

## Preface

How does law rule? In line with the optimistic worldview of earlier eras, many continue to maintain that law rules by applying equally to all; by speaking clearly and specifically; by warning before punishing; and through a systematic, institutional separation of its power, self-governed by mutual checks and balances. Others claim that all of the above are deceitful myths, opium for the masses. According to this critical view, the fictitious common notion of law's rule serves the hegemonic ruling classes in concealing *their* unlimited rule, feeding the false rhetoric that disguises the true social reality of power. In reality, therefore, law's rule means efficient legal preservation of existing social structures and power dynamics. In this sense, law rules through systematic concealment of its true nature and social function, achieved through the use of manipulative rhetoric of neutrality, fairness, professionalism, and equality before the law. Some believe there is some truth to each of these views, and that the specific answer depends on specific circumstances at any given time and place.

Whatever our view of the law, the fact is that, to some extent, in many parts of the world it does rule. It rules through constitutions, legislation, judicial decisions, contracts, and marriages. It rules through legal and semi-legal

education, through professional rhetoric, and through authoritative images, narratives, and self-perceptions. A distinct and central means through which law rules is culture, popular culture in particular. Most people learn what they know about the law from popular culture, often without realizing they are receiving a popular-legal education and being socialized to a certain set of beliefs.

This book addresses the rule of law through (popular) culture. More specifically, it examines the ways in which popular fiction film operates as a vehicle of the rule of law. It reveals how in the course of “spreading the legal word,” popular fiction film creates law, by structuring society’s legal images, notions, perceptions, attitudes, sensitivities, and modes of operation; it shows how through the molding of social actors, popular film impacts the real hard core of legislation and litigation. Popular film offers interpretations and critique of juridical narratives and situations. It supplies the public with its versions of issues that concern justice, judgment, equity, affirmative action, class action, legal professionalism, and gender equality, to name but a few. It offers a central stage on which society is invited to collectively consider and practice such juridical and legally defined issues, while concurrently defining and molding itself. Popular film invites the public to actively judge situations and characters, applying the juridical notions the films present.

The study presented in this book is, therefore, an investigation of law-and-film, and thus a part of the new, growing discipline-in-the-making that goes by this name. As many are not yet familiar with this developing scholarly perspective, a few words of introduction may be in order.

Law and film are two of contemporary society’s dominant discourses, two prominent vehicles for the chorus through which society narrates and creates itself. The distinction between law and film is obvious: while law is a system of organized power, commercial film is constituted by an economics of pleasure. Nevertheless, each is a discourse constituting imagined communities, to use Benedict Anderson’s term. Law and film both create meaning through storytelling, performance, and ritualistic patterning, envisioning and constructing human subjects and social groups, individuals and worlds. Each invites participants—viewers, legal professionals, parties to legal proceedings, and/or members of the public—to share its vision, logic, rhetoric, and values. Law and film both demand adherence to rules and norms in exchange for order, stability, security, and significance. Each facilitates—and requires—concomitant and continuous creation of personal and collective identity, lan-

guage, memory, history, mythology, and social roles, as well as a shared future.

The emerging discipline of “law and film” is a new cultural field where complex relations between these two discourses can be explored: similarities, differences, analogies, dialogue, and mutual influences on various levels.<sup>1</sup> Legal and cinematic structures, techniques, images, symbols, ideologies, social functions, and impact can be identified and analyzed singly and in reference to each other, inviting conceptualization and comparisons that lead to deeper understandings of the multiple perspectives of interdisciplinary analysis. This book offers a theoretical framework for reading law and film together in a socially meaningful manner.

As its subject matter, this book focuses on cultural reflections and refractions of women, femininity, judgment, honor, and dignity in the highly influential, multi-layered dialogue between law and film. A dozen influential films are closely studied, each portraying and commenting on legal treatment of women and social construction of gender, gender stereotypes, and roles; each raising issues of judgment, honor, and dignity. In this sense, all the films are popular jurisprudential texts. Additionally, they serve as social agents, constructing their own sociolegal treatment of women and gender issues even as they portray and critique existing ones. At the same time, each of the films also invites its viewers to participate in the execution of cinematic judgment. Four of the films invite viewers to judge the film’s woman protagonist, pronouncing her always already guilty; they are discussed in the book’s first part. Three of the films allow their women protagonists to judge others; they are analyzed in the book’s second part. The last three refuse to support any judgment, transcending traditional notions both of judgment and of feminism. The readings of these films constitute the book’s third part.

