

Michigan Law Review

Volume 105 | Issue 6

2007

Judging Magic: Can You See the Sleight of Hand?

Rebecca Johnson

University of Victoria Faculty of Law

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Jurisprudence Commons](#), [Law and Gender Commons](#), [Law and Society Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Rebecca Johnson, *Judging Magic: Can You See the Sleight of Hand?*, 105 MICH. L. REV. 1353 (2007).

Available at: <https://repository.law.umich.edu/mlr/vol105/iss6/21>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

JUDGING MAGIC: CAN YOU SEE THE SLEIGHT OF HAND?

Rebecca Johnson*

FRAMED: WOMEN IN LAW AND FILM. By *Orit Kamir*. Durham: Duke University Press. 2006. Pp. xi, 283. \$23.95.

INTRODUCTION

“Strong texts work along the borders of our minds and alter what already exists. They could not do this if they merely reflected what already exists.”

—Jeanette Winterson¹

Cultural critic bell hooks says, “Movies make magic. They change things. They take the real and make it into something else right before our very eyes.”² Movies do not, of course, have an *exclusive* hold on this ability to change one thing into something else. Law, too, possesses this power. Certainly, one must acknowledge some significant differences in the “magic” of filmic and legal texts. For the most part, as willing consumers of cultural products, we “choose” to subject ourselves to the magic of film. We sit in a darkened theater and let ourselves be taken away to a different place. Or, we sit in the darkness resisting the film’s attempts at enchantment or provocation. Law, on the other hand, works its magic notwithstanding the resistance of its objectors. Through judicial and legislative pronouncements, law changes “the real,” and declares that something once named thus shall henceforth be named otherwise. With the flick of a pen, transformation occurs before our eyes: the hiring of a white woman by an Asian man is a punishable offense;³ a First Nations woman marries a white man and is “an Indian” no more;⁴ women are

* Associate Professor, University of Victoria Faculty of Law.

1. JEANETTE WINTERSON, *ART OBJECTS: ESSAYS ON ECSTASY AND EFFRONTERY* 26 (1995).

2. BELL HOOKS, *REEL TO REAL: RACE, SEX, AND CLASS AT THE MOVIES I* (1996).

3. The 1912 Saskatchewan Female Employment Act prohibited the employment by a “chinaman” of any white woman or girl. See *Quong-Wing v. The King*, [1914] 49 S.C.R. 440, 444.

4. Under the federal Indian Act, Indian women who married non-Indian men lost their registration under the Act. There was no equivalent provision depriving Indian men of their status as Indians. *Canada (Attorney General) v. Lavell*, [1974] S.C.R. 1349, 1353.

“persons” capable of sitting in the Canadian senate;⁵ marriage is no longer an exclusively heterosexual institution.⁶

One might, of course, protest the use of the word “magic” to describe such modifications of “the real.” Law can both change the world and prevent it from changing, situated as it is between the demands of stability and change.⁷ But, the skeptic might assert, law’s ability to bring about and resist change is a product of democratic mechanisms and judicial decision-making (albeit supplemented by relations of force). “Magic” may not be the most apt descriptor.

And yet, there is something in the comparison. Reflecting back on the experience of first reading and then teaching Orit Kamir’s⁸ book *Framed: Women in Law and Film*, I am reminded of Robert Gordon’s comment that the true power of a legal regime lies less in the relations of force it inscribes and brings to bear, than in “its capacity to persuade people that the world described in its images and categories is the only attainable world in which a sane person would want to live.”⁹ In law, as in film, persuasion matters, *enchantment* matters. The most powerful legal texts capture us not at the level of force, but at the level of conviction, at the level of judgment.¹⁰ They “work along the borders of our minds and alter what already exists.”¹¹ They construct a world, encouraging us to bring our own lives into alignment with it.¹² We are invited into community, invited to *be* in certain ways, to *understand* others in certain ways, and to *feel* in certain ways. This is magic indeed.

In 1986, Anthony Chase challenged critical legal studies’ concern with ideologies that he felt narrowly focused on “high culture.” He argued instead that popular culture’s images and ideas exposed the legitimacy—or lack

5. The Privy Council, then the final court of appeal for Canada, determined that the phrase “qualified persons” could include a woman, and that women were thus eligible to be members of the Senate of Canada. Re Section 24 of the B.N.A. Act, [1930] D.L.R. 98, 113.

6. The Court affirmed the constitutionality of federal legislation extending the right to civil marriage to same-sex couples on the same terms as opposite-sex couples. The legislation also affirms the freedom of officials of religious groups to refuse to perform marriages that are not in accordance with their religious beliefs. Reference re Same-Sex Marriage, [2004] S.C.R. 698.

