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# The Unforgiven Sources of International Law: Nation-building, Violence and Gender in the West(ern)

Ruth Buchanan

*Osgoode Hall Law School of York University*, [rbuchanan@osgoode.yorku.ca](mailto:rbuchanan@osgoode.yorku.ca)

Rebecca Johnson

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# **The *Unforgiven* Sources of International Law: Nation-building, Violence, and Gender in the West(ern)**

Ruth Buchanan and Rebecca Johnson\*

[Forthcoming in Doris Buss and Ambreena Manji, eds. International Law: Modern Feminist Perspectives. (Hart Publishing)]

## **Introduction: The Force of Law's Stories**

*The rules and principles of justice, the formal institutions of the law, and the conventions of a social order are... but a small part of the normative universe that ought to claim our attention. No set of legal institutions or prescriptions exist apart from the narratives that locate it and give it meaning...Once understood in the context of the narratives that give it meaning, law becomes not merely a system of rules to be observed, but a world in which we live.*<sup>1</sup>

In his classic work, 'Nomos and Narrative,' Cover reminds us that legal traditions form part of a complex normative world – a 'nomos' – a world of language and myth.<sup>2</sup> Because precept and narrative operate together to ground meaning, one cannot truly inhabit any given nomos without a rich understanding of its narratives. The very intelligibility of behaviour within the nomos inheres in the communal nature of common scripts or narratives for that behaviour. International law is also supplied with 'history and destiny, beginning and end, explanation and purpose' in and through narratives.<sup>3</sup> In contrast with conventional approaches, new scholarship in international law has begun to reveal the extent that the discipline 'operate(s) not only, or even principally, in the field of state systems, rationality and facts, but also in the field of identification, imagination, subjectivity and emotion.'<sup>4</sup> In this paper, we suggest that the 'nomos' of which Cover speaks and international law are connected through a shared reliance on a set of narratives concerning the origins of law.<sup>5</sup> This can be seen most clearly in the context of interventions, both military and monetary, that are conducted under the auspices of nation-building.<sup>6</sup>

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\* Associate Professor, Law Faculty, University of British Columbia and Associate Professor, Law Faculty, University of Victoria. The authors wish to gratefully acknowledge Doris Buss, Ambreena Manji, Peter Fitzpatrick, Sundhya Pahuja, Sara Ramshaw, Renisa Mawani and Jeremy Webber for reading and offering generous comments on earlier versions of this essay.

<sup>1</sup> Robert Cover, 'Nomos and Narrative' (1983) 97 Harv. L. Rev. 4 at 4.

<sup>2</sup> Above n 1 at 6. See also James Tully, *Strange Multiplicity: Constitutionalism In An Age Of Diversity* (New York: Cambridge University Press, 1995) at 60, and Peter Berger, *Sacred Canopy: Elements of a Sociological Theory of Religion* (Garden City, NJ: Doubleday, 1967).

<sup>3</sup> Anne Orford, *Reading Humanitarian Intervention: Human Rights And The Use Of Force In International Law* (Cambridge; New York: Cambridge University Press, 2003) at 36.

<sup>4</sup> *Ibid.* at 36.

<sup>5</sup> On the connection between law, nation and the international, see Ruth Buchanan and Sundhya Pahuja, (2004) 'Legal Imperialism: Empire's Invisible Hand?' in J. Dean and P. Passavant, eds., *The Empire's New Clothes* (London: Routledge).

<sup>6</sup> While this paper had its genesis in a consideration of the events immediately surrounding the U.S. led invasion of Iraq in 2003, we believe that the analysis begun in this paper is more broadly applicable. Indeed, as Ambreena Manji pointed out to us in a comment on an earlier version of this paper, monetary interventions such as those authorised by

Although ‘perhaps no concept is more fundamental to international law than sovereignty’<sup>7</sup>, investigations of the source or foundation of sovereign law are not a common subject of mainstream international legal discourse.<sup>8</sup> At the margins, however, critical and feminist scholarship in international law has begun the daunting task of untangling the interwoven strands of imagination, memory and desire that binds sovereign nations into a ‘nomos of the earth.’ So too, contemporary ‘apocryphal jurisprudence’<sup>9</sup> attends to stories of the origins (both mythical and actual) of modern law, and to the regulation of subjectivity effected through these narratives. In apocryphal jurisprudential accounts, modern law tells the story of what it *is* through a sequence of exclusions; that is, accounts of what it is *not*. Two sets of these exclusionary narratives concern us here. The first are ordinary accounts in which the violent and savage order is displaced, even vanquished, by the arrival of sovereign law. As the story goes, law’s authority is secured through its exclusion of violence, though as we will see, this exclusion can never be realised.<sup>10</sup> The second set of narratives are those which produce the legal order as masculine, and the legal subject as male, while displacing both the feminine and the female subject to a space that is outside the law.<sup>11</sup> We see these displacements effected in a myriad of ways, from the narratives of ‘muscular’ humanitarian intervention in which the masculinised hero (the UN, NATO or the US) rescues the feminised developing state, to the familiar account of the relegation of women to (unregulated) private space and their (implicit or explicit) exclusion from regulated public spaces. These two sets of narratives implicate each other, although they are often considered separately.

Modern law has much at stake in maintaining these boundaries: between male and female, inside and outside, law and violence, civilization and savagery. In our postmodern era, we know that the stability of these modernist categories is largely a chimera. Yet law, including international law, is one realm in which the rearguard action of shoring up these categorisations takes place. The public and scholarly debates concerning the ‘legality’ of the Anglo-American invasion of Iraq in

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the World Bank employ the language of nation building and rule of law with greater legitimacy and more universality than the U.S. or even the U.N. Space constraints (and good sense) foreclosed further consideration of this topic in this paper, however. On the World Bank and rule of law, however, see Buchanan and Pahuja, above n 5.

<sup>7</sup> Karen Knop, ‘Re-Statements: Feminism and State Sovereignty in International Law’ (1993) 3 *Transnational and Contemporary Problems* 292 at 343.

<sup>8</sup> Orford, above n 3 at 72. She puts it this way, ‘International lawyers do not usually conceive of international law as embodying or enacting sovereign power. Indeed, the question ‘is international law really law?’, a question that haunts legal theory, is a manifestation of the sense that international law lacks this sovereign force.’ Of course, there are many notable exceptions in critical international law scholarship, such as Edward M. Morgan, ‘The Hermaphroditic Paradigm of International Law: A Comment on Alvarez-Machain’ in *State Sovereignty: The Challenge of a Changing World: New Approaches and Thinking on International Law* (Proceedings of the 21<sup>st</sup> Annual Conference of the Canadian Council on International Law, October 1992) at 237.

<sup>9</sup> By this, we refer to jurisprudence concerned with the circulation of stories in a culture. See Desmond Manderson, ‘Apocryphal Jurisprudence’ (2001) 23 *Studies in Law, Politics and Society* 81.

<sup>10</sup> Jacques Derrida, ‘Force of Law: The ‘Mystical Foundation of Authority’ in D. Cornell, M. Rosenfeld, and D.G. Carlson, eds., *Deconstruction and the Possibility of Justice*, (New York, Routledge, 1992).

<sup>11</sup> Ngaire Naffine & Rosemary J. Owens, *Sexing the Subject of Law* (North Ryde, NSW: LBC Information Services, 1997). Also, Dorinda Dallmeyer, ed., *Reconceiving Reality: Women and International Law* (Washington, D.C., American Society of International Law, 1993); Hilary Charlesworth & Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester, Manchester University Press, 2000).

2003 provide one illustration of this process at work—a fervent effort to reinforce the hopelessly blurred boundary between law and violence.<sup>12</sup>

That international law may function as a conservative force rather than, as its disciplinary self-representations would have it, a liberating one is not necessarily a new insight.<sup>13</sup> What we think is useful to explore further, however, is how this comes to happen. And how we, in the developed Western world, are made complicit in this process.<sup>14</sup> How we are caught up in the stories, for example, that portray people trapped in various conflicts in the developing world as victims, and international humanitarian law as the agents of their rescue. Or why we continue to rely on portrayals of the sovereign state as the bounded and masculine subject of public international law, erasing women's agency and identity within international legal discourse. We are apparently unable to resist the appeal of these stories, even though they naturalise divisions we would seek to put in question.

It is of no small interest to us that the concerns of apocryphal jurisprudence – concerns with the sources of modern law and its place in maintaining the categorizations and exclusions of our nomos – are also concerns of the Western. The Western provides a mythic location, the frontier, in which anxieties about law's foundations, nation building, and sexual and racial differences, can be played out.<sup>15</sup> In both fiction and film, the Western has been a powerful site for the ongoing working and reworking of these anxieties. Its fecundity has made it the most loved genre in American popular culture: influential Americans from Presidents Roosevelt, Eisenhower and Nixon (one could probably add Reagan and Bush Sr. and Jr. to this list) to Douglas MacArthur and Henry Kissinger, have been avowed fans of the Western.<sup>16</sup>

In an earlier paper, we argued for the importance of taking the intersection of law and popular culture in film seriously.<sup>17</sup> To the extent that films participate in constructing as well as in reflecting upon our nomos, they can and should be read as jurisprudential texts.<sup>18</sup> In this paper, we are arguing for a reading of the Western genre, and of one exemplary Western in particular, as a source of insight about the nomos of law and of the international. Not only does the cinematic Western deal explicitly with questions about the foundation of law, nation and sovereignty; it does so in ways that invite commentary. Indeed, the cinematic Western is one of our nomos' most

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<sup>12</sup> On the public discussions regarding the 'legality of the war' see Open Letter by Law Professors, 'War Would be Illegal' 7 March 2003 online: Guardian <<http://www.guardian.co.uk/letters/story/0,3604,909275,00.html>>; Rabinder Singh and Alison Macdonald, 'Legality of Use of Force Against Iraq' online: Lawyers' Committee on Nuclear Policy <<http://www.lcnp.org/global/IraqOpinion10.9.02.pdf>>

<sup>13</sup> Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Helsinki, Finnish Lawyers Publishing Co., 1989).

<sup>14</sup> For more on complicity, see Ruth Buchanan and Sundhya Pahuja, 'Collaboration, Cosmopolitanism and Complicity' (2002) 17 *Nordic Journal of International Law* 297-324.

<sup>15</sup> Richard Slotkin, *Gunfighter Nation: The Myth of the Frontier in Twentieth-Century America* (New York, Atheneum, 1992).

