

Introduction

CONCEPTUAL FRAMEWORK

Law and Film: Methodological Perspectives

There are three fundamental premises to my analytical approach: 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. I suggest that study of films' performance of these functions is 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, and labeled accordingly as examining "film paralleling law," "film as judgment," and/or "film as jurisprudence." Each of these methodological perspectives may require the employment of various methodological tools, such as textual analysis (discussing, for example, the film's implied reader and reader response); focus on the film's composition of plot or characters; reading the film in the context of a historical survey of developments in film, society, or law; or examining or highlighting cinematic techniques (such as shots) and cinematic choices (such as casting).

Some films' interactions with law and the legal system are, of course,

more significant than others. Courtroom dramas, trial films, movies featuring a lawyer 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 legal discourse and system (*Unforgiven* and *Thelma and Louise* 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 manifest two or all three of the premises presented here, thus offering a complex and powerful combination of these cinematic-legal functions.

The first premise is that law and film are two pivotal discourses that both reflect and refract the fundamental values, images, notions of identity, lifestyles, and crises of their societies and cultures, and that there exists a significant correlation between their parallel functions. Both law and film are dominant players in the construction of concepts such as subject, community, personal and collective identity, memory, gender roles, justice, and truth; they each offer major sociocultural arenas in which 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, apparent, and identifiable in one discourse than in the other. An interdisciplinary comparison sheds light on the less obvious analogous structures and modes of operation of the parallel discourse. Detailed comparison of such structures can expand our understanding of both discourses, as well as the operation of broader social discourses and institutions. Most significant and intriguing of these parallel functions are the many subtle ways each field offers its reader a seductive invitation to take on a sociocultural persona and become part of an imagined (judging) community that shares the worldview constituted by law or film. (References to “readers” include “viewers” in the sense of “readers of film”).

The second premise is that some films, law films in particular, perform

large-scale “legal indoctrination.” That is, they train audiences in the active execution of 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, supplying them with frameworks, images, and stories with which to imagine themselves and their worlds (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.

A law film can be read as passing cinematic judgment when, in addition to portraying a fictional legal system, it offers distinct normative constructions of subjects and societies, of justice and judgment, inviting a judgmental viewing process. 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, value system, and juridical views that criticize or undercut those supported by its fictional legal system. Moreover, as a rich, multilayered 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 many and varied methods of performing cinematic judgment and engaging viewers in that judgment can be complex, subtle, and often elusive, and as a result uncritically influential. The various methods frequently involve cinematic choices regarding genre, editing, 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.

The third premise of my law-and-film theory is that a law film’s cinematic

judgment of its on-screen legal system can offer jurisprudential commentary. Law films, therefore, often invite analysis as jurisprudential texts. 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 overlooked and dismissed; but unrestricted by conventional academic disciplines and categories, it may also be fresh, original, innovative, and imaginative, transcending familiar routes and formulas.

Films' jurisprudential input is, arguably, the most prevalent theme in law-and-film scholarship. Stressing the importance of films' jurisprudential contributions, John Denvir (1996) suggests that 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 process ignores" (xii). Anthony Chase (1999) claims that the film *A Civil Action*'s jurisprudential conclusion is that "if most Americans have to depend on tort law to enforce their interests against corporate capitalism they have not got a chance" (955). Austin Sarat (2000) analyzes the film *The Sweet Hereafter* as a jurisprudential investigation of the interconnections between law and fatherhood. Similarly pointing to films' jurisprudential impact, Rebecca Johnson and Ruth Buchanan (2002) argue that films like *The Thin Blue Line*, *A Question of Silence*, and *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.

Examination of a film's underlying—and often unacknowledged—perceptions of gender roles, familial structures, and human relations can shed light on an embedded portrayal and treatment of social and normative issues that may otherwise remain effectively elusive. Similarly, the study of a film's jurisprudence and/or its cinematic judgment can reveal an underlying value system that is at odds with the film's proclaimed adherence to liberal values such as equality or dignity.

Why should one invest in reading films as popular jurisprudential texts? Why explore the cinematic judgment 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. Combining narratives and appealing characters with visual imagery and tech-

nological achievement, they can stir deep emotions and leave deep impressions. Leading viewers through cinematic judgment (and constituting notions of justice, equality, honor, and gender in the process), films can be extremely effective in molding public actions and reactions. A law film can 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 sociolegal influences may remain imperceptible, uncritically embraced, thereby augmenting film's influence and the need for critical, systematic investigation.

Furthermore, the study of cinematic jurisprudence may be valuable for its popular jurisprudential insight: that is, for purely real-world legal purposes. Similarly, the study of cinematic judgment may help expose structures, techniques, and mechanisms that operate in real-world legal judging, yet are more difficult to discern and identify in the less coherent texts of lived lives. The intertwined study of popular jurisprudence and cinematic judgment may also contribute to the revelation and evaluation of moral values—such as honor and human dignity—underlying social structures and the law.

Honor and Dignity: Two Antithetical Value Systems

The centrality of honor or dignity within a society's value system carries overwhelming implications and is thus deserving of strict scrutiny. While honor has been carefully studied and defined by scores of scholars over decades, dignity remains an elusive concept. A binary opposition of honor and dignity can assist in the conceptualization of dignity, which emerges as honor's antithetical adversary. Whereas honor entails a structured hierarchy and strict gender roles, encouraging violent competition among men and sexual constraint of women, human dignity aims to promote an egalitarian society, based on utmost respect for authentic, diverse individual needs and aspirations. Honor-based conceptions continue to underlie and influence significant portions of both legal and cinematic rhetoric and texts; dignity-based conceptions can increase sensitivity to honor-based attitudes, offering alternative frameworks for the creation of social meaning and legal standards. Let us turn briefly then to an examination of cultures based on honor and those based on dignity.¹

Honor cultures differ greatly in many features, as well as in the linguistic terms they use to denote honor and shame.² Significant generic attributes are, nevertheless, common to many honor cultures. Whether a particular behavior is shameful may be viewed differently by different honor cultures, but the use of shame as a fundamental criterion to determine worthiness and social rank is typical of them all. Julian Pitt-Rivers suggests comparing honor “to the concept of magic in the sense that, while its principles can be detected anywhere, they are clothed in conceptions which are not exactly equivalent from one place to another” (1966, 21).

To use William Miller’s words, “the well-known distinction between shame and guilt cultures, though rightly and roundly criticized, still captures a fundamental difference . . . between a culture in which reputation is all, and one in which conscience, confession and forgiveness play a central role” (1993, 116). Members of historical and contemporary honor cultures derive their social rank and sense of worthiness by measuring up to well-defined social norms of honorable behavior and avoiding or avenging behaviors and situations that are conceived as inflicting shame. Miller provides a basic definition:

Honor is above all the keen sensitivity to the experience of humiliation and shame, a sensitivity manifested by the desire to be envied by others and the propensity to envy the successes of others. To simplify greatly, honor is that disposition which makes one act to shame others who have shamed oneself, to humiliate others who have humiliated oneself. The honorable person is one whose self-esteem and social standing is intimately dependent on the esteem or the envy he or she actually elicits in others. At root honor means “don’t tread on me.” But to show someone you were not to be trod upon often meant that you had to hold yourself out as one who was willing to tread on others . . . In the culture of honor, the prospect of violence inhered in virtually every social interaction between free men . . . For shame and envy are quickly reprocessed as anger, and anger often is a prelude to aggression. (1993, 84)

Honor cultures thus cultivate emotions such as shame and envy which tend to depend on relative standing in a community, rather than cultivating more internally oriented and individualistic emotions such as guilt, remorse, angst, and ennui (Miller 1993, 116). Similarly stressing honor cultures’ typical linkage of social status, social rights, and self-esteem, Pitt-Rivers defines honor as “the value of a person in his own eyes, but also in the eyes of his society. It

is his estimation of his own worth, his *claim* to pride, but it is also the acknowledgment of that claim, his excellence recognized by society, his *right* to pride” (Pitt-Rivers 1966, 21). Adding the “honorable impulse” expected of members of honor cultures, the formula becomes this: “The sentiment of honor inspires conduct which is honorable, the conduct receives recognition and established reputation, and reputation is finally sanctified by the bestowal of honors. Honor felt becomes honor claimed and honor claimed becomes honor paid” (22).

In honor cultures, honor serves as an effective disciplinary tool, and the behavioral code under which members achieve and maintain honor is, therefore, a structure of social power. Failure to detect an insult that taints one’s honor, or failure to respond to an offense to one’s honor at the right time, in the right fashion, in the right degree, results in costly consequences, i.e., in loss of honor. Such cultures are ritualistic in the sense that they demand very specific responses to offensive behaviors. Honor cultures are local and particularistic in the sense that they apply exclusively to their own members, demanding thorough mastery of the most nuanced norms and expectations. Foreigners and outcasts are honorless, and honor norms very often do not apply to them. Honor cultures are individualistic in that each member is responsible for his or her honor, and will suffer the consequences of a wrong social move. At the same time, they are collectivist in the sense that each person’s honor also affects the honor of his or her clan, and sometimes that of a larger group. They are also class oriented, in the sense that a person’s honor and the means of maintaining it vary greatly according to social class.

In many honor societies, the most obvious class difference is gender based.

The honor of a man and of a woman . . . imply quite different modes of conduct. This is so in any [honor] society. A woman is dishonored . . . with the tainting of her sexual purity, but a man [is] not. While certain conduct is honorable for both sexes, honor=shame requires conduct in other spheres, which is exclusively a virtue of one sex or the other. It obliges a man to defend his honor and that of his family, a woman to conserve her purity . . . Restraint is the natural basis of sexual purity, just as masculinity is the natural basis of authority and the defense of familial honor . . . Masculinity means courage whether it is employed for moral or immoral ends . . . The honor of a man is involved . . . in the sexual purity of his mother, wife and daughters, and sisters, not in his own . . . “The honorable woman: locked in the house with a broken leg.” (Pitt-Rivers 1966, 42–45).