7. PETER FITZPATRICK, *MODERNISM AND THE GROUNDS OF LAW* 2–3 (2001).

8. Professor of Law, Hebrew University.

9. Robert Gordon, *Critical Legal Histories*, 36 *STAN. L. REV.* 57, 109 (1984).

10. This is not to say that law’s deployment of force and violence is unimportant. In the context of legal decision-making, a judge’s expressed understanding of the normative world is given backing by all the mechanisms of force that can be engaged by the modern nation state. Certainly, I accept Cover’s assertion that “[n]either legal interpretation nor the violence it occasions may be properly understood apart from one another.” Robert M. Cover, *Violence and the Word*, 95 *YALE L.J.* 1601, 1601 (1986). And yet, for law to work *most* powerfully, it must persuade its subjects to *voluntarily* bring their actions into compliance, reducing the need for the mobilization of the state’s more explicit and bloody instruments of force and coercion.

11. WINTERSON, *supra* note 1, at 26.

12. Rebecca Johnson, *The Persuasive Cartographer: Sexual Assault and Legal Discourse in R v. Ewanchuk*, in *SOCIAL CONTEXT AND SOCIAL LOCATION IN THE SOCIOLOGY OF LAW* 247 (Gayle M. MacDonald ed., 2002).

thereof—of the legal order.¹³ In the twenty years since Chase made that claim, theorists have increasingly made “the cultural turn.”¹⁴ Legal academics are using film in their classrooms, and there has been a marked upswing of literature produced at the intersection of law and film.¹⁵ Some look to film to learn the way law, lawyers, and legal officials are represented in popular culture;¹⁶ some to assess the impact of the moving image on legal institutions and legal procedures;¹⁷ and still others to engage the moving image as another domain of legal life, with its own jurisprudence, treating movies *as* legal texts.¹⁸ While it may yet be too early to speak of law-and-film as a discipline, *Framed* makes a most welcome addition to an emergent field. The book, a “strong text” by any account, is a delicious mixture of theory (legal, literary, film, feminist, race, postmodern), critical engagement, and pure reading pleasure. Part I of this Review describes the analytical structure and insight of the book. In Part II, using the chapter on *Death and the Maiden* as an example, I turn to my own experience of reading *Framed*, and reflect on the unexpected ways the book has worked its magic on the edges of my own thinking.

I. FRAMING *FRAMED*

One of Kamir’s central assertions is that we can profitably study the intersection of law and film to learn more about what we, as legal actors—lawyers, judges, law professors, law students, “ordinary” citizens embedded in the legal order—do when we engage in acts of judgment. Indeed “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” (p. 5).

For those accustomed to seeing film primarily as an instrument of entertainment, this may seem a rather bold claim. But the magic of this book lies in Kamir’s ability to persuade us of both the claim’s simplicity and its

13. Anthony Chase, *Toward a Legal Theory of Popular Culture*, 1986 Wis. L. Rev. 527.

14. This is true across the disciplines, and one sees attention to film also making itself visible in the work of, for example, historians and political theorists. See, e.g., NATALIE ZEMON DAVIS, *SLAVES ON SCREEN: FILM AND HISTORICAL VISION* (2000); *THE PERSISTENCE OF HISTORY: CINEMA, TELEVISION, AND THE MODERN EVENT* (Vivian Sobchack ed., 1996); WILLIAM E. CONNOLLY, *NEUROPOLITICS: THINKING, CULTURE, SPEED* (2002).

15. For an overview of the different ways that legal scholars make use of film, see Rebecca Johnson & Ruth Buchanan, *Getting The Insider’s Story Out: What Popular Film Can Tell Us About Legal Method’s Dirty Secrets*, 20 WINDSOR Y.B. OF ACCESS TO JUST. 87 (2001). Three contemporary collections of work at the edge of law and film are *LAW AND FILM* (Stefan Machura & Peter Robson eds., 2001); *LAW ON THE SCREEN* (Austin Sarat et al. eds., 2005); *LAW’S MOVING IMAGE* (Leslie J. Moran et al. eds., 2004).

16. See, e.g., PAUL BERGMAN & MICHAEL ASIMOW, *REEL JUSTICE: THE COURTROOM GOES TO THE MOVIES* (1996). In this book, the authors provide a rating for films on the quality, dramatic power, and authenticity of their trial scenes.

17. See, e.g., Jennifer L. Mnookin, *Reproducing a Trial: Evidence and Its Assessment in Paradise Lost*, in *LAW ON THE SCREEN*, *supra* note 15, at 153–200; Jessica M. Silbey, *Judges as Film Critics: New Approaches to Filmic Evidence*, 37 U. MICH. J.L. REFORM 493 (2004).

18. See *LEGAL REELISM: MOVIES AS LEGAL TEXTS* (John Denvir ed., 1996).

power. She has written the book with readers firmly in mind—readers with a variety of intellectual, political, and disciplinary backgrounds. She neither presumes too much in the way of theoretical or ideological orientation, nor talks down to her audience. Rather, she walks with the reader down sometimes unexpected paths and allows the journey to unfold in a manner that is both measured and full of moments of discovery and delight. Her argument about the mechanisms of judgment, unfolding against the rich tapestry of concrete experience provided by a set of films, is persuasive precisely because the reader is provided with a set of theories with which to elaborate the argument, a workable method of approach, and the embodied experience of using those theories and methods to work through concrete moments of judgment.