This book maintains that honor-based law films tend to subject sexual women protagonists to honor-based cinematic judgment, in which they are found to have always already been guilty objects responsible for the destruction of men, though themselves denied full subjecthood and agency. Offering viable alternatives, dignity-based law films tend to treat women who have been mistreated by men or social systems as victimized subjects and agents, respecting their plight as well as their survival and undefeated subjecthood. Such films refrain from subjecting their female protagonists to cinematic judgment, empowering them to pursue their own judgments, or questioning the notion of judgment altogether.

## Chapter Outline

The book's chapters are organized thematically, each focusing on a single aspect of cinematic and legal constructions of women's victimization, condemnation, and/or vindication and empowerment. This clear thematic distinction facilitates systematic treatment of a complex theoretical topic. The themes discussed include cinematic judgment of women by the film's order of narration, cinematic prevention of a woman's day in court, the Hollywood hero-lawyer and the condemnation of the sexual woman, and women's judgment of legal and psychiatric institutions. Each of the chapters develops its theoretical argument through the close reading of a single film. This structure stresses my analogy between legal thinking through cases and precedents in the tradition of Anglo-American common law logic, and analysis of socio-cultural phenomena through close textual reading.

In the introduction, I present my method of analysis, which is dignity based, honor sensitive, and grounded in feminist law-and-film theory. The introduction offers a theoretical discussion of the discipline of law and film, dignity- and honor-based value systems, feminist jurisprudence, feminist film theory, feminist law-and-film theory, and their complex interrelations. Part I, which comprises chapters 1 to 4, demonstrates cinematic judgment of women on screen. In chapter 1, I look at Akira Kurasawa's *Rashomon* (1951) to see how the very structure of the film's narrative points to its female character's guilt while denying her victimization. Chapter 2 examines G. W. Pabst's classic silent film *Pandora's Box* (1928), focusing on the judgment of sexually alluring women through stereotyping and the use of mythological archetypes, such as Pandora and Lilith. Chapter 3 presents Alfred Hitchcock's *Blackmail* (1929), examining the ironic juxtaposition between the film's status as the first British talkie and the way it silences its female character by denying her her rightful day in court. In chapter 4, I scrutinize *Anatomy of a Murder* (1959), which suppresses a woman's ongoing abuse by a violent husband, subjecting her to harsh cinematic judgment for adultery and homicide. The film also establishes the paradigmatic image of the hero-lawyer, modeled on the classic image of the western hero.

In part 2, I examine portrayals of women judging oppressive systems and individuals. Reading the popular classic *Adam's Rib* (1949), chapter 5 compares Hollywood's image of the feminist female lawyer (Katharine Hepburn) with that of the male hero-lawyer. I also briefly apply the analysis of *Adam's Rib* to two more recent Hollywood films, *Disclosure* (1994) and *Legally Blonde* (2001). In

chapter 6, I study a film that invites comparison of law, film, and psychiatry as patriarchal regimes: *Nuts* (1987), Barbara Streisand's cinematic treatment of an abused, prostituted woman's struggle to enter the legal arena as a competent defendant in a murder case. A postscript discusses Dolores Claiborne (1995) in reference to *Nuts*. Chapter 7 analyzes Roman Polanski's 1994 adaptation of Ariel Dorfman's chilling play *Death and the Maiden*, looking at feminine and feminist notions of law and justice, women's use of law to reclaim personal memories of victimization as well as to enter collective memory, and their legal claim for social recognition. The chapter concludes with a postscript reading Jane Campion's *The Piano* (1993) against *Death and the Maiden*.