Manly honor, thus, correlates with masculine conduct: proactive, public, courageous, assertive, and even aggressive. In contrast, a woman's honor is contingent on the suppression, restriction, and concealment of her femininity, which is reduced to her sexuality. Women are often associated not with positive honor but with its negative opposite, shame, as they are considered a potential source of dishonor to their men and families.

Despite much contemporary reference to dignity, especially in countries where it is a legally recognized value, writers typically refrain from offering precise, comprehensive definitions, sometimes claiming that it is "intuitively" self-explanatory. Often discussed from legal and legalistic perspectives, dignity tends to be treated instrumentally rather than theoretically. "When it has been invoked in concrete situations, it has been generally assumed that a violation of human dignity can be recognized even if the abstract term cannot be defined. 'I know it when I see it even if I cannot tell you what it is'" (Schachter 1983, 849). There is no standard, widely accepted, meaningful definition of *dignity*.

For the purposes of this discussion, human dignity is the contemporary, liberal, post-World War II, minimalist, legalistic concept. It is the fundamental, egalitarian, humanistic value celebrated in Article 1 of the 1948 Universal Declaration of Human Rights, which proclaims that "all human beings are born free and equal in dignity and rights." This dignity seems to be a descendent of the theological, Judeo-Christian notion of glory: God's absolute, universal glory is fundamental and indestructible, and, created in God's image, a fraction of that glory exists equally in all human beings. Unlike its predecessor, dignity is not theologically based, deriving its vitality and substantial contents from humanistic liberal modernism. Over the second half of the twentieth century, this value has been embraced by constitutions and legal systems in states such as Germany, South Africa, Israel, and Canada, and in international organizations such as the European Union.

Like honor in honor cultures, dignity in dignity-based cultures relates to the core of a person's worth as a human being. It is viewed as an axiomatic human quality, the source of social acknowledgment and rights and the organizing principle of humanistic value systems. Like honor, the concept of dignity confuses human nature, noble sentiment, claims to social respect and legal rights and "natural" social and legal rights. Dignity is generally treated as simultaneously empirical and normative, natural and social, absolute and tentative, both a source and a consequence.³ In this discussion, I try to sketch a rough outline of dignity by highlighting the specific ways in which it differs

from honor. I suggest that dignity can best be substantially defined through comparison with honor, constructed as an antithetical, fundamental basis of a value system. For this purpose, I use simple descriptions of both honor and dignity, avoiding ambiguity and complexity within each term and value system.

Whereas, for most members of honor cultures, honor is earned and maintained through careful, painful observance of a specific cultural code, many define dignity as an essential human quality obtained at birth. All persons are worthy of human dignity and/or possess it merely by being humans. Honor entails variable status and virtue for the few honorable persons of high social rank; dignity entails invariable, fundamental virtue for all human beings. Whereas a person's honor can be easily lost through the slightest social error, or stolen by another, many would argue that one cannot lose or be deprived of his or her human dignity under any circumstances.

Honor is socially and culturally specific, and, within a given society and culture, each person's honor varies greatly, in both type and degree, depending on his or her class and behavior. Dignity is universal, and many claim that, except in extreme cases, all human beings are entitled to and/or possess it equally. Honor dictates specific, daily (sometimes ritualistic) behavior; dignity requires no action, and merely precludes others from extreme conduct (such as torture and mutilation). Honor implies both self-esteem and social status; dignity does not convey social status. Honor demands that an individual measure him or herself against social norms and other members of the community, encouraging competition; dignity demands equal basic concern for and treatment of all. Honor encourages rivalry, antagonism, and sometimes aggression, whereas dignity fosters consideration and constraint. Honor is complimented by fear of shame and humiliation; dignity by empathy, solidarity, humanistic obligation, and perhaps disgust at the thought of human violation.

In an honor culture, an offense to one's honor burdens one with the duty to remove the stain, purify the honor, avenge the offense, and humiliate the offender. Within the logic of dignity, an attack on a person's dignity is an attack on society and its fundamental values; it does not burden the offended party, but challenges the social order. Honor (like a commodity, a valuable possession, a trophy) can be accumulated; dignity is often portrayed as the most essential human asset, which cannot be quantified or accumulated. An honor culture, therefore, offers higher stakes and higher risks, whereas dignity secures a fundamental minimum. In this sense, whereas honor promotes ambition, dignity inspires a "minimalist" social code.

Miller asserts that “the mathematics of honor usually meant that you could never be just like someone else without taking what he had, appropriating his status to yourself. For the most part, people acted as if the mechanics of honor had the structure of a zero-sum or less-than-zero-sum game” (1993, 116). Pitt-Rivers documents that, in some honor cultures, “one who gave an insult thereby took to himself the reputation of which he deprived the other” (1977, 4). Dignity, on the other hand, like a parent’s love, “expands” with every newborn human being; no matter how many humans there are, there is always enough human dignity to be equally shared by all. In contrast with the logic of honor, the logic of dignity links a person’s own dignity with the dignity he or she allows others. By offending another’s dignity, a person offends his or her own. This dynamic motivates all humans to secure each other’s dignity.

Defining an honor culture, J. K. Campbell claims that “self regard forbids any action which may be interpreted as weakness. Normally this would include any altruistic behavior to an unrelated man. Co-operation, tolerance, love, must give way to autarky, arrogance, hostility” (1966, 151). In clear contrast, dignity promotes tolerance, love, and sometimes altruism, renouncing vengeance and hostility. I, therefore, agree with Pierre Bourdieu’s observation that

the ethos of honor is fundamentally opposed to a universal and formal morality which affirms the equality in dignity of all men and consequently the equality of their rights and duties. Not only do the rules imposed upon men differ from those imposed upon women, and the duties towards men differ from those towards women, but also the dictates of honor, directly applied to the individual case and varying according to the situation, are in no way capable of being made universal. This is so much the case that a single system of values of honor establishes two opposing sets of rules of conduct—on the one hand that which governs relationships between kinsmen, and in general all personal relations that conform to the same pattern as those between kinsmen, and on the other hand, that which is valid in one’s relationships with strangers. This duality of attitudes proceeds logically from the fundamental principle . . . according to which the modes of conduct of honor apply only to those who are worthy of them. (1966, 228)⁴

The constitution of honor or dignity as the basis of a society’s value system, or even as one of several such bases, has profound implications and is particularly consequential to the construction of women, their cultural images, social status, and legal rights (Kamir 2003a, 2003b, 2004a). The

analysis of honor and dignity as fundamental values inherently reflects feminist and feminist jurisprudential concerns. This book further suggests and demonstrates an intertwining of the honor/dignity and (jurisprudential) feminist perspectives, which, I believe, is mutually beneficial and perhaps crucial for the future of feminist thought.

An honor-sensitive feminist critique of both law and film may expose persistent patriarchal, androcentric, and sexist notions underlying our social systems, cultural images, and legal standards. A dignity-oriented feminist approach may be useful in replacing currently governing honor-based social, cultural, and legal attitudes. In this sense, this book develops a perspective that may best be described as a dignity-oriented, honor-sensitive, feminist law-and-film theory.

Feminist Law and Film

A feminist law-and-film analysis reviews the mutual interactions between law and film, assuming certain views regarding women's social status, highlighting gender-oriented constructions and implications, and critiquing underlying structures that uphold and perpetuate androcentric points of view and patriarchal social hierarchies. It also points to preferable alternatives. I believe and attempt to demonstrate that the feminist law-and-film approach developed in this book bridges the harmful gap between feminist film theory and feminist jurisprudence in a productive manner.

Feminist legal scholarship is goal-oriented, influential, and diverse (Barnet 1998; Chamallas 2003; J. Barr 1999; MacKinnon 2001; Johnson 2002). "Radical," or "dominance-focused," legal feminism has been considered to be mainstream legal feminism since the 1980s, and I thus refer to it simply as *feminist jurisprudence*. This type of feminist jurisprudence mostly targets the systematic, patriarchal domination of women, calling attention to the prevalent sexual violence against women (including rape, prostitution, child molestation, domestic murder and battery, pornography, stalking, and harassment) and demanding deep change of fundamental legal structures in order to address the endemic societal oppression of women. The expansion of antidiscrimination law to address women's discrimination through sexual harassment in the workplace is, perhaps, the most readily familiar example of real-world consequences of this line of legal feminism. In its perception of women as a subordinate class, dominance-focused legal feminism is Marxist in its fundamental logic.

Prior to the 1980s, mainstream feminist jurisprudence was of a more liberal nature. Its main goal was to overcome the law's exclusionary treatment of women, making it more gender inclusive. Liberal feminist jurisprudence assumed women's similarity to men as the basis of their right to legal equality. It did not aim to revolutionize the law, but to extend to women all legal rights enjoyed by men. Although many profeminist jurisprudential enterprises are still of this nature, they are often viewed as more liberal than feminist.

Another feminist school of thought, "cultural," or "relational," feminism, or "feminism of care," has also left its mark on feminist legal scholarship. In 1982, Carol Gilligan's groundbreaking *In a Different Voice* argued that women's unique mothering, caring, and nurturing tendencies express a unique sense of justice. Celebrating women's uniqueness, this line of thought proposes that the currently male-dominated law must be reformed to equally reflect women's sense of justice. Values such as caring and nurturing must be embraced and elevated to modify governing masculinist adversarial values of competition and rivalry. This approach, developed and theorized by prominent feminist legal scholars such as Robin West (1993, 1997), tends to focus less on the victimization of women and more on the legal implications of the celebration of womanhood. Care-centered feminist jurisprudence advocates more legal attention to feminine social functions, such as mothering, and to women's voices narrating their realities, pains, and needs. This perspective is more theoretical and less specific in targeting legal structures (such as rape law, or sexual harassment law), and is therefore less dominant in the contemporary legal reality.