Kamir's analytical framework is firmly grounded in three approaches to the intersection of law and film: "film as paralleling law," "film as judgment," and "film as jurisprudence" (p. 1). According to the first approach, some films' modes of social operation parallel those of law and the legal system. Here, one focuses on law and film as two related discourses—discourses that reflect and refract the multiple dimensions of any society, participating in the construction of identity, memory, gender, justice, and truth. Using such an approach, one explores how law and film work similarly to construct the normal family,¹⁹ or considers the relationship between contemporary anti-stalking legislation and the filmic stalkers memorialized in films like *Taxi Driver* or *Fatal Attraction*.²⁰ A "film paralleling law" approach focuses on points of continuity and disjuncture, and the unacknowledged dialogue between the two social discourses, making it possible to see moments when "film imitates law," when "law imitates film," and where a series of feedback loops result in mutual projects of construction.

Kamir's second approach, "film as judgment," holds that filmic texts not only participate in the constitution of subjects and communities, but they also teach those subjects to judge the world in certain ways. Film is one of the vehicles through which we learn *how* to judge. We can look to film to understand the processes of legal indoctrination. To return to the Robert Gordon point above,²¹ texts attempt to involve their readers in moments of judgment, to persuade them of the justice (or inevitability) of the sentence pronounced. In this approach, one studies the ways that we are positioned (both in film and law) to practice "appropriate" forms of judging. One can do this by asking how the text directs our attention to certain questions and away from others. One might, for example, consider how a film positions us to know whether we are supposed to be celebrating or grieving a particular

19. See, e.g., Rebecca Johnson, *Leaving Normal: Constructing the Family at the Movies and in Law*, in *NEW PERSPECTIVES ON DEVIANCE: THE CONSTRUCTION OF DEVIANCE IN EVERYDAY LIFE* 163 (Lori G. Beaman ed., 2000).

20. For a monograph length exploration in this mode, see ORIT KAMIR, *EVERY BREATH YOU TAKE: STALKING NARRATIVES AND THE LAW* (2000).

21. See *supra* text accompanying note 9.

death.²² As viewers, we are positioned to identify with certain points of view, to see some groups of people as trustworthy (or dangerous, disgusting, laughable), to experience some kinds of violence as normal, and some lives as lightly expendable.²³ Taking this approach, one can ask how a film leads us to judge not simply a given character or event, but also the cinematic social or legal system in which the action is embedded. One can address how the film positions us to make judgments about justice itself.²⁴ Though there are some elements in the filmmaker's toolbox that are unavailable to the legislative or judicial scribe, the two discourses share many mechanisms of judgment.²⁵ The heightened visibility of these filmic mechanisms can open space for their reconsideration in the design of legal texts.

The third approach looks to film for jurisprudential insight. A prevalent approach, current scholarship uses it with topics ranging from gender roles, familial structures, and human relations, to memory, tragedy, and truth. Such an approach, Kamir asserts, is often highly robust and creative (p. 3–4). For instance, a work like *The Sweet Hereafter* offers space for thinking about law and fatherhood,²⁶ *Chocolat* for theorizing about alternative dispute resolution,²⁷ *It's a Wonderful Life* for thinking about constitutional theory,²⁸ and *Buffy the Vampire Slayer* for considering the jurisprudence of difference and desire.²⁹ The "film as jurisprudence" approach not only can bring the jurisprudentially inclined to scrutinize a film, but also presumes that a film's *own* judgment of its "on-screen legal system" can offer socio-legal commentary.

22. This can happen through point of view, editing technique, and music. For a comparison of how filmic techniques combine to position us as viewers to judge certain deaths as unjustified, and others as simply inevitable, see Ruth Buchanan & Rebecca Johnson, *The 'Unforgiven' Sources of International Law: Nation-Building, Violence, and Gender in the West(ern)*, in INTERNATIONAL LAW: MODERN FEMINIST APPROACHES 131 (Doris Buss & Ambreena Manji eds., 2005).

23. Giroux makes this point brilliantly in an essay titled *Racism and the Aesthetic of Hyper-Real Violence: Pulp Fiction and Other Visual Tragedies*, in HENRY A. GIROUX, *FUGITIVE CULTURES: RACE, VIOLENCE, AND YOUTH* 55 (1996).

24. See, e.g., William Ian Miller, *Clint Eastwood and Equity: Popular Culture's Theory of Revenge*, in LAW IN THE DOMAINS OF CULTURE 161 (Austin Sarat & Thomas R. Kearns eds., 1998). Here, Miller considers how films like *Unforgiven* lead us to judge law as inadequate to the task of meeting a social need for vengeance, validating the importance of characters like William Munny who step in as the necessary (violent) supplement.