Part 3 is concerned with films that transcend both conventional judgment and feminist notions. Chapter 9 discusses Marleen Gorris's feminist Dutch film *A Question of Silence* (1982) together with Susan Glaspell's short story, "A Jury of Her Peers" (1916). Each of the texts concerns an emotionally abused housewife who kills a man representing oppressive patriarchy, and I read them both against feminist theories of dominance and care. In chapter 10, I return to the theoretical feminist model presented in the introduction, augmenting it with a diversity-sensitive perspective. I use this model to read *Set It Off* (1996) as a feminist critique of sociolegal discrimination against poor Black American women. I conclude the book on an optimistic note in chapter 11, with a look at Pedro Almodovar's postmodern, comic melodrama *High Heels* (1996). The film offers a new cultural image of judgment and justice that transcends gender distinctions, social roles, and judgment itself.

#### *Reading Film: Popularity, Adaptation, Viewer Response, Implied Viewer*

All but one of the films I chose for this book have received much public attention and left a significant mark both in their countries of origin and in contemporary Western culture. These films were viewed by massive audiences when first released as well as over subsequent decades, inspiring public discussion, journalistic reviews, and scholarly writing. Clearly, the popular success and durability of a film do not necessarily reflect its artistic or philosophical value, and this book does not appraise and proclaim such value. Popularity and durability do, however, attest to significance as influential social actors, and it is as such that this book reads these films.

Most films discussed in the book are cinematic adaptations of novels or plays. Some viewers—as well as some scholars—tend to overlook a story's medium and blur the distinctions between play (or novel) version and film

version. In contrast, this book focuses strictly on analysis of films. I wholly agree with George Bluestone's view on adaptation of novels into films, that "the film becomes a different thing in the same sense that a historical painting becomes a different thing from the historical event which it illustrates" (1971, 5).<sup>2</sup> This study focuses on films' unique characteristics and modes of operation. As Bluestone rightly notes, "the spatial liberation of the cinema was its unique achievement. But film editing, combining the integrity of the shot with the visual rhythm of the sequence, gives the director his characteristic signature" (74). It is not merely the story's plotline that I focus on but the film as medium, including specific shots, editing choices, casting choices, acting styles, directing pace, atmosphere, and the viewer's familiarity with the film's genre conventions or cognizance of the director's biography and style. Comparisons between films and their source material aim solely to highlight the uniqueness of the film version.

My discussion of films does not seek to reveal or expose the films' "original" (conscious or unconscious) intent or to critique an "original" ideological agenda or the film's effectiveness in advancing it. Similarly, I do not refer to the filmmakers and their inputs (unless specifically noted). My focus is on texts and their operations, reader/viewer response, and the likely social impact of the films under discussion. Believing that a text both constitutes its reader/viewer and is simultaneously created by him or her in the process of reading/viewing, I look at both text and reader/viewer as active participants in the creative interaction that occurs at their meeting.

In the context of studying a text's construction of its reader/viewer, I look at explicit and implicit mechanisms which constitute the film's "implied reader/viewer." I borrow this term from the field of narratology and its definition of the "implied" or "constructed" reader as a "theoretical construct, implied or encoded in the text, representing the integration of data and the interpretive process 'invited' by the text . . . Such a reader is 'implied' or 'encoded' in the text 'in the very rhetoric through which he is required to 'make sense of the content' or reconstruct it 'as a world' " (Rimmon-Kennan 1983, 117).

The implied reader/viewer is thus a part of the text, distinguished from the flesh-and-blood human being actually performing the act of reading a book or viewing a film. The implied reader/viewer is the ideal reader sought and invited by the text through textual construction and manipulation. A real film viewer may be completely unresponsive, or even resistant, refusing the film's invitation, or responding to it from a different premise than that desired by the film.

I do however assume a resemblance between the films' implied viewer and at least a significant portion of their actual contemporary Western audience, a resemblance which, I believe, makes it easy for the real contemporary viewer at the beginning of the twenty-first century to assume the implied viewer's role as constructed by the film. This assumption is not scientifically substantiated in any way. It relies on the published responses of film critics and scholars to the discussed films, on random, documented audience responses, as well as my understanding of my own students' and friends' responses to the films. Given the unfounded nature of this assumption, any reference to the films' real viewers is, thus, purely speculative on my part.

