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## Honor and Dignity in the Film *Unforgiven*: Implications for Sociolegal Theory

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Orit Kamir

This article calls attention to “honor” and “dignity” as two fundamental, antithetical bases of unique value systems, both highly significant to social orders and legal systems in the contemporary Western world. The article argues that in this comparative context, the relatively new dignity-based value system may be better defined and articulated; at the same time, the overlooked, traditional honor-based value system, which underlies much of contemporary reality, can be better identified and replaced or at least modified by a dignity-based one. Rather than look to specific sociolegal realities, the article presents this line of thought from a “law-and-film” perspective, i.e., through the close reading of a single feature film: Clint Eastwood’s *Unforgiven*. This contemporary, widely familiar, and immensely popular Western exposes the ugly face of the honor-based value system at the heart of the Western film genre; further, it subversively undermines this value system, replacing it with a dignity-based one. In so doing, the film expresses deep faith in the human capacity to transform, calling on real-world social and legal systems to follow in its footsteps and apply the same critical analysis and reformative activism to Western law and society at large.

The task for the Law and Society Association is regularly to challenge its own doggedly conventional assumptions about what is worth studying, about the theories and methods that we use and about what counts as sociolegal scholarship.

(Austin Sarat, “Imagining the Law of the Father: Loss, Dread, and Mourning in *The Sweet Hereafter*”)

### Introduction and Overview

This article calls attention to “honor” and “dignity”<sup>1</sup> as two fundamental, antithetical values, both firmly rooted at the heart of

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<sup>1</sup> In this article, “honor” refers to the social status acquired by individuals in reference to the norms of an honor culture they belong to, whereas “human dignity” is an innate, human attribute that is equally imprinted in every human being and commends reverence by all. According to most honor codes, a woman who publicly mocks a man’s sexual performance shames him and devastates his honor. The treatment of a human being as less than fully human is an attack on his or her human dignity. Obvious examples would be

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social orders and legal systems in the contemporary Western world. An antithetical analysis of these concepts has long been suggested, in an anthropological context, by Bourdieu (1966:228), and re-framed by Berger (1983) and later, in the context of multiculturalism, by Taylor (1994). I argue for its relevance to contemporary Western societies and their laws. I suggest that honor, that manly basis for behavior codes in cultures throughout history and around the world, is incorrectly misjudged as an archaic, irrelevant remnant of antiquity (Berger 1983:173); it is thus wrongly neglected and ignored in sociopolitical rhetoric as well as in the legal context. Dignity, on the other hand, though officially hailed and embraced by national and international authorities around the world, is mostly left unspecified and amorphous, thus ineffective or, worse, a potentially manipulatable basis for arbitrary decisionmaking. I believe that comparatively viewed as potentially competing, adversarial, fundamental notions, honor and dignity emerge as two antithetical bases of unique value systems. In this comparative context, dignity may be better defined and articulated, while the overlooked, underlying honor-based value system can be better identified, and replaced—or at least modified—by a dignity-based one.<sup>2</sup>

Examining the manifestations and implications of Western socio-legal systems' underlying honor-based values, and suggesting their replacement (or modification) with alternative, dignity-based ones, is a monumental task.<sup>3</sup> In this article I merely outline the described line of thought and offer a preliminary "taste" of its gist. For this purpose, I do not refer to any particular legal system,

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forcing a person (say a prisoner) to eat his or her meals from the floor, and to urinate in their pants in public. For fuller definitions and discussion, see "Honor and Dignity" below.

<sup>2</sup> Most societies and cultures, of course, contain values, norms, modes of conduct, and linguistic terms that derive from and attest to an honor mentality, as well as others that can be associated with the premise of dignity. Similarly, many—if not all—individuals have some sense of duty to both. Nevertheless, some societies follow strict honor codes even at the expense of individuals' dignity, while others attempt to transcend their honor-based drives and adhere to the dictates of human dignity. Many other societies are perhaps not as closely associated with one value system or the other, but are, nevertheless, more in line with one ideology than the other. (The same is true of the traditional distinction between "honor cultures" and "guilt cultures," mentioned in note 9.) I would argue that American society still manifests few but distinct traces of an honor culture (as I discuss later in the text). It does not adhere to human dignity the way other modern societies (mostly Western European) do, preferring the rhetoric and logic of alternative, more traditionally American values, such as liberty and equality (see Eberle 2002). Nineteenth-century European societies were often deeply steeped in honor codes, whereas today they explicitly embrace human dignity as a fundamental value and the basis for their value system. I will address this point in detail elsewhere. In this article I set out to distinguish the two, and define dignity in reference to honor; I therefore focus on the features that separate the one from the other, rather than stress the similarities.

<sup>3</sup> For the first step in that direction see Kamir (2002), in which I apply this line of thought to the Israeli legal system. For a full explication of the Israeli context, see Kamir (2004).

looking, instead, to another central social discourse: popular culture. Following a basic, antithetical presentation of “honor” and “dignity” (meant to clarify the meaning of dignity as well as highlight the distinction between dignity and honor), I look to a single major contemporary film and read it in a manner that I believe demonstrates the theoretical, jurisprudential, “law and society”<sup>4</sup> argument presented above. More specifically, I read Clint Eastwood’s *Unforgiven* (1992) as revealing the honor code that underlies social and legal norms (as well as many films’ generic conventions) while calling to substitute it with a dignity-based one. This contemporary, widely familiar, and immensely popular Western exposes the ugly face of the honor-based value system at the heart of the Western film genre; further, it subversively undermines this value system, replacing it with a dignity-based one. In so doing, the film expresses deep faith in the human capacity to transform, calling on “real-world” social and legal systems to follow in its footsteps and apply the same critical analysis and reformative activism to Western law and society at large. In essence, this incredibly popular and subversive film is a significant reimagining of sociolegal orders rooted in honor systems.

In addition, the reading of *Unforgiven* offered in this article demonstrates the workings, scope, and nature of the study of law and film. In this sense, the article offers an abbreviated exploration of this novel, evolving type of scholarship, suggesting how law-and-film can operate as a sub-genre of law-and-society.<sup>5</sup> Law and film scholarship can demonstrate new insights into alternative conceptualizations of sociolegal structures.

The first section of this article, “Honor and Dignity,” sets out the contours of honor- and dignity-based social codes, pointing to their relevance to legal regimes. “Law and Film: A Brief Exposition” briefly overviews law and film scholarship and sets out the methodology I use to analyze *Unforgiven*. “*Unforgiven*” sets out the plot of *Unforgiven* and offers a reading of the film that demonstrates how it exposes and subverts an honor-based code and replaces it with a dignity-based one, while calling on viewers to follow its lead and similarly transform social norms, legal codes, and per-

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<sup>4</sup> I employ *law and society* here to stress the honor and dignity argument’s fundamental references to social structures, processes, and mechanisms and the deep linkage between them and legal systems and their social functions. *Jurisprudential* refers more to the legal-philosophical aspects of the argument.

<sup>5</sup> Not to belabor this “categorizational” point, law-and-film is more commonly viewed as a descendant of the law-and-literature and law-and-culture schools of thought. This article suggests that it is also inherently a law-and-society project in the sense mentioned in the previous note: exploring social structures, processes, and mechanisms, and the deep linkage between them and legal systems and their social functions.

sonal conduct. This part shows how a reading of a prominent film can add to law and society scholarship.

## Honor and Dignity

### Honor Cultures

In this article I refer to “honor,” “honor cultures,” and “honor societies” as they have been carefully studied and defined through decades of anthropological studies in the Mediterranean, Middle East, western Europe, southern United States, India, and South America.<sup>6,7</sup> In this context, honor, together with its complementary opposite, shame, is the centerpiece of societies that evaluate their members and rank them according to adherence to rigid conduct codes, requiring specific manifestations of pride, assertiveness, and independence of men, and sexual purity of women. An honor society entails a structured hierarchy and strict social roles, encouraging assertive competition among men and sexual constraint among women. An honor culture glorifies as honorable conformity to its honor code, while debasing deviant conduct and constructing it as shameful (in this context, both honor and shame bear very precise meanings, which may differ from these terms’ diverse meanings in other types of societies and cultures).<sup>8</sup>

Honor societies and cultures differ greatly in many features, as well as in the linguistic terms they use to denote honor and shame. Nevertheless, a survey of studies that research particular honor societies and cultures around the world reveals that significant generic attributes are common to many such cultures. Whether a particular behavior is shameful may be viewed differently by

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<sup>6</sup> The following section contains paragraphs from Kamir (2006).

<sup>7</sup> The (mostly anthropological) literature on honor cultures, on which I rely in the following survey, includes Campbell (1970), Pitt-Rivers (1977), Herzfeld (1980), Wyatt-Brown (1983), Boehm (1984), Peristiany and Pitt-Rivers (1992), Miller (1993), Stewart (1994), Peristiany (1966), Ginat (1997), Ney (1998), Johnson and Lipsett-Rivera (1998), and Afsaruddin (1999).

<sup>8</sup> Traditionally, honor and shame cultures have been defined in opposition to guilt cultures, in which individuals are indoctrinated to internalize moral notions of sin and monitor their own social conduct for fear of sinning and experiencing guilt. Honor cultures were said to be extroverted, whereas guilt cultures were depicted as introverted. Ancient Greek and Roman civilizations, the samurai of Japan, the saga of Iceland, and Bedouin tribes are all archetypal examples of honor societies and cultures. Judeo-Christian cultures, on the other hand, are obvious examples of guilt cultures. Although this polar, binary definition has been criticized by many, it still offers a meaningful, basic distinction between cultural tendencies and social inclinations. To use Miller’s words, “The well known distinction between shame and guilt cultures, though rightly and roundly criticized, still captures a fundamental difference between the world of the sagas and ours, between a culture in which reputation is all and one in which conscience, confession and forgiveness play a central role” (Miller 1993:116). The binary definition of honor and dignity is structurally analogous to the honor-guilt one.

different honor cultures, but the use of shame as a fundamental criterion to determine worthiness and social rank is typical of them all. Pitt-Rivers suggests comparing honor “to the concept of magic in the sense that, while its principles can be detected anywhere, they are clothed in conceptions which are not exactly equivalent from one place to another” (Pitt-Rivers 1966:21).