25. This is a point developed also in ANTHONY G. AMSTERDAM & JEROME BRUNER, *MINDING THE LAW* (2000).

26. Austin Sarat, *Imagining the Law of the Father: Loss, Dread, and Mourning in The Sweet Hereafter*, 34 LAW & SOC'Y REV. 3 (2000).

27. Jennifer L. Schulz, *Confectionery and Conflict Resolution? What Chocolat Reveals about Mediation*, 22 NEGOTIATION J. 251 (2006).

28. John Denvir, *Capra's Constitution*, in LEGAL REELISM: MOVIES AS LEGAL TEXTS, *supra* note 18, at 118.

29. William P. MacNeil, "You Slay Me!": *Buffy as Jurisprudence of Desire*, 24 CARDOZO L. REV. 2421 (2003). Cinematically organized TV series like *Buffy* and the spinoff series *Angel* (featuring the law firm of Wolfram & Hart, which offers a full range of legal services to the forces of evil) present particularly interesting sites of inquiry, and pose some additional complexities for scholars grappling with a series, as opposed to the more discrete text presented by a single film. See Sue Turnbull, *Teaching Buffy: The Curriculum and the Text in Media Studies* 17 CONTINUUM: J. OF MEDIA & CULTURAL STUD. 19 (2003).

In examining this jurisprudence in conjunction with a film's cinematic judgment, Kamir reminds us that it is possible to reveal, for example, underlying value systems that are at odds with a film's ostensible adherence to liberal values such as equality or dignity.

Kamir argues that these three approaches to law and film can teach us much about the mechanism of real-world legal judging (p. 5). And she gives credence to that claim by providing a concrete context for the exploration of judgment: gendered violence. She asks us to consider ten stories involving women who attack or harm the men who abuse them, women characterized as either victims or villains. Kamir follows in a tradition of scholarship concerned with legal and cultural representations of women, a tradition that has documented the continuing operation of stereotypical and negative representations of women.³⁰ Kamir builds on this scholarship by focusing attention on the ways that the stories are rooted in honor-based or dignity-based value systems. Indeed, the honor/dignity juxtaposition evokes a unifying set of questions, providing a framework for weaving the films together, identifying the persistence of honor-based values, and enabling Kamir to continually return to the explicitly political and activist question, "What would have to change for a less damaging dignity-based system to operate?"

She takes ten very different filmic texts and organizes them into three categories: films that judge women according to the demands of "honor" systems; films in which women themselves demand judgment from the system; and films in which women resist and subvert judgment itself. In Part One, she examines films that judge their women. Each of the four films in this part constructs the woman as the primary guilty actor, though each in a different way. Kamir enables us to see how the films lead viewers to conclude that, whether or not the woman fired the gun or plunged the knife into a body, she is ultimately responsible for the harm in question. Female sexuality (and the failure to restrain it) figures largely in each film. What is novel is Kamir's focus on how viewers are led to participate in such judgments. She makes visible four different ways in which film encourages complicity. In *Rashomon*, she foregrounds legal conventions; in *Pandora's Box*, the attention is on point of view; in *Blackmail* we focus on legal questions not asked; and in *Anatomy of a Murder*, we consider the role of the hero-lawyer, and the revival of the honor-based "unwritten law."

In Part Two, Kamir considers three films that purport to allow victimized women to speak. In these films, women indict and judge the social and legal systems that have harmed them. These are films that turn the tables of judgment, where victimized women claim the power to engage in their own acts of resistant judging, refusing to "be guilty" and refusing to be silent.

30. There is also a body of writing exploring the filmic representation of women lawyers. See generally Louise Everett Graham & Geraldine Maschio, *A False Public Sentiment: Narrative and Visual Images of Women Lawyers in Film*, 84 KY. L.J. 1027 (1995-96). This is true also for portrayals of lesbians or gay men, people of color, etc. See BELL HOOKS, *BLACK LOOKS: RACE AND REPRESENTATION* (1992); ANDREA WEISS, *VAMPIRES AND VIOLETS: LESBIANS IN FILM* (1993); Herman Gray, *Black Masculinity and Visual Culture*, 18 CALLALOO 401 (1995); Jenni Millbank, *From Butch to Butcher's Knife: Film, Crime and Lesbian Sexuality*, 18 SYDNEY L. REV. 451 (1996).

The discussion of *Adam's Rib* advances the debates in feminist theory around radical, liberal and cultural feminist approaches, and of the importance of considering the interaction of legal and social acts of judgment. It also draws attention to the importance of the body through which various legal arguments are articulated. The chapter on *Nuts* considers the intersections of law and psychiatry, raising questions about expert reinterpretation of women's experience. The chapter on *Death and the Maiden* allows us to explore the differences between truth commissions and courts, foregrounding questions of complicity, recovery, and the importance of witnesses to trauma.

Part Three involves another shift in gear, moving us to the resistance and subversion of judgment itself. *A Question of Silence*, *Set it Off*, and *High Heels* raise questions of women's community, the community that is missing in the films treated in Parts One and Two. These films draw attention to difference, put "gender" and "mothering" into question, and suggest additional images of justice and judging to guide the reader.