The 1990s saw the birth and growth of identity-oriented critiques of mainstream feminist jurisprudence. Much of the identity-oriented critique has given voice to the perspectives of African American (P. Williams 1991) and lesbian women (Robson 1998), challenging what they consider as feminist jurisprudence's "essentialism" and "heterosexism," that is, its hidden assumptions of a privileged model of womanhood based on the life experiences of white, heterosexual, and mostly upper-class women. Concurrently, throughout the 1990s, postmodern perspectives have been very influential in academic circles, eventually making their way into legal academia and giving rise to much debate (and confusion) among legal feminists. Postmodern perspectives were much more readily embraced and integrated into feminist scholarship by feminist film theorists, who are deeply immersed in psychoanalytic rhetoric and modes of analysis.

Like feminist jurisprudence, feminist film critique is also a salient enterprise at the forefront of feminist critical and innovative scholarship. These branches of feminist scholarship have to some degree interacted separately with feminist psychological, sociological, and literary scholarship, but rarely with each other. Feminist legal discourse typically limits its interest in film to the portrayal of the female lawyer, rarely engaging in feminist film theory. Feminist film scholars occasionally refer to legal issues enacted on film and may even acknowledge, in passing, legal-feminist reference to such an issue. But they too refrain from more comprehensive attempts to establish a dialogue with feminist jurisprudence.

One consequence of this mutual lack of interest is the relative detachment and distance of many feminist legal scholars from lively, contemporary, theoretical feminist discourse. From a (post)psychoanalytic, postmodern perspective, much feminist legal work, in both content and methodology, is perceived as simplistic, overly legally analytic, solipsistic, anachronistic, and embarrassingly unreflective. At the same time, as Sue Thornham elegantly understates, “along the way, feminist film theory and criticism has become an academic subject and has become, perhaps, . . . cut off from its original sense of bold innovation and political purpose” (1999, 4). Indeed, for many feminist legal writers, a (post)psychoanalytic, postmodern perspective seems irrelevant, self-indulgent, condescending, and obscurant. Neither set of observations is wholly unfounded.

A more rigorous interdisciplinary feminist dialogue may draw feminist legal thinkers closer to the latest developments in feminist cultural studies, while reconnecting and reengaging feminist film study with real-world, politically acute issues of gender emancipation. As a feminist legal scholar, my point of departure is feminist jurisprudence. *Framed* aspires to reintroduce feminist jurisprudence to feminist film scholars—as well as to feminist legal scholars—as relevant and challenging, both in content and in methodology, in the hope of bridging the gap through a feminist law-and-film approach.

A MODEL OF FEMINIST JURISPRUDENTIAL CONSTRUCTIVE DECONSTRUCTION

This section introduces a model of the structure of a fundamental type of feminist legal analysis. I believe that many “classic” feminist legal arguments can be presented through this model, and that it is capable of facilitating many more useful theoretical developments. To avoid an overly theoretical

discussion, I introduce the model by demonstrating its *modus operandi* in reference to two of the most imperative and familiar feminist legal arguments. The most familiar formulations of these arguments have been associated with Catharine MacKinnon, a dominance feminist. Despite much criticism leveled at different aspects of MacKinnon's feminist legal scholarship, it remains the standard against which many claims are evaluated. As such, it is to this body of scholarship that I refer in the demonstration of the proposed model of feminist legal operation. The first argument examines, critiques, and deconstructs the meaning and implications of the Aristotelian notion of equality in the context of gender equality; the second examines, critiques, and deconstructs the meaning and implications of the criminal definition and prohibition of rape.

Jurprudential Constructive Deconstruction of Equality The Aristotelian formula of equality, which has been applied by many legal systems in all areas of the law, bases its notion of equality on concepts of similarity and difference. According to this definition, equality requires the similar treatment of similarly situated people, and the different treatment of differently situated people. This formula provides the framework for evaluating legal claims regarding unequal treatment, and it serves as the basis for the definition of the right to equality in specific contexts.

Like other dominance feminists, MacKinnon claims that in order to understand the Aristotelian formula in the context of "gender equality," we must expand our vision and examine this formula in conjunction with the deeply rooted sociocultural construction of woman as "other" (MacKinnon 1987, 32). This feminist legal approach combines the legal analysis of the Aristotelian notion of equality with extensive feminist literature arguing that (male-dominated) culture establishes (white, heterosexual) man as the universal, absolute standard of humanity, while constructing woman as man's negative image, i.e., as the manifestation of "difference."

Reading the Aristotelian formula of equality in conjunction with the perception of women as essentially different illuminates the full meaning of gender equality. In the context of a culture dominated by the Aristotelian formula, demanding equality for women amounts to demanding that different (or differently situated) people be treated similarly. Such a demand sharply clashes with the logic of the Aristotelian formula, constituting the notion of gender equality as an inoperative contradiction in terms (MacKinnon 1987, 33). In order to accommodate a meaningful notion of gender

equality, the concept of equality must, therefore, be redefined in a manner that would facilitate the transformation of the common notion of woman's difference, and of the patriarchal social order this perception serves and reflects. MacKinnon's alternative "gender equality formula" seems to consist of a "negative" aspect as well as a "positive" one (to borrow from Isaiah Berlin's characterization of "liberty"). The negative aspect of gender equality is the project of eradicating every intrusive, systemic, social and legal mechanism that reflects, maintains, perpetuates, and reinforces the domination of women by men in any way. The positive aspect of gender equality seeks to create norms, images, institutions, laws, and other sociolegal mechanisms that establish, define, reinforce, and uphold women's identities, value systems, and needs, as defined by themselves at a time when they become sufficiently emancipated to develop a free consciousness. This new notion of women's equality would therefore imply the repudiation of anything that supports the patriarchal construction of woman and the promotion of anything that may liberate women from such construction and facilitate their self-definition.

This feminist legal deconstruction of the Aristotelian formula of equality can be structured as follows:

1. The argument's first stage is the identification of law and society's accepted, working definition of the investigated legal norm. (This stage can be called "understanding the norm.") In the specific context of equality and gender equality in particular, the definition of the norm is that similarly situated persons deserve similar treatment.

2. The second stage is the presentation of a feminist analysis of a social convention that is not commonly associated with the investigated legal norm. (This stage can be called "defining the convention.") In the specific context of gender equality, the feminist analysis of a social convention argues that law and society construct woman as inherently different (from man, the universal standard of humanity).

3. The third stage is the critical juxtaposition of the accepted definition of the investigated legal norm with the feminist analysis of the social convention. (This stage can be called "juxtaposing norm and convention.") In the specific case of gender equality, the critical juxtaposition of the Aristotelian definition of equality (similar treatment of similarly situated persons) with the feminist analysis of the social convention (women are constructed as different) leads to the understanding that in the context of contemporary society and culture, gender equality is a meaningless paradox.

4. The fourth stage is the conclusion that in light of stages one to three, the investigated definition of the legal norm must be abandoned and replaced. The new definition must acknowledge the feminist analysis of the social convention, and enable the application of the legal norm in a manner that would challenge the social convention and the value system it manifests. (This stage can be called “proposing an alternative.”) In the specific case of gender equality, the proposed alternative definition of equality must establish that anything upholding the patriarchal construction of gender and gender difference is discriminatory, whereas anything that promotes women’s liberation from patriarchal construction advances gender equality.

This model captures the logic of many other legal feminist arguments. As an additional example, let us consider feminist deconstruction of the criminal definition and prohibition of rape.

Jurisprudential Constructive Deconstruction of Rape Law

1. Understanding the norm. In the specific context of rape, the traditional definition offered by common law asserts that (heterosexual) intercourse is illegitimate (and thus criminal) when consisting of forced (vaginal) penetration without consent. This definition assumes and relies on a clear distinction between legitimate and illegitimate sexual intercourse.

2. Defining the convention. In the specific context of rape, the feminist analysis claims that, under patriarchy, masculine use of at least some force is considered a natural component of legitimate heterosexual intercourse. Concomitantly, women are presumed to consent to sexual intercourse (MacKinnon 1987, 85, 86, 88; 1989, 126). This is predicated on the construction of man as “hunter,” “warrior,” and “conqueror,” and woman as one who means “yes” even when saying “no.” It results in the presumption that men are always willing and women always consenting. Under patriarchy, this feminist analysis goes, women are taught to believe that sexual intercourse is something they “owe” their men and must submit to in order to please them. Women are trained to believe that men need sexual release and that it is incumbent on women to provide men with both sexual stimulation and the means for its fulfillment. Women often believe that sexual preparedness is their duty. The question they ask themselves is not whether they consent but whether the situation requires them to provide a man’s sexual fulfillment. The outcome of this social indoctrination is that many women under many circumstances do not fully know whether sexual intercourse took place with or without their free consent, and are easily shaken and convinced that they

must have consented. When many women under many circumstances do not know whether or not they freely consented to sexual intercourse, the question whether intercourse was consensual is almost meaningless, and it is easy to concede that all women must surely always consent to any sexual intercourse.

3. Juxtaposing norm and convention. In the specific case of rape law, the critical juxtaposition of the legal definition of rape (forced sexual intercourse without consent) with the feminist analysis of the social convention (legitimate intercourse is perceived as consisting of the use of masculine force and is not premised on the woman's free consent) leads to the understanding that in the context of contemporary society and culture, criminal law's definition of rape as distinguishable from legitimate intercourse and thus criminally punishable is practically meaningless.