Members of historical and contemporary honor cultures derive their social rank and sense of worthiness by measuring up to well-defined social norms of honorable behavior and avoiding or avenging behaviors and situations that are conceived as inflicting shame. Sketching a basic, general definition, which represents well the common perceptions in this field of study, Miller suggests that

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

Honor cultures thus cultivate emotions such as shame and envy, which tend to depend on relative standing in a community, rather than more internally oriented and individualistic emotions such as guilt, remorse, angst, and ennui (Miller 1993:116). Similarly stressing honor cultures’ typical linkage of social status, social rights, and self-esteem, Pitt-Rivers defines honor as “the value of a person in his own eyes, but also in the eyes of his society. It is his estimation of his own worth, his *claim* to pride, but it is also the acknowledgment of that claim, his excellence recognized by society, his *right* to pride” (Pitt-Rivers 1966:21). Adding the “honorable impulse” expected of members of honor cultures, the formula becomes this: “[t]he sentiment of honor inspires conduct which is honorable, the conduct receives recognition and established reputation, and reputation is finally sanctified by the bestowal of honors. Honor felt becomes honor claimed and honor claimed becomes honor paid” (Pitt-Rivers 1966:22).

In honor cultures, honor serves as an effective disciplinary tool, and the honor code is, therefore, a structure of social power. In order for its members to achieve and maintain honor, an honor

culture offers specific behavior codes demanding complete obedience. Failure to detect an insult that taints one's honor, or failure to respond to an offense to one's honor at the right time, in the right fashion, and in the right degree results in costly consequences, i.e., loss of honor. Honor cultures are local and particularistic in the sense that they apply exclusively to their own members, demanding thorough mastery of the most nuanced specific norms and expectations.<sup>9</sup> Such cultures are ritualistic in the sense that they demand very specific responses to offensive behaviors. Honor cultures are individualistic in that each member is responsible for his or her honor and will suffer the consequences of a wrong social move. They are collectivist in the sense that each person's honor also affects the honor of his or her clan, and sometimes that of a larger group. They are also class-oriented, in the sense that a person's honor and the means of maintaining it vary greatly according to social class. The most obvious class difference is gender-based. In most honor cultures, men are the predominant possessors of honor, and honor is very explicitly associated with masculinity and manhood, and all their cultural symbols. In fact, *honor* and *masculinity* are often interchangeable terms. In such cultures, women's honor is secondary to men's: it is derived from a woman's success in protecting the honor of her man (or men). Most often a woman is considered honorable if she guarantees her father's, brother's and/or husband's full control over her sexuality. Since a man's honor is frequently dependent on his control of his woman's sexuality, her honor derives from guaranteeing it and preventing his shame.

The honor of a man and of a woman [ . . . ] imply quite different modes of conduct. This is so in any society. A woman is dishonored [ . . . ] with the tainting of her sexual purity, but a man [is] not. While certain conduct is honorable for both sexes, honor = shame requires conduct in other spheres, which is exclusively a virtue of one sex or the other. It obliges a man to defend his honor and that of his family, a woman to conserve her purity. [ . . . R]estraint is the natural basis of sexual purity, just as masculinity is the natural basis of authority and the defense of familial honor. [ . . . ] Masculinity means courage whether it is employed for moral or immoral ends. [ . . . ] The honor of a man is involved [ . . . ] in the sexual purity of his mother, wife and daughters, and sisters, not in his own. [ . . . T]he honorable woman: locked in the house with a broken leg." (Pitt-Rivers 1966:42-5)

The most explicit and familiar remnant of honor culture norms in contemporary American law is the partial defense of provocation, which mitigates the homicidal offense committed by a cuckold

<sup>9</sup> Foreigners and outcasts are honorless, and honor norms very often do not apply to them.

husband on his wife and/or her lover.<sup>10</sup> In the past, the rationale for this defense was that in such a situation, an honorable man was not merely forgiven, but fully expected and encouraged to take the law into his hands and avenge his honor on the man and/or the wife who robbed him of it.<sup>11</sup> Now the partial defense of provocation is no longer a justification but an excuse, expressing society's forgiving understanding rather than the full condoning of such killings. Nevertheless, in most American states, as in England and other common law countries, it is still the law of the land.

Equally striking is the American doctrine of self-defense. In English common law, a man has always been required to retreat before using defensive force, deadly force in particular. A leading American precedent, however, held that "a true man who is without fault is not obliged to fly from an assailant, who by violence or surprise maliciously seeks to take his life or do him enormous bodily harm" (*Erwin v. State* 1876). Following this 1876 decision of Ohio's Supreme Court, American common law deviated from the English norm, holding that a true man does not and must not be expected or required to retreat.<sup>12</sup> This honor-based norm continues to enjoy both popular support and legislative acknowledgment to this day. In fact, it may be gaining new ground. In April 2005, Florida legislated a "stand your ground" bill, which "lets people use guns or other deadly force to defend themselves in public places without first trying to escape. Floridians already had the right to defend themselves against home intruders under what is

<sup>10</sup> In other, more honor-based societies, laws offer further reaching protection of men who commit "honor killings" of women who have shamed them with their sexual conduct. (For a recent presentation and analysis, published in this journal, see Warrick [2005].) But the basic logic is no different.

<sup>11</sup> For detailed discussions see Kernan (1906), Weinstein (1986), Horder (1992), Ireland (1988, 1989), Hartog (1997), Umphrey (forthcoming), and Lee (2003).

<sup>12</sup> Commenting, in 1906, on this American deviation from the English common law, Thomas J. Kernan declares:

Under the theory of the old common law only cowards were permitted to kill in self-defense; a man was compelled to flee like a craven and be cornered like a rat in a hole before he could legally deliver the coup de grace to his adversary. The refinements of the bench and the rough-edged administration of justice from the jury box finally succeeded in amending that absurd law, and now flight is no longer necessary, but the person attacked may pursue and kill his adversary if necessary to his own protection. (Kernan 1906:462)

Accordingly, under American criminal common law, a defendant's right to argue self-defense was not—and in many jurisdictions is still not—contingent on his previous attempt to retreat and avoid the use of illegal force. Provocation and self-defense are merely two high-profile, unambiguous, well-known examples of a sociocultural-legal phenomenon that mostly goes unnoticed. The study of honor, its logic and norms, may lead to realizations regarding other, less obvious cultural remnants and their ideological implications in contemporary society and law.

known as the castle doctrine, but until now, they could not do so in public” (Goodnough 2005:A12).

### Human Dignity Versus Honor

Like honor in honor cultures, dignity in dignity-based cultures relates to the core of a person’s worth as a human being. It is viewed as an axiomatic human quality, the source of social acknowledgment and rights and the organizing principle of humanistic value systems. Like honor, the concept of dignity synthesizes (or confuses) human nature, noble sentiment, and *claims* to social respect and legal rights with *actual* “natural,” social and/or legal rights. Like honor, dignity is thus generally treated as simultaneously empirical and normative, natural and social, both a source and a consequence.<sup>13</sup> Its specific features, however, remain largely vague.

Despite much contemporary reference to dignity, especially in countries where it is a legally recognized value, writers typically refrain from offering precise, comprehensive definitions, sometimes claiming that it is “intuitively” self-explanatory. Often discussed from legal and legalistic perspectives, dignity tends to be treated instrumentally rather than theoretically. “When it has been invoked in concrete situations, it has been generally assumed that a violation of human dignity can be recognized even if the abstract term cannot be defined. ‘I know it when I see it even if I cannot tell you what it is’” (Schachter 1983:849). Referring to the usage of the term in U.S. Supreme Court jurisprudence, Meyer and Parent argue that:

Although the concept of human dignity has been used by the [American] Supreme Court [. . .since 1946], its precise meaning has rarely been clarified. The value of human dignity is often presupposed in moral and legal argument, but the precise function of the concept is almost never explained. In comparison with the attention it has paid to such notions as justice, equality, and rights, contemporary scholarship has devoted surprisingly little analysis to the concept of human dignity. (Meyer & Parent 1992:3–4)

Even in the German legal system,<sup>14</sup> which has dedicated more judicial thought to human dignity than any other, Eckert claims that:

<sup>13</sup> The discussion of dignity manifests much ambiguity in crucial points: is dignity inherent and equal in all persons under all circumstances? Does a person’s moral behavior influence his or her dignity? Is a person’s dignity dependent on social recognition? Can a person be deprived of human dignity, and if so—how? (Gewirth 1992; Fletcher 1984). The discussion of these ambiguities is beyond the scope of this article. The notion of dignity I present here entails my choice and determination regarding each of these points. These choices are based on common perceptions among scholars, reflecting my own beliefs and preferences.

<sup>14</sup> For a thorough exploration of the German law and its basis in dignity, see Eberle (2002).

[I]t is difficult to seize the judicial meaning of the concept of human dignity. Therefore, some might even characterize human dignity as an *'empty formula amongst others.'* Even if one does not agree and tries to define the specific legal essence of the concept of human dignity, a very wide range of applications still remains. (Eckert 2002:42, emphasis in original)

For the purpose of this article, human dignity is the contemporary, liberal, post–World War II, legalistic concept that emerged, in the aftermath of the horrors of that war and the Holocaust, as a minimalist universal common denominator and the basis for elementary human rights. This human dignity is the fundamental, egalitarian, humanistic value established and celebrated in Article 1 of the 1948 Universal Declaration of Human Rights, which proclaims that “[a]ll human beings are born free and equal in dignity and rights.”

This dignity seems to be a descendant of the theological, Judeo-Christian notion of glory that is attributed to mankind as an earthly manifestation of God’s image. Accredited to Man, God’s absolute, universal glory is fundamental and indestructible, existing equally in all human beings.<sup>15</sup> Unlike its ancient, metaphysical predecessor, dignity today is not theologically based; it derives its vitality and substantial content from humanistic liberal modernism. In its non-metaphysical humanism, contemporary dignity takes after one of its more recent forebears: dignity as defined by Kant’s moral philosophy and secured by his Categorical Imperative, stipulating that one may never treat a fellow human being as merely a means to an end that is external to him- or herself (Kant 1785). In Kantian moral philosophy, human dignity is the essence of humanity and human existence, and an absolute, independent, superior source of value. Twentieth-century dignity is similarly constructed as the essence of humanity and human existence and an absolute, universal value. Over the second half of the twentieth century, this value was embraced by constitutions and legal systems in states such as Germany, South Africa, Israel, and Canada, and in international organizations such as the European Union.