Kamir further facilitates the reader's sense of being a participant in a process of exploration and discovery by organizing each chapter around one theme. The reader gets some sense of boundary and coherence, while allowing Kamir to focus on making visible the practices through which we are invited to judgment. One layer at a time, she moves through the processes: the character roles in stories; how we (as audience) are positioned like the judge; how we are led to distinguish the more from the less important issues; how material is foregrounded as relevant or dropped into the background. She encourages multiple readings both with and against the film's grain, allowing the films to be read in a multi-textured fashion.

She manages at the same time to draw on an amazing range of topics and concepts: murder, rape, provocation, insanity, battering, self-defense, trauma, truth, memory, justice. A reader will come away from this book considerably the richer with respect to legal knowledge as well as film topics like "the gaze," lighting, casting, editing, flashback, angle, and genre. Indeed, there is a staggering amount of information distilled and presented in a manner both thought-provoking and incredibly accessible. With each chapter, the book increasingly opens itself up to multiple readings of the films, encouraging the active involvement of the reader in the project of drawing law and film into dialogue, a dialogue explicitly designed to bring about change. The point of the book is to offer a theoretical framework to draw the discourses of law and film together "in a socially meaningful manner" (p. xiii). What interests Kamir is not deconstructive play, but "deconstructive construction" (Chapter One). She offers tools for understanding how we come to judge, as well as tools for thinking about how we can change the terms of our participation.

II. REFLECTING ON *FRAMED*

William Connolly reminds us of Nietzsche's observation that "[b]etween two thoughts all kinds of affects play their game . . ."³¹ There is, he argues, "a dense series of loops and counterloops among cinema, TV, philosophy, neurophysiology, and everyday life" that facilitate our explorations of the relationships between thinking and affect. *Framed* is a masterful performance of this insight. Kamir takes seriously the loops and counterloops, walking readers through the process of interrogating how both *what we know* and *what we feel* are implicated in how and whom we judge. Her book grapples in a robust way with how film mobilizes the power not merely of "narrative," but also of "affect." For while there are important linkages between literary and cinematic stories, film narrates its tales through the senses. Dudley Andrew puts it like this:

[C]inema . . . is the art in which our mute perceptions take on meaning and value. If the novel makes us feel the interdependence of man and man or of men and the world, it does so abstractly, through words and figures of speech; film, on the other hand, does so through the normal process of brute perception.³²

In the theater, the viewer is not simply "told a story," but is dropped into a stream of affective inputs. The viewer *sees* things, and *hears* things. Seeing and hearing are two quite different ways of knowing about the world,³³ ways of knowing that sometimes pull in the same direction and sometimes do not. In the theater, as in the courtroom, acts of judgment require us to sort through the links and disjunctures in what we see, hear, sense, and know. This is not to say that affect is necessarily reliable, nor that it is politically innocent. It is merely to acknowledge that affect plays a role in thought, and thus a role in judgment.

The magic of the book lies in Kamir's ability to give such observations meaningful application in multiple contexts. Let me share, by way of example, her analysis of Roman Polanski's film *Death and the Maiden* (Chapter Seven), which worked in unexpected ways along the borders of my own mind.

The story is set during a period of political reconstruction following the fall of a fictional South American dictatorship. The society is recovering from the trauma of the totalitarian regime and struggling to forge the basis for a new future, one in which victims, victimizers, and bystanders will need to cooperate in the making of a fresh start. As part of that process, a public

31. FRIEDRICH NIETZSCHE, *THE WILL TO POWER* 264 (Walter Kaufmann ed., Walter Kaufmann & R.J. Hollingdale trans., Vintage 1968).

32. J. DUDLEY ANDREW, *THE MAJOR FILM THEORIES* 208 (1976) (discussing Jean Mitry's theory of film).

33. Sound and image are often deployed together as guarantors of two radically different modes of knowing: the seeming concreteness of the visible is conducive to an ideology of empiricism, while the ineffable, intangible quality of sound places it on the side of the emotional or intuitive. See Mary Ann Doane, *Ideology and the Practice of Sound Editing and Mixing*, in *THE CINEMATIC APPARATUS* 47 (Teresa de Lauretis & Stephen Heath eds., 1980).

commission is established to investigate atrocities of the former regime. Gerardo Escobar—a celebrated human rights attorney and formerly a leader of the resistance movement—has been appointed to head that commission. Paulina Lorca, the protagonist of the film and Gerardo's wife, had suffered repeated and severe torture and rape under the old regime without betraying Gerardo's identity. As the film opens, she learns of Gerardo's appointment to the commission. She considers his acceptance of the appointment a betrayal: as the commission was charged with investigating only those incidents of torture that ended in death, Paulina's repeated rape and torture will remain invisible, unredressed in the process of social and legal reconciliation.

