through textual construction and manipulation.

A real film viewer may be completely unresponsive, or even a ‘resisting viewer’, refusing the film’s invitation, and responding to it from a different premise than that desired by the film. Nevertheless, in my law-and-film work I do assume a resemblance between the films’ implied

viewer and at least a significant portion of their actual contemporary Western audience, a resemblance which, I believe, makes it easy for the real viewer to assume the implied viewer's role as constructed by the film. This assumption is not 'scientifically' substantiated in any way. It relies on the published responses of film critics and scholars to the discussed films, on random, documented audience responses, as well as my understanding of my own students' and friends' responses to the films I study. Given the unfounded nature of this assumption, any reference to the films' real viewers is thus purely speculative on my part. A reader not persuaded by my linkage of implied and actual viewers may ignore it, and read any mention of the films' reader or viewer as referring purely to the hypothetical, implied reader.

Along with a film's implied and real viewer, I also refer to its 'community of viewers'. In so doing I allude to literature associated with writers such as Benedict Anderson and James Boyd White which concentrates on the community-creating mechanisms of socio-cultural regimes, such as literature and law. Whereas the implied viewer is a part of the text, distinct and distinguished from the flesh-and-blood person engaged in viewing, the community of viewers refers to the actual, historical public, which is constituted by law, film or literature as an 'imagined community' in social reality. Mentioning communities of readers, I usually refer to contemporary communities, at the turn of the twenty-first century. Sometimes, however, I do refer to a film's 'original' community, that is to the community to which it was released.

- [2] I am grateful to my students Robert Sherman and Dan Davis at the University of Michigan Law School who introduced me to this remarkable film and offered an insightful analysis of it.
- [3] I am grateful to my student Tamar Adi in the gender studies programme at the University of Tel Aviv for introducing me to this disturbing film.

References

- Black, D. A. (1999) *Law in Film: Resonance and Representation*, University of Illinois Press, Champaign.
- Chase, A. (1999) 'Civil Action Cinema', *Law Review of Michigan State University-Detroit College of Law*, pp. 945–957.
- Chase, A. (2002) *Movies on Trial: the Legal System on the Silver Screen*, New Press, New York.
- Clover, C. (1998a) 'God bless juries', in *Refiguring American Film Genres: History and Theory*, ed. N. Browne, University of California Press, Berkeley, pp. 255–277.
- Clover, C. (1998b) 'Law and the order of popular culture', in *Law in the Domains of Culture*, eds A. Sarat & T. R. Kearns, University of Michigan Press, Ann Arbor, pp. 97–119.
- Corcos, C. A. (1997) "'Who ya gonna c(s)ite?'" *Ghostbusters* and the environmental regulation debate', *Florida State University College of Law*, vol. 13, pp. 231–272.
- Denvir, J. (ed.) (1996) *Legal Reelism: Movies as Legal Texts*, University of Illinois Press, Champaign.
- Greenfield, S., Osborn, G. & Robson, P. (eds) (2001) *Film and the Law*, Cavendish, London.
- Johnson, R. (2000) 'Leaving normal: constructing the family at the movies and in law', in *New Perspectives on Deviance: the Construction of Deviance in Everyday Life*, ed. L. Beaman, Prentice Hall, Eaglewood Cliffs, NJ, pp. 163–179.
- Johnson, R. & Buchanan, R. (2002) 'Getting the insider's story out: what popular film can tell us about legal method's dirty secrets', *Windsor Yearbook of Access to Justice*, vol. 20, pp. 87–110.
- Kamir, O. (2000a) 'Judgment by film: Rashomon's socio-legal functions', *Yale Journal of Law and the Humanities*, vol. 12, pp. 39–88.
- Kamir, O. (2000b) 'X-Raying *Adam's Rib*: multiple readings of a (feminist?) law-film', *Studies in Law, Politics and Society*, vol. 22, pp. 103–129.
- Kamir, O. (2000c) 'Feminist law and film: searching for imagery of justice in popular culture', *Chicago-Kent Law Review*, vol. 75, pp. 899–930.
- Kamir, O. (2001) *Every Breath You Take: Stalking Narratives and the Law*, University of Michigan Press, Ann Arbor.