### Giving Dignity Form Through Comparison with Honor

Against clear structural analogies between honor and dignity and their sociocultural functions, this article focuses on the substantive distinction between the two concepts. Furthermore, in this discussion, I attempt to sketch an outline of dignity by highlighting the specific, substantive ways in which it differs from honor. Ac-

<sup>15</sup> The Hebrew, biblical word for glory, *kavod*, is the same and only one denoting dignity. (Interestingly, *kavod* is also the only Hebrew word denoting honor.) For extensive discussion, see Kamir (2002) and (2004).

knowledging the elusiveness of dignity and the difficulty in characterizing it, I suggest that dignity can best be substantially defined through comparison with honor, constructed as an antithetical, fundamental basis of a value system. For this purpose, I use simple descriptions of both honor and dignity, avoiding ambiguity and complexity within each term and its derivative value system.

While for most members of honor cultures, honor is earned and maintained through careful, painful observance of a specific cultural code, many define dignity as an essential human quality obtained at birth. All persons are worthy of human dignity and/or possess it merely by being human; it requires no action. Honor cultures are thus duty-based, whereas cultures based on human dignity are rights-oriented. Honor entails variable status and virtue for the few honorable persons of high social rank; dignity entails invariable, fundamental virtue for all human beings. Whereas a person's honor can easily be lost through the slightest social error, or stolen by another, many would argue that one cannot lose or be deprived of his or her human dignity under any circumstances. One may attack another's dignity, but can never destroy—or even tarnish it. The right to dignity thus entails a prohibition on any attempt to destroy or undermine a person's dignity—although such an attempt is inherently impossible.

Honor encourages rivalry, antagonism, and sometimes aggression, whereas dignity fosters consideration and constraint. Honor, (like a commodity, a valuable possession, a trophy), can be accumulated; dignity is often portrayed as the most essential human asset, which cannot be quantified or accumulated. An honor culture, therefore, offers higher stakes and higher risks, whereas dignity secures a fundamental minimum. In this sense, whereas honor promotes ambition, dignity inspires a “minimalist” social code.<sup>16</sup>

<sup>16</sup> Miller eloquently voices the common perception that:

[T]he mathematics of honor usually meant that you could never be just like someone else without taking what he had, appropriating his status to yourself. For the most part, people acted as if the mechanics of honor had the structure of a zero-sum or less-than-zero-sum game.” (Miller 1993:116)

Pitt-Rivers documents that, in some honor cultures, “one who gave an insult thereby took to himself the reputation of which he deprived the other” (Pitt-Rivers 1977:4). Dignity, on the other hand, like a parent's love, “expands” with every newborn human being; no matter how many humans there are, there is always enough human dignity to be equally shared by all. In contrast with the logic of honor, the logic of dignity links a person's own dignity with the dignity he or she allows others. By offending another's dignity, a person offends his or her own. This dynamic motivates all humans to secure each other's dignity. Defining an honor culture, Campbell claims that

[s]elf regard forbids any action which may be interpreted as weakness. Normally this would include any altruistic behavior to an unrelated man. Cooperation, tolerance, love, must give way to autarky, arrogance, hostility.” (1966:151)

Honor is complemented by fear of shame and humiliation; dignity by empathy, solidarity, and humanistic obligation (and perhaps disgust at the thought of human violation). Honor implies “live and let die,” whereas dignity implies “live and let live.”

In an honor culture, an offense to one’s honor burdens him or her with the duty to remove the stain, purify the honor, avenge the offense, and humiliate the offender. Within the logic of dignity, an attack on a person’s dignity is an attack on society and its fundamental values; it does not burden the offended party, but challenges the social order.

Considering all these oppositions, I agree with Bourdieu’s observation that

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

In hope of further illuminating dignity by contrasting it with honor, I suggest that human dignity relates to honor much like specific gravity relates to weight.<sup>17</sup> Honor, like weight, can be accumulated or lost through adherence to or deviation from rules of conduct. In contrast, just as specific gravity is intrinsic to a material (“from birth”), irrespective of its size, location, age, price, or circumstances, dignity is identical in all human beings, disregarding their conduct, stature, status, or circumstances. Just as a heavy piece of steel has precisely the same specific gravity as a very light one, so an honorable person and a “lowly” one both share the same human

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In clear contrast, dignity promotes tolerance, love, and sometimes altruism, renouncing vengeance and hostility.

<sup>17</sup> This metaphorical analogy derives from the Hebrew linguistic association of honor and dignity with weight. (Honor, dignity, and weight are all derived from one root: k.v.d. The Hebrew word for honor and dignity is *kavod*, and the word for weight is its twin, *kaved*. Because of their common root, they strongly connote each other.)

dignity. Honor can be “taken” or “stolen” from a person much like weight can be “taken” or stolen from a piece of steel. Dignity, on the other hand, is intrinsic to a person and indestructible, just as steel’s specific weight is intrinsic to it and indestructible.

The specific gravity of any material can be determined by the division of an object’s weight in its volume; the specific gravity is identical for all objects made of the same material. Similarly, human dignity can be determined by the division of a person’s honor in his or her social assets (as determined by the relevant, governing social norms); such human dignity is identical in all humans.

In sum, in the context of our modern,<sup>18</sup> liberal, humanistic worldview, human dignity entails, above all, personal autonomy, self-determination, and self-governance. This human essence establishes every individual’s rights to life, nourishment, clothing, housing, basic security against suffering and cruelty, liberty, control over one’s body, basic pursuit of happiness, choice of sexual and intimate fulfillment, basic freedom of thought, speech, religion, and movement.

#### **Implications of the Honor-Dignity Choice for Sociolegal Orders: Some Examples**

The constitution of honor or dignity as the basis of a society’s value system, or even as one of several such bases, has profound implications and is particularly consequential to human rights, including minorities’ and women’s rights. What follows are some concrete examples of the grave import inherent in honor and dignity-based sociolegal orders.

##### ***Rape Laws***

The sociolegal treatment of rape can serve as a telling illustration. Since antiquity and throughout most of the history of Western civilization, rape was conceived and treated as a crime against the raped woman’s father/husband’s rights to property and honor. The unlawful seizure of a woman’s sexual purity and/or potential fertility was constructed as confiscating a man’s property and staining his honor. Legal remedies were constructed accordingly. In biblical law, for example, the penalty for raping an unattached virgin was compensation of the woman’s father for his loss of property (his

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<sup>18</sup> Sociologist Peter Berger suggests that an honor culture reduces a person to his or her social roles, whereas a culture based on human dignity highlights the intrinsic self. Based on this distinction, he defines honor cultures as pre-modern, and cultures based on human dignity as modern (1983:177). Philosopher Charles Taylor similarly perceives cultures based on human dignity as more modern in spirit than honor cultures. He argues: “With the move from honor to dignity has come a politics of universalism, emphasizing the equal dignity of all citizens and the content of this politics has been the equalization of rights and entitlements” (1994:37).

daughter's virginity and her potential dowry) as well as for his loss of honor.<sup>19</sup> The woman herself was taken off her father's hands and placed in the care of the rapist as his wife. The rapist was forbidden to divorce her (i.e., send her back to her father) for the rest of his life. Focusing on the father's property and honor, this legal remedy clearly did not address the victim's human dignity. In a legal system that views rape as an offense to the victim's dignity, the legal intervention must address the attack on the raped woman's human dignity, i.e., on the attempt to dehumanize, objectify, and use her as a sexual object (denying her worth as an end in her own right). Such legal intervention must seek recognition and acknowledgment of the victim's human dignity and of the unlawfulness of the attempt to undermine it. It must punish the rapist for the attack on the victim's dignity and attempt to restore and secure her sense of dignity and self-worth.<sup>20</sup>

### *Sexual Harassment Laws*

A clear example of a sociolegal choice of the dignity model is Israel's Sexual Harassment Law, enacted in 1998, which declares that sexual harassment is a prohibited criminal conduct because it is an offense to human dignity (as well as an infringement on equality and on privacy; Kamir 2003). Israeli courts have elaborated on the significance of such sexual assault on human dignity, and it is through this prism that the Israeli public and legal system have both come to consider the issue. This dignity-based conceptualization of sexual harassment is a far cry from the Israeli law's common-law, honor-based definitions of criminal provocation<sup>21</sup> and "indecent conduct."<sup>22</sup> Each alludes to a distinct value system, reflecting, enforcing, and perpetuating distinct social norms.

<sup>19</sup> "And if a man entice a maid that is not betrothed and lie with her, he shall surely endow her to be his wife. If her father utterly refuse to give her unto him he shall pay money according to the dowry of virgins" (Exodus 22:16-7). "Humbling" the woman is humiliating her, i.e., depriving her honor, i.e., tainting her father's honor. "If a man find a damsel that is a virgin which is not betrothed and lay hold on her, and lie with her and they be found. Then the man that lay with her shall give unto the damsel's father fifty shekels of silver, and she shall be his wife; because he hath humbled her, he may not put her away all his days" (Deut. 22:28-9).

<sup>20</sup> In February 2005, Knesset member Eti Livni brought before the Israeli parliament a draft for a new rape law, stressing the principle presented here and defining rape as an attack on human dignity. In a preliminary meeting with the officials in the Ministry of Justice, they expressed a willingness to consider the suggested legislation seriously.

<sup>21</sup> Although it is an element of the offense of murder, rather than an affirmative defense, the Israeli doctrine of provocation is very similar to the English and American ones, discussed earlier as honor-based doctrines.

<sup>22</sup> "Indecent conduct" is an archaic sexual offense, prohibiting "obscene" conduct in the presence of another, as it may offend the honor of the victim, particularly a modest woman.

***Right-to-Die Laws***

Another illustrative example is the analysis and construction of the legal right to die in a dignity-based legal system, such as in Israel. In a series of hotly debated cases in the early 1990s, Israel's justices split on the question of whether human dignity entails or precludes a person's right to request the ending of a life that he or she perceives as grossly undignified. Can human life ever become "undignified"? Can painful living be less dignified than death? Does human dignity place life itself as an absolute value, beyond any consideration? Clearly, this line of analysis is unique to legal thinking that is committed to human dignity as its fundamental value. An honor-based legal system might confront a different set of concerns regarding the right to die. It is easy to imagine a situation in which a person's illness could be seen as condemning him or her to a life that is devoid of honor, whereas, from a dignity-based perspective, it could be determined that the same illness does not offend his or her human dignity. The implications are stark in this context.