4. Proposing an alternative. The existing legal definition of rape must be abandoned and replaced. The new definition must acknowledge the conventional construction of legitimate sexual intercourse, of man as conqueror and of woman as inherently consenting. It must facilitate a meaningful prohibition of rape in a way that will challenge and undermine the conventional construction of legitimate sexual intercourse, which blurs the distinction between forced sexual intercourse without consent and mutually freely consensual intercourse.

Over the last thirty years, feminist legal scholars have proposed various alternatives to the traditional common-law definition of criminal rape, and several of them have been adopted by legislators around the common-law world. Some believe that for a rape definition to be effective it must construct rape not as a sex crime but as violence, emphasizing the use of force rather than the woman's (lack of) consent. Others define rape as any sexual intercourse without consent, whether violent or not. Many believe that rape should be defined more broadly, to include sexual acts other than intercourse. I suggest that since they all attempt to resolve the predicament described by the model, they can each be evaluated against the requirements of the model's fourth stage.

The explication of the model of a feminist legal argument may have also clarified the seemingly paradoxical label I attached to it: constructive deconstruction. Unlike postmodern, apolitical deconstruction, feminist legal deconstruction is not necessarily committed to the theoretical assumption that a text's internal conflicted duality is a given or unchangeable quality. It does not assume that a text will always undercut itself or that there is nothing beyond the text. On the contrary, feminist legal deconstruction is ideologi-

cally and pragmatically motivated, and must be viewed as a methodological tool, applied not solely for its textual interest but also in pursuit of revolutionary ideological social change.

Furthermore, for feminist legal scholars, professional indoctrination may shape their perception of reality, facts, norms, and their relationships. For a legally oriented person, reality is not the inner psychological makeup of individuals described by psychoanalytic discourse, but is rather the set of governing legal orders, prohibitions, and regulations in a particular time and place. Facts are determined by judges or juries within the legal process of enforcing governing laws. Norms are commands or organizational rules that, when legitimately legislated or endorsed by a court, become legal reality, thereby influencing future determination of facts.

Legally trained people understand reality as ever changeable, facts as uncertain until determined by the authorized institution(s), and norms as inseparable from both. It is perhaps relatively easy for a feminist legal scholar to envision a new normative standard becoming law, and thus also a fact determining reality. Dramatic change, an immediate, authoritative shift in perspective, may be more comprehensible, possible, and attainable in this context than, say, within a psychoanalytic framework.

Feminist legal deconstruction is at its best when it is constructive, that is, followed by operative reconstruction aiming to furnish new legal concepts and tools more suitable—or at least less destructive than those exposed by deconstructive analysis—to the agenda of sex/gender emancipation. This, of course, requires transcending postmodern (as well as psychoanalytic) passivity and fatalism, which can content itself with playful, pleasurable exposure of the self-defeating mechanism inherent in every text. Such a feminist legal venture may be considered too analytic or theoretically naive and falsely optimistic; it is also political, revolutionary, and world changing.

INSERTING THE DIGNITY-BASED, HONOR-SENSITIVE COMPONENT

In one way or another, honor-based mentality is common to many, if not all, patriarchal societies. It is closely linked to and responsible for social conventions as well as legal norms requiring feminist jurisprudential constructive deconstruction. In spite of this, the honor-based logic of many layers, components, and manifestations of patriarchy has not received the feminist (legal) attention it deserves, perhaps because of a mistaken belief that it has lost much of its relevance. In order to remedy this gap, I propose sensitizing feminist legal argumentation to honor-based values, norms, and social con-

ventions, as well as to the possibility of replacing them with alternative, dignity-based ones. The model of feminist legal argumentation can be so sensitized through the insertion of an “honor test,” and through the explicit search for dignity-based alternatives for honor-based sociolegal norms and conventions.

The first step is expanding the argument’s second stage, defining the convention, to include the investigation as to whether the analyzed social convention corresponds with an honor-based value system, and if so how and to what degree. In the specific context of the constructive deconstruction of the Aristotelian notion of (gender) equality, this honor test reveals that woman’s construction as paradigmatically different often goes hand in hand with honor-based worldviews. In a culture that is, or was, honor oriented, such construction of woman may well be a manifestation of honor mentality as well as a means to preserve it.

The construction of woman as different is well suited to a world of honor, which is deeply invested in pronounced social stratification. In an honor society, hierarchy and status are the crucial social resources available for distribution based on compliance with society’s norms. The categorical gender distinction is critical to the definition of social gender roles, which play a foremost function in an honor society. If masculinity is, by definition, the source of honor and a reward for honorable conduct, and femininity is the paradigmatic potential source of shame that must be oppressed and suppressed to maintain honor and prevent dishonor, then an honor society’s most fundamental values depend on a rigid gender distinction. And since man is the standard of honor, woman, the potential source of dishonor and shame, is clearly different.

In the specific context of the constructive deconstruction of the criminal definition of rape, the honor test reveals that the conventional social perception of legitimate (heterosexual) intercourse, as consisting of masculine use of force and as not necessarily relying on a woman’s free consent, goes hand in hand with honor-based worldviews. In a society that is, or was, honor oriented, such construction of legitimate intercourse may well be a manifestation of the honor mentality as well as a means to preserve it.

In the world of honor, the only type of sexual intercourse considered legitimate is that in which penetration is performed by a man on his wife, whose sexuality he rightfully controls. No other extramarital sexual contact is legitimate, as it fatally harms the honor of the man who controls sexual access to the woman and is responsible for guarding and protecting that

access. Extramarital intercourse connotes failure on the part of the man responsible for the woman's honor, shaming and dishonoring him and his family. Such shame calls for violent vengeance, which disturbs the peace and is socially undesirable.

In an honor culture, therefore, neither consent nor force are relevant to the definition of legitimate sexual intercourse and to its distinction from illegitimate intercourse. When, according to the rules of honor, a man penetrates a woman whom he is rightfully entitled to penetrate, the intercourse is legitimate whether or not he uses force, and whether or not she conveys her freely given consent. And again, according to the rules of honor, when a man penetrates a woman who may be penetrated only by a different man (or by no man at all), the sexual intercourse is illegitimate, irrespective of either his use of force or her freely given consent. In reality, then, the critical distinction is not between "carnal knowledge of a woman against her will with the use of force" and any other form of intercourse, but between "intercourse that respects the honor code" (any marital intercourse) and intercourse that does not (any fornication or adultery).⁵

An honor mentality thus blurs the distinction between consensual, or unforced, intercourse and nonconsensual forced intercourse. In an honor-based world, the traditional common-law legal definition of rape as nonconsensual forced intercourse would clash with the honor-based conventional perception of legitimate intercourse, and render the criminal prohibition ineffective. Since contemporary Western societies are not far removed from their honor-based origins, it stands to reason that the blurring of distinctions between types of sexual intercourse may be a remnant of an honor-based era.

The significance I attach to the honor test is not merely theoretical, academic, and descriptive. Its relevance is not limited to the conceptual insight reached in the model's stage of juxtaposing norm and convention. The honor test's foremost significance lies in the context of the model's last, practical, goal-oriented stage of proposing an alternative formulation of the legal norm. The importance of identifying the honor-based component of the examined social convention is that it leads to the careful construction of an alternative definition that is free of honor mentality, replacing it with a preferred dignity-based one.

Kant's categorical imperative, which has become a pillar of modern Western culture, proclaims that one must never treat a person as merely a means to an end external to that person. Human beings must always be treated as an end in their own right. Treatment of a person as merely a means to an end

offends his or her human dignity. In a dignity-based world, equality means that all persons are equal in human dignity, and thus equally entitled to be treated as ends, not means. This definition is more complex than meets the eye. Although fundamentally universalistic, it can also be the basis for specific protection of group rights. It defines gender equality as every woman's absolute right to always be treated as an end in her own right and never as merely a means, irrespective of cultural traditions, men's honor or family interests.

Human dignity prescribes the right to think, express oneself, not be enslaved, not be violently victimized, obtain an education, work in order to provide for oneself, choose one's partner, choose whether to have a family, and so forth. In a world based on human dignity, these rights are granted equally to all people, men and women, by virtue of their humanity. However, people are differently situated in social settings, often based on their chosen or enforced affiliations. For example, a certain regime (such as the Taliban) may prevent women, and only women, from obtaining an education and working to support themselves. From a dignity-based perspective, the demand that women be allowed to pursue education derives from the value of human dignity, in which the idea of gender equality is inherent. The demand, therefore, does not rely on women's similarity with men, but on every woman's equal right to be treated as an end in her own right, and not as merely a means to ends dictated by religion and custom. Human dignity can thus be the basis for the definition of equality rights that are specific to members of distinct groups. A perspective based on human dignity may add a universalistic depth to alternative feminist formulations of legal norms.

Similarly, human dignity can be the basis of a new definition of criminal rape. In a dignity-based world, the distinguishing criteria between legitimate and illegitimate sexual intercourse is whether both parties treated each other as a human end, and not merely as a means for self-gratification. In a world of human dignity, legitimate sexual contact expresses every party's recognition of the humanity and dignity of the other(s). Rape, on the other hand, is an attempt to violate the other's fundamental humanity and dignity. A person committing rape treats his victim as less than human, as an object for sexual use. Rape denies the victim's basic rights derived from his or her human dignity: to basic self-definition, self-respect, freedom from sexual aggression, and freedom from trespass across her or his most personal boundaries.⁶

Feminist legal argumentation can and should be sensitized to the deep

sociolegal implications of diversity among women in a manner analogous to its sensitivization to honor and dignity. Much like the “honor test,” a “diversity test” must be inserted into the model’s second stage of analyzing the relevant social conventions. This test must detect distinctions applied by the social convention to diverse categories of women, mapping their implications. This analysis will, in turn, affect the alternative formulation of the governing norm, offered in stage four. This part of the argument is presented in chapter 10, together with the reading of *Set It Off*.

