

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

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... how much to acknowledge, whether to punish and how to recover

—Martha Minow

Introduction

Law and Film

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Post-Traumatic Societies

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

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

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

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

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

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

Film Synopsis

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

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

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

Cinematic Jurisprudence

Two Concepts of Law and Justice

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

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

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

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

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

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

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

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

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

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

Recovery from Trauma and the Features of the Legal Process

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

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

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

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

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

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

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

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

Healing Testimony and the Legal Process

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

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

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

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

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

Judith Herman elaborates further:

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

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

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

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

Gendering Concepts of Law and Political Victimization

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

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

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

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

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

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

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

Rape and Political Atrocities

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

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

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

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

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

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

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

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

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

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

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

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

Cinematic Judgment

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

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

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

Structural Viewer Identification with Gerardo

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

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

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

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

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

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

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

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

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

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

Viewer Identification with Paulina

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Double Identification and Self-Judgment to the Bitter End

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Cinematic Reflections on Law and Truth Commissions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Roman Polanski's 'Death and the Maiden'

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

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

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

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

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

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

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

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

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

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

Notes

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25. *Ibid.*, 70.

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

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

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

29. *Ibid.*, 69.

30. *Ibid.*, 70–71.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51. *Ibid.*, 61–62.

52. *Ibid.*, 72.

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

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

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

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

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

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

59. Kamir, “Judgment By Film.”

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

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

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

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

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

65. Ibid., 63.

66. Ibid., 61.

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

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

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

70. Ibid.

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

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

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

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

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

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

76. Weschler, "Artist in Exile," 105.

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

ORIT KAMIR

... how much to acknowledge, whether to punish and how to recover

—Martha Minow

Introduction

Law and Film

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

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