Along with a film's implied and real viewer, I also refer to its community of viewers. In so doing, I allude to the work of writers such as Benedict Anderson and James Boyd White, which concentrates on the community-creating mechanisms of sociocultural regimes, such as literature and law. Whereas the implied viewer is a part of the text, the community of viewers refers to an actual, historical public that is constituted as a community by the text through the real-world process of reading/creating it. In discussing communities of readers, I usually refer to contemporary communities. Sometimes, however, I refer to a film's "original" community, that is to the audience at the time of its release.

My reference to audiences and communities of readers/viewers is further complicated by the fact that the films discussed here were released not merely at different historical periods, but also in different parts of the world and different cultural contexts. The ten films central to the book's discussion were created in countries as diverse as Japan, Germany, Britain, Holland, France, Spain, and the United States, over a sixty-eight-year period from 1928 to 1996. My choice of international films addresses the multicultural, linguistic, and national character of cinematic constructions of women in law. The book's survey of films produced in different parts of the world, in different languages and historical contexts, reveals how distinct cultures, despite their differences, perform similar social functions in parallel ways. Each film operates in its own society as well as in the global arena, and the dialogue between them constructs our contemporary universal imagined community.

Despite this clear international diversity, this book confines itself to the cultural domain of the Western world. Even a film created by a Japanese director in Japan is read strictly as a text operating within Western culture. Indian, Egyptian, Chinese, Turkish, and African cinemas, which produce and release the majority of films around the world, are not included in this discus-

sion. I hope that experts in non-Western cultures will expand this study beyond the scope of my own capacity.

In referring to Western viewers and viewing communities, I assume their intuitive familiarity with the logic, rhythm, and basic procedural structure of the Anglo-American, adversarial, common-law legal system or, more specifically, with its Hollywood version. In their research on globalization of the Hollywood courtroom drama, German scholars Stefan Machura and Stefan Ulbrich found that audiences in the Western world are more familiar with the (Hollywood) common-law legal system than with their own respective real-world ones. This is so not merely because of the popularity of the American film industry, but also because European filmmakers imitate Hollywood's portrayal of the American legal system. Machura and Ulbrich report: "Prior to our research we operated on the assumption that courtroom films reflected the legal system more or less correctly, but we soon found this not to be so. What came to amaze us was the striking uniformity of the legal procedures that are portrayed in movies: predominantly criminal procedures. We discovered that American procedure has provided the formula for almost all cinematic legal procedures, even in films set in a country like Germany that has a different system . . . American courtroom films have created a manner of portraying legal procedure that has been followed in courtroom films set in other countries and other legal systems" (2001, 123).

Western viewers, then, are mostly familiar with the logic of (Hollywood's) common law and the basic criminal procedure of the American legal system. It is this familiarity, acquired from the movies, that they bring with them to the cinema and apply in viewing films. American law is, therefore, the natural reference point in a legal discussion of these films.

#### *A Word on Teaching (Feminist) Law and Film*

Like many good things, this book grew out of teaching. It is with great pleasure that I offer it as a textbook for classes on law and film, feminist jurisprudence, and feminist reading of law and film. Having taught feminist law-and-film courses based on materials and discussions presented in this book in four universities in three different countries, I have witnessed how effective and powerful these teaching materials can be in law schools as well as in the context of gender studies.<sup>3</sup> Films have a unique way of touching people's hearts and allowing them to employ their emotions in the processes of seeing, listening, understanding, discussing, and analyzing. Analysis of

film from a new perspective is an exciting, intriguing, and challenging experience for students, an experience they share with families and friends, thereby continuing its work. The connection of law with film adds a personal aspect to professional legal training, making it more human, specific, and meaningful. The study of feminist jurisprudence through film makes the subject less abstract and intimidating, more concrete and intuitive. Teaching law and film is an avenue for bringing the humanities into legal studies and for integrating law with gender studies.