<sup>16</sup> Lee Clark Mitchell, *Westerns: The Making of the Man in Fiction and Film* (Chicago, Chicago University Press, 1992) at 15.

<sup>17</sup> See Rebecca Johnson and Ruth Buchanan, 'Getting The Insider's Story Out: What Popular Film Can Tell Us About Legal Method's Dirty Secrets' (2001) 20 *Windsor Yearbook of Access to Justice* 87. The argument is that in our society, film, like law, enjoys a 'licence to arbitrate the social imaginary.' Both law and film engage in the practice of 'world-making;' in the making of meaning through the telling of stories.

<sup>18</sup> See Orit Kamir, 'X-Raying *Adam's Rib*: Multiple Readings of a (Feminist?) Law-Film' (2000) 22 *Studies in Law, Politics & Society* 103.

prolific and powerful genres for the exploration of accounts of law's origins, masculinity and violence.

In this article, we turn our attention in particular to Clint Eastwood's film, *Unforgiven*. We seek to illustrate the ways in which the film opens up for our consideration several key insights about the operation of modern law. The most central and perhaps obvious of these is, of course, the inescapable link between the founding violence of frontier justice and the (American) ideal of the rule of law. Intertwined with these is the narrative of the masculinised hero rescuing the feminised victim. While *Unforgiven* can be read as faithfully reproducing these familiar storylines, it also subverts them; refusing to glamorise or 'forgive' its violence, giving agency to its female characters, and undermining the machismo of its outlaw hero, William Munny.

We offer a reading (or rather, an intentional mis-reading)<sup>19</sup> of *Unforgiven* in conjunction with a theoretical account of law's foundation, and contemporary debates over calls for intervention into the affairs of sovereign states. *Unforgiven* draws our attention to the many erasures still at work in our conceptions of law, violence and gender. It helps us to identify the exclusions operating at 'the source' in the stories we believe about the origins of law, whether in the mythic past of the American West, or in the mythic future of a 'liberated' Iraq.

We begin by providing an elaboration of the ground on which we seek to situate the discussion that follows. First, we suggest that the frontier myth, as encapsulated in the genre of the Western in twentieth century American letters and film, can usefully be read as one version of the account of modern law's foundations, one which is particularly relevant to contemporary considerations of the international. Both the Western and modern law establish themselves through the construction of ostensibly stable categories, most importantly, the distinctions between law/violence, civilised/savage, masculine/feminine, which we will take up in some detail. In the second part, we turn to an examination of *Unforgiven*, to consider more carefully how it manages to both invoke and subvert these modernist dichotomies. Our critical exegesis of *Unforgiven* will reveal the contours of some of the deep social narratives about justice, gender, and violence at issue in modern law. We suggest in our concluding section that this line of inquiry is particularly suggestive in relation to current debates over the legitimate use of force and humanitarian intervention in international law.

#### A. Stories of Legal Origins<sup>20</sup>

*'The origin has to 'be' before and after the point of origination.'*<sup>21</sup>

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<sup>19</sup> By misreading, we mean an intentional reading 'against the grain'; subjecting a text to an interpretation that cuts against both conventional understandings and the likely intentions of its authors. See also Anne Orford's misreadings of the texts of international law (above n 4, ch 2) and Spivak's misreadings of the canons of philosophy in Gayatri Chakravorty Spivak, *A Critique of Postcolonial Reason: Toward a History of the Vanishing Present* (Cambridge, Harvard University Press, 1999).

<sup>20</sup> We thank Sundhya Pahuja and Jennifer Beard for originally piquing our interest in this line of inquiry. See Pahuja, S. and Beard, J.L. 'Before the Beginning: Disclosing Law's Foundation' in *Divining the Source: Law's Foundation and the Question of Authority*, eds. Sundhya Pahuja and Jennifer Beard ([place], Griffith University Press, forthcoming).

<sup>21</sup> Peter Fitzpatrick, 'Breaking the Unity of the World: Savage Sources and Feminine Law' (forthcoming AFLJ\*more info on journal?)

There are many stories upon which one might draw to provide an account of the source and legitimacy of modern law, including Freud's account of patricide in *Totem and Taboo*, or Hobbes account of the transition from a 'state of nature' to sovereignty.<sup>22</sup> We focus here on the mythical West, and the stories told in the Western genre of books and films of outlaws and lawmen on the American frontier. As an origin myth, the Western shares much with these other examples, including most obviously their violent and masculinised nature. But, of course, there is always more to the story (of origins). Origin myths don't work, as they claim, by providing us with a definitive account of 'how it all got started.' Rather, as Peter Fitzpatrick has argued, it is the failure of modern law's accounts of its own origins to definitively 'settle' the matter that is telling. The irresolution of these accounts is their most revealing aspect.<sup>23</sup>

Modern law's narratives of origin undertake an impossible task, for they must somehow reconcile the realms of the universal and the particular, inside and outside, savage and civilisation, law and violence. For this reason, many legal theorists have felt compelled to describe law's foundation in paradoxical terms. So, for Robert Cover, 'Every legal order must conceive of itself in one way or another as emerging out of that which is itself unlawful.'<sup>24</sup> For Agamben, the paradox is that 'the sovereign is at the same time both inside and outside the juridical order.'<sup>25</sup> Or, as Fitzpatrick pithily pronounces, 'law, in short, constitutively combines a self-grounding with grounds other to it.'<sup>26</sup> The resolution of modernity's dilemma, it seems, requires the impossible artistry of law in order to 'suture(e) the great chasm between the finite and the infinite in a line of zero width.'<sup>27</sup> This line is, of course, sovereignty; that which underpins and connects the modern nation and the modern subject.

Instead of a world we vaguely remember and castigate for worrying about the number of angels dancing on the head of a pin, we have become used to a world that dances on razors, on the edge of the state, on the edge of the modern subject.<sup>28</sup>

Indeed, the question of sovereignty is central to each of these formulations, although not necessarily in a way that would be familiar to international law scholars. Nevertheless, so much has been written so well on the subject of modern law's problem with 'grounds' that a reader might legitimately ask what could possibly justify a return to this well-trod terrain. Indeed, one might even suggest that the obsession with origins is itself a pre-occupation of modernism, and one that we might do well to get beyond.<sup>29</sup>

But, can we simply 'get past' the paradox of law's self founding? The implication of the above accounts is that the story of law's foundations is not an 'old' story; in the sense that it cannot be expected to 'fade into annals of history.' Rather, the story of law's foundation is a story that is

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<sup>22</sup> On *Totem and Taboo*, see Peter Fitzpatrick, *Modernism and the Grounds of Law* (Cambridge, Cambridge University Press) 2001, ch. 1. On Hobbes, see Karena Shaw, 'Feminist Futures: Contexting the Political' in R. Falk, L. Ruiz and R.B.J. Walker, eds., *Reframing the International: Law, Culture, Politics* (New York, Routledge, 2002) at 224.

<sup>23</sup> Fitzpatrick, *Modernism*, above n 22 at 12

<sup>24</sup> Cover, above n 1 at 23-24.

<sup>25</sup> Giorgio Agamben, *Homo Sacer* (Stanford: Stanford University Press, 1998) at 15.

<sup>26</sup> Fitzpatrick, *Modernism*, above n 22 at 12.

<sup>27</sup> R.B.J Walker, 'Polis Cosmopolis Politics' (2003) 28 *Alternatives* 267.

<sup>28</sup> *Ibid.* at 270

<sup>29</sup> Mark Antaki, 'Leading Modernity (to) A-ground' forthcoming in *Australian Feminist Legal Journal*

always with us; it must constantly be re-enacted. This is what Derrida calls the ‘paradox of iterability’: ‘Iterability requires the origin to repeat itself originally, to alter itself so as to have the value of origin.’<sup>30</sup> In the context of an extended discussion of Freud’s *Totem and Taboo* as an account of law’s origins, Peter Fitzpatrick formulates this iterability in terms of the mythic dyad of the savage and civilization, which he concludes by observing: ‘Civilization, then, has ‘repeatedly’ to be made permanent.’<sup>31</sup>

Similarly, regarding the narratives that served to hold colonial relations in place, Homi Bhabba has observed that ‘the same old stories ...must be told (compulsively) again and afresh, and are differently gratifying and terrifying each time.’<sup>32</sup> In the seemingly endless repetition of the ‘same old stories’ one finds a reconciliation of sorts of the demands for both stability and flexibility, or determination and responsiveness, to use Fitzpatrick’s language.

It is in this paradox of iterability, then, in the repetition of the competing yet complementary pulls of sameness and difference that law finds its ground and order unendingly forms.<sup>33</sup>

Re-enactments of the perplexing moment of sovereign law’s self-founding are all around us, from the stalled negotiations over aboriginal title in British Columbia to the unfolding events of the War on Terror. They are narrated through the morning news, the afternoon lecture on property law, and the evening trip to the cinema. We need to attend to each of these retellings, for as RBJ Walker reminds us, the problem of sovereignty ‘cannot be detached from the most pervasive cultural, social and political practices of modern life, especially those practices that encourage us to assume that all the questions about the authority of authority have already been answered with some authority.’<sup>34</sup> The endlessly repeated stories of law’s founding authority—both what they reveal and what they conceal—literally make ‘the world in which we live’; they not only demand our attention, they call us in. That is, they call upon us to take our (proper) places so that the action may begin (again).<sup>35</sup>

## B. The Western as a Founding Myth

*‘The hunger Westerns satisfy is a hunger not for adventure but for meaning.’<sup>36</sup>*

The Western as a genre shares with other myths of origin this (paradoxical) iterability, that is, the combination of stability and flexibility that comes with repetition. Tompkins notes that the genre appears to operate within ‘a terribly strict set of thematic and formal codes,’ in which the ‘same manoeuvres are performed over and over.’<sup>37</sup> Westerns share a predictably unforgiving yet austere beautiful wilderness setting. Their heroes are lean, taciturn, white men; men who speak little but can

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<sup>30</sup> Derrida, ‘Force of Law’ above n 10 at 43.

<sup>31</sup> Fitzpatrick, ‘Breaking the Unity of the World’ above n 21.

<sup>32</sup> H.K. Bhabba, *Location of Culture* (New York, Routledge, 1994) at 77, quoted in Orford, above n 3 at 183. See also Gilles Deleuze, *Difference and Repetition*, trans. by Paul Patton, (New York, Columbia University Press, 1994.)

<sup>33</sup> Fitzpatrick, above n 22 at 79.