FEMINIST FILM THEORY

Having presented a model of feminist legal argumentation, I now present one of feminist film critique. The similarities and differences between these two models testify to the uniqueness of the feminist legal constructive deconstruction. In order to best present the second model and compare it with the first, I demonstrate its logic in reference to a substantive, classic feminist critique of cinematic pleasure, developed by Laura Mulvey, in her 1975 groundbreaking essay “Visual Pleasures and Narrative Cinema” (1999). Much like MacKinnon’s scholarship, Mulvey’s too has been criticized by many. Nevertheless, it remains the standard against which feminist film critique develops, and it is as such that I refer to it here.

According to film theory (in particular that of Christian Metz), an audience enjoys absolute, one-sided, controlling omnipotence regarding on-screen characters. The audience’s unbounded view is empoweringly erotic. In “Visual Pleasures and Narrative Cinema,” a groundbreaking essay published in 1975, Laura Mulvey aimed to read this formula of “film-viewing pleasure” in its broad context, rather than take it at its seemingly neutral face value. Her male predecessors applied psychoanalytic logic to film viewing in a way that was blind to gender; they assumed, without acknowledging, the “human,” “universal” viewer’s maleness. Unlike them, Mulvey reminded her readers that such psychoanalytic analysis of film viewing applies exclusively to men, as only they are privileged, in psychoanalytic discourse, with the potential of full subjecthood. Women are defined through that discourse as the male subjects’ objects; the viewer’s “look/gaze” is an erotic, masculine way of objectifying and controlling women. The pleasure of film viewing described by film theorists, Mulvey concluded, is the male viewer’s erotic, fetishistic, sadistic pleasure of fully objectifying women on-screen through the camera’s omnipotent gaze (enhanced by point-of-view shots of on-screen male characters’ controlling, eroticized gazes at on-screen women). Combined with the

on-screen male characters' control of women within the film's narrative, the male viewer's pleasure constitutes a male fantasy of women's submission and objectification. Female viewers were assumed to identify with on-screen women, thus accepting their objectification as a necessary means to achieve men's pleasure. It is this pleasure, therefore, that Mulvey challenged. She hoped that in its place a new language of desire would emerge.

In other words, bringing to light more of the psychoanalytic discourse underlying film theory, Mulvey showed that the promise of pleasure, omnipotence, erotic gratification, and empowered subjecthood made by film (as theorized by scholars) to its viewers was, in fact, relevant only to male viewers. Women viewers were not merely excluded from it; their objectification was the condition supporting the promise made to male viewers. No subjecthood or erotic pleasure was promised women since their objectification was the basis of film's false promise of universal subjecthood.

Following Mulvey's lead, feminist film scholars developed this critique of mainstream film theory and its social implications, expanding the feminist analyses to better scrutinize the film-viewing experience of female viewers. These viewers, they showed, were manipulated into identifying with the "to-be-looked-at" women on-screen, uncritically accepting their passive role as the object of men's gaze and the source of male erotic, controlling, sadistic pleasure. Narrative film seduced women into accepting the construction of feminine sexuality as masochistic and submissive.

Feminist film scholars further demonstrated how women viewers were simultaneously invited by film to take on the masculine identity of on-screen male characters who looked at and objectified on-screen women. This was effected through relentless cinematic manipulation of female and male viewers alike to identify with the camera's point of view which, like the on-screen men and often together with them, gazed at women and objectified them.

According to this feminist critique, women were invited by film to identify both with the voyeuristic, controlling, erotically empowered male subject, and with the female object whose submission is the source of man's sexual pleasure. Women were simultaneously seduced into participating in the erotic masculine pleasure of objectifying on-screen women, while passively accepting that, as women, their sexual pleasure was masochistic and submissive. Women were programmed to identify control, sadism, and gazing as masculine attributes; and passivity, subordination, and masochism as feminine ones. Despite the many critiques of this line of feminist film analysis, it is still a "classic" and prominent one, the standard against which much of

feminist film criticism has developed. It's useful to compare this feminist film critique with the model of feminist legal argumentation.

1. The first stage of Mulvey's argument is the identification, framing, and rephrasing of the theoretical, psychoanalytic definition of cinematic pleasure, as formulated by leading film theorists. Mulvey showed that in psychoanalytic terms, these theorists (such as Christian Metz) proclaimed that narrative film enables the viewer to dominate on-screen characters with his gaze. They established that this one-sided, omnipotent, dominating gaze gives the viewer erotic visual pleasure, which is, in its very nature, voyeuristic, fetishistic and sadistic. This is the essence of cinematic pleasure. Mulvey showed that the one-sided nature of film viewing renders it a particularly voyeuristic pleasure, and hence also particularly fetishized and sadistic (in the Freudian sense of these terms). This stage can be called "psychoanalytic gaze at film theory."

2. The second stage in Mulvey's argument is the presentation of a feminist critique of a psychoanalytic construction; this feminist critique is not commonly associated with the investigated theoretical definition of cinematic pleasure. Mulvey's feminist critique is of the psychoanalytic association of masculinity with potential subjecthood, and femininity with objectification. Mulvey shows that in psychoanalytic terms, man alone is capable of full subjecthood, while woman is constructed as an object for man. In the cinematic context, which focuses on the visual, this view constructs woman as man's visual object. This stage can be called "feminist gaze at psychoanalysis."

3. The third stage in Mulvey's argument is the critical juxtaposition of the theoretical, psychoanalytic definition of cinematic pleasure with the feminist critique of the psychoanalytic construction of man as subject and woman as his (visual) object. This juxtaposition makes it clear that, in describing the pleasure of film viewing, film theorists referred exclusively to the male viewer's erotic voyeuristic pleasure of fully objectifying women on screen. According to Mulvey's critique, female viewers are invited to identify with the on-screen female characters, thus passively accepting their own objectification as a necessary means to achieve men's erotic pleasure. This stage can be called "juxtaposing film and psychoanalytic theories."

4. Resting on the presumption that psychoanalysis accurately captures the essence of human existence under patriarchy, the fourth stage in Mulvey's argument is the conclusion that the only strategy possible is to use psychoanalytic rhetoric against itself in an attempt to expose, deconstruct, and undermine both it and the human reality it portrays. To use her own words:

There is an obvious interest in [Freud's] analysis for feminists, a beauty in its exact rendering of the frustration experienced under the phallogentric order. It gets us nearer to the roots of our oppression, it brings closer an articulation of the problem, it faces us with the ultimate challenge: how to fight the unconscious structured like a language (formed critically at the moment of arrival of language) while still caught within the language of the patriarchy? There is no way in which we can produce an alternative out of the blue, but we can begin to make a break by examining patriarchy with the tools it provides, of which psychoanalysis is not the only but an important one . . . At this point, psychoanalytic theory as it now stands can at least advance our understanding of the *status quo*, of the patriarchal order in which we are caught. (Mulvey 1999, 59)

Mulvey set out to expose male erotic pleasure as derived from the objectification and domination of women. She wanted to uncover the gender-oppressive nature of cinematic pleasure. She further aspired to challenge and destroy this gendered erotic cinematic pleasure and replace it with a new one. But she believed that all these goals could be pursued only from within the psychoanalytic world, using its own logic and rhetoric to expose and undermine the damaging constructions of cinematic, i.e., masculine erotic pleasure.

The comparison of Mulvey's argument with the model of legal constructive deconstruction reveals two key differences. The legal model's first stage refers to the definition of a norm (gender equality, the prohibition of rape), and its second stage refers to social convention ("Woman is different," "Legitimate sexual intercourse may contain force"). In contrast, the first two stages of Mulvey's argument ("psychoanalytic gaze at film theory" and "feminist gaze at psychoanalysis") refer to psychoanalytic(-based) constructions of human constitution (cinematic pleasure and masculine erotic pleasure). This difference leads to a second, most significant one. The legal argument's fourth stage is the replacement of the definition of the norm identified in the first stage with one that would challenge the social convention analyzed in the second stage, and the oppressive worldview it entails. In contrast, the fourth stage in Mulvey's argument ("using the master's tools") concludes that the psychoanalytic construction of human constitution presented in stages one and two is irreplaceable, as it is consistent with human reality under patriarchy. Mulvey's feminist film theory is, thus, obliged to use the psychoanalytic discourse to reveal gender biases of psychoanalytic discourse, which are also the biases of human reality under patriarchy. Feminist critique must accept the premises of psychoanalysis, and slowly use it against itself.

I suggest that these two intertwined differences highlight the efficiency of the model of feminist constructive deconstruction for social change, in contrast to Mulvey's argument, which fails to inspire reform. The model of classic feminist legal argumentation uses a Marxist outlook on and approach to human reality. But it is not committed to Marxist notions of gender and women. Mulvey's argument is committed to the premises and method of psychoanalysis, as well as to its construction of gender and women. Mulvey's potentially paradigm-shifting move did not inspire a new language of cinematic pleasure and women's agency because it was undercut and frustrated by her use of psychoanalysis as a political tool to fight sexism, by her uncritical acceptance of a subject-object dichotomy, and by her adherence to a postmodern deconstructive logic that precludes a radical break with the given text.

Mulvey assumed that, given the existing structure of our unconscious, the psychoanalytic depiction of woman is real in the sense that our unconscious mechanisms actually function in a manner that is well captured by psychoanalytic constructs. She of course did not celebrate this oppressive reality, but seemed to believe that only exposure of this system in its own terms could, perhaps, bring about slow, evolutionary change from within. There could be no other way because no other depiction captured our inner mechanisms, and there was no other language we could speak.