***Anti-Torture Laws***

A prisoner's right not to be tortured is another case in point. In 2002, Israel's Supreme Court determined that human dignity forbids the torture of prisoners, disregarding the circumstances of their crimes (*Public Committee against Torture v. Government of Israel*, (3) Takdin-Elyon 458 [1999]). In an honor-based legal system, torture can be viewed as humiliation and shaming, which may be justified if the prisoner's crime consisted of unlawfully humiliating and shaming another member of society (or a clan). In a legal culture that is not based on either honor or dignity, it may be less self-evident how to conceptualize torture. Neither equality nor liberty seem to offer clear-cut guidance as to how torture and humiliation should be socially conceived of and legally constructed. It may be argued that an equality-based worldview, focusing on "similarly situated" individuals, may be less sensitive than a dignity-based one to the torture and humiliation of persons perceived as "different," i.e., "others." Similarly, liberty seems to focus on the rights of free citizens, and not on those of legally incarcerated inmates. This comparison of basic values may offer an interesting perspective for an examination of the American society's and legal systems' treatment of the Abu-Ghraib cases (regarding accusations of torture and humiliation of Iraqi prisoners by American soldiers).

***Gay and Lesbian Rights***

In honor-based legal systems, gay and lesbian men and women may be considered shameful individuals whose sexual conduct and lifestyle is dishonorable. Such legal systems may refrain from le-

gitimizing such persons and/or their conduct, and may refuse to grant them legal protection. Furthermore, in such legal systems, a homosexual advance made toward a heterosexual man may be considered a fundamental offense to the heterosexual man's honor. The heterosexual man may, therefore, be allowed to use a "gay panic" defense if he responds to the homosexual advance with criminal violence.<sup>23</sup> In a more dignity-based legal culture, a complaint of a homosexual advance may be treated no differently than a heterosexual complaint of sexual harassment. If it is found to have been invasive, offensive, and unwelcome it may be considered as an offense to the victim's human dignity and may thus be defined as harassment. Such a legal culture is not likely to construct a "gay panic" defense.

As these examples indicate, the constitution of honor or dignity as the basis of a society's value system and its legal system's logic carries overwhelming implications in contemporary sociolegal orders. In the next part, I offer a brief introduction to law-and-film scholarship and identify the analytical framework I employ in discussing *Unforgiven*'s radical subversion of traditional honor systems and elevation of a sociolegal order based on dignity.

### Law and Film: A Brief Exposition

In this part I briefly sketch the study of law-and-film and isolate the methodologies I use in this article to distill fresh insights from the film *Unforgiven*.<sup>24</sup>

At first glance, law and film appear to have little in common. One could argue that while law is a system of organized power, commercial film is constituted by an economics of pleasure. Law is an authoritative, normative, centralistic, coercive system; film a world of amusing, escapist, emotionally gratifying popular-cultural artifacts. Nevertheless, from a more nuanced sociocultural perspective, law and film are two of contemporary society's dominant discourses, two prominent vehicles for the chorus through which society narrates and creates itself. This is the common denominator that underlies the drive to integrate the study of these two distinct disciplines; it is the fundamental assumption shared by law-and-film scholars, and the basic common ground to their otherwise diverse scholarship.<sup>25</sup>

<sup>23</sup> For a thorough discussion of "gay panic" in contemporary American criminal law, see Lee (2003:67–95).

<sup>24</sup> For a comprehensive discussion, see Kamir (2005b, 2006).

<sup>25</sup> Since the turn of the twenty-first century, scholarly work on law-and-film has become significant. For some representative works in this genre, see Black (1999), Clover (1998a, b), Denvir (1996), Greenfield et al. (2001), Johnson and Buchanan (2001, 2005),

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

The characteristics of law and film listed above are shared by additional discourses, the most obvious example being literature (White 1973, 1984, 1999). Indeed, just like any discourse and discipline, film shares some of its characteristics with other discourses and disciplines while featuring others that are distinctly unique. Narrativity and textuality are common to several discourses and disciplines, including literature, film, and law. Cinematic editing and casting are examples of traits unique to film. A textual or narrative analysis of law and film may not bear unique features that distinguish it from a textual or narrative analysis of law and literature. It may, nevertheless, be just as insightful as any interdisciplinary analysis of law and literature. A law-and-film analysis that focuses on, or at least acknowledges, film’s unique cinematic features may be both insightful and unique. It may highlight features of the legal system that, in one way or another, parallel film’s unique traits or offer a fresh, uniquely cinematic perspective on aspects of the legal world. The interdisciplinary study of law and film is, thus, close in many ways to any other interdisciplinary study of law, while at the same time offering unique cinematic input.

Furthermore, the twentieth century was the era of the visual and of popular culture. The visual, popular image ruled, first through the silver screen, then through the smaller television screen, and finally through the computer screen. Film enjoyed tremendous universal popularity and had unprecedented influence worldwide—more so, perhaps, than any other form of culture or art. From a law-and-society point of view, therefore, film is probably the primary discourse to investigate for the pop-

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Lenz (2003), Manchura and Robson (2001), Miller (1998), Sarat (2000, 2002), Sherwin (2000), Silbey (2002), Symposium (1996, 1997, 1998, 2001).

ular conceptualization of law and legal systems and any of their aspects. A study of ancient Greek law may reasonably refer to Greek tragedy and comedy. Similarly, the study of contemporary law may reasonably address the visual image and its habitat: the feature film, the television series, and virtual space, among others. The interdisciplinary study of law and film is a step in this direction.

Still in its nascent stages of development, law-and-film scholarship eludes a precise “scientific” definition and cannot yet be characterized by a distinct methodology or worldview. Writers who explore this new field emphasize different aspects and interpretations of the described common ground.<sup>26</sup>

My own formulation of law and film comprises three fundamental premises: that some films’ modes of social operation parallel those of the law and legal system; that some films enact viewer-engaging judgment; and that some films elicit popular jurisprudence.<sup>27</sup> The study of a given film’s performance of these functions is the study of law and film. In reference to these three basic premises, law-and-film studies may be distinguished on the basis of their primary focus or perspective, and labeled accordingly as examining “film paralleling law,” “film as judgment,” and/or “film as jurisprudence.” Any given analysis may involve one, two, or all three. In this article, I employ all three.

<sup>26</sup> Let me illustrate by mentioning one such scholarly project. In an article that lays out the foundations of a comprehensive theory of law and film, Johnson and Buchanan set out to

relocate the discipline of law firmly in contemporary culture; in a world in which it is commonplace to question linear narratives that seem to lead without difficulty to a particular “truth” of a matter, to subvert claims to truth as being subject to radically variant interpretations and to recognize the blurred boundaries between reality and representation. [ . . . ] Films like *The Thin Blue Line*, *A Question of Silence* and even *Thelma and Louise* have illustrated the tenuousness of law’s claim to privileged access to truth, the troubled relationship between narrative and truth, and even the limits of language itself.” (Johnson & Buchanan 2001:91)

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

three insights related to the construction of meaning: the role of narrative; the role of “brute perception” and the implications of audience reception and multiple readings. [ . . . ] We seek not only to build on these critiques, but also to push them more firmly to the center of public dialogue concerning both law’s claims to legitimacy and its meaning-making function. (Johnson & Buchanan 2001:89)

<sup>27</sup> I present this conceptualization of law-and-film in a similar manner in Kamir (2005a), where I illustrate its specifics in the close reading of a single law-film, Roman Polanski’s *Death and the Maiden* (1994). This line of thought is further elaborated in great detail, through the reading of a dozen law-films, in Kamir (2006).

### Film Paralleling Law

The first premise of my proposed conceptualization of law-and-film is that law and film are two pivotal discourses that both reflect and refract the fundamental values, images, notions of identity, lifestyles, and crises of their societies and cultures, and a significant correlation exists between their parallel functions. Both law and film are dominant players in the construction of concepts such as subject, community, identity, memory, gender roles, justice, and truth; they each offer major sociocultural arenas in which collective hopes, dreams, beliefs, anxieties, and frustrations are publicly portrayed, evaluated, and enacted. Law and film often perform these functions in ways that echo and reinforce each other, inviting attentive interdisciplinary examination. Furthermore, certain underlying structures and modes of operation relevant to law and film's sociocultural functions are sometimes more explicit and identifiable in one discourse than in the other. An interdisciplinary comparison can shed light on the less obvious, or less familiar, analogous structures and modes of operation of the parallel discourse.

### Film as Judgment

The second premise is that some films, law films in particular, perform wide-scale "legal indoctrination"; that is, they train and mold viewers and audiences in judgment, while examining—and often reinforcing—legal norms, logic, and structures.<sup>28</sup>

For decades, James Boyd White has been exploring and demonstrating how legal rhetoric constitutes human subjects and communities of readers, endowing them with collective visions, aspirations, and hopes, supplying them with frameworks, images, and stories with which to imagine themselves and their world (White 1973, 1984, 1999). Judicial decisions and other legal texts are inherently imbued with judgment and concerned with justice; their construction of subjects and communities is, 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

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<sup>28</sup> At this preliminary stage in the development of law and film as a distinct discipline, I refrain from Aristotelian typology and prefer to engage in the broad category of "law-films": films that feature any type of legally oriented social or moral issue as a subject matter. Many law-films' interaction with the world of law is multifaceted. They often operate in two or all three of the dimensions presented above (paralleling law, conducting judgment, and producing popular jurisprudence), thus offering a complex and powerful combination of these cinematic-legal functions. Their study may demand an integrated examination of their various cinematic-legal functions. For a comprehensive discussion, see Kamir (2000).

are often engaged in judgment, pseudo-legal reasoning, the pursuit of justice, and a corresponding self-fashioning. Judgment is often an activity not merely portrayed but actively performed by films, together with their (constructed and/or actual) viewers; it is often a function of a film's constitution of a community of viewers and its engagement in the social constitution of primary values, institutions, and concepts.

### Film's Popular Jurisprudence

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

The proposition that (some) films contain jurisprudential insights, standpoints, and even elaborate arguments is hardly novel and would seem self-explanatory. The more puzzling question may be *why* we should invest in reading films as popular jurisprudential texts. Why explore the judging acts they perform and 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, by combining narratives and appealing characters with visual imagery and technological achievement, can stir deep emotions and leave deep impressions.

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

conceptualization of sociocultural issues, and even the legal system and its members renders the exploration of such coded cinematic attitudes socially meaningful and significant.