<sup>34</sup> Walker, above n 27 at 274.

<sup>35</sup> On women in international law and their proper places, see Doris Buss, ‘Feminist Theory and the State of International Law: Rethinking Public and Private Spheres’ talk at The New International Law Workshop, Birkbeck University, June, 2003.

<sup>36</sup> Jane Tompkins, *West of Everything: The Inner Life of Westerns* (New York, Oxford University Press, 1992) at 15.

<sup>37</sup> *Ibid.* at 27.

see far. They are subjected to extraordinary physical suffering; from rain and cold, exhausting journeys, to brutal beatings, all of which they endure stoically. The supporting characters are almost always white men as well. Women and native people may function as extras, but are rarely if ever real characters with whom we become acquainted. The indoor setting is usually a saloon, bringing with it the attendant themes of drinking, gambling, and prostitution. The stories almost always culminate in an ecstatic scene of violent retribution, in which the audience is expected to identify with the hero.<sup>38</sup> For the viewer, the violent culmination is read as justifiable not only because it is the resolution of a vengeance plot, but also because it is seen to clear the way for ‘the possibility of a new beginning, of re-founding, of establishing governments from reflection and choice, rather than mishaps of birth and tradition.’<sup>39</sup> Through the familiar yet remote canvas of setting, characters and plot, Western films have told and retold, to generations of viewers, a mythic tale of the violent foundations of law on the frontier.

Even if Westerns all tell ‘the same old stories,’ the genre has also proven highly adaptable in response to changing social and political contexts. Lee Clark Mitchell argues that the Western has been successful both because it was open to multiple interpretations, and because it was such a flexible form that plots were able to shift in accordance with ‘the altering winds of cultural anxiety and popular ideals.’<sup>40</sup> Similarly, William Handley suggests that the Western provides a space ‘where open questions about national identity, the meaning of American history and democracy and the struggle of the nation’s present and future are worked through... in both the political and artistic sense.’<sup>41</sup> Just what allows the genre to be so productive in this way is not explained in these accounts.

Westerns produce meaning in the same way that modern law does -- through the invocation of a series of ‘classic’ oppositions, ‘parlour versus mesa, East versus West, women versus men, illusions versus truth, words versus things.’<sup>42</sup> Indeed, like modern law, the Western claims to depict a world of clear (even obvious) choices. And, as with law, as we begin to look more closely at the alternatives laid out for us in the Western, we see that the distinctions are less clear than they at first appear:

What is most characteristic of these oppositions is that as soon as you put pressure on them they break down. Each time one element of a pair is driven into a corner, it changes shape and frequently turns into its opposite. It’s as if the genre’s determination to have a world of absolute dichotomies ensures that interpenetration and transmutation will occur.<sup>43</sup>

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<sup>38</sup> Ibid, at p. 229. Tompkins describes this moment as one of ‘moral ecstasy.’

<sup>39</sup> Slotkin, above n 15. For a slightly different take that reads Western history and Westerns together, see Janet Walker’s Introduction to *Westerns: Films Through History* (New York, Routledge, 2001).

<sup>40</sup> Mitchell, above n 16 at 5. For an exploration of the various sub-genres of the Western, one which places the sub-genres in their socio-cultural-historical contexts, see William Wright, *Six Guns and Society: A Structural Study of the Western* (Berkeley, University of California Press, 1975).

<sup>41</sup> William R. Handley, *Marriage, Violence and the Nation in the American Literary West* (Cambridge, Cambridge University Press, 2002) at 33.

<sup>42</sup> Tompkins, above n 36 at 48.

<sup>43</sup> Tompkins, *ibid.*



The inherent instability of the categories it purports to establish is one key to the genre's ability to function as a vehicle for containing and mediating a variety of social tensions and hence its enduring appeal. For example, Jane Tompkins asserts: 'Westerns strive to depict a world of clear alternatives-independence versus connection, anarchy versus law, town versus desert, but they are just as compulsively driven to destroying these opposites and making them contain each other.'<sup>44</sup> Through this fundamental ambiguity, the dual tendency towards distinction and the erasure of distinctions, the Western, like law, opens itself to a variety of alternative readings, providing a fertile space for cultural critique of continuing relevance.<sup>45</sup>

Indeed, if we turn to the narration of contemporary events in the popular media, we can see that these tensions and anxieties, and their apparent resolution in mythic narratives of the frontier, remain a powerful part of the American (and hence global) cultural frame of reference. As Nick Blomley observes, 'the trope of the 'frontier' that separates the West from the savage is still powerfully operative.'<sup>46</sup> In this era in which the real and the spectacle have become improbably reversed,<sup>47</sup> it seems hardly remarkable that the press room in the White House seems to recount the familiar Western plot line in which a lawless outlaw must be ruthlessly killed, and his bad deeds avenged, in order that a just, free and democratic legal order can take its rightful place on the frontier.<sup>48</sup>

To be sure, observations about the 'cowboy' in the White House or the sense of 'frontier justice' embodied in America's increasingly unilateralist stance on foreign policy are often made disparagingly, in passing, by critics dismayed by the retreat from a liberal internationalist order whose moral and legal superiority is taken to be self-evident. We argue, however, that the narrative of 'frontier justice' is embedded much more deeply in internationalist discourse than reflections on the tenure of the most recent Texan in the White House might reveal. In our view, the contradictory legacy of frontier justice manifests itself both in the (American) ideal of the 'rule of law' and the interpenetration of that ideal with the presumptions of liberal internationalism.<sup>49</sup>

### C. Law and Violence on the Frontier

*The construction of that which is deemed law thus rests on the violent world of non-law. The inscription of a frontier—which may be figurative, temporal and spatial—is integral to this process.*<sup>50</sup>

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<sup>44</sup> Tompkins, *ibid.*

<sup>45</sup> So, for example, Kamir argues that the social functions of what William Wright calls the professional plot Western (above, n 40 at 168) are now performed in a sub-genre of lawyer movies. See Orit Kamir, *The Rule of Law-Films: How Law on Screen Constructs Guilt, Gender, Dignity and Honor* (Duke University Press, forthcoming). On the links between the Western and the Road Film, see Shari Roberts, 'Western Meets Eastwood: Genre and Gender on the Road' in Steven Cohan & Ina Rae Hark eds., *The Road Movie Book* (New York: Routledge, 1997) 45.

<sup>46</sup> Nicholas Blomley, 'Law, Property, and the Geography of Violence: The Frontier, the Survey, and the Grid' (2003) 93:1 *Annals of the Association of American Geographers* 121 at 125.

<sup>47</sup> See, for example, Slavoj Žižek, *Welcome to the Desert of the Real* (London, Verso, 2002).

<sup>48</sup> As Susan Faludi observed 'On the eve of the Iraqi invasion, the president's advisors were working hard to embed George W. Bush inside the script of the American Western, as if we had missed the 'subtext' of the president's own statements over the past year or so about 'smoking them out of their holes' and 'wanted: dead or alive.', 'An American Myth Rides Into the Sunset' (30 March 2003) *New York Times* D13.

<sup>49</sup> On rule of law, see Buchanan and Pahuja, above n 5.

<sup>50</sup> Blomley, above n 46 at 124.

The genre of the Western in both fiction and film mythologised the settlement of the American frontier—that is, a frontier imagined both in terms of a particular territory and in relation to a particular nation.<sup>51</sup> It didn't seem to matter that its landscape was not always exclusively or recognisably 'Western.'<sup>52</sup> Rather, the frontier has served as a (peculiarly American<sup>53</sup>) mythic boundary between civilised and uncivilised, between a 'masculinised' West and a 'feminised' east; a liminal site in which the anxieties about nation-building and identity, particularly gender, but also racialised identities, could be worked out.<sup>54</sup> For this reason, the frontier can profitably be thought of as a 'spatialisation'—that is, a spatial concept that is always at its root bound up with social relations—rather than as either a particular territory or a spatial metaphor.<sup>55</sup> As Mitchell puts it, the 'West of free speaking was thus never an actual place, first discovered, then explored, but has always been instead an ideological terrain reinvented with each generation of fears and hopes.'<sup>56</sup> The frontier is necessary to our legal imaginations because of its capacity to combine opposites: it is both violent and law-abiding, it is both East and West, it is the edge of the civilisation and the edge of the wilderness. The frontier stands in here as the 'razor's edge,' the impossible line on which 'law' and 'not law' are balanced. To the extent that modern law must always be able to 'maintain itself in relation to an exteriority,' an idea of the frontier is essential.<sup>57</sup>

The frontier narrative of the Western shares with other modernist accounts of law's origins a troubled and slippery relationship between law and violence. While the arrival of law on the frontier is said to herald the cessation of violence, and the inauguration of a society governed by rules rather than force, that very arrival is always predicated on a violent act.<sup>58</sup> Although it cannot

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<sup>51</sup> For an illuminating, if brief, discussion of the particularities of this American notion of the frontier see Peter Fitzpatrick (2004) 'The Immanence of *Empire*' in Passavant and Dean, above n 5 at p. 49-50.

<sup>52</sup> Mitchell, above n 16.

<sup>53</sup> To say that the Western is a peculiarly American product is not to deny that other nations and cultures have their own engagements with the genre. The 'spaghetti Westerns' of Sergio Leone are likely the best known examples, but there is a German fascination with the Western. See, for example, Uta G. Poiger, 'A New, 'Western' Hero? Reconstructing German Masculinity in the 1950s' (1998) 24 *Signs* 147-169; and Tassilo Schneider, 'Finding a new Heimat in the Wild West : Karl May and the German Western of the 1960's' in Edward Buscombe & Roberta E. Pearson, *Back In The Saddle Again : New Essays On The Western* (London, British Film Institute, 1998).

<sup>54</sup> Roberts, above n 45, focuses on this phenomenon in her argument that the American Road Movie is one of the modern incarnations of the Western, saying at 45: 'what ultimately links the road movie to the Western is this ideal of masculinity inherent in certain underlying conceptualizations of American national identity [revolving around individualism and aggression] that have persisted, if only through continual ideological struggle.'

<sup>55</sup> Blomley, above n 46 at 123. In focusing here on 'the idea' of the frontier, we do not go so far as to deny its materiality. We agree with Buss that the frontier is *both* metaphor and material space. As Brown argues, the spaces we construct through social relations are the spaces of power/knowledge; to deny the materiality of those spaces would risk a denial of the power/knowledge enacted by and through space. See Michael P. Brown *Closet Space: Geographies of Metaphor from the Body to the Globe* (Routledge, 2000). It is important not to lose sight of the ways in which the 'materiality' of the actual frontier, as the 'razor's edge' of law and not law, has had and continues to have a very real impact upon American Indian and First Nations communities.