By starting from the belief that psychoanalysis accurately captures and portrays contemporary human reality, Mulvey's own sophisticated, self-conscious critique featured woman as a symbol of the lack of phallus, guilty of arousing male fear of castration, as a "guilty object" provoking man's justified devaluation or punishment of her, his possession, and as a mystery, prompting man's desire to demystify her. In Mulvey's critique, woman's psychoanalytic construction as the object of man's subjecting gaze and sexual pleasure is irrefutable. The meaning of woman within this framework, she explicitly asserted, is sexual difference.

Unlike Mulvey, I do not believe that psychoanalysis can supply effective tools for its own deconstruction, exposure, critique, and replacement. An ideology so openly misogynist cannot explore its own misogyny, nor can it allow a meaningful exploration of women's emancipation. An Archimedean point of view from an alternative framework is an essential precondition for such a project.

Mulvey does not seem to doubt or challenge the (psychoanalytic) "fact" that man's will and gaze can and do "objectify" woman. Neither does she doubt or

challenge this objectification's (psychoanalytic) "justification" through the woman's inherent (sexual) "guilt." Nor does she doubt or challenge the possibility of a "guilty object." Yet it seems to me that any discourse that acknowledges that women can be "objectified," that such deprivation of their subjecthood can be "justified," and that there can be an inanimate "object" that is nevertheless morally responsible, hence "guilty," cannot be reconciled with a feminist worldview, with the premises of human dignity, or with other ideological sensitivities excluded by psychoanalytic theory. I suggest that the application of the distinction between honor- and dignity-based value systems can shift the sense of inescapable entrapment within psychoanalysis so eloquently articulated by Laura Mulvey, substantiating a more revolutionary feminist film critique, analogous to the feminist jurisprudence presented above.

The theory of one person's objectification of another through a viewer's gaze assumes that a person exists either as subject or as object, that one person can reduce another from one type of existence to the other, and that this reduction can be done through looking. The logic of the specific belief system underlying Mulvey's psychoanalytic discussion was perhaps best described and explained by Sartre in *Being and Nothingness*. The human look is Sartre's basic tool in his discussion of subject and object, self and other, power and shame.

Sartre defines the perceiving human subject as "being-for-itself," which means "nothingness": unbound personal freedom, countless possibilities from which to constantly choose. The essence of human existence, of subjecthood, is perpetual self-determination; the subject is one whom no exterior force can control, limit, subordinate, or determine. Subjecthood is eternal human potential of choice, self-determination, and change. An object, on the other hand, which Sartre defines as "being-in-itself," is the exact opposite: it just is that which it is. It is determined by a subject, a force exterior to itself, and exists for it, in the sense that it is a part of the perceiving subject's world as he constitutes it through his free, unbound choice, perception, and determination.

In Sartrean terminology, "the Other" is a person looking at me in a way which *objectifies* me. This objectification prevents the looked-at person's autonomous existence as "being-for-itself" and condemns him to a subordinate existence of a "being-in-itself" in the Other's world—the world the Other constitutes, as a free subject, through his look at the objectified person. In an interaction between two persons, only one can look at the other, performing the role of the free, human subject, being "the Other." The other participant

in the interaction is deprived of his subjecthood, forced by the looking subject into the existence of an object in the looking subject's world, "being-in-itself." In Sartre's world, any intersubjective meeting entails an objectification of one by the other. This is so because a person cannot be both subject and object simultaneously: "We cannot perceive the world and at the same time apprehend a look fastened upon us; it must be either one or the other. This is because to perceive is to look at, and to apprehend a look is . . . to be conscious of being looked at" (Sartre 1966, 347).

The Other, therefore, undermines my subjectivity by forcing me to feel/be "looked at," like an object, rather than to look at the world and determine it as an autonomous subject. It restricts me as self in every possible way and prevents my "being-for-itself"; it overpowers and subjugates me, depriving me of my human essence (Sartre 1966, 379). In every human interaction, therefore, the Other and his look shame the objectified person for the loss of his freedom and mastery. "Shame" within this framework is

the recognition of the fact that I am indeed that object which the Other is looking at and judging . . . Shame reveals to me that I am this being, not in the mode of "was" or of "having to be" but in-itself. . . In order for me to be what I am it suffices merely that the Other look at me . . . Pure shame is not a feeling of being this or that guilty object, but in general of being an object; that is, of recognizing myself in this degraded, fixed and dependent being which I am, for the Other. Shame is the feeling of an original fall, not because of the fact that I may have committed this or that particular fault, but simply that I have "fallen" into the world in the midst of things and I need the mediation of the Other in order to be what I am . . . And yet while making me into "me-as-object" for the Other, the feeling of shame also supposes a selfness which is ashamed and which is imperfectly expressed by the "I." (350–51, 384, 385)

Sartre's linkage of the Other's objectifying gaze with the feeling of shame is not accidental. The zero-sum duel over subjecthood and objectification, in which the gaze replaces the sword, is simply a philosophical, sophisticated, bloodless rephrasing of the honor mentality. Just like honor, subjecthood, the defining social value that determines relational status and worth, can be lost or taken away by a more powerful opponent. One wrong move can cost a person his subjecthood—as it can cost one his honor. A person's loss of subjecthood to another affirms the other's subjecthood and the loser's shame and hostility, just as with honor. Just as a dishonored existence is "worse than death," so a subjectless existence is degradation to the state of an inanimate

object. In other words, this portrayal of the subject-object relationship which Mulvey employs rests on a belief system rooted in an honor mentality. This honor mentality carries with it embedded gender implications.

In Mulvey's psychoanalytic terms, masculine objectification of a woman is not merely possible; it is also justified by her castration guilt. Translated into the more explicit, crude terms of honor: woman's potential ability to shame and endanger her father and/or husband (i.e., to "castrate" them) by exposing/submitting herself to another man's pleasure renders her inherently guilty, thus deserving of subordination, restriction, veiling ("objectification"). Within this value system, little significance is attached to the difference between woman's "self-exposure" and her "submission" (that is, between adultery and rape). In other words, woman's (sexual) "autonomy" is in clear contrast with the entire value system and the social order it supports.

An explicit honor terminology clearly associates "gaze" with "penetration" and "man looking at a woman" with "man penetrating a woman." "Objectifying by looking" is a variation on "possessing/conquering/defiling/shaming by penetrating." This narrative of "subject-gaze-object" reflects and perpetuates the social construction of man as "penetrating" and woman as "penetrable." Psychoanalytic definitions of man's identity, subjecthood, and film-viewing pleasure assume this narrative and depend on it. Behind the professional jargon of psychoanalytic discourse thrives a socially constructed penetration, defining man and woman by positioning them on two opposite ends of a male-defined sexual activity. Woman is thus constructed through man's self-defining criteria, and characterized as different from him in reference to his most valued and cherished characteristic. She is positioned as his inferior negative image, his lesser other. The biological connotation of penetration affords this structure a sense of natural, objective, neutral, universal, and irrefutable truth.

The same mythology underlying the conventional perception of woman as different and of legitimate sex as not precluding force or requiring a woman's free consent lurks behind psychoanalytic constructions of masculine erotic pleasure and woman's objectification by man readily adopted by film theory. Feminist legal scholars such as MacKinnon concluded that, once exposed, perceptions, constructions, and conventions tainted by such misogynistic myths must be abandoned and replaced. Feminist film scholars such as Mulvey concluded that we must continue to expose the mythology from within, having no alternative. But in fact it is a deconstruction from within that is impossible, whereas an alternative readily exists. A feminist value system

based on human dignity can indeed replace the honor-based structure that is currently dominant, including its psychoanalytic versions.

“Subject looks and objectifies other” is an honor-based narrative. It reflects and perpetuates naturalized misogynistic social constructions, including the construction of man as “naturally penetrating” and woman as “naturally penetrable.” It no more captures our inner mechanisms than do alternative narratives. It constructs and perpetuates such personal and collective mechanisms only if awarded a privileged position. But this is a choice, and it is ours to make. The “subject looks and objectifies other” narrative relies on determinations such as “we cannot perceive the world and at the same time apprehend a look fastened upon us; it must be either one or the other.” At the risk of sounding naive, I contend that this is fundamentally false. We can, indeed, and do regularly look at another person while concomitantly enjoying the other person looking at us. Friendships, intimate relationships, professional encounters, competitions, and rivalries provide daily reminders and proof.

LAW-AND-FILM FEMINIST CONSTRUCTIVE DECONSTRUCTION

A constructive deconstructive version of Mulvey’s film theory could take the following form:

1. Understanding the norm. The identification of the psychoanalytically based theoretical definition of cinematic pleasure as objectifying on-screen characters through an omnipotent gaze.

2. Defining the convention. The presentation of a feminist critical analysis of a psychoanalytic convention that constructs only man as a potential subject and woman as his object. The honor test reveals that the definition of both masculine and cinematic erotic pleasure as deriving from the objectification of women is compatible with honor-based value systems.

3. Juxtaposing norm and convention. Juxtaposing the psychoanalytic-based definition of cinematic pleasure with the feminist critique of psychoanalytic subjectification of men and objectification of women leads to the understanding that, in a psychoanalysis-influenced world, the theoretical construction of cinematic pleasure perpetuates misogynistic perceptions of woman as object for man, indoctrinating women into submissive masochism.

4. Proposing an alternative. A new conceptualization of cinematic pleasure that acknowledges the widely held interpretation of gender domination as the source of masculine erotic pleasure, and aspires to challenge it through a dignity-based value system. In a dignity-based world, objectifying the other (through a gaze) is meaningless, since a person’s humanity is irreducible. An

attempt to objectify another person (through a gaze) is an attack on her or his human dignity. The construction of women as means for men's sexual gratification offends their human dignity, as it denies them the fundamental right to be treated as ends and not as means. In a dignity-based world, the attack on another person's dignity and humanity is not the source of (erotic) pleasure. Pleasure coincides with interpersonal communication premised on mutual acknowledgment, respect, empathy, compassion, care, appreciation, celebration. Cinematic pleasure may, therefore, be premised on sympathetic identification with an on-screen character, and vicarious respectful interaction with other on-screen characters. It can be associated with the potential opportunity to experience respectful identification with a vast variety of human types in incessantly changing human situations.