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

The proposed threefold categorization of law and film perspectives is not thematic or methodological. It is a didactic mapping of the law-and-film terrain, identifying and defining three types of relationships between law and film, which give rise to three scholarly perspectives on the interdisciplinary encounter between the two discourses. Thematic issues, such as the image of the lawyer and the legal profession, or the law's impact on the social construction of gender roles, may be approached from either one or any combination of the three perspectives. At the same time, various relevant methodologies may be employed in the context of researching law and film from each or all of these three perspectives.

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

The proposed threefold categorization bears a resemblance to the elementary distinction between law-and-literature studies that focus on "law *as* literature," those that read "law *in* literature," and those that compare legal and literary modes of interpretation

(Minda 1995). As any such seemingly clear-cut categorization, the one proposed in this article may be viewed by some as necessarily partial, artificial, and somewhat superficial. I share such concerns and feel that most often the three perspectives are closely intertwined and practically inseparable in the legal reading of a film. Nevertheless, in the initial stages of an emerging discipline, such categories are pedagogically useful in order to identify, mold, and define the transpiring field, and to create a common terminology for professional discussion and exploration. This is why I present the threefold model and attempt to point to the working of each of its three components in the reading of *Unforgiven*.

### *Unforgiven*

#### Plot Synopsis

At the heart of *Unforgiven*'s plot lies a violent incident in which a local cowboy in Big Whiskey, Mike, brutally attacks and slashes a "whore," Delilah, for giggling at the sight of his penis. His friend Davey, not fully understanding the situation, comes to his aid and holds Delilah as Mike slashes her, while pleading with Mike to stop. Big Whiskey's law-and-order sheriff, Little Bill (Gene Hackman), a legendary remnant of "the old days," listens to the parties, dismisses the "whores'" demand to hang the men, or at least whip them, and accepts their pimp Skinny's claim to compensation for the damaging of his property (Delilah). Mike and Davey are ordered to pay Skinny seven ponies and do so. Davey tries to offer Delilah a gift pony, but the "whores" refuse it, chasing the cowboys out of town with shouted insults and hurled clods of horse manure. Defying Little Bill's ruling, the "whores" deliberate and organize, saving money to set a substantial thousand-dollar reward for the two cowboys' heads.

Among the bounty hunters that stream into town are English Bob (Richard Harris) and William Munny (Clint Eastwood), ultimate examples of the legendary outlaws of yore. English Bob travels with his East Coast biographer, who collects and "documents" legends of the West. Munny arrives on the scene with Ned (Morgan Freeman), his old partner and buddy, and a young would-be gunfighter and killer called the Kid.

After portraying the violent incident in Big Whiskey, *Unforgiven* moves to introduce us to its hero, William Munny, and his longtime buddy Ned. In the past, before they both married and settled down as impoverished pig farmers, Munny and Ned were professional killers, gunfighters for hire. Munny was then reputed to be the luckiest, fastest, and best fighter in the West. He was invincible. He was also known to be the meanest killer in the West, the man who

killed women and children (as well as “Chinamen”) by setting dynamite on trains. But Munny’s good wife, now deceased, “showed him the error of his ways,” and with her guidance he transformed into a remorseful, compassionate man, and a devoted—if economically failing—father who refrains from alcohol, bad language, and illicit sex. In the film’s opening scenes, he no longer rides horses, carries guns, or breaks the law. His son and daughter consider him a grumpy, unmanly old pig farmer. When the Kid approaches him, inviting him to kill the cowboys and win the “whores” prize, Munny turns him down, saying he is no longer the man he once was. But he reconsiders and joins the Kid on this bounty hunt in the hope of saving his crumbling pig farm and supporting his two young children. Munny pleads with Ned to join him, and he does, for old times’ sake. (Ned’s “Indian” wife, Two Tree Sally, who has never forgiven Munny for his past, does not hide her resentment when he stops in to invite Ned to join in the job.)

In an attempt to drive the bounty hunters out of town and maintain order and control, Little Bill brutally beats both English Bob and Munny. He succeeds in driving English Bob out of town, but fails to prevent Munny, together with the Kid, from reaching the ranch where Mike and Davey live and killing the two cowboys. Ned rides with them to the ranch and attempts to participate in the killing, but finds that he is no longer able to murder and sets off for home.

Munny and the Kid collect the thousand-dollar reward from the “whores,” and are about to leave Big Whiskey when they hear from the “whores” that Little Bill caught Ned, beat him to death, and exhibited his body at the entrance to Skinny’s (the pimp’s) saloon. In response, Munny rides into town, walks into Skinny’s saloon, and in a magnificent, climactic scene shoots Little Bill, Skinny, and every last man who takes their side. When he leaves the saloon, none of its patrons is alive, with the single exception of the East Coast biographer. Riding away in a furious nighttime storm, Munny warns the town’s people to bury Ned properly and treat their “whores” well, lest he return to kill all of them.

In the film’s final shot, against the background of Munny’s wife’s grave, subtitles inform the viewer in documentary-style fashion that Munny left Wyoming, moved to San Francisco, and became a merchant.

### Overview

*Unforgiven* received four Academy Awards in 1992, including those for Best Picture and Best Director, and it has enjoyed tre-

mendous popularity. The film almost succeeded in reviving the fading Western genre. *Unforgiven* is at heart a law-and-justice Western that deeply agrees with Bazin's observation that the Western is essentially a cultural commentary on "the relation between law and morality" (Bazin 1971:145). What seems less obvious is the content of its sociolegal commentary.

In his now classic reading of this highly acclaimed film, Miller presents *Unforgiven* as a commentary on the shortcomings of formal, positive law and the crucial social role of visceral, honor-based "equity" (Miller 1998). According to Miller, in applying positive law and its modern, cold logic of deterrence, Little Bill fails to address our suppressed, primeval craving for retributive justice. In addressing the authentic, instinctual yearning for honor-based vengeance, a healthy libidinal sensation uncorrupted by political correctness, the film supplements the on-screen (Little Bill's) "legal" proceeding with Munny's extralegal vengeance, thus satisfying our "raw" sense of justice.<sup>29</sup> According to this honor-based reading, the film revives a familiar, widely appreciated, and much-needed honor-based value system for its viewers to fill in the emotionally unacceptable gaps in the justice provided by contemporary, politically correct positive law. Reformulated in the law-and-film terminology suggested in this article, Miller's argument is that *Unforgiven's* cinematic judgment of its on-screen, fictional legal system finds it overly professionalized, formalistic, and lacking in spirit, passion, and justice. Accordingly, in Miller's view, the film's popular jurisprudence is retribution, rather than deterrence.<sup>30</sup>

Miller's overtly nostalgic, honor-based reading does not and cannot explain the film's most memorable, widely quoted one-liner, rightly understood as its punch line: "deserve's got nothing to do with it." This is Munny's response to Little Bill's desert-oriented plea ("I don't deserve this, to die like this"), as he shoots him at very close range, looking straight into his eyes.<sup>31</sup> Miller's reading similarly cannot explain (away) the film's complementary, second-best one-liner: "We all have it coming, Kid" (Munny's reply to the Kid, who tries to convince himself that he was

<sup>29</sup> Miller does address the film's problematization of vengeance, but this does not alter his fundamental reading of it (Miller 1998:183).

<sup>30</sup> Other writers seem to share Miller's basic understanding of *Unforgiven* as echoing a longing for vigilante vengeance in the face of positive law's unsatisfactory formalism (see, e.g., Yacowar 1993; Engel 1994; Sarat 2002; Blundell & Ormand 1997). Perhaps less consciously and openly, these authors too seem to assume the honor-based value system and operate from within. For a very different, feminist analysis of the film, see Johnson and Buchanan (2005).

<sup>31</sup> Aware of this inherent difficulty, Miller tries to belittle the significance of this utterance, suggesting that "[l]ike so many Clint lines, 'deserve's got nothing to do with it' is rather Delphic. [...] In the context, Munny can be understood to be simply denying Little Bill's claim of unmerited death" (Miller 1998:195).

justified in killing because his victim “had it coming”). More significantly, this suggested honor-based reading is thoroughly gender-blind.<sup>32</sup> A more gender-acknowledging reading observes that Little Bill’s legal decision is, in fact, in line with the honor code, while Munny’s quest is not.

In a different vein, I suggest that *Unforgiven* presents an exercise in cinematic judgment by exposing, judging, and condemning Little Bill’s honor-based law, as well as the whole Western ethos that his law represents. *Unforgiven* suggests that such an ethos is ripe for dismissal for clinging to the honor code and to its bravado image, whose pretenses are fundamentally false, self-deluding, and pathetic. The film’s popular jurisprudence advocates the replacement of the Old West’s society and law’s honor-based value system with a dignity-based one. In so doing, *Unforgiven* subverts and transcends the unwritten laws of the Western genre. Rather than hailing Eastwood’s classic as the ultimate Western, to borrow Sarat’s words: “it might be more accurate to call it a classic anti-Western, antirevenge film” (Sarat 2002:312).<sup>33</sup> The film thus calls for a sociolegal transformative substitution of honor with dignity while leading the way by presenting a model of how a Western film can make this very move, transcending the genre, deconstructing it, and re-creating it as dignity-based.

In the following analysis, the three modes of law-and-film analysis I presented earlier (film paralleling law, film as judgment, and film as offering popular jurisprudence) all function to inform the reading of *Unforgiven*. In this textual analysis, as elsewhere, these three approaches intermingle and are hardly distinguishable, yet for purposes of clarity and illumination of the theoretical structure, I try to note, in every part of the analysis, which of the three perspectives predominates the discussion.

### **Popular Jurisprudence: *Unforgiven*’s Construction and Evaluation of Law, Honor, and Dignity, and Their Interconnection**

In the opening scene, Strawberry Alice, speaking for the “whores,” asks Little Bill to hang the offenders. In support of her demand, she argues that Delilah did nothing to “deserve” the assault, i.e., to justify or excuse the slashing; she stole nothing, and merely let out a small giggle. Alice’s desert-based sense is translated into the legal-like stand that Delilah’s giggle cannot be regarded as legally sanctioned provocation; it therefore constitutes neither justification nor excuse for the affliction of grave bodily injury, and

<sup>32</sup> I am grateful to Andrew Promowitz, who in 1999 first called my attention to this point in a seminar paper.

<sup>33</sup> Despite this sentence, Sarat does share much of Miller’s reading.