<sup>56</sup> Mitchell, above n 15 at 6.

<sup>57</sup> Agamben, above n 25; Fitzpatrick, above n 22.

<sup>58</sup> The dilemma presented by the commingling of law and violence on the frontier is well illustrated in John Ford's last Western, *The Man Who Shot Liberty Valence* (1962). In this film, John Wayne and Jimmy Stewart play the contrasting characters of Tom Doniphon (the Western gunfighter) and Ranse Stoddard (the eastern lawman). The legal order transplanted from the East in the persona of Ranse Stoddard is feeble, and threatened by the lawless violence of the West, personified by the outlaw, Liberty Valence (played by Lee Marvin). Law on the frontier is established only once Liberty Valence is shot dead, ostensibly by Ranse. That shot, the act of heroism for which Ranse becomes famous, was in fact the act of Tom Doniphon, the hero of the 'old' West. Tom, hidden in shadows, made the shot that both saved

be said that the violence done ‘before the law’ is ‘legal,’ ‘this law to come will in turn legitimate retrospectively, the violence that may offend the sense of justice, its future anterior already justifies it.’<sup>59</sup> Conventional accounts, recognising the difficulty arising from law’s simultaneous association and disavowal of violence, would draw a line in the sand here between law’s reluctant or exceptional resort to violence and the savage violence that remains still outside the law. The problem is that the ‘founding’ violence, the pre-legal violence of the origins of law does not fall on either side of that imaginary line.

Rather, in the founding moment, that which is set apart from law, violence, is also deeply embedded within it.<sup>60</sup> As Agamben explains, ‘the juridico-political order has the structure of an inclusion of what is simultaneously pushed outside.’<sup>61</sup> This occurs because of the necessity of the re-iteration of the (violent) origins. As we’ve already observed, the self-founding narrative of law doesn’t stand on solid ground, but rather acquires its aura of stability from its continual repetition. It is through these repetitions that violence, although cast out, returns to infuse law.

From this it also follows, as Nick Blomley astutely observes, ‘the frontier is not closed.’<sup>62</sup> This observation is made in contrast with the classic account of Frederick Jackson Turner, which provides the American frontier with meaning and historical trajectory (telos) from ‘open and empty’ to ‘settled and civilised.’ In our account of the mythic West, however, the frontier can never be closed, as the divide that it purports to maintain between the ‘civilised’ inside and the ‘violent’ outside of law requires it to be continually open, perpetually enacting the violence that it would purport to exclude.

#### D. Locating Women in the Western

*Without a woman, the story wouldn’t work.*<sup>63</sup>

The Western seems preoccupied with a world of rugged masculinity, where women figure as marginal characters. It is thus not surprising that it has been rated as women’s least favourite movie genre.<sup>64</sup> As we observed above, one can think of the frontier as a spatialisation – a concept that is

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Ranse’s life, and made him a hero. But in order for modern and civilized law to establish itself on the frontier, that fact must be concealed lest law and violence become indistinguishable. As Ryan notes, *Liberty Valance* poses the question, ‘To what extent does the legal order necessarily find its origins in kinds of violence that compromise its very legitimacy?’ See Cheyney Ryan, ‘Print the Legend: Violence and Recognition in *The Man Who Shot Liberty Valance*’ in J. Denvir, ed., *Legal Realism: Movies as Legal Texts* (Urbana, University of Illinois Press, 1996) at 24.

<sup>59</sup> Derrida, above n 10 at 35.

<sup>60</sup> ‘Violence is not exterior to the order of droit. It threatens it from within.’ Derrida, above n 10 at 34. See also Blomley, above n 46. ‘The constitutive outside is at once radically set apart and deeply embedded within law.’ Agamben, above n 25, speaks of the capacity of law to maintain itself in relation to an exteriority, pointing in particular to that violence which is imagined as beyond state sovereignty and yet captured within it.’

<sup>61</sup> Agamben, above n 25 at 18.

<sup>62</sup> Blomley, above n 46 at 124.

<sup>63</sup> Anthony Mann, quoted in Raymond Bellour, ‘Alternation, Segmentation, Hypnosis: Interview with Raymond Bellour,’ conducted by J. Bergstrom in C. Penley, ed., *Feminism and Film Theory* (London, Routledge, 1988) at 187.

<sup>64</sup> Even in the heyday of the Western, women did not make up any significant part of the audience for the Western, ranking it as their least favourite genre. See Leo Handel, *Hollywood Looks at Its Audience: A Report on Film Audience Research*. (Champaign: University of Illinois Press, 1950) at 124, cited in Virginia Wright Wexman, *Creating the Couple: Love, Marriage, and Hollywood Performance* (Princeton, N.J., Princeton University Press, 1993) at 69.

simultaneously social and spatial in its ordering effects.<sup>65</sup> Those ordering effects are not genderless. In the Western, particular spaces are not only represented as lawful or lawless, they also encode social ideas about gender, and the ‘proper places’ of women.<sup>66</sup> And what are those proper places? In the world of the Western, women appear almost exclusively in one of two locations: the homestead and the saloon. Both the good woman and the bad woman have their proper place on the frontier. In its flattened representations of women, the filmic Western seems to merely play out the madonna/whore dichotomy found in much of Western civilisation’s art and literature.<sup>67</sup> But the flattened gendered dimensions of the genre bear further critical attention.

Attending to gender, in *West of Everything*, Tompkins argues that the inner life of the Western is fundamentally about the rejection of the feminine and the reclaiming of all things masculine. She dismisses the notion that the Western is primarily about the encounter between civilization and the frontier, or even that it has anything to do with West as such: ‘It is about men’s fear of losing their mastery, and hence their identity, both of which the Western tirelessly reinvents.’<sup>68</sup> She asserts that the genre needs to be understood at least in part as a reaction against the dominance of the 19<sup>th</sup> century sentimental novel (a genre dominated by women).<sup>69</sup> As she puts it:

the Western owed its popularity and essential character to the dominance of a women’s culture in the nineteenth century and to women’s invasion of the public sphere between 1880 and 1920. For most of the nineteenth century the two places women could call their own in the social structure were the church and the home. The Western contains neither. ... Given the enormous publicity and fervor of the Women’s Christian Temperance Union crusade, can it be an accident that the characteristic indoor setting for Westerns is the saloon?<sup>70</sup>

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<sup>65</sup> Blomley, above, n 46.

<sup>66</sup> Doris Buss, above n 35. On ‘proper place,’ see: Tim Cresswell, *In Place/Out of Place* (Minneapolis, University of Minnesota Press, 1996); Davina Cooper, ‘Like Counting Stars: Re-Structuring Equality and Socio-legal Space of Same-Sex Marriage,’ in Robert Wintemute and Mads Andenaes, *Legal Recognition of Same-Sex Partnerships: A Study of National, European and International Law*. (Oxford, Hart, 2001). On gender and space generally, see Massey, Doreen. *Space, Place, and Gender* (Minneapolis: University of Minnesota Press, 1994); Lynn A. Staeheli and Patricia M. Martin, ‘Spaces for Feminism in Geography’ (2000) 571 *The Annals of the American Academy of Political and Social Science* 135-150.

<sup>67</sup> There is a significant literature on such representations in film generally. See for example, Annette Kuhn, *The Power of the Image: Essays on Representation and Sexuality* (London, Routledge, 1985); Mary Ann Doane, *Femmes Fatales: Feminism, Film Theory, Psychoanalysis* (New York, Routledge, 1991). For an engaging visual collection of examples from the 19<sup>th</sup> century, see Bram Dijkstra, *Idols of Perversity: Fantasies of Feminine Evil in Fin-de-Siecle Culture* (Oxford, Oxford University Press, 1986).

<sup>68</sup> Tompkins, above n 36 at 45.

<sup>69</sup> The argument parallels in some ways Harold Bloom’s theory that patterns of imagery in poems represent both a response to and a defence against the influence of precursor poems. See Harold Bloom, *A Map of Misreading*, above n 24 and Harold Bloom, *Anxiety of Influence* (New York, Oxford University Press, 1973). It is worth noting that Tompkin’s thesis is consistent with that advanced by Ann Douglas, *The Feminization of American Culture* (New York: Anchor Books, 1988). See also Schaum’s exploration of the view in this period that the predominance of women authors in literature had produced ‘a nation literally unmanned of its intellectual and creative strength.’ Melita Schaum, ‘H.L.Mencken and American Cultural Masculinism’ (1995) 29:3 *J of Am. Stud.* 379 at 381. For a collection of articles exploring the complexities of manhood and masculinity during the Victorian era, see Mark C. Carnes & Clyde Griffen, eds., *Meanings for Manhood: Constructions of Masculinity in Victorian America* (Chicago, University of Chicago Press, 1990).

<sup>70</sup> Tompkins above n 36 at 44.

But if the Western involved a rejection of femininity and of all things related to the 19<sup>th</sup> century sentimental novel, Tompkins notes that it was in many ways a surface rejection. The Western retained (in a form inflected with masculinity rather than femininity) the sentimental novel's same disciplinary model of heroic selfhood: a model involving renunciation of self; a regime of silence imposed where expression is most needed; the equation of repression with integrity and authenticity. What appeared to be a rejection of the feminine as articulated in the sentimental genre was often little more than a rearticulation of the same set of disciplinary codes from a different gender direction.<sup>71</sup> Gender, she asserts, functions in the Western in a more complicated fashion than its surface indicates. While we do not agree with the strong version of the claim that the western has nothing to do with civilization, we do agree that gender must be taken into account. And certainly, Tompkins' gender analysis also resonates with the oft-articulated feminist insight that, when attempting to read gender into the art and literature of Western civilisation, it is important to attend to the seeming silences, gaps and repressions.<sup>72</sup> Even the absent woman (as we will later see in our discussion of *Unforgiven*) may continue to function as a crucial structuring element.