On the dark and stormy night in which the tale is set, a stranger (Dr. Roberto Miranda) drops Gerardo off at home. Paulina, hidden in another room, "recognizes" him (by voice, smell, and manner of speech) as the doctor who had tortured and raped the blindfolded Paulina so many years ago. She holds the two men hostage at gunpoint, and conducts her own private proceedings to establish the truth and do justice. The blindfolded and frequently gagged Dr. Miranda steadfastly proclaims his innocence, but is subjected over the course of the evening to brutal and humiliating treatment at the hands of Paulina. Gerardo, horrified at his wife's actions, finds himself repeatedly threatened by Paulina's gun as he attempts to release Dr. Miranda or deflect Paulina from her attempts to force a confession from the doctor. But by the end of the night, truth emerges from the process. Gerardo is brought to acknowledge his own "crimes" against his wife, and Dr. Miranda, held at gunpoint at the edge of a cliff, gives a full confession, one that erases any doubts that the doctor might be an innocent victim of Paulina's tortured imagination. He gives a detailed account of his rape and torture of her, admitting further to having taken great enjoyment in his exercise of power, and to grieving only over the end of the regime and the end of his ability to exert such control over a woman's body. Having heard the confession, Paulina chooses not to impose a death sentence, and simply lets Miranda go. Gerardo momentarily rushes at Miranda as if to push him over the cliff, but is unable to, and finally follows Paulina away, leaving Miranda staring down into the crashing waters below. The movie ends with a scene of the three characters, eyes meeting in a chance encounter in the civilized world of the concert hall.

Kamir's analysis of the film is textured, and engages with a number of legal issues and questions. She pulls into dialogue scholarship on political atrocity and feminist scholarship on rape, and convincingly shows how each illuminates the connections between the social and legal impasses confronted by both victims of rape and victims of tyrannical regimes. The chapter also provides a study of the different venues for seeking justice, foregrounding the distinctions between the criminal trial and the truth and reconciliation commission. Kamir's analysis makes visible the hopes and limits of each venue in a way that does not focus on identifying the best choice, but rather on helping the viewer *feel* the costs of each choice.

The chapter stresses the need both for the public narration of traumatic memory, and for witnesses capable of hearing and acknowledging the reality of that traumatic encounter. And it is here that I found the chapter to work so powerfully, and where I understood the value of an approach that interrogates the relationship of thinking and affect. Kamir first allows the film to do its (affective) work, and then engages the viewer in a conversation about *how* the film's "work" happened, focusing attention on techniques that place us as viewers in specific subject positions, fostering certain kinds of affective responses.

The film's three characters stake out three subject positions: aggressor, victim, and bystander/witness. One of the questions the viewer must grapple with as the film plays itself out is the identification of just *who* the victim is: Is Dr. Miranda the torturer and Paulina the victim? Or is Dr. Miranda an innocent victim of Paulina's tortured and now cracked mind? We are denied access to flashbacks, or other such methods of establishing a seemingly objective "truth": we must judge on the basis of what we see and hear.

The film positions us to feel torn, pulling us into multiple subject positions. At the beginning, we are drawn into Paulina's emotional space: we see her suffering, her fear and isolation, and the certainty of her conviction that Dr. Miranda is her torturer. But we maintain some distance from her character, feeling partly repelled by the brutality with which she acts. We are also positioned to feel the experience from Gerardo's perspective. Like him, we are disoriented and confused by Paulina's actions, not sure initially of what is happening. As events unfold, we share his resistance to convicting a man on the basis of a blindfolded victim's assertion that she recognizes her former oppressor by his voice and his smell. With Gerardo, we doubt Paulina, suspecting that the experience of rape and torture has broken her. But the film subsequently leaves us feeling compromised in this identification. As Gerardo shows moments of dishonesty, cowardice, and guilt, viewers feel the desire to draw some distance from the character with whom they were initially drawn to sympathize. This is particularly so when Dr. Miranda confesses and Gerardo is forced to confront his failure of judgment.

One of the most powerful dimensions of the chapter is its readiness to contend directly with the moment of judgment confronting bystanders, bystanders charged with witnessing a traumatic encounter, bystanders who may end up finding themselves having done justice, but who may instead find they are complicit in its denial, complicit in the perpetuation of further violence and erasure. Kamir shows us how the technique of split identification in the film helps viewers viscerally experience (through Paulina) the importance of the victim's need for a witness to trauma and also experience (through Gerardo) the resistance and denial felt by one pushed unwillingly into such service. Kamir's analysis allows the reader to grapple directly with the problem Polanski offers us: the blurring of victim/aggressor/bystander positions, and a powerful affective understanding of the strength of the bystanders' desire to forget or deny the trauma they are being asked to see.