Mike must be held fully responsible and punished appropriately.<sup>34</sup> Little Bill accepts the logic of her argumentation but, to her great dismay, determines that whipping is the appropriate, deserved, proportional punishment. At this point, Skinny intervenes, showing his contract with Delilah and demanding damages for his lost investment. "I got a contract that represents an investment of capital," he states. Skinny's legal stand is that the case should be tried as a tort, rather than a criminal case.

Thoughtfully pronouncing the word "property," Little Bill considers Skinny's legal stand, accepts it, and orders the defendants to compensate Skinny. Responding to Alice's complaint, Little Bill explains that Mike and Davey are hardworking boys who acted foolishly. "If they was given over to wickedness in a regular way . . ." he continues, and Alice fills in: "like whores . . ." Little Bill's legal decision to frame the case as civil, not criminal, therefore, also reflects his moral judgment that the cowboys are not "criminal" types that need to be deterred or incarcerated. Theirs was a one-time slipup that can be overlooked. Given their social character, a civil procedure compensating Skinny for his damages is sufficient, and in the absence of public interest, criminal charges can be dropped.

Is Little Bill's legal decision emotionally unsatisfying? Perhaps. But is it, as Miller seems to suggest, in conflict with the Western's honor-based value system? Or does its deficiency lie elsewhere?

Within an honor-based value system, shameful sexual impurity deprives "whores" of any honor deserving of protection. In nineteenth-century honor-based America, "[u]nmarried women who fell from grace supposedly would never be accepted in polite society or marry an acceptable young man" (Ireland 1989:33). The cherished honor code of the day, (partly "encoded" in the "unwritten law"), encouraged a gentleman to avenge any offense to a lady's honor, but it was plainly restricted to "a woman of chaste character," "an innocent girl," and "a virtuous woman" (Kernan 1906:450). Excluded from the world of honor (denied the status of "members," "agents," "subjects," or "honorable beings"), "whores" had no claim to vengeance or compensation.

Further, Delilah's shaming of the phallus—the most cherished attribute of manhood and masculinity—renders her guilty of a grave breach of the honor code, which glorifies masculinity and its symbols above any other value. This offense to Mike's manly honor obligates him to retaliate forcefully. Though herself not deserving of the code's protection, Delilah's shaming of Mike's manhood stains *his* honor, allowing and obligating him to avenge himself on

<sup>34</sup> Clearly, this is not an accurate legal argumentation, as provocation applies to homicide alone. Nevertheless, the logic of Alice's argument is structured as a semi-legal one.

her. In this sense, in Big Whiskey's honor world, Delilah occupies the paradoxical position of the "guilty object," a deserving target of Mike's vengeance but not of society's defense.

In various ways, the law has silently acknowledged this social reality and refrained from confronting it. Attempts to overcome this underlying honor-based, extralegal, socio-moral reality, even in the twentieth century, were often rejected with righteous public indignation.<sup>35</sup> In the context of such an honor-oriented sociolegal atmosphere, Little Bill's legal determination to "drop the criminal charges," which would convey strong social condemnation, seems plausible.

The "whores" fully grasp the meaning of their legal construction as honorless objects of property rather than human members of society, and they refuse to succumb to it. "Just because we let them smelly fools ride us like horses don't mean we got to let them brand us like horses," Strawberry Alice aptly states.<sup>36</sup> "Maybe we ain't nothing but whores, but by God we ain't horses." These remarks are strong affirmations of dignity, and they encourage the "whores" to demand that the law acknowledge and protect human dignity rather than adhere to the logic of honor.

The "whores'" insistence that they deserve the protection of the penal code and that their offenders must die manifests their defiance of the honor-based value system and law's adherence to it. In offering a reward for the cowboys' heads, the "whores" actively and publicly renounce the worldview that constructs Delilah as a shameful, dishonored, guilty object. They similarly reject Mike's social construction as the "inherently innocent subject": the honorable human agent, not guilty of his violence toward a woman, due to her illicitly sexual, and thus wicked and dangerous, nature. They challenge the governing honor-based social order, together with the legal order that supports it, attempting to replace it with a dignity-based sociolegal order that would recognize Delilah as a human being fully entitled to the social protection of the law. This is an act of resistance, constituting civil disobedience and, perhaps, revolution. And it is fully supported by the film.

<sup>35</sup> An interesting example within the common-law world, and highly relevant to this discussion, is the House of Lords' famous 1954 decision (*Bedder v. Director of Public Prosecutions*) that a young man, mocked by a prostitute for his impotence, could not successfully raise the partial defense of provocation to mitigate the murder charge pressed against him and reduce it to manslaughter. The court based its decision on the grounds that a "reasonable" man does not suffer from impotence and would not be provoked to commit the killing under such circumstances. The harsh (not to say hysterical) academic criticism of this decision, propagating defendants' rights, resulted in the gradual "subjectifying" of the "reasonable man" standard and the modification of provocation law. Consequentially, the contemporary "reasonable man" used as a standard to decide provocation arguments shares every defendant's specific characteristics, including impotence. *Bedder* may have thus been decided differently had it come before the court today.

<sup>36</sup> In the old, honor-based world, women were not even second-class citizens, prostitutes marking the low end of the scale.

Paradoxically, the means chosen by the “whores” to challenge the honor-based world are, themselves, aggressive and murderous, thus more in line with the honor-based society they are familiar with than with the dignity-based one they aspire to establish. Can a violent, aggressive, honor-based society be changed through humanitarian, dignity-based means? Can a new, dignity-based social order be promoted through violent means? Can it be promoted otherwise? These questions are brought to the fore by the film’s gruesome depiction of the cowboys’ killings by Munny and the Kid, and by Ned’s refusal to commit the killings. They are left open, to haunt the viewer and disturb his or her peace. The film’s final scene, which places Munny in a paradoxical bind analogous to the one the “whores” find themselves in, seems to imply that violence may unavoidable in the replacement of society’s honor-based mentality with a dignity-based one. *Unforgiven* seems to suggest that, tragic, self-contradictory, and disappointing as it may seem, perhaps the act of transformation must be rooted in the logic and legacy of the world that is being challenged and transformed. Further still, perhaps any transformative change must be violent and forceful, even when attempting to establish human dignity as the basis of a new value system. For further discussion of this point, see “Munny as the Western’s (Anti?) Hero” below.

A powerful cinematic means of supporting the women and their struggle for emancipation, dignity, and equality is the film’s highly unusual portrayal of its “whores.” In Westerns, “saloon ladies” are seductively appealing, glamorous, provocatively dressed, heavily made-up *femmes fatales*. They are inherently “loose” women, overtly sexual, vulgar, and fully content with their voluptuous lives. They perform before cheering crowds of men in smoky bars, presenting themselves to the men on- and offscreen. They have no personal, “offstage” lives, personalities, or female friends. Westerns’ portrayal of “whores” is pornographic in that the films offer the “whores” as objects for the genre’s male viewers’ visual-sexual consumption. In this sense, Westerns dehumanize “whores,” these honorless, shameful women, disrespecting their human dignity. *Unforgiven* consciously departs from this generic convention, thus calling critical attention to it. *Unforgiven* portrays its “whores” as plain, ordinary women, leading difficult, unhappy, yet human lives. The women on screen are neither stereotypically pretty nor seductive. Their garments, like their faces and hair, are plain. They are neither provocatively dressed nor heavily made up. They do not sing, dance, or perform.<sup>37</sup> They are never shown in a saloon or a bar—the Westerns’ archetypal, manly public domain. In clear

<sup>37</sup> Delilah’s exotic, sexually charged, clearly phony name rings uncomfortably pathetic, given her plain character and appearances.

defiance of generic conventions, *Unforgiven's* "whores" are always portrayed in their living quarters, attending to ordinary domestic chores and maintaining a warm, supportive feminine community. Their "professional occupation" is presented as anything but glamorous or pleasant. It is hard work and a tedious routine. They are routinely treated as property and as trash. They hurt. Nevertheless, the film does not neglect to depict their individual characteristics, sense of humor, views, sensitivities, joys, and basic dignity. *Unforgiven* dignifies its "whores," treating them as human beings rather than as sexual objects on display. In so doing it supports their struggle for dignity, illustrating how it may be promoted.

*Unforgiven's* world is a transforming one. Big Whiskey is still immersed in legends of larger-than-life outlaw heroes from a time of honor-based lawless vigilantism, as it struggles to create new social norms to constitute and govern a more stable, peaceful, and organized community. The violent attack on Delilah serves as a catalyst for the "whores," Big Whiskey's women,<sup>38</sup> to demand the right to participate in the process of collective negotiation regarding social norms and fundamental values, and the manifestation of these norms in the community's criminal code as well as the daily practice of law enforcement. In becoming their champion, Munny, the film's uncontested hero, takes on this ideological endeavor, renouncing the honor code and embracing a dignity-based worldview. Together with Munny, *Unforgiven* supports its women's uprising, reinforcing it through the (cinematically judgmental) treatment of Little Bill and English Bob, men of honor, the portrayal of Munny, and the cinematic transcendence of the Western's generic formula (all detailed in the following sections).

In this dignity-promoting context of the film, how should the film's bloody final scene be read? Munny's use of brutal force to retaliate for the death of his friend and re-establish the deterring power of his honor echoes Little Bill's ruthless conduct in brutalizing English Bob, Munny, and Ned. This scene seems to imply that when provoked enough, even the meekest of men, the greatest critic of the Old World, and most zealous convert to dignity resorts to retaliation. And when retaliation takes on extreme, violent proportions, it can be just as bloody and ugly as an extreme form of deterrence. I suggest that *Unforgiven's* acceptance of Munny's brutality, (much like its support of the "whores" bloody quest), does not imply acceptance of violence per se. The film's acceptance of its

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<sup>38</sup> While several other women's bodies briefly appear on screen (as does one woman's grave), the only fleshed-out women who speak and play roles other than scenery are *Unforgiven's* "whores." I thus refer to them as Big Whiskey's and *Unforgiven's* women. For a feminist analysis of *Unforgiven's* women, including Munny's and Ned's wives, see Johnson and Buchanan (2005).

hero's act of brutality testifies to the complex reality that sometimes such gory actions are unavoidable and necessary to survive in a brutal world, and perhaps even crucial in transforming it into a better place. The acceptance of Munny's begrudging resort to brutality, thus, does not vindicate brutality at large. Whereas Little Bill acts brutally to enforce the Old World's alleged value system as the New World's social norm, Munny acts in the sole service of exposing the romanticized "honor code" bravado, the disguised state terror, and the pretentious (legalistic) rhetoric of both deterrence and retribution. He employs the Old World's violent conduct in the course of waging war on it. To take on the old system, Munny, the worst and best of its products, must fight fire with fire and perform the ultimate Old West role. Playing out his role, he turns the system's definitive human weapon against it, destroying the honor-based system and paving the way for an alternative, dignity-based regime.<sup>39</sup>

*Unforgiven* thus seems to suggest that any value system must be established through force and supported with the threat of more force. But this is not to be confused with the false glorification of brutality and terror in romantic guises. The use of force as a means to support a humane social order is qualitatively different from revering force. The first can coincide with a dignity-based worldview; the latter is often associated—sincerely or cynically—with honor-based social orders. The confusion of the two may be detrimental, leading to the legitimization of brutality, or to the pronouncement of force as a necessary tool in the promotion of a just cause. The film's distinction between them is unambiguous.