Wexman, also taking gender seriously, asserts that while the Western seems preoccupied with questions of law and violence on the frontier, and while the act of founding a (modern) legal order is generally represented as a necessarily masculine endeavour, woman nonetheless remain central to the genre itself.<sup>73</sup> In a related vein, Bellour argues that Westerns are 'subtended from one end to the other by the problematic of marriage.'<sup>74</sup> This theme is pushed to the centre in William Handley's work, *Marriage, Violence, and the Nation in the American Literary West*.<sup>75</sup> Handley points out that the literary west (if not the west of the Western film) was preoccupied with marriage. Indeed, he argues that it is nearly impossible to unpick the braiding of marriage and nation in the Western. As he puts it, people presumed that marriage of the proper sort would create the right kinds of citizens.<sup>76</sup> If the Western is often explicitly about the legitimacy of law, and the meaning of the foundational violence, it is also the case that the meaning of marriage is often being constructed in tandem with the meaning of citizenship, nation and law itself. The convention is to have a woman central to nation building, to the bringing of civilization to the frontier, to the project of expelling violence from the spaces of civilization.<sup>77</sup> That is, as in the Mann epigraph above, 'without a

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<sup>71</sup> Tompkins above n 36 at 127: 'women cannot express their rage because to do so marks them as unfeminine. Men cannot register their pain because to do so marks them as unmanly. The gender system works to enforce codes of behaviour that are, in their different ways, excruciating.'

<sup>72</sup> A classic remains Adrienne Rich, *On Lies Secrets and Silence: Selected Prose, 1966-1978* (New York, Norton, 1979).

<sup>73</sup> Wexman, above n 64 at 70. In one chapter, she presses this point: 'Star and Genre: John Wayne, the Western, and the American Dream of the Family on the Land.'

<sup>74</sup> Bellour, above n 63 at 187.

<sup>75</sup> Handley, above n 41.

<sup>76</sup> Handley, above n 41 at 3.

<sup>77</sup> Again, *The Man Who Shot Liberty Valance* well illustrates this point. In the film, both Ransie and Tom are in love with Hallie. She is the prize in the contest not just between two men, but also between the orders of positive and natural law. In the story, the very foundation of modern (legal) civilization is, at the end, contingent on the struggle over a woman, and the question of who is the better man for Hallie. Tom leaves Ransie to take the credit for shooting Liberty Valance, but only because Tom has decided that Ransie *is* the better man for Hallie: 'You taught her to read and write. Now give her something to read and write about.' As Wexman points out, above n 64 at 124: 'This formulation of the issue places not an abstract notion of justice or even the welfare of the town as the crucial motivating factor in the murder of Valance, but rather the possession of a Northern European woman who has been made literate and who now must be provided with laws to protect the group interests that she represents.'

woman, the story wouldn't work.' And, as per the conventions, not just any woman will do: it is only the pure white woman who has the capacity for being a civilizing force.<sup>78</sup>

### E. Reading Nation, Violence and Gender through *Unforgiven*

We turn now to *Unforgiven*, the 1992 Clint Eastwood film that won Academy Awards for best picture and director,<sup>79</sup> and which generated a significant body of academic writing.<sup>80</sup> It is widely held as an iconic text, one that is celebrated as an achievement both in the genre of the Western, and in film generally.<sup>81</sup> The film sums up the genre of the Western by invoking, thematically and stylistically, countless prior Westerns including many featuring Eastwood himself.<sup>82</sup> It continues to rework the familiar themes of masculinity, justice and the civilization of the frontier, albeit by revealing more overtly the uncertainties and contradictions that attend the creation and maintenance of these categories. It both draws on and deviates from the genre in ways that speak to the anxieties of the time in which it was produced, and the time in which we read it.<sup>83</sup> In particular, we read it as a story about humanitarian interventions and projects of nation-building.<sup>84</sup>

*Unforgiven* draws together the threads explored above. In the exegesis that follows, we discuss key scenes in the film to illuminate the ways in which it functions both as a meditation upon and reflection of contemporary dilemmas of law, violence, gender and nation. Our (mis)reading of *Unforgiven* aims to utilise it as a vehicle for the recognition of the ways in which certain powerful stories in Western culture exert a 'pull' upon our sensibilities, positioning us both to identify with

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<sup>78</sup> For more on 'Racial Difference and the Threat of Miscegenation,' see Wexman, above n 64 at 89-105.

<sup>79</sup> *Unforgiven* (Malpas Productions/Warner Brothers, 1992) The transcript of the film is available online at: <http://www.clinteastwood.net>. Click on 'Filmography,' then on 'Unforgiven,' then on 'Script.'

<sup>80</sup> See, for example, Kamir, above n 45; Austin Sarat, 'When Memory Speaks: Remembrance and Revenge in *Unforgiven*' (year?) 77*Indiana Law Journal* 307-329; Beard, William. '*Unforgiven* and the Uncertainties of the Heroic' (2002) 3:2 *Canadian Journal of Film Studies* 41; Mary Whitlock Blundell & Kirk Ormand, 'Western Values, or the Peoples Homer: '*Unforgiven*' as a Reading of the 'Illiad'' (1997) 18:4 *Poetics Today* 533; William Ian Miller, 'Clint Eastwood and Equity: Popular Culture's Theory of Revenge' in Austin Sarat & Thomas R. Kearns (eds) *Law in the Domains of Culture* (Ann Arbor, University of Michigan Press, 1998) at 161; Carl Plantinga, 'Spectacles of Death: Clint Eastwood and Violence in *Unforgiven*' (1998) 37 *Cinema Journal* 65.

<sup>81</sup> It is helpful to distinguish the typical from the iconic. In his discussion of genre, Ryall points out that the iconic or 'canonical' Westerns are, in many senses, not typical of their genre. Indeed, if one wants to best understand the norms of the genre, he asserts that one needs to go to the 'B' pictures rather than the Hollywood 'A' list. See Tom Ryall, 'Genre and Hollywood' in John Hill & Pamela Church Gibson (eds) *The Oxford Guide to Film Studies* (New York, Oxford University Press, 1998) at 334. Certainly, audiences for Hollywood films, just like audiences for other cultural products, 'read them according to a detailed set of assumptions – an intertextual consciousness – derived from a regular viewing of related films and an awareness of the various secondary discourses.' Further, the pleasures of the viewer are derived in large measure (at 334) 'from such qualities as the ritualistic predictability of the narratives and the nuancing of familiar conventions.'

<sup>82</sup> The co-mingling of influences is also marked in the film's final dedication, 'for Don and Sergio.' The latter is, of course, 'spaghetti western' director Sergio Leone, responsible for Eastwood's transformation into The Man With No Name. He worked with Eastwood in *Fistful of Dollars* (1964), *For a Few Dollars More* (1965) and *The Good, The Bad & the Ugly* (1966). The former, action-movie director Don Siegel, directed Eastwood in *Dirty Harry* (1971), as well as in *Coogan's Bluff* (1968) and *The Beguiled* (1971).

<sup>83</sup> David People's script was originally written in 1984. Eastwood produced it nearly a decade later. For a useful discussion of the legitimacy of readings which speak less to authorial intent than to reader response issues, see Kamir's discussion of modern Western legal understandings of *Rashomon*, a Japanese film produced in the 1950s, set in feudal Japan in Orit Kamir, 'Judgment By Film: Socio-Legal Functions of *Rashomon*' (2000) 12 *Yale J.L. & Human.* 39.

<sup>84</sup> Further, that this re-reading has been prompted, in part, by recent events in Iraq should not seem extraordinary when one considers that the film appeared in the year following what is now know as Gulf War I.

certain types of agents and to respond to certain types of injuries, to the exclusion of other narratives, other agents and other possible harms.

### *The Injury*

The opening scene of the film links together law, violence and gender in the symbolically important site of the saloon. In the opening minutes of the movie, Delilah, one of the whores working in Greeley's Saloon and Billiards, is viciously attacked with a knife by cowboy Mike, assisted by his friend Davey. The cause of the trouble? A woman's laughter. When Sherriff Little Bill arrives on the scene, Strawberry Alice, another of the whores, reports: 'She didn't steal nothing. She didn't even touch his poke. All she done, when she seen he has a teensy little pecker, is give a giggle. That's all. She didn't know no better.' This opening act of violence is thoroughly gendered. Not only is it enacted on the body of a woman, it is justified because of the gendered assault of her laughter on the body of a man.<sup>85</sup> Through her laughter, she has assaulted the core of his sexualised masculinity. Mike's return of violence is similarly sexualised and gendered, targeting her face and breasts, the parts of her body which signify her beauty and desirability in the sexual economy of the brothel/saloon.

In such a context, what penalty is appropriate? Strawberry Alice makes it clear that she sees the injury to Delilah as deserving of the maximum sanction possible at law: 'Going to hang them, Little Bill?' Little Bill initially indicates his own view that the punishment required is something short of death, telling his deputy to go fetch his bullwhip. Strawberry Alice's expression of outrage is matched by that of Skinny, the brothel owner, who asserts that *he himself* is the victim. The injury is here re-inscribed to focus not on the body of Delilah, but on Skinny's damaged property interests: he has invested in Delilah, and the slashing of her face has made her economically unprofitable.<sup>86</sup> An economic injury cannot be redressed through a whipping, but requires economic recompense. Little Bill is persuaded by the argument, and directs Mike and Davey to deliver a certain number of ponies to to Skinny before the spring.

To Alice's expression of outrage that the cowboys are not even to receive a whipping, Little Bill grabs her and pulls her close, saying: 'Haven't you seen enough blood for one night, Huh? Hell, Alice, it ain't like they were tramps, or loafers or bad men, you know they were just hard working boys who were foolish. If they was given over to wickedness in a regular way then I could see...' Alice interrupts, finishing his sentence with, 'Like whores?' The movie positions the viewer, like Alice, to understand the double standard all too clearly. 'Given over to wickedness in a regular way,' the whores are visible to the law only through the property interests of those who, like Skinny, profit from the women's location in the sexual economy. Through their emplacement in the sexual economy of the brothel, they do not merit the full protection of the law. Such protection

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<sup>85</sup> For a discussion of women's laughter, see Judy Elsley, 'Laughter as Feminine Power in *The Color Purple* and *A Question of Silence*' in Regina Barreca (ed) *New Perspectives on Women and Comedy* (Philadelphia, Gordon and Breach Science Publishers, 1992) at 193-199; see also Tania Modleski, 'Rape vs. Mans/laughter: Blackmail' in T. Modleski, *The Women Who Knew Too Much: Hitchcock and Feminist Theory* (New York, Routledge, 1989) at 17-30.