As Kamir reminds us, for a victim to recover there must be a return to the trauma. The event needs to be recounted, and a witness is crucial to the

recounting. There must be someone who can hear the story and acknowledge the horror of the event. However, the experience of *being* the witness is not costless. To be a witness means exposure to a range of horrors—the trauma becomes one's own. Kamir's chapter makes it possible for us to occupy that space of witness, and to think more clearly about the range of emotions and strategies we might be employing when we find ourselves witnessing trauma or confronting the possibility of complicity. The film enables us not just to see, but to feel a range of responses, from denial to belief. Kamir's analysis of *Death and the Maiden* offers a space to grapple with the experience of the witness/bystander, to acknowledge the potential for complicity associated with that role, and to reflect on what it might mean to refuse to run from that moment. Kamir's analysis encourages us to use the space of potential complicity as a moment for the application of her "deconstructive construction"—the attempt to use the insights to think about how things could be made different.

And this draws me back to the ways in which the book opens space for thought beyond its boundaries. This book about film led me to some useful insights about teaching criminal law. Criminal law can be an emotionally taxing experience, for both the professor and the students. It is, for example, a fraught enterprise to teach sexual assault law in a context where the statistics predict that the classroom will contain students who have been victims of sexual violence, as well as students who have been perpetrators of that violence. As professors, we may experiment with a variety of strategies for working through the sexual assault cases, worrying about the emotional loads that might be carried by students in our classrooms who have experienced victimization. And yet, many of us find that, no matter how sensitive one attempts to be in approach, those classes often fail to hit the mark. There is a persistent and widely expressed student concern that the classes on sexual violence are painful.

Kamir's chapter led me to understand how the standard law school approach to the facts, with its occasional sensitivity to the position of victim/aggressors in the class, fails to deal with the emotional baggage carried by the vast majority of students, who occupy the position of compulsory bystander/witnesses. I found myself thinking more about my own experience of reading the facts in upsetting cases, cases involving violence, death, and unbearable tragedy, thinking about the ways that those facts have sometimes seemed to stick in my throat, about the need I have sometimes felt to recount the facts to (often unwilling) others, hoping that somehow the sharing of the tale might reduce the sense of sorrow or horror those facts generated in me. I reflected on the many strategies I have deployed in order to reduce the emotional costs of having to return to those cases again and again in the classroom. I found myself thinking about the (sometimes politically appalling) dark humor of criminal law scholars, and forensic doctors, people whose jobs take them frequently to a space of witnessing trauma, horror, and sorrow. I reflected also on what it might mean to use that insight constructively, to take seriously the costs associated with witnessing.

Taking up the challenge offered by Kamir's "constructive deconstruction" approach, I decided to speak directly with the students about the problem of affect and witnessing, about the ways in which the criminal law materials exact costs from people, and exact them in different ways depending on the extent to which the students were themselves positioned with respect to violence. We talked about the kinds of strategies used by those called upon to witness, including the range of strategies they would see used by different people in different contexts. I spoke also of kinds of strategies I myself sometimes adopted, discussing the ways those strategies, while reducing my own emotional costs, could sometimes run the risk of making me complicit in the minimization of some instances of trauma experienced by others.

I cannot say that a classroom miracle occurred because of this discussion, or that the act of making the costs visible made them go away. Nor can I report that I have purged my own teaching practice of what is admittedly a tendency to veer too quickly toward ironic or black humor as a strategy for coping with painful facts. I can say, however, that it was a powerful and strangely liberating experience to engage in the political move of discussing those practices with the students, talking about the politics of those emotions, both authorizing a space for them to remain conscious of their own emotional responses and enabling them to call me to account in contexts in which my classroom approach to the facts was insufficiently attentive to these costs. Making the problem visible did make a difference. For all of us.

Thinking further about the way that strong texts work on the borders of the mind, I note that the experience of reading the Kamir book not only influenced my pedagogical practice, but also provided some new avenues for thought in some of my ongoing research projects. While reading *Framed*, I was also preoccupied with *R. v. B. (F.F.)*, a Canadian Supreme Court decision in a case involving the delayed prosecution of a man for the childhood sexual abuse of his niece.³⁴ The case had arrived at the Court as a criminal appeal as of right, and involved no issue of national importance, no precedent-setting point of law.³⁵ Indeed, only five of the nine judges heard the case.³⁶ The main question was whether or not to apply section 686(1)(b)(iii) of the Canadian Criminal Code, the "curative provision" that allows a court, faced with a minor or technical error in trial process, to affirm a jury's decision to convict, rather than order a re-trial.³⁷ A simple question of application, and yet the five judges hearing the case produced four written opinions characterized by significant emotional excess, with judges tossing claims of miscarriage of justice and judicial incompetence against each other. Anger is tangible in the opinions.

34. [1993] S.C.R. 697.

35. *Id.* at 698. In general, the Supreme Court grants leave only to those cases it deems to involve issues of national importance. There is, however, a small exception for criminal law cases involving a dissenting opinion at the Court of Appeal. In such cases, a criminal defendant has a right to have the Supreme Court be the final adjudicator of the case.