Munny's arrival in Big Whiskey facilitates its transformation from honor to dignity, the film's central theme. Engaging in Old World terror, he empowers the women, Big Whiskey's most vulnerable segment, enabling them to participate in the collective making of an emerging egalitarian, dignity-based sociolegal system. Having achieved his goal, Munny, the last remainder of the Old World, "returns to the dead," this time for good, and a new Clint Eastwood character re-emerges from his ashes as a civilized, urban family man, a San Francisco merchant. *Unforgiven* begins with a caption narration of Munny's transformation from a man of honor to an avid believer in human dignity. The film concludes with a

<sup>39</sup> *Unforgiven* admits its own genre's inclination, as well as that of many of its viewers', to revere the spectacle of bloody, unrestrained force. Two characters, the film's dimebiographer and its young aspiring assassin (the Kid), both manifestly short-sighted, correspond to generic norms and viewers' expectations. Like Westerns' typical viewers, these characters actively adhere to the genre, continuously luring Munny to fulfill their expectations and offering admiration and glorification as reward. Resisting the expectations of a popular, familiar, long-standing tradition, *Unforgiven* expresses unequivocal adherence to its proclaimed belief in the human possibility of transformation, transcending the limits of genre and audience.

captioned reassurance that the portrayed adventure did not mark the old Munny's comeback. Munny remained the transformed, honor-averse, dignifying man his wife had helped him become, and his Big Whiskey venture was indeed his contribution to the making of a New World.

**The Portrayal of English Bob and Little Bill: *Unforgiven's* Cinematic Judgment of Men of Honor and Honor-Based Law**

*Unforgiven* pits Munny against English Bob, who purports to represent Old World honor-bravado, and Little Bill, an alleged representation of New World law and order and an official advocate of deterrence as the judicious rationale for punishment.

*Unforgiven* portrays English Bob, extravagantly performing the role of the Old West's outlaw, as exploiting the rhetoric of honor-driven vengeance to conceal crude, cold-blooded savagery, while cynically and opportunistically advancing his immediate, selfish, honorless interests. Re-creating himself as a legend, English Bob narrates his acts of heroism to his admiring biographer. But Little Bill's recollection of these recounted incidents portrays English Bob's accomplishments in a far less flattering light. For example, despite his pet name, Two-Gun Corkey never carried two guns, explains Little Bill (he merely had a sexual organ the size of a gun), and English Bob did not fight him in defense of a lady's honor, as he had chosen to define the event. English Bob shot the unarmed Corkey in drunken jealousy over the attentions of a "whore." But Little Bill does not aim to undermine the glorification of Old West bravado but to offer *himself* as its hero. Willingly catering to the biographer's uncritical admiration, he shares his treasured wisdom of the Old World, portraying it as an orderly system, tailored for honorable men. When outnumbered, he teaches his newfound disciple, a man must first aim and shoot the best gunman among his opponents. Concentration, self-control, self-assurance, and courage, not a fast draw, are the keys to survival and triumph. The moral of his narration is that a truly honorable man manifests and personifies the Old West's honor code, and as such is inherently just and unbeatable.

Clearly, Little Bill presents himself to the biographer as the ultimate Western hero. Unlike English Bob, a fake version of Old World courage, Little Bill is not merely the personification of the natural, unwritten law of honor and manhood; he further integrates natural law with the New World's written law, of which he is in charge. Embodying the justice and equity inherent in a true man, Little Bill combines natural law principles with Big Whiskey's positive law. In his own mind, he *is* law and justice, a living fusion of manhood, honor, justice, and the law. This is why, as the hero of his

mythology, Little Bill does not “deserve to die.” According to Western convention, Little Bill seems to argue, he is the embodiment of the story’s values, and is thus immune. Munny’s cryptic reply dismisses the whole premise of Little Bill’s claimed right to live. He is not this story’s hero, his are not the story’s values, and his mythology is not “the story.”

Munny exposes the false portrayal of the honorable old days and the inherently false premises of the true man bravado. “I was lucky in the order,” he states when he writes off Little Bill’s theories reiterated by the biographer, after shooting five men to death in a matter of seconds. “I’ve always been lucky when it came to killing folks,” he continues to disillusion the insistent biographer. Similarly, throughout the film he soberly reports that in the old days of professional killing he was continually drunk to the point of having no recollection of his actions. His survival was hardly just or otherwise explicable. Honor, justice, and a true man’s instinctive skill had nothing to do with it.<sup>40</sup>

In addition to destroying Little Bill’s image of the true, honorable man, the film exposes his “legalistic” pretenses by allowing him to pursue and execute his notion of law to the extreme.

Allegedly embodying and protecting the rule of law, Little Bill extravagantly strives to deter potential outlaws. Capturing bounty hunters that carry arms in disobedience of the ordinance he published, Little Bill stages their punishment as a public spectacle, sending a message of deterrence to other outlaws who, tempted by the “whores” promised reward, were likely to threaten the rule of law in Big Whiskey. In a bloody and unhitched scene where English Bob is brutally kicked, Little Bill says, “I guess you think I am kicking you, Bob,” he explains, “but that ain’t so. What I am doing is talking to all those villains in Texas, and all the villains in Missouri. [. . .] I’m telling them there ain’t no whores’ gold, and even if there was, they wouldn’t want to come looking for it anyhow.”

Little Bill’s rhetoric of law, order, and deterrence fails to disguise the brutal character of his actions. His exaggerated, public beating of English Bob, Munny, and Ned is so inhuman that even the toughest residents of Big Whiskey turn their heads away in horror. Through uncomfortably long scenes portraying gory, painful brutality, *Unforgiven* leaves no room to doubt Little Bill’s monstrosity. In the name of promoting social order and safety, Little Bill is discriminatory, ruthless, and unscrupulous in sacrificing human dignity, rights, and lives. His law-and-order rhetoric and mannerisms are a thin smoke screen, barely concealing his cruel violence.

<sup>40</sup> For a discussion of “true manhood” in American culture (and law) see Umphrey (forthcoming).

Through Little Bill's character, *Unforgiven* exposes the violence of positive law, as well as the falsity of the nostalgic true man bravado and the mythical notion that law and justice can be smoothly integrated and embodied in a hero's character. Little Bill demonstrates the close affinity between honor-driven, power-thirsty outlaws, state terror, and the logic of deterrence, as well as the threat they all pose to human dignity. Legitimizing his brutality through his sheriff's badge, Little Bill attempts to create a new social order in the image of the Old West. He is incapable of doing otherwise.

In telling imagery, Little Bill tries to build a house but, as his townspeople comment, he is no carpenter, and the leaking roof renders the house uninhabitable. The extended, repeated shots portraying the rain flooding the house offer a powerful visual picture of the impossibility of Little Bill's domestic project. Just as this character is incapable of building a habitable home for himself, so is he incapable of transcending the old brutality and violence and furnishing his community with humanistic law and order. "Hang the carpenter," suggests the unknowing biographer, indicating the hopelessness of Little Bill's domestic vision. *Unforgiven* echoes this conclusion, using Munny to free Big Whiskey from the man who cannot leave the bloody past behind.

*Unforgiven's* cinematic judgment of Little Bill, a man of honor as well as the image of law, is the most complex and interesting judgment offered by the film.

**Munny as the Western's (Anti?) Hero: *Unforgiven's* Transcendence of Honor and (the Western) Genre as a Model for Analogous Social and Legal Transcendence ("Film Parallels Law")**

Coming to the rescue of the film's victimized damsels in distress, avenging his friend's death in Skinny's saloon, Eastwood's Munny, once "the worst, meaning the best" of the Old West's outlaws, is this Western's protagonist, seemingly exhibiting the genre's ultimate honor-code performance. But while performing this romantic role, Eastwood's Munny exposes the legendary honor code, as well as the legalistic rhetoric of retribution and deterrence and the false premise of the whole Western genre. In its construction of the anti-heroic Munny, *Unforgiven* transcends the Western's genre while deeply transforming it. Munny personifies this Western's alternative, dignity-based social philosophy and jurisprudence, and his transcendence of the traditional hero role embodies the film's transcendence of its genre. These acts of transcendence invite the film's viewer to contemplate and perform analogous acts of transcendence in the social realm as well as in the legal world.

Throughout the film, Munny exhibits the least "honorable" behavior possible. Our first visual encounter with Munny imprints

in our minds' eyes his unskillful attempt to capture his sickly hogs and subsequent inelegant plunge into the mud. We observe him, covered with mud and pig shit, through the disappointed, disgusted eyes of both his own shame-stricken son and the disillusioned Kid. Throughout the film, deliberately using very long shots, the camera repeatedly shows Munny falling off his horse, missing his targets, admitting his fear of death, and letting Little Bill "kick the hell out of" him. The Munny who rides into Big Whiskey is no honorable "Western hero."