Had Mulvey chosen legal feminist constructive deconstruction over psychoanalysis as her political tool, her move could have triggered a paradigm shift. Films can choose to narrate dignity-based stories through dignity-based cinematic structures. Film theory can choose to read films, their cinematic effects, and their impact on their viewers through dignity-based theories. Even psychoanalytic discourse could choose to replace its underlying honor-based mythology with a dignity-based one. As in the world of law, new orders and regulations can create a new reality, which, in turn, determines new facts.

A Feminist Law-and-Film Treatment of Women's Construction as Victims and Villains

Feminist legal practitioners and writers have long attended to the systematic victimization of women, the social concealment and denial of this violence against them, and the consequential phenomenon of blaming the victim which occurs within legal systems through the use of legal tools. Such issues have always been central to feminist jurisprudence. For decades, feminist legal scholars have argued that the legal treatment of victims of sexual assault (rape in particular) constitutes a second assault on them, minimizing or denying their victimization while accentuating suspicions of guilty "contribution" and "provocation" that allegedly triggered the violent crime. Since the 1990s, some feminist legal scholars have been emphasizing the objectification that accompanies a simplistic, one-dimensional presentation of women's victimization. They argue that such objectification has influenced the legal perception of women, leading to a new type of gender blindness and

discrimination. A prime example is many courts' expectation that victims of rape or domestic violence be passive and helpless; women whose conduct implies active resistance and struggle are not recognized as "reasonable victims," and their victimization is not legally acknowledged and condemned.

Feminist film scholars have focused on techniques of visual representation of women on-screen. They have shown and analyzed how women are systematically portrayed in ways that objectify them and construct them as submissive commodities for on- and off-screen male consumption and/or as deadly sexual predators (*femme fatales*). The analogous insights gained by these two branches of feminist scholarship are striking. My aim is to highlight these insights and combine the two perspectives to offer a fuller picture of the construction of women's victimization and culpability through observation of the significant cultural interaction between law and film.

More specifically, extending decades of feminist work in law and in film, I contend that the sociolegal construction and understanding of women's victimization, objectification, and inherent guilt is mediated to a great extent through their representation and the cultural imagery of its composition. While the conceptualization of victimization and guilt belong to the sphere of judgment and justice that we associate with legal discourse, representation and imagery are part of the lexicon of art. My exploration of the relationship between imagery and representation and judicial (or judgmental) conceptualization is an inherently feminist law-and-film project, tapping the unique, innovative potential of this new interdisciplinary field and mapping an approach to such research.

The specific unifying theme of *Framed* is twofold: to reveal the construction of oppressed women as "guilty objects" through cinematic judgment, silencing, stereotyping, and application of honor-based notions, and to explore their alternative construction as "victimized subjects" and performers of judgment through cinematic consciousness raising and the application of dignity-based values. The films chosen for analysis in this book present themes of women's victimization and their alleged delinquency. The victimization portrayed in the films is gender specific: it is sexual and discriminatory. Women in these films suffer abuse, rape, prostitution, sexual harassment, marginalization, humiliation, and silencing. The women protagonists' alleged delinquency is associated with men's deaths. My analysis focuses on the legal-cinematic characterization of these components, and the construction of the relationship between them.

Most films discussed in this book feature societies and legal systems that trivialize, minimize, and silence women's victimization, highlight assaults against men, and link the two by judging the women and finding them guilty. Typically, a woman is raped (or is victim of attempted rape) and a man dies (or nearly dies) following the sexual violence (whether he is the rapist or the woman's husband). The films' fictional societies and legal systems tend to focus on the men's deaths, diminishing the women's sexual victimization. Whether or not they explicitly charge the women with murder (legally or socially), most films' cinematic legal systems seem to condemn them for their own sexual plight as well as for the men's deaths. Focusing on the women and decontextualizing the men's violent deaths, each film implies that it was the woman's uncontrollable, naturally dangerous sexuality that brought about both the sexual encounter and the death.

The cinematic communities and legal systems in these films do not necessarily attribute to the women criminal *mens rea* (guilty mind) or even *actus reus* (bad act). Nor do they examine the women's specific conduct or mental state at the time of the men's deaths. The women are not treated as full legal subjects. Assuming and upholding underlying honor-based values (such as the potential shamefulness of feminine sexuality), applying sexist, misogynistic stereotypes (such as the image of the *femme fatale*) and prejudices (such as the belief in women's desire to be raped), these films' fictional communities and legal systems construct the women as inherently (sexually) guilty. Concomitantly, these fictional communities and cinematic legal systems suggest that the women's plights cannot be judged by legal standards, whereas the men's deaths are grave legal offenses.

Earlier, I noted that a film may echo, affirm, or undercut its own on-screen, fictional legal system. Similarly, a film may take a variety of directions in its construction of women. It may echo its fictional world's construction of women. In this, the film may offer cinematic support for the sociolegal functions it portrays. On the other hand, a film may expose and subvert its fictional social community's and legal system's treatment of women. It may renounce sexist stereotypes and avoid masculinist prejudices. In its reference to underlying genre conventions, in its choice of characters, plots, legal argumentation, and actors, in shooting and editing techniques, a film may convey different—and even contradictory—views of women, society, and law, reflecting and refracting its audience's conflicted beliefs in a changing world.

The close law-and-film reading of the films analyzed in this book shows

that most of their on-screen fictional legal systems tend to construct, treat, and judge women as guilty objects. Some films adopt this construction in their presentation of women, while others reject it, offering an alternative presentation of women as victimized subjects. This law-and-film study thus reveals that women's objectification goes hand in hand with their accusation and condemnation, whereas their cultural presentation as victims of gender abuse is coherent with their construction as active agents. Films that deny women's victimization also tend to objectify them, while simultaneously prosecuting and condemning them. Films that acknowledge and emphasize women's victimization seem to have no difficulty understanding and conveying victimized women's subjecthood and agency.

Critical feminist legal analysis of an on-screen legal system, and of its logic, rituals, conventions, and protagonists, offers a convenient, challenging, and entertaining means of addressing the problematic treatment of women within real-world legal systems. Analysis of cinematic methods of constructing and judging women exposes and illuminates analogous legal methods of constructing and judging them. This concomitant reference to legal and cinematic methods reveals intersections of pleasure and power, offering unexpected feminist insights into law, film, and social functions at large.

JUDGMENT AND VILIFICATION OF VICTIMIZED WOMEN

The films presented in the first part of this book echo and uphold their fictional worlds' masculinist sociolegal treatment of women. In a multitude of subtle, transparent ways, cinematic as well as thematic, the films deny the systematic victimization of their women protagonists by men and social systems, and portray them as dangerously sexual. Decontextualizing their victimization, the films naturalize it, along with the women's inherently dangerous sexuality. Each of these films silences the female protagonist, depriving her of authentic language and the power to laugh. Secluding her, trapping her between dominating men (often her husband and a rapist), each of these films denies its woman a feminine community, support, solidarity, and empathy.

Applying and perpetuating patriarchal stereotypes and mythological feminine archetypes, these films rule their women by dividing them into familiar categories: deadly, sexually brazen Lilith women; timid, domesticated, nurturing, good, sexually subjugated, self-sacrificing Eves; saintly, completely

asexual Madonnas; pathetic, manly, unnatural, and unattractive lesbians/feminists (Kamir 2001). Alternatively, they present an allegorical woman, embodying the combination of every sexist stereotype.

Whether or not their on-screen legal systems subject the women protagonists to fictional trials, the films subject the women to cinematic judgment, inviting viewers to actively partake in the cinematic judging processes. Unbound by restrictive, statutory definitions of offenses, evidentiary rules, and the presumption of innocence, the films use the women's sexuality, as well as sexist stereotypes and prejudices, against them. Furthermore, they fill in, cinematically, judgmental functions not explicitly executed by legal systems, thus preserving archaic, moralistic notions and subverting social reform. The most significant case in point is the way the films accuse rape complainants of adultery.

As Ann Coughlin (1998) contends, societies and legal systems closely associate "rape" with "adultery." Coughlin suggests that, initially, rape was conceptually indistinguishable from adultery and all other forms of nonmarital intercourse. Intercourse was legitimate and legal only when participants were legally married to each other; any nonmarital intercourse (whether premarital fornication or extramarital adultery) was deemed sinful and strictly illegal. In practice, an unwed mother or a married woman who was caught in the act with a man who was not her husband would be charged with engaging in nonmarital intercourse. The only way for a woman to exonerate herself from such a charge was to convince a judge and/or jury that she was *not* the man's partner in crime, but rather, that he had imposed himself on her and compelled her to commit the offense.

Coughlin demonstrates that within the constraints of traditional criminal common law, there were three possible avenues of argument for a woman charged with fornication. "Such traditional defensive strategies would include the claim that the woman had committed no *actus reus*, that she lacked the *mens rea* for fornication or adultery, or that she had submitted to the intercourse under duress" (8). To argue that she had committed no *actus reus* (bad act) an accused woman would have to argue that the man with whom she had the illegal intercourse exercised such overwhelming power that her body was not in her command; she could not control her movements, and the man had used her body as if it were an object at his disposal. This would be an argument for lack of "voluntariness." To support this argument, the woman would have to convince the judge and/or jury that the man had used over-

powering force, that she had resisted to the utmost throughout the event, and that, despite her resistance, she had not managed to regain control over her body and stop the perpetrator.