<sup>86</sup> Skinny's legal argument is articulated thus 'This here is a lawful contract between me and Delilah Fitzgerald, the cut whore. I brought her clear from Boston, I paid her expenses and all, and I've got a contract here that represents an investment of capital. ... Damaged property. Like if I was to hamstring one of their cow ponies. ... maybe she can clean up the place or something, but nobody's going to pay good money for a cut up whore.'

apparently extends only to the right kind of woman, potential wives and mothers, women on the homestead, women who advance the nation-building cause.

In the face of law's failure/refusal to expel violence from their space of work, and to see them as the appropriate subjects of law, they take the law into their own hands. They pool their savings and offer a reward of one thousand dollars for anyone who will kill Mike and Davy. And we see how the nature of the injury has again changed. Their outrage over the cutting of Delilah has been surpassed by their outrage over the gendered violence of the law's erasure of their collective status as persons: 'Just because we let them smelly fools ride us like horses doesn't mean we gotta let them brand us like horses. Maybe we ain't nothing but whores but, by God, we ain't horses.'

But as viewers, we find ourselves in a bind with respect to the injury, and the whores' efforts to find redress. Though sickened by the violence done to Delilah, and outraged by the injustice of the law's response, we are left uncomfortable with the whores' desire to have the heads of the two cowboys.<sup>87</sup> Indeed, we begin to see the ways in which their desire for vengeance erases Delilah's subjectivity as effectively as did Mikey with his blade and Little Bill with his 'law.' Further, though we as viewers reject the vision that their status in the sexual economy might leave them outside the protection of law, we also see that they are, nonetheless, dangerous women. They are *femmes fatales*, who, Pandora-like, have opened the door to lawlessness and violence that will bring suffering and death to the town of Big Whiskey.

### *The Flawed Call for Justice*

As expected, news of the bounty spreads quickly, and men of 'notoriously vicious and intemperate disposition' are drawn to the town. Amongst them, three well known assassins of the 'old West,' English Bob, William Munny, and Ned Logan. Bob, the first to arrive, is promptly apprehended and savagely beaten by Little Bill, in a scene that is shot in such a way as to leave viewers deeply discomfited. Little Bill makes it clear that the public and vicious nature of his punishment is intended to have a deterrent effect:

I guess you think I'm kicking you, Bob. It ain't so. What I'm doing is talking. You hear? I'm talking to all those villains down there in Kansas. I'm talking to those villains in Missouri. And all those villains down there in Cheyenne, and I'm telling them there ain't no whore's gold. And even if there was, well they wouldn't want to come looking for it anyhow.

The effect of the scene on the viewer however, is to put in question the legitimacy of Little Bill's legal order. The legitimacy is further broken down during the beatings Bill subsequently administers to Munny and then Ned. While Bill is unaware who Munny *is* while beating him for violating the 'No Guns' bylaw, it is also clear that he is taking great pleasure in the brutal beating, grinning as he allows the ill and beaten Munny to crawl on his belly out of the Saloon. Later in the film, after the first of the contract killings has been completed, Bill administers a third vicious beating. This time, the victim is Ned. Stripped to the waist, wrists tied to the bars of the jail cell, Ned is whipped again and again in a beating that proves ultimately to be fatal.

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<sup>87</sup> And indeed, their refusal to allow Davey to make reparations directly to Delilah emphasises the injustice of their response to the injury.



In the vicious beatings Little Bill gives to English Bob, Munny and Ned, the lawmaker is revealed as equally violent and unforgiving as the alleged outlaws. In the character of Little Bill, the film brings us face to face with the insight that the violence that the founding of law has attempted to cast out inevitably returns to suffuse it. It is the women in the brothel who have implemented just such a dangerous return, exposing the tenuous violent foundations of the legal order that Little Bill is straining to hold in place in *Big Whiskey*. In so doing, however, they are not unequivocally on the side of 'justice' themselves. Indeed, if we are made uncomfortable by the violence of Little Bill, the violence of the contract is equally painful.

Indeed, there is no easy place from which to watch the unfolding of the film's apparently irrevocable sequence of violence. Both the contract killings are myth shattering, in that they confound both our genre expectations (as well as those of the Kid) about the quick, clean and heroic nature of violence in the frontier mythology of the old West.<sup>88</sup> The first of the cowboys to be shot is Davey, the cowboy shown to be less than deserving of the sentence placed on him. And when he is finally shot by Munny, it is a 'gut shot' which fails to kill, but leaves a wounded and groaning victim to die slowly in the sun, begging for water. The movie allows the viewer no distance from its brutality, just as Munny can find no relief from his haunting memories of killings past. The film's motto, 'Deserve's got nothing to do with it' underlines both the connection between law and violence and the disconnect between law and justice. The second of the two killings, though less painful to watch, is equally unsatisfying. In neither of the two killings is there a strong sense of justice being done. Though the whores may have been responding to an injustice, their call for retribution opens a Pandora's Box of new injustices and inequity. Far from re-establishing law's relationship to justice, their call both destabilises law and gives rise to new injustices.

### *Authorising Heroic Intervention*

If the gendered injury involves women in the saloon, the development and resolution of the tale is integrally linked with a dead woman who had once occupied the homestead, Munny's wife, Claudia Feathers. She is, one might say, an absent presence: though dead, she is invoked and re-invoked throughout the movie. Munny's actions and re-actions are not meaningful without an understanding of the role played by Claudia. Indeed, the architecture of the movie places Claudia at the foundation. Using the structural device of a framing story, the movie opens and closes with the same scene: a backlit shot of a homestead on the desolate prairie; one gnarled tree stands beside a lone log cabin. In the first of these two bookend pieces, the silhouette of a man can be seen in the distance, digging a hole in the earth behind the cabin. A haunting melody plays while the following text scrolls slowly over the screen:

She was a comely young woman and not without prospects. Therefore it was heartbreaking to her mother that she would enter into marriage with William Munny, a known thief and

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<sup>88</sup> Giroux describes this kind of violence as 'symbolic violence.' Such violence 'attempts to connect the visceral and the reflective. It couples the mobilisation of emotion and the haunting images of the unwelcome with an attempt to 'give meaning and import to our mortal twitchings.' ... Instead of providing the viewer with stylistic gore that offers the immediacy of visual pleasure and escape, symbolic violence probes the complex contradictions that shape human agency, the limits of rationality, and the existential issues that tie us to other human beings and a broader social world.' See 'Racism and the Aesthetic of Hyper-Real Violence,' Henry A. Giroux, *Fugitive Cultures: Race, Violence, and Youth* (New York, Routledge, 1996), at 62.

murderer, a man of notoriously vicious and intemperate disposition. When she died, it was not at his hands as her mother might have expected but of smallpox. That was 1878.

At the end of the movie, we are returned to the same desolate backlit shot of the homestead. This time the text reads:

Some years later, Mrs. Ansonia Feathers made the arduous journey to Hodgeman County to visit the last resting place of her only daughter. William Munny has long since disappeared with the children.... some said to San Francisco where it was rumoured he prospered in dry goods. And there was nothing on the marker to explain to Mrs. Feathers why her only daughter had married a known thief and murderer, a man of notoriously vicious and intemperate disposition.

In this way, the film begins and ends with the question of Claudia. This narrative framing makes it clear from the beginning that marriage, its meaning and function are central to the story being told. As we have already suggested, in the Western, a marriage of the proper sort can create the right kinds of citizens. Nation-building, the excising of violence and the bringing of civilization all are tasks that require the right sort of woman in her proper place.

And Claudia is just such a woman. She has a profound effect on Munny's behaviour and his psyche. It is because of her that, as he constantly tell us, 'I ain't like that no more. Claudia, she straightened me up, cleared me of drinking whisky and all.' Claudia's order disavows drinking, gambling, and killing, and offers up settled family life and farming as a preferable alternative to riding the range. It is Claudia who transforms Munny from villain to potential hero. Yet, his heroic potential is not immediately obvious to the viewer. Indeed, our initial suspicion is that Claudia may be responsible for his emasculation. We first meet Munny in a pigsty, prone and covered in filth. The widowed father of two young children, he is clearly inadequate as a farmer. Like 'The Kid,' soon to one of Munny's partners in the quest for the bounty, we have a hard time reconciling this picture with Munny's reputation as the 'meanest god damned son of a bitch alive.' It is, indeed, his desperate need for money for his children that eventually leads Munny to respond to the whores' bounty.

Both Claudia and her moral order are fundamentally tied to the homestead and the project of nation-building. Good men, like good women, are deeply connected to the home. And it is in the home that we encounter Claudia's ghostly traces, traces that identify her as continuing to occupy her roles as wife and mother. Indeed, it would seem that even death does not release her from her childcare obligations: when Munny rides off to pursue the bounty, he still charges her spirit with the task of watching over the children.<sup>89</sup> And further, Claudia's death does not release Munny from his obligations of sexual fidelity. Unlike his partners, he turns down the offer of 'free-ones' from the whores.

Claudia's order does reject the Saloon and the peddling of flesh, but this rejection does not seem to focus on the immorality of the women selling their services. Rather, it focuses on the

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<sup>89</sup> Munny leaves the two small children on their own, telling them, 'I'll be back in a couple of weeks. You remember how the spirit of your dear departed Ma watches over you.'

dangers of the Saloon to the nation itself – the threat posed to the most important of men, fathers.<sup>90</sup> The Saloon, with liquor and sex for sale, is a site of potential contagion. Claudia's moral order creates an enlightened man who is somehow able to see the immorality of prostitution while continuing to acknowledge the full humanity of the whores. Indeed, other than Davey (who had attempted to make direct reparations through the offer of her own pony), Munny is the only person to speak 'to' Delilah, and to do so in ways that address her 'self.' And, in riding away at the end, his final words of warning are directed at those who would hurt the whores. So it is that, even after her death, Claudia continues to exert a civilizing moral influence upon Munny.<sup>91</sup> We as viewers are made to understand that marriage to the right kind of woman is crucial for the reformation/construction of a re-imagined civilised masculine citizen.

But again, it must be the right kind of woman, as the film reinforces through its treatment of The Other wife in the movie. She is Ned's Indian wife, Sally Two Trees. If Claudia is an absent presence in the movie, one might make the argument that Sally is her dark double, that is, a present absence. Though physically present, she is silent, speaking no lines of text. Sally is not shown to have Claudia's power as a source of moral authority for Ned. Ned understands that Munny wouldn't be seeking the bounty if Claudia were alive. Sally Two Trees *is* alive, and clearly disapproves, but her moral authority is insufficient to prevent Ned from joining Munny on this problematic voyage. Further, the dead Claudia's moral force was such that Munny put aside the pleasures of the flesh. Sally Two Trees has no such authority: Ned willingly takes up the whores' offers of 'a free one.' Although there are two wives in this story, they are positioned quite differently with respect to the task of 'nation building.' In this respect, it is significant that Sally is textually marked as 'an Indian.'