- Kamir, O. (2005) 'Cinematic judgment and jurisprudence: a woman's memory, recovery and justice in a post-traumatic society (a study of Plains's *Death and the Maiden*)', in *Law on the Screen*, eds A. Sarat, L. Douglas & M. Umphrey, University of Michigan Press, Ann Arbor.
- Kamir, O. (forthcoming 2005) 'Anatomy of Hollywood's hero-lawyer: a law-and-film study of Western motifs, honor-based values and gender politics underlying *Anatomy of a Murder*'s construction of the lawyer image', *Studies in Law, Politics and Society*.
- Kamir, O. (forthcoming 2006) *The Rule of Law-films: How Law on Screen Constructs Gender, Honor and Dignity*, Duke University Press, New York.
- Kamir, O. (unpublished b) 'Law, society and film: *Unforgiven*'s call to substitute honor with dignity'.
- Lenz, T. O. (2003) *Changing Images of Law in Film & Television Crime Stories*, Peter Lang, New York.
- Machura, S. & Robson, P. (eds) (2001) *Law and Film*, Blackwell Publishers, Oxford.
- MacNeil, W. (2003) 'You slay me! Buffy as jurisprudence of desire', *Cardozo Law Review*, vol. 24, pp. 2421–2440.
- MacNeil, W. (forthcoming 2005a) 'One Recht to rule them all! Law's empire in the age of empire', *Studies in Law, Politics and Society*.
- MacNeil, W. (forthcoming 2005b) 'Precrime never pays! "Law and Economics" in *Minority Report*', *Continuum*, vol. 19, no. 2, pp. 000–000.
- Miller, W. I. (1998) 'Clint Eastwood and equity: popular culture's theory of revenge', in *Law in the Domains of Culture*, eds A. Sarat & T. R. Kearns, University of Michigan Press, Ann Arbor, pp. 161–202.
- Minda, G. (1995) *Postmodern Legal Movements: Law and Jurisprudence at Century's End*, New York University Press, New York.
- Moonken, J. L. & West, N. (1990) 'Theaters of proof: visual evidence and the law in *Call Northside 777*', *Yale Journal of Law and the Humanities*, vol. 13, pp. 329–390.
- Raz, J. (1983) 'A right to dissent? I. Civil disobedience, II. Conscientious objection', in *The Authority of Law: Essays on Law and Morality*, ed. J. Raz, Clarendon Press, Oxford, pp. 262–289.
- Rimmon-Kenan, S. (1983) *Narrative Fiction: Contemporary Poetics*, Methuen, New York.
- Sarat, A. (2000a) 'Imagining the law of the father: loss, dread, and mourning in *The Sweet Hereafter*', *Law & Society Review*, vol. 34, pp. 3–46.
- Sarat, A. (2000b) 'Exploring the hidden domains of civil justice: "naming, blaming, and claiming" in popular culture', vol. 50, pp. 425–452.
- Sarat, A., Douglas, L. & Umphrey, M. (eds) (2005) *Law on the Screen*, University of Michigan Press, Ann Arbor.
- Sherwin, R. K. (2000) *When Law Goes Pop: the Vanishing Line between Law and Popular Culture*, University of Chicago Press, Chicago.
- Silbey, J. M. (2004) 'Judges as film critics: new approaches to film evidence', *University of Michigan Journal of Law Reform*, vol. 37, pp. 493–571.
- Symposium: Picturing Justice: Law and Lawyers in the Visual Media (1996) *University of San Francisco Law Review*, vol. 30, pp. 891–1247.
- Symposium: Film and the Law (1997) *Oklahoma City University Law Review*, vol. 22, pp. 1–256.
- Symposium: Law and Popular Culture (1998) *The Legal Studies Forum*, vol. 22, pp. 3–176.
- Symposium: Law and Popular Culture (2001) *UCLA Law Review*, vol. 48, pp. 1293–1591.
- White, J. B. (1973) *The Legal Imagination*, Little Brown, Boston.
- White, J. B. (1984) *When Words Lose their Meaning*, University of Chicago Press, Chicago.
- White, J. B. (1999) *From Expectation to Experience*, University of Michigan Press, Ann Arbor.

Filmography

- Adam's Rib* (1949) George Cukor.
- Anatomy of a Murder* (1959) Otto Preminger.

The Conviction (1994) Marco Bellocchio.
Buffy, the Vampire Slayer (1992) from Rubel Kuzui.
Death and the Maiden (1994) Roman Polanski.
Disclosure (1994) Barry Levison.
Fatal Attraction (1987) Adrian Lyne.
The Empire.
Ghostbusters (1982) Ivan Reitman.
High Heels (1991) Pedro Almadovar.
Lord of the Rings (2001) Peter Jackson.
A Pure Formality (1995) Giuseppe Tornatore.
A Question of Silence (1982) Marleen Gorris.
Rashomon (1950) Akira Kurosawa.
Taxi Driver (1976) Martin Scorsese.
Thelma and Louise (1991) Ridley Scott.
Unforgiven (1992) Clint Eastwood.