36. *Id.*

37. *Id.*

As I struggled to understand the disjuncture between majority and dissenting judgments, I came to appreciate how Kamir's analysis of *Death and the Maiden* opened up another avenue for thinking about the case. It enabled me to think about the nature of the emotions that spilled from the case as the judges were made witness to the recounting of what was an extreme moment of traumatic violation and abuse. Kamir's analysis reminds us that to witness trauma (whether directly or in the course of legal hearings) is to be drawn into the traumatic encounter, to be made a co-owner of the event. This enabled a return to *B.(F.F.)*, looking not only at how language use in the different judgments tended to portray facts as more or less stable, but also at how the judges themselves were functioning as different kinds of witnesses.³⁸ How did the judges respond to a moment of judgment that forced them to be co-owners of a traumatic encounter? In dealing with "the case," how were they dealing too with the affectively rooted experience of trauma? Though strategies of minimization? Rage? Denial? Distance? And who was to be the target of their emotional loads?

In the different opinions, one can see performed many of the strategies visible in *Death and the Maiden*. In the majority decision of Justice Iacobucci, one can see tactics of minimization and distancing. Like Gerardo in the first part of the film, Justice Iacobucci expresses some sympathy for the victim, sees the damage, and yet is unwilling to do what is asked of him. He instead stands by a commitment to abstract justice. In the dissent of Claire L'Heureux-Dubé one can hear echoes of Paulina, of one who refuses to be silent in the face of the traumatic encounter. One also hears her direct challenge to the other witnesses (judges), accusing them of complicity, of active participation in a further moment of victimization. In his concurring reasons, Chief Justice Lamer also expresses rage, but it is displaced. His rage at being called complicit leads him to call Justice L'Heureux-Dubé incompetent, and further, to do so in a manner which leads him to write in a fashion that does not simply minimize but comes close to denying the shape of the actual encounter of violence between B. and his child victim. Finally, in the dissenting reasons of Justice Gonthier, one sees an attempt to acknowledge the victimization, but in language devoid of emotional overload (other than the slightly passive-aggressive strategy of failing to even advert to the reasons of the Chief Justice).

* * *

A film like *Death and the Maiden* cannot help us determine whether the majority or dissenting judges were right in *B.(F.F.)*, or indeed, in any case. It can, however, allow us to feel and then interrogate our own desires to deny the reality of trauma, our desires *not* to act. The *film* enables us to feel the complicity in these desires precisely because it also allows us to know unequivocally that Paulina was right, and that Dr. Miranda *was* guilty. The real

38. See Marie-Claire Belleau & Rebecca Johnson, *The Faces of Judicial Anger, in Les sept péchés capitaux et le droit privé* (Myriam Jézéquel & Nicholas Kasirer eds., forthcoming 2006).

life dilemma is that we are of necessity forced into the space of a witness and required to render judgment in contexts in which it is rare that we encounter a “flashback” or “last minute confession” to help us know what it is that justice requires of us. Kamir’s book is so useful precisely because it acknowledges the Nietzschean insight that “[b]etween two thoughts all kinds of affects play their game,”³⁹ encouraging us to take those affects seriously, and to interrogate their effects on the ways in which we render judgment.

Framed is a book that offers us a cornucopia of challenging film analyses. More importantly, it points us in the direction of crucial legal problems, offering a method of analysis that allows us to see deeper into the processes of judgment: the judgment of courts, and the judgments of those of us who work in the same terrain. How do these operations work on us, how do they shape what we see and the language we use to discuss it? In Kamir’s book, the links between legal and cinematic forms of judgment are drawn into view. *Framed* keeps the focus squarely on questions of *judgment*, on the concrete mechanisms of law and film through which we are positioned in the communities of those who judge, and those who *are* judged. The book is *not* an “exposé” of filmic false representation, nor of law and film’s (sexist or racist) bad faith. Kamir’s point is not that women are badly represented. She poses a far more complicated set of questions: *How* do social, legal, and cinematic conventions and mechanisms combine to lead us to condemn or exonerate? What is it, exactly, that we find the women in these films guilty or innocent *of*, and how do we arrive at this judgment? And, perhaps most importantly, how might our social and legal judgment be exercised otherwise?

The book’s ability to attend to the multiple mechanisms that many people use to engage in decision-making makes it compelling. Using film, Kamir begins with this experience of judgment rooted in felt experience, and then walks us through the process of deconstructing it, of asking how it is that the film is structured to encourage or undercut certain kinds of knowing. The reader has the experience of judging, and then is given space to question that moment of judgment in the light of a specific set of questions. On occasion, we return to an earlier moment of judgment and are required to judge anew, layering our experience in complicated ways.

Kamir’s book *Framed* is a gem, albeit one that resists easy description. The back cover indexes the book under three categories: “Law/Film/Women’s Studies.” Accurate enough, but it doesn’t capture the generative tension produced by the ways in which those categories stand in relation to each other. *Framed* is very much a book for those who work with and in the law, a book committed to the premise that law matters, and that the legal design of our world makes a difference. It is a book that seeks to enable its readers to see with greater depth into the jurisprudential assumptions captured in law and film, and into the structure of those relations of force and enchantment in which we inevitably must participate. There is no other word for it. Magic.

39. NIETZSCHE, *supra* note 31, at 264.