To argue that she lacked the required *mens rea* (guilty mind), an accused woman would have to claim that the man had deceived her into mistaking him for her husband, or into mistaking the sexual act for something other than intercourse (such as medical treatment). To raise the defense that she submitted to the intercourse under duress, a woman would have to argue that the man compelled her participation in the criminal conduct using credible threats of death or great bodily harm. She would need to establish that she did not place herself in a situation that resulted in the illicit intercourse.

For centuries, common law has defined rape as one of three scenarios: carnal knowledge of a woman (not the perpetrator's wife): (1) performed on her forcibly and against her will (currently phrased "without her consent"), while she resisted to the utmost (currently phrased "reasonably") throughout the event; (2) deceived by the perpetrator into mistaking him for her husband, or mistaking the nature of the sexual act; (3) who submitted in fear of the perpetrator's threats of death or severe bodily harm. Intercourse was not deemed rape if the woman willingly placed herself in a situation in which intercourse was likely to happen.

Clearly, "the elements of the rape offense (almost) are a mirror image of the defenses we would expect from women accused of fornication or adultery" (Coughlin 1998, 8). In other words, close examination of the common law reveals that its definition of rape is almost identical to the common-law defenses available to a woman accused of adultery or fornication. Within the logic and discourse of the common law, rape is symbiotically linked with other forms of nonmarital intercourse. The charges made against a man accused of rape mirror the complainant's defense arguments in her own case of nonmarital intercourse. Today, the legal procedure once used by the female defendant to defend herself against charges of committing nonmarital intercourse has evolved into the procedure used by the state prosecution to accuse a man of committing rape.

Coughlin concludes that in a society that believes that "fornication and adultery no longer should be criminalized . . . there appears to be no justification for adhering to a definition of rape that treats the rapist's victim as a lawbreaker who must plead for an excuse from criminal responsibility" (9). We should, therefore, "immediately move to reform the definition of rape so that the law enforcement officials no longer are licensed to construe rape

complaints as admissions of guilt for which women alone must seek to be pardoned” (46). Coughlin does not supply sufficient historical evidence to establish the narrative she offers as more than plausible. But her construction is immensely compelling as a diachronic, deconstructive exposure of the logic and elements of common-law rape. Note also that Coughlin’s arguments can be easily structured as a typical feminist legal constructive deconstruction, as defined by the model.

The films discussed in part 1 of this book portray fictional legal systems treating rape legalistically, never explicitly prosecuting or judging rape victims for adultery or fornication. Through their cinematic judgments, these films supplement their fictional legal systems’ treatment of rape. Voicing and upholding rape law’s suppressed subtext, they subject the women who’ve survived rape to cinematic judgment, constructing them as suspect and accused of adultery and sexual corruption.

In portraying sexually violated women’s sexual guilt as inherent and natural, while implicitly judging and condemning them for improper, fatal, sexual conduct, these films constitute their women protagonists as both determined by their sex and responsible for the damaging consequences of their sexuality, that is, as guilty objects.

My reading of these films exposes their modes of operation not to understand or assert the underlying, misogynistic nature of humans and cinematic texts, but to unravel their hold on viewers and encourage critical rethinking of filmmaking as well as judgment. In the terminology offered by the model, part 1 offers a feminist law-and-film constructive deconstruction of four law films. This part’s reading of the films finds that all four profess their commitment to the pursuit of justice and truth, defined as the thorough investigation of facts and guilt. Each of the films sets out to judge an interaction that involved a sexual encounter and the death of a man. Each of their judgments focuses on a woman character involved in the sexual encounter. But the close reading of the films also reveals that each constructs the investigated, sexually implicated woman as inherently guilty. In each film, the woman’s sexuality renders her a guilty object. The juxtaposition of the films’ declared norm with their conventional treatment of the women characters reveals that the cinematic judgments they conduct are paradoxical and meaningless, as they set out to investigate the guilt of a woman already constructed as inherently and irrevocably guilty.

The juxtaposition of the films’ declared norm and underlying convention leads to the conclusion that a new normative, cinematic quest can and must

be formulated, acknowledging and refuting films' conventional tendency to construct women as guilty objects. The films presented in parts 2 and 3 demonstrate what such alternative quests may be, and how they may be constructed. Each of the films read in part 2 pursues justice and truth not by investigating the guilt of a sexually involved woman, but by supporting her judgment of people and social institutions who would construct her as always already guilty. Refusing to investigate their heroines' potential guilt even when no known legal defense is available to them, the films read in part 3 reject and transcend judgment altogether.

In addition to a feminist law-and-film critique, my discussions in part 1 also offer a feminist reading of these texts against their grain. Whereas the feminist critique of a film exposes its sexist and misogynist modes of operations, a feminist reading against the grain brings to light existing potentially feminist textual elements, emphasizing and using them to read the text's suppressed feminist subtext. This is an additional subversive method, enabling the resistant feminist reader to defy a text's invitation to endorse its explicit androcentric belief system.

WOMEN EXECUTING JUDGMENT

Again featuring a woman's sexual violation and a man's death (or near death), each of the films discussed in part 2 explicitly addresses women's issues from a self-declared pro-feminist perspective.⁷ These films make conscious, explicit efforts to offer alternative portrayals of women's sexuality, openly challenging the stereotyping, silencing, and victimization of women. Presenting multidimensional, strong female characters, they attempt to humanize, individualize, and empower them, endowing them with authentic voices and laughter, points of view, and narratives. The films address their women protagonists' sexual victimization, highlighting their pain and suffering, making a conscious effort to understand and accept, rather than suspect, judge, and condemn.

These films do not subscribe to honor-based, androcentric social values, nor do they endorse their legal systems' inherent tendency to objectify women and construct them as guilty objects. Instead of subjecting their women protagonists to cinematic judgment they let the women judge their oppressors on their own terms, inviting viewers to share the women's points of view and participate in their judgments. In their construction of their women protagonists, the films endow the abstract notion of human dignity with specific,

concrete contents. Concomitantly, they combine insights associated with radical feminism, liberal feminism, and cultural feminism. In this part of the book, I examine the various feminist perspectives presented and advocated by the films, emphasizing films' unique potential to smoothly align feminist positions that are often considered irreconcilable.

The film readings that comprise part 2 present each of the films as conducting a feminist law-and-film constructive deconstruction. *Adam's Rib* tackles the semi-legal "unwritten law," used by juries to exonerate husbands who kill their wives' lovers. The film harshly critiques the social convention that views a husband's philandering more favorably than a wife's, demonstrating how it precludes an equal application of the unwritten law to women who kill their husbands' lovers. In its on-screen court, *Adam's Rib* redefines the unwritten law, expanding it to apply to women defendants. The norm investigated by *Nuts* is equality before the law, as defined by an individual's basic right to have his or her day in court, unless otherwise prevented by the authorized psychiatric and legal professionals. *Nuts* exposes the psychiatric inclination to label sexually victimized women "deviant" and incapable of standing trial, thus silencing them and depriving them of the right to have their day in court. The film supports its heroine in her struggle to secure a victimized woman's equal right to have her day in court, challenging both the accepted version of the film's investigated norm and the social reality it exposes.

Death and the Maiden calls attention to the norm ascribing to the legal system the duty to secure justice and healing in the context of a society recovering from traumatic dictatorship and civil war. This norm's official definition, presented by the film's jurist character, requires the law to turn a blind eye to crimes perpetuated by the old regime, if their legal investigation may endanger the social process of healing and reconciliation. Referring to the unspoken reality, the film reveals that under such circumstances, unprosecuted crimes would include sexual atrocities committed by officials of the old regime. Read against this, the accepted formulation of the norm implies abandonment and sacrifice of sexually victimized women. *Death and the Maiden's* female protagonist, a rape survivor, rejects the accepted formulation of the norm. To her, the legal system's duty to secure justice and healing includes a responsibility to offer women such as herself justice and to facilitate their healing, forcing society to confront its ugly past rather than bury it together with its victims.

CINEMATIC FEMININE COMMUNITIES

Taking women a step further, the films discussed in part 3 provide their female protagonists with supportive, feminine communities, emphasizing the collective nature of women's plights and the feminist project. Unlike the women characters in parts 1 and 2, these women protagonists are embraced by warm, supportive communities, expressing powerful solidarity. Within their communities, women find their voices, as well as the power to laugh together. In their refusal to judge their women, these films go beyond reversing roles and placing women in the judge's seat; they question the concept of judgment itself. They similarly question mainstream (legal) feminist perceptions from separatist, postmodern and identity-politics perspectives. Chapters 8 to 10 provide an opportunity to study the interactions between these perspectives and the feminist project.

The three films discussed in this part of the book offer their own versions of constructive deconstruction. *A Question of Silence* confronts the right to a fair judicial hearing. It exhibits both society's and the legal system's complete inability to hear women's voices, concluding that a judicial proceeding cannot conduct a hearing of defendants it is incapable of hearing. Rather than suggest a new formulation of the ruling norm, this film offers a radically different norm: women's camaraderie outside the legal domain, and civil disobedience. Similarly, *Set It Off* looks at the right to equal citizenship and the presumption of innocence, showing that poor Black women are viewed as always already guilty through association (with the Black community), and treated as second-class citizens. It too suggests loyalty and friendship among poor Black women as a total alternative to legal norms. *High Heels* questions what it means to do justice in a given case involving the death of a man at the hand of his wife. So, too, it questions the meaning of guilt itself. It finds that a killing may be the outcome of the complicated, unacknowledged victimization of the killer, herself neither more nor less guilty than others around her, including the deceased. *High Heels* (much like *Death and the Maiden*) concludes that doing justice means helping a woman recover from her traumatic past, and securing her happiness.