It is also interesting to reflect on the relationship between what the film does at the levels of script and of casting. Morgan Freeman was cast in the role of Ned. This was an open option: though it may be a Hollywood convention to cast white actors where race is not 'in issue,' nothing in the text of the script identifies Ned's racial background one-way or the other. Here, the casting of a black man in the role adds significant depth to the film. It makes the scene where Ned is whipped to death all the more brutal, since it is inevitably coloured by our cultural knowledge of racialised violence against black men. Such a choice was not open with respect to the character of Sally Two Trees. Not only does her name mark her as Indian, Ned also uses her race as an explanation for her seeming rudeness to Munny, for her having given him evil eye. Ned says, 'Sally's an Indian, and Indians aren't over-friendly.'

But *why* does the story mark her textually as an Indian? Apart from taking its place in a long history of unflattering and flattened representations of First Nations peoples in the genre, this marking draws into the film a set of racialised discourses about the kinds of women who could serve as the cornerstones in the creation of a just and civilised nation.<sup>92</sup> In marking her as Indian,

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<sup>90</sup> 'That ain't right, peddling flesh. Claudia, God rest her soul, would never want me doing something like that, me being a father and all.'

<sup>91</sup> Indeed, it might be argued that she functions as such a powerful moral force precisely because she *is* dead. In death, Claudia is able to combine both particularity, that is, her embodied white woman-ness, and universality, as the quintessential wife and mother of the nation. This 'combination of determination and what is beyond determination' resonates with Fitzpatrick's account of the origin of law, to which we alluded earlier, Fitzpatrick, above n 22 at 76.

<sup>92</sup> For a delicious fictional playing with this flattened history of Cowboys and Indians in the Western, see Thomas King, *Green Grass, Running Water*, (New York, Bantam Books, 1994).

the film itself performs a judging act:<sup>93</sup> Sally is found incapable of occupying that space which is inhabited by Claudia. In marking her as an Indian, the film also provides us with the explanation for Sally's failure: she is quite simply not the right kind of woman.

The film's portrayal of the two wives offers up as the most persuasive source of legitimacy, or grounds, for law and nation the internal, self-regulative, conscience binding authority of a very specific racialised (white) mother rather than the authoritative, 'power over,' authority of the father. In so doing, it may provide us with insight into the gendered and racialised content of the (ostensibly universalised) discourses of 'nation-building,' particularly to the extent that they take shape within and as disseminated by an American-led 'coalition of the willing.'

### *The Showdown*

We conclude this section with a discussion of the showdown, the climactic final scene of ecstatic violence, which again takes place in the saloon. The initial injury occurred there, and it is to the Saloon that we return. And if much of the film to this point could have been called an anti-Western, at this point, it becomes rather an uber-Western. The film pulls its punches, and we end with something much closer to a generic climax.

At this point, the two killings having been completed, the women deliver the bounty money to Munny and the Kid, along with the news that Ned was caught, beaten to death by Bill, and is now on display outside of the saloon. This news has a dramatic effect on Munny and inaugurates the final act. Claudia's civilizing influence is set to the side, and he begins taking long swigs from a nearby bottle of whisky. He also says, 'So they killed Ned for what I done?' Here, though he will later utter the line 'deserves' got nothin to do with it,' it is clear that deserve has everything to do with it.<sup>94</sup> He rides back into town to avenge his friend's death, bottle in hand.

Munny enters the Saloon and shoots Skinny, the unarmed bar owner saying 'he should have armed himself if he was going to decorate his saloon with my friend.' At this, Little Bill recognises who he is, and says, 'You'd be William Munny out of Missouri. Killer of women and children.' Up to this point in the film, Munny has consistently responded to such assertions by saying 'I ain't like that no more.' But he no longer disclaims this aspect of his past or indeed, his personality. This time, he says, 'That's right. I've killed just about anything that walked or crawled at one time or another, and I'm here to kill you, Little Bill, for what you did to Ned.' Then, in a piece of balletic violence, Munny manages to single-handedly shoot down five armed men, including Little Bill. The saloon now empty, Munny goes to the bar, and pours another drink. Although some viewers may experience in this scene a disquieting shift, it is satisfying, even pleasurable for most viewers, fulfilling genre expectations of what the Western outlaw hero is supposed to be doing.<sup>95</sup> We want him to kill Little Bill, and he does it with the panache that we would expect from *The Man With No Name*, or even *Dirty Harry Callahan*. The final exchange between Munny and Little Bill invokes a

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<sup>93</sup> On the ways in which film both performs act of judgment, and positions its viewers to do likewise, see Orit Kamir, 'Judgment By Film: Socio-Legal Functions of *Rashomon*' (2000) 12 *Yale J. of L. and Human.* 39. See also Orit Kamir, *The Rule of Law-Films: How Law on Screen Constructs Guilt, Gender, Dignity and Honor* (forthcoming)

<sup>94</sup> For a reading of the film with takes very seriously the notion of 'desert' and revenge, see Miller, above n 80.

<sup>95</sup> Our observations here are based on an informal and assuredly unscientific 'survey' of viewer responses to the film, including our own, our students and the many friends and colleagues who have had to endure our (perhaps somewhat myopic) fascination with it for too long.

long tradition of laconic Western heroes. Bill says ‘I don’t deserve to die like this. I was building a house’ to which Munny replies ‘deserve’s got nothing to do with it,’ and shoots him point blank.

This piece of violence stands in sharp contrast with the acts of violence that preceded it. As viewers, we are now positioned to identify with and even cheer the killing of little Bill and Skinny. In part, this is facilitated by the filmic techniques deployed for the various portrayals of violence. The earlier violent moments are filmed in a manner that emphasised realism. We are forced to confront the ugliness and pain of actual slashing and killings. But in this final scene, we retreat from what Giroux calls ‘symbolic violence’ back into the less textured world of what he labels ‘ritualistic violence.’<sup>96</sup> This is action-adventure violence of the kind typical of much Hollywood fare. The suffering of victims is no longer at issue. The sense of complexity and ambivalence cultivated earlier in the film is erased. We are now called upon to believe wholly that this killing is indeed deserved. As in the classic Western, there is no moral ambiguity in the portrayal of paroxysm of vengeance that provides the culminating moment of the film.<sup>97</sup>

Thus, in its final moments, the film makes a dramatic ‘swerve’ to a mythic narrative that embeds a quite different (and much less equivocal) account of the outlaw hero and his role in law’s violent foundations. What should we make of this abrupt change of direction? We observed at the outset that the Western negotiates the paradox of modern law’s self-founding through its iterability, that is, the ability to combine sameness and difference through repeated retellings. *Unforgiven* performs our modern dilemma for us, capturing the problem of how we – as moderns – must grapple with our need to both disavow the violence that is endemic to our legal order, and yet, somehow also affirm it.

*Unforgiven* is not an anti-Western, but it is a Western of its time. It appears initially to deconstruct the place of both gender and violence in the Western. But at the end, it does neither. Claudia, as the central female character, is emphatically kept in her ‘place.’ In the final scene, violence is also put back into its proper place as well.<sup>98</sup> *Unforgiven* shows us both our loss of faith in the myths of law’s foundations, as well as our unflinching capacity to continue, in the face of this cynicism, to stake all claims on its continued potency. Indeed, our cynicism is far from debilitating here, as Žižek has pointed out.<sup>99</sup> Rather, by enacting the denial of the myth’s potency, by claiming that it no longer has the hold that it once had, we give it even greater power over us. And perhaps this explains, in part, the film’s great success. By enacting a profound and gut-wrenching critique of violence throughout most of its duration on screen, the film heightens many viewers’ pleasure in

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<sup>96</sup> Ritualistic violence is that ‘at the centre of the genres that produce it – horror, action-adventure, Hollywood drama – utterly banal, predictable, and often stereotypically masculine. This type of violence is pure spectacle in form and superficial in content. Audiences connect with such depictions viscerally; yet it is not edifying in the best pedagogical sense, offering few insights into the complex range of human behavior and struggles. Ritualistic violence is racy, sensationalist, and testosterone laden. ... it glows in the heat of the spectacle, shock, and contrivance, yet it is entirely formulaic.’ Giroux, above n 88 at 61.

<sup>97</sup> As Tompkins emphasises, above n 36, the entire film works towards the final act of violent retribution. The moment of violent retribution is in fact a central point in the entire rape-revenge genre. For an extended exploration of that genre, see Carol J. Clover, *Men, Women, and Chainsaws: Gender in the Modern Horror Film* (Princeton, N.J, Princeton University Press, 1992), particularly ch. 3, ‘Getting Even.’

<sup>98</sup> Of course, this is not atypical for Hollywood films. See, for example, ‘Seduction and Betrayal in *The Bodyguard*’ in bell hooks, *Outlaw Culture: Resisting Representations* (New York, Routledge, 1994), where she argues the film seduces us with the promise of a taboo exploding, inter-racial love affair between Whitney Houston and Kevin Costner, only to betray that expectation by pushing the actualisation of the relationship out of the characters’ reach in the final scenes.

<sup>99</sup> Slavoj Žižek, *On Belief* (London, Routledge, 2001).

the climactic return of the mythic hero, and reinforces the efficacy of the masculine myth of law and its violent origins.