Read against Tompkins' characterization of the Western's (honorable) hero, Munny overtly "fails" on all fronts but two. Breaching one of the Western hero's most definitive codes of conduct, Munny speaks and does so willingly, to the shocking extent of initiating personal, intimate conversations and sharing his feelings and anxieties (Tompkins 1992:51–9). Just as significantly, he feels and expresses a genuine fear of dying (Tompkins 1992:31). Munny is deeply attached to a strong woman, accepting her moral code and fully subjecting himself to it (Tompkins 1992:41–2). Munny hardly controls his horse, humbly accepting the animal's disobedient rebelliousness (Tompkins 1992:105–7). Both Munny and Ned are uncomfortable in the wilderness, and admit that they would rather be home in bed (Tompkins 1992:81). The only two surviving characteristics are the hero's professional excellence as a fighter and his sexual purity (Tompkins 1992:84).<sup>41</sup>

Furthermore, Munny proclaims soberly and un sentimentally that even in the old days, the Old World's honor code never existed outside the eager imagination of cheap Western writers. When he shot men, women, children, animals, and "anything that walked or crawled," he was regularly drunk and barely conscious of his actions. Unglamorous alcohol abuse triggered the unnecessary shootings and gruesome killings, prompted more drinking, and fed a vicious and senseless cycle. Honor had nothing to do with it. Nor did retaliation and desert.

Glory had nothing to do with it either. Throughout the film, Munny is haunted by the gruesome, tormenting memories of the bloody, unnecessary murders he committed in his drunken days. Remorseful and ashamed, he repeatedly reminds Ned that he is no longer the murderous, heartless man he once was, begging his friend never to tell a soul of his past. The film's excruciatingly long, detailed portrayal of the clumsy, messy shooting of Mike and Davey represents and condones Munny's unheroic perception of killing.

<sup>41</sup> Munny's complete abstention is repeatedly emphasized (even when Delilah, the "cut-up whore," offers herself to him, he bluntly refuses). Yet his open disclosure of this sexual abstention to Ned is highly disturbing, in the context of the Western's hero's code of conduct.

The killing of Davey in particular is an emotional fulcrum of the film. Ned loses heart. It is a botched shooting, Davey is hit in the stomach, his death far from instant. He cries out for water, prompting Munny to angrily demand that the other cowboys bring him water. This is not the cool detachment of an honor killing. The scene is especially disastrous because the viewer has some sympathy for Davey, who tried to atone for his partner's slaying of Delilah by offering a pony in addition to the ones Little Bill extracted as just payment for Skinny's lost "property." These painful, vivid scenes are ones viewers are unlikely to forget. They diverge in every way from the classic Western portrayal of the hero's clean-cut, honorable killings of bad guys, and are therefore shocking and horrifying.

The unromantic reality of survival in the Old West had everything to do with pure chance, the capacity to commit brutal murders without scruples, and the ability to execute horrors that would discourage potential rivals. It was survival in the most basic sense of pre-social life, or, phrased differently, it was the ability to maintain a balance of terror that would paralyze an opponent and prevent him from attacking. The violent nature of an "honor-based" culture boils down to survival through apish intimidation. Honor, retribution, and deterrence are merely sophisticated terms used to disguise and beautify the harsh truth that survival in a brutal world depends on ruthless, cold-blooded savagery and sheer luck. The whole Western genre, *Unforgiven* declares, is a dangerous, misguided romanticizing of an ugly human reality.

This reading of the film is as textually plausible as Miller's honor-based reading. Unlike the honor-based reading, however, this view constitutes the film as a subversive Western that turns the genre on its head, exposing its disingenuous pretense.<sup>42</sup> Like Munny, the finest outlaw who transforms and turns on the

<sup>42</sup> Refusing to construct its hero as a man of honor is not *Unforgiven's* only defiance of the dictates of the Western genre. In fact, the film seems to challenge every such dictate, of which I will briefly mention only the most outstanding. Tompkins links the Western's code of honor with its essence as "secular, materialist, and antifeminist; it focuses on conflict in the public space, is obsessed by death, and worships the phallus. [ . . . ] it is a narrative of male violence" (Tompkins 1992:28). In comparison, *Unforgiven* is spiritual and pro-feminist. Its obsession with death is quite different from the traditional Western's, as this film's hero is afraid to die. *Unforgiven* does focus on conflict in the public space, narrates male violence, and portrays worship of the phallus, but is highly critical of all three. In a variety of ways (which I cannot present here), *Unforgiven* challenges every aspect of the most sacred and taken-for-granted of the Western conventions: the glorification of open space, the infinite desert, the open skies, and the lone rider who dominates them with natural, nonchalant indifference (Tompkins 1992:69–87). From a more formalistic, generic perspective, the film also transcends the distinctions between the various Western sub-genres (as presented in Wright 1977). *Unforgiven* transforms the "professional-plot Western," reviving the optimistic, socially oriented, moral "classic-plot Western." Traditional generic Western formulas would dictate adherence to the honor code; *Unforgiven's* genre transcendence allows it to seek and present a new moral code. For a complementary reading of

culture that cultivated him, *Unforgiven*, arguably the finest Western, transcends its own genre. In so doing, the film offers cinematic support to its argument that individuals (and systems) can change, and that social values and legal norms can indeed be transcended and replaced by those better suited to treating all people as ends, never as means to other ends. Having transformed its on-screen society and law as well as the Western genre itself, *Unforgiven* offers itself as a role model for real-world social and legal transformation through the substitution of honor with dignity. The film's explicit reference to (Little Bill's) law and its strong ties to honor-based norms calls viewers' attention to this fundamental social institution as one in vital need of transcendence and transformation.

### Concluding Remarks

I launched this discussion asserting that when comparatively viewed as potentially competing, adversary, fundamental notions, honor and dignity emerge as two antithetical bases of unique value systems that are very relevant to social orders and legal systems in the contemporary Western world. I suggested that in such a comparative context, dignity may be better defined and articulated, while the overlooked, underlying honor-based value system can be better identified, and replaced—or at least modified—by a dignity-based one. The following close reading and analysis of *Unforgiven* has offered such a comparative context, which does, I believe, indeed offer a vivid perception of honor and the reality of honor codes, as well as a better definition of dignity and the worldview it entails.

*Unforgiven* exposes the brutality of life under a specific, exemplary honor code: that of America's mythological Wild West. Betraying every convention of the Western genre, *Unforgiven* demystifies the would-be "good old days" to which America, at times, looks with sentimental longing; the days in which "men were men," the smallest of insults was redeemed with a gun, and no breath was wasted on "cowardly" talk. *Unforgiven* claims that those "glorious" days were, in fact, savage and ruthless, and that their "heroes" were merely drunk. There was never any honor under the honor code, just plain luck and plenty of cruelty, pain, and waste. *Unforgiven* is merciless in its undermining of any sentimental longing for a world ruled by a manly honor code. It thus suggests that any remnants of such a code in contemporary social

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lawyer-films as exhibiting traditional Western formulas as well as the honor code, see Kamir (2005c).

structures and legal systems must be rethought and dispensed with.

Portraying a critical and bleak picture of an honor society, *Unforgiven* offers a contrasting alternative: a world based on human dignity. In this world, Delilah is not a “whore” nor “damaged goods” but always a woman, a person, a human being. Under the Old West’s honor code, Delilah is a shameful/honorless woman who offended the honor of an honorable man, her client. She is also her pimp’s damaged property. In short, she is an inherently “guilty (sexual) object.” In *Unforgiven*’s alternative world, she is a human being, thus neither a “shameful whore” nor anyone’s property. Her human dignity is as absolute and precious as any person’s, and she deserves to be treated accordingly. This dignity-based perspective exposes Big Whiskey’s social and legal norms as victimizing Delilah, objectifying her, silencing her, excluding her from the social and legal arena, and dehumanizing her. These are the features of an honor society that go unnoticed until they are examined from a dignity-based perspective. And it is from this honor-based reality that the film’s uncontested hero comes to Delilah’s rescue, redeeming her human dignity. It is not merely her liberty or right to equality that he fights for, but more fundamentally her human dignity.

I suggest that careful reading and analysis of cultural and popular—as well as legal—texts may further reveal the deep antithetical meaning of both honor codes and dignity-based value systems. Such work may produce a sociolegal critique of remnants of honor codes that go unnoticed in our social and legal systems, as well as an advocacy for a deeper commitment to human dignity as a basic value.

While assessing honor codes and dignity-based value systems, this article also offers an example of a law-and-film scholarly work. The article’s reading of *Unforgiven* reveals the film’s dignity-based jurisprudence; it points to the film’s cinematic judgment of the sociolegal honor-based value system and its (mythological, symbolic) representatives. It further reveals *Unforgiven*’s suggestion that law and film can and should perform parallel social functions in the demystification of honor and the construction of a new, dignity-based world. *Unforgiven*’s jurisprudence, its cinematic judgment, and (legal-like) social functions are all presented in this article as entailing perspectives and arguments that are deeply relevant to the scholarly research of “law and society.”

*Unforgiven* was a tremendous success, reaching immense audiences around the country and around the world. This alone makes it worthy of investigation as a highly influential popular culture text. But the film is further worthy of study for the manner in which it puts forth its critique of honor and promotion of dignity.

*Unforgiven's* divergence from the traditional conventions of the Western genre and from the norms of honor, although revolutionary, does not alienate its audience. On the contrary, the film succeeds in securing viewers' attentive interest and collaboration. The film achieves this impressive effect by carefully communicating with its viewers from within the shared norms of the Western genre, relying on viewers' familiarity and adherence, and banking on both their respect for the Western hero and their capacity to transform.

The East Coast biographer and to some extent the Kid are the film's on-screen characters that invite viewer structural identification: like the viewer, these characters are outsiders, admiring voyeurs of the Old West. Like the biographer and the Kid, *Unforgiven's* potential viewer is likely to appreciate good old bloody, glamorous, honor-based legends of manly exploits, recognizing conventional constructions of the Hollywood Old West and their significance. *Unforgiven* uses these two characters to walk the viewer through the slow process of disillusionment, demystification, and growth from "adolescent viewing" to a more mature, critical, responsible, and humanistic vision.

Further, *Unforgiven* privileges viewers in comparison with the on-screen spectators, offering them a unique insight into the internal world of the legendary Western hero: Munny, who is also Clint Eastwood, who is also Blondie (*The Good, The Bad and the Ugly*) and a host of other legendary Western heroes. Viewers are invited to fulfill the fantasy represented by the biographer and the Kid: to join Eastwood's hero and share his point of view. *Unforgiven* makes his viewers an offer they cannot refuse. In this setting, Eastwood's hero's willingness to forgo his legendary status, disclosing his innermost feelings to viewers, compels them to listen respectfully and attentively. *Unforgiven* trusts its viewers that, capable of transformation and growth, they will join Eastwood's hero in transcending honor and reaching for dignity. Other discourses, such as the law, may find analogous ways of communicating with their community members from within familiar, shared generic codes; of forgoing mystifying fictions and leading their community members to transformation and growth.

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