## F. Reading the International

*International legal stories participate in creating worlds inside which we live life everyday. These stories at once make us feel less anxious about our own insecurity and more complacent about the insecurity and suffering we inflict upon others.*<sup>100</sup>

We propose that our reading of *Unforgiven* opens an avenue for re-examining the way international law may also function, despite itself, as a conservative force – one that helps to hold in place the divisions and inequalities of our modern era.<sup>101</sup> There are two avenues through which we think this might happen. The first is through an examination of the substance of the narrative itself, how it provides a particularly persuasive (even hegemonic) account of the links between law, violence, gender and nation that inform contemporary debates in international law. We argue, along with many feminist scholars working in the field, that the violent, gendered, and racialised content of this peculiarly Western story needs to be revealed as such, and reckoned with more directly than is currently the case. The second is by drawing attention to the function of narrative itself, as it plays out in the international sphere. As we observed earlier, the stories of law's founding authority are necessarily repeated in our public spheres, shaping our increasingly transnational 'nomos' while making particular demands on us as viewers/listeners. We do not stand outside these narratives. They draw us in, and attempt to position us, just as a film endeavours to position its viewers through the use of camera angles, editing, and sound. Understanding how we, as citizens in the west, as well as legal scholars, can find ourselves complicit in these stories is another crucial task to which we aim to contribute.<sup>102</sup>

We've suggested in particular that our analysis might be relevant to reconsiderations of the approach taken by international lawyers to the question of humanitarian interventions. We think it is possible to read *Unforgiven* as a mythic account of humanitarian intervention, in which feminised victims seek justice from a source outside the oppressive legal order in which they are confined. The film subverts the myth's moral clarity, however, for neither the call for justice itself nor the response can be experienced unequivocally. The film does indeed draw to a conclusion, however, and in its final moments, as William Munny rides out of town, he admonishes the townsfolk not to disrespect or otherwise injure the whores. As Orit Kamir has argued, the whore appear to be the primary beneficiaries of the shooting of Skinny and Little Bill, being reinscribed as the possessors of human dignity.<sup>103</sup> And certainly, a dominant reading of the film does suggest, on one level, that the whores can now take their rightful places as full members of the community. While our reading of the gendered exclusions throughout the film leads us to be less than hopeful about the collective

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<sup>100</sup> Anne Orford 'Muscular Humanitarianism: Reading the Narratives of the New Interventionism' (1999) 10 *E.J.I.L.* 679 at 708.

<sup>101</sup> On this point, see also S. Pahuja and R. Buchanan, 'Law, Nation, Community' (2004) *Law, Text, Culture* (forthcoming). See also, S. Pahuja, above.

<sup>102</sup> Buchanan and Pahuja, *Cosmopolitanism, Collaboration and Complicity*, above n 14.

<sup>103</sup> Orit Kamir, 'Deserve's got nothing to do with it': Deterrence and Retribution, Honour and Dignity in Clint Eastwood's *Unforgiven*, Presentation at the Annual Meeting of the Association for the Study of Law, Culture and the Humanities, New York, March 2003.

fate of the whores, we do agree with Kamir that there is something quite seductive about the emancipatory possibility held out by the 'rescue' narrative in the film's conclusion.

Indeed, we have argued in this paper that Westerns, and *Unforgiven* in particular, can assist us to recognise more clearly the ways in which certain powerful stories in Western culture exert a 'pull' upon our sensibilities, positioning us both to identify with certain types of agents and to respond to certain types of injuries, to the exclusion of other narratives, other agents and other harms. We suggest that one can read contemporary accounts of the international as analogous to a cinematic narrative, one that has many of the characteristics of the Western. The story is told largely through images in the popular media, although scholarly accounts, documentaries, and fictional retellings of events trace and retrace these familiar storylines. The accounts usually involve 'characters' such as NATO, the 'international community,' the US and rogue states, with and against whom we are invited to identify.

An illuminating and sympathetic effort to reveal the narratives that help to contain our responses to the tragic and morally ambiguous terrain on which humanitarian interventions take place can be found in the work of Anne Orford. In *Reading Humanitarian Intervention*, Orford argues that the international has increasingly been understood as a realm of danger, instability, and insecurity.<sup>104</sup> In this realm, heroic, masculinised subjects encounter threats from rogue states, terrorists, and other outlaws. The heroic role in which these subjects are positioned requires them to face down these threats of violence, lawlessness, and even savagery, with force if necessary, in order to establish order, civilization and most importantly, the rule of law. The central heroic figure with which we are called to identify is 'tough, aggressive, decisive, benevolent' white masculinity.<sup>105</sup> While Orford depicts these figures as knights in white armour, it should be clear from our preceding analysis that the cowboy -- that other familiar trope of mounted masculinity -- is equally, if not more, apt. We suggest that the dangerous realm of the 'international' can be seen as an imagined space very like the frontier West. As in the cinematic Western, Orford observes that contemporary discourses of humanitarian intervention call upon us to identify with the hero, and to support his inevitable use of force to accomplish what we are made to believe are necessary and morally desirable ends. In both narratives, through the actions of morally superior white 'men,' law paradoxically both uses 'legitimate' violence to banish (illegitimate) violence, and restores (or bestows) a just legal order to a formerly dangerous and lawless realm.

In both Orford's account of international humanitarian intervention, and our account of the cinematic Western, it is the distinction between law and violence that is centrally in issue. This distinction, however, is deeply interpenetrated with the heroic narrative of (white) masculinised agency and feminised/racialised victimisation. As we've seen in our close reading of *Unforgiven*, the law and violence distinction depends on other unequally weighted binaries, such as male and female, civilised and savage to hold it in place, and vice versa.

The most significant convergence between our account and Orford's, however, is the focus placed in each on the ways in which we are positioned as viewers. Film theory is, of course, particularly instructive in this respect. We can all too readily see how films like *Unforgiven* work

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<sup>104</sup> Orford, above n 3.

<sup>105</sup> Orford, above n 3 at 692.

on their viewers, using filmic effects to encourage specific types of identifications and responses.<sup>106</sup> We saw how, in the early part of the film, the violence was discomforting, destabilising, while in its cathartic concluding sequence, we were thrilled and relieved that our troubled hero, Munny, with whom we have now come to identify totally, has finally acted decisively to right prior wrongs and inaugurate a new just legal order in the town of Big Whiskey. We no longer question the justice or authority with which he acts, because of how we have been positioned as complicit in his actions. Orford argues similarly that we (as international law scholars in the West) fail to question the justness or humanity of ‘humanitarian interventions’ because we have already been positioned to identify with the heroic intervenors on behalf of the feminised and presumed-to-be helpless victims.

## G. Conclusion

Our reading of *Unforgiven* reveals some of the gendered and racialised narratives at work in the contemporary discourses of the international, and their connection to even deeper and affect-laden gendered and racialised narratives of the source and authority of law.<sup>107</sup> We have done this by suggesting that the Western, and *Unforgiven* in particular, traces an account of the founding of law on the frontier that resonates strongly with the mythological foundations of modern law in the west. Both sets of stories reveal acts of founding as a twofold process of inclusion and exclusion. The dominant, generic account of the Western tells a story of itself as being about neither race nor gender, but about individual freedom and the search for justice, and the shaping of the nation out of the savage and lawless frontier. Though women seem to be absent, they are actually central to the story. And the people who can take their proper place in the nation are specifically marked by race (here, whiteness). In its act of self-founding, nation defines its Others as it defines itself. That act of demarcation, the particularity of the foundation of law and nation, must immediately be erased, so that law and nation can both be seen as responsive to the universal demands of justice and equality.<sup>108</sup> We’ve shown how the Western generally, and *Unforgiven* in particular, give content to both the insiders and the outsiders framed by the account of law’s foundations. We have further suggested that these narratives are not confined to film, but rather, are central to the construction of our ‘nomos’ in the West. Their endless replication in film and in popular culture more generally, is part of what makes them so persuasive and intuitive. By articulating the narratives of exclusion embedded in the generic accounts, we hope to make it possible to imagine how the story could be told differently.

*Unforgiven*, in the ways that it simultaneously enacts and deconstructs the genre of the Western in which these exclusionary narratives are powerfully inscribed, also helps to reveal the unstable and contradictory nature of many of these stories. Reading law through film in this way reveals how we might be called or interpolated by these narratives to identify with certain (white, male, macho) subject positions instead of others. *Unforgiven* helps to make this process visible by making the usual identification with the white male hero extremely uncomfortable at first: instead

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<sup>106</sup> To say that a film encourages specific types of identification or response is not to assert a causal relation, or to claim that film works unproblematically on the viewer. For more on the importance of attending to audience response, see Buchanan and Johnson, above n 17 at 103-107. Certainly, films can be read with or against the grain; we are arguing for the importance of acknowledging the pull of the standard story in order to read it differently. On reading against the grain, see Kamir, ‘Rashamon’ above n 93.

<sup>107</sup> For an exploration of the significance of the visceral register of being to thinking, judgment and public culture, see, William E. Connolly, *Neuropolitics: Thinking, Culture, Speed* (Minneapolis, University of Minnesota Press, 2002).

<sup>108</sup> See Fitzpatrick, above n 22.



of taking pleasure in our identification with the powerful, macho hero, we are made to squirm through the techniques that the film uses to deglamourise its violence and to humanise/feminise its macho hero. We seek to use the film's deconstructive moves to parallel our own efforts at reflexively repositioning ourselves in relation to the heroic narratives of international intervention and the holistic narrative of law's founding certainties.

Neither the idea of law's violent foundations, nor of the violence endemic to the masculinised hero (whether played out in the Cineplex or on CNN), will have come as a revelation to most readers. A more potent question is this: How it is that the erasure of the various violences which fracture our international legal order continue to be effected so readily? That is, how can we, knowing of the violence, somehow forget, or too readily accept it? The insight about erasure comes from our reading of film more generally—thinking about how film works on us as subjects and make us complicit. Narratives work in somewhat the same ways in the international public sphere—through media coverage of crises in the developing world, through the distressing slippage between movies, CNN, and the 'desert of the real.'<sup>109</sup> We argue for a practice of reading the public sphere as we might read a film, indeed, by reading these artefacts alongside one another. Such practices might well move us in the direction of a better understanding of our *nomos*, of how we are made complacent about the suffering and insecurity inflicted on others, and hence, become complicit subjects of both law and the international. As we also argued, narratives only cohere or sustain themselves through endless repetition. And, with re-iteration comes the possibility of reading against the grain, of writing things differently. Each reading re-inscribes, but also potentially alters, these categories.<sup>110</sup> We have shown how re-inscription exists alongside subversion in *Unforgiven*. So, then, to know and understand the narratives of our *nomos* opens space for shifts: both in the shape of the narratives, and in their direction.

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<sup>109</sup> This currently popular phrase is spoken by the character 'Morpheus' in the Wachowski brother's film, *The Matrix* (1999) and is taken as a point of departure in, Slavoj Žižek, *Welcome to the Desert of the Real* (London: Verso, 2002).

<sup>110</sup> For a discussion of the productive possibility of repetition, see the interchange between Trin T. Minh-ha and Homi Bhabah, 'Painted Power' in Minh-ha, Trinh T. *Cinema Interval* (New York: Routledge, 1999) at 17-31.